

Heckington Fen Solar Park

EN010123

Consents and Licences Required Under Other Legislation

Applicant: Ecotricity (Heck Fen Solar) Limited

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CONSENTS AND LICENCES REQUIRED UNDER OTHER LEGISLATION

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Table of Contents:

CONSENTS AND LICENCES REQUIRED UNDER OTHER LEGISLATION 1

Table of Contents: 2

1 INTRODUCTION 3

2 PURPOSE OF THIS DOCUMENT 3

3 APPROACH TO CONSENTING REQUIREMENTS BEING INCORPORATED WITHIN THE DRAFT DCO 3

4 CONSENTS INCORPORATED WITHIN THE DRAFT DCO 5

5 OTHER CONSENTS AND LICENCES 6

6 AGREEMENTS 6

Appendix..... 7

 Summary of additional Consents likely to be required 7

1 INTRODUCTION

1.1.1 This document has been prepared by Ecotricity (Heck Fen Solar) Limited (the "**Applicant**"). It forms part of the application ("**the Application**") for a development consent order ("**DCO**") that has been submitted to the Secretary of State for Energy Security and Net Zero ("**the Secretary of State**") under section 37 of the Planning Act 2008.

1.1.2 The DCO relates to a solar generating station project and associated development at Heckington Fen, connecting to the Bicker Fen Substation, Bicker, Lincolnshire, PE20 3BQ (owned and operated by National Grid Electricity Transmission Plc ("**NGET**")), which is referred to as the Heckington Fen Solar Park project (the "**Project**").

1.1.3 The Project will deliver a large-scale solar generation and energy storage asset, with the solar array having a generating capacity of over 50MW. These assets will help the UK meet its legally binding carbon emissions targets, ensure the energy security of the UK, and it has the potential to support the operation and balance of the national grid (the "**National Grid**") through the delivery of an integrated electricity storage capability.

2 PURPOSE OF THIS DOCUMENT

2.1.1 The purpose of this document is to provide information on the additional consents and licences that are, or may be, required to construct and operate the Project.

2.1.2 Section 37 of the Planning Act 2008 (the "**PA 2008**") governs the content of an application for a DCO, including the requirements for the necessary accompanying documents specified in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 ("**APFP Regulations**").

2.1.3 Regulations 5 and 6 of the APFP Regulations provide the statutory requirements for what must accompany a development consent application. The "Planning Act 2008: Application Form Guidance (June 2013)" issued by the Department for Communities and Local Government, requires that:

'Where the proposed development will also require other consents, licences, permits, etc, to enable it to be constructed and / or operational, and for which the Secretary of State is not the authorising body, then the applicant must list and briefly describe these in [...] the application. Reference should be made to any that have already been applied for, and a copy enclosed of any that the applicant may already be in the possession of.'

2.1.4 This document lists those consents which the Applicant currently anticipates could be required. Further consents may be required as the Project develops due to unforeseen circumstances and the Applicant will keep the Examining Authority up to date with any such developments.

3 APPROACH TO CONSENTING REQUIREMENTS BEING INCORPORATED WITHIN THE DRAFT DCO

3.1.1 Section 33 of the PA 2008 makes it clear that there is no requirement for certain principal conventional consents to be obtained where a DCO is required to authorise a project (as is the case for the Project).

3.1.2 Part 7 of the PA 2008, in particular section 120, makes it clear that the following can be included within a DCO:

Consents and Licences Required Under Other Legislation

- 3.1.2.1 Ancillary matters (including those listed in Part 1 of Schedule 5 to the PA 2008);
 - 3.1.2.2 The application, modification or exclusion of statutory provisions for which the provision may be made in the DCO;
 - 3.1.2.3 Amendment, repeal or revocation of any local legislation, where thought necessary or expedient by the Secretary of State in consequence of or in connection with the DCO; and
 - 3.1.2.4 Incidental, consequential, supplementary, transitional or transitory provisions and savings.
- 3.1.3 Section 150 of the PA 2008 states that a requirement to obtain certain prescribed consents, or authorisations, under the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 can be removed by the DCO with the consenting body's agreement.
- 3.1.4 From the above, it is clear that the intention of the PA 2008 is to encourage as many consents to be 'wrapped up' in a DCO as possible creating a 'one-stop shop' approach for construction and operation-related consents.
- 3.1.5 The Applicant considers that the approach to including consents with a DCO should apply to both those consents that do, and those that do not, require the agreement of the relevant body under section 150 in order for them to be included in the DCO. The Applicant therefore envisages the general approach being as follows:
- 3.1.5.1 The DCO contains an express provision disappling the requirement for the consent in question;
 - 3.1.5.2 In exchange, the DCO includes 'protective provisions' for the benefit of the body concerned;
 - 3.1.5.3 These protective provisions are specifically stated to have effect unless otherwise agreed between the Applicant and the body concerned;
 - 3.1.5.4 Compliance with the provisions is a matter as between the parties and can be enforced accordingly;
 - 3.1.5.5 Either way, the protective provisions provide a means for the body concerned to monitor, enforce compliance and to review the effectiveness of the approval regime enshrined in the protective provisions; and
 - 3.1.5.6 The mechanism of approval being given under the protective provisions allows the body concerned to approach a project in two stages, as follows:
 - 3.1.5.6.1 the DCO application stage, where the principle of the project is accepted by the body concerned and the detail of the protective provision is negotiated; and
 - 3.1.5.6.2 the subsequent approval stages, where the protective provisions which cannot be unreasonably refused but when detailed matters going to construction can be properly considered.
- 3.1.6 This is a tried and tested approach adopted in numerous local and public (hybrid) Acts, Harbour Act Orders, Transport and Works Act Orders for many decades and which is now firmly established in the case of DCOs.

4 CONSENTS INCORPORATED WITHIN THE DRAFT DCO

4.1.1 The principal consent for the Project will be a DCO. The DCO process enables land acquisition and/or compulsory land rights to secure the Project, along with many consents and powers, to be dealt with at the same time. The DCO application may, however, need to be supplemented by other applications because:

4.1.1.1 A particular consent cannot be contained in the DCO;

4.1.1.2 A consenting authority declines to allow a consent to be contained in the DCO; or

4.1.1.3 It is not desirable or it is inappropriate to include a consent within the DCO due to the stage of design development and the level of detail available at the time the DCO is made.

4.1.2 The majority of consents required are included, or addressed, within the draft DCO, as permitted by various provisions of the PA 2008, although discussions in some of these respects are continuing with the principal stakeholders. These fall within the following categories:

4.1.2.1 Authorisation of all permanent and temporary works for the Scheme which are described as the "Authorised Development" in Schedule 1 to the draft DCO (equivalent to planning permission). Article 3 is the principal power in this respect;

4.1.2.2 Compulsory acquisition of land and of rights over land, and the temporary possession of land. Articles 18 to 31 of the draft DCO provide these powers;

4.1.2.3 Consent to carry out street works. Article 8 of the draft DCO provides this power;

4.1.2.4 Consent to alter the layout of streets and to form new, or alter or improve existing, accesses to the highway. Articles 9 and 12 provide this power;

4.1.2.5 Land drainage consent(s) under section 23 of the Land Drainage Act 1991 for works affecting the flow in ordinary watercourses (disapplication of that requirement requires the consent of the relevant body). Article 6 provides this power, which is linked to the protective provisions in Schedule 13 of the draft DCO;

4.1.2.6 Flood risk activity permit(s) from the Environment Agency under the Environmental Permitting Regulations (England and Wales) 2016 in connection with drainage outfall installation (disapplication of that requirement requires the consent of the relevant body). Article 6 provides this power, which is linked to the protective provisions in Schedule 13 of the draft DCO;

4.1.2.7 Consent or approval for the carrying out of the works required under any relevant byelaws made under the Water Resources Act 1991. Article 6 provides this power, which is linked to the protective provisions in Schedule 13 of the draft DCO;

4.1.2.8 Consent or approval for the carrying out of the works required under any relevant byelaws made under the Land Drainage Act 1991. Article 6 provides this power, which is linked to the protective provisions in Schedule 13 of the draft DCO;

4.1.2.9 Requirement of licence for felling under section 9 of the Forestry Act 1967. Article 6 provides this power.

4.1.3 Some of these consents are prescribed in the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015. As a result, under section 150 of the PA 2008, the relevant consenting body must agree to the inclusion of these consents within (i.e. disapplied by) the DCO.

4.1.4 Discussions between the Applicant and these consenting bodies are ongoing, and the Applicant is confident that the necessary agreements will be obtained before or during the examination of its application, in exchange for the Applicant including in the DCO appropriate protective provisions (at Schedule 14 to the draft DCO).

5 OTHER CONSENTS AND LICENCES

5.1.1 A summary of the additional consents likely to be required is set out in Appendix below.

5.1.2 The table outlined in the Appendix lists the type of consent or licence required, the relevant consenting body, any agreement that has been reached with that body, actions to be undertaken and the status of the relevant application (e.g. whether the consent or licence has been granted or the anticipated application submission date).

5.1.3 This document will be updated by the Applicant during the examination of the Application and documents that have been superseded will be clearly identified as such.

6 AGREEMENTS

6.1.1 Agreements with third parties may be required in parallel to the DCO process and may take a variety of forms.

6.1.2 A fundamental part of the DCO process is the preparation and agreement of Statements of Common Ground ("**SoCG**") with third parties to identify the matters on which we are in agreement, in order to narrow the focus for examining the Application concerned and to make the examination process more efficient. These will be progressed by the Applicant where appropriate.

APPENDIX

SUMMARY OF ADDITIONAL CONSENTS LIKELY TO BE REQUIRED

Consents and Licences Required Under Other Legislation

Nature of Consent	Key Legislation	Consenting Authority	Requirement for consent	Current status	Expected timescale for being obtained
1. Electricity generation licence	Electricity Act 1989	OFGEM (Office of Gas and Electricity Markets)	Licence required for the operational phase of the Project in connection with the electricity generation activities	Ongoing	An application for a generation licence will be applied for post-consent when the project's construction phase is completed/near completion and the project is in a position where it is ready to carry out licensable activities.
2. Connection Agreement	None applicable	NGET / NGESO	Bilateral agreement required for purpose of connecting the Project to the National Grid	Obtained	<p>A sibling group company of the Applicant (Ecotricity Generation Limited) accepted a grid connection offer from National Grid Electricity System Operator Limited ("NGESO") on 19 July 2022, further details of which are given in the Grid Connection Statement (Document Ref: 5.4).</p> <p>Discussions remain ongoing between the Applicant and NGESO regarding novation of <u>intends to novate</u> the grid connection offer to the Applicant <u>agreement post-consent.</u></p>
3. European Protected Species Mitigation Licence	Conservation of Habitats and Species Regulations 2017	Natural England	Licence required where works forming part of the Project impact on European protected species	Ongoing	The Applicant previously submitted a pre-screening form to Natural England (" NE ") in respect of protected species and wildlife licences.

Consents and Licences Required Under Other Legislation

4.	Specific Protected Species Licence	Protection of Badgers Act 1992	Natural England	Licence required where works forming part of the Project impact on badgers (as a specific protected species)		The position remains that at this stage and based on the current assessment undertaken the only protected species licence which may be required is a licence pursuant to the
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Consents and Licences Required Under Other Legislation

5.	Wildlife Licences - Science, Education & Conservation or Class licence	Conservation of Habitats and Species Regulations 2017. Wildlife & Countryside Act 1981 (as amended)	Natural England	Licences required where works forming part of the Project result in an element of risk for certain specific and classes of protected species	<p>Protection of Badgers Act 1992.</p> <p>The Applicant has engaged with NE through their discretionary advice service and is actively working with NE case officers to secure a 'letter of no impediment' in respect of the potential need to licence badger mitigation strategies. ("LONI").</p> <p>Following discussions and the provision of further information to NE by the Applicant, NE issued a LONI to the Applicant on 9th February 2024.</p> <p>The LONI confirms that NE is content that the draft application submitted by the Applicant for a potential badger mitigation licence is of the required standard.</p> <p>Therefore, NE see no impediment to a badger mitigation licence being issued in respect of the Proposed Development if the DCO is granted.</p>
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Consents and Licences Required Under Other Legislation

6.	Request permission for works or for an activity on an SSSI	Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000)	Natural England	Written assent required where works or activities forming part of the Project may affect a SSSI (even if the works/activity are outside the SSSI)	Ongoing	Discussion with Natural England to be commenced if SSSI identified and required.
7.	Health and Safety related consents	Health and Safety at Work Act 1974 and subsidiary legislation	Health and Safety Executive (HSE)	Various consents required in connection with the works comprising the Project which relate to health and safety matters	Ongoing	Applications to be made by the Applicant's contractor before construction commences as appropriate.
8.	Permit for transport of abnormal loads (relating to the delivery by road of loads that fall outside standard practice)	Road Vehicles (Authorisation of Special Types) (General) Order 2003 or with authorisation from the Secretary of State under the Road Traffic Act 1988	Department for Transport, Highways Agency, Local Highway Authority or the police and bridge owners (if any) as appropriate	Permit required for the delivery by road of loads that fall outside standard practice (by reference to the weight, width of length of the load)	Ongoing	Appropriate applications and notifications, in accordance with the Construction Traffic Management Plan, will be made by the Applicant's contractor in advance of the delivery of any abnormal loads.
9.	Notice of Street Works	Traffic Management Act 2004	Highways Authority	Notice required to be given in advance of certain street works required in connection with the Project.	Ongoing	Applications to be made by the Applicant's contractor before construction commences as appropriate.
10.	Temporary Road Traffic Orders	Road Traffic Regulation Act 1984	Highways Authority	Order required if construction phase requires temporary closure of any public highway	Ongoing	Applications to be made by the Applicant's contractor before construction commences as appropriate.

Consents and Licences Required Under Other Legislation

11.	Section 61 Consent	Control of Pollution Act 1974	North Kesteven District Council and Boston Borough Council	Consent required prior to the carrying out of works comprising the Project which would create noise controlled under law (ie noise from a construction site)	Ongoing	Any applications required will be made by the Applicant's contractor before construction commences.
12.	Water abstraction or impoundment licence	Water Resources Act 1991 (as amended by the Water Act 2003), Environment Act 1995, Water Resources (Abstraction and Impounding) Regulations 2006	Environment Agency	Licence required prior to water being from watercourse and/or groundwater resources	Ongoing	If groundwater pumping/dewatering is required, then applications to be made by the Applicant's contractor before construction commences as appropriate.

Consents and Licences Required Under Other Legislation

13.	Water discharge permit	Environmental Permitting (England and Wales) Regulations 2016	Environment Agency	Permit required prior to discharging liquid effluent or waste water into surface waters and/or the ground	Ongoing	<p>If water discharge activities are required then an application for water discharge activity environmental permit will be made by the Applicant's contractor before water is discharged.</p> <p>The Applicant specifically notes that where any septic tanks required as part of the construction or operational phases of the Project do not meet the General Binding Rules for small sewage discharges (meaning that a separate permit is needed by the Applicant).</p>
14.	Hazardous Substance Consent	The Planning (Hazardous Substances) Regulations 2015	North Kesteven District Council and Boston Borough Council	Consent required prior to the storage or use of hazardous substances as part of the Project	Ongoing	Applications to be made by the Applicant's contractor following detailed design, if that is necessary. The Applicant is not aware of any reason why a consent would not be granted should one be required.

Consents and Licences Required Under Other Legislation

15.	Crown Consent	Section 135 of the Planning Act 2008	The Crown Estate	Consent required to be obtained from the Crown prior to acquiring any interest which forms part of Crown land	Ongoing	<p>Consent to acquire third party interests (and not the interests of the Crown) in Crown land currently being sought as part of the Examination period.</p> <p>Negotiations with the Agents representing the Crown Estate and Duchy of Lancaster are ongoing.</p> <p>Heads of Terms have been issued to the Crown Estate for both an Option for Easement on the cable route and a lease in respect of mines and minerals ownership.</p> <p>A meeting was held on 11th January with the Crown Estate to progress negotiations. <u>A meeting was held on 30th January 2024. The Applicant's agent has continued to approach the Crown's agent (since the meeting on 30th January 2024) and provided a revised commercial counteroffer but the Crown Estate's agent has refused the revised offer put forward by the Applicant's agent.</u></p> <p><u>A comprehensive update on negotiations with the Crown has been provided in the Schedule of Negotiations with Statutory Undertakers and Landowners</u></p>
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Consents and Licences Required Under Other Legislation

						<p>(document reference: 4.4).</p> <p>Discussions are ongoing with the Duchy of Lancaster’s Agent regarding the Heads of Terms for an Option for Easement on the cable route with a meeting held on 16th January.</p> <p>Heads of Terms were returned to the Duchy’s agent on 9th February 2024 and it is anticipated that the parties will shortly be able to proceed to drafting the required legal document.</p> <p>A comprehensive update on negotiations has been provided in the Schedule of Negotiations with Statutory Undertakers and Landowners (document reference: 4.4).</p> <p>The Applicant's agent (Ardent) continues to push for a resolution in respect of the Crown Consent as part of Examination.</p>
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