

Heckington Fen Solar Park

EN010123

Written Summary of Applicant Oral Case Issue Specific Hearing 1

Applicant: Ecotricity (Heck Fen Solar) Limited

Document Reference: ExA. WSISH1-D1.V1

Pursuant to: APFP Regulation 5(2)(q)

Deadline 1: 3rd October 2023

Document Revision: 1

October 2023



WRITTEN SUMMARY OF APPLICANT'S ORAL CASE AT ISSUE SPECIFIC HEARING 1

Document Properties		
Regulation Reference	Regulation 5(2)(g)	
Planning Inspectorate Scheme Reference	EN010123	
Application Document Reference	ExA.WSISH1-D1.V1	
Title	Written Summary of Applicant's Oral Case at Issue Specific Hearing 1	
Prepared By	Heckington Fen Energy Park Project Team (Osborne Clarke)	
Version History		
Version	Date	Version Status
Rev 1	October 2023	Deadline 1



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1. Purpose of this Document

- 1.1. This document is submitted on behalf of Ecotricity (Heck Fen Solar) Ltd (“the Applicant”) and contains the Applicant's written summary of its oral submissions at Issue Specific Hearing (ISH) 1.
- 1.2. ISH 1 on the draft Development Consent Order (the "DCO") for Heckington Fen Solar Park took place on 19th September 2023 as a blended hearing (in-person and virtually through Microsoft Teams) at 14.00pm.
- 1.3. A list of the Applicant’s oral participants that attended the ISH can be located at **Appendix 1** of this note.
- 1.4. The broad approach to the ISH followed the form of the agenda published by the Examining Authority (the ExA) on 7th September 2023 (the Agenda).
- 1.5. The ExA, the Applicant, and the stakeholders discussed the Agenda items which broadly covered the areas outlined below, presented in a tabulated format.

Table 1: Written Summary of the Applicant’s Oral Case at Issue Specific Hearing 1 – Draft Development Consent Order

Item	ExA Question/ Content for Discussion	Applicant's Response
Agenda Item 3: Applicant's introduction to the draft DCO		
a)	General overview of its approach to the dDCO	<p>Overview</p> <p>The Applicant explained that:</p> <ul style="list-style-type: none"> • The Order is referred to as The Heckington Fen Solar Park Order and it seeks consent to construct, operate, maintain and decommission a solar park, with an energy storage facility, electricity cables and all infrastructure required to transmit energy to the Existing Bicker Fen Substation in the district of Boston. • The scheme is defined by reference to the "Authorised Development" which is described in Schedule 1 of the Order, and splits out the proposed works into different work packages; the works packages then correlate to coloured areas on Works Plans (document reference 2.2 / AS-004). <p>Approach</p> <p>The Applicant outlined its approach to drafting the DCO and explained that the Order takes the form of a statutory instrument and has been drafted in accordance with three main areas, being:</p> <ul style="list-style-type: none"> • The Planning Act 2008 (most notably section 120 and Schedule 5); • Planning Inspectorate Advice Note 15; and • Precedents from other energy DCOs.
b)	Structure of dDCO	<p>The structure of the DCO is split into 6 parts and 14 schedules. The 6 Parts in the front end of the Order are referred to as Articles and are broken down as follows:</p> <ul style="list-style-type: none"> • Part 1 (Preliminary) includes the preliminary matters and the definitions; • Part 2 (Principal Powers) includes the principal powers and provides for the development, operation, and maintenance of the project as well as powers to modify and amend certain legislative provisions; • Part 3 (Streets) gives the undertaker a suite of powers in relation to street works – including the ability for the Applicant to carry out works to streets and place apparatus within streets;

		<ul style="list-style-type: none"> • Part 4 contains supplemental powers in relation to the discharge of water, removal of human remains, protective works to buildings, and the surveying of land; • Part 5 contains the powers of compulsory acquisition; and • Part 6 includes miscellaneous and general articles in relation to various provisions of the Order such as defining who has the benefit of the Order and the process to follow for transferring the benefit of the Order; and then there are Articles giving effect to the Schedules with powers in relation to trees and removal of hedgerows; certification of plans; arbitration; protective provisions; procedure for discharge; and guarantees for funding and CA compensation, as well as an Article for the benefit of the Crown Estate. <p>The DCO then has 14 Schedules. Each Schedule corresponds to an operative Article in the front-end of the DCO, which can be identified from the top-right corner of each Schedule. The Schedules cover:</p> <ul style="list-style-type: none"> • Schedule 1 – the "Authorised Development" and works packages. Work No.1 is the Nationally Significant Infrastructure Project consisting of a "<i>generating station with a gross electrical output capacity of over 50 megawatts</i>", and Work No.2-10 are all associated development; • Schedule 2 sets out the requirements that apply to the Scheme and has the effect of securing mitigation and controls through management plans and pre-commencement obligations for example. The requirements are similar to conditions on a planning permission; • Schedule 3 includes a list of legislation to be disapplied; • Schedules 4 – 7 contain various standard schedules in relation to street works, temporary alterations, accesses and rights of way; • Schedule 8 corresponds with the CA articles and details land in which only new rights may be acquired; • Schedule 9 is a standard schedule which amends legislation to ensure appropriate compensation is payable where new rights over land are acquired under the Order; • Schedule 10 lists the hedgerows to be removed; • Schedule 11 includes the documents to be certified by the Secretary of State (known as "certified documents"); • Schedule 12 sets out the arbitration rules that apply to disputes under the Order; • Schedule 13 includes protections for statutory undertakers (known as "protective provisions"); and
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		<ul style="list-style-type: none"> • Schedule 14 contains provisions relating to the discharge of the Requirements.
c)	Summary of engagement on dDCO with relevant parties	<p>The Applicant explained that:</p> <ul style="list-style-type: none"> • as the DCO has various parts, the Applicant has focused discussions with parties on the areas relevant for each respective stakeholder; • in order to maintain consistency and ensure familiarity for stakeholders, the Applicant has closely followed precedent from other energy DCOs as well as those emerging solar DCOs in Lincolnshire; • the DCO is included as an item within each relevant Statement of Common Ground (SoCG) so engagement is ongoing; • the majority of the engagement to date has been with statutory undertakers in relation to protective provisions at Schedule 13 of the DCO, and drainage authorities in relation to the disapplication of certain legislative provisions (for example under Article 6 of the DCO); and • the Applicant has undertaken preliminary engagement with the relevant planning authorities (RPAs) on matters such as the Requirements (Schedule 2) and various other drafting matters. <p>In summary, the Applicant confirmed that engagement on the DCO is underway and ongoing; the Applicant noted that it was due to hear from the RPAs during this hearing and that discussions would continue outside of ISH 1.</p>
d)	Summary of amends to dDCO as a result of 25 August 2023 Change Application	<p>The Applicant referred to the Change Application submitted on 25 August 2023. This is required as a result of further engagement with National Grid (who the Applicant referred to as NGET) where it became apparent that additional works were required to connect the Applicant's project. These works are twofold and include:</p> <ol style="list-style-type: none"> 1. An increased footprint to the Bicker Fen substation extension to the south of the existing Bicker Fen Substation; and 2. A new cable sealing end and compound on land to the west of the existing Bicker Fen Substation. <p>The Applicant explained what this meant for the DCO, and outlined that the main changes of substance relate to the following areas:</p> <ul style="list-style-type: none"> • Inclusion of a new Article 45 in relation to the NGET extension to make clear that if NGET needed to undertake the extension works through a separate consenting regime (for example because they needed to come forward sooner and in advance of the Applicant's DCO) then the Requirements under Schedule 2 would not apply to these works; and the second limb of Article 45 disappplies a

		<p>previous landscaping condition associated with the original 2005 Bicker Fen Substation consent, which is needed as extension works require the removal of an element of plantation, associated with the 2005 Bicker Fen Substation consent, to the south of the Substation;</p> <ul style="list-style-type: none"> • Schedule 1 (Authorised Development) – amendments to the works and inclusion of a new Work No.6B and 6C. Work No. 6A is the Applicant's works for creation of their generation bay; Work No. 6B is for the extension to the NGET substation including the overhead busbars; and Work No. 6C is creation of a cable sealing end and compound in connection with Work No. 6B. Work No 6B and 6C are for NGET's benefit and will be undertaken by NGET; • Schedule 2 (Requirements) – there have been minor updates to the Requirements to make clear whether or not the Requirements are binding on the NGET Works. For example, the requirement to decommission the scheme after 40 years does not apply to the NGET extension works at Work No. 6B and 6C; and • Other consequential provisions in relation to Schedule 8 (New Rights) to more clearly define the compulsory acquisition rights of connection into the NGET substation, and protective provisions at Schedule 13 to reflect that the NGET protective provisions are now agreed.
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Agenda Item 4: Part 1 Article 2 Interpretation Schedule 1: Authorised Development

a)	Definition of "maintain"	<p>In response to questions from the ExA and RPAs, the Applicant agreed to update the definition of "maintain" (at Article 2) to make clear that maintenance activities must be in accordance with the activities assessed in the environment statement (ES) and not be likely to give rise to any materially new or materially different effects to those assessed in the ES. The Applicant noted that this position is already provided for under Article 5 of the dDCO but, notwithstanding this, the Applicant is content to update the definition of "maintain" in the DCO for Deadline 2.</p>
b)	Definition of "commence" and "permitted preliminary works"	<p>In response to a question from the ExA as to whether the definition of "permitted preliminary works" should refer to the diversion and laying of <u>temporary</u> services at sub-paragraph (d), the Applicant agreed to review the wording within the definition for Deadline 2.</p> <p>The Applicant notes that the drafting of the recently made Longfield Solar Farm Order 2023 refers to the "<i>diversion of existing services and the laying of temporary services</i>" under the definition of permitted preliminary works. The Applicant considers that this precedent wording from Longfield is precise and the Applicant will update the DCO in a similar manner at Deadline 2.</p>



c)	Definition of "relevant planning authorities"	<p>The Applicant agreed to review the use of the term "relevant planning authority" to ensure consistency throughout the DCO. The Applicant also agreed to discuss this point with the RPAs. The Applicant welcomed the commitment from the RPAs to follow up in writing with drafting suggestions by Monday 25 September (in advance of Deadline 1). The Applicant agreed to consider these suggestions and make the necessary updates to the DCO at Deadline 2.</p> <p>Post-hearing submission: <i>The Applicant is grateful to the RPAs for the suggested drafting changes and table of discharging bodies received on 29 September 2023. As the Applicant only had 1 full business day to review these documents prior to Deadline 1, and given the implications of some of the suggested changes, the Applicant wishes to consider these thoroughly and engage with the RPAs following Deadline 1, in order to capture necessary amendments for Deadline 2.</i></p>
d)	Any other matters regarding definitions	<p>Authorised Development</p> <p>In response to comments from the RPAs on the definition of "authorised development" the Applicant explained that the wording "<i>and other development</i>" is necessary in view of the difficulty with identifying each and every minor element of associated works with a Nationally Significant Infrastructure Project of this nature. The Applicant did, however, note that control and comfort can be taken from the final words within the definition ("<i>authorised by this Order</i>") which has the effect of tying any 'other works' to those authorised under the Order and by virtue of Schedule 1 of the DCO.</p> <p>The Applicant also notes that the definition of authorised development within the current draft DCO (document reference 3.1 (version 3)) has precedence in other energy projects including the recently made Hornsea Four Offshore Wind Farm Order 2023 as well as the draft Gate Burton Energy Park Order.</p> <p>Permissive Path</p> <p>The Applicant noted the suggestions from the RPAs and the Applicant confirmed that it will consider this once in receipt of the drafting suggestions from the RPA.</p>
Agenda Item 5: Part 3 Articles 8 to 13, and Schedules 4 to 7: Streets and Access		
a)	Relevant authority for highways and street works	The Applicant welcomed confirmation from Lincolnshire County Council (LCC) that LCC are the competent authority with jurisdiction for highway and street works.

b)	Schedule 4-7: should LCC be listed under column 1?	In response to a question from the ExA, the Applicant confirmed that column 1 within Schedules 4 – 7 merely identifies the location in which the street or work is situated, rather than the competent authority. No updates are therefore required to column 1.
c)	Article 11 and Schedule 6: extent of stopping up Footpath Heck 15/1	The Applicant explained that the extent of the temporary stopping up of footpath HECK 15/1, as shown between points marked A-B on the rights of way plan (document reference 2.3 / AS-005), was necessary to show that the footpath will be unusable whilst the Applicant constructs the footbridges for the permissive path. The Applicant has adopted a precautionary "worst case" approach of showing the full extent of the temporary stopping up of the footpath (between points marked A and B) that will be unusable notwithstanding that only a small element will be under construction for the reinstatement of the footbridge(s).
d)	Footbridges associated with Work No.9B	The Applicant clarified that it may be necessary to install two footbridges in order to construct the permissive path under Work No. 9B of the DCO. The footbridges to be constructed are located on the north-western boundary of the Energy Park and can be seen on Figure 4.1f (APP-107).
e)	Permanent Accesses	In response to a question from the ExA on the number of permanent accesses, the Applicant explained that the DCO only seeks consent for construction of one permanent access – pursuant to Article 12(1)(a) and Schedule 7 (Part 1). This access, the principle for which was granted consent under the previous wind farm consent, is from the north side of the A17 at point EP/B on sheet 5 of The Street and Access Plan (document reference 2.7 / AS-006). However, the Article also provides that other means of access or works can be provided in other locations reasonably required for the Authorised Development with the subsequent approval of the RPA, in consultation with the highway authority.
f)	Consistency of approach	The Applicant noted LCC's wish to adopt a consistent approach to the highway matters for the draft solar DCOs across Lincolnshire. The Applicant agreed to work with LCC to further understand the position and, to the extent possible, agree a consistent approach to the drafting and mechanism for securing highway consents.

Agenda Item 6 Part 4 Article 14: Discharge of Water

a)	Questions for drainage authorities	The Applicant acknowledged that the ExA did not wish to raise any questions given that Black Sluice Internal Drainage Board (IDB) were not in attendance. The Applicant noted that the Protective Provisions with the IDB are agreed and that the IDB are planning to attend ISH 2.
Agenda Item 7 Schedule 2: Requirements		
a)	Discharging Authorities	<p>The Applicant concurred with the discussion regarding the need for clarity and consensus over the discharging authorities and the relevant consultees under Schedule 2 of the DCO. The Applicant has structured the DCO so that the discharging authority is the body with the relevant jurisdiction and competency – for example, LCC in relation to highway matters, archaeology, and drainage, and North Kesteven District Council (NKDC) and Boston Borough Council (BBC) in relation to other topics such as design, ecology, noise, and construction matters.</p> <p>The Applicant welcomes the commitment from the RPAs to provide a table at Deadline 1 with a breakdown of the suggested discharging authorities for each of the respective Requirements at Schedule 2 of the DCO.</p>
b)	Requirement 6 (Detailed Design Approval)	In response to a question from the ExA as to why Requirement 6(1)(i) secures a " <i>programme for landscaping works</i> " when landscaping is dealt with under Requirement 8 and 9, the Applicant explained that the intention under Requirement 6 is to outline the expected timeframes and programming of how the landscaping works fit with the detailed design of the scheme. The Applicant considers it necessary to include this with the approval of the detailed design under Requirement 6 in order to help provide a holistic design picture. Whilst the Applicant recognises the potential for overlap with Requirement 8 and 9, the Applicant notes that this drafting is in line with the recently made Longfield Solar Farm Order 2023.
c)	Requirement 11 (Surface Water and Drainage)	<p>The Applicant explained that the flood risk assessment (FRA) includes a drainage strategy at Appendix E (document reference 6.3.9.1 / ASO19-O23). The FRA is a certified document and secured under Requirement 6 of the DCO. As a result, the detailed design must be in accordance with the FRA and, by extension, the drainage strategy. Notwithstanding this, the Applicant is content to refer to the FRA and drainage strategy within Requirement 11. Additionally, in response to a question from the ExA and in the interests of clarity, the Applicant agreed to refer to "Black Sluice Internal Drainage Board" by name rather than the "relevant IDB". The Applicant will therefore update the DCO at Deadline 2 to read as follows:</p> <p><i>"11.—(1) No phase of the authorised development may commence until details of the surface water drainage strategy and (if any) foul water drainage system (including means of pollution control) (which must be substantially in accordance with the outline drainage strategy in the flood risk assessment) for that phase have been submitted to and approved by the relevant county authority, such approval</i></p>

		<p>to be in consultation with both relevant planning authorities or the relevant planning authority (as applicable), Black Sluice Internal Drainage Board, the relevant internal drainage board and Anglian Water (in respect of its sewerage undertaker functions).</p> <p>... "</p>
d)	Requirement (Archaeology) 12	<p>The Applicant explained that the purpose of Requirement 12 is twofold as it provides that:</p> <ol style="list-style-type: none"> 1. The cable works (Work No. 5, 5A, and 5B) must not commence until a written scheme of investigation (WSI) (in accordance with the outline WSI – Evaluation (document reference 7.13 / APP-244)) has been submitted to and approved by LCC, in consultation with the RPAs; and 2. No phase of the authorised development may commence until a WSI (in accordance with the outline WSI – Mitigation (document reference 7.14 / APP-244)) has been submitted to and approved by LCC, in consultation with the RPAs. <p>Requirement 12 therefore secures the need for trial trenching on the cable route (Requirement 12(1)), as well as mitigation for the entire authorised development (Requirement 12(2)). In the event that the Applicant is unable to undertake a full scheme of trenching prior to the close of examination, it will become a pre-commencement activity as the controls are secured under Requirement 12. The Applicant cannot commence construction of the cable route until the archaeological evaluation is carried out and, to the extent necessary, mitigation put in place; it is therefore a matter of when and not if the trial trenching will take place.</p> <p>Post-hearing submission: as the Applicant explained under Agenda Item 13 of ISH 2 (document reference ExA.WSISH2-D1.V1), the Applicant has undertaken evaluation works on the part of the cable route with the greatest archaeological potential (land known as Royalty Farm). The Applicant therefore considers that the drafting of Requirement 12(1) needs updating to make clear that the pre-commencement requirement for evaluation / trenching work on the cable route only applies to that section of the route that has not been subject to archaeological evaluation to date. The Applicant will update the DCO at Deadline 2 accordingly.</p>
e)	Requirement 13 (CEMP) & Requirement 14 (CTMP)	<p>In response to a question from the ExA on who the appropriate discharging authority is for the Construction Environmental Management Plan (CEMP) and the Construction Traffic Management Plan (CTMP), the Applicant explained that there are relevant measures appropriate to highways within the outline CEMP which is why the "relevant highway authority" are a consultee under Requirement 13 for the CEMP. Equally, the CTMP relates to highway matters in which the Applicant understands that LCC are the competent authority, hence why the "relevant county authority" are listed as the discharging authority.</p>

		<p>Notwithstanding, the Applicant recognises the need for consistency in referring to statutory bodies. The Applicant welcomes confirmation from the RPAs that they will follow up in writing with drafting suggestions for the appropriate relevant discharge bodies; to the extent necessary, the Applicant will then include updated drafting in the DCO at Deadline 2.</p>
f)	<p>Requirement 18 (Decommissioning and Restoration)</p>	<p>The Applicant explained that the wording "within 12 months" is necessary as the undertaker will have a considerable number of matters to prepare prior to decommissioning including finalising decommissioning plans and appointing contractors. 12 months is therefore a reasonable estimate of the time it would take to activate contractors and prepare details for submission of the decommissioning plans. The Applicant does not consider that a shorter period would be beneficial for either the Applicant or stakeholders/discharging authorities as it could lead to 'half-baked' decommissioning plans.</p> <p>The Applicant does, however, recognise that there should be a notification to the RPAs no later than 12 months prior to the date that the undertaker intends to decommission the authorised development; this would then start the clock for submitting the decommissioning and restoration plan.</p> <p>Accordingly, the Applicant proposes to include wording within Requirement 18 of the DCO at Deadline 2 similar to that included in the draft Gate Burton Solar Farm Order as follows:</p> <p><i>" (1) No later than 12 months prior to the date the undertaker intends to decommission the authorised development, the undertaker must notify the relevant planning authority of the intended date of decommissioning.</i></p> <p><i>(2) Within 12 months of the date notified pursuant to sub-paragraph (1), the undertaker must submit to the relevant planning authority for that part (or both relevant planning authorities where that part falls within the administrative areas of both the District of North Kesteven and Borough of Boston) for approval a decommissioning and restoration plan for that part.</i></p> <p>... "</p>
g)	<p>Requirement 3 (Phasing)</p>	<p>In response to comments from the RPAs, the Applicant explained that Requirement 3 deals with phasing from a DCO requirement perspective and provides that the Applicant must submit a phasing plan prior to commencement of the authorised development. The drafting of Requirement 3 is intentionally worded to provide for 'notification' rather than an 'approval' of the phasing plan. The Applicant does not consider it appropriate for the RPA to approve the phasing as this should be within the Applicant's gift; the Applicant's procurement strategy, including availability of contractors and the number of sub-contractors, is a crucial factor in determining the number of phases to a Nationally Significant Infrastructure Project. The Applicant therefore needs flexibility and control over the number of construction phases. This position is in</p>

		<p>accordance with precedent from the Norfolk Vanguard Offshore Wind Farm Order 2022 and the Norfolk Boreas Offshore Wind Farm Order 2021.</p> <p>The Applicant does, however, recognise that the phasing strategy will need to be in accordance with the measures assessed in the ES. The Applicant is therefore content to consider wording within Requirement 3 to make clear that the phasing strategy submitted pursuant to Requirement 3 must include a statement that the phases are in line with the assumptions in the ES and are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the ES.</p>
h)	Requirement 8 (LEMP and BNG)	<p>In response to comments from the RPAs on Biodiversity Net Gain (BNG), the Applicant explained that:</p> <ul style="list-style-type: none"> • The requirement to deliver a minimum of 10% BNG is across the entire authorised development, not on a phased basis. In other words, the Applicant does not need to provide 10% BNG on each phase of the development (see Post-hearing submission below); and • The Applicant cannot commit to an exact BNG percentage at this stage as it is subject to detailed design and the final layout of the panels, but the current calculations are that the BNG percentage is over 100%. <p>The Applicant notes that the RPAs agreed to respond more fully in writing; the Applicant will therefore consider these points further once in receipt of the written submissions.</p> <p>Post-hearing submission: <i>In order to address concerns from the RPAs as to how they could be confident BNG would be delivered across phases, the Applicant can confirm its intention to submit a BNG plan / report for discharge with each phase. The report would:</i></p> <ul style="list-style-type: none"> • <i>Reconfirm what level of BNG is being delivered across the site as a whole;</i> • <i>Set out what has been delivered in any previous phases, and</i> • <i>Set out how much of the whole BNG is being delivered in that particular phase.</i> <p><i>This mechanism is already secured by the wording within Requirement 8(2)(a) which states that the LEMP (for each phase) must include details of how a minimum of 10% biodiversity net gain will be secured during the operation of the authorised development.</i></p>
i)	Suggested additional Requirements	<p>In response to suggestions from the RPA as to additional Requirements for Schedule 2 of the Order, whilst the Applicant reserved its position until in receipt of the drafting from the RPAs, the Applicant noted that there is a balancing exercising between conciseness of drafting and detail. Accordingly, the Applicant noted the following:</p>

	<p>Outline Soil Management Plan (oSMP)</p> <p>The oSMP is included at Appendix E of the outline CEMP (document 7.7 / AS-027). The mitigation for soil protection is therefore secured in the DCO under Requirement 13 given that the final CEMP must be in accordance with the outline CEMP and, by extension, the oSMP.</p> <p>However, the Applicant recognises that it might be helpful for the DCO to include a standalone Requirement for soil management which secures the oSMP. The Applicant agreed to discuss this matter with the RPAs following the hearing; the Applicant will include any additional wording considered necessary in the DCO at Deadline 2.</p> <p>Operational Environmental Management Plan (OEMP)</p> <p>The Applicant has approached operational management measures by including detail within the appropriate headline plan. The operational management measures are therefore covered across various certified documents including the:</p> <ul style="list-style-type: none"> • Outline Landscape Ecological Management Plan (document reference 7.8 / APP-239) – which is primarily designed for the operational phase and refers to various management and maintenance activities throughout the lifetime of the project (i.e. in relation to planting and species management (paragraph 5 and 6), sheep grazing (paragraph 4), and lighting (paragraph 3.4)); • Outline Construction Environmental Management Plan (document reference 7.7 / AS-027) – which, at paragraph 4.20, refers to the operational vehicle movements (located with sheep grazing and maintenance activities); Appendix H which details the control of light for the operational phase; and Appendix K which details the construction and operation waste management controls; • Outline Supply Chain, Employment and Skills Plan (document reference 7.12 / APP-243) – which covers training and education activities during construction and throughout operation; and • Outline Energy Storage Safety Management Plan (document reference 7.11 / APP-242) – which provides measures for energy storage safety and ongoing management and monitoring along with Emergency Response Plans for the operational phase. <p>In summary, the Applicant's position is that the operational elements are secured in a number of the existing certified documents and it could be considered duplicative to incorporate these into a separate document. Notwithstanding, the Applicant is mindful of the responses received and recognises that there might be greater clarity and usability if these provisions were extracted into one framework/outline document. The Applicant will therefore consider this further once it is in receipt of the post-hearing submissions from the RPA and in advance of Deadline 2.</p>
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		<p>Fees for Discharge</p> <p>The Applicant considers that this is better dealt with under Schedule 14 in the context of the procedure for discharge (see Agenda Item 11 below).</p>
<p>Agenda Item 8 Schedule 3 (Article 6): Legislation to be disapplied</p>		
a)	<p>Questions for Black Sluice IDB and Environment Agency</p>	<p>The Applicant noted that the ExA wished to ask questions of the IDB and the Environment Agency with regards to the list of legislation to be disapplied at Article 6 and Schedule 3.</p> <p>The Applicant notes that Article 6 seeks to disapply certain statutory provisions – in keeping with the powers given to an Applicant under s120(5) of the Planning Act 2008 and the notion that a DCO can be a 'one stop shop'. The disapplication in Article 6 is well precedented for DCOs of this nature (for example in the recently made Longfield Solar Farm Order 2023).</p> <p>The Applicant also noted that the protective provisions with Black Sluice IDB and the Environment Agency are now agreed; updates will be made to Schedule 13 at Deadline 2.</p>
b)	<p>Disapplication of the Neighbourhood Planning Act 2017</p>	<p>As the Applicant explains in paragraph 7.1.14.6 of the Explanatory Memorandum (document reference 3.3 / AS-010), the provisions of the Neighbourhood Planning Act 2017 are disapplied in so far as they relate to temporary possession of land under Articles 27 and 28 of the Order. At present the reforms to the temporary possession regime contained in the Neighbourhood Planning Act 2017 have not yet been commenced (nor consulted on). When this may happen is uncertain, as are the detailed implications of implementation for the Authorised Development. The Applicant requires certainty on timeframes; it is therefore appropriate and necessary to disapply the reforms as they could come into force between now and the commencement of construction. The Applicant has, however, taken account of the principles in the relevant articles of the Order, these being Articles 27 and 28. This approach has precedent and has been accepted by the Secretary of State in the Drax Power (Generating Stations) Order 2019, the Millbrook Gas Fired Generating Station Order 2019, the Cleve Hill Solar Park Order 2020, the Norfolk Boreas Offshore Wind Farm Order 2021, and the recently made Longfield Solar Farm Order 2023.</p>
<p>Agenda Item 9 Schedule 11 (Article 38): Documents and plans to be certified</p>		
a)	<p>Certified Documents</p>	<p>The Applicant considers that this is a complete list and noted that there were no comments from the RPAs. The approach taken is that the "ES" is a secured document as well as all of the relevant control/management plans which are secured and referenced by Schedule 2. The Applicant explained that the number of ES</p>



		<p>updates or standalone environmental submissions is likely to increase throughout examination; the list at Schedule 11 of the DCO is therefore live and will be updated at each appropriate deadline.</p> <p>Post-hearing submission:</p> <p><i>For ease of reference and completeness the Applicant has updated the Guide to the Application (document reference 1.4, version 4) (GttA) submitted with Deadline 1 to include a list of certified documents within the front of the GttA (before listing out the documents relevant for each deadline/milestone). This list will be updated throughout the Examination.</i></p>
Agenda Item 10 Schedule 13 (Article 40): Protective Provisions		
a)	Updates on protected provisions	<p>The Applicant confirmed that there has been good progress with statutory undertakers and the Applicant is actively progressing negotiations. The Applicant has submitted a detailed tracker at Deadline 1 (document reference 4.5, version 3) and updated Protective Provisions (PPs) will be include in Schedule 13 of the DCO at Deadline 2.</p> <p>In summary, the following PPs are agreed:</p> <ul style="list-style-type: none">• National Grid Electricity Transmission (as submitted with the change application (document reference 3.1, version 3));• National Gas Transmission (as submitted with the change application (document reference 3.1, version 3));• Black Sluice IDB;• Environment Agency; and• Anglian Water; <p>The Applicant confirmed that negotiations are ongoing with:</p> <ul style="list-style-type: none">• Network Rail;• Triton Knoll; and• Viking Link (National Grid Ventures). <p>The Applicant explained that the PPs for Triton Knoll are being progressed as part of discussions with Triton Knoll in relation to seeking voluntarily rights to use the Triton Knoll access track for the Applicant's construction traffic. It is therefore unlikely that any bespoke PPs will be capable of agreement with Triton</p>

		<p>Knoll unless and until the commercial agreement is finalised for use of the access track. The Applicant is hopeful that this matter will be resolved during the Examination timeframe.</p> <p>The Applicant also confirmed that Cadent Gas will be removed from Schedule 13 of the DCO as Cadent Gas have now confirmed that they do not have assets within the Order Limits.</p>
Agenda Item 11 Schedule 14 (Article 42): Procedure for Discharge		
a)	Title of Schedule 14	In response to a question from the ExA, the Applicant agreed to update the title of Schedule 14 to refer to 'Procedure for Discharge of Requirements '. The Applicant will update the DCO at Deadline 2 accordingly.
b)	Comments from RPAs – Timeframes for Discharge and Deemed Consent	<p>Following comments from the RPAs on the timeframes for discharge under paragraph 2 of Schedule 14 and the mechanism of a deemed consent, the Applicant responded accordingly:</p> <ul style="list-style-type: none"> • The process for discharge set out in Schedule 14 is required in order to ensure that applications under the Order are dealt with efficiently and that the Authorised Development is not held up; the Applicant requires certainty over its project timeframes and construction programme (including in respect of the time period for discharge of requirements). Six weeks (or 42 days) is the period suggested by the Planning Inspectorate Advice Note 15 (at Appendix 1); • Deemed consent (in the event that the RPA does not determine the application within the [6] week period) is required for the same reason – to ensure the timely delivery of a nationally significant renewable energy project, in which there is a public interest to proceed efficiently given the net zero imperative; • The Applicant stressed that deemed consent is only applicable in the event that the discharge application/materials do not give rise to materially new or materially different environmental effects (paragraph 2(3) and (4) of Schedule 14); • Whilst the Applicant recognises that there is an appeals process under paragraph 4 of Schedule 14, this is not available to the Applicant in the event that there was non-determination and the application was held in abeyance, which further emphasises the need for a deemed consent provision; • The Applicant also noted that: <ul style="list-style-type: none"> a) The outline plans (certified documents) submitted with the application plans are considerably detailed;

		<p>b) The outline plans are subject to scrutiny and review during Examination; and</p> <p>c) The final plans submitted for discharge must be in accordance with the outline plans.</p> <p>Accordingly, the detail submitted to the RPA for discharge will be very familiar and in accordance with the structure of other DCO projects, particularly the solar schemes in Lincolnshire;</p> <ul style="list-style-type: none"> The concept of deemed consent also has precedence in solar DCOs including the recently made Longfield Solar Farm Order 2023, as well as the emerging draft solar DCOS in Lincolnshire such as Gate Burton and Mallard Pass. <p>In summary, the Applicant considers it is of paramount importance that a deemed consent provision is included within the Discharge of Requirements schedule, which is in keeping with precedents for solar DCOs. The Applicant is, however, willing to be flexible on the 6 week timeframe for discharge (particularly noting the 10 week period included in the Longfield Solar Farm Order 2023). The Applicant agreed to discuss timeframes for discharge with the RPAs and, to the extent agreement is reached, include updated drafting in the DCO for Deadline 2.</p>
c)	Fees	<p>The Applicant noted that there would be a PPA in place with the RPAs for the post-examination / discharge phase but the Applicant recognises that the ExA would not be able to give weight to a post-consent PPA. The Applicant therefore considers that:</p> <ul style="list-style-type: none"> Schedule 14 would be the appropriate place to include details on any fee arrangement for dealing with the discharge of requirements; and The wording included in Schedule 16 of the Longfield Solar Farm Order 2023, which imports the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (as amended)), would be the most suitable mechanism. <p>The Applicant agreed to discuss fees for discharge with the RPAs following the hearing.</p>
Agenda Item 12: Statements of Common Ground (SoCGs)		
a)	Status and update	<p>The Applicant confirmed that SoCGs are progressing and are on track for submission at Deadline 1. The Applicant explained that the following SoCGs are agreed for Deadline 1:</p> <ul style="list-style-type: none"> Lincolnshire Wildlife Trust (post-hearing correction: additional sections to be added to SoCG (in relation to licences, biodiversity and net gain, and mitigation and enhancement) which were missed off the first draft; the parties are therefore still under discussion on this matter).



		<ul style="list-style-type: none">b) National Grid Electricity Transmission (some elements under discussion);c) Black Sluice IDB (single point under discussion);d) Environment Agency (some elements under discussion);e) Anglian Water (fully agreed). <p>Subject to Local Impact Reports, a single Statement of Common Ground is provided with the three Local Planning Authorities.</p> <p>The Applicant explained that the following are in draft form, with comments awaited from the other party:</p> <ul style="list-style-type: none">a) National Gas Transmission;b) National Grid Ventures (Viking Link);c) Natural England;d) Network Rail; ande) Triton Knoll.
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Appendix 1 – Applicant's list of appearances

Those speaking during the Issue Specific Hearing:

- 1. Josh Taylor, Associate Director, Osborne Clarke LLP**
Speaking on behalf of Ecotricity (Heck Fen Solar) Limited in relation to most agenda items with support from those below.
- 2. Neil Bromwich, Partner, Osborne Clarke LLP**
Speaking on behalf of Ecotricity (Heck Fen Solar) Limited in response to the Examining Authority's questions on Part 3 Articles 8 to 13, and Schedules 4 to 7: Street Access (Item 5).
- 3. Isobel Hollands, Director – Environment, Pegasus Group**
Speaking on behalf of Ecotricity (Heck Fen Solar) Limited when called upon (i.e. project description).
- 4. Laura White, Senior Development Manager, Ecotricity (Heck Fen Solar) Limited**
Speaking on behalf of Ecotricity (Heck Fen Solar) Limited in relation to engagement with stakeholders and SoCGs.

Cirencester

33 Sheep Street, Cirencester,
Gloucestershire, GL7 1RQ

T 01285 641717

E Cirencester@pegasusgroup.co.uk

Offices throughout the UK

