

North Kesteven District Council response to Deadline 3 submissions

Document/reference	NKDC comments
Outline Decommissioning and Restoration Plan	NKDC raises no specific comments on the ODRP at this stage however refers to the provisions of draft Requirement R18 below.
Draft DCO Revision 5	<p>NKDC makes the following comments in relation to Revision 5 of the draft DCO, with some of the below points overlapping with the EXA’s second questions:</p> <p>Requirements</p> <p><u>R3 (Phasing)</u> – the revision does not address the comments submitted at deadline 3 ‘Action Points’. We understand the need for some flexibility to be able to depart from a masterplan in response to matters such as unforeseen supplier issues or local constraints however we still consider it important that broad geographical principles of phasing should be submitted to and should be approved by the RPAs.</p> <p><u>R6 (Detailed design)</u> – the draft now includes reference to outline design concepts plan and that the detailed design will be informed by findings of archaeological surveys. This addresses concerns raised by the Council’s archaeologist in terms of the flexibility provided by the Rochdale envelope.</p> <p><u>R8 (LEMP)</u> – the Council notes the BNG percentage has increased from 60% to 65%. As per our comments at deadline 3 we support the fixing of Metric 4.0. However, the replacement planting period is still at 5 years not 7; as specified in the NKDC Tree Strategy. As set out in our deadline 3 comments the increase to 65% is still a significant shortfall from the “over 100% in habitat units” claimed as recently as Deadline 2 (DL2) within the Applicant’s response to the LIRs [REP2-078].</p> <p>This is notwithstanding that, in summary, the baseline reports (e.g. the phase 1 habitat survey reports) do not provide detailed accounts of the baseline condition of each relevant habitat (e.g. composition of each of the woodlands and hedgerows included within the calculations) nor the relevant underpinning evidence.</p>

Ultimately it remains at the applicant's discretion whether they seek to further increase the committed BNG percentage over and above 65% in the draft Requirement, however if that is the case then the decision taker will need to ensure that any adjusted planning weight aligns with a clearly evidenced position at that point in time. As set out in the Council's response to the EXAs second questions, there is a potential benefit to the applicant later from fixing a minimum threshold, as any excess units could potentially be sold later for use by another development. The Government has published guidance (<https://www.gov.uk/guidance/make-on-site-biodiversity-gains-as-a-developer> and <https://www.gov.uk/guidance/biodiversity-net-gain-what-local-planning-authorities-should-do#checking-developers-selling-excess-on-site-gains>) on excess on-site gains that may be helpful when formulating a response.

R10 (Fencing) – as set out at deadline 3, any details must align with recommendations contained in the LEMP regarding deer fencing/exclusion.

R12 (Archaeology) – as set out above the previous concern relating to the flexibility proposed by the Rochdale envelope in terms of the potential to develop in areas not previously trial trenched has now been addressed through the amendment to Requirement 6 (detailed design submission).

R16 (Supply chain, employment and skills) – we note revisions to the draft including that section 3 of the Outline Supply Chain, Employment and Skills Plan refers to potential traineeships/apprenticeships. Section 3 confirms that a fund to facilitate training and apprenticeships to a value of £50,000 per annum (index linked) will be provided for the operational lifetime of the Proposed Development.

The applicant has advised that the mechanism to provide this will be agreed between NKDC and BBC following determination of the Development Consent Order. As set out below we welcome this commitment and will work with the applicant to move this matter forward. The Council provides further comments in its response to the ExAs second questions however for the avoidance of doubt we recommend that section 3 of the oSCES is amended to confirm that a s106 Agreement will be the mechanism by which the fund will be secured.

R18 (Decommissioning)/R19 (Operational Environmental Management Plan) – the Council has had post-hearing discussions with the applicant however Revision 5 still makes no reference to decommissioning in event of early cessation of energy export. As drafted in the Outline OEMP, section 6.1, the wording is still based around the Applicant notifying the LPAs of the periods of extended outage and the measures being put into place to rectify the issue along with an expected timeframe for when generation is predicted to recommence.

There is no ‘back stop’ clause which would then trigger decommissioning of that part or parts of development as set out in the Mallard Pass OEMP section 2.4 to 2.5 and as we set out at the recent ISHs. We will continue to seek an absolute back stop clause but are conscious that this would need to factor in force majeure events or National Grid/other unforeseen activities impacting Bicker Fen Substation. As submitted the Council still cannot support the position outlined in section 6.1 of the oOEMP.

R19 (Operational Environmental Management Plan) – whilst part (2) of the draft Requirement continues to bind that the detailed OEMP must include details of how sheep grazing will be managed and maintained within the fenced areas of the solar park, the Council’s response to the Examining Authority’s written questions and requests for information (ExQ2) (question LUS 2.2) highlights that some revisions will be required to the detailed OEMP notably in relation to grazing densities on grassland post-establishment, and that if the land is left ungrazed for longer than 1 season a cutting or mowing regime should be in place to bridge the period when grazing can re-commence. Please refer to the response to ExQ2 question LUS 2.2 for more information.

R21 (Community orchard) – the Requirement needs to carry over the 7-year replacement plantings wording, rather than 5 years, consistent with R8.

DCO Schedule 14

NKDC has confirmed to the applicant that they are satisfied with the revised proposals for a 10-week discharge period with deemed discharge for all Requirements needing prior approval. Revision 5 has been updated on this basis. We note that other timings contained in Schedule 14 (3) relating to consultation/notification (10 and 20 working day periods) is consistent with the draft Mallard Pass DCO and on that basis these matters are also resolved.

DCO Schedule 14 (5) - Fees

The Council still does not support the current proposition in Revision 5 that discharge of Requirement fees are capped at the equivalent rate of the discharge of conditions equivalent for TCPA 1990 applications; even with proposed indexation. We set out further detail in our deadline 3 comments, have also raised this concern separately and directly with the applicant and set out further comments in the Council's response to the Examining Authority's written questions and requests for information (ExQ2) (question DCO 2.7).

We note the draft Mallard Pass solar NSIP proposal (Sch. 16, part 5) which proposes a higher figure being the 'Other operations – maximum fee' rate. Whilst we understand that the proposals for subsequent rate reductions with follow-up discharge applications is not supported by the County Council, this rate is more representative reflective of the scale, nature and complexity of matters being discharged and the discharge timescales which the applicant is seeking and that the Council has now accepted. Whilst we note and accept, in principle, the offer of a Planning Performance Agreement running alongside the discharge process ultimately this is a discretionary mechanism.

We have suggested a number of alternative options to the applicant either adopting the 'Other operations – maximum fee' rate referred to in the Mallard Pass project or alternatively a multiplier using the TCPA baseline condition discharge rate and reflecting the cross-boundary location of development. In both cases the fee would need to align with the stepped increases set out in The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2023.

Additional Ecology Information

The Council's response to the additional ecological information presented by the Applicant is contained in our submission relating to ExQ2 questions BIO 2.1, 2.2, 2.5 and 2.8.

Outline Landscape and Ecological Management Plan

The Council's response to the matters relating to sheep grazing is contained in our submission relating to ExQ2 question LUS 2.2. The response highlights that some revisions will be required to the detailed OEMP, and therefore also to the detailed LEMP, notably in relation to grazing densities on grassland post-establishment, and that if the land is left ungrazed for longer than 1 season a cutting or mowing regime should be in place to bridge the period when grazing can re-commence. As a minimum sections 4.6 and 5.4 of the detailed LEMP are likely to require some revisions on that basis.

Outline Supply Chain,
Employment and Skills Plan

We welcome that a fund to facilitate training and apprenticeships to a value of £50,000 per annum (index linked) will be provided for the operational lifetime of the Proposed Development. The applicant has advised that the mechanism to provide this will be agreed between NKDC and BBC following determination of the Development Consent Order.

We will work with the applicant to move this matter forward. Given that the proposal relates to a financial payment/commitment rather than for example submission and approval of a scheme of works, the Council's position is that no payment of money or other consideration can be positively specified (by Requirement) when granting a DCO. However, it may be possible use a negatively worded Requirement to prohibit development authorised by the DCO until, for example, the applicant has entered into a planning obligation requiring either the payment of a financial contribution towards the funding of apprenticeships or an alternative unilateral undertaking mechanism whereby the funds are held and committed by the applicant.

We are aware that the other RPAs agree with this view and that the applicant has now indicated their intention to pursue a S106 and that all three RPAs would be subject of that agreement given that three RPA parties have an interest with regard to how the funding is spent. For the avoidance of doubt we recommend that that section 3 of the oSCES is amended to confirm that a s106 Agreement will be the mechanism by which the fund will be secured.

In terms of other observations we note and support the revisions to the rest of the document however advise that Table 1 could be expanded to reference private sector organisations such as the Federation of Small Businesses, the Chamber of Commerce (both referenced in section 2) and the NFU. Section 3 'Recruitment and Training Opportunities' could further reference early engagement with schools, colleges and universities.