

# Heckington Fen Solar Park

EN010123

## Applicant Response to Deadline 2 Submissions

Applicant: Ecotricity (Heck Fen Solar) Limited

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**APPLICANT RESPONSE TO DEADLINE 2 SUBMISSIONS**

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**1. INTRODUCTION**

1.1 The purpose of this document is to provide responses from the Applicant to the documents received from interested parties at Deadline 2. The Applicant has commented separately on the responses to first written questions - within document ExA.ResponseIPFWQ-D3.V1 submitted at Deadline 3

1.2 The following documents were submitted by interested parties at Deadline 2:

- Boston Borough Council Written Summary of Oral Submission (**REP2-81** and **REP2-82**)
- Lincolnshire County Council Written Summary of Oral Submission (**REP2-83**);
- North Kesteven District Council Written Summary of Oral Submission (**REP2-84**);
- Mr Bowler (**REP2- 102**);
- Environment Agency Written Representation (**REP2-103**);
- Lincolnshire County Council (LCC) Written Representation (**REP2-104**);
- National Grid Viking Link Written Representation (**REP2-105**);
- Network Rail Written Representation (**REP2-106**);and
- North Kesteven District Council (NKDC) Written Representation (**REP2-109**) and Summary (**REP2-107**) including Appendix 1 (**REP2-108**) and Appendix 2 (**REP2-110**).

1.3 The documents received at Deadline 2 as noted above are summarised in the tables below.

**Table 1 – Boston Borough Council (BBC) Written Summary of Oral Submission (REP2-81 and REP2-82) and Applicant Response**

Theme	BBC Comment	Applicant Response
Written summaries of oral submissions made during the Issue Specific Hearings (ISH) held on 19th and 20th September <b>REP2-81</b>	<ul style="list-style-type: none"> <li>• During ISH2 BBC supported the comments made by NKDC on the issue of woodland loss and it not being replaced within the Borough.</li> <li>• BBC had nothing to add to NKDC’s comments on the implications with planning policy.</li> <li>• BBC would defer to NKDCs ecologists as they do not have an ecologist.</li> <li>• BBC had nothing to add to the discussion on Best and Most Versatile agricultural land.</li> </ul>	The Applicant notes these comments and is submitting an update to the Outline Landscape and Environmental Management Plan (document reference 7.8, Revision 4) at Deadline 3, to confirm that where possible (in agreement with landowners) the Applicant commits to plant further trees (hedgerow, or other habitat functions) in Boston Borough. The backstop to this position is a contribution to planting within Boston Borough, or a payment to Boston Borough Council to facilitate tree planting. The Applicant understands that BBC are in agreement with this position, and the Applicant expects to record this within the Statement of Common Ground at Deadline 4.
Written summaries of oral submissions made during the Issue Specific Hearings held on 19th and 20th September <b>REP2-82</b>	<ul style="list-style-type: none"> <li>• During ISH1 the Examining Authority (ExA) asked for clarification on the discharge of Requirements.</li> <li>• A discussion took place on this point and BBC agreed with the suggestions made by other parties.</li> <li>• During the discussion on working hours BBC raised the issue of</li> </ul>	The Applicant responded to these points in REP2-012 following a further meeting with the RPAs, and an exchange of emails on the suggested amendments. The Applicant understands that the discharging bodies (as reflected in the DCO at Schedule 2) are now agreed with the RPAs and, following further discussions, a 10-week timeframe for

Theme	BBC Comment	Applicant Response
	<p>flexibility in agreeing amendments to them, owing to recent experience on another DCO development. It was suggested by the applicant that Requirement 5 would provide this flexibility.</p> <ul style="list-style-type: none"> <li>Discussions were also held on the timeframe within which to discharge a requirement. BBC agreed with the comments made by Counsel for NKDC and LCC and that BBC would participate in discussions with the two councils prior to the information being forwarded to the applicants</li> </ul>	<p>discharge will be included in Schedule 14 of DCO at Deadline 3.</p>

**Table 2 – Lincolnshire County Council (LCC) Written Summary of Oral Submission (REP2-83) and Applicant Response**

Theme	LCC Comment	Applicant Response
Requirements	<p>LCC confirmed it had been agreed that certain requirements that fall within the statutory remit of the County Council would be submitted to that Authority as the discharging authority (with consultation with the other RPAs being carried out as required) and vice versa. LCC also agreed to look at draft wording of certain requirements and provide Applicant with suggested revised drafting and a table setting out which requirements should be submitted to which Authority.</p>	<p>The Applicant responded to these points in REP2-012 following a further meeting with the RPAs, and an exchange of emails on the suggested amendments. The Applicant understands that the discharging bodies (as reflected in the DCO at Schedule 2) are now agreed with the RPAs.</p>
Planning Policy and Guidance	<p>LCC referred to its Local Impact Report for relevant planning policies within the Central Lincolnshire Local Plan and South East Lincolnshire Local Plan. LCC also confirmed they would look to agree with policies relevant and important in the Statement of Common Ground, to be agreed with the Applicant and all RPAs.</p>	<p>The Statement of Need and Planning Statement Addendum (document reference 7.3a/ REP2-062) covered relevant policies; a further update to the SOCG on policies agreed between the parties will be made at Deadline 4.</p>
Cumulative Assessment	<p>LCC welcomed the Applicants commitment to update the list to take into account status of projects that have advanced and to keep under review. LCC requested the list take into account One Earth which is another NSIP on the Notts/Lincs boundary.</p>	<p>The Applicant has considered One Earth Solar Farm, and other project in the ES Technical Note - Updated Information on Cumulative Projects (document reference ExA.ESTN-Cumulative-D2.V1) and the Interrelationship with other Nationally Significant Infrastructure Projects (document reference ExA.IRReport-D1.V1) Report, both of which are resubmitted at Deadline 3 with updated versions.</p>
Ecology, biodiversity and ornithology	<p>LCC confirmed that its views on this issue would be set out in its Local Impact Report, however LCC does not have a County Ecologist and is likely to defer specific and technical comments to those given by other RPAs and statutory consultees.</p>	<p>The Applicant notes this comment, and no further response is deemed necessary.</p>

Habitat Regulations Assessment	LCC confirmed that it would be pertinent for the Applicant to review the Shadow HRA and list of cumulative sites identified to make sure that there aren't any other sites that perhaps need to be captured in that HRA. This reflects the comments made previously in relation to Item 8 (cumulative assessment) in terms of additional projects and sites that may potentially have in-combination effects. It would therefore be useful for the Applicant to review the table in the HRA.	A revised Shadow HRA to Inform Appropriate Assessment was submitted at Deadline 2 (document reference 5.2/ REP2-023).
Archaeology	LCC confirmed that it has a statutory function with regard to archaeology however North Kesteven also use Heritage Lincolnshire as their advisors and will be making their own comments in this regard. However, the Applicant has liaised with both of those bodies and there is general agreement between the authorities on the approach and stance that they've taken so far.	The Applicant notes this comment, and no further response is deemed necessary, particularly noting Heritage Lincolnshire comments at the Issue Specific Hearing 4 on the 22 <sup>nd</sup> November 2023, whereby they note a <i>"robust level of baseline information... which has informed the mitigation strategy"</i> . The Applicant also acknowledges the response from LCC's Counsel as to <i>"the small bit [of trenching] that's left to be done and will be progressed as it should."</i>
Site Visit	Agreed to liaise and review proposed viewpoint locations and arrangements for the ASI with the Applicant ahead of Deadline 1	This action was completed, and the ASI held on 20 November 2023.

**Table 3 – North Kesteven District Council (NKDC) Written Summary of Oral Submission (REP2-84) and Applicant Response**

Theme	NKDC Comment	Applicant Response
Plantation	The Council have concern regarding the plantation impact – about 0.4ha are to be removed – AECOM has provided comments regarding the BNG and location for replacement provision. AECOM recommend that replacement plantings should be in the area around Bicker Fen Substation rather than on the Energy Park site.	The Applicant has now reached agreement with BBC on this position. Accordingly, an iteration to the Outline Landscape and Environmental Management Plan (document reference 7.8/ Revision 4) at Deadline 3 will detail that the Applicant will continue to liaise with landowners to seek to achieve further planting in Boston Borough, however, should this not be possible a monetary contribution for the purposes of tree planting will be made.
Planning Policy	<ul style="list-style-type: none"> <li>The February submission referred to the 2017 Central Lincolnshire Local Plan - which was replaced in April 2023</li> <li>The LIR will deal with the specific polices and analysis of impacts – but S14, S16, S53, S57, S60, S61 and S67 are most relevant - CLLP is framed around delivery of net zero development – a national and local imperative</li> <li>CLLP policy S14 'Renewable Energy' has ground based solar specifics and has more detail than previous CLLP policy LP19. There is a presumption in favour of solar development – with</li> </ul>	<p>The Applicant further covered these planning policy points in The Statement of Need and Planning Statement Addendum (document reference 7.3a/ REP2-062).</p> <p>The Change Application was accepted as confirmed in the Rule 8 letter dated 26 September 2023.</p>

Theme	NKDC Comment	Applicant Response
	<p>the caveat of unless there is significant harm arising or the proposals do not meet policy requirements in relation to BMV agricultural land (there is a cross reference to CLLP policy S67)</p> <ul style="list-style-type: none"> <li>• CLLP policy S67 – there are four tests that overlap with S14 – the need for the proposed development must be clearly established and evidence that there is insufficient lower grade land available</li> <li>• CLLP Policy S16 (BNG policy) requires 10% or more; fixes 10% as a minimum. S61 ties to S14 - S14 seeks to maximise BNG delivery – they must be read together</li> <li>• If the ExA accepts the change application, then documents need to be updated to reflect the adopted 2023 CLLP</li> <li>• The DCO application has identified emerging national policy changes (NPS revisions) – and these are addressed in the NKDC LIR</li> <li>• The changes in the NPPF to wind technology are not relevant</li> </ul>	
Need and Benefit	The Applicant has sought to weigh up the economic benefits of farming and the change in agricultural activity, along with the associated financial value; including in relation to sheep grazing.	The Applicant notes this comment and has made updates at Deadline 3 associated with the grazing and the Outline Operational Environmental Management Plan (document reference ExA.oOEMP-D3.V2, Revision 2). As a result, the parties can be confident that agricultural practices are continuing on the Energy Park site.
Cumulative Assessment	Agree with the broad scope of the outline documents (based on the timings of their preparation - see below) however does not wholly agree with the conclusions in relation to cumulative effects. - There have been updates and progress in relation to other NSIP and TCPA projects – the Lincolnshire Reservoir application is now at pre-application stage – an elongated pre-app process is expected, with an estimate submission date of Q1/Q2 in 2026.	The Applicant submitted an updated Cumulative Assessment via ES Technical Note- Updated Information on Cumulative Projects at Deadline 2 – which is subsequently updated at Deadline 3 (ExA.ESTN-Cumulative-D3.V2, Revision 2) along with the Interrelationship with other Nationally Significant Infrastructure Projects Report (ExA.IRReport-D3.V2, Revision 2).
Ecology, Biodiversity and Ornithology	AECOM agree the habitat baseline is 'low risk' and they are broadly in agreement regarding the timings, conclusions and recommendations arising from the surveys undertaken, including the baseline assessments - However there are a number of queries, to be presented in the NKDC LIR, regarding (amongst other things) botanical surveys. With reference to BNG there are gaps regarding the information embedded into the metric and requests for more clarity on data to be provided.	The Applicant notes this comment, and AECOM's comments at the Issue Specific Hearing 4 on the 22 <sup>nd</sup> November 2023. Further updates and clarification will be made at Deadline 3 in ES Technical Note – Additional Ecology Information (ExA.ESTNE.D3.V1).

Theme	NKDC Comment	Applicant Response
Habitat Regulations	It was confirmed that AECOM do not specifically comment on HRA compliance issues and instead note that they are content with the assessment of wintering birds provided that Natural England agrees with the findings of the HRA report.	The Applicant notes this comment, and no further response is deemed necessary.
Land Use and Soil	There is an area of disagreement in relation to permanent sealing over of the 3-4ha BESS area. The Applicant tends to focus on this being the primary impact whereas the Council's position is that the loss of farming opportunity over 40 years across the BMV areas in the Energy Park site is the more significant issue.	<p>The Applicant contends that this is not a loss of farming, but a change of land use. This position is laid out in Appendix 3 of Written Summary of Applicant Oral Case at Issue Specific Hearing 4 (ISH4) on Wednesday 22nd November 2023 (document reference ExA.WSISH4-D3.V1).</p> <p>In addition, the Applicant has now committed to a minimum number of sheep to graze the site (in accordance with NFU stocking densities), as captured in the updated Outline Operational Environmental Management Plan (document reference ExA.oOEMP-D3.V2, Revision 2). Accordingly, there is no loss of farming opportunity over 40 years across the Energy Park site.</p>
Land Use and Soil	The Council's position is that proposed sheep grazing/lamb production by mitigation is insufficiently evidenced at this stage. There is a large degree of reliance on this issue by way of mitigating BMV impacts for the 40year operational lifetime.	The Applicant notes this comment and has made updates at Deadline 3 confirming a minimum number of sheep grazing the Energy Park. This update is reflected in the Outline Operational Environmental Management Plan (document reference ExA.oOEMP-D3.V2, Revision 2).
Land Use and Soil	Landscape advise that in practice the difference between soil grades 3a and 3b land can be slight albeit they do not challenge the overall distribution of the grades in the applicant's assessment.	The Applicant notes this comment, and no further response is deemed necessary.
Land Use and Soil	Landscape set out some disagreement in terms of the operational claims regarding irrigation and blackgrass	The Applicant notes this comment and highlights this is a professional disagreement. The information contained in the Appendix 16.1 Farming Report Savills(document reference 6.3.16.1/APP-220) was informed by discussions with the Land Managers and following a professional study of the land and grass in question.
Archaeology	<ul style="list-style-type: none"> <li>The trial trenching and geophysics scheme and monitoring of works in the Energy Park site has been agreed.</li> <li>Within the LIR the Council will summarise the significance of the effects across the Energy Park site but will advise that as the archaeological baseline is not yet known in relation to the cable route, the applicant's conclusions regarding the significance of effect across the cable route cannot be supported until those additional works are completed - NKDC via HTL will continue to review as the Examination continues</li> </ul>	The Applicant proposes to complete the remaining trial trenching following harvest (and close of the Examination) to reduce the impact on the landowners along the cable route. In any event, further evaluation and mitigation is secured prior to commencement of the cable route works by Requirement 12 of the draft DCO (document reference 3.1) and the Outline Written Scheme of Investigation - Evaluation (document reference 7.13).



Theme	NKDC Comment	Applicant Response
	<ul style="list-style-type: none"> <li>In respect of the main energy park, there is an element of disconnect between the ES and some other areas of technical work; there is some inconsistency in relation to the requirements on the main energy park</li> </ul>	

**Table 4 – Mr Bowler Written Representation Summary**

Theme	Mr Bowler Comment	Applicant Response
Transport and Access	<p>Cowbridge Road, Bicker, together with other local roads around Bicker has been classified by Boston Borough Council as unsuitable for construction traffic...Ecotricity has promised local residents in writing that they will not use Cowbridge Road for their construction traffic when laying the cabling from the Heckington site of the solar panels to the National Grid substation on Bicker Fen. It is requested that the non use of Cowbridge Road (there is a highly suitable road off the A17 for the traffic) is written in by the Planning Inspectorate as a planning condition, or the equivalent wording. Cowbridge Road is totally unsuitable for construction traffic being very narrow, with no footpaths and is in a shocking state of disrepair and therefore dangerous.</p>	<p>The Applicant fully intends to the use the Triton Knoll access track preferably following voluntary agreement with Triton Knoll or in the absence of agreement through the acquisition of rights by compulsion. The commitment not to use Cowbridge Road for construction traffic for the cable route and the Applicant’s works at Bicker Fen Substation (Work No. 6A) is confirmed.</p> <p>Whilst National Grid will have to comply with the DCO and carry out their phase of works in accordance with a bespoke Construction Traffic Management Plan (substantially in accordance with the relevant parts of the outline CTMP (document reference 7.10)), given that National Grid have their own existing haul road off the A52 (avoiding Bicker village) to access their substation, the Applicant cannot directly control National Grid's construction traffic routing which may need to use Cowbridge Road in accordance with their existing arrangements. Therefore the Applicant has assessed the impact of the use of Cowbridge Road by National Grid.</p>

**Table 5 – Environment Agency (EA) Written Representation (REP2-103) and Applicant Response**

Theme	Environment Agency Comment	Applicant Response
Principle Powers and Protective Provisions	<p>The Environment Agency and the Applicant have agreed a satisfactory form of Protective Provisions and is therefore pleased to confirm that it consents to the disapplication of the need for a flood risk activity permit under Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016 and any applicable bylaws under the Water Resources Act 1991, for the purposes of section 150 of the Planning Act 2008.</p>	<p>The Applicant welcomes this confirmation and concurs with the position.</p>
Decommissioning and Restoration	<p>The Environment Agency will be included as a consultee to this Requirement (18) in the updated draft Development Consent Order (DCO) to be submitted at Deadline 2.</p>	<p>The Applicant concurs and this is reflected in the DCO at Schedule 2 (document reference 3.1)</p>

Theme	Environment Agency Comment	Applicant Response
Schedule 14 (Article 42) - Procedure for discharge	The Environment Agency requested that this Requirement use the term 'business day' and be amended to 20 business days. The Applicant has advised that they will be amending Article 42 to satisfy this request and the EA look forward to reviewing this in due course.	The Applicant concurs and this is reflected in the DCO at Schedule 14 (document reference 3.1)
Easement	The Environment Agency's Legal Team is reviewing documents provided by the Applicant with a view to entering into an option for Easement.	The EA and the Applicant continue to work on this matter.
Hydrology, Flood Risk and Drainage	Drawings state that the finished floor level of both buildings will be at or above 2.25m AOD. Accordingly, this matter is now resolved.	The Applicant welcomes this confirmation.
Outline Construction Environmental Management Plan	This additional text added to the OCEMP in relation to a management and reporting system to minimise and track the fate of construction wastes, is welcomed.	The Applicant welcomes this confirmation.
Summary	The Environment Agency has no objection to the principle of the development; the outstanding matters in relation to landholdings are capable of resolution through agreement and we hope to conclude these during the examination period.	The Applicant welcomes this confirmation and will continue to work with the EA to seek agreement on the position with the landholding.

**Table 6 – Lincolnshire County Council (LCC) Written Representation Summary (REP2-104) and Applicant Response**

Theme	LCC Comment	Applicant Response
Overview	The positives and benefits are not outweighed by the significant and negative impacts the development would have in particular on the landscape character and appearance of the area and on best and most versatile agricultural land.	<p>The Applicant strongly disagrees with these conclusions.</p> <p>The Applicant reiterates the positives referred to in the Planning Statement (REP2-060) and Planning Statement Addendum (REP2-062), but also the contained nature of the Energy Park within a single landholding with significant distances from properties, particularly to key elements like the onsite substation and energy storage compound, along with few local objections. Local support for the scheme has been noted during consultation.</p> <p>As the Applicant explains in the Interrelationship Report (ExA.IRReport-D3.V2) and Cumulative Assessment (ExA.ESTN-Cumulative-D3.V2) the area of land that is to be sealed over or 'lost' for the duration of the Heckington Fen project is only 3ha. This, coupled with the new commitment to a minimum number of sheep for grazing (within the outline Operational Environmental Management Plan (ExA.oOEMP-D3.V2)), means that agricultural practices will be continuing at the Energy Park site and any impact on BMV land is mitigated.</p> <p>The Applicant responds to the points on landscape character within its Written Summary of ISH 4 submitted at Deadline 3 (ExA.WSISH4-D3.V1).</p>

Theme	LCC Comment	Applicant Response
Land use	<p>The loss of high-grade land is not only of significant concern to the Council in respect of this specific project and location but is also of significant concern given the cumulative and in-combination effects of such loss when taking into account other NSIP scale solar developments that are also currently being promoted across Lincolnshire that are similarly seeking to use high-grade agricultural land.</p>	<p>The Applicant believes the County Council’s recommendation for refusal comes from a cumulative stance and desire not to be seen to be setting a precedent for the county of Lincolnshire, whereas this site and application should be judged on its own merits.</p> <p>The Applicant does not consider that support for this scheme, or indeed awarding a DCO consent, will set a precedent, as this scheme has an overwhelming number of positives.</p> <p>These positives include the continuing agricultural use of the Energy Park site; a community orchard; a permissive path; business rates and jobs. A full list is contained in the Written Summary of Applicant Oral Case at ISH4 on Wednesday 22<sup>nd</sup> November 2023 (listed 1 – 9 on page 23, document reference ExA.WSISH4-D3.V1).</p> <p>The Applicant would argue these outweigh the temporary change of land use from intensive arable, and all the negatives that go with the current farming practices, such as the high-carbon footprint agri-chemicals and diesel.</p> <p>Whilst 49% of the site is Best and Most Versatile (BMV) the Applicant considers that this is oversimplifying the statistics, the Energy Park is 81% Grade 3, Grade 3a is the lowest end of Best and Most Versatile which is 30.5% of this. Grades 1 and 2 comprise 7.4% and 11.1% of the landholding respectively. The land is farmed as a block, due to the difficulty of working higher grade areas dispersed across the site as explained in the Farming Report prepared by Savills (APP-220 / 6.3.16.1). Fields entirely classified as Grade 1 and 2 have been removed from the scheme.</p> <p>The Applicant also refers LCC to the Cumulative Impact Assessment (ExA.ESTN-Cumulative-D3.V2) and Interrelationship Report (ExA.IRReport-D3.V2) which explains that the area of land that is to be sealed over or 'lost' for the duration of the Heckington Fen project is only 3ha and that the temporary change of use of land for all the schemes included in the cumulative assessment amounts to an equivalent of 0.01% of BMV land in Lincolnshire, which leads to a conclusion of <b>not significant</b> in EIA terms.</p> <p>The Applicant responds in more detail to these points within Appendix 3 of its Written Summary of ISH-3 (ExA.WSISH3-D3.V1).</p>
Land use	<p>Given the strategic importance of the County as a food producer for the nation,</p>	<p>The Applicant welcomes the acknowledgement from LCC at ISH 3 on 21 November 2023 that</p>

Theme	LCC Comment	Applicant Response
	<p>any development on BMV land should start from a position of refusal with the emphasis for Applicants to prove otherwise. The Council’s view is that the impacts of this proposal are of such significance that the Development Consent Order should be refused.</p>	<p>this "starting presumption" is based on strength of feeling rather than policy. As a result, the Applicant considers that this statement from LCC should be given little weight in the planning balance.</p> <p>In addition to the points raised above and in the documents that the Applicant cross-refers to, the Applicant emphasises the wheat being grown on this site historically has been predominantly used for feed wheat (including exported) and bioethanol. From a purely calorific perspective, the (below average) grain yield in 2020 of 19 million tonnes would be sufficient to sustain the population (source: UK Food Security Report, 2021). A kilo of wheat provides 3,400 calories making 0.8 kilos of grain over 2,600 calories, compared to recommended calorie intake of 2500 for adults. From these figures it is easy to demonstrate that, even without accounting for other domestic products like potatoes, vegetables (which are not grown at Heckington Fen as outlined in the Savills Report (APP-220)), grass-fed meat and dairy, and fisheries, current UK grain production alone could meet domestic calorie requirements if it was consumed directly by humans in a limited choice scenario.</p> <p>Farming will continue at the site with a commercial sheep enterprise, and the Applicant has committed to a minimum number of sheep within the outline Operational Environmental Management Plan submitted at Deadline 3. This coupled with a conversion to renewable energy, and associated biodiversity enhancements means the site meets the national policy tests and should be recommended for approval.</p>

**Table 7 – National Grid Viking Link (NGVL) Written Representation (REP2-105) and Applicant Response**

Theme	National Grid Viking Link Comment	Applicant Response
<p>Land Interest and infrastructure</p>	<p>NGVL are waiting for information to establish the nature of the impact on NGVL infrastructure and land interests.</p>	<p>The Applicant has been in engaged dialogue and discussions with NGVL. The Applicant provided a provisional indicative drawing to NGVL, however Risk Assessments and Method Statements requested by them are not available until the detailed design is completed. The Applicant has since had confirmation from NGVL that they understand this position and that the protective provisions and side agreement will provide the adequate protections for the precise interaction and crossing to be approved prior to construction.</p>

Theme	National Grid Viking Link Comment	Applicant Response
Infrastructure	NGVL will require protective provisions to be included within the proposed DCO to ensure its interests are protected and compliance with safety standards	The Applicant continues to work with NGVL to get these agreed.
Infrastructure	NGVL is in discussions with the applicant in relation to the protective provisions and any supplementary agreements which may be required.	The Applicant continues to work with NGVL to get these agreed.

**Table 8 – Network Rail (NR) Written Representation (REP2-106) and Applicant Response**

Theme	Network Rail Comment	Applicant Response
Railway	<p>The Application includes provisions which would, if granted, authorise the Promoter to carry out works on and in close proximity to operational railway land in the control of Network Rail to use such land temporarily and to acquire permanent interests in such land... Plot 190 of the Book of Reference. The Promoter has identified rights sought to be compulsorily acquired from NR fall within Classes 1 (permanent easement and access); 3 (temporary use) and 4 (override private rights of extinguish other rights)... NR objects to the use of Compulsory Powers and the exercise of the Class Rights over the Plot to develop the development on the grounds that the proposed works will interfere with the safe and efficient operation of the railway and give rise to impacts on NR’s railway and associated infrastructure.</p> <p>The exercise of Class Right 1 is a particular cause for concern due to the structural impacts that the Class Right contains, and the exercise of these without the necessary provisions in place would be at the detriment of public safety.</p> <p>NR continues to investigate the extent of the risk to its assets and liaising with the Promotor in relation to any mitigation required. It is anticipated this will continue during the examination. NR requires Protective Provisions to ensure its interests are adequately protected and to ensure compliance with relevant safety standards.</p> <p>NR requires a private agreement to regulate the manner in which rights over the railway are to be granted and in which works are carried out in order to safeguard NR’s statutory undertaking. Engineers are continuing to review the extent of impacts on operational railways and any mitigation required (including NR’s review and prior approval of design proposals).</p>	<p>The Applicant notes that the acquisition of rights and the protection of the railway, whilst connected, should be treated as separate aspects of the Applicant’s proposals. Dealing firstly with the protection of the railway, Network Rail and the Applicant are close to agreement on the Protective Provisions. Directionally drilling underneath the railway in a safe manner is well established as evidenced by the construction of the Triton Knoll and Viking link connections.</p> <p>The Proposed Development will not therefore interfere with the safe and efficient operation of the railway, as the proposal is to HDD underneath the railway, some 10m below the surface as shown on Figure 4.13 - Indicative HDD Crossing Sections (document reference 6.2.4/ REP2-039).</p> <p>Network Rail has confirmed its willingness to work with the Applicant to agree protective provisions and a private agreement for prior approval and design of engineering details and therefore there is no prospect that the project would cause a serious detriment to the railway.</p> <p>The rights to use compulsory acquisition powers are a distinct and separate issue from the notion of public safety and/or detriment to the railway. The two issues should not, in the Applicant's view, be conflated. Compulsory acquisition rights go to the heart of the viability case for the project because without these the Applicant could be ransomed by Network Rail should they seek a land right payment that exceeds one that they would be entitled to under the compulsory purchase codes. This in itself could put the delivery of the project at risk and create a dangerous precedent for all NSIPs where statutory undertakers claimed that they should be treated differently to any other landowner.</p>

Theme	Network Rail Comment	Applicant Response
	<p>The completion of the necessary deeds of easement and asset protection agreement to govern the construction, maintenance and, where appropriate, removal of the parts of the development proposed by the DCO located on or adjacent operational railway land.</p> <p>NR and Promoter are in discussions about the effects of the DCO in general and will continue to liaise to address all outstanding matters. Until satisfactory agreement has been reached, NR will not be in a position to withdraw its objection.</p>	<p>Compulsory acquisition is therefore needed in order to ensure the deliverability of the project. Further, any ransom value that Network Rail could excerpt should not be a material consideration for the Secretary of State in deciding whether compulsory powers are confirmed, per Section 106(1)(c) Planning Act 2008.</p> <p>In any event (regardless of the compulsory acquisition position), Network Rail will still be offered protections in the form of the protective provisions (currently included at Part 8 of Schedule 13 to the DCO). The protective provisions provide safeguards for Network Rail, including with the following:</p> <ul style="list-style-type: none"> <li>• The requirement for the Applicant to provide Network Rail with plans of the crossing work for approval by a Network Rail engineer prior to undertaking any works in proximity to the railway (paragraph 86(1), Schedule 13 Part 8);</li> <li>• The ability for Network Rail to step in and undertake any works (at the Applicant's cost) in the event of concerns over the stability of the railway (paragraph 86(3), Schedule 13 Part 8);</li> <li>• The requirement for the Applicant to have to undertake protective works (if considered necessary by a Network Rail engineer) before any crossing takes place in order to ensure the safety of the railway (paragraph 86(3), Schedule 13 Part 8); and</li> <li>• The requirement for the Applicant to provide Network Rail/its engineers access to the crossing works to inspect during their construction; and to supply Network Rail with all information reasonably required in respect of the crossing works or method of constructing them (paragraph 88, Schedule 13, Part 8).</li> </ul> <p>Accordingly, the protective provisions provide adequate safeguards and the ability for Network Rail to approve plans and crossing method statements prior to undertaking works in proximity to the railway. In view of this, as well as the industry standard (HDD) crossing technology, there are provisions to ensure that there will be no serious detriment to Network Rail's undertaking. This position has previously been supported by the Examining Authorities, and endorsed by the Secretary of State, in both the Hinkley Point C</p>

Theme	Network Rail Comment	Applicant Response
		<p>Connection<sup>1</sup> and the Hornsea Project Three Offshore Wind Farm Order<sup>2</sup>.</p> <p>Notwithstanding the above, the Applicant is yet to remove the restriction on compulsory acquisition at paragraph 85 of the Network Rail protective provisions from the current version of the DCO (3.1, version 5) as the Applicant is hopeful it can reach a voluntary agreement with Network Rail. In the event that the Applicant cannot reach agreement with Network Rail then the Applicant proposes to amend the provisions at paragraph 85 to remove the restriction on the use of compulsory acquisition.</p>

**Table 9 – North Kesteven District Council Written Representation and Summary (REP2-109, REP2-107, REP2-108 and REP2-110) and Applicant Response**

Theme	NKDC Comment	Applicant Response
<p>Overview <b>REP2-107</b></p>	<p>This written representation considers four topic areas where there are policy conflicts and tensions with both local and national policy or an absence of information (or departure from best practice assessment methodologies:</p> <ul style="list-style-type: none"> <li>• Impacts on BMV agricultural land</li> <li>• Landscape and Visual Impact</li> <li>• Cultural Heritage Impacts</li> <li>• Ecology, Ornithology and BNG impacts</li> </ul>	<p>The Applicant notes this comment and responses, where applicable are included below.</p>
<p>Overview <b>REP2-107</b></p>	<p>The Council's Planning Committee also resolved to make additional submissions on:</p> <ul style="list-style-type: none"> <li>• Cumulative Impact of BMV land across Lincolnshire</li> <li>• Battery technology to be deployed</li> </ul>	<p>The Applicant notes NKDC comments on cumulative assessment which are covered in two documents at Deadline 3, the Interrelationship with other Nationally Significant Infrastructure Projects Report (ExA.IRReport-D3.V2, Revision 2) and the ES Technical Note- Updated Information on Cumulative Projects (ExA.ESTN-Cumulative-D3.V2, Revision 2). See below in relation to the technology to be deployed.</p>
<p>Policy <b>REP2-107</b></p>	<p>The Council supports the principle of the development however notes that there are negative impacts identified for the majority of the ES topics. This creates a tension and conflict with the adopted and draft NPSs, the NPPF and policies contained in the 2023 CLLP. However, the Council are satisfied that in principle those matters are capable of being addressed by Requirement.</p>	<p>The Applicant addresses this 'tension' in the Statement of Need and Planning Statement Addendum (document reference 7.3a/ REP2-062).</p>

<sup>1</sup> At paragraph 8.5.230 of the Examiner's Report, the Panel considered that it would not be necessary, nor would it be reasonable, to include paragraph 4 [restricting the use of CA powers] of Network Rail's preferred form of the protective provisions and that it could compromise the Applicant's ability to deliver the proposed development.

<sup>2</sup> At Paragraph 19.5.25 of the Examiner's Report, it was noted that the Applicant may not be able to reach an agreement with Network Rail before the end of examination but, in any event, the ExA concluded (at paragraph 19.6.43) that the Applicant's proposed protective provisions (which did not restrict the use of CA powers) were sufficient and that there was no serious detriment to NR's undertaking.

Theme	NKDC Comment	Applicant Response
Battery Technology <b>REP2-107</b>	The Council requests that the applicant give consideration to the use of lithium iron phosphate batteries in the operation of the BESS.	The energy storage technology would be confirmed following a procurement process and safety is covered in the Outline Energy Storage Safety Management Plan, also revised at Deadline 3 (document reference 7.11, Revision 2).
Land Use and Agriculture <b>REP2-107</b>	The cumulative impacts arising in terms of the region-wide use of BMV is also more significant in the Council's submission and it has been rather down-played by the applicant.	The Applicant has covered this in Appendix 3 of the Written Summary of Applicant Oral Case at Issue Specific Hearing 3 (ISH3) on Tuesday 21 <sup>st</sup> November 2023 (ExA.WSISH3-D3.V1); the Interrelationship with other Nationally Significant Infrastructure Projects Report (ExA.IRReport-D3.V2); and the ES Technical Note- Updated Information on Cumulative Projects (ExA.ESTN-Cumulative-D3.V2).
Land Use and Agriculture <b>REP2-107</b>	There is a particular tension and policy conflict in relation to BMV land impacts given that very nearly half of the energy park site by area comprises land in Grades 1, 2 and 3a.	Please see above comment.
Land Use and Agriculture <b>REP2-107</b>	The temporary loss of 257ha of BMV land is significant in its own right. The Council are not convinced that the applicant has demonstrated that they have avoided the use of BMV agricultural land where possible (including making further adjustments to the Order Limits or site layout through drawing back panelled areas).	The Applicant has further confirmed its commitment to grazing and a minimum number of sheep at Deadline 3 by way of an update to the Outline Operational Environmental Management Plan (ExA.oOEMP-D3.V2, Revision 2).
Land Use and Agriculture <b>REP2-107</b>	The applicant has ruled out making further adjustments to BMV proportions and Order Limit changes/reductions owing to this being commercially unattractive. Furthermore the Council are not satisfied that the 'need' to develop BMV land has been evidenced.	The Applicant covers this further in the Applicant Response to Interested Parties First Written Question Submissions at Deadline 2 (ExA.ResponseIPFWQ-D3.V1).
Land Use and Agriculture <b>REP2-107</b>	In relation to cumulative BMV impacts the One Earth Solar Farm and solar NSIP projects (Cottam, Gate Burton, West Burton, Mallard Pass, Temple Oaks, Tillbridge, Beacon Fen, Springwell and Fosse Green) will have cumulative adverse effects on agricultural land at a regional level. The Council do not agree that those cumulative agricultural land/BMV impacts will not be 'significant', as suggested by the applicant and therefore the Council also consider there to be an additional policy conflict associated with cumulative BMV impacts.	The Applicant notes NKDC comments on cumulative assessment which are covered in two documents at Deadline 3, the Interrelationship with other Nationally Significant Infrastructure Projects Report (ExA.IRReport-D3.V2) and the ES Technical Note- Updated Information on Cumulative Projects (ExA.ESTN-Cumulative-D3.V2). See below in relation to the technology to be deployed.
Land Use and Agriculture <b>REP2-107</b>	The proposed mitigations (including contractual arrangements for sheep grazing) are poorly developed at this stage. The Council will continue to	The Applicant has further confirmed its commitment to grazing and a minimum number of sheep at Deadline 3 by way of an update to the Outline Operational



Theme	NKDC Comment	Applicant Response
	work with the applicant to assess whether these matters can be addressed by Requirement.	Environmental Management Plan (ExA.oOEMP-D3.V2).
Ecology, Ornithology and BNG impacts <b>REP2-109</b>	AECOM are satisfied with the approach taken, the results obtained, the impact assessment conclusions, and the mitigation proposed for the BNG calculation and outline LEMP. It is agreed that the existing habitat baseline is relatively 'low risk' and therefore that the development is capable of delivering BNG. AECOM advise the Council that they are not satisfied with the approach taken for the botanical surveys, specifically the timing and survey effort and the suitability of surveying for occurrences of scarce arable flora.	The Applicant notes this comment, and AECOM's comments at the Issue Specific Hearing 4. Further updates will be made at Deadline 3 in ES Technical Note – Additional Ecology Information (ExA.ESTNE.D3.V1).
Ecology, Ornithology and BNG impacts <b>REP2-109</b>	Further details required of the proposed mitigation by way of badger gates in the proposed perimeter fencing, and the implications of security fencing on deer movements.	The Applicant understands AECOM are now content with this following Deadline 2 submissions.
Ecology, Ornithology and BNG impacts <b>REP2-109</b>	AECOM note that the impact assessment of birds is rather high level and that the main 'impact pathway' (displacement due to habitat loss rather than injury/mortality) has been sufficiently considered. Whilst the future habitat baseline may be improved for foraging by some bird species, the concern is that it might not outweigh the loss of nesting habitat.	The Applicant notes this comment, and AECOM's comments at the Issue Specific Hearing 4. Further updates will be made at Deadline 3 in ES Technical Note – Additional Ecology Information (ExA.ESTNE.D3.V1).
Ecology, Ornithology and BNG impacts <b>REP2-109</b>	AECOM also point to insufficient impact assessment on quail, however are content with the assessment on wintering birds provided that Natural England (NE) agrees with the findings. Certainty is also needed that the timing and extent/intensity of proposed sheep grazing would also allow for use of pasture by ground nesting birds.	The Applicant notes this comment, and AECOM's comments at the Issue Specific Hearing 4. Further updates will be made at Deadline 3 in ES Technical Note – Additional Ecology Information (ExA.ESTNE.D3.V1). The Applicant is working on a grazing calendar to be agreed with the shepherd, this will form part of the final Operational Environmental Management Plan.
Ecology, Ornithology and BNG impacts <b>REP2-109</b>	AECOM note that the level of detail in the BNG assessment is sufficient to understand what is being offered in broad terms, but it does not represent a full specification suitable to set terms of reference for agreement of the detailed plan later as a Requirement. Whilst the quantum of BNG to be achieved is likely to over 10%, it cannot be agreed until sufficient information has been provided to verify the applicant's BNG calculations. Amongst other things, grassland provision might have been overstated, the gains associated with 'over-sowing' of existing grassland	Following the release of the statutory biodiversity metric tools and guides released on Wednesday 29 <sup>th</sup> November 2023 further consideration will be given to them and comments raised by AECOM at ISH4, and an update prepared for the BNG assessment at Deadline 4.

Theme	NKDC Comment	Applicant Response
	<p>headlands are challenged, the balance between new hedgerow creation and the gapping up of existing hedgerows is unclear, and the condition scores for the baseline and proposed habitats are not fully provided; including the 'Strategic Significance' weighting associated with some areas of ditch which are mapped as 'green infrastructure</p>	
<p>Ecology, Ornithology and BNG impacts <b>REP2-109</b></p>	<p>With reference to impacts on trees, the Council's Tree Officer raises no concerns with the submitted AIA, noting that the tree/hedge protection measures are adequate and that soft landscaping details can be secured by Requirement. However, AECOM highlight that the Oak within Group G39 will need to be reassessed for 'veteran tree' status and that stand-off distances/root protection zones might need to be adjusted.</p>	<p>The survey at G39 has not been possible to undertake due to access issues, however an update in the Outline Construction Environmental Management Plan to undertake this survey prior to commencement is included (document reference 7.7, Revision 5).</p>
<p>Ecology, Ornithology and BNG impacts <b>REP2-109</b></p>	<p>The Council's position therefore is that whilst the applicant has largely complied with CLLP policies S59, S60 and S61 and the associated national guidance and policy, there remains a degree of tension and conflict with these policies (particularly S60) on the basis that there remain unresolved construction/ operation effects in relation to breeding/nesting birds, and in the assessment of botanical impacts. Set in that context we do not yet agree that temporary minor beneficial/ positive effects accrue for species benefitting from seeding of watercourse boundaries, including breeding birds.</p>	<p>The Applicant addresses this 'tension' in the Statement of Need and Planning Statement Addendum (document reference 7.3a/REP2-062).</p>

Theme	NKDC Comment	Applicant Response
Landscape and Visual <b>REP2-109</b>	The Council is satisfied that there are no cumulative adverse LVIA impacts with the solar NSIPS, the Lincolnshire Reservoir NSIP and the Town and Country Planning proposals as assessed. The one exception to this is in relation to the Beacon Fen energy park. There is the potential for significant cumulative visual effects to occur during the construction stage of the offsite cable routes if the two NSIP schemes were built out at the same time, as the two offsite cable route corridors overlap. We agree those that these effects are likely to be highly localised, short term and temporary. In terms of cumulative LVIA considerations associated with the construction and operation of the respective Heckington Fen and Beacon Fen energy park sites, in the absence of emerging designs for the Beacon Fen proposal the Council could only conclude that some negative operational effects, primarily associated with the energy park site as opposed to the cable corridor works, would occur.	The Applicant notes NKDC comments on cumulative assessment which are covered in two documents at Deadline 3, the Interrelationship with other Nationally Significant Infrastructure Projects Report (ExA.IRReport-D3.V2) and the ES Technical Note- Updated Information on Cumulative Projects (ExA.ESLN-Cumulative-D3.V2).
Landscape and Visual <b>REP2-109</b>	With reference to LVIA effects of the Heckington Fen proposals in isolation, the Council agrees that the construction and operation will invariably cause geographically highly limited yet significant adverse effects upon the character of the Fenland Landscape Character Sub-Area and agree these impacts would be experienced within the Energy Park itself, the existing public right of way, and the immediate surrounding landscape context up to a distance of approximately 500m from the energy park boundary.	The Applicant notes the comments on LVIA effects and responded in more detail at ISH 4 (ExA.WSISH4-D3.V1).
Landscape and Visual <b>REP2-109</b>	Inevitably as a product of the size and scale of the Order Limits, the topography of the fenland landscape within which the site is located, the proportion of ground coverage, the absence of built development and the inclusion of a multi-hectare BESS and substation with plant and equipment of relatively pronounced height there is a conflict and tension with CLLP policy S53 'Design and Amenity'.	The Applicant addresses this 'tension' in the Statement of Need and Planning Statement Addendum (document reference 7.3a/ REP2-062) that being how proposed mitigation planting responds to the field pattern and echoes the historic presence of tree vegetation across the Fen, and simultaneously protects the visual amenity of the nearby receptors.
Cultural Heritage <b>REP2-109</b>	Whilst there is nothing to suggest that the outstanding cable route trial trench works will reveal remains of more than	The Applicant notes this comment but due to access issues and impacts on harvesting further trial trenching will not

Theme	NKDC Comment	Applicant Response
	<p>local or regional significance, the Council agrees that ‘minor harm’ accrues and that it is not yet possible to assign categorically impact significance to the cable route works. There is a degree of tension and conflict with the provisions of NPPF paragraph 194 and CLLP policy S57 pending the reporting of the scheme of trial trenching on the cable corridor. Whilst paragraph 5.8.22 of the adopted EN-1 notes that in principle Requirements can be considered to ensure that appropriate procedures are in place for the identification and treatment of such assets discovered during construction, at present there is a disconnect in the evidence base which tempers how draft Requirement 12 can be finalised. If subsequently accepted into the examination process the Council would wish to review the report once available.</p>	<p>take place during Examination. Further evaluation and mitigation are secured prior to commencement of the cable route works by Requirement 12 of the draft DCO (document reference 3.1) and the Outline Written Scheme of Investigation – Evaluation (document reference 7.13).</p>
<p>Cultural Heritage <b>REP2-109</b></p>	<p>The farm buildings (cottages and barn) at Six Hundreds Farm and the former drainage pump should probably be subject to some further assessment. However, we are satisfied that on the basis these structures will not be physically impacted by the proposed development, this assessment could be linked with ‘archaeological’ matters through expanding the dDCO Requirement 12 and requiring a submission of a scheme for historic building recording for these two assets which then can be placed on the Historic Environment Record as supplemental to existing entries.</p>	<p>The Applicant notes this comment and has updated the Outline Construction Environmental Management Plan to undertake this assessment prior to commencement of works close to these features (document reference 7.7, Revision 5).</p>
<p>Cultural Heritage <b>REP2-109</b></p>	<p>The Council disagrees with the conclusion in paragraph 10.5.22 of APP-063 that the effect on Kyme Tower is “not significant” and that no harm is caused. In our view, we believe that the impact has yet to be fully assessed, however we accept that the harm lies towards the lower end of ‘less than substantial’ (engaging NPPF paragraph 202) and that the required counterbalance of public benefit would be met with reference to the NPPG guidance on this matter.</p>	<p>The Applicant maintains its position in relation to South Kyme Tower but would stress that even if paragraph 202 of the NPPF is engaged, then the public benefit test has been satisfied, as demonstrated in various places, primarily the provision of a renewable energy scheme to meet net zero targets, local benefits such as the permissive path and a community orchard, and benefits to the local economy during construction.</p>