



Meeting note

Project name	North Lincolnshire Green Energy Park
File reference	EN010116
Status	Final
Author	The Planning Inspectorate
Date	14 October 2021
Meeting with	Solar 21
Venue	Microsoft Teams
Meeting objectives	Project Update
Circulation	All attendees

Summary of key points discussed and advice given

The Planning Inspectorate (the Inspectorate) advised that a note of the meeting would be taken and published on its website in accordance with section 51 of the Planning Act 2008 (the PA2008). Any advice given under section 51 would not constitute legal advice upon which applicants (or others) could rely.

Project Update, including submission date

The Applicant is aiming to submit the application on 26 November 2021. If this is unlikely, the Applicant will update the Inspectorate if this were to change, and submission would be delayed until early 2022. The Environmental Statement (ES) is progressing, with noise and archaeology being the key matters still being considered. North Lincolnshire Council (NLC) suggested a target noise level below the baseline level recorded in the noise assessments. The Applicant is looking at technical options for additional screening and is mindful of potential flood risk impacts of any measures put in place. Geo-physical surveys for archaeological matters have been agreed. Planning trial trenching will be completed by the point of submission. If the requirement for increased trial trenching was identified, this would be completed post submission.

At the previous meeting, the Applicant had advised it was in discussions with the Environment Agency (EA) regarding flood mitigation for nearby industrial land and the potential for third party evacuation plans. Support had been requested from NLC. The approach has been amended to include installation of a flood wall rather than flood bund, which was agreed with EA. Invitations had been extended to third parties regarding joint flood evacuation plans. The Inspectorate advised to include a strong audit trail on this matter within the application.

Draft documents review

Explanatory Memorandum (EM)

The Inspectorate advised that more detailed EM's are now being requested, and as much information about any Associated Development (AD) and more novel elements of the project (such as the Hydrogen plant) would be required. Clarification of the subordinate nature of the Hydrogen plant relationship with the National Significant Infrastructure Project (NSIP) would be necessary, taking into account the cross-subsidisation of the development by the Hydrogen plant. The principles set out in the 2013 DCLG Guidance on associated development for major infrastructure projects should be followed. The Inspectorate advised that the application should set out the rationale for elements of the project considered as AD. The Applicant advised that a s35 directive had been issued by the Department for Business, Energy and Industrial Strategy (BEIS) advising on the elements to include in the NSIP.

The Inspectorate advised that as well as the in-principle view from BEIS, evidencing the subordinate relationship within the EM could reduce the time spent on the matter during Examination. The Applicant advised it would consider including the detail from the s35 directive in the EM. The Applicant highlighted that the carbon capture elements of the project had been previously shown in the Preliminary Environmental Information Report (PEIR) as AD, however it now featured within the NSIP. This was due to the intrinsic nature of the carbon capture storage and utilisation ahead of the Humber Low Carbon project (HLC). HLC would be in close proximity but the programme limited the references that could be made within the application. Carbon capture enablement would be included in the EM. The Inspectorate advised that there would be various iterations of the Development Consent Order (DCO) during the Examination. If the Examining Authority (ExA) wanted any elements separated this could be requested during the Examination, and the rationale for inclusion should be clearly set out.

The Inspectorate queried the timescales for the NSIP and AD for both construction and operation. The Applicant was discussing a phased approach and was aware of the need to make certain commitments. The new access road would be provided ahead of other elements, but the timescales for the remaining elements needed to be determined. It was considering options for minimising the impact of construction compounds. It would also include any technicalities regarding the efficient use of energy within the application.

Plans

The Applicant was mindful that in the PEIR and Scoping, feedback was received that the plans were not detailed enough. However, plans at draft documents needed to be more accessible. The Applicant was re-considering its Work Plans and looking at consolidating these into three separate packages, covering the heat and power network, railway and rail re-instatement, plus the core scheme. The Applicant would provide one work per sheet only where there was a lot of overlap, and clarity needed. The Inspectorate advised the driver was clarity to understand the inter-relationships, it could be possible to have a diagram rather than a plan to show how the different elements integrated.

The Inspectorate advised the Applicant to be mindful of memory sizes, with larger size files being difficult to navigate. Smaller file sizes could be requested in the Rule 6 letter, to ensure information was accessible for both the Inspectorate and the public/statutory

parties. The Inspectorate clarified this request would apply to plans rather than figures within the ES. The Examination process could be mostly virtual, with the possibility of hybrid events at a later date so the accessibility of information for event types should be considered.

Update from the Inspectorate

The Inspectorate's [Advice Note 6](#) has recently been updated to advise that hyperlinks should not be included in submissions; this follows a similar approach to the Crown Prosecution Service. This was due to the risk of information being amended by third parties. Links navigating between application documentation were acceptable. The Applicant should consider a measured approach to where physical copies of documents should be submitted and where descriptions and clear referencing to freely available information would suffice, particularly relating to the ES. The Inspectorate acknowledged the Applicants suggestion of provision of a bibliography and use of Harvard referencing as acceptable.

The Inspectorate confirmed the application should be submitted virtually, and we transfer file sharing had been used successfully for some recent projects. The documentation and links should be checked to ensure they do not expire during the acceptance period.

The Inspectorate requested a shapefile 14 days before submission, which would need to match the application DCO boundaries, once the boundary was confirmed. A warm-up letter would be issued, which would include this information and other information in preparation for submission, including the payment of the acceptance fee.



NORTH LINCOLNSHIRE GREEN ENERGY PARK – EN010116

Section 51 advice regarding draft application documents submitted by North Lincolnshire Green Energy Park Limited

On 15 September 2021, North Lincolnshire Green Energy Park Limited submitted the following draft documents for review by the Planning Inspectorate as part of its Pre-application Service¹:

1. Book of Reference (1 document)
2. Connection Plans (8 documents)
3. Consultation Report (1 document)
4. Design Codes (1 document)
5. Existing Levels (11 documents)
6. Indicative Elevations and Sectional Drawings for the ERF (4 documents)
7. Indicative Floor Plans and Roof Plans for the ERF (9 documents)
8. Indicative Highways Drawings (3 documents)
9. Indicative Landscape and Biodiversity Plans (11 documents)

¹ See <https://infrastructure.planninginspectorate.gov.uk/application-process/pre-application-service-for-applicants/>



10. Indicative Proposed Levels (4 documents)
11. Indicative Railways Drawings (6 documents)
12. Indicative Surface Water Drainage Drawing (4 documents)
13. Indicative Utility Diversion Drawings (4 documents)
14. Land Plans (1 document)
15. Order Limit Plans (11 documents)
16. Phasing Plans (1 document)
17. Rights of Way and Access Plans (11 documents)
18. TRO Plans (3 documents)
19. Vertical Parameters Plans (1 document)
20. Work Plans (1 document)



On 20 September 2021 North Lincolnshire Green Energy Park Limited also submitted the following draft documents for review by the Planning Inspectorate as part of its Pre-application Service²:

1. Draft Development Consent Order
2. Explanatory Memorandum

Abbreviations used

ANxx Advice Note number

APFP Regs

2009 The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

BEIS Department for Business, Energy and Industrial Strategy

BoR Book of Reference

CA Compulsory Acquisition

dDCO Draft Development Consent Order

² See <https://infrastructure.planninginspectorate.gov.uk/application-process/pre-application-service-for-applicants/>



DfT Department for Transport

EIA Regs

2017 Environmental Impact Assessment Regulations 2017

EM Explanatory Memorandum

ExA Examining Authority

NPA Neighbourhood Planning Act 2017

PA2008 Planning Act 2008

SI SI template

SoS Secretary of State

The advice recorded in the table comprising this document relates solely to matters raised upon the Planning Inspectorate's review of the draft application documents, and not the merits of the proposal. The advice is limited by the time available for consideration and is raised without prejudice to the acceptance or otherwise of the eventual application.

General drafting points

1. Where references are provided to other draft application documents it would be beneficial to provide the full title thereof inclusive of document reference number. Should further draft documents be provided for review, the Applicant may wish to consider providing a full list of known application documents (for purpose of signposting) as well as their respective reference number.
2. [\[MHCLG\] Application form guidance](#), paragraph 3, states: "*The application must be of a standard which the Secretary of State considers satisfactory: Section 37(3) of the Planning Act requires the application to specify the development to which it relates, be made in the*



prescribed form, be accompanied by the consultation report, and be accompanied by documents and information of a prescribed description. The Applications Regulations set out the prescribed form at Schedule 2, and prescribed documents and information at regulations 5 and 6.”

3. The Applicant should ensure that when the draft development consent order (dDCO) is finalised for submission all internal references and legal footnotes are checked and that the drafting follows best practice in AN13 and AN15 and any guidance on statutory instrument drafting.
4. A thorough justification should be provided in the Explanatory Memorandum (EM) for every Article and Requirement, explaining why the inclusion of the power is appropriate in the specific case. The extent of justification should be proportionate to the degree of novelty and/ or controversy in relation to the inclusion of that particular power
5. Notwithstanding that drafting precedent has been set by previous DCOs, whether or not a particular provision in this DCO application is appropriate will be for the Examining Authority (ExA) to consider and examine taking account of the facts of this particular DCO application and having regard to any views expressed by the relevant authorities and interested parties.

General		
Ref No.	Article/ Requirement/ Schedule	Comment/Question
1.	Filing Structure	Structure for submission: Naming conventions on individual files needs to provide specific detail of the relevant document – the description of the actual files of some of the drawings/plans is not specific, so once downloaded and saved, without sub-folder structure it is difficult to determine what the document is. PINS to provide filing structure.



General Comments on the draft Development Consent Order		
Ref No.	Article/ Requirement/ Schedule	Comment/Question
2	Drafting Article 38, 45, Schedules 3-10 and 12-14	<p>The Development Consent Order (DCO) should be:</p> <ul style="list-style-type: none"> • in the Statutory Instrument (SI) template • follow guidance and best practice for SI drafting (for example avoiding “shall/should”) in accordance with the latest version of guidance from the Office of the Parliamentary Counsel • follow best practice drafting guidance from the Planning Inspectorate and the Departments in Advice Note 15 – Drafting development consent orders (and see specific references to Advice Note 15 below) • fully audited to ensure that that there are no inconsistencies within the DCO and its constituent parts such as definitions or expressions in the articles, requirements, protective provisions, other schedules and any book of reference and/or any deemed marine licence (including scope of works permitted – deemed marine licence should not permit works outside the scope of those permitted by the DCO itself), that all legislative references in the DCO are to extant provisions and all schedules refer to the correct articles. Also, definitions should be precise, accurate and relatively easily understandable. (e.g., if a definition is drafted in a way that obliges the reader to cross refer to wording in multiple other documents in order to understand the definition, then it is not easily understandable). Where any registered company is referred to in the DCO (or any deemed marine licence) it should be defined by using its full and precise company name and company registration number (as those appear on the register held by Companies House). • Kept under constant review by the applicant throughout any Examination so that definitions are kept up to date by them as matters evolve – e.g.: any definition of ‘Environmental Statement’ in the context of how/the purposes for which it is referred to in the DCO; or how plans and drawings are defined (and where possible include drawing/revision numbers). • In addition, where the Explanatory Note at the end of a draft DCO states that documents will be available for inspection at a third-party location the applicant should be asked to confirm in writing that the stated third party has agreed to that.



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3	Precedents Articles 5 – 12, 16, 17, 20, 38, 39	<p>Notwithstanding that drafting precedent has been set by previous DCOs or similar orders full justification should be provided for each power/provision taking account of the facts of this particular DCO application</p> <p>Where drafting precedents in previous made DCOs have been relied on, these should be checked to identify whether they have been subsequently refined or developed in the most recent DCOs so that the DCO provisions reflect the Secretary of State (SoS)'s current policy preferences. If any general provisions (other than works descriptions and other drafting bespoke to the facts of this particular application and DCO) actually differ in any way from corresponding provisions in the SoS's most recent made DCOs, it would be preferable for an explanation to be provided as to how and why they differ (including but not limited to changes to statutory provisions made by or related to the Housing and Planning Act 2016)</p>
4	Novel Drafting (No novel drafting identified at present)	<p>The purpose of and necessity for any provision which uses novel drafting, and which does not have precedent in a made DCO or similar statutory order should be explained in the Explanatory Memorandum (EM). The Planning Act 2008 power on which any such provision is based should also be identified in the EM. The drafting should:</p> <ul style="list-style-type: none"> • be unambiguous • be precise • achieve what the applicant wants it to achieve • be consistent with any definitions or expressions in other provisions of the DCO • follow guidance and best practice for SI drafting referred to above.
5	Flexibility – as provided for example in the	<p>The extent of any flexibility provided by the DCO should be fully explained, such as the scope of maintenance works and ancillary works, limits of deviation and any proposed ability (through tailpieces) of discharging authorities to authorise subsequent amendments.</p>



General Comments on the draft Development Consent Order		
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	<p>maintenance article and definition, definition of commencement, power to deviate, Schedule 1 authorised development and requirements</p> <p>Articles 5 and 16</p>	<p>The preferred approach to limiting this flexibility is to limit the works (or amendments) to those that would not give rise to any <u>materially new or materially different</u> environmental effects to those identified in the environmental statement. Also, further as to tailpieces, see section 17 of Advice Note (AN) 15.</p> <p>The drafting which gives rise to an element of flexibility (or alternatives) should provide clearly for unforeseen circumstances and define the scope of what is being authorised with sufficient precision. For example, the Secretary of State had to amend article 6 (Benefit of Order) of the National Grid (Richborough Connection Project) Development Consent Order 2017 at decision stage to remove ambiguity (as later corrected by the National Grid (Richborough Connection Project) (Correction) Order 2018).</p> <p>In relation to the flexibility to carry out advance works, any “carve out” from the definition of “commencement” should be fully justified and it should be demonstrated that such works are de minimis and do not have environmental impacts which would need to be controlled by requirement. See section 21 of AN 15. Pre-commencement requirements should also be assessed to ensure that the “carve out” from the definition of “commencement” does not allow works which defeat the purpose of the requirement.</p>
	<p>Development Consent etc granted by the order</p> <p>Articles 7, 8 and 9</p>	<p>The intent of this article is to avoid inconsistency with other relevant statutory provisions applying in the vicinity, but, notwithstanding other precedents, as much information as possible should be provided about “any enactments” together with clarification about how far from the Order limits the provision might bite.</p>
6	<p>Compulsory Acquisition and</p>	<p>These provisions (and any relevant plans) should be drafted in accordance with the guidance in AN 15, in particular sections 23 (extinguishment of rights) and 24 (restrictive covenants)</p>



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	<p>extinguishment of rights</p> <p>Articles 21 - 26</p>	<p>The Secretary of State for the Department for Transport (DfT)'s decision (paragraph 62 of the M4 Motorway (Junctions 3 to 12) (Smart Motorway) DCO) should be noted: <i>"to remove the power to impose restrictive covenants and related provisions as he does not consider that it is appropriate to give such a general power over any of the Order land as defined in article 2(1) in the absence of a specific and clear justification for conferring such a wide-ranging power in the circumstances of the proposed development and without an indication of how the power would be used"</i>. Other DfT decisions have included very similar positions, e.g. the A556 (Knutsford to Bowdon Improvement) DCO and the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) DCO.</p> <p>Where an Applicant wishes to create and compulsorily acquire new rights over land, those rights should be fully, accurately and precisely defined for each relevant plot and the Compulsory Acquisition (CA) should be limited to the rights described. This could be done by drafting which limits the CA of new rights to those described in a schedule in the DCO or to those described in the book of reference.</p> <p>If the article is drafted to enable CA of new rights over all of the Order land, with a schedule which limits the compulsory acquisition power in defined plots to the defined rights listed in that schedule, this approach (allowing undefined rights in land not listed in that Schedule) should be clearly identified and the need for it explained and justified in the Explanatory Memorandum and Statement of Reasons. It is likely to be difficult to justify. There must be evidence to show that persons with an interest in the Order land were aware that undefined new rights were being sought over all of the Order land and were consulted on that basis. The SoS for DfT has in at least three decisions (A585 Windy Harbour to Skippool Highway DCO, A30 Chiverton to Carland Cross DCO, Manston Airport DCO) limited the power to create undefined new rights by amending the temporary possession article (see below at 22).</p> <p>It should be noted that in the Manston Airport DCO the SoS for DfT removed the ability to create undefined new rights over land identified for temporary possession even though it was not an issue in examination. The reasons for</p>



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		<p>this are set out at paragraph 121 of the DL: "The Secretary of State is concerned about the creation of new unidentified rights and is unclear whether affected land-owners have been appropriately consulted".</p> <p>In all respects (including in relation to the book of reference), the applicant should follow <i>Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land</i> published by DCLG (now MHCLG) in September 2013.</p>
7	Statutory undertakers and apparatus Articles 33, 34, 39 and 40	<p>Where a representation is made by a statutory undertaker (or some other person) that engages section 127(1) of the Planning Act 2008 (PA2008) and has not been withdrawn, the SoS will be unable to authorise compulsory acquisition powers relating to that statutory undertaker land unless satisfied of specified matters set out in section 127. If the representation is not withdrawn by the end of the examination, the Examining Authority (ExA) will need to reach a conclusion whether or not to recommend that the relevant statutory test has been met in accordance with s.127.</p> <p>The SoS will be unable to authorise removal or repositioning of apparatus (or extinguishment of a right for it) unless satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates in accordance with section 138 of the PA2008. Justification will be needed to show that extinguishment or removal is necessary.</p>
8	Planning Permission Article 8	<p>This article is intended to allow development not authorised by the DCO to be carried out within the Order limits pursuant to planning permission. This would appear to obviate the need, in such circumstances, to apply to change the DCO (through section 153 of the Planning Act 2008). This article should be justified.</p>
9	Classification of the roads	<p>Variation of the <u>application of</u> provisions in these articles is possible under the Road Traffic Regulation Act 1984 and arguably this has the effect of disapplying section 153 which provides a procedure for changing a DCO. There may be precedent in other made DCOs for the same drafting but it should be clear under which section 120 power these</p>



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	Clearways, prohibitions and restrictions Speed restrictions Article 19; Schedule 8	articles are made and if necessary justification provided as to why the provisions are necessary or expedient to give full effect to any other provision of the DCO.
10	Temporary stopping up and restriction of use of streets Articles 11-14	Notwithstanding other precedents, justification should be provided as to why the power is appropriate and proportionate having regard to the impacts on pedestrians and others of authorising temporary working sites in these streets
11	Power to alter layout of streets Articles 14 - 16	This is a wide power – authorising alteration etc. of <u>any</u> street within the Order limits. It should be clear why this power is necessary and consideration given to whether or not it should be limited to identified streets.
12	Disapplication or amendment of legislation/ statutory provisions Articles 19, 20 and 40 (NB	The guidance in section 25 of AN 15 should be followed and, if not already provided, additional information sought such as: <ul style="list-style-type: none"> • the purpose of the legislation/statutory provision • the persons/body having the power being disapplied



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	there are two Article 20s but both are potentially in the purview of this category)	<ul style="list-style-type: none"> an explanation as to the effect of disapplication and whether any protective provisions or requirements are required to prevent any adverse impact arising as a result of disapplying the legislative controls (by reference to section 120 of and Schedule 5 to the PA2008) how each disappplied provision constitutes a matter for which provision may be made in the DCO. <p>Where the consent falls within a schedule to the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 evidence will be required that the regulator has consented to removing the need for the consent in accordance with s.150 PA2008.</p>
13	Felling or lopping of trees and removal of hedgerows Trees subject to tree preservation orders Article 37 and Schedule 13	<p>The guidance in section 22 of AN 15 should be followed. If it hasn't been followed justification should be provided as to why this is the case.</p> <p>If the 'felling or lopping' article is drafted to allow such actions to trees both within and 'near' the Order limits, should consideration be given to amending that, so that it only applies to trees within or 'encroaching upon' the Order limits?</p>
14	Procedure for discharge of requirements Article 27	AN 15 provides standard drafting for articles dealing with discharge of requirements. If this guidance hasn't been followed justification should be provided as to why this is the case



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15	Benefit of the Order Articles 9 and 10	<p>If any part of this article is drafted so as to allow any transfer of benefit by the Applicant (undertaker) to any other person without the need for the SoS’s consent, then the applicant should provide full justification as to why that is appropriate.</p> <p>See 18 below in relation to references to arbitration in this article.</p>
16	Discharge of Water Article 35	<p>The Applicant should be aware and mindful of section 146 of the PA2008.</p>
17	Temporary Possession Articles 29 and 30 Schedule 12	<p>Temporary possession is not itself compulsory acquisition.</p> <p>Articles giving temporary possession powers should be considered carefully to check whether or not they allow temporary possession of any land within the Order limits, regardless of whether or not it is listed in any Schedule to the DCO which details specific plots over which temporary possession may be taken for specific purposes listed in that Schedule. If they do, then the applicant should justify why those wider powers (which also allow temporary possession of land not listed in that Schedule) are necessary and appropriate and explain what steps they have taken to alert all landowners, occupiers, etc. within the Order limits to this possibility.</p> <p>If not already present, consideration should also be given to adding in a provision obliging the applicant (undertaker) to remove from such land (on ceasing to occupy it temporarily) any equipment, vehicles or temporary works they carry out on it (save for rebuilding demolished buildings under powers given by the DCO), unless, before ceasing to occupy temporarily, they have implemented any separate power under the DCO to compulsorily acquire it.</p> <p>If compulsory acquisition articles (land and rights) are drafted to authorise the compulsory acquisition of all of the Order land there will need to be a provision in the temporary possession article which prevents compulsory acquisition of land which is only intended to be used temporarily. For example:</p> <p><i>The undertaker may not compulsorily acquire under this Order the land referred to in paragraph [(1)(a)(i)] except that the undertaker is not to be precluded from acquiring any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) that land under article [xx] (acquisition of subsoil or airspace only).</i></p>



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		<p>In that scenario the compulsory acquisition article would also need to be drafted in a way that expresses that it is subject to the temporary possession article (by reference to the temporary possession article number).</p> <p>If the temporary possession article drafting also says that the undertaker is not precluded from:</p> <p><i>acquiring new rights or imposing restrictive covenants over any part of that land under article [xx] (compulsory acquisition of rights)</i></p> <p>careful consideration must be given to the drafting of the compulsory acquisition of rights article in relation to new rights/restrictions and the effect of its interaction with this provision.</p> <p>If the compulsory acquisition of rights article authorises the creation of new rights over all of the order land, in addition to the new rights described in a specific schedule, wording permitting the creation of new rights in accordance with that article will permit the creation of undefined new rights in the land over which temporary possession powers are granted (i.e., the schedule in the DCO listing the plots over which temporary possession is authorised – Schedule 12). This is likely to be difficult to justify.</p> <p>In these circumstances it is important to look carefully at the book of reference, land plans and Statement of Reasons to see how the land in Schedule 12 is identified and described. If the land is consistently described as being for temporary possession, then it may be that persons with an interest in the land have not understood the nature of powers sought over their land and consequently have not been correctly consulted. The applicant should be able to clearly explain the powers that they are seeking over these plots, the need for these powers, how this is secured in the DCO and provide evidence that all persons with an interest in these plots have been consulted appropriately in a way that was clear about the nature of the powers sought.</p> <p>The SoS for DfT has issued three decisions amending the drafting of the temporary possession article to remove the power to create undefined new rights in the land described as being for temporary possession (A585 Windy Harbour to Skippool Highway DCO, A30 Chiverton to Carland Cross DCO, Manston Airport DCO). One of the main reasons for this related to the failure to accurately consult those with an interest in the land on the nature of the powers sought, the land being described in all supporting documents and on the land plans, as being for temporary possession only.</p> <p>There may be circumstances where it is permissible to retain drafting which enables the undertaker to acquire new rights in the land in the schedule in the DCO listing the plots over which temporary possession is authorised (Schedule 12 and Articles 29 and 30). For example, where there are cross-over plots with those listed in a schedule in the DCO containing detail of the new rights being compulsorily acquired (Schedule 12 and Articles 29 and 30). In</p>



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		<p>those circumstances, if the new rights are precisely defined and have been consulted on, drafting could be included in the DCO along the following lines:</p> <p><i>The undertaker may not compulsorily acquire under this Order the land referred to in paragraph [(1)(a)(i)] except that the undertaker is not precluded from— (a) acquiring new rights or imposing restrictive covenants over any part of that land under article [] (compulsory acquisition of rights) to the extent that such land is listed in column [(1)] of Schedule [xx]...</i></p> <p>This drafting has precedent in the East Anglia Three Offshore Windfarm DCO, Hornsea Two Offshore Windfarm DCO and Norfolk Vanguard Offshore Windfarm DCO.</p> <p>Given the parliamentary approval to the temporary possession regime under the Neighbourhood Planning Act 2017 (NPA 2017), which were subject to consultation and debate before being enacted, should any provisions relating to notices/counter notices which do not reflect the NPA 2017 proposed regime (not yet in force) be modified to more closely reflect the incoming statutory regime where possible? As examples:</p> <ul style="list-style-type: none"> • The notice period that will be required under the NPA 2017 Act is three months, substantially longer than the 14 days required under Article 29, and 28 days required under Article 30. Other than prior precedent, what is the justification for only requiring 14/ 28 days’ notice in this case? • Under the NPA 2017, the notice would also have to state the period for which the acquiring authority is to take possession. Should such a requirement be included in this case? • Powers of temporary possession are sometimes said to be justified because they are in the interests of landowners, whose land would not then need to be acquired permanently. The NPA 2017 Act provisions include the ability to serve a counter-notice objecting to the proposed temporary possession so that the landowner would have the option to choose whether temporary possession or permanent acquisition was desirable. Should this article make some such provision – whether or not in the form in the NPA 2017?
18	Arbitration Article 46	It is unlikely that a consenting Secretary of State will allow arbitration provision wording to apply arbitration to decisions he/she, or, if relevant the Marine Management Organisation (‘MMO’) may have to make on future consents or approvals within their remit.



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		<p>By way of example:</p> <p>The SoS for Business, Energy and Industrial Strategy (BEIS) included the following drafting in the arbitration article in the Norfolk Vanguard Offshore Windfarm DCO and the draft Hornsea Three Offshore Windfarm DCO (published with a minded to approve decision) to remove any doubt about the application of arbitration to decisions of the Secretary of State and the MMO under the DCO:</p> <p>Any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order shall not be subject to arbitration.</p> <p>The SoS for BEIS also agreed with the ExA recommendation to remove reference to arbitration in the transfer of the benefit article and the deemed marine licences (DMLs) in the Hornsea and Norfolk Vanguard DCOs. The Hornsea ExA recommendation report at 20.5.9 details the reasons for removal from the transfer of benefit article, and at 20.5.17 – 20.5.24 regarding removal from the DMLs.</p> <p>It should also be noted that the SoS removed the following from the arbitration clause in both DCOs:</p> <p><i>Should the Secretary of State fail to make an appointment under paragraph within 14 days 42 of a referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.</i></p>
19	Defence to proceedings in respect of statutory nuisance Article 42	<p>Are the controls on noise elsewhere in the DCO sufficient to justify the defence being provided by this article to statutory nuisance claims relating to noise?</p> <p>If the defence has been extended to other forms of nuisance under section 79(1) Environmental Protection Act 1990, the same question will apply to those nuisances.</p> <p>This article also sometimes refers to legislation that has been repealed – e.g. s65 Control of Pollution Act 1974. It should refer to extant legislation only.</p>



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20	General	<ul style="list-style-type: none"> The numbering of paragraphs is not correct – contents include <i>40. Apparatus and rights of statutory undertakers in stopped up streets</i> and <i>41.Recovery of costs of new connections</i> which aren't then in the main body of the DCO. The list of plans to be certified under para 43 doesn't include all docs identified elsewhere in the dDCO as to be certified (e.g., the book of reference) OR the names are inconsistent (eg indicative OR illustrative lighting strategy). Suggest applicant does a thorough cross check. The draft DCO needs an Explanatory Note to be completed at the end

Development Consent Order		
Ref No.	Article/ Requirement /Schedule	Comment/Question
	Schedule 1 Authorised Development	<ul style="list-style-type: none"> Suggest defining “<i>ISO conditions</i>”, “<i>FGTr</i>” The draft Development Consent Order (dDCO) does not specify dimensions of any work elements. Requirement 3 refers to detailed design stating they must be in accordance with the design code. Limits of deviation are referred to in para 5, with reference to the works plans; however the works plans identify the precise locations of only a limited number of elements and at that scale it is not possible to determine their dimensions. The works plans show a number of block areas without specific locations and dimensions of specific elements. Should the maximum dimensions of different



Development Consent Order		
Ref No.	Article/ Requirement /Schedule	Comment/Question
		<p>elements, to accord with those which have been assessed in the Environmental Statement (ES), be secured within the DCO?</p> <ul style="list-style-type: none"> • The vertical parameter plans are referred to in para 43 as a certified document, but there is no further reference to them within the DCO limiting the authorised development to the parameters within them. • Work 7 hydrogen electrolyser - requires connection into national grid, the Inspectorate assumes that this connection will be assessed within the cumulative effects assessment of the ES and Habitats Regulations Assessment (HRA).
	Schedule 2 Requirements	<ul style="list-style-type: none"> • Requirements which state that no part of the core scheme or railway works may commence until a certain scheme is submitted and approved. Why are other Work Nos omitted from these requirements? Has this approach been agreed with the LPA? Should this be explained in the EM? • Construction traffic management plan and operational travel plan - how will other transport modes that have been assessed be controlled? Will drafts of these plans be included with the application?
	Schedules 8 and 14	Schedules 8 and/or 14 are mislabelled – Article 38 states Schedule 8 relates to protective provisions, but Schedule 14 is labelled as detailing protective provisions. Please check cross references.



Development Consent Order		
Ref No.	Article/ Requirement /Schedule	Comment/Question
	Article 38	Article 38 refers to protective provisions but there is no justification for the protective provisions in the EM, which there should be (see Advice Note (AN) 15 para 4).
	Schedules 3 - 10, 12 - 14	Schedules 3 to 10 and 12 to 14 need populating (they are just placeholders at present). The shoulder references to the various Articles need checking for accuracy of cross-referencing. The Hedgerow Schedule needs to be completed (in accordance with Good Practice Point 6 to AN 15)
	Article 24	In relation to Article 24 on "Private Rights", the Applicant should consider whether the Article should be subject to a power under a separate Article which would allow the Applicant to exclude a particular private right from the blanket extinguishment power
	Restrictive Covenants	As regards Restrictive Covenants, and in accordance with AN 15, Good Practice Point 9, the Applicant should provide justification which is specific to each of the areas of land over which the power is being sought, rather than generic reasons and include a clear indication of the sorts of restrictions which would be imposed and wherever possible the power should extend only to the particular type of Restrictive Covenant required. The Applicant needs to be able to explain and justify the need for including such a power in the Statement of Reasons.
	Requirements	In line with AN 15 para 11.2, the plans and other documents required to be certified should be specifically listed in the relevant Articles. Applicants should set out the titles and numbers of such documents either in the certification Article or in a separate schedule or Schedules to the Development Consent Order (DCO).



Development Consent Order		
Ref No.	Article/ Requirement /Schedule	Comment/Question
		According to AN 15 para 16, biodiversity mitigation should be included in the Requirements section in the draft DCO. There are no Requirements that currently deal with biodiversity mitigation in the draft DCO at present – is that because no biodiversity mitigation is necessary? If biodiversity mitigation is necessary, please ensure that it is addressed in the Requirements.
	Article 45	The wording of Article 45 does not at present replicate standard drafting as set out in the Appendix to AN 15 (and advised in AN 15 Good Practice Point 3), and there is no explanation in the Explanatory Memorandum (EM) for the different wording used in the draft DCO here. This needs to be rectified: - either amendment to the standard wording, or the supply of an additional explanation for why this innovative wording is used here in the EM, along with details of any precedent used for drafting purposes.
	Articles	According to AN15, Good Practice Point 4, Articles should be considered to ensure compliance with the 2017 EIA Regulations. There is no reference in this draft DCO to the 2017 Environmental Impact Assessment Regulations (2017 EIA Regs) and the draft DCO therefore may need to be amended in certain Articles to guarantee compliance with the 2017 EIA Regs.
	S127 and S138 of the Planning Act 2008	Will s 127 and/or s 138 PA08 will be triggered? If so, relevant Articles may need to be implemented to deal with the position in relation to Statutory Undertakers. Further, the Land Plan must identify any land over which it is proposed to exercise powers of compulsory acquisition, including any land in relation to which it is proposed to extinguish private rights.



Explanatory Memorandum		
Ref No.	Article/ Requirement/ Schedule	Comment/Question
	Paragraphs 3.4 – 3.9	The justification included in the Explanatory Memorandum (EM) for the Associated Development required for this project does not appear to provide much detail, please can further information and justification be provided.
	Articles 18 and 19	There is no wording to address Articles 18 and 19 in the EM; there are two Article 20s and there is then a subsequent reference to Article 19. This numbering confusion and/or substantive content needs to be clarified and resolved.
	Schedules 3 to 14	Schedules 3 to 14 need populating in the EM
	General	Following AN 15, para 17, any provisions in the draft Development Consent Order (DCO) that allow for flexibility must be thoroughly justified within the EM. This applies to the explanation regarding Articles 5, 6 and 16 in particular.
	General	AN15 1.2 and 1.4, 1.5 – the application needs to provide justification and an explanation regarding the source of each provision and why it is relevant to the proposed development. There is a general absence in many Articles to explain why a particular precedent has been relied upon and further, why the wording in the precedent has been varied to accommodate the facts of this particular case. E.g., , as regards Article 5 it would be helpful if the Applicant could explain how the Article has been adapted to be suitable. The EM should explain why that particular



Explanatory Memorandum		
Ref No.	Article/ Requirement/ Schedule	Comment/Question
		wording of any Articles is relevant to the proposed draft DCO, for example what is factually similar for the consented NSIP and proposed development, and why it is appropriate for the scheme applied for.
	Articles 11, 12, 14, 19 and 20, 38 and 39	In the case of certain Articles (e.g., Articles 11, 12, 14, 19 and 20, 38 and 39), no precedent information is offered at all – there should be details of a precedent supplied for these Articles, or some explanation as to the wording adopted if there is no applicable precedent.
	Novel provisions	The EM does not state whether there are any novel provisions contained in the draft DCO. It would be helpful if the EM could specify whether there are any novel provisions or confirm that there are not. Please see AN15 1.1, 1.2 and 1.4 on this point.
	Article 38/Protective Provisions	The EM should explain why Article 38 is drafted as it is in relation to Protective Provisions.



Book of Reference		
Ref No.	Paragraph/Section	Comment/Question
	General	Please be aware of the requirements in Annex D to the Planning Act 2008: Guidance related to procedures for the Compulsory Acquisition (CA) of land (September 2013), in particular paragraphs 7, 8 and 10 of Annex D to that Guidance. Paragraph 10 states, "Where it is proposed to create and acquire new rights compulsorily they should be clearly identified. The book of reference should also cross-refer to the relevant articles contained in the development consent order".
	General	The Book of Reference (BoR) should be clear as to which plots (if any) will be subject only to temporary possession or use.
	General	A draft Statement of Reasons was not provided, therefore we are unable to comment on the extent of CA required by the Applicant or what types of new rights or restrictions, or the extent of them, that may be required. The draft BoR also does not appear to define anything in this regard. Any relevant Schedule to the DCO dealing with CA rights needs to be populated and an explanation provided in the draft EM
	Part 1	As regards Part 1 - (a) what is an "Org. no." in, for example, plot 1? Does this refer to the company registration number? (b) please confirm what what restrictive covenant is being referred to? (what type or what entry number in which register of the registered title referred to?) – in, for example, the final column of plot 1; (c) throughout the second column the Applicant has simply said "new rights" without explicitly defining the new right sought. As the DCO simply says the rights in the BoR then there is no definition anywhere. The new rights requested need some definition, the Applicant needs to set out in the description of land for each relevant plot, the exact nature of any new right required.



Book of Reference		
Ref No.	Paragraph/Section	Comment/Question
	Part 2	At present the page 1 description of Part 2 is incomplete as it doesn't mention s152(3) of the Planning Act 2008 (PA08) - even though page 11 does. Please amend to include a reference to s 152(3) PA08 in Part 2, to ensure these Parts are consistent.
	Part 2	In relation to Part 2 of the BoR, category 3, it is advisable to write "none" if that is the case – dashes are ambiguous and lack clarity (see para 9 of the 2008 Guidance).
	Part 2	The draft BoR states that there are no areas within the Order Limits which contain any Category 3 parties. Applicants are advised (s57(4)) that diligent inquiry should be made to in order to identify any Category 3 parties.
	Part 3	In relation to Part 3 of the BoR, regarding the National Grid interest, it is not necessary to include this column – see reg 7(1)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP Regs 2009) which states in relation to Part 3 that only the name (of those entitled to enjoy easements or other private rights over land which may be extinguished, suspended or interfered with) should be included. However, if the intention is to maintain that column, it is uselessly vague unless it also includes a description of the nature of the apparatus which is affected.
	Parts 4 and 5	In relation to Parts 4 and 5, at present these parts simply contain dashes. If in fact the case is that these Parts are "none", please amend these Parts of the table to make that clear by inserting "none" where appropriate, see para 9 to Annex D of the PA08 Guidance related to procedures for the CA of land. The green text in the BoR should not be there.



General Comments on the following plans: Connection, Existing Levels, Indicative Floor and Roof, Indicative Proposed Levels, Order Limits, Phasing, Rights of Way and Access, TRO, Vertical Parameter, Land, and Works

Ref No.	Plan ref	Comment/Question
	General	<ul style="list-style-type: none"> • The Applicant is reminded to provide a Key Plan for any plan that consists of anything more than four sheets. The Key Plan should show the relationship between the sheets. • The Applicant is reminded that all documents should be easily accessible and able to navigate and to be mindful of the file size of each document. For example, the Works Plans are slow to open and difficult to navigate due to the latency of the document. • We suggest reducing the Key on plans to just display the works being shown on that sheet for clarity. • All plans (including individual sheets) should include the North direction • Please make sure all plans are clear and consistent with the key. E.g., the key for the Proposed Contours Plan Sheet 4 has a dashed green line to outline the Contours Minor 0.2mm, however this is not shown clearly in the plan which shows it as a solid bold line; this makes it difficult to determine where the contour lines begin or end.

Consultation Report

Ref No.	Paragraph/Section	Comment/Question
	General	The Appendices to the Consultation Report (CR) are listed in the CR table of contents; this may already be the Applicant’s intention, but please note that the CR appendices are often provided as a separate document to the CR itself due to their size.



Design Codes		
Ref No.	Paragraph/ Section or Plan ref	Comment/Question
	General	Please include full abbreviations index in final version

General comments on the following Indicative drawings: Elevations and Sectional Drawings for the ERF, Highways, Railway, Surface Water Drainage, Utility Diversion		
Ref No.	Paragraph/ Section or Plan ref	Comment/Question
	General	No general comments, however, please note that at present these drawings cannot be reviewed at a technical level

Indicative Landscape and Biodiversity Plans		
Ref No.	Plan Ref	Comment/Question
	General	In the absence of an Environmental Statement to compare this against any detailed comments cannot be provided on these plans.



Land Plans		
Ref No.	Plan ref	Comment/Question
	General	Key for plan shows a total of ten land plans, however only one has been provided.
	1	Reference point of Burringham Road is described in Book of Reference (BoR) but not marked on plan, please could this be included. Refers to "Continuation on page 2" at top of page but only one page provided.
	2	Reference point of Burringham Road is described in BoR but not marked on plan, please could this be included.
	3	Reference point of Burringham Road is described in BoR but not marked on plan, please could this be included.
	5	Please can the West of Nuddock Wood Lake be included in the description, as this is between the plot and the current reference point (M181)
	6	Reference point in BoR (Brumby Common Lane) is not clearly labelled on the plan
	7	Reference point in BoR (Brumby Common Lane) is not clearly labelled on the plan
	8	Reference point in BoR (Brumby Common Lane) is not clearly labelled on the plan
	9	Reference point in BoR (Brumby Common Lane) is not clearly labelled on the plan



Land Plans		
Ref No.	Plan ref	Comment/Question
	10	<p>It appears that a small amount of land is also included in Plan Ref 10 in addition to Brumby Common Lane, please can this also be included in the description.</p> <p>Reference point in BoR (Brumby Common Lane) is not clearly labelled on the plan</p>
	11	<p>Reference point in BoR (Brumby Common Lane) is not clearly labelled on the plan</p>
	12	<p>Plot appears to continue onto a page 2 which has not been provided, therefore we are unable to determine scale/size without full plans for this plot</p> <p>Plot appears to cross over a motorway junction which is not included in the BoR description</p> <p>Reference point in BoR (Brumby Common Lane) is not clearly labelled on the plan</p>
	13	<p>Description in BoR refers to drain, shrubbery and agricultural land. It is unclear due to lack of reference on plan whether this is correct (possible inclusion of road?)</p>

Phasing Plans		
Ref No.	Plan ref	Comment/Question
	General	<ul style="list-style-type: none">L-0200 Phasing Plan – the concrete block/ polymer production/ district heat network is programmed for delivery after the main energy recovery facility; the Environmental Statement should clearly explain this phasing and whether it has any implications for effects



Vertical Parameter Plans		
Ref No.	Plan ref	Comment/Question
	General	Please include labels as full words or an abbreviations key in order to aid understanding, e.g., FGT/IBA

Works Plans		
Ref No.	Plan ref	Comment/Question
	General	<ul style="list-style-type: none">• Some Works Plans are difficult to decipher. Plans should be clear in order to enable Affected Persons and Interested Parties to confidently identify Works that may be carried out on the land. It is advised that the Applicant considers providing a sheet for each works that clearly shows the Works, as it has done in other sheets.• Please ensure boundaries for Works are clearly identifiable. For example, Work No. 3 overlaps with the redline boundary, it is not clear where this work ends (same with Work No. 7).• There are instances where the works boundaries have not been demonstrated clearly. Does the Work encroach onto the following sheet or should it end on the existing sheet? E.g., Work No. 4 shows no end to the works before going onto the next sheet. Please either provide a second sheet with cut off lines showing the works continuing or if the Works end on that sheet please clearly display this.• If a brief description of the Works No is going to be provided in the Works Plan key, please be consistent and provide all works, for example, Work No. 2 in the Works Plans key does not contain sub (d) offices listed in the description of the plan (although this could be deliberate for flexibility).• There appears to be a number of sheets missing presumably due to these being draft versions (e.g., work nos. 8 and 9 are not shown, and work nos. 4, 5, 10, 11, 12, 13 and 14 are cut off part way) – please include full extent of defined work areas to be shown on work plans



Works Plans		
Ref No.	Plan ref	Comment/Question
	Work No.1	Work no. 1 includes sub-works a) to u) as part of the electricity generating station – but only three components are shown separately on the works' plans (1A ERF stacks, 1B carbon capture and 1C visitor centre) - other components could be sited anywhere within the wider work no. 1 extent. Is this flexibility reflected within the Environmental Statement (ES)?
	Work No.2	Location and parameters of concrete block manufacturing and ash reprocessing components not defined within work area
	Work No.6	Plastic recycling – footprint extent shown but no parameters for the building specified
	Work No.10	Private wire network – please provide a separate plan showing the two potential route options referenced, and a plan showing the route continuation beyond the DCO boundary
	Work No.11	District heat network – please provide a separate plan showing the two potential route options referenced, and a plan showing the route continuation beyond the DCO boundary