



Application by Mallard Pass Solar Farm Limited for the Mallard Pass Solar Farm (EN010127)

The Examining Authority's commentary and questions on the draft Development Consent Order

Issued on Wednesday 18 October 2023

The following table sets out the Examining Authority's (ExA's) commentary and questions in relation to the latest version of the draft Development Consent Order (dDCO) [Clean version: REP7-009 & Tracked version: REP7-010].

This document takes into account the evidence submitted to the Examination to date. Some aspects of the dDCO are under active discussion between the parties. The ExA will consider any further evidence that is submitted before the close of the Examination in making its recommendation to the Secretary of State (SoS).

Column 1 assigns each row a unique reference number. When you are responding to a question or item, please start your answer by quoting the unique reference number.

Column 2 of the table indicates to which Interested Parties (IPs) and other persons each question or comment is primarily directed to. Please respond to all questions/comments directed to you, providing a substantive response, or indicating that the matter is not relevant to you for a reason. This does not prevent an answer or comment being provided to a question by a person to whom it is not directed, should the matter be relevant to their interests.

If you are responding to a small number of comments or questions, answers in a letter will suffice. If you are answering a larger number of questions, it will assist the ExA if you use a table based on this one to set out your responses. An editable version of this table in Microsoft Word is available on request from the case team: please contact MallardPassSolar@Planninginspectorate.gov.uk

In accordance with the revised timetable [PD-015] responses **from the Applicant are required by Deadline 8 (Wednesday 25 October 2023)** and subsequently comments **from Interested Parties are required by Deadline 8A (Wednesday 1 November 2023)** which can take account of the Applicant's D8 response.

The Applicant's final DCO is required to be submitted by Deadline 9 (Friday 10 November 2023). This should be accompanied by an up-to-date Schedule of Changes along with an updated Explanatory Memorandum reflecting the revisions made during the Examination.

Parties are reminded that the Examination closes on **Thursday 16 November 2023**. Any matters not agreed or concluded, and fully documented as such, will fall to be adjudicated by the ExA through its Recommendation to the Secretary of State.



Questions and comments are directed to the following parties:

The Applicant

Lincolnshire County Council

Rutland County Council

South Kesteven District Council

Environment Agency

Mallard Pass Action Group

List of frequently used abbreviations:

D	Deadline
DCO	Development Consent Order
EA	Environment Agency
CEMP	Construction Environmental Management Plan
OEMP	Operational Environmental Management Plan
LCC	Lincolnshire County Council
MPAG	Mallard Pass Action Group
RCC	Rutland County Council
SoS	Secretary of State
SKDC	South Kesteven District Council

The Examination Library

References in these questions set out in square brackets (e.g. [APP-010]) are to documents catalogued in the [Examination Library](#). The Examination Library is updated as the Examination progresses.



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DCO1 1.	Party directed to: Part 1: Preliminary	Question and/or commentary:
Q1.01	Applicant LCC RCC SKDC	<p>Article 2 (Interpretation) “maintain”</p> <p>a) Confirm whether or not you agree with the related wording in section 2.2 of the updated outline Operation Environmental Management Plan (OEMP) [REP7-018]. If disagreement remains, including in relation to the maintenance schedule approval provision, please provide justification along with any alternative suggested drafting for consideration.</p> <p>b) Can the Applicant confirm whether or not it agrees to LCC’s [REP7-040] suggested drafting for paragraph 2.2.2 of the outline OEMP? Please provide clear justification for any disagreement in addition to your preferred drafting.</p>
Q1.02	Applicant	<p>The interpretation of maintain has been revised at D7 [REP7- 010] to include ‘(but not remove, reconstruct or replace the whole of Work No. 1 at the same time)’.</p> <p>Explain the reasoning for including the words at the same time in the interpretation. In the context of panel replacement what does it actual mean in terms any specific period (e.g. over one week, one month etc). Can more specific terminology be provided?</p>
Q1.03	Applicant	<p>The outline CEMP [REP7-018] includes the restriction in paragraph 2.2.2 that the traffic movements associated with the planned maintenance activities will be no more than 5 daily HGV two-way movements. Approximately how many panels would this allow to be replaced a daily basis?</p>
Q1.04	Applicant	<p>In paragraph 1.2.4 of its D7 submission [REP7-056] Mallard Pass Action Group (MPAG) suggest that day to day maintenance should be split out from the replacement of panels and assessed accordingly. MPAG also goes onto suggest that the replacement of panels should have its own definition in the DCO.</p> <p>The Applicant is requested to comment on these suggestions in the context of the proposed sixty year operational time limit.</p>

DCO1 2.	Party directed to:	Question and/or commentary:
Part 2: Principal Powers		
Q2.01	The Applicant	<p>Article 5 (Power to maintain authorised development)</p> <p>As noted above, the interpretation of maintain has been revised at D7 [REP7-010] including that ‘such works do not give rise to any materially new or materially different environmental effects than those identified in the environmental statement <i>for the operation of the authorised development.....</i>’.</p> <p>As Article 5 provides the power to maintain the authorised development, and for clarity and consistency, does this additional wording (in bold above) also need to be added to Article 5(3)?</p>
Q2.02	The Applicant	<p>Article 5 (Power to maintain authorised development)</p> <p>The ExA considers that Article 5 (3) should be amended to ‘<i>This article does not authorise the carrying out of any works which are likely to give rise to any materially new or materially different effects that have not been assessed in the environmental statement for the operation of the authorised development</i>’.</p> <p>This is to ensure consistency with the wording used in the interpretation of ‘maintain’ in Article 2. It will also remove uncertainty that could arise from the words ‘are likely to’.</p> <p>For further consistency and certainty, the Applicant is asked to amend such other references where the words ‘are likely to’ or ‘are unlikely to’ are used elsewhere in the draft DCO and outline management plans.</p>
Q2.03	The Applicant	<p>Article 6 (Application and modification of statutory provision)</p> <p>In the context of section 150 of the Planning Act 2008, the Applicant is requested to provide an update on progress being made to achieving the necessary consents for the relevant provisions in Article 6.</p>
3. Part 3: Streets		
Q3.01	The Applicant	<p>Article 9 (Power to alter layout, etc. of streets)</p> <p>a) With regard to Article 9(3), the ExA questions whether it is appropriate for a DCO to include such a provision relating to land that is outside of the Order limits. Such works would not be included in the scope of development consent for the authorised development to be carried out within the Order limits under Article 3 (Development consent etc. granted by this Order). Furthermore, the ExA questions</p>

DCO1	Party directed to:	Question and/or commentary:
		<p>whether the need to obtain a number of consents in this regard would have such implications to justify the inclusion of this provision.</p> <p>b) Should Article 9(3) be, in a any case, subject to the 'no materially new of materially different effects' caveat given, for example, the potential for unforeseen circumstances such as the creation of passing places in an SSSI?</p>
Q3.02	The Applicant & LCC	<p>Article 12 (Claimed public right of way)</p> <p>The Applicant explains in its Summary of Oral Submissions for ISH5 [REP7-037] that this Article has been further updated to account for comments from LCC.</p> <p>a) Can LCC confirm whether or not it is now in agreement with the drafting of this Article in the latest draft DCO [REP7-010]?</p> <p>b) If outstanding concerns do remain the parties are also asked to continue discussions in order to seek to achieve an agreeable wording by Deadline 8A (Wednesday 1 November 2023).</p> <p>c) For any remaining concerns, both parties are requested to set out what these are with justification and suggest any alternative drafting that might overcome the concerns?</p>
<p>4. Part 5: Powers of Acquisition</p>		
Q4.01	The Applicant	<p>Article 20 (Compulsory acquisition of land)</p> <p>In spite of the amendment made to this Article at D7 [REP7-010], the ExA does not consider that there is a reasonable justification for its inclusion in this draft DCO and Article 3 (Development consent etc. granted by the Order) provides in any case that the undertaker is granted consent for the authorised development to be carried out within the Order limits. The ExA therefore suggests that Article 20 (1) (b) is omitted.</p>
Q4.02	The Applicant	<p>Article 20 (Compulsory acquisition of land)</p> <p>a) Can the Applicant provide an update on the proposed additional wording (including any without prejudice wording) with regards to the cable crossing options.</p> <p>b) On the assumption that only one railway cable crossing option is implemented, what would the implications be for the compulsory acquisition powers sought in the draft DCO in relation to the proposed cable crossing options no longer required? Please also respond to MPAGs Deadline 7</p>

DCO1	Party directed to:	Question and/or commentary:
		<p>comments regarding the cable iterations both north and south of the railway line and the uncertainty for plots south of Uffington Lane on the A6121 [REP7-059)?</p>
Q4.03	The Applicant	<p>Article 22 (Compulsory acquisition of rights) Bearing in mind the advice in Advice Note Fifteen: Drafting Development Consent Orders, the ExA questions the general power in Article 22(1) to impose restrictive covenants over the Order land in the absence of a specific and clear justification for conferring such a wide-ranging power in the circumstances of the proposed development and without an indication of how the power would be used.</p> <p>Without such a specific and clear justification the ExA is minded to amend Article 22(1) to remove the general power to 'impose such restrictive covenants over the Order land'.</p>
Q4.04	The Applicant	<p>Article 29 (Temporary use of land for constructing the authorised development) The ExA considers it appropriate to extend the notice period in Article 29(3) from 'not less than 14 days' to 'not less than 28 days'. A longer notice period appears to be reasonable given the uncertainties at this stage as to which land will be required for temporary possession. It also appears unlikely that a 28 day period would cause any significant issue for the construction programme and it would provide for a balance between the needs for this project and the longer proposed three notification period set out under the Neighbourhood Planning Act 2017.</p>
Q4.05	The Applicant	<p>Other The D7 submission on behalf of Mr Richard Williams includes suggested drafting for an Article to apply the Crichel Down rules to the Applicant [REP7-070].</p> <ol style="list-style-type: none"> a) The Applicant's response is requested to this suggested drafting. b) If this suggested drafting is not agreed, provide alternative drafting for such an Article for use should the Secretary of State consider it to be necessary in this case.

DCO1	Party directed to:	Question and/or commentary:
5. Schedule 1: Authorised Development		
Q5.01	The Applicant	<p>Further associated development</p> <p>The ExA considers that the wording below Work No.7 should read:</p> <p>'In connection with and in addition to Work Nos. 1 to 7 further associated development within the Order limits <u>comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the authorised development</u>, and insofar as they are unlikely to which do not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement, including-'</p> <p>This provides for more certainty and clarity (as set out in the commentary on Article 5 above) and prevents the need for the additional paragraph at the end of Schedule 1 which the ExA considers is superfluous and should be deleted.</p>
6. Schedule 2: Requirements		
Q6.01	The Applicant LCC RCC SKDC	<p>R5 (Approved details and amendments to them)</p> <p>The ExA seeks views on whether it would be appropriate to add the following wording to R5(2) in order for certainty that any proposed changes are non-material:</p> <p>'Approval under sub-paragraph (1) for the amendments to any of the Approved Documents, Plans, Details or Schemes must not be given <u>except for non-material changes and</u> where it has been demonstrated to the satisfaction of the relevant planning authority or both relevant planning authorities (as applicable) that the subject matter of the approval sought is unlikely <u>would</u> not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.</p>
Q6.02	The Applicant LCC (b) RCC (b) SKDC (b) MPAG (b)	<p>R6 (Detailed design approval)</p> <p>a) Is it intended that R6(f) includes electrical cables as proposed under Work Nos. 1, 2 and 3? The current drafting refers to 'power and communication' cables which should be clarified for the avoidance of any doubt and to ensure that the detailed design of the electrical cables falls for approval under this Requirement.</p>

DCO1	Party directed to:	Question and/or commentary:
		<p>b) With further regard to the proposed cabling, would a requirement for the submission and approval of a method statement for the construction and maintenance of the proposed cabling be necessary for the Proposed Development in this case?</p>
Q6.03	The Applicant LCC	<p>R6 (Detailed design approval) Please confirm whether the Applicant is in agreement with the suggested additions [REP7-040] to R6(2) in the event that the Secretary of State considers that additional trial trenching is required under Requirement 10 (Archaeology). If not, can agreement be reached between the parties on appropriate alternative drafting?</p>
Q6.04	The Applicant	<p>R10 (Archaeology) Please refer to the related questions on archaeology in the ExA's Rule 17 letter dated 18 October 2023. These matters are relevant to our consideration of the drafting of Requirement 10, including consideration of the Applicant's 'without prejudice' drafting set out in the cultural heritage section of REP4-041.</p>
Q6.05	The Applicant	<p>R10 (Archaeology) The Applicant's 'without prejudice' drafting of Requirement 10 [REP4-041] (in the event the Secretary of State (SoS) considers that the issue of trenching needs further consideration) provides that the scheme is determined by the Secretary of State in consultation with both relevant authorities. Whilst the Applicant says that it is very important for the determination of this to be by the Secretary of State, given the inclusion of provisions for appeal to the SoS in Schedule 16 of the draft DCO, why is this so critical?</p>
Q6.06	The Applicant LCC RCC	<p>R10 (Archaeology) Notwithstanding the other considerations relevant to this Requirement, the current drafting of R10 is inconsistent with that for other Requirements where final versions of documents (which must be substantially in accordance with the relevant outline plan) require approval. For consistency, should it be amended to require the approval of a detailed WSI for each phase which must be substantially in accordance with the outline WSI?</p>

DCO1	Party directed to:	Question and/or commentary:
Q6.0.7	The Applicant	<p>R18 (Decommissioning and restoration)</p> <p>a) Please respond to the suggestion from MPAG [REP7-056] that a time limit should be incorporated within this Requirement for the period of decommissioning activity.</p> <p>b) What measures are imposed by the draft DCO to ensure that the entirety of the development is satisfactory decommissioned within a reasonable timeframe?</p> <p>Note that the ExA will be considering whether the proposed 60 operational period set out in this Requirement is appropriate and reasonable for the proposed development, further to the receipt of remaining submissions made during the Examination.</p>
Q6.0.8	The Applicant Environment Agency (EA) LCC RCC SKDC	<p>R19 (Long-term flood risk mitigation)</p> <p>a) If still required, please provide an update on whether the wording of this newly proposed Requirement has been agreed with the EA along with the relevant authorities. If not required, please provide reasons.</p> <p>b) Is it appropriate for the matters in R(2)(a) to be approved by the EA, rather than in consultation with the EA. What is the justification for this when usually such matters would fall for the approval of the relevant planning authority (and local lead flood authority)?</p> <p>c) Comments from relevant interested parties are invited on this proposed Requirement and related flood risk matters.</p>
<p>7. Schedule 15: Protective Provisions</p>		
<p>Any Protective Provisions that are not agreed between the parties and fully documented as such by the close of Examination will fall to be adjudicated by the ExA through its Recommendation.</p>		
Q7.0.1	EA	<p>Part 5 (For the protection of the Environment Agency)</p> <p>Noting the Applicant D7 submission [REP7-037] that the Protective Provisions have been fully finalised and agreed, can the EA confirm whether this is correct and consequently whether it now consents to the disapplication of the need for a flood risk activity permit and any applicable bylaws under the Water Resources Act 1991, for the purposes of section 150 of the Planning Act 2008?</p>

DCO1 8.	Party directed to:	Question and/or commentary:
Schedule 16: Procedure for Discharge of Requirements		
Q8.01	The Applicant	<p>Applications made under Requirement</p> <p>The ExA is of the view that there is merit in there being a consistent ten week determination period for the discharge of all requirements taking account of the potential need for consultation with relevant parties along with the benefits for consistency and certainty that would result for all parties. Whilst understanding the Applicant's comments that this is a nationally significant infrastructure project and that there is a need to ensure there is unacceptable delay to implementation, why would an additional two weeks determination time for the discharge of certain Requirements cause any material delay to implementation?</p>
Q8.02	RCC, SKDC, LCC	<p>Please provide any final comments on the drafting of Schedule 16 by Deadline 8A (Wednesday 1 November 2023), including justification for any proposed change and any proposed alternative drafting where any disagreement remains.</p>
Q8.03	The Applicant	<p>Appeals</p> <p>a) Under Schedule 16 4(2), would it be appropriate to insert a time period (e.g. 42 days) within which the undertaker has to make any appeal? This could take the form of the following wording (notwithstanding Q8.0.1):</p> <p>'Any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the relevant time period set out in paragraphs 2(1) or 2(2), giving rise the appeal referred to in sub-paragraph 4(1).'</p> <p>b) The ExA considers that 4(2)(e) should be amended as follows:</p> <p>' The appointed person must make their decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 working days of <u>after</u> the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d);'</p>
9. General matters		
Q9.01	The Applicant	<p>Please submit by Deadline 9 an updated and final Explanatory Memorandum which takes into account the DCO matters that have progressed and revised during the Examination.</p>

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