Mallard Pass
Solar Farm

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Applicant's Response to ExA's Commentary and Questions on the draft Development Consent Order

Deadline 8 (25th October 2023)

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Infrastructure Planning (Examination Procedure) Rules 2010

Mallard Pass Solar Farm

Development Consent Order 202[x]

9.48 Applicant's Response to the ExA's Commentary and Questions on the draft Development Consent Order

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Introduction

This report has been prepared to provide the Applicant's response to the *Examining Authority's (ExA's) Commentary and Questions on the draft Development Consent Order* issued on 18 October 2023 **[PD-018].** It responds to each of the questions posed to the Applicant. The Applicant has not responded to questions posed to specific Interested Parties but will review those responses once available and may comment on those at Deadline 8A.

Applicant's response to ExA's commentary and questions on the draft DCO

DCO1 1.	Party directed to: Part 1: Preliminary	Question and/or commentary	Applicant's Response
Q1.0.1	The Applicant LCC RCC SKDC	**Article 2 (Interpretation)** **"*maintain*"** 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. 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.	Part a) – This question is not directed to the Applicant. Part b) – The Applicant has reviewed and disagrees with LCC's suggested drafting **[REP7-040]** for paragraph 2.2.2 of the outline OEMP **[REP7-018]**. This is because the Applicant's amendments to the outline OEMP at paragraph 2.2.2 and new paragraph 2.2.4 submitted at Deadline 7 **[REP7-018]** reflect what was discussed at Issue Specific Hearing 5 (ISH5) **[REP7-037]**. This was that the Applicant believes it would be disproportionate for the local planning authorities (LPAs) to approve every maintenance schedule and would query why they need such broad powers, particularly as maintenance activities generally are controlled by the measures in the OEMP. At the Hearings, it was clear that the LPAs were not seeking such a broad power. However, the Applicant has provided that where the maintenance schedule involves the replacement of solar panels or stations those activities cannot take place until the LPAs have provided confirmation that they agree these replacements will not lead to materially new or materially different environmental effects to those identified in the assessment of the operational phase of the Environmental Statement (ES).
Q1.0.2	The Applicant	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)'***. 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	The addition of the "at the same time" wording in the "maintain" definition in article 2 is intended to address concerns raised at ISH5 **[REP7-037]** and to make it clear that all of the panels cannot all be replaced at the same time but on an ad-hoc basis, as that is what was provided for in the ES.

		specific period (e.g. over one week, one month etc). Can more specific terminology be provided?	While the Applicant is prepared to restrict its ability to replace the panels so everything cannot be replaced "at the same time", the Applicant is unable to be more specific. This is also subject to controls in the outline OEMP **[REP7-018]**, as explained in the answer to Q1.0.1 above, to ensure that replacement will not lead to materially new or materially different environmental effects to those identified in the operational phase of the ES. If the ExA thinks this additional "at the same time" wording creates lack of clarity then the Applicant is happy to remove the wording, as there are controls in place to restrict replacement of equipment with or without this additional wording.
Q1.0.3	The Applicant	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?	The technology that is available is ultimately an evolving picture as panel designs continue to develop and so any figure given for this answer is an approximation and subject to change. The current panel design information held by the Applicant suggests that a container could hold up to 527 panels and, with up to five daily HGV two-way movements, this could allow for up to 2,635 panels to be delivered to the site each day. Ultimately, however, this does not correlate to how many would actually be installed once delivered (noting that it is not just panels that are required for the solar farm to work, so the HGV movements would be allowing for other replacement equipment where needed). This is because those activities are controlled by the Order and the oOEMP - that replacement of equipment will not lead to materially new or materially different environmental effects to those identified in the operational phase of the ES. The ES has only assessed for ad-hoc replacements as explained in section 5.17 of the ES **[REP2-012],** so anything more than that would be a breach of the DCO.
Q1.0.4	The Applicant	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	As the Applicant explained in ISH5 **[REP7-037],** section 5.17 of the ES **[REP2-012]** sets out the basis and parameters for how the ES has considered effects relating to operation

		replacement of panels and assessed accordingly. MPAG also goes onto suggest that the replacement of panels should have its own definition in the DCO. The Applicant is requested to comment on these suggestions in the context of the proposed sixty year operational time limit.	(servicing, maintenance and replacement of equipment) and at paragraph 5.17.4 states that replacement "*will be on an ad-hoc, low frequency basis only to replace broken or faulty equipment*". The control on maintenance activities (which includes replacement) is in paragraph 2.2.2 of the outline OEMP **[REP7-018]** which sets out that the Applicant has to evidence that there will be no materially new or materially different environmental effects arising from any planned maintenance activities when compared to those identified in the operational phase in the ES. The outline OEMP sets that this includes confirmation that there will be no more than 5 daily HGV two-way movements. Given the above, the Applicant's position is that there is no need to separate maintenance from replacement of panels as they are both assessed together as part of an overarching approach to maintenance activities in the ES and the basis of controlling them is also the same for both. The Applicant does not consider that having a definition of 'replacement of panels' brings any additional clarity or control in that context, not least as the references to 'equipment' are not just to panels, but equipment across the solar farm.
DCO1 2.	**Party directed to: Part 2: Principal Powers**	**Question and/or commentary**	**Applicant's Response**
Q2.0.1	The Applicant	**Article 5 (Power to maintain authorised development)** 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 ***for the operation of the authorised development…..'.*** 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)?	The Applicant has amended Article 5 to include the wording in bold as requested and has submitted the updated draft DCO at Deadline 8.

<table>
<tr>
<td>Q2.0.2</td>
<td>The Applicant</td>
<td>Article 5 (Power to maintain authorised development)
The ExA considers that Article 5 (3) should be amended to '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 statemen for the operation of the authorised development'.
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'.
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.</td>
<td>The Applicant has amended this wording where it is appropriate to do so and has submitted the updated draft DCO at Deadline 8.

Please note that the outline management plans (in particular the outline OEMP [REP7-018] and outline DEMP [REP7-019] do not contain the "likely to" or "unlikely to" wording so these remain unchanged.

The table below sets out where this wording is present in the draft DCO and whether or not it has been amended depending on the context of the drafting.
<table>
<tr><th>Detail of Provision</th><th>Has "are likely to" wording been amended?</th></tr>
<tr><td>Article 5(3) – text as set out in the ExA's question.</td><td>Yes – "are likely to" has been removed.</td></tr>
<tr><td>Schedule 1
"In connection with and in addition to Work Nos. 1 to 7 further associated development within the Order limits, and insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement, including-"</td><td>Yes – "are unlikely to" has been amended to "do not".</td></tr>
<tr><td>Schedule 1
"… further associated development comprising such other works… for the purposes of the authorised development… but only within the Order limits and</td><td>Yes – "are unlikely to" has been amended to "do not".</td></tr>
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			insofar as they are unlikely to give rise to any materially new or materially different environmental effects…"	
			Schedule 2 Requirement 5(2) "Approval under sub-paragraph (1) for the amendments to any of the Approved Documents, Plans, Details or Schemes must not be given except 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 to give rise to any materially new or materially different environmental effects…"	No – this has not been amended. This is because the context is different in Schedule 2 Requirement 5(2) compared to article 5 and Schedule 1. In article 5 and Schedule 1 the context is around what powers the Applicant will have and what they are authorised to do or not do. However, in R5 the Applicant has to present information to demonstrate to the LPA it is not likely to give rise to any materially new or materially different effects compared to the ES, and for the LPA to then make a judgment on that. This is different to stating what the Applicant has authorisation to do under the DCO.
			Schedule 16(4) "Any application made to the relevant planning authority pursuant to sub-paragraph (1) or (2) must include a statement to	No – these have not been amended. This is because the context is different in Schedule 16 compared to article 5 and Schedule 1.

			confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects…" Schedule 16(5)(a): "and the application is accompanied by a report pursuant to sub-paragraph (4) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement…"	In article 5 and Schedule 1 the context is around what powers the Applicant will have and what they are authorised to do or not do. However, in Schedule 16 the Applicant is presenting information to the LPA as to whether it is likely to give rise to any materially new or materially different effects compared to the ES and for the LPA to make a judgement on that. This is different to stating what the Applicant has authorisation to do under the DCO.
Q2.0.3	The Applicant	**Article 6 (Application and modification of statutory provision)** 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.	The Applicant can provide the following update on achieving the necessary consents for the relevant provisions in article 6: Rutland County Council as Lead Local Flood Authority has provided its consent as reported at RCC15-07 in the draft Statement of Common Ground submitted at Deadline 7 [REP7-031]. The Applicant understands the Environment Agency is submitting a statement at Deadline 8 which will confirm its consent for the disapplication of the need for a flood risk activity permit. Discussions between the Applicant and the Upper Witham Internal Drainage Board (which also acts as agent on behalf of Lincolnshire County Council as LLFA) are progressing and ongoing.	
DCO1 3.	**Part 3: Streets**	**Question and/or commentary**	**Applicant's Response**	

Q3.0.1	The Applicant	**Article 9 (Power to alter layout, etc. of streets)** 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 whether the need to obtain a number of consents in this regard would have such implications to justify the inclusion of this provision. b) Should Article 9(3) be, in 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?	In answer to part a), as the Applicant explained in ISH5 **[REP7-037],** Article 9(3) provides the Applicant with the ability to deal with unknown issues that arise on all large infrastructure projects like the Proposed Development in a timely manner so that the project is not unduly delayed. The Applicant's position is that removing the "all streets" wording could lead to wholly disproportionate outcomes. For example, the whole DCO could be prevented from coming forward because of a need to amend a kerb line to facilitate AIL movements and then having to wait for multiple consents to amend a single kerb-line (when the current wording allows for a single consent from the street authority in these circumstances). It is also the Applicant's position that changing Article 9(3) goes against Secretary of State's thinking for other projects and that the justification for keeping the wording in is not just unique to this project but is the same for every other NSIP project in that they can try to prepare for all eventualities but ultimately things change on the ground as projects continue to develop. The purpose of the NSIP regime is to create a one stop shop for consenting the framework of a scheme being brought forward, with appropriate controls in place. This article has that control. In answer to part b), the Applicant's position is that it is unnecessary to add this drafting to the DCO. This is because the power granted in article 9 is not untrammelled as ultimately the street authority will have the final say when it comes to approving the works.
Q3.0.2	The Applicant & LCC	**Article 12 (Claimed public right of way)** 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.	Part a) – This question is not for the Applicant. Parts b) and c) – The Applicant has not been able to discuss this matter with LCC before Deadline 8 but will endeavour to do so before Deadline 8A.

		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]? 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)**. 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?	
DCO1 4.	**Part 5: Powers of Acquisition**	**Question and/or commentary**	**Applicant's Response**
Q4.0.1	The Applicant	**Article 20 (Compulsory acquisition of land)** 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.	The Applicant has considered the ExA's comment. Article 20(1)(b) has been omitted from the draft Development Consent Order that has been submitted at Deadline 8.
Q4.0.2	The Applicant	**Article 20 (Compulsory acquisition of land)** a) Can the Applicant provide an update on the proposed additional wording (including any without prejudice wording) with regards to the cable crossing options. 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 comments regarding the cable iterations	Part a) – The Applicant is still progressing the matter with Network Rail and the signing of the option agreement has not happened yet, although the Applicant is pushing for it to happen as soon as possible. As requested, the Applicant has drafted 'without prejudice' wording to inserted into Article 22 (acquisition of rights) rather than Article 20 (compulsory acquisition of land) (as the powers relate to acquisition) that it would be happy to be imposed if that option agreement is signed before the end of the Examination or decision period. It has set out in its previous submissions why it cannot introduce such drafting until all NR agreements are complete.

		both north and south of the railway line and the uncertainty for plots south of Uffington Lane on the A6121 [REP7-059)?	The wording would be added as a new Article 22(3) and (4) as follows: *(3) The undertaker may only exercise the power conferred by paragraph (2) for one of the following two options in respect of the carrying out of Work No. 4 to cross the East Coast Mainline railway line-* *(a) the land comprising plots 02-51b, 02-52b and 02-54 to 02-147 as shown on the land plans; or* *(b) the land comprising plots 02-139, 02-140, 02-149, 02-151 and 04-22 as shown on the land plans.* *(4) Where the undertaker serves notice to treat under section 5 of the 1965 Act or makes a declaration under section 4 of the 1981 Act over any of the land specified in either sub-paragraph 3(a) or sub-paragraph 3(b), it must at the same time serve on the owners of the land of the other option, a notice specifying that powers under this article cannot be exercised over that land under this Order.* The draft DCO, Land Plans and Book of Reference have been updated to re-plot the relevant area to allow for the drafting above to be easily inserted post-Examination if this is required. The updated Land Plans, Book of Reference and Schedule of Change to Book of Reference have been submitted at Deadline 8. This control should be seen alongside the wording in the oCEMP which provides for relevant notifications to be given to the LPAs and the community if the Essendine option is required. Part b) – The 'without prejudice' wording in the Applicant's response to Part a) makes it clear that when one option is chosen, the compulsory acquisition powers cannot be used for the other option. The 'without prejudice' drafting's use of

			plot numbers to define the land subject to each of the options addresses MPAG's first point in its Written Summary of Case for Compulsory Acquisition Hearing 2 (CAH2) **[REP7-059]** that the drafting should be very clear about the cable routes both north and south of the railway line. In respect of MPAG's concerns about the uncertainty for plots to the south of Uffington Lane on the A6121, the Applicant has addressed this point in its post-hearing note submitted as part of the Summary of Applicant's Oral Submissions at CAH2 **[REP7-035]**. This explains that Plots 02-29 to 02-36 and 02-38 are still required to provide working room for the installation of the cable from Plot 02-23. This is to reflect that it is unlikely that the cable will go straight from plot 02-23 to plot 02-34/02-36, due to the presence of vegetation at the southern edge of that field (although that has been kept in as an option via HDD if plot 02-028 was not feasible for any reason). As such, the cabling will pass through plot 02-028, and then along the A6121, necessitating also the use of those plots to deal with any constraints in the road.
Q4.0.3	The Applicant	**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. 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'.	In its submissions at ISH5 **[REP7-037],** the Applicant explained that the article enables the Applicant to acquire rights rather than having to compulsorily acquire the land in appropriate circumstances so there is not as much interference. The example provided by the Applicant at ISH5 was in respect of cabling and that following detailed design it may be found that in a field currently set out for solar, cabling and other aspects the Applicant may only need the cabling and the Applicant would use article 22(1) powers to acquire rights rather than take full powers.

			To further build on this indicative example to answer the ExA's specific point, restrictive covenants would be required to ensure that there was no building on top of the cables. Another indicative example may be that after detailed design is completed the Applicant may find in a place currently set out for solar, it may only need vegetation maintenance rights and the ability to impose restrictive covenants to prevent the vegetation being removed. The Applicant would not want to remove the general power "to impose such restrictive covenants over the Order land" because it needs to be able to, for example, restrict the ability to build on top of the cable. However, notwithstanding this and that the purpose of article 22(1) is to provide for unknown issues that may arise as the project progresses, the Applicant is happy to amend the wording to limit the power to existing powers sought for cable rights, access rights and vegetation maintenance rights as defined in Schedule 9, so that there is clarity on the types of rights and restrictive covenants that may be imposed. The draft DCO has been updated to reflect this and submitted at Deadline 8.
Q4.0.4	The Applicant	**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.	The Applicant does not agree to this amendment. The justification for this position is that the project has and is looking to meet a connection date of 2028 and so time is of the essence, particularly when the Applicant has to successfully obtain development consent and discharge all of the requirements before connection can occur. The Applicant acknowledges that there are various precedents on this, but sees no reason why this project is an example of why there should be a departure from the Model Provisions, particularly where it has a specific deadline to meet.

Q4.0.5	The Applicant	**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]. 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.	Both parts – The Applicant strongly refutes the proposal that drafting to apply the Crichel Down Rules to the Applicant should be included in the dDCO at all. Therefore, the Applicant does not agree to drafting proposed by Mr Williams and does not propose to offer alternative drafting either. There is no requirement or obligation in any guidance, statute or any other legislative requirement for the Applicant to be subject to the Crichel Down rules. If the Secretary of State wanted to introduce this requirement for this project, they would need to introduce this requirement for all projects as this is a public policy decision. As such, it is the Applicant's position that it would be inappropriate to use an individual DCO to introduce such a wide-ranging change in policy.
DCO1 5.	**Party directed to: Schedule 1: Authorised Development**	**Question and/or commentary:**	**Applicant's Response**
Q5.0.1	The Applicant	**Further associated development.** The ExA considers that the wording below Work No.7 should read: 'In connection with and in addition to Work Nos. 1 to 7 further associated development within the Order limits comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the authorised development, 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-' 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.	The Applicant has considered but does not agree with the ExA's proposed amendment in this case. The effect of moving the text from the final paragraph up and inserting it ahead of the list, is that the final paragraph text becomes subject to the "including" at the start of the list. This means it becomes part of the definitive list a) to n) and the purpose of the final paragraph is to cover something which has not been considered and so by definition is not on the list a) to n). Also, as set out in its submissions at ISH5 **[REP7-037]**, the use of this paragraph is very well-precedented in Tilbury2, A14, Silvertown Tunnel DCOs and it is limited to the Order limits and in connection with the authorised development.

DCO1 6.	Schedule 2: Requirements	Question and/or commentary:	Applicant's Response
Q6.0.1	The Applicant LCC RCC SKDC	**R5 (Approved details and amendments to them)** 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: 'Approval under sub-paragraph (1) for the amendments to any of the Approved Documents, Plans, Details or Schemes must not be given except for non-material changes and 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~~ would not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.	The Applicant has considered but does not agree with the ExA's proposed amendment in this case. The Applicant's position is that the addition of "non-material changes" is not necessary and adds a layer of qualitative subjective judgment. The current drafting is already clear and is more objective as it asks for a judgment in relation to the submitted ES. This wording has not been sought to be necessary in all the precedents that it is used in Orders made by the Secretary of State. It does not provide any more certainty than the wording already provided.
Q6.0.2	The Applicant LCC (b) RCC (b) SKDC (b) MPAG (b)	**R6 (Detailed design approval)** 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. 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?	Part a) – The Applicant does not agree that the drafting at Requirement 6(f) needs to be amended to include detailed design approval for the electrical cables. This has not been done for solar projects before. The Applicant's approach to refer to "power and communication cables" in Requirement 6 (Detailed design approval) is the same as the approach taken in the detailed design approval requirements for other NSIP solar projects including: Cleve Hill Solar Park, Little Crow Solar Park and Longfield Solar Farm, notwithstanding that, for example, Longfield Solar Farm, has an extensive cable connection route that crosses fields (which Mallard Pass does not). Ultimately, the cable proposals for the Proposed Development involves the crossings of highways and land already in the Order limits, and relevant controls are in the OCEMP, OSMP and OWSI to influence how these are carried out. Any impacts from the cabling come not from the design (which is underground and has no environmental impacts), but how the cabling is carried out.

			As well as the precedents set out above, there is also a control on the construction methodology of the electrical cabling as the outline CEMP **[REP7-015]** specifies at paragraph 2.2.2 that this has to be prepared and presented for LPA approval in the CEMP(s). Part b) – The Applicant does not think a requirement for the submission and approval of a method statement for construction and maintenance of proposed cabling is necessary in this case, because as stated above, there is already a commitment in the outline CEMP to provide detail about methodologies for underground cabling works in the CEMP(s), which is secured by Requirement.
Q6.0.3	The Applicant LCC	**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?	In the scenario where the without prejudice drafting for Requirement 10(1)(a) is inserted into the DCO **[REP4-041],** then the Applicant would agree with suggested additions to Requirement 6(2).
Q6.0.4	The Applicant	**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.	Please see the document submitted at Deadline 8 setting out the Applicant's response to the ExA's Rule 17 Letter.
Q6.0.5	The Applicant	**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 Applicant's position is that determination by the Secretary of State is critical in this instance because it is already known that the LPAs and the Applicant fundamentally disagree about the issue of trial trenching and this is very unlikely to change. As such, it would be inefficient for both sides to knowingly go through the 10-week process of a LPA decision followed by a 3-4 month appeal process when they fundamentally disagree and so inevitably leading to a refusal, when the matter can

		the inclusion of provisions for appeal to the SoS in Schedule 16 of the draft DCO, why is this so critical?	be determined more quickly and efficiently by going straight to the Secretary of State.
Q6.0.6	The Applicant LCC RCC	**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?	The Applicant does not consider it necessary to amend Requirement 10 to require the approval of a detailed WSI for each phase that is substantially in accordance with the outline WSI. This approach is well-precedented in Tilbury2 and in A303 Stonehenge – the latter of which is a much more archaeologically sensitive location than the location of this project. It is also not currently known how many detailed WSIs may or may not be required so it is more straightforward to state that the development follows the outline WSI. This approach is consistent with other documentation as other management plans refer to proposals and consents being developed that are developed outside of these documents and these are not in the requirements. For example, the outline LEMP **[REP7-021]** has a commitment to consult with the Community Liaison Group before submitting proposals for planting around public rights of way (at paragraph 5.1.17) while the outline CEMP **[REP7-015]** sets out the need for Section 61 Consents (at paragraph 2.7.4) to be obtained.
Q6.0.7	The Applicant	**R18 (Decommissioning and restoration)** 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. b) What measures are imposed by the draft DCO to ensure that the entirety of the development is satisfactory decommissioned within a reasonable timeframe? Note that the ExA will be considering whether the proposed 60 operational period set out in this	Parts a) and b) – The Applicant does not think a specific time limit should be incorporated into the Requirement for the period of decommissioning activity because it is difficult to predict precisely how long it will take and there are already appropriate controls in the draft DCO to ensure that decommissioning phase timescales are reasonable. The Applicant set out in submissions at ISH5 how provisions relating to decommissioning had been revised and clarified during the Examination **[REP7-037].** Section 2.2 of the outline DEMP **[REP7-019]** clearly states that the detailed DEMP(s) will set out the decommissioning

		Requirement is appropriate and reasonable for the proposed development, further to the receipt of remaining submissions made during the Examination.	programme for the phase(s) of the authorised development to which it relates. The detailed DEMP (including the programme and the timing of the programme) has to be submitted and approved by the relevant LPA in accordance with Requirement 18. If the relevant LPA is not satisfied with the suggested timeframe for decommissioning as put forward by the Applicant in the DEMP as submitted for approval, then the relevant LPA ultimately does not need to approve the DEMP until amendments are made until it is satisfied. Once a DEMP has been approved by the LPA then the Applicant must decommission the site in accordance with it (including abiding by the timescales in the programme) otherwise the Applicant will be in breach of the DCO which is a criminal offence.
Q6.0.8	The Applicant Environment Agency (EA) LCC RCC SKDC	**R19 (Long-term flood risk mitigation)** 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. 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)? c) Comments from relevant interested parties are invited on this proposed Requirement and related flood risk matters.	Part a) and b) – It is the Applicant's understanding that the Environment Agency (EA) will confirm in its Deadline 8 submissions that Requirement 19 is not needed and so the Applicant has removed it from the draft DCO submitted at Deadline 8. It is acknowledged that the ExA may nonetheless decide the Requirement is needed. In that respect, the Applicant, in originally drafting the previous R19, had taken the EA's approach and practice in respect of the Drax BECCS DCO. However, if reinstating the provision, the Applicant would be happy (and understands that the EA would also be happy) to have a requirement subject to LPA approval with EA consultation, as set out in the 'without prejudice' drafting below: ***"Long-term flood risk mitigation*** *19—(1) If any part of Work No. 1 is still in operation on 1 January 2077, the undertaker must notify the approving authorities and the Environment Agency whether it*

			anticipates that the operation of Work No. 1 will continue past 31 January 2077. *(2) If a notification under sub-paragraph (1) indicates that the undertaker anticipates that the operation of any part of Work No. 1 will continue after 31 December 2077, it must submit for approval (following consultation with the Environment Agency) to the approving authorities —* *(a) An updated flood risk assessment of the flood risk arising from the continued operation of that part of Work No. 1 after 31 December 2077;* *(b) The details of any mitigation or compensation measures that the flood risk assessment under paragraph (a) recommends are necessary;* *(c) The implementation timetable, including identifying the need for (but not requiring a specific programme for the obtaining of) any consents, for any measures identified under paragraph (b); and* *(d) Retention proposals for any measures identified under paragraph (b) for the remaining lifetime of the authorised development,* *unless otherwise agreed in writing by the approving authorities, in consultation with the Environment Agency.* *(3) The undertaker must implement the measures approved under sub-paragraph (2)(b) in accordance with the implementation timetable approved under sub-paragraph (2)(c) no later than 31 December 2077 or such other time period as is agreed with the approving authorities in consultation with Environment Agency and must retain them for the lifetime of that part of Work No. 1 in accordance with*

			the retention proposals approved under sub-paragraph (2)(d). *(4) The undertaker must not continue operation of Work No. 1 beyond 31 December 2077 unless the approving authorities have given their approval following consultation with the Environment Agency under sub-paragraph (2) and the undertaker has complied with sub-paragraph (3) unless otherwise agreed in writing by the approving authorities, in consultation with the Environment Agency.* *(5) For the purposes of this paragraph, 'approving authorities' means the relevant planning authority and lead local flood authority for that part of the authorised development that is the subject of the approvals sought under this paragraph, or where that part of the authorised development falls within the administrative areas of both the District of South Kesteven and the County of Rutland, both relevant planning authorities and lead local flood authorities."* Part c) – The question is not directed to the Applicant.
DCO1 7.	**Schedule 15: Protective Provisions**	**Question and/or commentary:**	**Applicant's Response**
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.			
Q7.0.1	EA	**Part 5 (For the protection of the Environment Agency)** 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?	Question not for the Applicant

DCO1 8.	Party directed to: Schedule 16: Procedure for Discharge of Requirements	Question and/or commentary:	Applicant's Response
Q8.0.1	The Applicant	**Applications made under Requirement** 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?	The Applicant has considered the ExA's comments but does not agree and is not proposing to make any further changes to the time periods in Schedule 16. Although the ExA states that the delay will only be an additional two weeks, this is multiplied across multiple requirements being discharged and is set in the context of a project trying to be implemented in time to meet a connection date. Consequently, every week is critical for the delivery of the project. Also, in the event of an approval being refused this two-week delay turns into a longer delay with the appeal process needing to be followed, which impacts the ability to implement and deliver the project.
Q8.0.2	RCC, SKDC, LCC	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.	Question not for the Applicant
Q8.0.3	The Applicant	**Appeals** 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): '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).'	Part a) – The Applicant has considered the ExA's comments and has amended Schedule 16 to the draft DCO to include a time period of six months within which the undertaker may make an appeal. The Applicant disagrees that the time period should be only 42 days as this is a very short period for the developer to make arrangements for an appeal particularly as this is a major infrastructure project. The Applicant has chosen six months from the date of the decision or determination because this is the time allowed for developers operating in the Town and Country Planning regime to submit an appeal

		b) The ExA considers that 4(2)(e) should be amended as follows: '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~~ after the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d);'	for refusal of a condition discharge in accordance with article 37 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. The Applicant sees no reason why a NSIP project should be subject to a tighter timescale than TCPA projects for requirement discharges. Part b) – The Applicant has considered the ExA's proposed amendment but does not propose to change the text. This is because the removal of the time limit by which the appointed person must make their decision creates more uncertainty about the timescales for the appeal which, in turn, could lead to the appeal process being unduly lengthened.
DCO1 9.	**General Matters**	**Question and/or commentary:**	**Applicant's Response**
Q9.0.1	The Applicant	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.	The Applicant intends to submit an updated and final Explanatory Memorandum by Deadline 9 as requested by the ExA.