

National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

Your ref: EN010133

Date: 23 March 2023

Submitted via email: CottamSolarProject@planninginspectorate.gov.uk

Dear Sir/Madam

Order Granting Development Consent for the Cottam Solar Project (EN010133)

1.0 The Environment Agency's Role

- 1.1. The Environment Agency is an executive non-departmental public body, established under the Environment Act 1995.
- 1.2. We are an adviser to Government with principal aims to protect and improve the environment, and to promote sustainable development. We play a central role in delivering the environmental priorities of central government through our functions and roles.
- 1.3. We are also an adviser to local decision makers in our role as a statutory consultee in respect of particular types of development, as listed in Schedule 4 of the Development Management Procedure Order 2015.
- 1.4. For the purposes of this Development Consent Order (DCO), we are a statutory interested party.
- 1.5. We take action to conserve and secure proper use of water resources, preserve and improve the quality of rivers, estuaries and coastal waters and groundwaters through pollution control powers and regulating discharge consents. We have a duty to implement the Water Framework Directive (WFD).
- 1.6. We have regulatory powers in respect of waste management and remediation of contaminated land designated as special sites. We also encourage remediation of land contamination through the planning process.
- 1.7. We are the principal flood risk management operating authority. We have the power (but not the legal obligation) to manage flood risk from designated main rivers and the sea. We are also responsible for increasing public

awareness of flood risk, flood forecasting and warning and have a general supervisory duty for flood risk management. We also have a strategic overview role for all flood and coastal erosion risk management.

1.8. We have three main roles:

- We are an **environmental regulator** – we take a risk-based approach and target our effort to maintain and improve environmental standards and to minimise unnecessary burdens on businesses. We issue a range of permits and consents.
- We are an **environmental operator** – we are a national organisation that operates locally. We work with people and communities across England to protect and improve the environment in an integrated way. We provide a vital incident response capability.
- We are an **environmental adviser** – we compile and assess the best available evidence and use this to report on the state of the environment. We use our own monitoring information and that of others to inform this activity. We provide technical information and advice to national and local governments to support their roles in policy and decision-making.

2.0 Scope of these representations

2.1 These relevant representations contain an overview of the project issues, which fall within our remit. They are given without prejudice to any future detailed representations that we may make throughout the examination process. We may also have further representations to make if supplementary information becomes available in relation to the project.

2.2 We have reviewed the DCO, Environmental Statement (ES) and supporting documents submitted as part of the above-mentioned application, which we received on the 16 February 2023. Our comments are presented below:

3.0 Ecology and biodiversity

3.1. We would like to make the following comments in relation to the protection of ecology and biodiversity having reviewed the documents listed below:

- Environmental Statement: Chapter 9: Ecology and Biodiversity (ref: [APP/C6.2.9](#))
- Water Framework Directive Assessment (ref: [APP/C7.21](#))

- Biodiversity Net Gain Report (ref: [APP/C6.3.9.12](#))
- Otter and Water Vole Survey (ref: [APP/C6.3.9.6](#))
- Great Crested Newt Survey Report (ref: [APP/C6.3.9.7](#))

- 3.2. We welcome the recommendations in the Otter and Water Vole Survey and it is understood that the detail of protective measures will be set out in a Construction Environmental Management Plan (CEMP), or similar. Whilst we are content that enhancements to existing watercourses where otters and/or water voles have been recorded will be explored it would be preferential if there was a commitment from the developer to ensure these works are carried out.
- 3.3. We would recommend an assessment of ditch habitat suitability for water voles followed by suggested improvements to in channel and marginal habitats. This would provide more continuity in water vole habitat, with populations more resilient to non-native species i.e.mink.
- 3.4. We would expect to see more detail on the control of invasive species on site and how this has the potential to have an impact upstream in terms of recolonisation.
- 3.5. The non-native species monitoring and management should include American Mink as a named species. This would link into the catchment wide effort to address the invasion of mink in North Lincolnshire and adjacent areas.
- 3.6. Ongoing monitoring work should also focus on Himalayan Balsam control, which is located within the adjacent areas.
- 3.7. We support the recommendations for sensitive tree planting in respect of shading.
- 3.8. Enhancements to habitat quality within ditches and watercourses not only benefits otters and water voles but can achieve an improvement to water quality in the rivers from a WFD perspective. In the ES (Chapter 9, page 13) it states that “several ditch enhancements have been proposed”, however, we have been unable to find the details of these and would request the applicant provides signposting to where this information can be found.

- 3.9. We welcome the creation and enhancement of hedgerows, woodland, wetland and native wildflower meadows which would add multiple benefits in terms of improved water quality and natural flood management (NFM).
- 3.10. It is implied that a Landscape and Ecological Management Plan (LEMP) or similar would be able to secure enhancements to the habitat quality of ditches and watercourses. We would like to see more detail above what is contained within the outline LEMP in so far that it relates to ditch improvements.
- 3.11. We welcome the recommendations in the Great Crested Newt Survey Report and it is understood that the detail of protective measures will be set out in a CEMP, or similar. Equally the mitigation and enhancement to great crested newt habitats should be detailed to ensure that they are achieved as part of the development.
- 3.12. The WFD assessment omits physical impacts to the river that could detrimentally effect riverbank structure and substrate of the riverbed. We would expect hydromorphological quality to be explored in more detail within the WFD assessment based upon our understanding of the proposed river crossings and methods likely to be used i.e. culverts.
- 3.13. It is important that the applicant considers the cumulative risk from the construction and operational phases to water quality.
- 3.14. We appreciate that a specialist Modular River Physical (MoRPh) survey of the River Till was not carried out, however, we believe it would be worthwhile exploring improvements on the Till and its tributaries as the Cottam 1 sites intersect the river.
- 3.15. As the River Till is heavily modified and embanked, the applicant may like to consider reprofiling and widening the river which would provide multiple benefits for ecology, biodiversity and NFM. Within the smaller drainage network there are habitat improvements that could be explored and considered by the applicant which would improve the wet marginal areas of the existing drains to the benefit of water voles and other species.
- 3.16. In the Biodiversity Net Gain (BNG) Report, enhancement to nearby watercourses are assumed solely as a result of the change of use from agriculture use to placement of solar panels and the resultant removal of fertilisers/herbicides from the fields. However, as it cannot categorically be said that other fields in the vicinity wouldn't supply run-off we do not think it

can be assumed that water quality would be better as a result of the change of use alone.

4.0 Hydrology, flood risk and drainage

4.1 We have reviewed the documents listed below:

- Environmental Statement: Chapter 10: Hydrology, Flood Risk and Drainage (ref: [APP/C6.2.10](#))
- Environmental Statement: Appendix 10.1: Flood Risk Assessment and Drainage Strategy (ref: [APP/C6.3.10.1](#))

4.2 We note that the applicant wishes to disapply the requirement for an environmental permit under Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016 (EPR) and includes this in the DCO (Part 2 Principal Powers) in Article 6(1)(h). As currently drafted this Article seeks to disapply Regulation 12 in its entirety, meaning that the requirement for all types of environmental permit is disappplied. We will not agree to this. We will only agree to disapply the requirement for a flood risk activity permit and only if we can reach an agreement regarding the Protective Provisions for the Environment Agency in Schedule 16 Part 9. We are unlikely to agree to the disapplication of other environmental permits under the 2016 Regulations, including a water discharge activity. Accordingly, we request that Article 6(1)(h) is amended to read: "regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016, in respect of a flood risk activity permit only".

4.3 We have reviewed the proposed protective provisions (Schedule 16, Part 9) for the protection of the Environment Agency. We do not accept the current wording and will work with the applicant to agree the wording.

4.4 We welcome the inclusion of an 8-metre buffer zone around main rivers.

4.5. Where river crossings are proposed on the River Till and the River Trent these must be carried out using trenchless techniques. The use of open-cut techniques would be unsuitable at these locations, and we would object to any proposal of that nature.

4.6 The applicant is advised to follow the '[service crossing below the bed of a main river not involving an open-cut technique \(FRA3\)](#)' methodology for the proposed river crossing. Carrying the works out in accordance with the methodology within FRA3 will ensure works are done to the required standard in terms of flood risk.

- 4.7 Schedule 16, Part 9, Paragraph 99 of the DCO confirms that the applicant should submit all plans to the Environment Agency for approval before commencing any work, particularly within 8 metres of a main river or Environment Agency maintained asset.
- 4.8 We welcome the fact that water sensitive infrastructure will be sequentially located in flood zone 1 where possible. The ES states that where this has not been possible, equipment will be raised 0.6 metres above the 0.1% annual exceedance probability (AEP) level or as high as practicable. We wish to be made aware of any water sensitive infrastructure located within flood zone 3 (other than the tracker panels), and the height to which this infrastructure will be installed to ensure it is resilient during the design flood event.
- 4.9 Any site boundary fencing should be designed to prevent minor obstructions occurring, allowing the continuation of flow routes (if present) unimpeded through the site.
- 4.10 We agree that a silt management plan (ES, Chapter 10, Section 10.8.31) will be necessary to avoid deterioration of drainage quality and water bodies.
- 4.11 An abstraction licence may be required depending on the volume needed for dust suppression. Water in the area can be scarce during the warmer, drier months of the year and may not be readily available. The applicant may need to consider having water storage in place ahead of time ready for when dust suppression is required.
- 4.12 Discharging runoff to watercourses has the potential to transport pollutants such as herbicides, pesticides, nitrates, phosphates and silt and should be a last resort with mitigation in place to reduce the impact. It is understood that the detail on protecting water quality will be explored in a Water Management Plan, which will form part of the detailed CEMP, which is secured through Requirement 13 of the DCO.
- 4.13 We would advise that the CEMP explores maximising buffer distances, installation of silt traps, use of buffer strips and how best to communicate the key receptors to those working on site. This will minimise the possibility of sedimentation and erosion reaching watercourses
- 4.14 It should be ensured that any 'earth stockpiles' are located at least 30 metres away from any drain or watercourse for flood risk and water quality reasons.

- 4.15 The developer should consider water quality monitoring during construction to help prevent deteriorating water bodies.
- 4.16 Cottam 2, 3 and 3b overlap with the Environment Agency's River Eau NFM Opportunity Mapping. Opportunities to include NFM on-site should be considered as part of mitigation in relation to flood risk and WFD.

5.0 Ground conditions and contamination

- 5.1. We have reviewed the Environmental Statement: Chapter 11: Ground Conditions and Contamination (ref: [APP/C6.2.11](#)) and agree with the preliminary risk assessment findings.
- 5.2. Whilst Chapter 11 provides a summary of the ground conditions and receptors in the vicinity of the proposed scheme it does not appear to mention whether a search for private water supplies has been made. Although there are no licenced water supplies in the locality it is possible that small, unlicenced abstractions exist. The local planning authority will have record of these and should be contacted for further information.
- 5.3. Should the 'Discovery Strategy' protocol identify any unsuspected contamination during construction we would like to review and comment on these findings alongside the local planning authority (ES Chapter 11, Section 11.8.2, bullet point 4). This appears to be secured through Requirement 13 (the CEMP) in the DCO.

6.0 Environmental permit

- 6.1. Under The Environmental Permitting (England and Wales) Regulations 2016 a permit is required for installations, medium combustion plant, specified generator, waste or mining waste operations, water discharge or groundwater activities, or work on or near a main river or sea defence.
- 6.2. As referred to in paragraph 4.2 above, the disapplication of The Environmental Permitting (England and Wales) Regulations 2016 for work on or near a main river or sea defence (flood risk activity) is the only activity we will agree to disapply (subject to agreement regarding Protective Provisions). The applicant should make it clear that any reference made to The Environmental Permitting (England and Wales) Regulations 2016 within the DCO text is related to flood risk activities only and that any additional permits for water abstraction or discharge would still need to be applied for.

7.0 Development consent order

Application and modification of statutory provisions

7.1 We do not agree to the disapplication of sections 24 (restrictions on abstraction) and 25 (restrictions on impounding) of the Water Resources Act 1991.

7.2 As referred to in paragraphs 4.2 and 6.2, we will not agree to the disapplication of the requirement for any environmental permit, other than a flood risk activity permit in exchange for agreed protective provisions.

7.3 We are considering the disapplication of local legislation listed in Schedule 3 of the DCO. If we have any concerns about this, we will endeavour to include comments in our written representations.

Requirements

7.4 The Environment Agency wishes to be a specific named consultee in respect of Schedule 2, Requirement 7 (1) (landscape and ecological management plan); Requirement 8 (1) (ecological protection and mitigation strategy); Requirement 13 (1) (construction environment management plan); Requirement 14 (1) (operational environmental management plan) and Requirement 21 (1-4) (decommissioning and restoration). We would request that for the avoidance of doubt the words “following consultation with the Environment Agency” are inserted after “relevant planning authority”. This will give us an opportunity to comment on the detailed mitigation and management schemes, secured post consent, to ensure adequate protection and enhancement of the environment.

8.0 Further representations

8.1. In summary, we can confirm that we have no objection to the principle of the proposed development, as submitted. The issues outlined above are all capable of resolution and we look forward to receiving additional information to resolve our outstanding concerns. We will also continue to work with the applicant to agree the wording in the protective provisions.

8.2. We reserve the right to add or amend these representations, including requests for DCO Requirements and protective provisions should further information be forthcoming during the course of the examination on issues within our remit.



Should you require any additional information, or wish to discuss these matters further, please do not hesitate to contact me on [REDACTED] [@environment-agency.gov.uk](mailto:[REDACTED]@environment-agency.gov.uk), LNplanning@environment-agency.gov.uk or 020 847 48545.

Yours faithfully

Keri Monger AssocRTPI
Sustainable Places – Planning Specialist