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Via email only
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Dear Sir

**PLANNING ACT 2008 AND THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)
RULES 2010**

**APPLICATION BY COTTAM SOLAR PROJECT LIMITED FOR AN ORDER GRANTING
DEVELOPMENT CONSENT FOR THE PROPOSED COTTAM SOLAR PROJECT**

I refer to your letter dated 12th August seeking further information in respect of the above project. The Council has reviewed the responses and still has concerns regarding the applicants proposed wording for Requirement 12. The Council sets out below its suggested wording for Requirement 12

“12.—(1) No development may commence until an overarching archaeological mitigation strategy has been submitted to and approved by the relevant planning authority

(2) The overarching archaeological mitigation strategy must be in accordance with the agreed written scheme of investigation.

(3) No development may commence until a written scheme of investigation has been submitted to and approved by the relevant planning authority for that part.

(4) The written scheme of investigation must be in accordance with the approved overarching archaeological investigation and mitigation strategy and identify—

(a) the location of any intrusive archaeological surveys or investigations; and

(b) which of the measures set out in the overarching archaeological mitigation strategy are to be undertaken to protect, record or preserve significant archaeological remains in that location.

(5) must be carried out in accordance with the approved overarching archaeological mitigation strategy and the approved written scheme of investigation.

(6) The authorised development must be implemented in accordance with the approved overarching archaeological mitigation strategy and the approved written scheme of investigation.”

The Council is concerned that the Applicant’s wording lacks clarity and strongly recommend our wording as sent in our response of the 6th August 2024.

The Council recommends the phrase *‘No development shall commence’* be used instead of the phrases *‘No part of the authorised development’* or *‘Any intrusive permitted preliminary works’* as both non-intrusive and intrusive permitted preliminary works may damage or destroy buried archaeology, for example by compaction from plant movement.

It is imperative that *‘substantially’* is removed as the word suggests deviation from the agreed documentation. In practical terms establishing what is *‘substantially in accordance’* is likely to prove contentious and unworkable. The National Planning Policy Framework paragraph 55 makes clear that planning conditions(in this case requirements) must satisfy the six tests including being enforceable, precise, and reasonable in all other respects.

The Council do not accept that the Without Prejudice Archaeological Mitigation WSI (WPWSI) [REP5-035]) should be included in any part of the Requirement wording. The Council have consistently stated that it cannot approve the WPWSI as it is not fit for purpose. The Applicant will need to produce a new Archaeological Mitigation Strategy document which will need to be agreed, as set out below.

In the Council’s view the Applicant’s use of the phrases *‘overarching archaeological investigation and mitigation strategy’* and the singular *‘written scheme of investigation’* is confusing.

It is standard archaeological practice on large schemes to agree an overarching Archaeological Mitigation Strategy (AMS) which covers the whole scheme. As it requires an understanding of the surviving archaeology to be impacted by the development, this needs to be based on the evaluation trenching results in order to be fit for purpose. An approved trial trenching Written Scheme of Investigation (Trenching WSI) therefore is needed in advance of the AMS. Once the AMS is agreed a suite of more detailed Written Schemes of Investigation are prepared and agreed which cover specific areas or types of archaeological mitigation.

The Council responds to the Applicant’s assertion that *‘the Council has been unable to specify what changes to the WSI it would like to see, apart from additional precommencement trenching, which is included in the WPWSI.’* as follows:-

The Council cannot recommend any specific changes to the document until the trenching results have been provided to the Council. These will provide the information currently lacking across the redline boundary which will allow for a reasonable and proportionate AMS to be produced which can then be agreed.

This was expressed in the Council's response at Deadline 5 in the Lincolnshire County Council Statement of Common Ground Draft in February 2024 [REP5-038](#) , copied in the Lincolnshire County Council Statement of Common Ground Final in March 2024 [REP6-006](#) pp19-20:

'As they currently stand we cannot agree either of the two (Without Prejudice) WSIs. Our position remains that they have failed to adequately evaluate the site in line with professional guidance and standard archaeological practice and as such we cannot recommend either of the proposed post consent strategies.'

As we have consistently stated throughout the NSIP process, adequate trial trenching is required to inform an appropriate and fit for purpose mitigation strategy to adequately deal with the developmental impacts. This trenching should cover the full impact zone including the redline boundary and cable routes and be undertaken pre-consent to be in accordance with NPPF paragraphs 200 and 201 and the EIA Regulation 5 (2d)).

Trenching results are essential not only to inform mitigation but to ensure effective risk management and allows the developer to present a programme that is deliverable. As we are now in the post-submission stage we would do our best to facilitate completion of an appropriate scheme of trenching evaluation before the determination, to allow the results to inform a reasonable and robust site specific mitigation strategy.'

As there has not been enough trenching to provide sufficient baseline evidence, the Council's recommended wording follows the wording used in the Secretary of State's (SoS) recent decision for Mallard Pass and the requirement for Archaeology incorporates wording that the Council would like to see used in the Cottam decision should the SoS be minded to grant Consent. Like Mallard Pass, Cottam requires further trial trenching with the results informing an adequate AMS and the Council submit that the Mallard Pass decision sets a precedent for how the concerns of the Council should be captured as follows (for Mallard Pass the Council was not identified as the relevant planning authority for discharging the archaeology requirement):-

10.—(1) The authorised development may not commence until:

(a) a scheme for additional trial trenching has been submitted to and approved by both relevant planning authorities, in consultation with, Lincolnshire County Council and Historic England;

(b) additional trial trenching has been carried out in accordance with the scheme approved under sub-paragraph (a); and

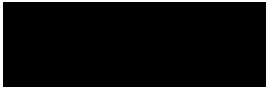
(c) updates are made to the outline written scheme of investigation to account for the results of the additional trial trenching carried out and the updated outline written scheme of investigation is submitted to and approved in writing by both relevant planning authorities in consultation with, Lincolnshire County Council and Historic England.

(2) The authorised development must be carried out in accordance with the updated outline written scheme of investigation approved under sub-paragraph 1(c).

[\(Mallard Pass Secretary of State Development Consent Order\)](#)

I hope this response is helpful to the Secretary of State and the Council will be pleased to assist further if required.

Yours faithfully



**Neil McBride,
Head of Planning**