

Heckington Fen Solar Park

EN010123

Written Summary of Applicant Oral Case at Issue Specific Hearing 3 (ISH3) on Tuesday 21st November 2023

Applicant: Ecotricity (Heck Fen Solar) Limited

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WRITTEN SUMMARY OF APPLICANT'S ORAL CASE AT ISSUE SPECIFIC HEARING 3

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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) 3.
- 1.2. ISH 3 on the draft Development Consent Order and Environmental Matters for Heckington Fen Solar Park took place on Tuesday 21st November 2023 as a blended hearing (in-person and virtually through Microsoft Teams) at 14.00.
- 1.3. A list of the Applicant’s oral participants that attended ISH 3 can be located at **Appendix 1** of this note.
- 1.4. The broad approach to ISH 3 followed the form of the agenda published by the Examining Authority (“ExA”) on the 13th November 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 3 – draft Development Consent Order and Environmental Matters

| Item | ExA Question / Content for Discussion | Applicant's Response |
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| PART 1: DRAFT DEVELOPMENT CONSENT ORDER | | |
| Agenda Item 3: Applicant's update on the latest version of the draft Development Consent Order (dDCO) [REP2-008] | | |
| a) | A summary of further engagement on the dDCO with relevant parties | <p>The Applicant summarised the recent engagement on the DCO:</p> <ul style="list-style-type: none">• The Applicant has undertaken helpful and constructive discussions and held a meeting with the relevant planning authorities (RPAs) following Issue Specific Hearing (ISH 1) and Deadline 1 to discuss comments on the DCO.• The Applicant produced a document at Deadline 2 (the Applicant's response to the RPA's comments on the DCO [REP2-012]) to respond to the points raised by the RPAs. In the majority of cases the Applicant has been able to accept the proposals put forward by the RPAs and/or to include further drafting in the DCO. Where this has not been possible the Applicant has explained the reasoning in REP2-012.• Otherwise, the further engagement has been with statutory undertakers on the protective provisions. |
| b) | A summary of amendments made to the dDCO following this engagement and since submission of revision 3 [PS-024], with reference to the Schedule of Changes to the DCO [REP2-013] | <p>The Applicant referred to Version 3 of the Schedule of Changes [REP2-013] and explained that the changes to the DCO can, broadly, be grouped into three areas:</p> <ol style="list-style-type: none">1. Changes resulting from feedback and discussion at ISH 1;2. Changes resulting from stakeholders – primarily RPA comments and statutory undertakers;3. General tidy up and points of consistency. |

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| | | <p>The Applicant summarised the main changes to the DCO as follows:</p> <ul style="list-style-type: none"> • Article 2 definitions – most notably the definition of authorised development, maintain, county authority, relevant planning authority, and to insert definitions for the new control plans, to reflect comments made at ISH 1 and from the RPAs; • The Streets Articles at Part 3 of the DCO – These changes have been made following meetings with the RPAs and to align with other draft solar DCOs such as the draft Mallard Pass Solar Farm Order. In view of those discussions, the Applicant has been able to front-load more of the detail into the DCO (rather than saving it for post-consent). Accordingly, the following Articles have been updated: <ul style="list-style-type: none"> ○ Article 9, to split the works into permanent and temporary works. This is then reflected in Schedule 5, which now more closely aligns with the access works in Schedule 7. The rationale is that where the Applicant proposes to take access (which in the majority of cases is at existing field accesses), works to alter the layout of the street may be required including, for example, needing to create better visibility splays or to clear vegetation. ○ Article 10, to reflect that there is now permanent alteration to the streets required under Article 9, including with the inclusion of a 12 month maintenance period following completion of the works (Article 10(1)). ○ Article 11, following a request from the councils to provide a notice prior to temporarily stopping up the public right of way (HECK 15/1). ○ Article 12, in a similar manner to Article 9, following comments from the RPAs and to link with the detailed design pursuant to Requirement 6. • Schedule 1 has been updated to reflect comments from NKDC and introduce a new Work No.9C for the community orchard, which aligns with the new Requirement 21. |

| Item | ExA Question / Content for Discussion | Applicant's Response |
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| | | <ul style="list-style-type: none"> • Schedule 2 (Requirements). The changes to Requirement 2 reflect updates following ISH 1 and comments from the RPAs, including new standalone Requirements for an Operational Environmental Management Plan (Requirement 19), a Soil Management Plan (Requirement 20), and the Community Orchard (Requirement 21) as well as updates to the discharging bodies under the Requirements, as agreed with the RPAs. • Schedule 5 and 7 have been updated to reflect the changes to Article 9 and 12, and the revised version of the Streets and Access Plan [REP2-006]. • Schedule 13 – to reflect the agreed form protective provisions with Anglian Water, the Environment Agency, Black Sluice Internal Drainage Board, and to remove Cadent Gas (who no longer have an interest in the Order Limits). • Schedule 14 has been updated to reflect discussions with the RPAs by including a lengthened time limit for discharge from 6 to 8 weeks, and longer periods for consultation and requests for further information, as well as a fee schedule for discharge (in line with the Longfield Solar Farm Order). |
| Agenda Item 4: Schedule 2: Requirements | | |
| a) | The ExA will ask questions and seek any comments on a range of the proposed Requirements, in particular from the RPAs in relation to the amendments submitted at D2. | <p><u>Requirement 3 (Phasing)</u></p> <p>The Applicant explained the updates to Requirement 3, including on the Applicant's agreement (and updated drafting) to provide:</p> <ol style="list-style-type: none"> 1. a plan with the final phasing scheme (sub-paragraph (2)(b)); and 2. confirmation that the phasing is in line with the assumptions in the environmental statement and is unlikely to give rise to any materially new or materially different environmental effects (sub-paragraph (2)(c)). |

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| | | <p>The Applicant has included this drafting in response to comments from the RPAs. The Applicant did, however, reiterate why the mechanism in Requirement 3 needs to be a notification, rather than an approval, including for the following reasons:</p> <ul style="list-style-type: none"> • the Applicant's procurement strategy, including availability of contractors and the number of subcontractors (which will be determined post-consent), is a crucial factor in determining the number of phases to a project of this size and scale; • the well-contained nature of the site (located as one land parcel) means that the Heckington Fen project is different from many other solar DCO schemes which may more naturally be 'phased' by their geographically separate and distinct land parcels. Whereas, because the Applicant's site is located as one land parcel, it is less obvious at this stage where and how the Applicant may 'draw the lines' between different phases; and • Post-hearing submission: following the hearing, the Applicant has also been reminded by National Grid Electricity Transmission Plc (NGET) that discretion over phasing is needed to ensure that NGET can take a standalone phase of the authorised development for the NGET works at Bicker Fen substation (Work No. 6B and Work No. 6C). This is because the control plans and requirements will need to be specific for the NGET phased works. The Applicant explained this approach in the Change Request documentation including at paragraph 2.1.21 of the Change Request Explanatory Memorandum [PS-025]. <p>The Applicant also noted the precedent for this approach (of notification only) in the Norfolk Boreas Offshore Wind Farm Order 2021 and the Norfolk Vanguard Offshore Wind Farm Order 2022.</p> <p>The Applicant does not consider that the RPAs have raised any compelling or robust reasoning as to why they require approval of the phasing scheme. For this reason, as well as the reasons</p> |

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| | | <p>outlined above and previously by the Applicant including in [REP1-019] and [REP2-012], the Applicant considers that the 'notification' mechanism in Requirement 3 should remain.</p> <p><u>Requirement 8 (LEMP)</u></p> <p>The Applicant outlined the updates to Requirement 8 including on the increase in the percentage of biodiversity net gain (BNG), which the Applicant has increased from a minimum of 10% to a minimum of 60% in sub-paragraph (2)(c). The Applicant explained that:</p> <ul style="list-style-type: none"> • 60% has been selected because the Applicant considers that it strikes the right balance between preserving flexibility for detailed design as well as giving more secured benefit to the scheme, which should be weighed in the planning balance; and • An exact metric (Biodiversity Metric 4.0) has been referred to because the Applicant considers that this provides more certainty and clarity as to how the level of BNG will be calculated. The Applicant considers this is appropriate and proportionate particularly given that the mandatory BNG regime is not expected until 2025 for NSIP projects. The Applicant also notes that the Natural England User Guide 4.0¹, at Rule 2 in Table 3-1, states that "<i>Biodiversity unit outputs are unique to this metric. The results of other metrics, including previous versions of this metric, are not comparable to those of this metric.... [and].... cannot be summed, traded, or converted between modules</i>". <p>Post-hearing submission:</p> <ol style="list-style-type: none"> 1. <i>In response to ISH 3 Action Point 2, the Applicant has checked six other recent solar DCOs (both made and draft Orders) in relation to whether these schemes secure an exact BNG % and specify the precise metric. The Applicant has provided a table at Appendix 2 with a more detailed breakdown. In summary, there is no consistent approach and only one scheme (the Longfield Solar Farm Order 2023) refers to a 'live'</i> |

¹ The Biodiversity Metric 4.0 User Guide, Natural England Joint Publication, JPO39, March 2023.

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| | | <p><i>metric. In view of this, and the Applicant's above submissions, the Applicant considers that its approach (in specifying Metric 4.0) is proportionate and justifiable.</i></p> <ol style="list-style-type: none"> <li data-bbox="862 419 1966 520">2. <i>Taking on board comments from ISH 3 and following a post-hearing meeting with the RPAs, the Applicant has been able to update the minimum percentage of BNG to 65%. The DCO and oLEMP have been updated at Deadline 3 accordingly.</i> <li data-bbox="862 555 1966 655">3. <i>The Applicant notes on Wednesday 29th November 2023 that a new metric for BNG was released as mandatory for Town and Country Planning Act applications. The Applicant will consider further submissions on this for a future deadline, if necessary.</i> <p><u>Requirement 17 (Permissive Path)</u></p> <p>In version 4 of the DCO [REP2-008], the Applicant changed the wording at paragraph (1) from 'construction' to 'implementation' in respect of the trigger to provide the permissive path details for approval. The intention with the drafting was to make clear that the permissive path will not be "constructed" as such, given that the path is proposed to simply be a grassed track. However, noting the ExA's comments and nervousness as to the uncertainty with the wording 'implementation', the Applicant has reverted back to the term "construction" in Version 5 of the DCO submitted at Deadline 3. The Applicant does, however, wish to reiterate its previous position that no substantial 'construction' activities are expected in order to put in place the permissive path.</p> <p><u>Requirement 18 (Decommissioning)</u></p> <p>The Applicant explained the changes to Requirement 18 following ISH 1 and Deadline 1. In response to comments from the RPAs, the requirement has been restructured in order to give the RPAs:</p> <ul style="list-style-type: none"> <li data-bbox="862 1310 1966 1374">- At least 12 months' notice prior to the date the undertaker intends to decommission the project; and |

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| | | <ul style="list-style-type: none"> - The decommissioning plan(s) for approval at least 6 months prior to the end of the 40-year life of the project. This, coupled with the timeframe for discharge at Schedule 14 of the DCO, means that there will be ample opportunity for consideration and discharge of the decommissioning plan(s) in advance of the 40 year longstop. <p>In response to requests for an obligation to decommission the scheme in the event of non-generation, the Applicant noted that:</p> <ul style="list-style-type: none"> - It is not proportionate or reasonable for an undertaker to have to decommission a scheme of this size and scale in the event of non-generation, nor is it in keeping with the themes of National Policy Statements (EN-1, EN-3 and EN-5) and the notion of national security; - The reasons for any periods of non-generation may be outside of the Applicant's control – for example, due to outages with the National Grid Bicker Fen Substation or through delays to being able to fix panels and/or waiting for replacement parts; - Adequate controls are already provided for in the DCO and within the Requirements (of which it would be a criminal offence to breach under s161 of the Planning Act 2008); - New and novel: the Applicant is not aware (and the RPAs have not provided any examples) of any DCO energy schemes that include a requirement to need to decommission upon a period of non-generation; - The size and scale of the investment required to build a solar DCO scheme of this magnitude would mean that an applicant/undertaker would not simply 'walk-away' from the significant number of assets <i>in situ</i>; the Applicant would be doing all it could to fix any faulty parts rather than have to decommission a project of this size early. |

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| | | <p>- Equally, a financier may be reluctant to invest in a project with a requirement to decommission early / if it did not have certainty on the project's minimum lifetime. Such a requirement goes to the heart of the viability of the scheme.</p> <p>Accordingly, the Applicant strongly resists any requirement which seeks to impose an obligation on the Applicant in the event of a period of non-generation.</p> <p>Post-hearing submission: Notwithstanding the above, the Applicant has proposed additional wording for the OEMP at Deadline 3 [ExA.oOEMP-D3.V1] in which the Applicant must provide notice to the RPAs once any part of the authorised development stops generating electricity for a continuous period of 12 months ("Period of Extended Outage"). When giving such notice the Applicant must provide details of the steps it is taking to rectify the issue along with an expected timeframe for when generation is predicted to re-commence operation. The Applicant agrees to keep the relevant planning authorities updated following the Period of Extended Outage until the re-commence of operation.</p> <p>The Applicant considers that this position is a reasonable and proportionate compromise.</p> <p><u>Requirement 19 (OEMP)</u></p> <p>The Applicant explained that, following discussions at ISH 1 and through engagement with the RPAs, a standalone requirement has been added to the DCO to secure an Operational Environmental Management Plan (OEMP). The OEMP must be in accordance with the outline OEMP [REP2-075], which captures the operational commitments for the project in one place. These commitments were previously included in other control documents such as the oLEMP and oCEMP.</p> <p>In the context of the discussions around Requirement 19, the Applicant noted that:</p> <p>a) Schedule of Maintenance</p> |

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| | | <ul style="list-style-type: none"> - The Applicant does not agree with any suggestions for the inclusion of an annual schedule of maintenance to be submitted for approval. - By the very nature of the controls within the DCO (pursuant to Article 5 and the amended definition of "maintain"), the maintenance activities are not permitted to give rise to materially new or materially different ES impacts. The Applicant considers that it would therefore be superfluous to require a schedule of maintenance to be approved, particularly as the Applicant is not permitted to go above what has been assessed in the ES. - It is difficult to predict year on year what maintenance activities are likely to be required. Accordingly the Applicant considers a schedule of maintenance would be onerous for an undertaker or contractor to have to carry out on an annual basis for 40 years. - In addition, as the undertaker/contractor would be unable to include unplanned maintenance or emergency works within the schedule, as such the Applicant queries the purpose or helpfulness of such a provision. - Furthermore, if the schedule had to be approved before the Applicant could undertake maintenance activities then it could create greater issues (i.e. greater damage, greater impact and/or greater number of HGVs for example). - The Applicant also stresses the context of this project as distinct from other emerging solar DCO schemes, given that the Applicant has a well-contained site accessed off the A17 for a proposed lifetime of 40 years. In the majority of cases, other emerging solar DCO schemes are seeking a longer lifetime (i.e. of 60 years) and often with a more dispersed layout accessible from different field parcels. The Applicant therefore considers that the sensitivities associated with maintenance activities for the Applicant's project are not high and do not necessitate an annual schedule of maintenance. |

| Item | ExA Question / Content for Discussion | Applicant's Response |
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| | | <ul style="list-style-type: none"> - In view of the above, the Applicant does not consider that such a requirement (for a schedule of maintenance) would meet the tests for a Requirement as needing to be precise, enforceable, and reasonable in all other respects. <p>b) Sheep Grazing</p> <ul style="list-style-type: none"> - The Applicant reiterated that grazing is secured by virtue of the DCO through Requirement 8 and Requirement 19. - Requirement 8 secures the oLEMP [REP2-074] and grazing activities are 'baked in' throughout the oLEMP, for example at: <ul style="list-style-type: none"> o Paragraph 1.9, in which the Land Manager is liaising with the tenant sheep farmer to ensure the sheep farming practices are carried out; o Paragraph 2.10 refers to the need for species rich seed mix which is suitable for long term sheep grazing; o Table 1 outlines the discussions held to date with the shepherd and most notably the row of 14 July 2022 confirms that the shepherd agrees with and can comply with the guidance issued by NFU in relation to stocking densities; and o Paragraph 5.4.4 refers to rotation of the flocks around the site. - The Applicant therefore considers that grazing is secured throughout both Requirement 8 (in the oLEMP) and Requirement 19. - The Applicant strongly refutes the notion put forward by North Kesteven District Council that a contract should be in place with a shepherd in order to secure sheep grazing. The Applicant submits that a DCO is akin to an outline planning permission; the purpose of requirements in a DCO are to secure the mitigation and outline the framework of the proposals; the final plans/schemes/protocols must be in |

| Item | ExA Question / Content for Discussion | Applicant's Response |
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| | | <p>accordance with the outline schemes, in which the councils have rights of approval (as secured by the requirements). It would not therefore be prudent or proportionate for the Applicant to be required to enter into a contract with a shepherd prior to having a DCO consent in place and prior to having project certainty.</p> <p>Post-hearing submission: notwithstanding the above position, the Applicant has proposed an additional commitment within the oOEMP at Deadline 3 [ExA.oOEMP-D3.V2] to include a minimum number of sheep across the site based on the NFU guidance of 2/3 sheep per hectare on newly established grassland. In view of this commitment, which the Applicant has made as a compromise position following comments from North Kesteven District Council at ISH 3, the Applicant submits that that there should be added weight to the fact that agricultural practices will be continuing at the site.</p> |
| <p>Agenda Item 5: Schedule 13: Protective Provisions</p> | | |
| <p>a)</p> | <p>The ExA will ask questions and seek any comments on a range of the Protective Provisions listed at Schedule 13, particularly in relation to the amendments submitted at D2.</p> | <p>The Applicant confirmed that the following protective provisions included at Schedule 13 are now agreed:</p> <ul style="list-style-type: none"> • Anglian Water • National Grid Gas • National Grid Electricity Transmission • Environment Agency • Drainage Authorities (i.e. Black Sluice Internal Drainage Board). <p>Protective provisions are close to being agreed with Triton Knoll and Network Rail.</p> |

| Item | ExA Question / Content for Discussion | Applicant's Response |
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| | | <p>The Applicant is in regular dialogue with Viking Link and hopes to receive a draft set of protective provisions and a confidential side agreement shortly; likewise with Bicker Fen Wind Farm (who submitted their relevant representation in the name of Schroders Greencoat [RR-023]).</p> |
| b) | <p>The ExA will seek comments on the Protective Provisions from any relevant undertaker or Interested Party.</p> | <p>In response to comments from Lincolnshire County Council (LCC) requesting protective provisions for Lincolnshire Fire and Rescue (LFR), the Applicant notes that the draft form provided is not synonymous with the usual type of "protective provisions" as there are no assets to protect. Nevertheless, the Applicant is not opposed to the principle of providing a contribution towards the cost of LFR monitoring the fire safety equipment associated with the proposed energy storage; the Applicant therefore agreed to discuss these matters with LCC.</p> <p><i>Post-hearing submission: the Applicant has included the protections for LFR within the outline Energy Storage Safety Management Plan submitted at Deadline 3 [7.11, version 2]. The Applicant understands that LCC are in agreement with this proposal.</i></p> |
| <p>Agenda Item 6: Other Articles and Schedules</p> | | |
| a) | <p>Interested Parties will be asked if there are any outstanding concerns relating to any other Articles and/or Schedules of the dDCO.</p> | <p><u>Article 9 & Schedule 5</u></p> <p>The Applicant explained that:</p> <ul style="list-style-type: none"> • Article 9(1) corresponds with the list in Schedule 5 to the Order. The principle being that the works are covered under the DCO, so the consent is provided for with just the final details left for sign-off. • Article 9(2) is for works and changes to the layout of the streets not mentioned in Schedule 5. In this scenario, the secondary consent of the street authority is required as the work is not currently expressly provided for within Schedule 5. |

| Item | ExA Question / Content for Discussion | Applicant's Response |
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| | | <ul style="list-style-type: none"> In terms of the mechanisms for sign-off, the intention is that the detail will flow through Requirement 6 and the Design Principles, hence why the Applicant has also made it clearer within paragraph (1)(f) of Requirement 6 that there need to be detailed design covering junction improvements and passing places. This aligns with the approach taken on the emerging draft Mallard Pass Solar Farm Order. <p><u>Article 12 & Schedule 7</u></p> <p>Article 12 follows a similar format to Article 9 – with access points included in the DCO at Schedule 7 and the principle of consent established through the DCO, with detailed design subject to Requirement 6.</p> <p><u>Article 37 (Tree Preservation Orders (TPOs))</u></p> <p>The Applicant can confirm that there are no TPOs currently in effect across the Order Limits. Article 37 is, however, still required in the event that a TPO is made in the future in order to provide certainty that that the undertaker may fell or lop or cut back the roots of any tree which is subject to a TPO to prevent it obstructing or interfering with the construction, maintenance or operation of the Authorised Development. The Article is a model provision included in numerous made DCOs save for that it applies generally to any tree subject to a TPO made before and after the date of the Order coming into effect and either within or overhanging the Order Limits. This approach has precedent in the Cleve Hill Solar Park Order 2020 and the Longfield Solar Farm Order 2023.</p> <p><i>Post hearing submission: this deals with Action Point 9.</i></p> <p><u>Schedule 14</u></p> |

| Item | ExA Question / Content for Discussion | Applicant's Response |
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| | | <p>Whilst the Applicant has increased the time limit for discharge from 6 to 8 weeks in response to comments from the RPAs, the Applicant explained that its position on deemed discharge is unchanged from that put forward at ISH 1 and Deadline 2 [REP2-012]. In summary:</p> <ul style="list-style-type: none"> • This is a nationally significant renewable energy project with an urgent need for efficient delivery and deployment; • The Applicant and its contractors need certainty over programme and deliverability of the project; and • The outline plans are very detailed and have been reviewed by the RPAs to date; the final plans must be in accordance with the outline plans which means that the detail coming before the RPAs prior to commencement will be very familiar and capable of discharge within the 8 week period. <p>With the lengthened timeframes for discharge (of 8 weeks) the Applicant considers that this strikes a fair balance. The Applicant cannot agree to removal of the deemed discharge provision, which is in keeping with precedented DCOs including the recently made Longfield Solar Farm Order 2023.</p> <p>Post-hearing submission: the Applicant stresses that the Applicant's position should have increased weight in view of the final draft NPS (November 2023) in which the government supports solar as "critical national priority" infrastructure that needs to be deployed urgently. Nevertheless, following a post-hearing meeting with the RPAs, the Applicant has agreed to include a 10 week timeframe for discharge within Schedule 14 but on the condition that the deemed discharge mechanism remains at paragraph 2(2). This 10 week period is nearly double the Applicant's starting point of 6 weeks. In view of this, and the reasons outlined above, this is the Applicant's final position and the Applicant does not propose to make any further changes to the timeframes within Schedule 14.</p> <p>Post-hearing submission: in response to the concern from North Kesteven District Council as to paragraph 5(2)(b) (refunded fee), the Applicant submits that it would be arbitrary and an</p> |

| Item | ExA Question / Content for Discussion | Applicant's Response |
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| | | <p><i>abuse of process for the RPA to retain the fee in the event that they had not determined an application within the specified timeframe (or a longer period if agreed); it could be suggested that there would be little incentive for the councils to process an application if they were being paid regardless. It should, however, be noted that there is a mechanism at paragraph 5(2)(b)(i) for the fee to be retained by the RPAs and credited in respect of a future application. This wording has precedent in the Longfield Solar Farm Order 2023 and is also included in the emerging draft Mallard Pass Solar Farm Order and the Gate Burton Energy Park Order. The Applicant therefore considers that this wording should remain.</i></p> <p><i>This deals with ISH 3 – Action Point 10.</i></p> |
| Agenda Item 7: Update on Statements of Common Ground | | |
| a) | The ExA will seek an update on the progress of statements of common ground relevant to the dDCO. | <p>The Applicant notes that the Statement of Common Grounds remain under discussion with all parties listed in the Rule 8 letter and summarised in the Statement of Commonality submitted at Deadline 2 [REP2-079].</p> <ul style="list-style-type: none"> • The Statement of Common Ground with the Councils is progressing in line with other amendments to the Development Consent Order; and the Outline plans. Specific matters associated with Best and Most Versatile Land are unlikely to be agreed between the parties by the close of the Examination. Post-hearing submission: <i>however, the Applicant has now proposed measures within the oOEMP at Deadline 3 and, in view of this, the Applicant considers that there should be an acknowledgement from the councils that agricultural practices are continuing and sheep grazing (in line with NFU stocking densities) is secured.</i> • Black Sluice Internal Drainage Board will be agreed once the commercial side agreement is finalised. |

| Item | ExA Question / Content for Discussion | Applicant's Response |
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| | | <ul style="list-style-type: none"> • Once the land agreement is concluded with the Environment Agency this Statement of Common Ground can be finalised. • National Grid Gas and National Grid Electricity Transmission can be finalised once the commercial side agreements are agreed. • National Grid Viking Link Statement of Common Ground requires protective provisions to be agreed, this one is considered further from agreement than the previous National Grid entities given the delay in Viking Link being able to share their protective provisions and side agreement. • Natural England Statement of Common Ground remains under discussion. Further discussion is awaited following Natural England's review of the outline soil management plan submitted at Deadline 2, and progression of the district licence contract. Post-hearing submission: <i>the Applicant has considered the submission [AS-O35] in Deadline 3 submissions and has proposed further amends to the outline soil management plan.</i> • Network Rail remains under discussion and may be capable of resolution if a commercial agreement can be reached. • Triton Knoll will be progressed once the legal agreements are concluded. This is progressing. |
| PART 2: ENVIRONMENTAL MATTERS | | |
| Agenda Item 8: Land and Soils | | |
| a) | The Applicant is to provide a summary of their response to RPAs concerns set out in their Local Impact | The Applicant refers to Appendix 3 , which contains its submissions under Agenda Item 8. The Applicant shared these submissions with the RPAs on Thursday 23 November following ISH 3. |

| Item | ExA Question / Content for Discussion | Applicant's Response |
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| | Reports (LIRs) regarding use of Best and Most Versatile agricultural land, including cumulative effects. | |
| Agenda Item 9: Landscape and Visual Amenity, and Residential Visual Amenity | | |
| a) – c) | <p>The Applicant is to summarise their response to Lincolnshire County Council's Local Impact Report [REPI-028] in relation to landscape and visual effects.</p> <p>The ExA will ask questions of the Applicant in relation to viewpoints, significance of effects, mitigation and cumulative effects.</p> <p>The ExA will seek comments from Lincolnshire County Council and other IPs present.</p> | This agenda item was dealt with at Issue Specific Hearing 4. Please therefore refer to the Applicant's written summary of ISH 4 submitted at Deadline 3 [ExA.WSISH4-D3.V1]. |
| Agenda Item 10: Any Other Matters | | |
| a) | | The Applicant notes that there were no other matters raised. |



Appendix 1 – Oral Attendees

- 1.1. **Josh Taylor**, Associate Director and **Neil Bromwich**, Partner at **Osborne Clarke LLP** speaking on behalf of Ecotricity (Heck Fen Solar) Limited:
 - In response to the Examining Authority's questions and for general advocacy.
- 1.2. **Laura White**, Project Manager, **Ecotricity** speaking on behalf of Ecotricity (Heck Fen Solar) Limited on:
 - General project updates and Statements of Common Ground.
- 1.3. **Isobel Hollands**, Director of Environment at **Pegasus Group** speaking on behalf of Ecotricity (Heck Fen Solar) Limited on:
 - Cumulative impacts and the interrelationship report.
- 1.4. **Tony Kernon**, Chartered Surveyor at **Kernon Countryside Consultants** speaking on behalf of Ecotricity (Heck Fen Solar) Limited on:
 - Land use and soils.

Appendix 2 – BNG Examples

| Scheme | BNG % and Metric stated on the face of the DCO(?) | BNG Commitment |
|-------------|---|--|
| Cleve Hill | ✗ | <p>This Order was made prior to the recent Environment Act 2021 proposals for BNG.</p> <p>Requirement 5² of the DCO commits the developer to implementing the Landscape and Biodiversity Management Plan (in accordance with the Outline Landscape and Biodiversity Management Plan) as approved by Natural England and not commencing development until it is approved.</p> <p>The plan³ does not contain any BNG % commitments.</p> |
| Longfield | ✓ | <p>BNG commitments are contained on the face of the Order at Requirement 9⁴. At Requirement 9(2)(a), the Landscape and Ecological Management Plan must include details of:</p> <p><i>"...how the plan will secure a minimum of 87% biodiversity net gain during the operation of the authorised development, calculated using The Biodiversity Metric 4.0, published by Natural England on 20 April 2023 (or the current version of the metric if this has been superseded when the plan is submitted for approval)".</i></p> |
| Gate Burton | ✗ | <p>In the latest draft DCO for this scheme, no BNG commitment is made on the face of the Order, but Requirement 8⁵ commits the developer to not starting authorised development until a BNG strategy has been submitted to and approved by the relevant planning authority in consultation with the relevant statutory nature conservation body. The strategy must be in accordance with the oLEMP and implemented as approved.</p> <p>The latest oLEMP⁶ states that the Applicant will provide at least 10% BNG, but that quantum is likely to be in excess for some habitat types.</p> |

² Cleve Hill DCO

³ Cleve Hill Outline Landscape and Biodiversity Management Plan

⁴ Longfield DCO

⁵ Gate Burton draft DCO Deadline 5

⁶ Gate Burton OLEMP Deadline 5

| | | |
|--------------|-------|---|
| Sunnica | ✘ | <p>In the final draft DCO for this scheme, Requirement 8⁷ commits the developer to include details in the LEMP of how the plan will secure a minimum of 10% BNG. No metric is mentioned on the face of the Order, but the developer is committed to not starting development until the LEMP is submitted and approved.</p> <p>The plan⁸ details the current metric as the Defra Metric 3.1 and that the proposals in the plan ensures there is a net gain arising during the lifetime of the scheme.</p> |
| Cottam | ✘ | <p>In the latest draft DCO for this scheme, no BNG commitment is made on the face of the Order, but Requirement 9⁹ stipulates that the developer must not commence authorised development until a BNG strategy has been submitted and approved by the RPA in consultation with the relevant statutory nature conservation body. The strategy must be in accordance with the OLEMP, and implemented as approved.</p> |
| Mallard Pass | ✔ & ✘ | <p>Some BNG commitments are contained on the face of the Order at Requirement 7¹⁰.</p> <p>Requirement 7(2)(f) stipulates minimum percentages for BNG on the face of the Order, and states that the final LEMP must set out the metric that has been used to calculate the percentages.</p> <p>The latest draft of the plan¹¹ echoes the statement that the LEMP will include an update on the BNG calculations undertaken at detailed design and specify which version of the Defra BNG Metric has been used in these calculations.</p> |

⁷ Sunnica draft DCO Deadline 10

⁸ Sunnica OLEMP Deadline 10

⁹ Cottam draft DCO Deadline 2

¹⁰ Mallard Pass draft DCO Deadline 9

¹¹ Mallard Pass OLEMP Deadline 7

Appendix 3 – Position Statements on Item 8 (Land Use and BMV)

Policy Response on use of Best and Most Versatile Agricultural Land

Some Relevant Planning Authorities have contended that the temporary loss of BMV is significant in various submissions (including their Local Impact Reports – REP1-028 (LCC) and REP1-033 (NKDC) and Written Representations REP2-104 (LCC) and REP2-109, Section 3 (NKDC)) and that the Applicant has not justified the use of BMV land. The Applicant notes that:

- there is no prohibition in policy on the use of BMV land;
- there is no loss of soil resource; and
- that substantial justification has been given for the use of the BMV land within the development.

The Applicant has considered the concerns stated primarily by North Kesteven District Council (NKDC) and Lincolnshire County Council (LCC) in their LIRs (REP1-028 (LCC) and REP1-033 (NKDC)) and also in responses to ExA Questions (REP2-092 and REP2-101) and further Written Representations made at Deadline 2 (REP2-104 and REP2-109).

No points are being made by Boston Borough Council (BBC) in relation to Land and Soils and NKDC and LCC in their responses agree that the cable route will be restored to its BMV land value following construction.

There are no BMV land effects at Bicker Fen Substation. The cable route and the grid connection therefore do not raise any concerns in relation to Land and Soils and the Applicant has concentrated this response with the regard to the impacts arising from the Energy Park only.

Many of the points made by LCC are similar to NKDCs. As NKDC is a host Relevant Planning Authority for the purpose of the Application, the Applicant has concentrated its response on NKDCs representation, but also noting that LCC have submitted a further similar written representation.

NKDC note their support for the principle of the development but highlight that there are tensions and conflicts between need to meet the climate emergency and reach net zero and the relevant national and local planning policies. They highlight the impact on BMV land as one of their concerns.

The Applicant notes the use of poorer quality land (Grades 3b and below) for large scale solar parks in a rural location are generally supported by policy. Neither Council take any issue with the use of the poorer quality land. These areas together with the suitability of the grid connection and cable route form the predominant part of land use needed to deliver the development.

The Applicant considers that in justifying the use of BMV land significant weight should be given to the sites' selection, including that:

- The Energy Park consists of as single well contained site under a single landownership where the landowner is willing to diversify its holding into renewable energy generation.
- The Energy Park has an accepted grid connection with National Grid for supply of 400 Megawatts of generation.



- The site has very minimal opposition, some of which relates to the use of BMV, and that without the BMV issue the site is generally uncontroversial.

In its written representation NKDC (REP2-109) highlights a number of issues relating to BMV summarised as follows, which the Applicant addresses in this submission:

- That the Applicant should justify why other (non BMV) land cannot be used;
- That the Applicant has not proved the need to develop BMV land;
- That Applicant has not minimised the impact through appropriate design solutions;
- That certain fields could be removed from the development that consist wholly or primarily of BMV land;
- That the constraints on existing farming use argued to justify the use of BMV land for solar have not been supported by evidence;
- That the proposal to continue agricultural use through grazing has not been developed;
- That the use of the BMV land amounts to a significant impact in its own right;
- Additionally, the cumulative impacts with other schemes are a significant impact.
- That the 40 year temporary period for the development is not temporary as the revised NPPF contains a policy supporting repowering.

The Applicant considers that the primary policy considerations are those in the adopted and draft Energy National Policy Statements EN-1 & EN-3. These policies should be given significant weight. The NPPF is an important and relevant policy consideration which should be given some weight.

The local planning policies are important and relevant considerations but should be given minimal weight but in the context that they have been adopted taking into account smaller schemes that would be consented under Town and Country Planning. Smaller sites may find avoiding BMV to be less complex and therefore the policies should be treated within that context. The Councils (NKDC and LCC) appear to put great weight on the local plan policies and the Applicant disagrees with this approach.

NKDC raises the 2015 Written Ministerial Statement and the need to provide "compelling justification" for the use of BMV. They note that this policy was agreed as extant in the Lullington appeal. The Applicant notes that in other appeal cases the 2015 statement has been given little weight when considered against more recent Government support for renewable development in the Energy White paper, the British Energy Security Strategy, the draft NPS (draft EN1, draft EN3 and draft EN5), the NPPF and Powering up Britain.

The Applicant notes that the Lullington decision is subject to a statutory challenge (judicial review) on the ground that the "compelling evidence test" was misapplied by the inspector and considers that the appeal decision should in the Applicant's submission be given no weight in this matter.

The Applicant notes that none of the policies relevant to this matter prohibit the use of BMV land (draft National Policy Statement EN-3 (March 2023) para 3.10.5). That is the starting point for considering the use of BMV land. The Applicant notes that LCC's written representation (REP2-104) submitted at Deadline

2 suggest that the starting position should be one of refusal. That is not the correct policy position and as such the Applicant suggests their representation is considered in that context.

The urgent need for renewable energy generation gives rise to the presumption in favour of granting consent for NSIP proposals. Draft National Policy Statement EN-3 (March 2023) (paragraph 3.10.8) recognises that the scale of an NSIP development will have impacts, particularly if sited in rural areas. It is supportive of solar that is collocated with, for example storage to maximise the efficiency of land use (see paragraph 3.10.2).

The Applicant considers that the use of the BMV land within the site maximises the use of the land as it delivers the full 400MW capacity to meet the grid connection agreement to make efficient use of the land.

In accordance with paragraph 3.10.14 of draft National Policy Statement EN-3 (March 2023), poorer quality land has been preferred as justified by the removal of Grade 1 & 2 land, as acknowledged by NKDC. This has minimised the area of BMV land being used through iterative design. Only areas that are of mixed quality land and form part of a contingent farming block have been retained. Further justification for retaining this land in the solar park include:

- That the land parcels are more prone to flooding and wetness than the land removed. We highlight this on the plans that show the flood zones.
- The land is being used for growing cereals. Should the land be suitable and profitable for more economic crops such as potatoes or beans, the land would be being used for these crops, but it is not as it is not in practical terms suitable for these uses. Therefore, there is no loss of such high value food crops (as was the case in Lullington).
- The Applicant therefore considers the economic impact of a move from wheat to renewable generation and grazing is not significant, a factor that the Secretary of State should consider as important (para 3.10.136 draft National Policy Statement EN-3);

In accordance with paragraph 3.10.15 Draft National Policy Statement EN-3 which states that the use of BMV is not prohibited the applicant considers that the impacts have been considered and include:

1. The significant contribution of Biodiversity Net Gain (at 60% overall);
Post-hearing submission : following a post-hearing meeting with the RPAs, the Applicant has been able to update the minimum percentage of BNG to 65%. The DCO and oLEMP have been updated at Deadline 3 accordingly.
2. The continued agricultural use which the Applicant has developed and will be secured through a commercial agreement which has been advanced;
3. The temporary use of the land. NKDCs contention that the NPPF supports re-powering and therefore the use should be considered as permanent must be given no weight. The Secretary of State can only consider the application before her and Government policy and the need for renewable energy generation from solar in 40 years' time may be entirely different from today.
4. The loss of feed wheat grown on the land when compared with the yield on poorer quality land will have a negligible impact on food security within the UK. **Post-hearing submission**: the site also grows wheat for bioethanol production demonstrating the site is not used solely for feed wheat (which is predominantly going for cattle feed).



5. A small area (circa 2.8 hectares) of BMV land being used for access and the substation/battery storage area will be restored at the end of the life of the development. There will be negligible permanent loss.
6. The overall protection of soil as a resource to be used in the future for food production.
7. Natural England have no objection to the use of the BMV land.

The Applicant sees no tension or conflict between the desire in the relevant National Policy Statement (which contains the presumption in favour of sustainable development) and the need to protect soils with national planning policies. The NPPF does not require active use, it is concerned with the protection of soil as a resource.

Planning Policy Guidance on the 'Natural Environment' from the Department for Levelling Up, Housing and Communities (para 002) highlights the importance of soils not just for growing crops but also as a store for carbon and water, and a reservoir for biodiversity and a buffer against pollution. These are all aspects of the soil as a resource which are being maintained at Heckington Fen Solar Park.

The Applicant does not disagree that the use of BMV land for solar development needs to be justified but disagrees that the test is one of "compelling evidence". The Applicant considers that the 2015 Ministerial Statement is superseded in policy terms and given little weight. Much greater weight should be afforded to the NPS and NPPF.

These latter documents have been produced in the context of consideration by Government to amend the NPPF to prohibit the use of BMV for solar development. Government have sought not to make such changes in the most recent revisions to the NPPF (September 2023).

In the Government's response to the NPS consultations, published in March 2023, the Government states at page 31: *"given the range of factors that need to be considered in selecting viable sites for solar generation, including vicinity of grid and topography, and the limited availability of suitable brownfield land at the scale needed for NSIP projects, we expect that some projects (or parts of projects) may need to deploy on higher grade agricultural land."*

The Applicant considers that the 2015 Ministerial Statement should be afforded very little weight. However, it is noted that the 2015 Ministerial Statement also does not preclude the use of BMV land. The Applicant considers that its justification for use of BMV land is sufficient evidence to justify the use of the higher quality land and the threshold to justify such use in Draft National Policy Statement EN-3 (March 2023) is fully met.

As previously noted, the Applicant considers that the NPS's have primacy in what is the important and relevant policy. However, the local plan policies are relevant and the Applicant notes that they do not prohibit the use of BMV land. The Applicant considers therefore that there is very little, if any, conflict or tension between national and local policy, but if the Secretary of State considered there was such a tension, national policy should prevail.

North Kesteven Council note the "Golden Thread" of the Central Lincolnshire Local Plan as *"addressing the challenge of climate change and contributing to the transition to a low carbon society"*.

Policy S14 of the Central Lincolnshire Local Plan is noted as being a part of this process. Policy S14 provides a presumption in favour of development of ground based solar development on the proviso that, for proposals on BMV land, policy S67 is met. S67 refers to loss of BMV and the Applicant notes that there



is no loss and the opportunities for food production and the continuance of the agricultural economy are preserved.

Policy S67 seeks to protect BMV land and is also supportive of development causing loss to BMV land provided the following criteria are met:

- a. *the need for the development has clearly been established and that there is insufficient lower grade land to available at the settlement,*

The Council assert that the application has not established the need to utilise the BMV land, however this is not the appropriate policy test. The policy does not refer to need for BMV land, it is seeking that the overall need for the development is established. This overall need arises from the wider urgent requirement for renewable energy generation as highlighted in the Applicant's submissions and acknowledged in the in principle support for the proposal as accepted by the Council.

- b. *The benefits and sustainability considerations outweigh the need to protect the land, taking account of the economic and other benefits of the BMV land*

The significant benefits of the scheme have been set out by the Applicant in this submission and in previous submissions. The benefits are considered to heavily outweigh the effect of the proposal on BMV, in particular taking account of the very limited degree of disturbance that the development will have to overall soil resource.

- c. *Impacts have been minimised through design solutions.*

As highlighted the design has been amended to significantly reduce the extent of BMV land affected by the solar panels.

- d. *Where feasible once development ceases its useful life the land is restored to its former use.*

It is confirmed in the Requirements that the land will be restored to its former agricultural condition, with the exception of a very small proportion of the site which mostly relates to access land which will undoubtedly improve its utility for future farming.

In summary, given the context of policy to protect BMV soil as a resource overall, the Applicant considers that there is no tension between the proposals and national or local planning policy. Policy does not preclude the use of BMV agricultural land. The National and Local Plan policy is supportive of the proposal in the context of the required criteria.

The Applicant considers that the concerns raised by NKDC and LCC have been considered fully and measures taken in the iterative design of the proposal seek to avoid, reduce, mitigate and compensate for any negative effects of using BMV land as required (per para 4.2.4 NPS EN1).

Assessment Methodology for the EIA on Soils

The Applicant confirmed the EIA utilises the significance thresholds outlined in in the IEMA Guide "A new perspective on Land and Soil In Environmental Impact Assessment, Feb 2022", (referred to as 'IEMA Guide' hereafter). The use of the IEMA Guide and the thresholds for significance are outlined in paragraph 16.3.22 the ES Chapter 16: Land Use and Soils (document reference 6.1.16/REP2-029).

Table 2 and 3 within the IEMA Guide outlines the Sensitivity and Magnitude of Impact on Soil Resource and Soil Function. Table 2 defines that Grade 1-3a land to have a very high to high sensitivity due to the



biomass function. The IEMA Guide in Table 3 (page 49) states that loss needs to be “permanent and irreversible to one or more soil functions or soil volumes (including permanent sealing or land quality downgrading).” As the Proposed Development is not a permanent development and soil disturbance is being managed through the Outline Soil Management Plan (document reference 7.15) at construction and decommissioning phases, it will not have a permanent impact on the soils of the Site.

The IEMA Guide then goes on to a significance scale if land is being permanently sealed. These levels are:

- Use of land or an ALC downgrading of more than 20 hectares to be a major adverse magnitude of impact
- losses of 5 – 20 ha to be a moderate adverse magnitude
- and finally, losses of less than 5 ha to be slight adverse magnitude.

The Proposed Development’s Energy Park Site is 524ha, of which 257ha is BMV (49%). A solar farm development varies greatly from a development such as a new residential development, in so much as the development does not permanently seal over the land. Instead, the majority of a solar farm leaves the soil undisturbed and offers the opportunity to allow ongoing agricultural to take place in tandem with renewable energy development. Such a process is encouraged in the draft EN-3 Paragraph 3.10.2. The draft EN-3 states *“that government is supportive of solar that is co-located with other functions (for example, agriculture, onshore wind generation, or storage) to maximise the efficiency of land use.”*

The proposed design at Heckington Fen, which has been assessed in the EIA, is in line with this National Policy of co-location, as renewable energy generation will occur with ongoing agricultural activities.

The design of the Heckington Fen site has evolved in the pre-application stage through consultation with the Local Authorities and consideration of National Planning Policy. This design evolution process reduced the Order Limits to remove land to the south of the Energy Park that was Grade 1 and 2 which had been included to offer further BNG gain.

The design has also located the Onsite Substation and Energy Storage within an area of poorer grade land, as no ongoing agricultural can take place in the onsite substation or energy storage area. The generation of renewable electricity and storage of electricity are key requirements of decarbonisation and achieving Net Zero by 2050. UK based generation assists with achieving security of supply.

The remaining area of the development is solar panels, access tracks and other ancillary equipment. From the indicative design, it would result in approximately 3ha of BMV land being temporarily sealed for the lifetime of the development. The Applicant considers this is an acceptable loss, but for a robust assessment, the EIA has also considered the significance of the impact of this ‘loss’ of approximately 3ha as defined by the IEMA Guide.

Under the IEMA guide a loss of 3ha falls into the category of slight adverse effects and is therefore not significant. This is concluded within the ES Chapter 16: Land Use and Soil (document reference 6.1.16/REP2-029). There is no National Planning Policies that set a threshold for acceptable levels of use of BMV land for development. The only policy that uses an area of land as a marker for considering a significant effect is the Central Lincolnshire Local Plan – Policy S67. Although not expressly stated in any of the submissions from the RPA’s to date, the Applicant considers this policy is used as justification on the loss of BMV. Such statements should be considered with the appropriate weight Local Planning Policy should be given against National Planning Policy when considering a NSIP scheme.



The drafting of Central Lincolnshire Local Plan – Policy S67 states: “Where proposals are for sites of 1 hectare or larger, which would result in the loss of best and most versatile agricultural land, an agricultural land classification report should be submitted, setting out the justification for such a loss and how criterion b has been met.” Section b of this policy states: “The benefits and/sustainability considerations outweigh the need to protect such land, when taking into account the economic and other benefits of the BMV agricultural land”.

In response to part (a) of Policy S67, the Applicant disagrees with the Council’s position that there will be a permanent loss. The IEMA Guide methodology adopted in the assessment shows there will only be a temporary loss.

1. In response to part (b), the proposals offer the following beneficial gains which are deemed significant in EIA terms and can be seen in the various assessments in the Environmental Statement. These gains are: Additional tree and hedgerow planting within the Energy Park Site – boundary and orchard,
2. BNG of 60% in habitat units,
Post-hearing submission: following a post-hearing meeting with the RPAs, the Applicant has been able to update the minimum percentage of BNG to 65%. The DCO and oLEMP have been updated at Deadline 3 accordingly.
3. Creation of new 4km permissive path connecting to HECK/15/1,
4. Increase in employment in the 30-month construction period with 436FTE on site and a further 580 temporary indirect jobs within the local community (total 1016FTE). The expectation that there will be up to 6.5FTE for the operational life of the development and a further 9 supported in the wider community. The current jobs on the site will not be lost as their work is needed on other parts of the farming operation. At decommissioning there is expected to be further employment opportunities with 218FTE jobs and a further 290 temporary indirect jobs (508 total),
5. Between 28–74% of local accommodation bedspace would be required for non-local employees in construction. Alterations depending on month of the year,
6. Increased contribution to economic output the direct & indirect jobs
7. Ongoing agricultural activity on the land as BMV land is not being lost– operational lifetime shift from arable to pastoral in line with the draft EN-3 wish to co-locate PV with agriculture
8. Increased payment of Business Rates into the local economy of £1.3million each year, which will be £28.8million over the 40year lifespan (this total is a discounted figure over the lifetime of the development).
9. Decrease in GHG emissions into the atmosphere over the lifecycle of the development = 1,317,00tCO₂e. This figure accounts for the CO₂ that is saved from release by not using fossil fuels.
10. Generation of renewable electricity and storage of electricity are key requirements of decarbonisation and achieving Net Zero by 2050. UK based generation assists with achieving security of supply. The design of the site has located the ESS in low grade land which provides an efficient opportunity to integrate energy storage into the design of the Site to balance the electricity.



To date Lincolnshire County Council has not concisely stated their position if these benefits outweigh the temporary loss of 3ha of BMV agricultural land.

Within the EIA assessment, a cumulative assessment of the ongoing NSIP schemes and TCPA schemes in Lincolnshire is detailed. The cumulative assessment was updated and submitted at Deadline 2- ES Technical Note- Updated Information on Cumulative Projects (document reference ExA.ESTN-Cumulative-D2.V1/ REP2-O50). This report considered 18 sites (including the Proposed Development). Of these, if Heckington Fen Solar Park is included, there are 15 solar farm applications and 2 are other type of applications (Boston Alternative Energy Scheme & Lincolnshire Reservoir). These 2 non-solar schemes require the use of 998.8ha of BMV land in Lincolnshire. The use of 26.8ha BMV for the Boston Alternative Energy Scheme has already been approved by the Secretary of State in July 2023. The 14 cumulative solar sites (excluding Heckington Fen Solar Park) currently have 3,931ha of BMV in Lincolnshire within their current application areas. The above figure is higher than the 3,667ha presented in the Interrelationship Report with other NSIP projects (Revision 2, document reference ExA.IRReport-D3.V1), as further TCPA applications are included within the ES cumulative assessment that are excluded in the Interrelationship Report.

The figure of 3,931ha of BMV land in Lincolnshire is not to be considered for the cumulative loss of soil resource. Of this 3,931ha BMV 3,370ha is still within the pre-application stage of the projects and so there is very limited information on the proposals and detailed soil survey work has not been completed. This preliminary stage of these developments should be considered as a limitation of the data available for the EIA assessment.

The ES Technical Note- Updated Information on Cumulative Projects (document reference ExA.ESTN-Cumulative-D2.V1/ REP2-O50) has used the same IEMA Guide methodology to determine thresholds for significance. It has also applied a 1% temporary loss of BMV land where there was no information available in the documents on the possible design of the site or the possible loss. To offer some context to this 1%; Heckington Fen Solar Park is a temporary loss of 0.6% over the whole Energy Park.

As part of the Applicant's preparation for the Issue Specific Hearings 3 and 4 on the 21st and 22nd of November 2023, the BMV cumulative figures have been revisited as they underpin a number of points. This exercise has revealed that a lower area of BMV could be affected than has been stated in the ES Technical Note- Updated Information on Cumulative Projects (document reference ExA.ESTN-Cumulative-D2.V1/ REP2-O50). The reason for this is that areas of BMV land in Nottinghamshire were included in the BMV cumulative total within Table 3.17 and the loss from Gate Burton Energy Park was under calculated. The ES Technical Note- Updated Information on Cumulative Projects stated that 90ha of BMV land would be lost (permanently or temporarily) if the cumulative sites were built. This 90ha excludes the possible BMV land loss from Lincolnshire Reservoir. In error, this 90ha figure included the 1602ha of BMV across Lincolnshire and Nottinghamshire for One Earth Solar Farm rather than the 279.7ha which is within Lincolnshire. It also understated the loss of BMV land for Gate Burton Energy Park as applied a 1% loss (0.7ha) rather than the 2ha loss their project documentation has stated. Finally, it did not include the cumulative loss of 3ha from the Proposed Development at Heckington Fen Solar Park.

When the BMV losses for the One Earth Solar Farm and Gate Burton Energy Park are corrected and the 3ha temporary loss from the Proposed Development is added, the total temporary loss of BMV from the cumulative developments reduces to 80.7ha. This is a reduction of 9.3ha. This cumulative loss figure includes the 26.8ha permanent loss from the Boston Alternative Energy scheme which has been granted planning consent (July 2023).

The cumulative loss of BMV due to solar farms (including Heck Fen Solar Park) within Lincolnshire is calculated at 53.9ha. This loss represents the shortlisted cumulative solar sites within the ES Technical



Note- Updated Information on Cumulative Projects (document reference ExA.ESTN-Cumulative-D2.V1/REP2-050).

Applying the same principles as outlined before the IEMA Guide in Table 3 (page 49) states that loss needs to be “permanent and irreversible to one or more soil functions or soil volumes (including permanent sealing or land quality downgrading).” As the cumulative solar farm developments are not permanent developments, they will not have permanent impact upon the soils of the Site. For the 7 solar farm sites that are in pre-application stage, no detail has been currently submitted to indicate that they will submit soil management plans to mitigate the possible impacts of temporary development. For the purpose of the EIA, it has been assumed that this will occur. These 7 pre-planning solar sites account for 41ha of the cumulative temporary loss. For a robust assessment, the EIA has considered the significance of the impact of this temporary loss of 53.9ha from cumulative development, as defined by the IEMA Guide.

Under the IEMA Guide methodology a loss of 53.9ha falls into the category of major to moderate adverse effects. Further clarification on the significance of this cumulative effect would require detailed soils survey work from the 7 pre-planning solar farms, which is not yet available. Following the IEMA Guide the mix of Grade 1, Grade 2 and Grade 3a is vital in determining the final level of significance as the IEMA Guide places different weighting on the different soil types.

The Land Use and Soils section of the ES Technical Note- Updated Information on Cumulative Projects takes this headline figure of 53.9ha and considers it against the total area of BMV land within Lincolnshire. Across Lincolnshire there is estimated to be 402,900ha (71.2%) of BMV land. The temporary loss of 53.9ha of BMV is equivalent to 0.01% of BMV land in Lincolnshire. When this possible ‘loss’ is placed into context with the BMV resource within Lincolnshire County, the cumulative loss becomes not significant in EIA terms.

Post-hearing submission: *in response to the ExA question at ISH4, Item 8 the applicant has reviewed the cumulative assessment of the NSIP schemes to consider the altered status of some of these sites since the submissions at Deadline 1 and 2. The detailed finding of this requested review can be seen in the Interrelationship Report and the ES Cumulative Technical Note that were updated and completed at Deadline 3. The revisiting of the submitted documentation for the solar NSIP schemes has resulted in further alterations to the cumulative areas of BMV land experiencing change of use over their operational lifetimes. Since Deadline 2, Mallard Pass have submitted that 4.2ha of their site would be sealed over or lost for the operational lifetime of their scheme. Cottam have also clarified in their submitted documents that 4ha of BMV land would be sealed over rather than the 48.1ha previously stated in the documents. One Earth have also submitted a Scoping Request which has stated that 250ha of land is in Lincolnshire, rather than the 279.7ha previously assumed.*

These alterations means that the 15No. cumulative solar sites in Lincolnshire (NSIP & TCPA) have a total agricultural land area of 7,823ha. Of this 3,858ha is BMV quality. For these 15No. cumulative solar sites there is an estimated temporary sealing over of 57.3ha of BMV land across Lincolnshire. When the estimated area of 3ha from the Heckington Fen site is added, the total cumulative temporary sealing over is 60.3ha of BMV in Lincolnshire.

Therefore, whilst the total exceeds 20ha and under the IEMA guide would fall into the category of major to moderate adverse effects, further consideration needs to be made to this figure. The cumulative ES technical note then takes this headline figure of 60.3ha and considers it against the total area of BMV within Lincolnshire. Across Lincolnshire there is estimated to be 402,900ha (71.2%) of BMV land. The temporary change of 60.3ha of BMV land is equivalent of 0.01% of BMV in Lincolnshire. When this



temporary change and not a permanent sealing or downgrading is placed into context with the BMV resource within the County the cumulative effect would not be significant in EIA terms.

Applicant's Opinion of LCC/NKDC Methodology for assessing significance of Land Use and Soils

The Applicant is of the opinion that the RPA's assessment of significance is **not** based on the IEMA Guide, NPS, or NPPF. The IEMA Guide's methodology for assessment of significance is based on irreversible loss of biomass, and refers to "permanent, irreversible loss" with thresholds of 20 ha. The Applicant also notes that the RPA's assessment is not based on the designated or draft NPS EN-3 that requires "economic and other effects" to be considered and does not set criteria for significance or thresholds. The RPA's assessment is also not based on the NPPF either; the concept of "significant development" is set at footnote 58, however the RPA's conclusion is not linked to this footnote. It is not based on the Central Lincolnshire Local Plan, the opening paragraph on the relevant policy is "to protect opportunities for", and therefore the policy is about protection of land resource, and not about land use for food production. As the Proposed Development will have limited loss of BMV land (3ha), this is not significant. The RPA's concern, in the Applicant's view, must be based on the change in intensity of agricultural use of the land. Landscape on behalf of NKDC's identified the land will be "removed from arable farming for 40 years to, at best, lower intensity grass-based system". Due to this statement the Applicant is concluding that, food production must be the basis of the concern for NKDC.

Policy S67 of the Central Lincolnshire Local Plan as stated is about protecting the resource and opportunities, not actual use. The current intensity of use of the land does not affect the land grade. There are no Government policies or initiatives to require land to be farmed, or Government food production policy relevant to this application. Therefore, the position of significant harm from NKDC's perspective is not based on policy.

In practice, NKDC accept that the implications of using Grade 3a and 3b land are limited. In Chapter 16: Land Use and Soils (document reference 6.1.16/REP2-028 paragraph 16.6.57) attempts at identifying BMV and non-BMV land production using a crude assessment of 1.4 tonnes per hectare. BMV land from the Proposed Development would produce 360 tonnes per year. In context, the UK in 2022 produced 15.5 million tonnes of wheat and 24 million tonnes of cereal production (paragraph 16.5.47 of Chapter 16 of the ES). If the Proposed Development was considered on the basis on BMV and non-BMV, it would produce 4,500 tonnes a year, this is not significant in context. However, basing significance on an assessment of food production is wrong. There is no limitation on Grade 3b land, and therefore the correct measure is the incremental difference.

In DEFRA's press release dated 6th December 2022, there is no food crisis in the UK (paragraph 16.6.64, Chapter 16 of the ES (REP2-028). Non-food uses are encouraged on land through the Countryside Stewardship Scheme, where they have funded 161,000 ha of arable land into grass margins. The Government's Biomass Strategy (August 2023) aims for 121,000 ha of land to be used for biomass. The aim of this strategy is for more green energy from biomass. These are recent Government initiatives to use land for purposes other than food production.

In conclusion, in the Applicant's view, the RPAs' position on significance of land use and soils does not follow the IEMA Guidance, or National or Local policies. Reduction of labour from the change in land use is not significant. The Proposed Development is in line with National Policy Statement (designated and draft) EN-3, as the use of BMV land is justified. In the Central Lincolnshire Local Plan, Policy S67 is based on protection of resource; the overall land use at the Proposed Development will be protected, and the insertion of panels will not materially affect loss of land. In the Applicant's view the RPAs conclusions that there is significant harm, cannot apply as those conclusions are not based on the correct policies or the findings of the ES and are also not practical.

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