**Mallard Pass Solar Project DCO**

**Response by Richard Williams to Examining Authority's Written Questions (ExQ2)**

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| Q4.0.8 | The Applicant<br>Mr Richard Williams | Mr Richard Williams made oral submissions at CAH1 and these were followed up with written submissions at Deadline 4 [REP4-066], including submissions regarding Plot 01-01.<br>a) Please comment on these submissions including the representations on whether Plot 01-01 is required and the consideration of reasonable alternatives, including panel selection and the availability of land adjacent to the Order limits to the north of Carlby Road. Please also provide any update on the status of negotiations.<br>b) Does Mr Williams have any further comments on these matters? |

1. Since the first Compulsory Acquisition Hearing ("CAH1"), I have taken advice from specialist compulsory purchase solicitors and wish to make the following comments in addition to my written submissions [REP4-066] and in response to the submissions made by Mr Fox and Mr Phillips on behalf of the applicant summarised at REP4-042.

2. At CAH1 concerns were raised by myself, other interested parties and the Examining Authority that the amount of land subject to compulsory acquisition was significantly greater in extent than that required for the project. In response Mr Fox and Mr Phillips stated that this was because the project was at outline design stage and the land requirements would be reduced as the scheme progresses through detailed design.

3. Mr Phillips went on to say that there was a further opportunity (i.e. after the DCO has been made) to test whether land was required for the project. Mr Phillips' submissions are summarised at REP4-042 as follows:

   "*Once the detailed design has been approved by the local planning authority, then there is a second stage of consenting in terms of land acquisition as it is not the case when a DCO is granted that a developer can seize the land. Mr Phillips described how the developer could use one of two ways to compulsorily acquire the land (GVD or notice to treat) with each process having notice provisions, providing the landowner the opportunity to contest the acquisition and if there is a dispute it can be decided at the Lands Tribunal like a court case to decide if it is an appropriate use of the land*."

4. This is simply untrue. The Lands Tribunal no longer exists having been replaced by the Upper Tribunal (Lands Chamber) in 2009. The Upper Tribunal does not have any jurisdiction whatsoever as to whether the compulsory acquisition of land is appropriate or lawful. With respect to compulsory acquisition the Upper Tribunal's sole jurisdiction is in relation to disputes as to question of compensation following acquisition. It is not possible for a landowner to contest a decision by an acquiring authority to make a GVD or notice to treat through proceedings at the

Upper Tribunal or otherwise. The jurisdiction of the Upper Tribunal is set out at its website at the link below.
https://www.gov.uk/courts-tribunals/upper-tribunal-lands-chamber

5. Where a public body decides exercise compulsory acquisition powers, it is possible in very limited circumstances to seek a judicial review of that decision. No such remedy is available where a private body exercises compulsory acquisition powers.

6. Therefore, once the DCO has been made, the applicant has sole discretion as to whether to exercise compulsory acquisition (or temporary possession) powers. The Examining Authority Secretary of State must therefore be satisfied that every parcel of land included within the Order limits is required for the project and that compulsory acquisition powers are justified applying the guidance set out in the Department of Levelling Up Housing and Communities *Guidance on Compulsory Purchase and the Crichel Down Rules*[1] dated July 2019 ("the Guidance").

7. Mr Phillips further stated that the applicant was under an obligation pursuant to the Crichel Down Rules ("the Rules") to return land no longer required for the project to the owner. The written submissions qualified this somewhat by noting (correctly) that the Rules do not apply to private bodies but that such bodies may choose to follow them. No commitment has been given by the Applicant that they will follow the Rules and therefore no account should be taken of those rules as a mitigating factor in relation to the compulsory acquisition powers sought. In any event the Rules only require land to be offered back to the original landowner where the character of the land concerned has not been materially changed since its acquisition. The installation of solar panels and related equipment would constitute a change in the character of the land and the Rules would not in any event apply.

8. The Guidance states that compulsory acquisition is a last resort and that acquiring authorities should seek to acquire land by agreement. As the Applicant correctly notes, negotiations are ongoing and most terms have been agreed. A significant issue is that I am not satisfied with the covenant strength of the Applicant, which is effectively a special purpose vehicle for the purposes of the DCO application. I am concerned as to the payment of rent and as to the restoration of the land at the end of the lease including the removal of panels and equipment.

9. Those concerns could be rectified by the provision of a parent company guarantee by Canadian Solar but the Applicant refuses to provide one. This is inconsistent with the Applicant's reliance on Canadian Solar for the purposes of its funding statement. Alternatively I have suggested the provision of a two year rent deposit.

10. The requirement in the Guidance that acquiring authorities should seek to acquire land by agreement extends to authorities negotiating in good faith and offering reasonable market terms to landowners.

[1] The Applicant's Statement of Reasons (APP-021) for some reason refers throughout to the out of date DCLG Guidance dated September 2013 and accordingly is potentially defective to the extent that applies outdated guidance.