



HELIOS RENEWABLE
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Written Summary of the Applicant's Oral Submissions – Compulsory Acquisition Hearing 1

December 2024

Helios Renewable Energy Project

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– Compulsory Acquisition Hearing 1

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Prepared on behalf of Enso Green Holdings D Limited

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1. Introduction

1.1. Overview

- 1.1.1. This Post Hearing Note summarises the submissions made by Enso Green Holdings D Limited (the “**Applicant**”) at the Compulsory Acquisition Hearing (“**CAH1**”) on 5 December 2024. This document does not purport to summarise the oral submission of parties other than the Applicant. Summaries of submissions made by other parties are only included where necessary in order to give context to the Applicant's submissions.
- 1.1.2. The ExA confirmed that there were no requests at Procedural Deadline A for a further Compulsory Acquisition (“**CA**”) hearing, however there would be a further opportunity for interested parties to come forward a Deadline 1.
- 1.1.3. This document follows the order of the agenda published by the Examining Authority on Friday 15 November 2024. It covers agenda items 4, 5 and 6.

1.2. Agenda Items

1. Welcome and logistics
2. Purpose of the Compulsory Acquisition Hearing
3. Introductions
4. The Applicant's case for the Compulsory Acquisition (CA) of Rights & Temporary Possession (TP) of land and rights
5. Statutory Undertaker's Land and Rights
6. Human Rights and Equalities
7. Next Steps
8. Closing

2. The Applicant's case for the Compulsory Acquisition ("CA") of Rights & Temporary Possession ("TP") of land and rights

2.1. The Relationship Between the Design Approach, the Extent Of Land Sought And The Applicant's Initial CA & TP Request

Compulsory Acquisition Approach

- 2.1.1. The Examining Authority ("ExA") invited the Applicant to discuss their approach to CA and the extent of the land that will be subject to the CA rights. The Applicant confirmed that all the land in the redline boundary with the Order Limits is subject to CA powers, but that they are not seeking freehold acquisition of any land as it would be disproportionate to the nature of the Proposed Development and its 40-year time period. Instead, the Applicant is seeking power of temporary possession and the acquisition of rights relating to access, underground cabling, vegetation and maintenance depending on the area of the scheme, with permanent rights only to be taken over the land that is needed permanently for example the cable corridor.
- 2.1.2. The Applicant confirmed that they already have in place voluntary agreements with the landowners and have agreements with Drax Power Station and National Grid Electricity Transmission in legals. The Applicant confirmed that the approach to CA has been that the absolute minimum rights over the minimum land will be subject to CA.
- 2.1.3. The ExA asked a follow-up question in regard to the land agreements and the duration that they will be in place. The Applicant confirmed that the land agreements cover the 40-year operational period as well as site preparation/construction and decommissioning.

Extent of land sought to subject to CA

- 2.1.4. The ExA queried the scale of the land that is subject to CA powers and asked why the cable corridor area was so large, when the cable trench will be much smaller.
- 2.1.5. The Applicant confirmed that it is a standard approach for schemes where cable corridors are being used, as it is not certain the exact location in which the cable will be as the ground will be subject to inspection and ground surveys.

2.1.6. *Post hearing note: this was the approach followed in the confirmed Cottam Solar Project DCO.*

2.1.7. However, the Applicant reiterated that once a detailed design process has been undertaken and they know where the cables will go, only that part will be subject to the CA powers. The landowners of the t-shaped land have confirmed that this forms part of their most fertile farmland and therefore the Applicant does not want to take permanent freehold acquisition of this land and deprive them of this land. The Applicant confirmed that if any land was subject to CA powers, then the landowners would be compensated accordingly.

Impacts on Landowners

2.1.8. The ExA asked whether there would be any further implications on landowners in terms of delivering the project using the proposed CA powers instead of acquiring the land permanently. The Applicant stated that they do not consider there are any circumstances where permanent CA would be beneficial to landowners and in fact, that they do not consider that they would meet the requirements set out in the statutory tests under the Planning Act 2008. Further, the Applicant confirmed that the landowners of the land which forms part of the cable corridors could continue to use their land as normal once the cables are installed, so there would be very minimal disruption.

2.1.9. Overall, the Applicant reiterated that the acquisition of rights was most appropriate and was necessary due to the existence of some unregistered plots, potential for unknown interests beneath ground and rights in highways, including the subsoil. Whilst the majority of land is secured by way of option agreements, CA of freehold land could not be justified and should be reserved as a last resort when voluntary agreement is not available.

The CA Statutory Tests

2.1.10. The ExA asked the Applicant to confirm whether the statutory tests under s122(2) (purposes for which the compulsory acquisition CA powers are sought) and s122(3) (compelling case in the public interest) Planning Act 2008 (“**PA 2008**”) is met on all land sought.

2.1.11. The Applicant confirmed that this was the case as set out in the Statements of Reasons [**APP-011**].

2.1.12. In terms of s122(2) PA 2008, the land and rights being acquired are required for the Proposed Development to ensure connection to the grid and to be able to construct the inter array crossings. Therefore, all the powers sought were required.

2.1.13. It was noted that there was no special category land.

In terms of s122(3) the Applicant confirmed that it had been though each plot and questioned whether it was required and for what purpose and this is set out in Table 3 in the Annex of the Statement of Reasons [**APP-011**].

Alternatives

2.1.14. The ExA asked the Applicant about the alternatives that have been considered. The Applicant confirmed that wherever the scheme would be located it would need to connect to the grid and so by virtue of this, some element of CA rights would likely be needed. As all other prospective sites would require an element of CA, the Applicant confirmed that there was unlikely to be no site which wouldn't need CA.

2.1.15. Therefore, the next best approach is a site where no freehold CA rights are required. The Applicant confirmed that they had worked through the hierarchy of CA rights and has only included the lowest forms of CA, i.e rights.

2.1.16. *Post hearing note: A further consideration of alternatives can be viewed in the Planning Statement Appendix 2 Site Assessment [APP-227].*

Temporary Possession ("TP")

2.1.17. The Applicant confirmed that the TP sought under the dDCO were the same as the permanent rights. TP will permit the Applicant to go onto the land and construct the Proposed Development before taking the rights. This allows the Applicant to know exactly where the underground cables and crossing points of highways will be which will ensure that the minimum areas of land will be burdened by the acquisition of rights. This will minimise the impact to landowners as well as limiting any compensation liability.

2.1.18. The Applicant also noted that they had voluntary agreements in place for skylark mitigation and so this is already secured. In addition to this, the land that the skylark mitigation will be on would vary year to year. The requirement is for there to be plots within the area identified which are cleared of vegetation to ensure optimal conditions for the skylarks, with the remainder of the land area being unaffected that year.

- 2.1.19. Additionally, all landscape and environmental management land was under an option with the relevant landowner and so no further land outside the dDCO limits is required.
- 2.1.20. In relation to drainage, the Applicant confirmed that there was not a material amount of underground drainage required for the scheme, and it was installation of the piles and cabling which was subsurface. The exception to this is at the Drax Golf Course where there is an installation of a cable route under the private railway and some watercourses which is captured in the cabling rights for those plots, which are slightly different to the other cabling rights sought in the dDCO.

Approach Category 3 parties

- 2.1.21. The ExA questioned the Applicant on how they have classified parties as 'Category 3 Parties'. The Applicant responded that it is a staged approach and the inclusion of parties in this classification does not mean that the Applicant has accepted that they have a claim and an omission from that part of the Book of Reference does not prevent them from making a claim.
- 2.1.22. The Applicant confirmed that the main aspects that parties may make claims for are: dust, noise, lighting, discharge onto land of water and noxious gases/smells. This could include additional run off into land drains then running into other people's systems, land drains or ponds.
- 2.1.23. The Applicant explained that they had used the noise contour plan to identify properties which should be included as Category 3 interests in the Book of Reference.

2.2. The Purpose and Adequacy of the Funding Statement ("FS")

- 2.2.1. The ExA invited the Applicant to discuss the adequacy of the funding statement and the ability of the Applicant to pay the compensation to any affected landowners. The Applicant stated that the Funding Statement [APP-012] set out this position but they confirmed that the Proposed Development is likely to be funded by a mix of debt and equity finance by the Macquarie Group, a multi-billion-pound entity with significant experience of investing in the solar industry in the UK. As part of the funding for the project this would include provision for all build costs and compensation claims. The Group's accounts have been appended to the Funding Statement.

- 2.2.2. The Applicant referenced Article 46 of the dDCO which safeguards funds funding for compensation claims.
- 2.2.3. The ExA highlighted that there were a lot of comments in the Relevant Representations (“RRs”) regarding decommissioning and funding for the same. The Applicant confirmed that in terms of funding the decommissioning, the land agreements require the Applicant to put the landowners in funds from year 10 of operation for decommissioning and that the costs of decommissioning are comparatively lower than construction. The Applicant agreed that it isn’t expressly stated in the Decommissioning Environmental Management Plan (“DEMP”) but that they would consider adding this in.
- 2.2.4. The ExA also questioned that if the requirement to keep the landowners in funds for decommissioning from year 10 of the Proposed Development, then there is nothing in the dDCO that confirms this to North Yorkshire Council (“NYC”). The Applicant stated that they would consider adding into the DCO that NYC will be notified once the bond is in place.
- 2.2.5. **Action: Set out how the DCO (and/or relevant control document) would explicitly ensure that the Undertaker has funding secured (such as being provided as a bond to the relevant landowners) for decommissioning. To include details of how this would be approved (i.e. by the LPA).**
- 2.2.6. *Post Hearing Note: As per the Action List for CAH1 published by the ExA on 9 December 2024, the Applicant will respond to this action at Deadline 2.*
- 2.2.7. The ExA asked the Applicant whether there would be any anticipated circumstances in which the potential aggregate liability could grow to exceed the reasonably available or secured funding. The Applicant confirmed that it is difficult to put an accurate figure on the amount of compensation that may be claimed until they know the loss that any particular claimant would suffer. However, the Applicant confirmed that because of the nature of the CA rights, the compensation sums are likely to be low, but that the compensation is secured by Article 46 of the dDCO and this will be funded by McQuarie group as per the Funding Statement [APP-012].
- 2.3. Whether there is a compelling case in the public interest for the compulsory acquisition and temporary possession provisions overall?**
- 2.3.1. The ExA invited the Applicant to comment on whether the Proposed Development is

in the public interest and can therefore justify the use of CA. The Applicant confirmed this was set out in more detail in the Statement of Reasons [APP-011]. The CA powers are limited to rights only and the Proposed Development is a Critical National Priority (*Post hearing note: As per 4.2.4- 4.2.5 the Overarching National Policy Statement for Energy (“EN-1”)*) which means that significant weight should be attributed to that when considering the impact on any individual. The Applicant is not aware of any individual right that would override the need for renewable energy.

3. Statutory Undertaker's Land and Rights

- 3.1.1. The Applicant confirmed they are in the process of agreeing Protective Provisions (“PPs”) with various Statutory Undertakers (“SUs”) (noting the EA was not a statutory undertaker for CA purposes but they were agreeing PPs with this party).
- 3.1.2. The Applicant confirmed that discussions with NGET, NGT and NPG, in relation to PPs are currently ongoing (all of which previous technical work has been undertaken with) and that they will update the ExA at Deadline 2 on the progress of these discussions.
- 3.1.3. The Applicant confirmed that they are in discussions with Network Rail (“NR”), but that they consider that there has been a misunderstanding about the extent of NR’s interest as the interaction with the railway is in respect of Drax’s private railway, rather than an NR asset although there may be rights of access over some land included. The Applicant does not envisage that PPs will be needed with NR. The Applicant is hopeful that once the misunderstanding has been resolved, they will withdraw their query but is engaging with NR in the meantime.
- 3.1.4. The Applicant confirmed that they don’t believe SoCGs will be needed with any of the above SU’s referenced, but that they will update the ExA at Deadline 3 or 4 if the PPs have not moved to an agreeable point.
- 3.1.5. **Action: the Applicant agreed to update the ExA on the progress of PPs at Deadline 2.**
- 3.1.6. The ExA queried where the Applicant is at in terms of their position with the Council as Highway Authority. The Applicant confirmed that discussions have begun further to the Council’s review of the Book of Reference and that they are committed to working through the details with them, but the CA powers do give the Applicant the right to cross highways. NYC reiterated that the CA powers can be exercised over highways, but stringent controls were needed to ensure safety and that they had attended the hearing today in order to discuss further meetings with the Applicant to discuss these points further in the new year.

4. Human Rights and Public Sector Equality Duty

- 4.1.1. The Applicant confirmed that the European Convention on Human Rights (“**ECHR**”) is considered at paragraph 11 of the Statement of Reasons [**APP-011**] and that they consider that there isn't an infringement on any human rights.
- 4.1.2. The Applicant confirmed that Public Sector Equality Duty (“**PSED**”) only applies to the Secretary of State in determining the application, not to the Applicant but the Applicant considers that the Proposed Development does not adversely or disproportionately impact any protective characteristics of people and that Planning Inspectorate process is compliant.
- 4.1.3. The ExA confirmed that as they needed to be in a position to report to the SoS and therefore understanding the Applicant's view on this was of assistance.

5. Actions Arising / Any Other Matters

- 5.1.1. The ExA discussed whether a Land Rights Tracker may be necessary and concluded that given the large number of landowner agreements already in place (and NGET and Drax being in legals), it would not be necessary. However, the ExA requested that Table 1 of the Statement of Reasons is updated and submitted at deadline 3 with any additional land information.
- 5.1.2. The Applicant confirmed that Table 1 will be updated prior to Deadline 3. The Applicant also confirmed that if there is any correspondence with affected parties, this will be inserted into the table.
- 5.1.3. **Action: The Applicant is to provide an updated Table 1 in Statement of Reasons [APP-011]. Should any submissions through written representations) be provided by any Affected Persons reference (including the Examination Library reference number) to the written submissions to be included in Table 1.**
- 5.1.4. *Post Hearing Note: As per the Action List for CAH1 published by the ExA on 9 December 2024, the Applicant will respond to this action at Deadline 3.*
- 5.1.5. Finally, the ExA stated that there may be some further questions on CA in the written questions, but that there may not be another CA hearing, unless an interested party requests it at Deadline 1.