Mallard Pass
Solar Farm

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Summary of Applicant's Oral Submissions at ISH5 & Appendices

Deadline 7 (10th October 2023)

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Summary of Applicants Oral Submissions at ISH5

1.0 INTRODUCTION

1.1 This note summarises the oral submissions made by Mallard Pass Solar Farm Ltd (the "**Applicant**") at Issue Specific Hearing 5 ("**ISH5**") held on 28 September 2023 in relation to the Applicant's application for development consent for the Mallard Pass Solar Farm Project (the "**Proposed Development**").

1.2 Where the Examining Authority (the "**ExA**") requested further information from the Applicant on specified matters, or the Applicant undertook to provide further information during the course of ISH5, that further information is either set out in this document or provided as part of the Applicant's Deadline 7 submissions and signposted here.

1.3 This note does not purport to summarise the oral submissions of other parties, and summaries of submissions made by other parties are only included where necessary to give context to the Applicant's submissions, or where the Applicant agreed with the submission(s) made and so made no further submissions (this is noted within the document where relevant).

1.4 The structure of this note follows the order of the items listed in the detailed agenda published by the ExA on 19 September 2023 (the "**Agenda**"). Numbered agenda items referred to are references to the numbered items in the Agenda. The Applicant's substantive oral submissions commenced at Item 3 of the Agenda. Therefore, this note does not address Items 1 and 2 on the Agenda as these were procedural and administrative in nature.

2.0 WRITTEN SUMMARY OF THE APPLICANT'S ORAL SUBMISSIONS AT ISH5

Agenda Item	Applicant's Response
Part 1: Consideration of any environmental matters on the agenda for ISH4 which have not been completed at that hearing	
a) Consideration of any outstanding relevant matters (please refer to the Agenda for ISH4) not completed at ISH4.	Mr Andrew Croft (Affected Person) raised concerns the effects of construction traffic on and near to his property at North Lodge Farm bungalow in Uffington Lane (particularly as he experienced problems with construction traffic (such as HGVs churning up grass verges) during the substation's construction around ten years ago) and about effectiveness of vegetative screening from his property as it takes time to become established. In response, Mr Matt Fox, on behalf of the Applicant, said that Applicant had been made aware of specific concerns in respect of Uffington Lane and construction traffic in their discussions with local highway authorities and the measures had been incorporated into the Proposed Development and the Outline Construction Traffic Management Plan (oCTMP) **[REP6-014]** such as the introduction of temporary passing places and active management of HGVs to limit the number of HGVs passing one another on the road. ***Post-hearing note:*** *At North Lodge Farm Bungalow, following implementation of the proposed management measures (including restrictions to working hours and consideration of Best Practical Means to minimise impacts), residual construction noise and vibration effects are considered likely to be minor adverse at most which is not significant. These measures will be implemented in the final Construction Environmental Management Plan (CEMP) which is secured through requirement 11 of the draft DCO. The final design of the onsite plant at the Proposed Development (including the onsite substation) will be developed such that noise levels do not exceed 35dB L_{Ar} at North Lodge Farm. This will represent minor adverse noise effects at most which is not significant. This will be secured through requirement 16 in the draft DCO, as well as the measures included in the oOEMP, the final version of which is secured through requirement 12 of the draft DCO. In response to the concerns raised at the Hearing, more mature planting is now proposed within the oLEMP [updated for Deadline 7] in Field 24.* In response to the ExA flagging that the Applicant had submitted an Updated Cumulative Scheme Long List **[REP6-004a],** Mr Fox, on behalf of the Applicant, requested the local planning authorities provide their comments about the items on that list for Deadline 7 so that the Applicant can fully finalise the detail of the table by the end of the examination.
Part 2: The draft Development Consent Order (DCO)	
3. Update on latest version of the draft DCO [REP5-015]	
a) Applicant to summarise recent revisions to the dDCO. b) Summary of engagement on dDCO with relevant parties, including any relevant updates to	In response to the ExA's request for a summary of recent revisions to the draft DCO, Mr Fox, on behalf of the Applicant, said that generally the changes reflected discussions held at previous hearings and the Applicant's responses to ExA's Second Written Questions including:- • Amendments to the definition of "maintain" in article 2 and added definition of "outline written scheme of investigation"; • Amendments to highways articles 9, 10, 11, 13 and associated schedules to respond to questions, ongoing discussions and the fact that there is an intention to have a separate side agreement;

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Statements of Common Ground.	• Changes to requirements which were important to read alongside the changes made to the management plans; and • Changes to schedules including time limits and fees in Schedule 16. In response to the ExA's request for a summary of engagement with relevant parties, Mr Fox, on behalf of the Applicant, explained that there had been ongoing submissions to the Examination and this was reflected in the progress in the Statements of Common Ground. He explained there were two main things in dispute, Requirement 10 in respect of heritage and Schedule 16 in respect of time limits. He said the Applicant's position about Schedule 16 is that it is not proposing to make any further changes to the time limits and that it is now happy to leave this as a point for the Secretary of State to determine. He said that the Applicant and the local highway authorities had agreed to the principle of entering into a side agreement (akin to, but not in legal terms, a section 278 agreement) to address their remaining concerns and the Applicant anticipated they would provide a draft agreement to the local highway authorities early next week. In response to the ExA's comment that the Applicant should make every effort to ensure their DCO is consistent with the approach and drafting of other DCOs currently going through examination in Lincolnshire, Mr Fox said that Pinsent Masons were acting for all bar one of these schemes and there was a consistent approach being taken with local authorities and stakeholders. ***Post-hearing note (with reference to Action Point 13):*** *A draft of the side Agreement, based on the approach to section 278s taken by LCC and RCC, was sent to the local authorities on 28 September.*
4. Articles	
a) The ExA will ask questions and seek comments on the proposed Articles and related matters, including the following	
Article 2: Revised definition of 'maintain' and related wording in paragraph 2.2.2 of the outline Operational Environmental Management Plan [REP5-061] and related matters	Summarising the Applicant's revisions to the definition of 'maintain', Mr Matt Fox, on behalf of the Applicant, said at Deadline 4 the Applicant sought to make it clear that it cannot remove all Work No.1 in its entirety at once and had added in wording to confirm that maintenance activities would not lead to materially new or materially different effects to those assessed in the Environmental Statement ('NEWT wording'). In response to Mallard Pass Action Group's (MPAG) Deadline 6 submission stating it was not clear whether the NEWT wording applied to the whole of or part of Work No. 1, Mr Fox said that it applies to the whole of Work No.1. He added that the Applicant would consider whether the drafting needed amending to be clearer but flagged that this current wording is similar to other precedents. The ExA raised questions about how the changes made to paragraph 2.2.2 of the Outline Operational Environmental Management Plan (oOEMP) **[REP5-061]** relate to maintenance and how section 5.17 of the ES **[REP2-012]** is of relevance to this. In response, Mr Fox, on behalf of the Applicant, explained that section 5.17 sets out the basis and parameters of how the ES had considered effects related to maintenance. In that context, this definition is one of the controls for maintenance because as a

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	result of the NEWT wording in the DCO the Applicant cannot do anything that would lead to materially new or materially different effects to those assessed in the ES in the operational phase. The wording at paragraph 2.2.2 in the oOEMP was inserted to provide some form of quantification to help produce the maintenance schedule and explain how the activities on it will not lead to materially new or materially different effects by confirming there will be no more than 5 daily HGV two-way movements. Following further comments from the ExA and Mrs Sue Holloway (on behalf of MPAG), Mr Fox confirmed that for the maintenance schedule purposes, the NEWT wording was to be applied in the context of operational phase effects, not construction phase effects. Mr Fox agreed to look at the definition, article 5 and oOEMP to make sure that it is clear it is for the effects for operational phase to avoid any ambiguity. He also explained that section 5.17 of the ES sets the framework for operational phase and maintenance activities and none of those activities have been assessed for any topics because it is considered that the effects arising from these activities would be minimal and so these were effectively scoped out of the ES. Traffic was chosen as the quantification because people had concerns about traffic specifically, but the point applies to other topics and technical disciplines too. Mr Justin Johnson, on behalf of Rutland County Council, welcomed the five daily HGV limit but raised concerns that the local planning authorities (LPAs) would not have the ability to approve activities on the maintenance schedule. Their particular concern is what would happen if, in practice, several panels needed to be replaced at the same time and the LPA disagreed that the effects were NEWT. In response, Mr Fox, on behalf of the Applicant, said the maintenance schedule is not provided 12 months in advance, but is a list of things the Applicant is going to do in the next 12 months and the vast majority of items will not relate to replacing panels but to routine maintenance such as trimming hedges. As a result, it would be disproportionate to allow LPAs to approve the schedule, particularly as most DCOs have untrammelled maintenance power and the LPAs have enforcement powers. However, Mr Fox said that if the concern is specifically related to replacement of equipment being NEWT, then, as a compromise, the Applicant could look to include wording so that where equipment is being replaced, the LPA will be required to provide approval as to whether it agrees with the Applicant's conclusion that the effects of the activities around replacement of equipment would be NEWT. The approval would not extend to approving the choice of equipment itself or to routine activities on the maintenance schedule. In response to Mr Marc Willis' (Lincolnshire County Council) query about what procedure would be used for the approval set out in a sub-agreement in oOEMP, Mr Fox said he would look at that point and noted it had been raised in reference to the Written Schemes of Investigation (WSIs) in ISH4 and there it would be a case of amending paragraph 2 of Schedule 16 to make it clear that the process applies when producing the full detailed documents so that sub-agreements would follow in line with the Schedule 16 process.

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	Post-hearing note: *The Applicant has submitted a draft Development Consent Order at Deadline 7 which has been updated to make it clear that the "whole of" wording applies to all activities at once, to make it clear that the NEWT test is limited to the operational phase and to amend Schedule 16 so that it covers approval of subsidiary documents.* ***Post-hearing note:*** *The Applicant has submitted an updated oOEMP at Deadline 7 to ensure that the NEWT test applies to maintenance only and the local planning authorities are to approve whether the works proposed are NEWT for a maintenance schedule that include replacement of equipment.* **Together, these points deal with Action Points 2, 3 and 4 from ISH5 of the ExA's Action Points.** Tony Orvis, on behalf of MPAG, said there must be a wholesale replacement of panels during the lifetime of the scheme (as the scheme's lifespan is 60 years and the panels are advertised to last for 25 to 30 years) and panels will need to be replaced at the same time because the panels are produced by the same company, installed at the same time and so they will degrade and deteriorate at the same time and his concern that this can only be done in large blocks because it is not efficient to replace them singly. In response Mr Fox, on behalf of the Applicant, said that on the basis of current technology there would likely be two cycles of panels but there may be technological advancements and in any event there are controls in the DCO documentation, firstly the definition says that cannot remove or reconstruct Work No. 1 all at the same time and there are controls to ensure that the activities do not produce an effect (appreciating that there will be a drip-feed of replacement panels as required). If the Applicant wanted to replace the panels wholesale they would need to submit an application to amend the DCO. The project enables a solar project to deliver renewable energy for 60 years to help the UK reach net zero by 2050 and beyond, and with the controls in place there is no planning reason, given the level of controls, why this benefit could not continue to be achieved beyond 2050. Responding to Mrs Julie Smith (of Rutland County Council (Highways)) point that temporary passing bays and other highway improvements for the construction period should be made permanent rather than temporary to save them having to be re-done in 20 to 30 years' time when equipment begins to be replaced, Mr Fox said that this point would need to be discussed outside of the hearing because he did not understand why these temporary improvements needed to be permanent if limited to five daily HGV two-way movements. ***Post-Hearing Note:*** *The Applicant has been unable to confirm this point with the LPAs before the Deadline, however it can confirm its position that the temporary passing places and temporary highway works would not be needed for maintenance as with the 5 HGV two-way movement cap on daily levels of HGV activity associated with replacement/maintenance activity in the OEMP, the level of vehicle activity would all be within daily level of background traffic variations meaning there is unlikely to be any two-way conflicts or change from what is taking place on the network currently.* **This deals with Action Point 5 of the ExA's Action Points.**

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	Mr Orvis, on behalf of MPAG, set out Gate Burton Energy Park's assumptions about the replacement of components during the lifetime of the scheme (paragraph 6.4.29, Chapter 6: Climate Change, Environmental Statement [APP-015]) and asked why this scheme's approach was different. Mr Gareth Phillips, on behalf of the Applicant, said there is no difference in approach just different language setting the point out used by different teams. They are all approaching the issue in the same way, but there may be slight nuances depending on the applicants' supply chain and the information that is available to them from the suppliers at the point in time they are carrying out the assessment – the 25-to-30-year time period is the insight provided by suppliers at this point in time for this project but this lifespan was always likely to increase due to the rapid developments that are ongoing in solar technology. ***Post-Hearing Note (and in answer to Action Point 6):*** *Building on this**,** in terms of the ExA's request for evidence of recent improvement in efficiency, the Applicant refers to Figure 10.2 of the Statement of Need* ***[APP-202]*** *which shows how solar panels, have increased in efficiency over the last 40+ years. While no independently sourced update to this chart is currently available, the efficiency of currently available solar panels was included in the Applicant's response to the ExA's First Written Questions Q1.0.17 & related Appendix C* ***[REP2-037]*** *and* ***[REP2-038].*** *The data included in these tables shows a wide range of commonly available panels with their stated efficiencies.* *The Applicant's response to part c) of FWQ1.0.17 states that "over the period of possible module procurement for the scheme, e.g., until 2025/26, module efficiency will continue to increase at best linearly"; that "the Applicant may unlock opportunities to enhance the overall efficiency of the scheme at the detailed design stage" and importantly therefore that "it is therefore not a given that the installation of higher efficiency panels will result in reduced land take". Appendix C* ***[REP2-037****] lists 15 panels ranging from JA solar (available Q4 2020) at 21.3% to Huasun 23% (available Q1 2023). Panels are expected to continue to make small efficiency gains in the future.* *A larger version of Figure 10.2 of the Statement of Need is appended to this Summary of Oral Case at* ***Appendix A****.*
Article 6: Including the proposed disapplication of s23 of the Land Drainage Act	Mr Matt Fox, on behalf of the Applicant, explained that in the area the Internal Drainage Board (IDB) acts for both itself and on behalf of the Lead Local Flood Authority (LLFA) in respect of the practical dealings with developments and the Applicant was in discussions with the IDB to ensure that they are comfortable with how various provisions in the DCO operate to ensure that they do consent to the disapplication of s23 of the Land Drainage Act. Mr Fox said it was the Applicant's understanding that the IDB were generally comfortable with this but had requested more information which was being provided. The Applicant also acknowledges that even if the IDB are acting on the LLFA's behalf, the LLFA also has to formally give its consent. The Applicant committed to reaching agreement with the IDB before the end of the examination.

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	In respect of environmental permitting matters, Mr Fox said these were bound up in the Environment Agency's Protective Provisions in the usual way. ***Post-hearing note (and in answer to Action Point 7):*** *The Applicant is continuing to liaise with the IDB to seek to resolve this matter as soon as possible.*
Article 8: Including the clarity of the wording in 8(1)(d)	Following a comment from the ExA about the use of 'its' in article 8(1)(d), Mr Matt Fox, on behalf of the Applicant, flagged that the drafting had come from the Model Provisions, so amending would move the draft DCO away from the precedents, but agreed to look at amending the wording for Deadline 7 to be clear that the 'its' refers to apparatus and cables, not the street. In response to ExA's queries about article 8 and Schedule 4 cable works, Mr Fox, on behalf of the Applicant, said the Outline Construction Traffic Management Plan (oCTMP) makes it clear that before these works can be done the Applicant has to do a highways condition survey and get it agreed with the local highway authority. Mr Fox confirmed that article 8(3) means that all the usual controls that would be place in digging up a road would apply as they normally do and that the additional controls in the Outline CEMP and oCTMP are in addition to the standard provisions in the New Roads and Street Works Act 1991, and this included the proposed cable works in Essendine village. ***Post-hearing note (and in response to Action Point 8):*** *The Applicant has submitted an updated draft Development Consent Order at Deadline 7 which includes the requested amendment to article 8(1)(d).*
Article 9: Update on the latest position including the proposed 'side agreement' with highway authorities Whether Article 9(3) should extend to 'any street outside of the Order limits'? Should Article 9(5) say 'the prior consent of the street authority'?	Mr Matt Fox, on behalf of the Applicant, said the changes to article 9(2) were intended to clarify the scope of what is meant by temporary alterations and the amendments to article 9(5) set out that where consent is required under article 9(3) it can be in a form that is most agreeable to the LPAs. This reflects the approach on other Lincolnshire projects such as Gate Burton. It is important to consider article 9 alongside article 10 as article 9 provides the powers while article 10 provides the controls for those powers. He said that the Applicant acknowledged that local planning authorities are concerned about having normal controls under the Town and Country Planning Act 1990 regime and so is willing to enter into and is currently drafting a side agreement based on the controls that they would normally have if "reasonable satisfaction" in the DCO is not enough. In response to the ExA's comment that local highway authorities had concerns that there is not a great level of detail provided for the highways works in the DCO application, Mr Fox, on behalf of the Applicant, said that the starting point was the DCO is in a form consistent with the Model Provisions which have been used many times before, and that the submitted plans are consistent with the approach on all other DCOs, but he acknowledged in the last two to three years authorities had flagged that they were experiencing problems at implementation and now more applicants were taking the step of entering into side agreement with highway authorities to meet this concern.

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	He said the Applicant would provide drafting for a side agreement based on the highway authorities' standard section 278 agreement and seek to reach agreement on this by the close of the examination. The DCO articles have been amended so that works are completed to the reasonable satisfaction of and in a form reasonably required by the local highway authority so that if the worst happened and there was no side agreement, the local highway authorities have the ability to require the Applicant to go through the section 278 agreement process anyway. In response to ExA's concern that if there were no separate side agreement then there would be no mechanism to enable the local authorities to make sure the detail was sufficiently safe, Mr Fox, on behalf of the Applicant, reiterated how this current drafting had been sufficient for many DCOs that had been consented and he refuted the point that the detail would not be provided as the detail will be subject to the local authority reasonable satisfaction control and accesses have to be approved under Requirement 6. He said that the Applicant would look to add junction improvements and passing places to Requirement 6(1)(g) so that everything is covered. Responding to Mr Marc Willis' (of Lincolnshire County Council) query that if accesses are approved under Requirement 6 then that form of agreement is enough, Mr Fox said that is what the Applicant was seeking to do via the drafting but said that this would be made clear in the updated DCO. ***Post-hearing note (in response to Action Points 9 and 10):*** *The Applicant has submitted an updated draft Development Consent Order at Deadline 7 which includes the amendments to requirement 6(1)(g) to include junction improvements and passing places and additional drafting to make it clear that if matters are approved under requirement 6 they do not need to be approved via articles 9, 10 or 13 and vice versa.* Mr Alastair Ryder, on behalf of Great Casterton Parish Council, raised concerns about the impact of construction traffic and the proposed HGV route on the village and queried why the crossroads in the centre of the village were in the Order limits. Mr Fox, on behalf of the Applicant, said the Outline Construction Traffic Management Plan (oCTMP) at section 3.8 sets out measures including time limits for HGVs to pass through the village. The reasons for the crossroads in Great Casterton to be in the Order limits are to enable the delivery of any abnormal loads and are not required for the typical day to day deliveries that will take place during construction. The extent of the works and vehicle swept path analysis are shown in Appendix 9.4: Transport Assessment of ES Chapter 9 **[APP-074]** at Appendix E. The works would be temporary and limited to the relocation of signage, street lighting and temporary reinforcement of the kerbs to enable to abnormal load vehicle to access the Order limits. In response to the ExA's comments about the broadness of the reference to "any street" in article 9(3), Mr Fox said that the breadth of this should be considered in the context of Hornsea 4 DCO which gives the applicant powers for anywhere without no controls. Also, the reason the power is required is that the Applicant, having conducted a more detailed analysis, may have realised that it needs to amend a kerb on a street. As currently drafted, the Applicant would only have to get the consent of the street authority but if "any street" drafting was removed then the Applicant would be required to get a number of consents from various authorities.

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	Mr Fox also said that the Applicant would add the word "prior" in article 9(5) in the next iteration of the DCO. ***Post-hearing note (and dealing with Action Point 11):*** *The Applicant has submitted an updated draft Development Consent Order at Deadline 7 to add the word "prior" to article 9(5).*
Article 10: Update on previous concerns raised by Rutland County Council	Covered above.
Article 11: Including justification for the generality of 11(1)	In response to the ExA's comments about the generality of article 11 and how it covers any public right of way rather than those listed in Schedule 6, Mr Fox, on behalf of the Applicant, said that this is subject to the street authority and measures in the oCEMP. It is a power to be used in case the local authorities say that the diversion route required is outside of the Order limits and in that scenario the Applicant would need to be able to stop up more rights of way than are currently shown in the plans. Responding to Mrs Linda Davies (interested person) who raised concerns that the Applicant would use the power in the DCO to ride roughshod over things, Mr Fox, on behalf of the Applicant, pointed out that there was a control of this power which lies at local authority level (who could decide if it is appropriate or not) and this would be same situation whether the development is via DCO or normal planning permission.
Article 12: Applicant to explain the revised drafting of this Article	Mr Matt Fox, on behalf of the Applicant, explained that the previous drafting had originally sought to circumvent the DMMO process by stating that the path had been created and the Applicant is able to stop it, but after concerns had been raised by the local authorities, the Applicant had revised the drafting to allow the process to play out and if a new right of way is created then the Applicant can use the powers in the article to stop it up. Mr Andrew Fletcher, speaking on behalf of Lincolnshire County Council, said he was in broad agreement with the general principle behind the revisions to Article 12 but had some suggested amendments to provide to the Applicant to reflect how the Wildlife and Countryside Act 1981 process operates. In response, Mr Fox said the Applicant would consider any proposed drafting and suggestions from the council and flagged that the article was not seeking to do the same things as or duplicate the WCA1981 process (as it is separate from that) but allows the council to complete that process and once done, if the scheme is brought forward, then the Applicant would need to stop it up. In response to Mr Fletcher's concerns expressed later in the hearing about the article, Mr Fox said the drafting is allowing for a scenario (which the original drafting did not) if LCC were to finish the DMO process next month, agree to create the right of way and the scheme does not come forward for five years then that path has been enjoyed for five years and the scheme is building a solar farm on it. He said the point was to allow the authority to do what it normally would do and then allow the Applicant to deal with it as the need arises. ***Post-hearing note (and dealing with Action Point 12):*** The Applicant and LCC have liaised on the wording of this article and the DCO has been updated to account for their comments.

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Article 13: Clarity sought on relevant processes for approval	Mr Fox, on behalf of the Applicant noted how this article needs to be read alongside articles 9 and 10. Articles 9 and 10 provide the powers to carry out the works to highways. They are to enable the Applicant to be in the same position as a local highway authority under section 24/62 of the Highways Act 1980 to construct and improve highways. The controls (including local authority consents) flow from these articles to control the works. Article 13 is to provide authority for the principle of the access being able to be taken from the highway (pursuant to those works) as if this were an Order pursuant to section 129 (joined with s.14) of the Highways Act 1980 as that is, in a non-DCO setting, the only way a new access can formally be provided from a highway. The article is therefore needed in the DCO to avoid needing to get a separate section 129 order for creating the access, even if the works to create it had been approved pursuant to articles 9 and 10. As such the power in article 13 doesn't need to be controlled again through LPA approval as it is dealing only with the principle of the access being created and whether that (not the works) is acceptable or not is made pursuant to the DCO being made or not. It is in light of this relationship that the works in Schedule 5 match to the accesses created pursuant to Schedule 7 (but take up a wider amount of space on the Access and Rights of Way Plans to facilitate the works needed to create it). Article 13 1(b) (including the amendment for highway authority consent) allows for the creation of new accesses not shown on the plan, but only with approval. However, again this relates to simply the principle of the access being created, not the works to deliver it, which would happen pursuant to articles 9 and 10.
Article 14: Clarification on proposed use of Section 278 Agreements	Mr Matt Fox, on behalf of the Applicant, said article 14 comes from the Model Provisions Order and tells people that they can enter into agreements such as the proposed highways section 278 agreement. He flagged that it was an article that is in every DCO which interferes with streets, is not a power that gives the Applicant any powers but it allows agreements to be entered into. Mr Fox also said that he expected to have reached agreement on the highway agreement by the end of examination and, subject to the local authorities' agreement, he would expect to submit the agreement alongside the final draft DCO.
Article 15: Questions/comments on process	No substantive comments were made about this article.
Article 16: Applicant's D5 addition to drafting (16.7)	In answer to the ExA's question about why the additional drafting had been added to this article, Mr Matt Fox, on behalf of the Applicant, said it was because the local authorities had requested it. No further concerns were raised.

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Article 20: Further clarification sought on justification for the inclusion of 20(1)(b) Potential amendments to reflect latest position on cable routing	Following comments from the ExA about the drafting of article 20(1), Mr Matt Fox, on behalf of the Applicant, agreed that the wording would be amended from "undertaking" to "authorised development" in the Deadline 7 submission of the draft DCO. ***Post-hearing note (and dealing with Action Point 4):*** *The Applicant submitted at Deadline 7 an update version of the draft Development Consent Order which incorporates the amendment to article 20(1) as discussed at the hearing.* Mrs Helen Woolley, on behalf of MPAG, raised concerns that article 20(1)(b) was drafted broadly and queried whether the oCEMP and oOEMP provided security so that the proposed layout of panels and mitigation areas could not be changed again once the project has gone through its final design stage and the local planning authorities have signed it off. In response, Mr Fox, on behalf of the Applicant, said that the controls in the DCO apply regardless. The article is only trying to provide clarity on land powers and that the Applicant can only acquire land to use it for the purposes in the Order – it is not trying to circumvent any of the controls that have been discussed in submissions and previous hearings. In response to Mrs Sue Holloway's (on behalf of MPAG) query about what "other purposes" in article 20(1)(b) might refer to, Mr Fox, on behalf of the Applicant, said that the point is related to the wording in Schedule 1 which lists out the specific list of things the undertaker can do, but there is also wording to reflect how, at this point in the design process, ultimately there will be something that has not been thought of that will be needed but will not be known about until further into the detailed design process. The control for the wording in Schedule 1 is tied to the Environmental Statement. The wording in article 20 should not be read in isolation but in this context; all the article is trying to provide is clarity of the extent of the land powers.
Article 22: Any further questions from ExA	In response to the ExA's comment that Applicant's has previously stated the article enables rights to be acquired rather than full compulsory acquisition of land (so there is not as much interference) and ExA's request for an explanation about how this article would work in practice, Mr Fox on behalf of the Applicant said firstly given the position with option agreements it would be in a worst case that the Applicant would be using these powers. He said a practical example may be that in one of the solar areas, once detailed design is completed, it may be found that in a field currently set out for solar, cabling and other aspects the Applicant may only need cabling. In that scenario, the Applicant would use the article 22(1) powers to acquire rights rather than take full powers. Mr Fox added as a general point that article 22(1) as a concept is positive because it is giving the Applicant the flexibility to use less powers in respect of pink land on the land plans. If article 22(1) is removed then the Applicant would have to use the full acquisition powers where there are pink land plots rather than have the ability to acquire rights instead if the situation allowed. The pink land plots all relate to agricultural land. The ExA said it did not sound like landowners were aware of this and, referring to Schedule 9, queried why no equivalent schedule with these potential rights had not been provided. In response, Mr Fox, on behalf of the Applicant, said the cabling was an example he could think of, but there are other examples that may exist that he is unable to think of because of the nature of

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	where the project is in terms of its design and the article is designed to provide flexibility. He reiterated the point that it is not a requirement but it is about giving the Applicant the ability to use less powers if the situation allows.
Articles 29 & 30: Any further questions from ExA	No further comments were made about these articles.
Article 43: Any further questions from ExA	M Matt Fox, on behalf of the Applicant, responded to Mr Marc Willis' (Lincolnshire County Council) query to clarify that article 43 applies to 'not requirements' and that this article would capture highways approvals (which is in the form of reasonable satisfaction / reasonably agreed). He also clarified that in the absence of a side agreement, article 43 is separate to Schedule 16 and there is an 8-week timescale for approval (which has previously been extended from 6 weeks). In response to the ExA's comment about whether there is any inconsistency between article 43 and Schedule 16, Mr Fox said that the purpose of article 43 is to create a level of certainty that Schedule 16 does not, which is why it has the element of deemed approval.
b) Any comments from Interested Parties on any other Articles?	In relation to article 44 (guarantees in respect of payment of compensation), Mrs Holloway, on behalf of MPAG, said there had been a conversation at the Compulsory Acquisition Workshop held the previous week where the Applicant said they would remove any barrier to residents claiming compensation for cable works activity going through Essendine. She asked whether this could be secured in the DCO and whether article 44 was the appropriate place for this. Mr Fox, on behalf of the Applicant, said even if willing to do that, article 44 was not the appropriate place to do so as its purpose is to provide assurance to the Secretary of State that the Applicant has the money to pay compensation and that questions of compensation were not a planning consideration for the inspectors or the Secretary of State to consider. He said that it is not appropriate for this to be secured in the DCO and it was his understanding that the Applicant had already made a commitment on its website that if it gets the powers and has to come through the village then villagers should talk to the Applicant on this point.
5. Schedule 1 – Authorised development	
a) Including question regarding the generality of the final paragraph.	In response to the ExA's request for justification for the generality of the final paragraph in Schedule 1 and why it is needed for this project, Mr Matt Fox, on behalf of the Applicant, said that the wording is very well-precedented, for example, in Tilbury2, A14, Silvertown Tunnel DCOs and that it was important to note that it is limited to the Order limits and in connection with the authorised development. He said that its purpose is for when there is a scenario where at detailed design the Applicant realises that there is something that is required in order to deliver the project, however, it is something that had not been thought of before (and could not be known at this stage in the design) and is not specially listed. Without the drafting, the Applicant would need to get a separate planning permission because the DCO at Schedule 1 is setting out what the Applicant has permission to do, even though this

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	thing is required to build the scheme that already has planning permission. The drafting in Schedule 1 for the further associated development is also subject to NEWT wording so there is a control to ensure the Applicant does not go outside what has been assessed in the Environmental Statement. Mr Fox also flagged that he is unable to give an example of what may come under "any other further associated development" because if he could it would be added to the list (a) to (n) in Schedule 1 and that was the whole point why the drafting is present. The principle that large schemes need flexibility because developers cannot foresee every eventuality and everything they may need consent for at the earlier design stages is a principle that affects any large scheme, not just this one. He said there were controls such as enforcement and the opportunity for detailed design to be approved and signed off under Requirement 6 In response to ExA's query whether Requirement 5 would cover this, Mr Fox said Schedule 1 was not caught by Requirement 5 and also Schedule 1 is what the Applicant has got consent to do, if it is something they needed to do in connection with the authorised development and it is not on the list without the drafting they would not have planning consent for it. Mr Justin Johnson, on behalf of Rutland County Council, said the council understood that on large schemes unexpected things can arise and that if this flexibility is used like a non-material change on a normal planning application, then this position is quite reasonable. However, the council's concern is that there could still be a relatively big change to what was originally envisaged even if it had a little environmental impact and conform to the NEWT wording. Mr Fox, on behalf of the Applicant, flagged that this is where the controls in Requirement 6 come into play and the local planning authorities would have to consider what was put before them. There are also other controls in other requirements for items not falling within detailed design approval such as landscaping (requirement 7), fencing (requirement 8), drainage (requirement 9) etc. Mr Fox added that he is not aware of an example of a DCO where this wording was put forward in the draft DCO and the Secretary of State has not allowed the wording to be used.
6. Schedule 2 - Requirements	
a) Update from the Applicant on general progress being made on agreement of the draft Requirements with relevant Interested Parties	No substantive comments were raised for this item.
b) The ExA will ask questions and seek any comments on the draft DCO Requirements including the following:	n/a

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R3: Phasing of the authorised development and date of final commissioning	In response to the ExA's query about why there had been the addition of requirement 3(4), Mr Matt Fox, on behalf of the Applicant, said it was needed for the changes in requirement 18 to work and the amendment to refer to a plan identifying the phasing areas was a result of Rutland County Council asking for this to be added.
R5: Approved details and amendments to them	Mr Matt Fox, on behalf of the Applicant, explained that the amendment was to allow (without amending the whole DCO) for any tweaks to the net gain units in Requirement 7 once the metric has been agreed with the local planning authorities.
R6: Detailed design approval	Mr Matt Fox, on behalf of the Applicant, said additions to Requirement 6(2) were to take account of the archaeological investigations and evaluations in the outline written scheme of investigation and details under the highways articles as discussed earlier in the hearing. In response to Mrs Holloway's and Mrs Helen Woolley's (MPAG) comments that in the event that the approved detailed design does not use all of the land shown in the current plans for PV solar arrays then the Order limits should be reduced, Mr Fox said that Requirement 6 is consistent with Requirement 7 and the two would work together so that to the extent that the Applicant does not build out on any area of land then that would be used for farming or landscaping. In response to a query from the ExA who suggested that this was the case, he agreed to check if this is set out in the oLEMP at Deadline 7. ***Post-hearing note (and in response to Action Point 15):*** *This is not stated in the oLEMP, but it is a position the Applicant has set out in its submissions throughout Examination. As set out at the Hearing, the LPAs will, in considering Requirement 6 and 7, be able to see how any land that is not used for solar is otherwise proposed to be utilised.* Mr Fox also said that the Applicant was not proposing any mechanisms for the Order limits to change because once the detailed design approvals are in place the DCO can only be built out in accordance with these, even if the Order limits end up being wider than the scheme in that detailed design. Mr Gareth Phillips, on behalf of the Applicant, said that at detailed design the relevant consultees considering where to put the panels may find that there is not much to say on this because the design is linear in nature, however, aspects such as landscaping and the skylark plots would be opportunities where consultees have an opportunity to influence the layout.
R7: Landscape and ecology management plan	Mr Matt Fox, on behalf of the Applicant, explained that the drafting had been amended so that the LEMP must include percentages for habitat and hedgerow units in the DCO, and not just Biodiversity Net Gain, and the metric used to calculate those percentages (which has to be approved by the local planning authority under requirement 5).
R9: Surface and foul water drainage	In response to the ExA's comment about whether there was any benefit in having one single document to cover water issues for construction and operation phase (rather than two separate documents), Mr Matt Fox, on behalf of the Applicant, said he did not think so because construction management methods had different considerations compared to those in the operational phase (which is why the two water-related documents were 20 to 30 pages each) and it was a standard approach to have two separate plans.

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	Mr Fox agreed the Applicant would check and ensure that Requirements 9 and 14 of the DCO in respect of the water management plan and soil management plan were drafted to ensure that the plans are consistent with one another, given the concerns raised at ISH4. ***Post-hearing note (and in response to Action Point 16:*** *The Draft Development Consent Order updated and submitted at Deadline 7 has been amended to provide for consistency between the water management plan and the soil management plan.*
R10: Archaeology	Mr Matt Fox, on behalf of the Applicant, clarified that Schedule 16 would be amended so that it applies to site specific WSIs (as well as other subsidiary approvals that had been discussed earlier in the hearing). ***Post-hearing note:*** *The Draft Development Consent Order submitted at Deadline 7 has been updated to amend Schedule 16 so that it covers approval of subsidiary documents.*
R13: Construction Traffic Management Plan	Mr Matt Fox, on behalf of the Applicant, confirmed that following the discussions in Issue Specific Hearing 4 (ISH4) that the Applicant would make it clear that if the Applicant is only submitting a Construction Traffic Management Plan (CTMP) [REP6-014] to one local planning authority, they will still send a copy of the CTMP to the other local highway authority for information so that they are aware of it. Mr Fox said this may involve amendments to the CTMP only or both CTMP and DCO at Deadline 7. ***Post-hearing note:*** *The Draft Development Consent Order submitted at Deadline 7 has been updated to provide that if the CTMP is submitted to one local planning authority for approval, it will also be sent to both local highway authorities so that they are aware of what has been submitted.*
R16: Operational noise	No substantive comments were raised about this requirement.
R18: Decommissioning and restoration	Mr Matt Fox, on behalf of the Applicant, explained that the revisions to Requirement 18 were to move the reference to the timing of the Decommissioning Environmental Management Plan (DEMP) so that the DEMP needs to be signed off prior to the decommissioning work being undertaken. He also flagged that this needed to be read alongside section 2.4 of the Outline Operational Environmental Management Plan (oOEMP) which sets out the process to provide certainty for what happens if decommissioning were to happen before the 60-year time limit. He explained that the process in the oOEMP involves the Applicant having to provide notice to the relevant planning authority if part of the site is not generating electricity for non-maintenance reasons and, if after 12 months from the date of the notice, that part is still not generating electricity then that decommissioning must commence for that part. This means a DEMP should be approved by the local planning authority before that 12-month notice period expires. There are some exemptions carved out such as force majeure events or non-generation due to National Grid activities causing a cessation of electricity generation, but for certainty there is an obligation for the Applicant to provide updates every 3 months with either a programme to recommence generation or a statement saying they do not intend to recommence generation (and if that is the case the 12-month countdown to decommissioning starts).

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	In response to the ExA's query about when the "date of final commissioning of Work No. 1" is for the purposes of the requirement if there were phasing and the commissioning of the final phase did not happen for some reason, Mr Fox flagged that the "date of final commissioning" was "subject of the last notice given by the undertaker pursuant to requirement 3(4)" so if the Applicant only carried out three out of four phases then the end of phase 3 would be the last notice and that would be the date of final commissioning. Following a comment by the ExA asking if it is clear enough that all parts of the development are to be decommissioned in the DEMP, Mr Fox said section 2.1 of the oDEMP says what works are to be decommissioned and that the DEMP will include a programme of works, however, the Applicant would check the oDEMP to make sure it is clear that DEMPs must provide confirmation that all decommissioning works referred to in the oDEMP will take place. He clarified that as part of local planning authorities approving the detail of the DEMP they will approve the timing of decommissioning and works being removed would include any concrete feet used as part of the construction of the panels. Mr Fox also said the DCO would be amended so what is currently the final sentence of requirement 18(1) is set out as a separate sub-paragraph. ***Post-hearing note (and dealing with Action Points 17 and 18):*** *Requirement 18 and the ODEMP have been updated to provide the clarity sought by the ExA and the LPAs, including having wording on the face of the DCO dealing with timing.*
c) Any further relevant comments on the proposed requirements or the need for any further requirements?	Mr John Hughes (Affected Person) queried whether he and other residents would be consulted about elements of detailed design when these items came before the local authorities for consideration. He set out his specific concern in respect of the substation bund and whether the local planning authorities would consult about what the proposed appearance of this bund would be when they were considering it at the detailed design approval stage. Mr Matt Fox, on behalf of the Applicant, said that the information currently in the Application about the bund and the substation is not going to change before any potential making of the DCO. Post-making of the DCO, the details of the bund and substation will be go to the local planning authority under Requirement 6 to either approve or not approve (but the detailed design will be NEWT in respect of the effects assessed in the Environmental Statement). Whether the local planning authorities engage with the local community on these discharges is a question for them to answer, not the Applicant.
7. Schedules 3 to 14	
a) Addition to Schedule 8 (Traffic Regulation Measures) at D5.	Mr Matt Fox, on behalf of the Applicant, discussed that following the discussion at CAH2 that cabling would no longer be proposed on Pickworth Road, the Applicant would be reviewing the need for traffic management measures on Pickworth Road, as they had been added to Schedule 8 to account for those works.

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	Post-hearing note: *Following review, it has been determined that the ability to impose these traffic regulation measures should be retained. This is to accommodate potential cabling works along the mouth of the junction of Pickworth Road and the A6121 – which due to the proximity of the railway bridge and narrow footway on the southern side, could constrain where the cabling could sit in the carriageway and the range of traffic calming options available for the principal contractor. This is due to the narrow width of Pickworth Road and that there are no suitable places to turn a vehicle around once joining from the High Street, which could mean a vehicle travelling south from the High Street could get stuck in the event that the cabling works need to cross the mouth of the A6121 / Pickworth Road junction. The ability to close Pickworth Road to manage that risk is therefore required.* *However, the Access and Rights of Way Plans and accompanying Schedules have been amended to remove reference to the street works needed to undertake that cabling.*
b) Any other relevant comments on Schedules 3 to 14?	The ExA requested that the Applicant thoroughly checks Schedule 13 to ensure the plans to be certified are up to date with correct dates. ***Post-hearing note****: The draft Development Consent Order updated and submitted at Deadline 7 includes an updated Schedule 13.*
8. Schedule 15 – Protective Provisions	
a) Applicant to provide update on progress made towards agreement of Protective Provisions, including Part 5 (Environment Agency) and Part 7 (Network Rail).	Mr Matt Fox, on behalf of the Applicant, said there was only the Environment Agency left to fully finalise and that should be done in time for Deadline 7. ***Post-hearing note***: *The Protective Provisions have now been fully finalised and agreed between the Applicant and the Environment Agency. The draft Development Consent Order, updated and submitted at Deadline 7, has been updated to include this agreed form of Protective Provisions.*
b) Comments from any relevant Undertaker as necessary where any disagreement remains.	N/A.
9. Schedule 16 – Procedure for discharge of requirements	
a) Update from Applicant on latest drafting.	Mr Matt Fox, on behalf of the Applicant, said the Applicant was not proposing to make any further changes to the time periods in Schedule 16 and was prepared to allow the Secretary of State to decide the time periods in light of submissions from all parties. He said that the Applicant had added provision on fees because they accepted that the rules that applied to reserved matter application fees also apply here. In response to Mr Justin Johnson's (Rutland County Council) comment that previous information provided included higher fees for reserved matters and sums of money related to them, while the current DCO drafting appeared to be limited to discharge of condition fees which are significantly lower, Mr Fox said he would take the point away for further consideration.

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	Post-hearing note (and dealing with Action Point 19): *The Applicant has updated Schedule 16 at Deadline 7 to ensure consistency between the approach to time periods and fees (in terms of what are considered the 'complex' requirements and the fee amounts) and to amend to the drafting to reflect the Applicant's original offer to the LPAs.*
b) Relevant comments from Interested Parties.	No further comments were raised during this section.
10. Proposed Community Liaison Group	
a) Update and comments from IPs (including on the relevant content in the Outline Construction Environmental Management Plan [REP5-059].	Mr Matt Fox, on behalf of the Applicant, explained how the latest oCEMP provides that a Community Liaison Group will be created and the appendix to the oCEMP provides some suggested terms of reference (including how meetings are arranged, agendas agreed and that the Applicant will meet the cost for the group to meet). Mrs Holloway, on behalf of MPAG, said that due to the examination and the complex nature of setting up a group like this they needed more time to give the terms of reference of the group due consideration after the examination has finished. Mr Trevor Burfield, on behalf of Essendine Parish Council, agreed with Mrs Holloway and added that parish councils are underfunded so the Applicant should be paying for people from the community to represent the community on this group because it will be a stressful job particularly in the early days and when construction commences. Mr Burfield also flagged that the terms of reference at section 2.3 states members of the public can be co-opted if all members of the group agree, but if there are 25 people on the group it will be difficult to get the consensus to allow someone to be co-opted so Mr Burfield recommended changing this to a simple majority vote. In response to Mrs Holloway and Mr Burfield's comments, Mr Fox said that he would take Mr Burfield's comments away to consider. In respect of Mrs Holloway's point he said the Applicant would look at adding points to the terms of reference to allow the first meeting to be a discussion about how the group will work and updating the terms of reference as well as allow for the membership to change if necessary to allow for flexibility. In response to ExA comment that the final details of the terms of reference could be in the final CEMP, Mr Fox said that he did not think it was proportionate for the local planning authority signing off requirement for the CEMP to be delayed by the community liaison group's terms of reference details particularly when the terms of reference can be drafted in such a way that the these are discussed at the first meeting and the group can go on from there. ***Post-hearing note (and dealing with Action Points 20 and 21):*** *The Applicant has submitted at Deadline 7 an updated oCEMP with updated terms of reference for the Community Liaison Group to allow flexibility for them to be updated post consent. In respect of Parish Council funding, as part of the side Agreement put to the local authorities discussed above, the Applicant has provided that if Parish Councils wish to be reimbursed for their costs in preparing for and attending CLG/TMWG meetings, it will pay those costs at £25 p/h, if reasonably incurred, and if invoices are provided via the local authorities.*

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11. Any other relevant matters	
	N/A.
12. Review of actions arising	
	Please see the Applicant's submissions in this document as to how the Action Points have been dealt with.
13. Next steps (including the remaining Examination timetable)	
	In response to the ExA's proposed changes to the examination timetable, Mr Matt Fox, on behalf of the Applicant, said that he was generally happy with the amendments. He proposed an additional Deadline 7.5 on 24 October 2023 for the Applicant to respond to the ExA's Schedule of Changes / Commentary on the draft DCO so that all parties could see the ExA's position about the DCO drafting and the Applicant's response ahead of Deadline 8 submissions due on 31 October 2023. He also said he was happy with all parties' closing submissions being submitted together at Deadline 10 on 16 November 2023.

Appendices

Appendix A NREL – Historical Cell Efficiencies 1975 – 2023 (Statement of Need Figure 10.2)

Best Research-Cell Efficiencies

NREL
Transforming ENERGY