

Date: 27 March 2024

Ref: EN010127

Department for Energy Security and Net  
Zero,  
3-8 Whitehall Place  
London  
SW1A 2AW

Dear John,

Mallard Pass Solar Farm Limited

The Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

This letter constitutes Mallard Pass Solar Farm Limited's ('the Applicant's') response to the 'Secretary of State's Request for Information dated 13 March 2024. The Secretary of State has requested updates or information, as appropriate, to assist with the determination of the Application further to the Report and Recommendation submitted by the Examining Authority to the Secretary of State on 16 February 2024. The Applicant's responses to the Secretary of State's queries are set out in Table 1 below.

**Table 1 – Response to Information Requests**

| Information Request  | Applicant's Response  |
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| <p><b>The Applicant and Network Rail</b> should confirm if there are any updates regarding whether an Option for Easement has been agreed, in relation to the cable crossing of the East Coast Main Line. If agreement has not been reached, an update should be provided as to when confirmation will be provided to the Secretary of State confirming that agreement has been reached.</p> | <p>The Applicant is currently negotiating and working to progress the Option for Easement agreement with Network Rail (NR). The Applicant is confident that an agreement can be reached with NR (particularly as both the Basic Asset Protection Agreement and Framework Agreement have already been completed) and it is anticipated that the agreement will be agreed and completed over the coming weeks.</p> <p>The Applicant is still of the same view as it set out during the Examination (see the response to Q5.1.1 in <a href="#">Applicant's Response to Examining Authority's Second Written Questions [REP5-012]</a>) that it does not agree that drafting should be inserted into the draft DCO to limit the developer's choice about the cabling route to choose one of two routes until the full range of initial agreements are in place with Network Rail – the Option for Easement is the last one of these agreements to be put into place.</p> |

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|   | <p>This was on the basis that it would be inappropriate for the project to be beholden to a potential change in position of Network Rail if they decided to start withholding consent for these documents and if there was a viable alternative that could be taken, i.e. perhaps they would accept an option with some cables under the railway, but some still needing to go through the village of Essendine.</p> <p>Toward the end of examination, the ExA requested and the Applicant provided ‘without prejudice’ drafting in relation to limiting the developer’s choice of the cabling route to one of two options (see the response to Q4.0.2, <a href="#">Applicant’s Response to ExA’s Commentary and Questions on the draft Development Consent Order</a> [REP8-020]).</p> <p>The Applicant made it clear when providing this drafting that it would only be content for this to be included into the DCO if the option agreement was signed before the end of examination period, or the decision period, as the Applicant would know for certain that Network Rail were committed from both an asset protection (with the BAPA/Framework Agreement that is already signed) and a property (the Option for Easement) position on the option that puts all cables under the railway. As this has not yet occurred, it is still the Applicant’s preference that this without prejudice drafting is not included within the DCO.</p> <p>As stated above, the Applicant is confident it can reach agreement with NR about the Option for Easement and will inform the Secretary of State when this has been done.</p> |
| <p><b>The Applicant, RCC, and LCC</b> should confirm if side agreements have been reached in relation to highway matters. If side agreements have not been reached, confirmation will be provided to the Secretary of State confirming that agreement has been reached.</p> | <p>The Applicant is currently negotiating with Lincolnshire County Council in respect of reaching an agreement to deal with highways matters. The draft agreement is also designed to deal with the payment of fees to LCC and other local authorities (including relevant parish councils) for participation in community liaison groups and as such all the authorities (being LCC, RCC and SKDC) would be a party to the Agreement. The Applicant is confident</p>  |

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|  | <p>that an agreement can be reached as good progress has been made.</p> <p>The Applicant has been dealing directly with LCC on the basis that they are in a position to liaise with RCC on highways matters and that an agreement reached with LCC on highways matters should also be acceptable to RCC. RCC had previously indicated in meetings with the Applicant that they were happy for this to be the arrangement.</p> <p>Given the nature and location of the Mallard Pass Solar Farm project, there are areas where the highway works could be in solely in LCC's jurisdiction, solely RCC's jurisdiction or be in both authorities' jurisdiction so the Applicant believes it is important to have one agreement with both parties so that highways matters can be dealt with consistently with both authorities rather than having multiple individual agreements.</p> <p>The fact that negotiations are ongoing should not delay the Secretary of State from granting development consent as, during the Examination, the Applicant added wording to article 9 (power to alter layout, etc. of streets), article 10 (construction and maintenance of altered streets) and article 13 (access to works) of the <a href="#">Draft Development Consent Order [REP9-005]</a> to provide that the works carried out under those articles is to be "in a form reasonably required by the... authority". This means that works cannot take place until some form of agreement is secured that is agreeable to the local authorities, whether by the agreement discussed above or such other form that may be later agreed.</p> <p>The Applicant also notes that Lincolnshire County Council confirmed that it was comfortable with the approach taken in the dDCO in the <a href="#">Final Statement of Common Ground with Lincolnshire County Council [Version 4] [REP9-020]</a> (see reference: LCC-12-06), saying:</p> <p><i>"Articles 9, 10 and 13 have been updated to confirm that the powers conferred cannot be exercised without the consent of the</i></p> |
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|  | <p><i>highway/street authority and that such consent is to be in a form reasonably required by the highway/street authority. This therefore provides LCC with sufficient comfort those works cannot take place until some form of agreement is secured whether this be via the side agreement or not, but it will continue to negotiate with the Applicant to agree that Side Agreement as soon as practicable and with the aim of updating the Secretary of State prior to the decision being made."</i></p>   |
| <p><b>The Applicant</b> should confirm whether a draft Great Crested Newt district level license application has been made and if a IAPC has been issued. If the licence application has not yet been made, an update should be provided to the Secretary of State confirming when the Applicant intends to do so.</p> | <p>The Applicant has continued the process to seek to obtain an IAPC from Natural England, but at the time of writing, has not yet received it.</p> <p>In any event, we would emphasise that the Applicant is committed to being part of the district level licensing scheme. To that end, it has submitted alongside this letter an update to the Outline Construction Environmental Management Plan (clean and track changed) which specifically sets out that a DLL must be obtained prior to commencement of the authorised development, and that confirmation that this has happened must be set out in the detailed Construction Environmental Management Plan submitted for approval under Requirement 11 of the draft DCO.</p> <p>This ensures that impacts to great crested newts will be suitably mitigated.</p> <p>This updated version of the outline plan will require Schedule 13 to the DCO to reference version 10, rather than version 9, of the document, if the DCO is to be made.</p> |

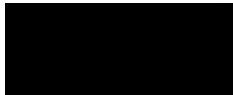
Additional to the responses provided in Table 1, the Applicant can provide an update on the matter of community benefits, which was also discussed at Examination, and which it is understood the LPAs may also comment on in response to the Secretary of State's letter.

Although the Applicant re-emphasises that the matter of community benefit payments cannot be taken into account in the planning balance, as set out in case law, it has been considering this matter further since the close of Examination and will be writing to the LPAs to set out that it is willing to commit to making a community benefit contribution of £400 per MW (AC) installed per year for the lifetime of the project; with the payments to be made annually and will be index linked to CPI.

The Applicant looks forward to working with the LPAs to document the mechanisms for the delivery of this commitment

If the Secretary of State or the Department's case team has any questions, please do not hesitate to contact me.

Yours faithfully,



**Sarah Price**

**Partner**

**DWD**

**For and on behalf of Mallard Pass Solar Farm**

 or 



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