

GATE BURTON ENERGY PARK

POST HEARING SUBMISSIONS FOLLOWING ISSUE SPECIFIC HEARING 1, REGARDING THE DRAFT DEVELOPMENT CONSENT ORDER

ON BEHALF OF WEST LINDSEY DISTRICT COUNCIL

INTRODUCTION

1. The table set out below provides written summaries of the oral submissions made on behalf of West Lindsey District Council (“WLDC”) at Issue Specific Hearing 1 (“ISH1”) on Tuesday 4th July 2023, regarding the draft Development Consent Order (“dDCO”) in line with the Rule 6 letter and Deadline 1 requests of the ExA. This document also responds where relevant to any comments made by the Applicant, Lincolnshire County Council (“LCC”) and/or 7000 Acres Action Group (“7000 Acres”) at ISH1.
2. The ExA will note that the submissions below go beyond that in the ISH1 agenda and are intended to assist the ExA in respect of WLDC’s position in greater detail. However, WLDC reserve the right to amend its position in response to any other party’s representations as provided by the Rule 6 letter and further deadline requests.
3. WLDC understand that LCC consider they should be the relevant determining authority in respect of a number of requirements. Unless it is expressly stated that this is agreed in relation to a particular requirement below WLDC consider it is the appropriate relevant determining authority.

WRITTEN SUMMARY

dDCO REFERENCE

Generating capacity

SUBMISSIONS

WLDC agree with the Applicant for the reasons given orally at ISH1 that there should not be a generating capacity cap. An increase in generating capacity as a result of technological advancements

would not alter the environmental impacts of the project given the parameters stipulated and would therefore be a benefit.

Associated Development - BESS	WLDC agree with the Applicant for the reasons given orally at ISH1 that the BESS is associated development.
Operational life time of the proposed development	WLDC submit that the requirement should have a temporal limit requiring decommissioning in no later than 60 years, as environmental effects are only considered and addressed in the ES up to a period of 60 years. WLDC do not accept the Applicant's reliance on any increased natural lifetime of the development, especially in light of the ability to replace all but the whole of the development as currently permitted by the definition of "maintain".
Decommissioning	Please see comments in respect of requirement 19 below.
Part 1 <i>"permitted preliminary works"</i>	The Appellant provided assurance that where not otherwise excluded all other legislative requirements apply to any works associated with the DCO. Accordingly, WLDC are satisfied that any signage would be required to comply with the Town and Country Planning Act (Control of Advertisements) Regulations 2007 and therefore do not have any further comments.
Part 2 Article 3 – Development Consent etc granted by this Order	No comments.
Article 6 – Application and modification of statutory provisions	No comments.
Art 7 – Defence to proceedings in respect of statutory nuisance	WLDC understand that Article 7 is a model provision however it is not considered that sufficient justification is provided by the Applicant in the Explanatory Memorandum to justify the exclusion

of statutory nuisance claims in relation to noise associated with the authorised development. WLDC are also concerned with potential noises that might occur which are not properly assessed by the ES, for instance the lack of clarity over the plant which will be used by the Scheme and potential for the Applicant to carry out construction activity during unsociable hours.

Articles 38 & 39 – Felling or lopping of trees and removal of hedgerows and trees subject to tree preservation orders	No comments.
Article 40 – Certification of plans and documents	No comments.
Article 49 – Crown Rights	No comments.
Schedule 1 Art 1	No comments.
Schedule 2 – Requirements	<i>Please note where there are no specific comments in respect of a requirement it is nevertheless still subject to the comments made below in relation to Schedule 16.</i>
1. Interpretation	No comments.
2. Commencement of the authorised development	No comments.
3. Approved details and amendments to them	No comments.
4. Community liaison group	WLDC request that the Applicant provides further details about the purpose of the requirement as it is considered important for WLDC and local communities to understand the scope of this group prior

to decision making. In particular, it is requested that the details of the 'terms of reference' for the CLG be provided and included as part of the requirement. Further, it is noted that 'vicinity' is not defined in the requirement; a definition would clarify the extent to which parties or persons would be eligible.

5. Detailed design approval

No comments.

6. Battery safety management

WLDC consider that this requirement should contain a retention clause. Further, given the Health and Safety Executive, Lincolnshire Fire and Rescue, Nottinghamshire Fire and Rescue and the Environment Agency's engagement in any consultation is outside of WLDC's control, it is not considered appropriate that WLDC are required to consult those bodies. It is submitted that the Applicant should be required to consult the same before submitting a plan for approval. WLDC do not have the technical expertise to assess the battery safety management plan and would be relying on parties identified as consultees.

7. Landscape and ecological management plan

WLDC consider that this requirement should contain a retention clause. Given the significance of the LEMP, it is considered that it should address certain criteria, as set out below, which are suggested for inclusion within the requirement:

- i) In accordance with the Outline LEMP
- ii) In accordance with Outline Landscape Masterplan (Sheets 1-6)
- iii) Approach to implementation cumulatively with other projects in the shared grid corridor (Outline Landscape Masterplan (Sheet 4 – Fig.10-23))

WLDC also request the Applicant provides clarification in respect of the effects of the LEMP over the life of the project and beyond,

in particular in relation to post-decommissioning and how this is governed by the DCO.

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| 8. Biodiversity net gain | WLDC consider that this requirement should contain a retention clause. It is also submitted that the requirement should stipulate a minimum percentage requirement the BNG must achieve. WLDC also requests that the Applicant explain how the requirement relates to requirement 19 and decommissioning. |
| 9. Fencing and other means of enclosure | No comments. |
| 10. Surface and foul water drainage | No comments. WLDC are content that LCC are the relevant determining authority for this requirement. |
| 11. Archaeology | No comments. |
| 12. Construction environmental management plan | WLDC requests that the Applicant explain how the requirement adequately provides and considers the cumulative approach in light of the Cottam and West Burton projects. |
| 13. Operational environmental management plan | WLDC consider that this requirement should contain an implementation and retention clause. WLDC requests that the Applicant explain how the requirement adequately provides and considers the cumulative approach in light of the Cottam and West Burton projects. |
| 14. Construction traffic management plan | WLDC consider that this requirement should contain an implementation and retention clause. WLDC requests that the Applicant explain how the requirement adequately provides and considers the cumulative approach in light of the Cottam and West Burton projects. |

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| 15. Operational noise | WLDC consider that this requirement should contain a retention clause. WLDC requests that the Applicant explain how the requirement adequately provides and considers the cumulative approach in light of the Cottam and West Burton projects. |
| 16. Public rights of way diversions | WLDC consider that this requirement should contain a retention clause. WLDC are content that LCC are the relevant determining authority for this requirement. |
| 17. Soils management | No comments. WLDC are content that LCC are the relevant determining authority for this requirement, but request that the requirement provides for such a determination to be carried out in consultation with WLDC. |
| 18. Skills, supply chain and employment | WLDC consider that this requirement should contain a retention clause. |
| 19. Decommissioning and restoration | <p>WLDC submit that the requirement should have a temporal limit requiring decommissioning no later than 60 years, as environmental effects are only considered and addressed in the ES up to a period of 60 years. WLDC do not accept the Applicant's reliance on any increased natural lifetime of the development, especially in light of the ability to replace all but the whole of the development as currently permitted by the definition of "maintain".</p> <p>WLDC consider that the requirement should contain a notification requirement if the decommissioning is to occur before the 60 years.</p> <p>The "date of decommissioning" is defined in the interpretations as "that part of the authorised development has ceased to generate electricity of a commercial basis", however, as the authorised development also incorporates all associated development, WLDC submit that the definition could be clearer and more precise.</p> |

WLDC also consider that the ES does not (and indeed cannot) provide a full assessment of the decommissioning due to the baseline not being known, or the methods of removal at the time of decommissioning. WLDC therefore requests that the Appellant explain how such works are dealt with by the requirement and why they would not fall outside of the scope of the ES.

Schedule 9 and Article 44. No comments.

Schedule 13 – Documents and plans to be certified No comments.

Schedule 14 – Arbitration WLDC recognise that Schedule 14 has been taken from other DCOs; however, the timescales proposed are considered to be unworkable. It is requested that the Applicant considers whether these timescales could be amended to allow more time during arbitration period.

Schedule 15 Part 4 & 5 WLDC notes that Schedule 15 is subject to further negotiations and agreements, as set out in the Explanatory Memorandum. However, it is requested that the Applicant provides clarification as to how the same is also going to be adequately addressed within the DCO itself.

Schedule 16 – Procedure
for discharge of
requirements

WLDC strongly objects to the Schedule 16 as currently drafted.

The 6 week approval period currently required by Article 46.2 does not adequately reflect the usual timescale for EIA development which is 16 weeks. It is submitted this time period should apply given some of the requirements include the need to assess complex material, may require the need to procure external expertise to review material, and there may be the requirement for approvals to be determined by WLDC committee(s) therefore requiring the alignment with meeting calendars and processes. It is noted that the Longfield DCO allowed a period of 10 weeks, however discharge applications under this DCO are likely to be made concurrently with West Burton, Cottam and Tillbridge applications if they are granted consent. It is also noted that there is no mechanism in the dDCO restricting the number of discharge applications that could be simultaneously submitted. In this context a 16 week determination period is entirely reasonable. Subject to the submissions made above in respect of consultation requirements, WLDC consider that a provision should be added allowing agreements for a reasonable extension of time, with such an agreement not being unreasonably withheld, particularly if the relevant determining authority is required to consult other bodies.

WLDC object to the deemed approval provision. The justification relied on the by the Appellant is one of efficiency (Explanatory Memorandum at 6.16.1) do not cite any unique or specific reason why such a provision should be included. This is especially relevant whether other DCOs, including those cited in the Explanatory Memorandum itself, do not provide for deemed approval or only do so in relation to certain requirements, rather than all of them. Indeed, the Applicant describes the Schedule 16 process as 'bespoke' (Explanatory Memorandum at 6.16.1). Given the importance and significance of the substantive areas governed by

the requirements WLDC submits that it is unacceptable for any of the requirements to be subject to deemed approval.

WLDC object to the requirement under Article 46.3.(2) that further information must be requested in 10 working days. The relevant determining authority will need to sufficiently assess the information in order to identify whether further information is required. This essentially requires that the WLDC all but procedurally determine the application in 10 working days. Similarly, WLDC object to the time periods in 3.(3), in particular, it is unreasonable to require the relevant determining authority to request further information within 15 working days where they have consultation requirements, as the response period of such consultees is not within their control.

WLDC submit that the usual fee provision (see the Longfield DCO), which has been excluded without any justification given by the Appellant, is reinstated in Schedule 16.