
Submission by Mallard Pass Action Group (MPAG)

– unique ID ref. 20036230

# Deadline 8A:

# Comments on the Applicant's response to the ExA's commentary and questions on the dDCO

**Q1.0.1**

| DCO1 1. | Party directed to: Part 1: Preliminary | Question and/or commentary | Applicant's Response |
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| Q1.0.1 | The Applicant<br>LCC<br>RCC<br>SKDC | **Article 2 (Interpretation)**<br>***"maintain"***<br>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.<br>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.<br><br>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]**.<br><br>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.<br>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). |

In simple layman's terms there seems to be a disconnect:

- on the one hand the Applicant says if the maintenance schedule involves the replacement of panels they can't take place until the LPA agrees and the Applicant is confident those 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). They claim replacement of panels is just an 'ad hoc' activity.
- If replacing panels is just an 'ad hoc' activity, how is it possible for the Applicant to provide a maintenance schedule for the LPA to then approve?

Para 2.2.1 of the OEMP is incorrect in its description as it alludes to "replacement of broken or faulty (as a result of reaching end of life) equipment." There is no correlation between end of life and broken/faulty. The Applicant has explained that the panels will be replaced when they have reached the end of their economic life, they could still be fully functional, just no longer commercially viable. Therefore they are not necessarily faulty or broken. Perhaps the OEMP could be more appropriately worded to reflect this distinct nuance?

The process of **retro-fitting** the inclusion of the full replacement of panels (as a result of the new 60 year time limit), does not sit comfortably or clearly in either the OEMP or dDCO.

**Q1.0.2**

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| 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.<br>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. |

MPAG respectfully ask the ExA to consider the probability of the panels being replaced in such an '**ad hoc**' way given the commercial and logistical challenges which would drive the replacement schedule. If it is likely that the Applicant will need to exceed the threshold of 5 2 way HGV movements a day, then that should be transparent upfront now in the ES that there **will be operational impacts** from the Proposed Development, albeit not at the level of the construction phase. It feels as if the Applicant is trying to scope out all impacts and adverse effects from the replacement of panels in an attempt to make the proposed development more palatable overall.

In Gate Burton Statement of Need para 7.7.8 states "*degradation of solar panels occurs roughly linearly, so all solar panels will degrade at approximately the same rate",* negating the premise that it will happen in an 'ad hoc' way.

It also states at 6.10.26 "*the **entire array** is assumed to be replaced **midway** through the design life."* Gate Burton also has a 60 year time limit. During ISH5 Part1 at 1.18.40 Mr Phillips, for the Applicant, said in answer to a question from the ExA as to why there was a difference in approach between Gate Burton and the Applicant, that there was no difference. He stated that they were using the same approach. That does not appear to be the case in the approach to the replacement of panels.

**Q1.0.3**

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| 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.<br>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.<br>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.<br>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. |

As the Applicant says the 2635 panels a day does not allow for any other electrical infrastructure to be replaced, other items like inverters will have to be replaced more than once over a 60 year period. Just taking panels alone it will take 201 days to complete a full replacement. It is unlikely the panel frames and piles will last 60 years, fencing certainly won't, neither will other electrical infrastructure. Therefore aside from **additional HGV movements**, there would also be the liklihood of **noise effects**.

**Q1.0.4**

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| 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.<br>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.<br><br>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. |

The Applicant says in paragraph 5.17.4 of the ES that replacement "*will be on an ad-hoc, low frequency basis only to replace broken or faulty equipment*". That does **not** describe the replacement of panels due to reaching end of their commercial life, it only describes if they are faulty or broken. Panels that have reached end of their commercial life for the solar farm may still be operational and useful in another environment.

Interestingly para 5.7.16 of the ES talks about the measures that control the type of activities, yet there is no mention of traffic movements in the ES.

It seems at the time of writing the ES with a time unlimited consent that the Applicant was keeping their options open and maybe never intended for the solar farm to run for longer than one commercial life cycle of the panels, hence why the replacement of panels was never reflected in the ES. Now with a 60 year time limit in place it is clear there would need to be a full replacement at some stage, yet the Applicant is just relying on the OEMP and DCO to pick up the full extent of the meaning of 'replacement' and/or 'maintenance'. MPAG believe this activity should have been fully scoped into the ES and a realistic acknowledgement given to some operational effects. As in Q1.0.1 MPAG does believe it would be beneficial to separate out economic replacement of panels vs. ad hoc replacements due to being faulty or broken.

**Q4.0.2**

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| Q4.0.2 | The Applicant | **Article 20 (Compulsory acquisition of land)**<br>a) Can the Applicant provide an update on the proposed additional wording (including any without prejudice wording) with regards to the cable crossing options.<br>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.<br><br>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. |

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| | | 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:<br><br>*(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-*<br><br>*(a) the land comprising plots 02-51b, 02-52b and 02-54 to 02-147 as shown on the land plans; or*<br><br>*(b) the land comprising plots 02-139, 02-140, 02-149, 02-151 and 04-22 as shown on the land plans.*<br><br>*(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.*<br><br>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.<br><br>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.<br><br>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.<br><br>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]**.<br><br>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. |

The Applicant 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", yet there is no explanation why the cable route back from 02-03 could not run alongside the bridleway and come out almost opposite Uffington Lane, instead of the proposed route going via 02-28 which cuts across fields rather than going down the side of fields. Using plot 02-28 would cause unnecessary disruption for the residents opposite on A6121 and also necessitate more complex traffic restrictions on what is already a busy road with a dangerous bend.

**Q6.0.7**

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| Q6.0.7 | The Applicant | **R18 (Decommissioning and restoration)**<br>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.<br>b) What measures are imposed by the draft DCO to ensure that the entirety of the development is satisfactory decommissioned within a reasonable timeframe?<br>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.<br>The Applicant set out in submissions at ISH5 how provisions relating to decommissioning had been revised and clarified during the Examination **[REP7-037].**<br>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.<br>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.<br>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. |

In the same way the Applicant believes it is important to commission the solar farm as quickly as possible, MPAG also believe the converse should apply on decommissioning and there should be a finite amount of time to decommission the scheme so that the land has the opportunity to be restored and returned to arable farming practices ASAP. If it is going to take 2 years to construct, there is less involved to decommission the site e.g. vegetation will stay in place, some cables will remain buried. It should be a legal requirement enforceable via the DCO not just via the DEMP, otherwise if the LPA disagrees with the plan they have no power realistically to speed up the decommissioning process. There is already concern there is no concrete way of protecting the funding for decommissioning in the absence of a bond.

**Q6.0.8**

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| Q6.0.8 | The Applicant<br>Environment Agency (EA)<br>LCC<br>RCC<br>SKDC | **R19 (Long-term flood risk mitigation)**<br>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.<br>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)?<br>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.<br><br>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:<br><br>***"Long-term flood risk mitigation***<br><br>*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* |

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| | | | *anticipates that the operation of Work No. 1 will continue past 31 January 2077.*<br><br>*(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 —*<br><br>*(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;*<br><br>*(b) The details of any mitigation or compensation measures that the flood risk assessment under paragraph (a) recommends are necessary;*<br><br>*(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*<br><br>*(d) Retention proposals for any measures identified under paragraph (b) for the remaining lifetime of the authorised development,*<br><br>*unless otherwise agreed in writing by the approving authorities, in consultation with the Environment Agency.*<br><br>*(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).*<br><br>*(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.*<br><br>*(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."*<br><br>Part c) – The question is not directed to the Applicant. |

MPAG feel Requirement 19 should be retained in the DCO for LPA approval in consultation with the EA. Given the uncertainties of the impacts of Climate Change on flooding and 2077 being over 50 years away, there needs to be an opportunity to review and address the flood mitigation measures. Even in 2023 it is clear the EA cannot predict the outcomes when we look at the impacts from Storm Babette just over a week ago.