

COTTAM SOLAR PROJECT

POST HEARING SUBMISSIONS FOLLOWING ISSUE SPECIFIC HEARING 2, 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 2 (“ISH2”) on 23 January 2024, 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.

WRITTEN SUMMARY

ISH1 AGENDA DCO REFERECE	SUBMISSIONS
APPLICANT’S UPDATE	WLDC welcomes the Applicant’s indication that the fees provision in Schedule 17 will be updated in line with the Cottam NSIP dDCO.
PARTS 1 TO 6 a. Article 5 (Power to maintain the authorised development): discussion of the extent of the maintenance provisions. b. Article 11 (Temporary prohibition or restriction of use of streets and public rights of way) and Article 14 (Agreement with street authorities): discussion to address matters raised by the local highway authority.	 No comments. No comments.

<p>c. Article 38 (Felling or lopping of trees and removal of hedgerows): clarification of the updates to the provisions for hedgerow removal, with regard to the provisions of Advice Note 15, Section 22.</p> <p>d. Article 29 (Temporary use of land for constructing the authorised development) and Article 30 (Temporary use of land for maintaining the authorised development): what steps been taken to alert all landowners/occupiers of land within the Order limits of this provision.</p> <p>e. Article 49 (Crown Rights): clarification of the nature of and progress towards gaining consent for provisions.</p>	<p>WLDC submits that there should be a plan in relation to Article 39 in accordance with Advice Note 15, Section 22.3. As currently drafted, it is not considered in accordance with the model provision (see The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009, Schedule 1, paragraph 40. This is especially important given TPOs do not appear to be referenced in the oLEMP.</p> <p>No comments.</p> <p>No comments.</p>
<p>SCHEDULES</p> <p>a. Schedule 2 – Requirement 5. Detailed design approval: discussion of why detailed design approval is confirmed to Work Nos 1,2 and 3.</p> <p>b. Schedule 2 Requirement 9 Biodiversity Net Gain: consideration of the mechanisms by which the anticipated levels of BNG would be secured through the dDCO.</p> <p>c. Schedule 9 Deemed Marine Licence under the 2009 Act: update on discussions with the MMO.</p>	<p>WLDC would welcome clarification from the applicant why requirement 5 only relates to the works specified.</p> <p>WLDC considers that there should be a minimum percentage of BNG secured through the dDCO which can be considered in the planning balance. It is noted that the Applicant is committed to delivering the enhancement measures in the oLEMP, however that does not provide sufficient clarity as to the minimum percentage. There are appropriate mechanisms and drafting options to address any change in biodiversity metric (see for instance the Longfield DCO Correction Order). Nevertheless, it is recognised this is a decision for the Applicant.</p> <p>No comments.</p>

<p>d. Schedule 16 Protective Provisions. The Applicant will be asked to provide an update progress between the parties, with an explanation of any important differences in view and timescales for resolution. In particular consideration will be given to provisions for:</p> <ul style="list-style-type: none"> a. Network Rail b. EDF c. Marine Management Organisation d. Canal and River Trust e. The Environment Agency f. Other parties with which protective provisions have not yet been agreed <p>e. Schedule 17 Procedure for discharge of Requirements: noting that these are bespoke provisions, the positions of the planning authorities and other consenting bodies will be clarified.</p>	<p>No comments.</p> <p><u>Deemed consent</u></p> <p>WLDC objects to the inclusion of a deemed consent provision. Due to the scale and potential complexity of the details and their importance to ensure that mitigation for a large scale infrastructure project is assessed and implemented, it is wholly unacceptable to impose a deemed consent provision. Additionally, with the potential cumulative impact of having to process subsequent approvals for several similar projects, it is essential that WLDC has sufficient time to make well informed decisions in the public interest.</p> <p><u>Approval timescales</u></p> <p>The deemed consent provision also has an impact on WLDC's position with regard to the approval timescales discussed below. Should the deemed consent provision be retained, WLDC consider that a longer determination period is proportionate. The timescales WLDC considers to be acceptable are influenced by whether a deemed consent provision is included in the DCO. If it is retained, a longer period of time is required to enable WLDC to fulfil its duties in the determination of subsequent applications that relate to EIA development.</p> <p>Consistent with the reasons that WLDC object to the deemed consent provision, it is essential that WLDC has reasonable time to interpret, assess, have regard to consultee representations, negotiate and formally determine</p>
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	<p>complex and technical details that are required in order for the project to be acceptable.</p> <p>WLDC's position on the timescale are therefore:</p> <p>Should there be no deemed consent provision, WLDC request that the following timescales be specified:</p> <p>Requirement 5 = 13 weeks Other Requirements = 10 weeks</p> <p>Should a deemed consent provision be retained, WLDC request that the following timescales be specified:</p> <p>Requirement 5 = 16 weeks Other Requirements 13 weeks</p> <p>The above timescales allow a reasonable and proportionate timescale in order to assess and determined typically complex and 'new' information relating to a large scale EIA development.</p> <p>WLDC welcomes the inclusion of an extension of time provision (Schedule 17.2(2)(c)). WLDC requests that the drafting is amended so that it is a clearer and more precise provision. In its current form the provision is unclear when read in conjunction solely with Schedule 17.2(2). WLDC also requests that the provision includes a clause that agreement to an extension of time cannot be unreasonably withheld.</p> <p><u>Fees</u></p> <p>WLDC's position aligns with LCC's in respect of the proposed fee provision and WLDC welcomes the Applicant's intention to update the fee provision in line with the Cottam NSIP dDCO.</p>
<p>OTHER MATTERS</p>	<p><u>Phasing</u></p> <p>WLDC requests that the Applicant considers including a phasing requirement in Schedule 2. It is acknowledged that the oCEMP includes detail on when anticipated works will start and relates to an indicative construction programme, however, WLDC considers that it would be of benefit to include a phasing requirement that provides greater clarity and certainty, including so that WLDC, as the relevant discharging authority for many requirements, is able to anticipate when discharge applications are likely to be submitted. It is submitted that the drafting used in the Mallard Pass dDCO should be adopted as follows (although it is recognised that the reference to 'date of final</p>

commissioning' may need to be revised in light of the definition of the same in the current dDCO):

3.—(1) No part of the authorised development may commence until a written scheme setting out the phase or phases of construction of the authorised development has been submitted to and approved by the relevant planning authorities.

(2) The scheme submitted pursuant to sub-paragraph (1) must include a timetable for the construction of the phase or phases of the authorised development and a plan identifying the phasing areas.

(3) The scheme submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

(4) Notice of the date of final commissioning with respect to each phase of Work No. 1 to complete commissioning must be given to the relevant planning authorities within 15 working days of the date of final commissioning for that phase.

Retention/ Maintenance Clauses

WLDC submits that the following Schedule 2 requirements should include retention and/or maintenance clauses: requirement 6 (Battery Safety Management), requirement 8 (Ecological protection and mitigation strategy), requirement 9 (Biodiversity net gain), requirement 16 (Operational noise) and requirement 20 (Skills, supply chain and employment). WLDC understands the Applicant's position that the control docs will require retention and/or maintenance but considers it would be clearer and more precise if they were also secured in the dDCO itself. There is significant precedent to this effect, including the Longfield DCO (requirement 11); Gate Burton dDCO (requirements 6, 7, 8, 10, 15 and 18); Mallard Pass dDCO (requirements 8, 9, 12 and 16); Little Crow DCO (requirements 8 and 15); and the Sunnica dDCO (requirements 7, 8, 11, 12, 17, 19, 20 and 21).

Decommissioning

WLDC considers that Schedule 2, requirement 21 should require decommissioning no later than 40 years following the date of final commissioning, not 60 years as currently drafted for the reasons raised by WLDC at