

Heckington Fen Solar Park

EN010123

Applicant Response to Deadline 3 Submissions

Applicant: Ecotricity (Heck Fen Solar) Limited

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APPLICANT RESPONSE TO DEADLINE 3 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 3.
- 1.2 The following documents were submitted at Deadline 3:
 - Black Sluice Internal Drainage Board (BSIDB) - Comments on submissions for Deadline 2 including responses to Written Representations document entitled “Response to the Examining Authority’s written questions and requests for information (ExQ1) issued on 17 October 2023, dated 4 December 2023” (**REP3-050**);
 - Boston Borough Council (BBC) Comments on any further information requested and received by Deadline 2 and Comments on submissions for Deadline 2 including responses to Written Representations (**REP3-043 – REP3-049**) – see Table 1;
 - Environment Agency (EA) Comments on submissions for Deadline 2 including responses to Written Representations (**REP3-051**) – Table 2;
 - Lincolnshire County Council (LCC) Written summaries of oral submissions made at Hearings w/c 20 November 2023 (**REP3-052**) – Table 3;
 - North Kesteven District Council (NKDC) Any further information requested by the ExA (**REP3-040 - REP3-042**) – Table 4; and
 - NKDC Written Summary of Oral Submission made w/c 20th November 2023 (**REP3-053**).
- 1.3 The documents received at Deadline 3 as noted above are summarised in the tables below.

Table 1 – Black Sluice Internal Drainage Board (BSIDB) Response to First Written Questions (REP3-050)

Question	Black Sluice IDB Response at Deadline 3 - summarised	Applicant Response
DCO 1.8 – Can the Black Sluice Internal Drainage Board (IDB) confirm: i) If you have any comments on the legislation to be disapplied ii) Is the list of drainage legislation at Schedule 3(1) a complete list, or do you consider any should be added or removed.	i). Items 1. (d) to (f) can be replaced by (d) Land Drainage Act 1991 (as amended) ii). As above.	The Applicant welcomes the confirmation from BSIDB that items 1(d) to (f) of Schedule 3 to the DCO are replaced by the Land Drainage Act 1991 (as amended). Given that the purpose of Schedule 3 of the DCO is to disapply old or inconsistent legislation, and in the interests of thoroughness, the Applicant considers that there is merit in keeping items 1(d) to (f) within the list at Schedule 3.
WE1.4 – ii) Could the IDB, the EA and Lead Local Flood Authority (LLFA) provide any further comments they wish to raise regarding the proposed methods of watercourse crossings and whether you consider the final details are	i): This would be covered by applications for consent to the Board, as per Schedule 13 Part 7 Item 73 under the definition of “specified work”. ii): The Board is satisfied with the wording of the protective provisions in Schedule 13 Part 7.	The Applicant notes the IDB comments and welcomes confirmation that the protective provisions contained at Part 7 of Schedule 13 of the DCO are agreed, and that these measures are secured under the terms of the Protective Provisions.

Question	Black Sluice IDB Response at Deadline 3 - summarised	Applicant Response
<p>able to be adequately secured by Requirement 6 of the dDCO [PS-024] alongside the protective provisions set out in Schedule 13 Parts 5 and 7. iv) Could the EA, IDB or LLFA comment on the mitigation and monitoring measures.</p>	<p>Mitigation & Monitoring - The Board will expect the Applicant to use silt retention facilities such as lagoons. If any water is to be discharged into any watercourse at any time, then the use of "silt-busters" or similar means of restriction will be expected to ensure that there will be no silt deposited in the receiving watercourses which would cause a blockage, whether within the order limits or without. Any silt discharged, either in an emergency or due to an infrastructure failure, will be the Applicant's responsibility to rectify at their costs. This would include any adverse effects to land or property downstream.</p>	<p>The Applicant is grateful for the information on silt retention facilities, which will help to inform its method of working in proximity to IDB assets and when submitting plans for approval under the protective provisions.</p>

Table 2 – Boston Borough Council (BBC) Submissions (REP3-043 – REP3-049)

Theme	BBC Comment	Applicant Response
REP3-043 BBC Response to Action Points from ISH3		
ISH3 - AP1 Requirement 3	BBC agree with the wording of Requirement 3 as set out in the draft DCO [REP2-009].	The Applicant welcomes the confirmation that Requirement 3 is agreed from BBC's perspective.
ISH3 - AP3 Requirement 8	<p>BBC suggest paragraph 2(a) in the draft DCO [REP2-009] is amended to: ... <i>size on planting</i>...</p> <p>BBC question if ...'proposed planting including details of any' ... is necessary. As a result 2(a) would then read: <i>the location, number, species, size on planting and planting density of any proposed tree and hedgerow planting and the proposed times of such planting</i>;</p>	<p>With regards to the suggestion of referring to "<i>size on planting</i>" at Requirement 8(2)(a), the Applicant notes that the LEMP will specify other sizes – for example, not just the size on planting but expected heights and sizes at different stages over the lifetime of the scheme in accordance with management prescriptions. This is also important for achieving the biodiversity net gain targets. Therefore, the wording in the DCO should remain as "size".</p> <p>The Applicant has discussed this with BBC.</p>
ISH3 - AP3 Requirement 8	BBC are pleased the BNG target has risen to 60% but consider there is flexibility between the calculated results and this figure for it to rise further.	The Applicant has taken on board comments from ISH3 and following a post-hearing meeting with the RPAs, has been able to update the minimum percentage of BNG to 65%. The DCO and oLEMP were updated at Deadline 3 accordingly.
ISH3 - AP3 Requirement 8	BBC does have an issue with paragraph (3). The dead plant maybe in a location where officers cannot go. BBC suggest the responsibility refers back to 2(d) which includes 'monitoring' as well as 'maintained'. It is BBC's view that 'in the opinion of the relevant planning authority (as applicable)' is removed from paragraph 3.	The Applicant considers that the control in the wording of Requirement 8(3) needs to rest with the relevant planning authority (RPA) as an independent body otherwise there could be debate or a difference of opinion about what constitutes a " <i>seriously damaged or diseased</i> " tree/hedgerow. The Applicant considers that the current wording within the DCO is more beneficial for the RPAs and gives the RPAs a mechanism to enforce against. There is precedent for this

Theme	BBC Comment	Applicant Response
		<p>drafting within The Norfolk Boreas Offshore Wind Farm Order 2021, the Norfolk Vanguard Offshore Wind Farm Order 2022, and the final draft of the Mallard Pass Order (dated 10 November 2023).</p> <p>The Applicant does, however, agree that the monitoring and management measures within the final LEMP, which are necessitated by Requirement 8(2)(d), will need to set out the appropriate reporting measures for damaged and diseased trees/hedgerows.</p>
REP3-044 BBC Response to Action Points from ISH3		
Article 32	BBC understanding that either Ecotricity or National Grid Electricity Transmission could undertake work package 6b or 6c. BBC is happy with this approach.	BBC's interpretation of the work packages, Articles, and Requirements is correct. The Applicant welcomes the confirmation and agreement from BBC.
Article 45	BBC understand the first part of article 45 is that it provides NGET the option of either seeking planning permission for the works contained in 6b or 6c or constructing those works using permitted development powers contained in The Town and Country Planning (General Permitted Development) (England) Order 2015. BBC is happy with this. BBC understand the second part of article 45 is that the planning permission for the substation, B/05/0046, would cease to have effect on the two referenced parcels that lie to the south of the substation compound. The planning permission would still be in force on the rest of the site to which it relates. The reason for this is to clarify which consent has precedence where inconsistency between the two permissions arise. BBC is happy with this approach.	
Requirement 16	The developments contained in 6b and 6c are specialist and unlikely to be skills that are locally available and so BBC are content these work packages are not in the supply chain, employment and skills considered under requirement 16.	
Requirement 18	BBC note it is up to NGET to decide if works should be removed or reused. BBC is happy with this approach.	
REP3-045 BBC Response to Action Points from ISH3		
Updated Socio-Economic Chapter 11	Table 11.7 should be for the period 2011-2021 as Table 11.6 above it. BBC welcomes the update with regarding bed spaces in the Borough. BBC note table 11.14 uses 164 when para 11.5.11 suggests it will use 327. Table 11.15 and 11.16 use 327. It	The socio-economic environmental statement chapter has been updated at Deadline 4 to address these comments (document reference 6.1.11, Version 4).

Theme	BBC Comment	Applicant Response
	<p>maybe that table 11.17 has been copied into this place. Paras 11.5.15 and 11.5.36 final bullet should include Boston Borough in the conclusion. These are all prior to para 11.7.2 which advises that the remainder of this document is updated as part of a standalone document (REP2-050)</p>	
REP3-046 BBC Response to Action Points from ISH3		
Triton Knoll access track	BBC have referenced text found in the Examining Authority's report of 3 June 2016 for Triton Knoll Electrical System.	<p>The Applicant notes that the extract from the Triton Knoll Examining Authority's report of 3 June 2016 is in the context of the Triton Knoll construction traffic. BBC, at the time, considered the roads in the Bicker village area were unsuitable and incapable of accommodating the volumes of traffic expected by the Triton Knoll project. The Triton Knoll access track removed these concerns.</p> <p>The Applicant has included the Triton Knoll access track within its compulsory acquisition powers in order to give it the ability to use the track for its construction traffic.</p> <p>National Grid have an established haul road off the A52 (avoiding Bicker village) to access the Bicker Fen Substation. The principal of this access has been accepted and used on a number of other infrastructure projects. National Grid's construction traffic, associated with their works, is expected to use this A52 haul road which avoids Bicker village but does use Cowbridge Road.</p>
REP3-047 BBC Response to Action Points from ISH3		
Draft Development Consent Order	<p>REP2-012 indicates in line 16 that BBC will be added to Req7 as a consultee. However, REP2-013 in line 35 shows the text that is in the draft DCO (REP2-008 & 009) and shows that this has not been done. REP2-010 & 011 also require amendment to include the BBC as a consultee.</p> <p>In relation to Req19: Borough is misspelt as Brough.</p>	The Applicant did not previously add BBC as a consultee given that the Energy Storage is not within their district. However, the Applicant notes this comment and has made both of these amendments to the draft Development Consent Order (document reference 3.1, Version 6).
REP3-048 BBC Response to Action Points from ISH3		
Outline Landscape and Ecological Management Plan	BBC ask what is going to be done with the results of monitoring. BBC suggest it should be submitted to the Lincolnshire Environmental Records Centre held by the Greater Lincolnshire Nature Partnership. They hold bird and bat records and with their involvement with the Local Nature Recovery Strategy habitat condition survey results would be helpful in monitoring	The Applicant has considered this request and confirms species data collected during the periodic monitoring can be submitted to the Lincolnshire Environmental Records Centre. This is confirmed in the Applicant's Response to Second Written Questions (document reference ExA.ResponsesSWQ-D3.V1) and in Section 6.2 of the Outline Landscape and Ecological Management Plan (document reference 7.8, Version 5).

Theme	BBC Comment	Applicant Response
	county wide habitat connectivity and recovery.	
REP3-049 BBC Response to Action Points from ISH3		
Planting at Bicker Fen Substation	The Forestry Commission operate at a national scale and at that strategic level replacing the trees at the solar park site is a reasonable point of view. However, locally it does not address the level of tree cover in Boston Borough. The applicants have continued to work on this issue and have drafted amended wording to be inserted into the Outline Landscape and Environmental Management Plan. BBC are happy with this approach.	The Applicant welcomes this confirmation from BBC that they are happy with the commitment in the oLEMP to offset the tree loss from the Bicker Fen Substation, and the Applicant concurs with the position. This position is further agreed in the Statement of Common Ground (document reference 7.6a, Version 3).

Table 3 – Environment Agency (EA) Comments on submissions for Deadline 2 including responses to Written Representations (REP3-051)

Theme	EA Comment	Applicant Response
Draft Development Consent Order; Control Building; Statement of Common Ground; Outline Construction Environmental Management Plan and Landowner Agreements	The EA confirm that all outstanding matters in respect of their remit have been resolved. The only matter outstanding is in respect of the EA as a landowner to various plots along the South Forty Foot Drain. The EA’s Legal Team is reviewing draft documents provided by the applicant in respect of these plots and will update the Examining Authority on this matter in due course.	The Applicant welcomes this confirmation and concurs with the position regarding land agreements.

Table 4 – Lincolnshire County Council (LCC) Written summaries of oral submissions made at Hearings w/c 20 November (REP3-052)

Theme	LCC Comment	Applicant Response
Part 1 – Draft Development Consent Order		
Item 4 – Schedule 2: Requirements Requirement 8	Currently only provides for a minimum of 60% biodiversity net gain – a significant shortfall from the “over 100% in habitat units” claimed within the Applicant’s response to the LIRs (REP2-078). LCC notes that at the hearing, the Applicant quite rightly acknowledged that if only 60% is secured, it can no longer claim to rely upon the benefits which would be associated with the 100% figure set out within the application documents. Also see response to Action Point ISH3-AP3.	The Applicant has taken on board comments from ISH3 and following a post-hearing meeting with the RPAs, has been able to update the minimum percentage of BNG to 65%. The DCO (document reference REP3-004) and oLEMP (document reference REP3-021) were updated at Deadline 3 accordingly.
Requirement 17 (and ISH3-AP5)	Currently provides no negative element triggering the requirement to implement the permissive path, it merely provides for a plan to be provided prior to any path but does not	The Applicant has reverted back to the term "construction" in Version 5 of the DCO submitted at Deadline 3.

Theme	LCC Comment	Applicant Response
	<p>require the path itself. The Applicant is encouraged to consider re-wording the trigger point for this requirement.</p> <p>ISH3-AP5 R17 (Permissive path) Provide written comment on the wording of R17: Suggested alternative drafting for R17 is as follows: "<i>Prior to the construction implementation laying out and provision of the permissive path, the undertaker must submit details of the permissive path details to.....</i>"</p>	<p>In respect of the 'provision of' the path, the Applicant considers that there is an appropriate trigger already within Requirement 17, most notably at paragraph (2) which states that:</p> <p><i>(2) The permissive path must be provided and open to the public prior to the date of final commissioning in respect of the phase which includes the permissive path.</i></p> <p>Paragraph (3) then provides the commitment that the path must be maintained until decommissioning of the authorised development:</p> <p><i>(3) The permissive path must be provided and maintained in accordance with the permissive path details and retained until the part of the authorised development in which the permissive path is located is decommissioned pursuant to requirement 18 (decommissioning and restoration).</i></p> <p>There is precedent for this trigger within the Longfield Order at Requirement 17(1).</p>
Requirement 18	<p>Does not provide for circumstances in which the project ceases exporting energy to the grid. If failures occur across all or part of the scheme, the Operator should be required to inform the Council of its proposals for replacing, fixing or decommissioning those parts which are no longer operational. Discussions were held with the Applicant post-ISH3 on this and it is hoped that agreement can be reached for a requirement within the DCO which requires the Operator to submit a scheme including its proposals to bring the apparatus back into use or decommission it in the event that it ceases exporting for a period of 12 months. A 12 month period strikes the right balance between not requiring any action in the event of temporary outages but equally not permitting a redundant project to sit within the</p>	<p>The Applicant has put forward a compromise position to help address LCC's concerns. The Applicant proposed additional wording for the OEMP at Deadline 3 (document reference REP3-034) 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 recommence operation. The Applicant agrees to keep the relevant planning authorities updated following the Period of Extended Outage until the commencement of operation.</p>

Theme	LCC Comment	Applicant Response
	<p>landscape without generating any of the benefits which would have justified its presence in circumstances where consent is granted.</p> <p>Equally subparagraphs (1) and (2) do not operate in a way which provides the Council with a set notice period prior to the date the Operator intends to decommission the scheme. This should be re-worded to provide for a set notice period in between receipt of notice by LCC and the proposed decommissioning date.</p>	<p>Whilst 12 months is offered, some parts (such as the Transformers) have an order time of 18-24 months. It is not therefore considered appropriate or necessary for the Order to demand a strict cut-off period (in LCC's view, of 12 months) in which decommissioning would have to take place following non-generation.</p> <p>As the Applicant explains in its Written Summary of ISH 3 (REP3-038), there are also other matters that could be outside of the Applicant's control including outages with the National Grid Bicker Fen substation which may contribute to periods of non-generation.</p> <p>Equally, typical warranties for solar panels can be in the region of 30 years. As such the concerns as to any large-scale replacements, such as those required for the solar panels, are considered unlikely for a 40-year scheme.</p> <p>It will be in the Applicant's interest to get the solar park generating electricity as quickly as possible. For these reasons, coupled with the explanation outlined in REP3-038 and the compromise position put forward (above), the Applicant considers that there should not be a strict and arbitrary timeframe on the need to decommissioning following a period of set period of non-generation.</p>
Requirement 19	LCC remains of the view that it is appropriate for the Council to be informed of planned maintenance including replacement of panels or any activity which could include the need for HGV deliveries for example.	The Applicant updated the outline Operational Environmental Management Plan at Deadline 3 (REP3-034) to address this; paragraph 2.8 provides that the Applicant must (at the minimum of) once a year throughout the operational lifetime of the development, notify the local planning authorities of planned maintenance activities as well as provide a wider project update.
Item 5 – Protective Provisions (and ISH3-AP8)	LCC has begun discussions with the applicant about a potential additional protective provision for the Fire Authority which is based	Following further discussions, the Applicant has included the protections for LFR as a protective provision and removed it out of

Theme	LCC Comment	Applicant Response
	<p>on a similar approach that is being taken forward as part of the Gate Burton DCO. This will essentially say the Fire Authority can come and inspect the battery energy storage system on an annual basis that their fees will be paid for doing so. Also see response to Action Point ISH3-AP8.</p>	<p>the outline Energy Storage Safety Management Plan accordingly for Deadline 4 (document reference 7.11).</p>
<p>Item 6 – Other Articles and Schedules</p>	<p>LCC has ongoing comments in relation to Schedule 14. LCC considers a 10-week period is appropriate and in line with the Longfield Solar DCO.</p> <p>In relation to paragraph (5) the fee proposed by the Applicant is in line with a condition discharge fee for a TCPA scheme. This is wholly insufficient. This project is much larger and of greater complexity and the requirements reflect this. Further, discharge of Requirement 6 is not akin to a simple condition discharge but is instead akin to a complex reserved matters approval under the TCPA regime, for which a full planning application fee is due under the Fee Regulations. At present, the draft DCO undervalues the time and importance of the work undertaken to discharge DCO requirements and is equally not in line with Advice Note 15 which notably does not seek to import the TCPA Fees Regulations into a draft DCO but instead proposes a bespoke fee amount.</p>	<p>As confirmed in the Written Summary of Applicant’s Oral Case for ISH3 (document reference REP3-038) 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). The Applicant understands that this element of Schedule 14 is therefore agreed.</p> <p>In relation to fees to discharge Requirements, the Applicant notes DCO 2.7 in the Examining Authority’s Second Written Questions and has agreed with the RPAs that a fee per Requirement, rather than per phase, should be pursued in the draft DCO wording, and include indexation. Accordingly, amendments have been made to the DCO for Deadline 4.</p>
<p>Part 2 – Environmental Matters</p>		
<p>Item 8 – Land and Soils</p>	<p>The Applicant’s position appears to be that temporary effects on soils are not capable of being significant following the IEMA guidance and are therefore not a harm of any consequence within the planning balance. The Applicant sought to downplay the 2015 WMS and its requirement for compelling evidence.</p> <p>It should be noted that this is emphatically not how the Secretary of State has approached the matter in other solar DCO or TCPA decisions. LCC reference paragraphs 4.54 - 4.59 of the Longfield Solar decision letter.</p>	<p>The Applicant continues to advocate 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 ISH3 (document reference REP3-038).</p> <p>Whilst planning is sought for an operational lifetime of 40 years, this is still “temporary” in planning terms. The use of Best and Most Versatile is considered in the Outline Soil Management Plan (document reference REP3-017) which will see the land returned to the current Agricultural Land Classification grade.</p>

Theme	LCC Comment	Applicant Response
	<p>LCC takes the same approach here – the use of BMV is clearly discouraged in all local and national policy statements on the topic and negative weight attaches to both the temporary and permanent loss, noting that a 40-year time period is a significant portion of our lifetimes so “temporary” needs to be seen in this context. This is carried through to the newly published EN-3.</p>	<p>The use of BMV should not be a predominating factor, nor is the use of grade 1, 2, 3a prohibited as confirmed in the National Policy Statement for Renewable Energy (November 2023). Furthermore, agricultural use can continue, along with co-located functions such as energy storage.</p>
ISH3 Action Points		
<p>ISH3-AP1 Schedule 2 Requirement R3 (Phasing the authorised development and date of final commissioning) With reference to the Applicant’s comments at ISH3 and in REP2-012 (point 14) provide written comments in response to their view that it would be inappropriate for Relevant Planning Authorities (RPAs) to approve a phasing plan.</p>	<p>Given the relatively contained nature of this specific NSIP project, LCC is agreeable to the drafting of R3 as set out in the dDCO submitted at DL2 [REP-009] – namely that the phasing does not require approval by the RPAs but rather the requirement simply places an obligation to submit a scheme setting out a timetable and plan of that phasing.</p>	<p>The Applicant welcomes the confirmation that Requirement 3 (and the notion of a 'notification' of the phasing) is agreed.</p>
<p>ISH3-AP3 R8 (Landscape ecological management plan) Provide written comment on the amendments made to R8.</p>	<p>LCC have no issue with the Requirement fixing the use of Metric 4.0 given that to remove this reference could introduce future uncertainty in relation to complying with a fixed BNG figure.</p> <p>LCC appreciate that the Applicant does not wish to over commit themselves at this stage given the detailed design of the scheme has yet to be confirmed, given the 40% difference between the two figures, LCC believe there is still scope for a higher % to be agreed that would strike a reasonable balance between giving the Applicant the flexibility they require whilst ensuring one of the key benefits of this scheme as promoted by the Applicant is secured/delivered.</p> <p>Finally, whilst the drafting of R8 is acceptable, we do still have some concerns about the robustness of aspects of the oLEMP especially in relation to the maintenance regime and so will continue to liaise direct with the Applicant and suggest changes to the content of this plan.</p>	<p>The Applicant welcomes LCC confirmation that the Requirement can fix the use of Metric 4.0.</p> <p>The Applicant has taken on board comments from ISH3 and following a post-hearing meeting with the RPAs, has been able to update the minimum percentage of BNG to 65%. The DCO and oLEMP were updated at Deadline 3 accordingly.</p> <p>Regarding LCC’s comments about robustness of the oLEMP especially in relation to the maintenance regime, further commentary is awaited but the Applicant notes that the oLEMP is only the framework/outline plan to inform the final plan. Pursuant to Requirement 8(2)(d) the final plan must include details of the</p>

Theme	LCC Comment	Applicant Response
		<p>maintenance regime, and the RPAs will therefore have to be satisfied with these details prior to approving the final plan. The Applicant therefore considers that the Requirement provides sufficient controls.</p>
<p>ISH3 Action Points</p>		
<p>Item 4 – Landscape and Visual Amenity and Residential Visual Amenity</p>	<p>The Applicant has failed to give any consideration to whether effects assessed as ‘moderate’ should be considered significant or not. Whilst the Applicant points to paragraphs within GLVIA 3 which refer to this being a matter of judgement for the assessor, that is correct but it still requires a judgement to actually be made on a case-by-case basis rather than the approach taken by the Applicant which is, instead of making an informed judgement, making an assumption that moderate effects are not significant. This has a notable potential to “miss” significant effects and thereby underassess the scale of significant effects across the project.</p>	<p>As confirmed in the Written Summary of Applicant’s Oral Case for ISH4 (document reference REP3-039), the Guidelines for Landscape and Visual Impact Assessment Edition 3 (GLVIA3) confirm that it is for the assessor to determine the level of significance, determine their own approach in a simple and transparent manner. The LVIA methodology (document reference APP-177) with its three-tier scale is very simple and avoids ambiguity. The Applicant’s position is that significant effects would only occur where the key characteristics of the landscape or a view would be completely changed and redefined or removed. The Applicant stated that should the ExA accept the LCC level of significance, and assuming moderate effects are significant, based on the Applicant’s assessment such significant visual effects would still be highly localised and within the same geographical extent as major adverse effects.</p>
<p>Item 4 – Landscape and Visual Amenity and Residential Visual Amenity</p>	<p>The Applicant overly relies upon hedgerow planting for mitigation. Hedgerows are not a common characteristic of the site and the immediate locality. The hedgerow mitigation proposed would adversely affect “<i>the open panoramas and enormous skies</i>” and would introduce a significant vertical element into views which are currently long and open and characteristic of the area. The effect would be most notably experienced by users of country lanes to the north; travellers to South Kyme and isolated dwellings along the A17. Some change would be noticeable because of the proposed mitigation which would reduce the wide views to the north from the A17.</p>	<p>As confirmed in the Written Summary of Applicant’s Oral Case for ISH4 (document reference REP3-039) the Applicant’s position is that the proposed mitigation planting is in keeping with the local landscape and that the Proposed Development would respond to the final draft of EN-3, paragraphs 2.10.95 (on effective screening to minimise the zone of visual influence), and 2.10.100 (promoting the growth of vegetation on site boundaries), and by extension to Section 4.7 of the final draft EN-1, paragraph 4.7.6 specifically (encouraging nature inclusive design within the design process).</p> <p>In respect of the notion of introducing a “<i>vertical element</i>”</p>

Theme	LCC Comment	Applicant Response
		<p><i>into views"</i>, in REP3-039 the Applicant stresses that the site should be viewed in the context of the local landscape, which contains a number of large scale energy related infrastructure projects including the Bicker Fen Wind Farm, which is highly visible and prominent from close to medium range views, and from Sidebar Lane and the A17. These elements contribute to the character and baseline of the landscape.</p>
<p>Item 4 – Landscape and Visual Amenity and Residential Visual Amenity</p>	<p>LCC have some concerns about the robustness of the maintenance regime as set out in the oLEMP (REP2-074). These concerns are principally that the information contained therein is light and should be sufficient to ensure the effective establishment and management of the soft landscape works for the duration of the development. The initial period should include detailed methodology for ensuring the saplings establish effectively, especially given the climatic extremes that are being faced. This would include details of weed suppression, watering and replacement protocols. The number of visits during the establishment period should be detailed alongside a methodology for reporting the findings and actions undertaken. The management plan should also detail the effective management of the juvenile plants to ensure effective growth of all species. This would need to detail the number of visits per year and the actions of each visit alongside reporting mechanisms.</p>	<p>The Applicant has added some additional text to the OLEMP (document reference 7.8, Version 5) at Deadline 4. This is broadly summarised that management and monitoring of the site will be undertaken within an 'adaptive management framework' with management prescriptions reviewed in years 1,2,5,10 and then every 5 years. Using an adaptive management approach will identify any unexpected external influences which may impact planting such as new plant diseases, invasive species or increased flood risk that become relevant to site management because of broader climatic changes over time.</p> <p>The Applicant also reiterates that the oLEMP is the framework / outline plan to inform the final plan. Pursuant to Requirement 8(2)(d) the final plan must include details of the maintenance regime, and the RPAs will therefore have to be satisfied with these details prior to approving the final plan.</p> <p>The Applicant therefore considers that the Requirement, coupled with the additional measures referred to above, provides sufficient controls.</p>
<p>Item 8 – Transport</p>	<p>LCC considers that Cowbridge Road, Vicarage Drove and Bicker Drove are not accurately described as of negligible sensitivity. They are country lanes would could [sic] be used by walkers and do not have a segregated footway. They are therefore rightly described as</p>	<p>The Applicant prepared ES Transport and Access Technical Note- Sensitivity of Cowbridge Road, Bicker Drove and Vicarage Drove to assess a worst-case scenario of 'high' sensitivity. This was submitted at Deadline 3 (document reference REP3-030). This document concluded that the</p>

Theme	LCC Comment	Applicant Response
	being of medium or high sensitivity. It is noted that, at the hearing, the Applicant agreed with this assessment and proposes to present an updated assessment which may be agreed through the SOCG. This is welcomed.	proposed package of mitigation will ensure that the Proposed Development is acceptable and that there will be no adverse Significant effects at Cowbridge Road, Bicker Drove and Vicarage Drove, even when classifying the sensitivity as 'high'.

Table 5 – North Kesteven District Council (NKDC) Any further information requested by the ExA (REP3-040 - REP3-042)

Theme	NKDC Comment	Applicant Response
REP3-040	<p>ISH3 – AP1 - The revised wording as proposed is still deficient in that it is essentially just a notification of phasing and the timetabling of construction within that phase/phases of the authorised development, and does not give the authorities the right of approval. Whilst the revised wording still requires the applicant to confirm 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, this would be generally restricted to comparison of environmental effects and would not necessarily capture details of triggers for the implementation of specific works necessary in a given phase if those triggers are not already set out in the ES control document/s. As set out below it is also not yet clear if the phasing of the development is a relevant consideration to delivery of the BNG strategy.</p> <p>It should be relatively straightforward to distil these from other Requirements (for example construction and operational noise mitigation measures) and align those measures to a specific phase/s such that if there is a departure from the overall plan on the basis of unforeseen circumstances then the applicant is at least bound by those principles, or an alternative/temporary strategy, pending the phasing reverting to the initial plan.</p>	<p>The Applicant notes LCC's and BBC's confirmation that Requirement 3 regarding phasing is acceptable. Whilst NKDC are not of the same opinion, the Applicant is not proposing further amendments to this requirement, and strongly advocates that a 'notification' mechanism is sufficient and proportionate for the reasons outlined previously at ISH1, ISH 3, and in REP2-012 and REP3-038.</p> <p>In relation to triggers for specific works, the phasing plan is to set out the geographical extent of the works and how these are split or 'phased' across the authorised development. The mitigation measures and relevant triggers, such as delivery of BNG, are dealt with by the respective plans secured under the remainder of the Requirements. For example, Requirement 8 provides (amongst other things) that details of:</p> <ul style="list-style-type: none"> the <u>location</u>, number, species, size and density of the planting; the <u>implementation timetable</u>; and how the minimum of 65% biodiversity net gain in habitat units will be <u>delivered across the authorised development</u>. <p>The RPAs have approval powers under the Requirements and must be happy with these details in order to sign-off the measures. To the extent that there was an issue with the geographical spread of the mitigation not being substantially in accordance with the outline plans, the RPAs have a right of refusal.</p> <p>The detail of the geographical spread of the mitigation will therefore flow</p>

Theme	NKDC Comment	Applicant Response
		through each of the respective control plans to be submitted prior to commencement of the phase (or relevant trigger) under the Requirements. Requirement 3 is not, therefore, the place for detail on these mitigation measures.
REP3-040	<p>ISH3 – AP8 - 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 include within the calculations) nor the relevant underpinning evidence. Additional information is required in relation to the condition rating/scoring, weighting and mapping of arable field margins, hedgerow, woodland and ditches (baseline) and post-development grassland types.</p> <p>It is the applicant’s discretion whether they seek to increase the committed BNG percentage 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.</p> <p>NKDC have no objection to the Requirement fixing the use of Metric 4.0 given that to remove this reference could introduce future uncertainty in relation to complying with a fixed BNG figure.</p>	<p>The new metric for BNG, released on Wednesday 29 November 2023, is considered in Appendix 8.12 and Appendix 8.13, alongside NKDC’s comments (document reference 6.3.8.12, Version 4 and ExA.6.3.8.13-D3.V2).</p> <p>The Applicant has taken on board comments from ISH3 and following a post-hearing meeting with the RPAs, has been able to update the minimum percentage of BNG to 65%. The DCO and oLEMP were updated at Deadline 3 accordingly.</p> <p>The Applicant welcomes NKDC’s confirmation that the Requirement can fix a specific Metric.</p>
REP3-040 REP3-042	<p>ISH4 – AP6 - Further to the ISH and specifically LEMP (R8) para (3) NKDC notes that the replacement period should be 7 years not 5. This can be justified by reference to the extract of the 2020 NKDC Tree Strategy - paragraph 2.2 – which specifies the 7-year replacement period. The strategy was subject to consultation and has been adopted by Full Council and therefore carries full weight as an adopted policy document. Given that draft R21 (Community Orchard) ties back into the LEMP it will also need to be bound by the same replacement plantings period.</p>	<p>The Applicant has updated replacement plantings from 5 years to 7 years in the draft Development Consent Order submitted at Deadline 4 (document reference 3.1, version 6).</p>

Table 6 – North Kesteven District Council (NKDC) Written summaries of oral submissions made at Hearings w/c 20th November (REP3-053)

Theme	NKDC Comment	Applicant Response
ISH3		
Part 2 Principal Powers - Defence to proceedings in respect of statutory nuisance	<p>The Council maintains its previous position that this inclusion is not justified. The proposals are not of a type where such disapplication would be warranted; for example in relation to nuisance stemming from MOD operations.</p>	<p>The Applicant maintains its position as set out in REP2-012 that this Article is a model provision and has precedent in a number of DCOs including the recently made Longfield Solar Farm Order 2023 and the Norfolk Boreas Offshore Wind Farm Order 2021, as well as the draft Mallard Pass and Gate Burton DCOs.</p>

Theme	NKDC Comment	Applicant Response
		<p>The purpose of this article is to provide preciseness as to the available statutory defence and to ensure that the undertaker can defend any statutory nuisance relating to noise, if it is as a consequence of the construction, maintenance, or use of the authorised development. The rationale being that the development has been subject to an Environmental Impact Assessment (EIA) and the works are subject to appropriate controls and measures (for example, in the Construction Environmental Management Plan).</p> <p>In view of this and the reasons outlined previously, the Applicant does not propose to amend Article 7.</p>
Requirement 6 (detailed design approval)	The draft could be expanded to reference that detailed design should be substantially in accordance with the details set out in the outline design document/DAS.	The Applicant considers this is sufficiently covered by paragraph (2) of Requirement 6 which states that the details submitted must accord with the outline design principles and paragraph (3) which provides that <i>"The authorised development must be carried out in accordance with the approved details."</i>
Requirement 10 (Fencing)	Any details must align with recommendations contained in the LEMP regarding deer fencing/exclusion.	The Applicant updated Requirement 10(2) of the DCO at Deadline 2 (version 4) to provide that the final details of the fencing must accord with the outline design principles, which refers to measures on deer fencing/mammal gates.
Requirement 12 (Archaeology)	Heritage Trust of Lincolnshire are satisfied with the revised wording however the applicant is requested to consider flexibility proposed by the Rochdale envelope in terms of the potential to develop in areas not previously trial trenched. This is more of an operational issue to ensure that the timings of submissions in relation to Requirement 6 (detailed design submission) are aligned with archaeological matters.	<p>The Applicant has considered where this might be applicable, and notes only the area in the north west of the Energy Park where woodland and hedgerow have been proposed following the Change Application. Accordingly, a further two trenches could be placed in this area.</p> <p>In addition, the Applicant updated Requirement 6(2) of the DCO at Deadline 3 (version 5) to provide that the final details submitted must, where relevant, demonstrate how they have taken account of the relevant results of any archaeological investigations or evaluations carried out under Requirement 12. Accordingly,</p>

Theme	NKDC Comment	Applicant Response
		Requirement 6 and Requirement 12 will have to work together and 'talk to each other'.
Requirement 15 (Operational noise)	NKDC note and support inclusion of the 'maintenance' reference.	The Applicant welcomes this confirmation.
Requirement 16 (Supply chain, employment and skills)	NKDC provided feedback on the applicant's supply chain, employment and skills plan through its First Questions response. As currently worded the Requirement only addresses opportunity for individuals and businesses to access employment and supply chain opportunities associated with the construction, operation and maintenance of the authorised development; i.e. there is no educational or training commitment. Section 3 of the supply chain, employment and skills plan refers to potential traineeships/apprenticeships. The Council requires further information as to how this will be delivered noting that this would likely require a financial commitment and that there is no draft s106 submitted. The Council has however had recent follow up dialogue on this matter with the applicant.	The Applicant considered the comments from the RPAs at Deadline 2 and provided an update to the Outline Supply Chain, Employment and Skills Plan (document reference 7.12, Revision 2) at Deadline 3. The Applicant has confirmed the mechanism to fund apprenticeship and training opportunities will be via a Section 106, the principles of which the Applicant will agree with the RPAs before the close of the Examination.
Requirement 18 (Decommissioning and restoration)	NKDC supports the inclusion of the additional triggers working back from the 40-year deadline for the submission and approval of decommissioning and restoration details. NKDC maintain previous concerns that the drafting is still deficient insofar as it does not contain a clause relating to and requiring decommissioning and restoration if there is early cessation of energy generation. NKDC are aware of, and briefly discussed, the Mallard Pass Solar NSIP example which contains such triggers and requirements. NKDC maintain that this is necessary to mitigate harm arising not least in relation to BMV land impacts and we have had recent follow up dialogue on this matter with the applicant.	As outlined in the Written Summary of Applicant's Oral Case for ISH3 (document reference REP3-038) the Applicant notes that 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. Further explanation is provided in ISH3 (REP3-038) and in response to LCC above but, in summary, a compromise position is offered to help address the concerns. The Applicant proposed additional wording for the oOEMP at Deadline 3 (document reference REP3-034) 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

Theme	NKDC Comment	Applicant Response
Requirement 19 (OEMP)	<p>NKDC welcome the inclusion of this additional Requirement but raise drafting concerns in relation to part (2), namely details of how sheep grazing will be managed and maintained at the Solar Park site. As drafted the wording, and the underlying detail contained with the November 2023 outline OEMP, is not sufficiently detailed as to the nature of contracts in place, matters such as expected grazing/stocking densities and likely periods when the site will be grazed. These details must be able to be secured over the lifetime of the development with opportunities to agree alternative agricultural 'mitigation' in the event of gaps in grazing contracts throughout that 40-year period. NKDC have had recent follow up dialogue on this matter with the applicant.</p>	<p>authorities updated following the Period of Extended Outage until the re-commence of operation.</p> <p>The Applicant proposed measures within the oOEMP (REP3-034) at Deadline 3 demonstrating that agricultural practices are continuing and sheep grazing (in line with NFU stocking densities) is secured.</p> <p>In view of this, the Applicant considers that there should be an acknowledgement from the councils that this mitigation is now secured in a certified management plan.</p>
Schedule 14 – Timescale for Discharge	<p>NKDC notes the amendment increasing the proposed discharge period to 8 weeks and with a deemed discharge clause throughout. As set out, the Council does not support this period and these arrangements however we have had recent follow up dialogue on this matter with the applicant.</p>	<p>As confirmed in the Written Summary of Applicant's Oral Case for ISH3 (document reference REP3-038) 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). The Applicant understands, following discussions with NKDC, that this element (of a 10-week timeframe for discharge) is agreed.</p>
Schedule 14 – Discharge Fees	<p>NKDC notes the proposal at (5) which suggests payment of a Requirement discharge fee equivalent to the discharge of planning conditions under the TCPA mechanism. NKDC do not support the rate proposed and have previously set out to the applicant that this undervalues the actual time and cost that will need to be expended by the Council.</p> <p>NKDC note the draft Mallard Pass solar NSIP proposal (Sch. 16, part 5) which proposes a higher figure being the 'Other operations – maximum fee' rate. NKDC understand that the proposals for subsequent rate reductions with follow-up discharge applications is not supported by LCC, 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.</p> <p>NKDC note and accept, in principle, the offer of a Planning Performance Agreement running alongside the discharge process</p>	<p>In relation to fees to discharge Requirements, the Applicant has updated Schedule 14 of the DCO at Deadline 4 (document reference 3.1) to cite The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2023 as a footnote. Further details are provided in answer to DCO 2.7 in the Applicant's Response to Second Written Questions (document reference ExA.ResponseSWQ-D4.V1).</p>

Theme	NKDC Comment	Applicant Response
	<p>ultimately this is a discretionary mechanism. NKDC will continue to discuss amendments on a 'without prejudice' basis with the applicant.</p>	
	<p>Consistent with the published set of actions, NKDC will provide a response to the applicant's submitted written scripts in relation to agricultural land and soils by Deadline 4. In summary at this stage and consistent with the LIR and Written Representation:</p> <ul style="list-style-type: none"> disagree with the applicant's continued primary focus on permanent loss/sealing over of BMV land as opposed to the loss of agricultural opportunity over the lifetime of development accept that the applicant modified the DCO boundary at pre-application stage and removed some areas of Grade 1 and 2 BMV land, but disagree that this amounted to 'prioritising the use of poorer quality land' disagree that varying (reduced) weight can be applied to Central Lincolnshire Local Plan policies S14 and S67 on the basis of the 'scale' of PA2008 NSIP solar proposals versus TCPA 1990 applications and that it is 'easier' to comply with BMV policy at local level. CLLP policy on BMV land is consistent with the national approach in the EN-1 and 3 policy statements and the NPPF. The applicant has referred to the January 2022 IEMA guidance 'A New Perspective on Land and Soil in Environmental Impact Assessment' in the context of discussing significance of impact, however CLLP paragraph 11.8.3 (allied to policy S67) defines a 'significant' loss of BMV either individually or cumulatively as being 1ha or more. The applicant suggests that there is no 'food production' planning policy, national food security crisis nor any requirement to actively use agricultural land for the growing of food. Nevertheless, NPPF paragraph 174 identifies the broader economic and other benefits of the best and most versatile agricultural land. The applicant has not yet developed and presented a detailed mitigation strategy stemming from proposed sheep grazing during the operational phase. 	<p>The agricultural opportunities whilst perhaps more narrow in their scope, are not entirely removed, with a commercial sheep grazing enterprise (in line with NFU stocking densities) to remain on site. This coupled with energy production and biodiversity net gain will allow a three-pronged approach to land management which the Applicant advocates outweigh the wheat production currently taking place, and the "loss of agricultural opportunity" NKDC note. The opportunities for this site are well detailed in the Savills Report (APP-220) and the Applicant advocates the opportunities are already limited by other factors (blackgrass; irrigation; drainage for example).</p> <p>The Applicant has prioritised the use of poorer quality land, by reducing the order limits; but also locating the energy storage and onsite substation in an area of lower quality Grade 3b.</p> <p>The weight applied to national policies; over local policies is imperative for a project of national significance.</p> <p>The Applicant notes that policy should be based on guidance. As such 1ha or more is a more akin to permanent developments, not temporary ones of this nature.</p> <p>The broader economic and other benefits of the wider scheme should be considered in this context. The landowner is looking to diversify, and energy production with commercial sheep grazing is considered more economic than the current regime.</p> <p>The land is currently unplanted due to the wetness of the site over autumn and winter.</p>

Theme	NKDC Comment	Applicant Response
ISH4		
<p>Item 4 – Historic Environment</p> <p>Grade I listed Kyme Tower</p>	<p>Due to the historic function of the tower and the extant landscape setting, no views of the tower, or away from the tower, should be classed as “incidental” and therefore NKDC disagrees with the applicant’s overall assessment on that point. NKDC believe that the impact has yet to be fully assessed, however 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.</p>	<p>The Applicant maintains its position in relation to South Kyme Tower but agrees that if paragraph 202 of the NPPF is engaged, then the public benefit test has been satisfied. Further information is contained the Applicant’s Response to Second Written Questions, as is supplemented with photomontages and a screened zone of theoretical visibility (document reference ExA.ResponsesSWQ-D4.V1).</p>
<p>Item 4 – Historic Environment</p>	<p>The revised (Deadline 2) OWSI has set out the outline aims of the potential excavation options for mitigation, and the methods and standards that will be employed for any strip, map and record excavations and watching briefs across the energy park site and the cable route corridor.</p>	<p>The Applicant thanks NKDC and their advisors for this confirmation.</p>
<p>Item 5 - Ecology, Biodiversity and Ornithology and the Natural Environment</p>	<p>AECOM confirmed that there are still unresolved matters in relation to Biodiversity Net Gain.</p> <p>The baseline reports (e.g. the phase 1 habitat survey reports) do not provide detailed accounts of the baseline condition of each relevant habitat (for example information on the composition of each of the woodlands and hedgerows included within the calculations) and the BNG assessment report also does not provide the relevant underpinning evidence; instead it primarily explains how the baseline condition score has been derived which is not the same. Further information is required in relation to woodlands, hedgerows, ditches and arable field margins (combination of baseline and enhancement details) and in relation to the proposed post-development grassland types.</p> <p>Ground nesting birds (skylark, yellow wagtail, quail) and cumulative habitat loss. It is agreed that the mitigation solution for skylark (and therefore yellow wagtail) set in the oLEMP is reasonable, however it is incomplete. Matters still to be resolved are:</p> <p>(a) the mechanism to secure the skylark mitigation - there is no firm proposal in the oLEMP suitable to be agreed or to inform a Requirement;</p> <p>(b) the level of provision to mitigate the impact – namely how many skylark plots are needed to effectively mitigate; and</p> <p>(c) that this mitigation actually provides additional opportunities over and above what the existing landscape provides at the proposed locations for skylark plots. The</p>	<p>The Applicant has considered NKDC’s comments and has provided further submissions 6.3.8.12 version 4, and ExA.6.3.8.13-D4.V2 in relation to BNG.</p> <p>In relation to quail the Applicant provided further detail at Deadline 3 in the REP3-027 and has secured through the DCO process further pre-commencement surveys for this species, via the Outline Construction Environment Management Plan (oCEMP) (updated at Deadline 3 – document reference 7.7, version 4). It is considered that mitigation proposals for skylark and yellow wagtail will also address any need to mitigate for the potential loss of quail breeding habitat, should 2024 surveys highlight the presence of breeding quail onsite an assessment and proposals for mitigation will be submitted to the relevant decision makers prior to commencement.</p>

Theme	NKDC Comment	Applicant Response
	<p>mitigation needs to deliver extra capacity/boost skylark nesting success to offset the reduction in nesting opportunities in the site.</p> <p>In relation to quail NKDC maintain that survey effort did not match good practice and would welcome further comment from the applicant.</p>	
<p>Item 8 - Other Environmental Matters</p>	<p>On socio-economic matters NKDC referred to the Council’s response to First Questions, the supply chain, employment and skills plan, and Requirement drafting in respect of education, training and apprenticeships.</p>	<p>The Applicant updated the Outline Supply Chain, Employment and Skills Plan at Deadline 3 following consideration of these comments. It is hoped the Revision 2 of the Outline Plan (REP3-015) addresses these satisfactorily.</p>
<p>Item 9 - Cumulative Assessment</p>	<p>NKDC provided comments in relation to cumulative assessment and interrelationships with other projects in its response to First Questions. NKDC will continue to identify projects to the applicant.</p>	<p>The Applicant thanks NKDC for bringing projects to their attention. As discussed, following ISH 3 and 4, Deadline 4 is agreed between the RPAs as the final deadline for projects to be sufficiently considered during the examination timetable.</p>
<p>Item 10 - Statements of Common Ground</p>	<p>NKDC has been working with the applicant to update the SOCG. This will continue to progress through the examination period.</p>	<p>The Applicant welcomes this confirmation and concurs with the position.</p>