

# Heckington Fen Solar Park

EN010123

## Applicant Response to Rule 17 Letter

Applicant: Ecotricity (Heck Fen Solar) Limited

Document Reference: ExA.AppResponseR17-D5.V1

Pursuant to: APFP Regulation 5(2)(q)

Deadline 5: 13th February 2024

Document Revision: 1

February 2024



## Applicant Response to Rule 17 Letter (document reference ExA.AppResponseR17-D5.V1)

### Introduction

Following the Rule 17 Letter and associated Annexes A-C, the Applicant provides further information below.

### Statements of Common Ground

Document Reference	Title	Summary of remaining areas not agreed / outstanding
7.6a, revision 4	Relevant Planning Authorities: Lincolnshire County Council, North Kesteven District Council and Boston Borough Council	Best and most versatile land (LCC and NKDC); methodology for landscape assessment (LCC); level of harm on Kyme Tower (NKDC) – SoCG agreed
7.6c, revision 3	Black Sluice Internal Drainage Board (signing required only)	None – SoCG agreed
7.6d, revision 4	Environment Agency	Land agreement
7.6f, revision 3	National Gas Transmission plc	None - Completion of private agreement awaited
7.6g, revision 3	National Grid Electricity Transmission plc	None - Completion of private agreement awaited
7.6h, revision 3	National Grid Viking Link Ltd	Completion of private agreement awaited
7.6i, revision 4	Natural England	None - SoCG agreed
7.6j, revision 3	Network Rail Infrastructure Ltd	Commercial principles now agreed; wording restricting the Applicant's compulsory acquisition powers in the protective provisions not agreed between the parties
7.6k, revision 3	Triton Knoll OFTO Ltd	Commercial principles agreed; completion of private agreement awaited. Wording restricting the Applicant's compulsory acquisition powers for the TK access track in the protective provisions not agreed between the parties.

The list of matters not agreed is included in the Statement of Commonality (document reference ExA.SOC-D4.V1, revision 4).

### A1 and A2 - Schedule of Negotiations with Statutory Undertakers and Landowners

The Applicant has updated the Schedule of Negotiations with the latest position, which the Applicant will continue to progress following the close of Examination. Full reasons for the delay in obtaining the necessary agreements is detailed in the Schedule of Negotiations – document reference 4.4, revision 7.

### A4 – Book of Reference update and response to new interests

The Applicant is confident the Book of Reference is correct and has undertaken extensive quality assurance checks on the Book of Reference and related data during the last few months of Examination. A small number of final clarifications are detailed in Appendix 1 to Cover Letter for Deadline 5 – document reference ExA.CL-D5.V1.

### B5 – Crown Land

The Applicant remains in negotiations with The Crown Estate and its agents. Despite late engagement from the Crown Estate significant progress has been made and the Applicant is confident that

agreement with the Crown will be reached, albeit this may not be by the close of Examination. The Applicant notes that this status, whilst disappointing for the Applicant, is not unique and other Development Consent Orders have not obtained Crown consent until very late in the decision making process<sup>1</sup>.

The Applicant confirms that no compulsory purchase of an interest in Crown Land held otherwise than by or on behalf of the Crown is being sought and therefore no consent is necessary pursuant to Section 135(1) Planning Act 2008.

The Crown Estate own land on the cable route, and the mineral rights in land affected by a portion of the Proposed Development at the Energy Park. The Applicant understands from very recent discussions with the Crown Estate that the Crown Estate has no intention of frustrating a Nationally Significant (renewable energy) Infrastructure Project that is of Critical National Priority in achieving the Government's Net Zero targets. Therefore, the Applicant remains certain that any consent necessary pursuant to Section 135(2) will be delivered by the Crown Estate in good time for the Secretary of State to make her decision.

### **C3 – Heads of Terms for the Section 106**

The Applicant appends the Heads of Terms for the Section 106 to this document as agreed with Lincolnshire County Council, North Kesteven District Council, and Boston Borough Council.

---

<sup>1</sup> For example the Brechfa Forest Connection Order where Crown consent was delivered the day before the Secretary of State issued his decision.

**Appendix 1**

**Section 106 Agreed Heads of Terms**

# **HEADS OF TERMS**

## **Section 106 Agreement**

**Heckington Fen Solar Park Development Consent Order**

**Land at Elm Grange Farm**

<b>1. The Parties</b>	
<b>Landowner</b>	<p><b>Name:</b> Bramall Properties Limited (02542185)</p> <p><b>Address:</b> 12 Cardale Court, Cardale Park, Beckwith Head Road, Harrogate, North Yorkshire HG3 1RY</p>
<b>Developer</b>	<p><b>Name:</b> Ecotricity (Heck Fen Solar) Limited (13225224)</p> <p><b>Address:</b> Lion House, Rowcroft, Stroud, GL5 3BY</p>
<b>Relevant Planning Authority</b>	<p><b>Name:</b> North Kesteven District Council ("NKDC")</p> <p><b>Address:</b> Council Offices, Kesteven Street, Sleaford, Lincolnshire, NG34 7EF</p>
<b>Relevant Planning Authority</b>	<p><b>Name:</b> Boston Borough Council ("BBC")</p> <p><b>Address:</b> Municipal Buildings, West St, Boston PE21 8QR</p>
<b>Relevant County Authority</b>	<p><b>Name:</b> Lincolnshire County Council ("LCC")</p> <p><b>Address:</b> County Offices, Newland, Lincoln, LN1 2YL</p>
<b>Landowner's Legal Advisor</b>	<p><b>Name:</b> Brian Wake</p> <p><b>Email:</b> [REDACTED]@excellolaw.co.uk</p>
<b>Developer's Legal Advisor</b>	<p><b>Name:</b> Josh Taylor (Osborne Clarke)</p> <p><b>Email:</b> [REDACTED]@osborneclarke.com</p>
<b>Relevant Planning Authority Legal Advisor (LCC and NKDC)</b>	<p><b>Name:</b> Martha Rees</p> <p><b>Email:</b> [REDACTED]@lincolnshire.gov.uk</p>
<b>2. Land</b>	
<b>Property description and land for the s106</b>	<p>Plot 282 on the Land Plans<sup>1</sup> described as 2032464.6 square metres, or thereabouts, of agricultural land at Elm Grange, north of the A17, east of the B1395 and west of Six Hundreds Drove - shown on the plan at Appendix 1, with title number: LL139549.</p>
<b>3. General</b>	
<b>Commencement Date</b>	<p>The obligations and operative terms in the section 106 agreement are conditional on the grant of the Development Consent Order by the Secretary of State and commencement of development.</p>

<sup>1</sup> [EN010123-000799-2.1- Land and Crown Land Plan - Rev 4.pdf \(planninginspectorate.gov.uk\)](#)

<p><b>General</b></p>	<p>The parties agree that the obligations form material considerations in planning terms and meet the tests for planning obligations under section 106 of the Town and Country Planning Act 1990 and Regulation 122 of the Community Infrastructure Levy Regulations 2010.</p> <p>The obligations are not in addition to the financial principles set out in the certified Development Consent Order (DCO) plans (outline Supply Chain, Skills and Employment Plan (oSCSEP)<sup>2</sup> and outline Landscape Ecological Management Plan (oLEMP)<sup>3</sup> (together the "<b>Outline DCO Plans</b>") but are intended to work with and provide the vehicle for delivery of the financial contributions proposed in the Outline DCO Plans.</p> <p>The Developer will indemnify the Landowner for any liabilities/obligations arising as a result of the s106 obligations unless and until the Landowner takes possession of the Land from the Developer.</p>
<p><b>Land Charge</b></p>	<p>The Deed shall be registrable as a local land charge by NKDC or BBC until the earlier of the date of decommissioning or fulfilment of the obligations.</p>
<p><b>4. Contributions &amp; Triggers</b></p>	
<p><b>Skills and Supply Chain – Apprenticeship Contribution</b> <i>(NKDC, BBC and LCC)</i></p>	<p><b><u>Financial Contribution</u></b></p> <p>A skills and education contribution of £50,000 per annum for the 40 year (unless decommissioned sooner) operational lifetime of the Heckington Fen Solar Park Project (the "<b>Skills Contribution</b>").</p> <p>The Skills Contribution will be index linked in line with the Retail Prices Index.</p> <p><b><u>Purpose</u></b></p> <p>To be used for increasing employment, education and skills opportunities in the local area (primarily within North Kesteven District and Boston Borough but to include neighbouring authority areas where necessary) for individuals in the renewable energy, sustainable farming/agricultural diversification, ecology and sustainable development sector (primarily with the purpose of reducing carbon emissions in line with the key values of Ecotricity relating to food, energy, and transport carbon emissions), and which may include the provision of training and apprenticeships and education bursary payments (the "<b>Purpose</b>").</p>

<sup>2</sup> Paragraph 3 of Revision 3 dated 16 January 2024.

<sup>3</sup> Paragraph 5.5.14-16 of Revision 5 dated 16 January 2024.

	<p><b><u>Trigger</u></b></p> <p>£50,000 index linked payable on or before the date of Final Commissioning<sup>4</sup> of the final phase of development; and</p> <p>£50,000 index linked annually for the 40 year (unless decommissioned sooner) operational lifetime of the scheme payable on each anniversary of the date of Final Commissioning of the final phase until the date of decommissioning.</p>
<p><b>Ecology &amp; Planting Contribution</b> (BBC)</p>	<p><b><u>Obligation</u></b></p> <ol style="list-style-type: none"> <li>1. The Developer will offer landowners hosting the grid connection cable in Boston Borough hedgerow planting, gapping up of existing hedgerows, or another improvement to connectivity for biodiversity between natural habitats as may be deemed suitable on their landholding. This will be at no cost to the landowner(s) and/or as a contribution to a wider initiative and the cost of the planting or other measures (inclusive of contractors, legal agreement, plants and maintenance) will be to a maximum value of £10,000 (the "<b>First Ecology Obligation</b>").</li> <li>2. If landowner agreement cannot be secured, the Developer will: <ol style="list-style-type: none"> <li>a) where possible, provide to BBC an alternative scheme (to be funded by the Developer up to the cost of £10,000) for the Purpose; or</li> <li>b) provide a contribution of £10,000 to Boston Borough Council for the Purpose</li> </ol> <p>(the "<b>Second Ecology Obligation</b>").</p> <p>The amount referred to in the Second Ecology Obligation is to be reduced by a proportionate amount based on the cost of any agreements reached with the landowners for hedgerow planting, connectivity, and/or biodiversity improvements under the First Ecology Obligation. If the amount left after application of the First Ecology Obligation is nil/zero then the Developer does not need to proceed with the Second Ecology Obligation.</p> </li> </ol>
	<p><b><u>Purpose</u></b></p> <p>To improve connectivity for biodiversity between natural habitats and/or to promote tree planting in Boston Borough.</p>

<sup>4</sup> As defined in the DCO, with notification provided to the councils pursuant to Requirement 3 of the DCO.



	<p><b><u>Trigger</u></b></p> <p>The Developer must:</p> <p>a) offer the First Ecology Obligation prior to commencement of Work No. 6B of the DCO<sup>5</sup>; and</p> <p>b) if relevant, provide the Second Ecology Obligation prior to the Date of Final Commissioning of the final phase.</p>
<b>Developer's Obligations</b>	
<b>Skills Contribution</b>	<p>a) To arrange and chair an annual meeting with the Councils to discuss potential beneficiaries for the Skills Contribution.</p> <p>b) To have regard to reasonable representations and suggestions from the Councils as to the potential beneficiaries.</p> <p>c) Within 28 days of the annual meeting, to submit to the Councils for approval details of the proposed beneficiary for the forthcoming year(s) (the "<b>Beneficiary Notice</b>").</p> <p>d) To pay the Skills Contribution in accordance with the triggers set out above and provide evidence of the same to the Councils within 28 days of the payment date.</p> <p>e) In the event of default, disagreement on the proposed beneficiary, or failure to pay by the trigger date, the Developer agrees to hold the money for the Purpose and engage with the Councils to decide on an appropriate beneficiary to receive the Skills Contribution for the calendar year(s) in which the payment was missed.</p>
<b>Ecology &amp; Planting Contribution</b>	To undertake the First Ecology Obligation and, where relevant, the Second Ecology Obligation in accordance with the triggers set out above.

---

<sup>5</sup> Being the National Grid extension works, which may require removal of the trees at Bicker Fen Substation (i.e. the harm in which the obligation is mitigating).

<b>Councils' Obligations</b>	
<p><b>Skills Contribution</b> <i>(NKDC, BBC, and LCC)</i></p>	<ul style="list-style-type: none"> <li>a) To attend an annual meeting arranged by the Developer to discuss potential beneficiaries for the Skills Contribution, and act reasonably in discussing potential beneficiaries for the Skills Contribution for the forthcoming year(s).</li> <li>b) Not to unreasonably withhold or delay consent/approval of the beneficiary and, in any event, to respond to the Developer with a decision within 28 days following receipt of the Beneficiary Notice.</li> <li>c) In the event the Developer fails to pay the Skills Contribution by the trigger (or in the event of disagreement as to the proposed beneficiary following the Beneficiary Notice), to hold meetings with representatives from each of NKDC, LCC, BBC, and the Developer to jointly elect a beneficiary (for example education provider(s)) to receive the Skills Contribution for the calendar year(s) in which the payment was missed.</li> <li>d) In the absence of agreement as to the beneficiary (or beneficiaries), the Developer is to hold the Skills Contribution for the Purpose (unless otherwise agreed) until a beneficiary can be jointly agreed.</li> </ul>
<p><b>Ecology &amp; Planting Contribution</b> <i>(BBC)</i></p>	<p>In the event that the Second Ecology Contribution is due, use the Second Ecology Contribution for the Purpose and provide evidence of the same to the Developer. In the event the amount is unexpended within 5 years from the date of payment, BBC agrees to return to the Developer.</p>

**APPENDIX 1**

**Site Plan**

Legend

 Elm Grange Land Parcel



Title: Section 106 Plan



0 0.4 km  
Scale: 1:15,000 @ A3

Drawn by: RS  
Checked by: Approved by:

Ref: 6945\_T0128\_01 Date: January 2024

Heckington Fen Solar