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**Our ref:** XA/2024/100121/03-L01  
**Your ref:** EN010122

**Date:** 1 October 2024

Dear Sir/Madam

**EXAMINATION - SOLAR FARM. DEADLINE 4 - RESPONSES TO THE EXAMINING AUTHORITY'S SECOND WRITTEN QUESTIONS OAKLANDS FARM SOLAR PARK, DERBYSHIRE.**

We have now reviewed the Examining Authority's (ExA) Second Written Questions (ExQ2) dated 10 September 2024 and our comments are provided below.

**Draft Development Consent Order (dDCO) and other consents [REP3-009]**

**1.4 Articles 11(7), 14(9), 16(6) – Guillotine**

Articles 11(7), 14(9), 16(6) confer deemed consent if the authority does not respond within 28 days (a “guillotine”).

DCC [REP1-026] and SDDC [REP1-029] consider that 28 days is a tight timeframe to deal with a submission, particularly if consultation is required between authorities, with internal consultees, or the Applicant. They ask that provision is made for the authority's attention to be drawn to the guillotine.

The EA [REP1-032] does not support “deemed approval” for any consents, but ask that provision is made for attention to be drawn to the guillotine if the approach is taken.

The Applicant [REP1-025, REP3-032] does not consider it necessary for any application for consent to contain a statement drawing the authority's attention to the deemed consent period as it considers that this is clearly and properly provided for within the dDCO [REP3-009]. and DCC, SDDC and the EA have been made aware of the “deemed consent” provisions through this examination process. The Applicant has revised Articles 11(7), 14(9) and 16(6) to allow the 28-day period to be extended if agreed in writing between the parties. It does not propose any further amendments.

With reference to the Applicant's updates, the ExA notes that if an extension to the 28-day period is not agreed in writing then the “deemed approval” provisions would remain. The ExA notes the likely benefits for applications for consent to be properly considered, and for the timescales to be reasonable. It would like to find the right

balance between not unnecessarily delaying the Proposed Development and ensuring that appropriate regard is given to the interests and advice of parties involved in considering applications for consent. The ExA refers to the form of words adopted in Articles 14(7), 18(12), 19(10), 21(7) of [The A57 Link Roads Development Consent Order 2022](#).

**a) Do DCC, SDDC, and the EA still ask that provision is made for the authority's attention to be drawn to the guillotine?**

We have no issues with Article 14 as our permitting process is a separate issue which is stated at clause (7).

### 1.5 Article 2 – Interpretation

DCC [\[REP1-026\]](#) and SDDC [\[REP1-029\]](#) consider that some site preparation works have the potential to create adverse noise and air quality impacts including “remedial work in respect of any contamination or other adverse ground conditions” and “site clearance (including vegetation removal, demolition of existing buildings and structures)”. They say that “commencement” should include site preparation works relating to protected species, archaeological remains and traffic.

In relation to “site clearance (including vegetation removal, demolition of existing buildings and structures)”, the Applicant [\[REP3-032\]](#) has amended Requirement 9 - Construction environmental management plans (CEMP) to provide that for the purposes of Requirement 9, “commence” includes site clearance works.

EA [\[REP1-032\]](#) consider that significant environmental effects from “remedial work in respect of any contamination or other adverse ground conditions” cannot be ruled out and advise that this is removed from “site preparations work”, and that such works are undertaken with controls that apply at commencement, including Requirements 9 and 13.

In relation to “remedial work in respect of any contamination or other adverse ground conditions”, the Applicant [\[REP3-032\]](#) has amended Requirement 13 – Land contamination to provide that no remedial works in any phase of the development may commence until a contamination risk assessment has been produced.

NE [\[REP1-037\]](#) say that if site preparation would involve the breaking the soil or other activity that could damage the soil through compaction etc. then further information about the potential impacts on Best Most Versatile (BMV) agricultural land should be included and suitable mitigation measures secured to ensure that this resource is not damaged. It says that additional mitigation measures must be proposed and secured to ensure that there is no impact on the designated sites features if any site preparation work in the River Mease Special Area of

Conservation (SAC) and River Mease Site of Special Scientific Interest (SSSI) catchment has the potential to mobilise sediment.

**b) Do DCC, SDDC, or EA have any remaining concerns in relation to the mitigation of site preparation works? How might they be resolved?**

As the draft Development Consent Order [\[REP3-009\]](#) has been updated, we have no remaining concerns.

Requirement 9 (Construction Environment Management Plan) now states, '(5) For the purposes of requirement 9(1) "commence" includes any site preparation works comprising site clearance (including vegetation removal, demolition of existing buildings and structures).

Requirement 13 (Land Contamination) now states, '(1) No part phase of the authorised development, and no part of the site preparation works for that phase comprising remedial work in respect of any contamination, is to be commenced until a contamination risk assessment in respect of soils has been produced.

## **Schedule 1, Part 2 – Requirements**

### **1.17 Requirement 8 - Landscape and ecological management plan (LEMP)**

***Should it be required for the LEMP to be submitted to and approved by the local planning authority in consultation with the EA and NE?***

There are no main rivers on or adjacent the site and the submitted ecological assessment doesn't suggest there is a risk to water dependant species/habitats for which the EA are the lead. Therefore, the LEMP would fall within the remit of NE and or the Local Planning Authority and the EA do not need to be consulted.

## **5. Project lifetime and decommissioning**

### **5.1 Outline DEMP [\[REP1-011\]](#)**

DCC [\[REP1-026\]](#) considers that it is necessary to understand the end state of the land following decommissioning, and its suitability of other uses, including agriculture, if the full impact of the proposal is to be understood prior to consenting, and suggests that this must be addressed in the DEMP. SDDC [\[REP1-029\]](#) considers that it is necessary, reasonable, and appropriate for the definition of the end state after decommissioning to be secured by the dDCO [\[REP3-008\]](#).

The Applicant [[REP1-025](#), [REP3-032](#)] refers to Requirement 22 of the dDCO [[REP3-008](#)], says that decommissioning would be carried out in accordance with the relevant legislation and policy in force at the time of decommissioning, that it is not considered necessary or appropriate to include further detail in the dDCO [[REP3-008](#)], and that its approach is consistent with recent precedent.

The ExA is considering the extent to which it would be appropriate for the mitigation of impacts from decommissioning to require measures to be taken during detailed design, construction, operation, and maintenance, and whether this would benefit from more consideration of the potential end state after decommissioning now and when detailed mitigation plans would be finalised. Would consideration of the end state and decommissioning at all stages of the Proposed Development be appropriate in relation to the effective and efficient mitigation of long-term adverse effects and are there any specific examples of where this might be beneficial or unhelpful.

***Please could the Applicant, DCC, SDDC, EA, and NE comment?***

We have no issues with the end state principles being identified in the DCO. We would request that the Applicant takes the ecological enhancements achieved during the development's lifetime into account.

***b) Do DCC, SDDC, EA and NE have any comments on the Outline DEMP [REP1-011]? How should their concerns be addressed?***

No, however we would like to be consulted on the discharge of requirement 22 (Decommissioning and restoration).

## **5.2 Decommissioning of underground cables**

DCC [[REP1-026](#), [REP2-001](#)] and SDDC [[REP1-029](#), [REP2-001](#)] consider that leaving underground cables in place would prevent suitable reinstatement of land drains, or appropriate decompaction of the soil, may inhibit mole ploughing/subsoiling, and prevent the land from being returned to BMV condition. They say that the decomposition of cabling materials could leach contaminants into the soil and water resources. The councils suggest that the dDCO [[REP3-008](#)] should require the underground cables and ducting to be removed, although SDDC [[REP1-029](#)] advise that removal would undo soil improvements that have taken place during the 40 fallow years.

The EA [[REP1-032](#)] say that the approach to decommissioning cables should depend upon a site-specific risk assessment being carried out prior to decommissioning and expect to work with operators to agree best available

environmental options. It notes that leaving cables in place could fall under the definition of waste.

Councillor Amy Wheelton [[REP1-039](#)] considers that leaving the cables in place would make the land incapable of returning to agricultural use due to the implications for drainage, whereas if they are dug out the previous 40 years fallow would be rendered a waste of time.

The Applicant [[REP3-031](#), [REP3-032](#), [REP3-033](#)] seeks an appropriate level of flexibility which would allow some cables to be left in place should an assessment of the situation at the decommissioning stage determine that to leave cables in place would be environmentally preferable, having regard to factors such as the condition of the land at that time, potential disturbance from the removal of the cables, and any contamination risks which could arise from the cables being left in place.

***a) Please could the Applicant consider the potential for the cables to be installed in such a manner as to mitigate the overall likely adverse impacts most effectively, for example by maximising the likelihood of it being acceptable for them to be left in place by mitigating long-term drainage, agricultural, contamination, and waste impacts? Should the dDCO [[REP3-008](#)] secure that this be considered during detailed design and subject to approval by the local planning authority in consultation with the EA?***

Applicant to answer

***b) Please could DCC, SDDC and the EA comment***

If the applicant proposes to install cables in such a manner as to mitigate likely adverse impacts, a risk assessment will need to be undertaken to determine what can be designed in or out to achieve appropriate mitigation.

Risks to the environment will remain at the time of decommissioning so another risk assessment should also be carried out before decommissioning takes place.

## **7. Biodiversity**

### **7.12 Invasive non-native species**

***Do EA or SDDC have any concerns regarding non-native species that need to be addressed at this stage? How might their concerns be resolved?***

The WFD assessment states Himalayan Balsam, Rhododendron, Cherry Laurel and Buddleia were recorded within the site boundary.

Where possible these should be removed and replaced with native species of local providence during the works. If this is not possible then the risk of managing and spreading INNS can be appropriately controlled during the works e.g. providing toolbox talks.

Works near the watercourse should be timed appropriately to avoid spreading Himalayan Balsam when it's in seed (August to October) or the area should be cleared of Himalayan Balsam before the works begin.

No further concerns at this stage as management of INNS are part of the normal working method procedures stated within the CEMP.

## **12. Water quality, resources, drainage, and flooding**

### **12.1 Water Framework Directive (WFD)**

The EA [[AS-019](#), [REP1-033](#), [REP3-001](#)] expect an updated WFD Assessment to address matters that have not been agreed:

- Ecology. Water Environment Report / WFD with regards to potential culverting of Ordinary Watercourses.
- Geomorphology. Water Environment Report / WFD.
- Groundwater protection. WFD assessment needs to include WFD Groundwater Body.

The Applicant [[REP1-025](#)] advises that it is providing a revised WFD Assessment to the EA for review and will provide an update on the position of those discussions at Deadline 3. It is engaging with the EA to progress and agree a SoCG.

***a) Please could the Applicant provide a draft copy of the SoCG with EA at Deadline 4, and set out the WFD Assessment matters yet to be agreed with NE, and the next steps to be taken to address them?***

Applicant to answer.

***b) Please could the Applicant submit the updated WFD Assessment?***

Applicant to answer.

***c) Please could EA set out any remaining WFD concerns at Deadlines 4 and 5,***

***summarise any related discussions with the Applicant, and suggest how their issues might be resolved?***

The Applicant provided us with an updated WFD Assessment 25 September 2024 which we agree with and now have no remaining WFD concerns. See below for further information.

**Hydro-morphology and Ecology:** The WFD Assessment now includes the design details of the proposed culverts for vehicle crossways. The culverts will be set 300mm below the existing channel to maintain fish passage and hydrological connection.

**Groundwater:** We note the inclusion of Chapter 4 - 'Groundwater Classification' within the amended WFD assessment report. The impact assessment now includes assessment of the groundwater body, as well as assessment of the three surface water bodies present locally. The assessment of groundwater now appears appropriate within this report, and we have no further queries.

## **12.5 Flood Risk Assessment (FRA)**

The EA [[AS-019](#), [REP1-033](#), [REP3-001](#)] expect an updated FRA to address matters that have not been agreed in relation to the Sequential Test, Exception Test, climate change allowance, and detailed flood modelling.

The Applicant [[REP1-025](#), [REP3-032](#)] expects to submit an amended FRA at Deadline 4. It is engaging with the EA to progress and agree a SoCG.

- a) Please could the Applicant provide a draft copy of the SoCG with EA at Deadline 4, and set out the FRA matters yet to be agreed with NE, and the next steps to be taken to address them?***

Applicant to answer.

- a) Please could the Applicant submit the updated FRA***

Applicant to answer.

- a) Please could EA set out any remaining FRA concerns at Deadlines 4 and 5, summarise any related discussions with the Applicant, and suggest how their issues might be resolved?***

We are currently reviewing the Flood Risk Model and Flood Risk Assessment and will provide an update shortly after Deadline 4.



## 12.6 Obstructions to flood waters

The EA [[REP1-032](#)] say that if it is found that water is at sufficient depth to reach the solar panels then a Maintenance Plan would be required, which should be specified under the Outline OEMP [[REP1-009](#)], and include:

- check periodically for penitential debris which could be moved by flood water (fallen trees etc) and removal
- checks and clearance of all flood debris after a storm event
- checks of the structural integrity of the solar panels after a storm event to reduce the risk of falling and causing blockages.

The Applicant [[REP1-025](#), [REP3-032](#)] considers that there is no significant potential for debris to build-up on the legs of the solar panel support structures which could create any meaningful implications for flood risk and drainage.

- a) Does DCC, as Lead Local Flood Authority, consider that the Outline OEMP [[REP1-009](#)] should be updated as suggested by the EA?**

Applicant to answer.

- b) Do the EA or DCC have any remaining concerns regarding potential obstructions to flood waters? How might any issues be resolved?**

We are currently reviewing the Flood Risk Model and Flood Risk Assessment and will provide an update shortly after Deadline 4.

## 12.7 Piling and underground cabling

DCC and SDDC [[REP1-026](#), [REP1-029](#), [REP2-001](#)] consider it inevitable that land drains would be compromised by piling and underground cables. They suggest that these may alter localised drainage patterns through the interruption of flows during the construction, operation, and decommissioning stages. Councillor Amy Wheelton [[REP1-039](#)] raises related concerns.

The Applicant [[REP3-031](#), [REP3-033](#)] says that although piling may disturb or break up land drains, the number affected is expected to be minimal and that in the unlikely event that any significant drainage issue emerges due to construction activity, it would use measures such as SuDS, replacing or repairing land drains to rectify the situation.

- a) Please, following consultation with the EA, DCC and SDDC, could the Applicant set out how it has assessed the potential for the piling and**



***underground cables to impact on land drainage and flooding at each stage of the Proposed Development, and advise how any necessary mitigation measures, including SuDS, replacing or repairing land drains, are secured?***

Applicant to answer.

***b) Do the EA, DCC, or SDDC have any remaining concerns regarding the potential for the piling and underground cables to impact on land drainage and flooding? How might any issues be resolved?***

No, the Local Planning Authority/ Lead Local Flood Authority are best placed to answer this.

### **13. Other planning topics**

#### **13.4 BESS fire risk and related emergency response and pollution**

Section 5.6 of the Outline BSMP [[APP-093](#)] identifies an additional risk of causing environmental harm from discharge of contaminated water. It says that to prevent this, there would be a drainage system installed around the BESS compound and substation area that will either drain to an underground tank or SuDS pond with shut-off and separating capabilities for containment and testing of water prior to discharge or removal. Paragraph 5.4.7 of the Outline OEMP [[REP1-009](#)] refers to the production of an Emergency Response Plan in consultation with Derbyshire Fire and Rescue.

DCC [[REP2-001](#)] and SDDC [[REP2-001](#)] consider that there is a significant risk that the battery storage fire suppression system would fail, resulting in a major incident requiring a disaster response with the use of water to extinguish the battery fires and thereafter their cooling. Given the presence of the aquifers on site, any spent firewater would be likely to be contaminated and hazardous and would need to be contained to avoid any significant environmental impacts, including to aquifers. They note that emergency calls to the fire service locally are directed to Staffordshire and that in an emergency, fire crews are required to cross the River Trent, which can result in some delay in attending incidents and reducing the potential to limit a damaging environmental incident.

The EA [[AS-019](#), [REP1-033](#), [REP3-001](#)] consider that the pollution risks of emergency response have not been appropriately assessed and that if the firewater isn't adequately controlled this could result in significant pollution risks and cause detrimental impact to the environment. It says that the Applicant should confirm that

the flow control valves would close automatically if a fire were detected by the detection system and include any relevant routine maintenance required, to ensure this system remains functional, within the Outline Drainage Strategy.

The Applicant [[REP1-023](#), [REP3-033](#)] says that the BESS would be set within a bunded slab which drains to a pollution-controlled attenuation tank to contain any contaminated water in the event of a fire. All rainwater landing on those impermeable areas would be collected and directed to underground tanks, which have been sized to account for larger storm events, with additional contingency for climate change. The tanks would be fitted with a hydrobrake which would manage the flow of water out to the existing watercourse to the north, near Rosliston Road at existing greenfield run-off rates. The tanks would be fitted with automatic control valves which would close in the event of any incident with the BESS or substation and any water contained in order to allow the water to be tested for contaminants and if necessary pumped into a tanker to be taken away from the Site for proper disposal. The Applicant says that the Outline BSMP [[APP-093](#)] provides further details on the procedure for dealing with potential contamination issues. It also states that design parameters for the BESS include measures which reduce the risk of fire from the batteries, by providing appropriate spacing between the battery units to mitigate fire spreading between battery units and through locating the BESS in the centre of the Site, away from residential properties. It says that the final BSMP would sit alongside an emergency response plan and provide details of in-built BESS safety features like internal fire suppression systems built into individual battery units, automatic detection and alert systems, remote shut-down, and procedures to alert local emergency services in line with agreed fire-fighting strategy.

***a) Please could the EA, DCC and SDDC set out any remaining concerns in relation to BESS, fire risk and related emergency response and pollution, summarise any related discussions with the Applicant, and suggest how their issues might be resolved?***

We have no remaining concerns. We are satisfied with the proposed approach, incorporating an automatic shut-off valve as part of the fire detection system.

The Applicant has confirmed that sufficient storage will be secured to retain the full capacity of the firewater system, and an adequate maintenance plan will be implemented to ensure the system remains functional.

### **13.6 Waste Management Strategy**

The EA [[REP1-033](#), [REP3-001](#)] says that the Waste Management Strategy is yet to be agreed with the Applicant

- a) ***Please could the Applicant set out how the strategy is secured for the construction, operation, and decommissioning stages, including how the final strategy would be consulted on and approved? Please could the measures for each stage be included in the Outline CEMP [[REP1-007](#)], Outline OEMP [[REP1-009](#)], and Outline DEMP [[REP1-011](#)]?***

Applicant to answer.

- b) ***Please could the Applicant provide a draft copy of the SoCG with EA at Deadline 4, and ensure that it sets out the waste management matters yet to be agreed with EA, and the next steps to be taken to address them?***

Applicant to answer.

- c) ***Please could EA set out any remaining waste management concerns at Deadlines 4 and 5, summarise any related discussions with the Applicant, and suggest how their issues might be resolved?***

We have no remaining concerns. The Waste Management Strategy was added to the EA Work Package Tracker in response to a question from the Applicant regarding topsoil storage. We have reviewed the topsoil bunds plans and they appear to be an appropriate height and profile. We recommend that they are compacted and planted with grass or other suitable vegetation to prevent soil erosion and potential runoff pollution.

It is the Applicant's responsibility to follow industry guidance ([CL:AIRE and Definition of Waste: Code of Practice](#)) This is a self-regulating process and we would have no comments to make as long as this guidance is adhered to.

Yours faithfully

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