

# COTTAM SOLAR PROJECT

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

### ON BEHALF OF WEST LINDSEY DISTRICT COUNCIL

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#### 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 6 September 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. WLDC understand that the Applicant is in the process of amending the dDCO in line with amendments made to Gate Burton Energy Park dDCO following ISHs in that examination process. Accordingly, the ExA are requested to note that the below may, and indeed likely will, be subject to amendments in due course.

#### WRITTEN SUMMARY

ISH1 AGENDA DCO REFERECE	SUBMISSIONS
<b>PARTS 1 TO 6</b>  Article 2 - Interpretation a) ‘Apparatus’ is either as defined in the 1991 act or it is not. The Applicant’s definition includes a long list of additional items. Please can the Applicant consider redrafting this definition.  b) ‘Authorised development’ – Please can the Applicant explain why this definition includes	  No comments.    WLDC submit that the definition of ‘authorised development’ should be more

<p>development beyond that described in Schedule 1.</p> <p>c) 'Date of decommissioning' – Please can the Applicant explain the reference to Requirement 21 which appears to cover a different point (i.e. submission and agreement of a decommissioning plan).</p> <p><b>Part 3 - Streets</b></p> <p>Article 11 – Temporary stopping up of streets and public rights of way</p> <p>d) The ExA notes that the drafting of this Article appears novel. The Applicant will be asked whether streets and public rights of way are better dealt with separately.</p> <p>e) The ExA notes that Article 11(1)(b) enables the undertaker to authorise the use of motor vehicles on classes of public rights of way where there is otherwise no public right to do so (albeit for the purposes of constructing and maintaining the Proposed Development). Please can the Applicant provide further justification for this power.</p> <p>f) Furthermore, the power in Article 11(1)(b) is exercisable for 'any reasonable time'. Please can the Applicant explain the need for this and identify the public rights of way over which it considers this power would be exercised.</p> <p>Article 12 – Private roads</p> <p>g) Article 12 enables the undertaker to use any private road within the Order limits for the purposes of, or in connection with, the construction or maintenance of the Proposed Development. Please can the Applicant provide further justification for the inclusion of this article and identify a prior precedent (whether Model Provisions or DCO).</p> <p>h) Please can the Applicant also identify which roads it considers will be affected by this provision and provide details of any discussions that have taken place with the owners of those roads.</p>	<p>precise and clearly defined (see Cleve Hill and Longfield DCOs).</p> <p>WLDC submit that the definition of 'date of decommissioning' and the drafting of requirement 21 are currently inconsistent (not least because requirement 21 does not currently have a notification requirement). Please see comments in respect of requirement 21 below.</p> <p>No comments.</p> <p>No comments.</p> <p>No comments.</p> <p>No comments.</p>
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<p>i) Please can the Applicant also explain why it considers the power to take temporary passage over private roads both during construction and maintenance is reasonable and proportionate in the context of this project.</p>	<p>No comments.</p>
<p><b>Part 5 - Powers of Acquisition</b>  Article 22(1) – Compulsory acquisition of rights  j) The ExA notes that Article 22(1) is broadly drafted to enable the Compulsory Acquisition (CA) of new rights over <b>all</b> of the Order land. While Schedule 10 limits the CA power in defined plots to the rights listed in that schedule, CA of rights is not limited to the plots listed in Schedule 10. Please can the Applicant confirm whether this is its intention and if so, explain why it considers the approach of allowing the CA of undefined rights not listed in Schedule 10 is justified.</p>	<p>No comments.</p>
<p>k) Please can the Applicant provide evidence that persons with an interest in the Order land (and not just those plots listed in Schedule 10) have been made aware that new, undefined rights were being sought over all of the Order land and that they were consulted on that basis.</p>	<p>No comments.</p>
<p>l) Please can the Applicant explain why Article 22 is stated to be subject to Article 23.</p>	<p>No comments.</p>
<p>Article 23(2)(c) – Private Rights  m) Please can the Applicant explain what enquiries have been made to establish what private rights exist over the Order land and what affected parties have been consulted.</p>	<p>No comments.</p>
<p>n) The ExA notes that there is some overlap with Article 22 which also gives the Applicant the ability to CA existing rights. Please can the Applicant explain why both articles are required.</p>	<p>No comments.</p>
<p>o) Please can the Applicant explain the inclusion of Article 23(2)(c). The Applicant's attention is drawn to paragraph 9.3 of the Secretary of State's decision letter in the Longfield Solar Farm DCO where the SoS removed a similarly drafted provision on the basis that it was uncertain and because he did</p>	<p>No comments.</p>

<p>not agree that rights should be affected before triggering one of the formal processes set out in (a) or (b).</p> <p><b>Part 6 - Miscellaneous and General</b>  Article 49 – Crown Rights  p) The Applicant will be asked to confirm whether consent under sections 135(1) and (2) PA 2008 has been obtained (or when it anticipates such consent will be obtained).</p>	<p>No comments.</p>
<p><b>Schedules 1, 2, 9 AND 17</b></p> <p>Schedule 1 – Authorised Development</p> <p>a) In view of its stated purpose as associated development, please can the Applicant explain why there is no upper limit on the storage capacity of the BESS.  b) Please can the Applicant explain the reasons for the final paragraph of Schedule 1, particularly in light of the extensive list of ‘further associated development’ listed immediately before it.</p> <p>Schedule 2 - requirements</p> <p>General  c) The ExA notes that ES Chapter 2 (EIA Process and Methodology) indicates the ES has assessed the environmental impacts of the scheme over a 40-year period. Please can the Applicant signpost where in the dDCO the consent is limited to this timescale or otherwise justify its absence.</p>	<p>No comments.</p> <p>WLDC submit that the ES is limited to 40 years and therefore anything beyond that is outside of the scope of the environmental impacts assessed. The project has been assessed as temporary (over a period of 40 years) and not as permanent. This is particularly relevant where the current definition of ‘maintain’ would allow it to have an indefinite operational lifetime.</p> <p>Examples of where the ES is limited to an assessment period of 40 years includes:</p> <ul style="list-style-type: none"> <li>• Chapter 8 – Landscape and Visual Impacts Assessment (para. 8.4.18) (Doc Ref: APP/C6.2.8);</li> <li>• Chapter 9 – Ecology and Biodiversity (para 9.4.7) (Doc Ref: APP/C6.2.9)</li> <li>• Chapter 14 – Transport and Access (para. 14.7.72) (Doc Ref: APP/C6.2.14)</li> </ul>

<p>Requirement 5 – Detailed design approval d) Please can the Applicant explain why this requirement is confined to Work Nos 1 to 4 and how the details of design will be approved in relation to the other numbered works.</p> <p>Requirement 9 – Biodiversity Net Gain e) The ExA notes that the Biodiversity Net Gain Report [APP-089] indicates a Biodiversity Net Gain (BNG) of 96% in habitat, 70% in hedgerow and 10% in river units. Please can the Applicant explain whether, and if so how, these levels of BNG are to be secured in the dDCO.</p> <p>Requirement 12 – Archaeology f) Please can the Applicant explain the drafting of this requirement. g) Please can the Applicant confirm whether or not the WSI [APP-131] is currently in outline form and whether it has been agreed with the Host Authorities. h) The Applicant will be asked to add the WSI to the list of documents to be certified under Schedule 14 as indicated in Article 2.</p> <p>Requirement 19 - Soils Management i) Please can the Applicant explain how soil resources will be managed during the operational and decommissioning phases of the Proposed Development and to signpost where/how this is secured in the dDCO.</p> <p>Requirement 21 – Decommissioning and restoration. j) Please can the Applicant explain why a 12-month delay is required between its decision</p>	<p>As a general submission in relation to the draft requirements WLDC submits that requirements 6, 7, 8, 9, 16, 19, 20 are missing retention clauses. Further, WLDC are content that LCC are the determining authority for requirements. WLDC agree that LCC are the determining authority for requirements 6 (on the basis that WLDC are named consultee), 11, 12, 18 and 19 and that LCC are a named consultee for requirements 4 and 20.</p> <p>WLDC submits that Work No 7 should be included in requirement 5, as it relates to above ground works that would have a visual impact.</p> <p>WLDC submits that a minimum requirement should be specified to secure the relevant BNG levels. It is also submitted that requirement 9 is missing a retention clause. WLDC also submit that more details about what must be included in the BNG strategy should be included (see Longfield DCO).</p> <p>No comments.</p> <p>No comments.</p> <p>WLDC submits that requirement 21 should require the submission of the</p>
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<p>to decommission and the submission of a decommissioning plan to the relevant planning authority.</p> <p>k) Please can the Applicant explain how decommissioning will be secured within the 40-year period assessed in the ES.</p> <p>Schedule 9 – Deemed Marine License Under the 2009 Act</p> <p>l) The Applicant will be asked to confirm whether the wording of this Schedule has been agreed with the MMO, and if not, provide an update on discussions including when it expects such agreement will be reached.</p> <p>Schedule 17 – Procedure for Discharge of Requirements</p> <p>m) The ExA notes that this is a bespoke procedure. The Applicant will be asked to explain what consultation has taken place with the local planning authorities and other consenting bodies on the wording of this Schedule.</p> <p>n) Please can the Applicant explain how the costs of the relevant local planning authorities associated with the discharge of requirements will be met under the Schedule.</p>	<p>decommissioning plan 12 months prior to the date of decommissioning.</p> <p>WLDC submits that a temporal 40 year limit should be included in requirement 21. It is also submitted that requirement 21 should contain a notification requirement if the decommissioning is to occur before the 40 years. WLDC considers that requirement 21 requires redrafting.</p> <p>No comments.</p> <p>WLDC strongly objects to the Schedule 17 as currently drafted.</p> <p>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 Gate Burton, West Burton 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. 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,</p>
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although WLDC is concerned that the response of consultees (for instance in requirements 11, 15 and 18) are not within the control of WLDC who are subject to the relevant determination period. WLDC note that the ability to agree an extension of time is permitted in Part 1, Article 47 but not Schedule 17.

WLDC consider that some requirements may need a longer determination period due to the likely complexity of the information being submitted. WLDC considers that this period will also be influenced by whether a 'deemed consent' provision is retained or removed. The position of WLDC is as follows:

Should there be no deemed consent provision, WLDC request that the following timescales be specified:

- Requirement 5 = 13 weeks
- Other Requirements = 10 weeks

Should there a deemed consent provision be retained, WLDC request that the following timescales be specified:

- Requirement 5 = 16 weeks
- Other Requirements 13 weeks

WLDC object to the deemed approval provision. The justification relied on the by the Appellant is one of efficiency (Explanatory Memorandum at 5.17.2) do not cite any unique or specific reason why such a provision should be included. This is especially relevant when 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 5.17.2). Given the importance and significance of the substantive areas governed by the requirements WLDC submits that it is

	<p>unacceptable for any of the requirements to be subject to deemed approval.</p> <p>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 able 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.</p> <p>WLDC submit that the usual fee provision (see the Longfield DCO and Advice Note 15), which has been excluded without any justification given by the Appellant, is reinstated in Schedule 17.</p>
<p><b>SCHEDULES 3 TO 8</b></p> <p><b>Schedule 4 – Streets Subject to Street Works</b>  a) Please can the Applicant explain the difference between the ‘streets plan’ and the ‘streets to be stopped up plan’ (which also appears in Schedule 5 and Schedule 8). The Applicant will be asked to identify the latter in the application documents.</p> <p><b>Schedule 5 – Alteration of Streets</b>  b) Please can the Applicant explain the extent of the alterations being proposed in column 3 of Schedule 5 (Parts 1 and 2) and why these are not specified in this Schedule.  c) Article 10 distinguishes between the highway authority and the street authority. Should such a distinction be carried through to Part 1 of Schedule 5 (i.e should it make clear which streets are maintained by the highway authority and which are maintained by the street authority)?</p>	<p>No comments</p> <p>No comments</p>



<p><b>SCHEDULE 14</b></p> <p><b>Schedule 14 – Documents and Plans to be Certified</b></p> <p><u>Latest versions and updates</u></p> <p>Annex G of the Rule 6 letter requests that the Applicant provide a schedule of the latest versions of the Applicant’s submission documents and documents to be certified.</p> <p>a) Please could the Applicant set out how it intends to respond?</p> <p>b) Please could the Applicant set out how it intends to update its application documents during the Examination? For example, to what extent does it intend to update the Environmental Statement to address clarifications identified during the Examination?</p> <p>c) Please could the Applicant set out its criteria for identifying the documents to be certified under Schedule 14.</p> <p>d) Please can the Applicant review the dDCO and ensure all documents to be certified are included in the Schedule.</p>	<p>No comments.</p>
<p><b>SCHEDULE 16 – PROTECTIVE PROVISIONS</b></p> <p><b>Progress updates</b></p> <p>Annex G of the Rule 6 letter requests that the Applicant provide a schedule of progress in relation to Statutory Undertakers, Protective Provisions, and any side agreements, that is updated during the Examination.</p> <p>a) Please could the Applicant set out how it intends to respond?</p> <p>b) Please could the Applicant summarise the progress made for each Statutory Undertaker and each Protective Provision, setting out any outstanding matters, the next steps to be taken, and the progress anticipated by the close of the Examination?</p> <p>c) Please could the Statutory Undertakers and other parties present that would benefit from the Protective Provisions comment?</p>	<p>No comments.</p>