



**East Yorkshire Solar Farm – EN010143**

**Section 51 advice regarding draft application documents submitted by East Yorkshire Solar Farm Limited**

On Thursday 14 September 2023 East Yorkshire Solar Farm Limited submitted the following draft documents for review by the Planning Inspectorate as part of its Pre-application Service<sup>1</sup>:

1. Draft Habitat Regulations Assessment Report
2. Draft Development Consent Order
3. Works Plan
4. Book of Reference (sample)
5. Land Plan (sample)

The advice recorded in the table below relates solely to matters raised upon the Planning Inspectorate's review of the draft application documents listed above. The advice is limited by the maturity of the documentation provided by the Applicant and the time available for consideration and is raised without prejudice to the acceptance decision or the final decision about whether development consent should be granted.

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<sup>1</sup> See <https://infrastructure.planninginspectorate.gov.uk/application-process/pre-application-service-for-applicants/>



<b>Draft Habitats Regulations Assessment Report (draft HRA Report)</b>		
<b>Ref No.</b>	<b>Paragraph/ Section</b>	<b>Comment/Question</b>
1.	<b>Paragraph 1.3.1</b>	This paragraph refers to 44 field stations; the number of stations is not identified in the dDCO. The Applicant should ensure that the Proposed Development description provided is consistent with that within Schedule 1 of the dDCO and also the ES. The Inspectorate notes the Applicant's intention to update this paragraph with the 'final DCO' project description.
2.	<b>Paragraph 4.2.3</b>	It is stated that a study area of 15km has been used. It is unclear on what basis this has been established considering paragraph 4.1.6 states that non-breeding goose species can forage up to 20km from European sites. The HRA Report should provide clear justification for the study area used.
3.	<b>Table 3</b>	Table 3 does not include 'Changes to predator-prey dynamics', which is identified in Table 2.
4.	<b>Footnote 2, page 21</b>	This footnote states that consultation with Natural England (NE) on the draft HRA Report has been undertaken. Evidence of this consultation should be provided within the application documents and should be cross-referenced where appropriate within the HRA Report.



Draft Habitats Regulations Assessment Report (draft HRA Report)		
Ref No.	Paragraph/Section	Comment/Question
5.	Table 6	<p>There are a number of potential impact pathways that are subsequently identified in the Report but not reflected in this table:</p> <ul style="list-style-type: none"> <li>• noise and visual disturbance of functionally linked habitat during construction or decommissioning is not identified for the Humber Estuary SPA/Ramsar site in Table 6, although it is identified as such subsequently in Section 6.2;</li> <li>• water quantity, level and flow is not identified for the Humber Estuary SAC in Table 6 although it is identified as such subsequently in Sections 6.2 and 6.3 (albeit it is determined that it will not result in an LSE on any European site); and</li> <li>• INNS is not identified for the Lower Derwent Valley SAC/SPA/Ramsar site and the Humber Estuary SPA/Ramsar site (or any other site) although it is identified as such subsequently in Section 5.7 and discussed in Section 6.2.</li> </ul> <p>In addition, loss of functionally linked habitat is identified as a potential impact pathway for the River Derwent SAC in Table 6 but is not reflected in Sections 5 and 6.</p> <p>Information should be consistently presented within the Report.</p> <p>It would also assist the reader if Table 6 identified the phases of the Proposed Development to which each of the impact pathways relate.</p>
6.	Table 7	<p>Unlike the other assemblages the foraging distance is not specified for dabbling ducks; although 500m is specified for teal in Table 13. For consistency it would be helpful to include the foraging distance for this assemblage.</p> <p>Bean goose are identified as an assemblage species in the left-hand column only and barnacle goose are identified in the right-hand column only but neither are subsequently referenced in the Report. The subsequent text in that column appears to suggest that a bespoke functional land IRZ has been used for some species, including barnacle goose, although it is unclear as the text appears to have gone awry.</p>



<b>Draft Habitats Regulations Assessment Report (draft HRA Report)</b>		
<b>Ref No.</b>	<b>Paragraph/Section</b>	<b>Comment/Question</b>
7.	<b>Paragraph 5.4.7</b>	It is recommended that justification is provided for the stated assumption that a site of under 2ha in size is unlikely to support a large enough population of birds to constitute 1% of an SPA/Ramsar population.
8.	<b>Paragraph 5.5.2</b>	'Site fabric' is first used here (page 44) but not defined, however it is defined in footnote 8 on page 58 in relation to paragraph 6.2.26 although it doesn't appear relevant to the wording therein. Suggest it is moved under the first use.
9.	<b>Paragraph 6.1.1</b>	It is stated in Section 4 that seven European sites are taken forward for further assessment but para 6.1.1 lists only six and omits reference to the Humber Estuary SAC (which is subsequently considered).



Draft Habitats Regulations Assessment Report (draft HRA Report)		
Ref No.	Paragraph/ Section	Comment/Question
10.	Table 10	<p>It is noted that the plans and projects listed within Table 10 do not include the Yorkshire GREEN project, which the Inspectorate understands is located within the vicinity of the European sites, albeit outside of the 15km study area. The Applicant should ensure the in-combination effects (ICE) assessment is comprehensive and considers schemes which have the potential to interact with the same European sites and contribute to ICE. The Applicant should include within the HRA Report information about any agreement with NE regarding the schemes selected for inclusion in the assessment.</p> <p>Table 10 should identify, where ICE are identified, which European sites and qualifying features may be affected and the phases of the Proposed Development in which the ICE could occur.</p> <p>It states for a number of plans and projects that as NE have concluded that those developments would not result in adverse effects on any European sites there is no potential for ICE together with the Proposed Development. It is unclear whether these developments had effects that were insignificant alone or whether particular impact pathways were ruled out so there was no potential for any effects. It is also unclear whether the ICE assessment for each of these developments included consideration of the Proposed Development. The ICE assessment for the Proposed Development should consider whether effects resulting from other plans and projects that are not significant alone could lead to significant effects together with the Proposed Development.</p> <p>The Inspectorate notes that the highlighted text under paragraph 8.4.20 states that further information on ICE will be included in the final HRA.</p>
11.	Section 6/7/8	<p>It would aid the reader if a table was included that summarised the conclusions of the screening stage, alone and/or in-combination for each European site, ie the impact pathways that were/were not taken forward to the appropriate assessment stage.</p>



<b>Draft Habitats Regulations Assessment Report (draft HRA Report)</b>		
<b>Ref No.</b>	<b>Paragraph/ Section</b>	<b>Comment/Question</b>
12.	<b>Paragraph 8.4.20</b>	It is noted that following appropriate assessment the conclusion of no adverse effect on integrity is dependent on providing suitable mitigation, the approach to which is not yet finalised and is currently under discussion with NE. It is recommended that the HRA Report sets out the latest position on the discussions with NE. In the event that this matter is not resolved prior to the submission of the application, consideration should be given to whether the HRA Report should address any subsequent stages of the HRA process. Relevant advice on derogations is provided in the Planning Inspectorate's Advice Note 10.
13.	<b>General</b>	It is not clear how the Framework Construction Environmental Management Plan (CEMP) is secured. It is assumed that the Framework CEMP will be a certified document secured via the DCO, however Schedule 15 of the dDCO, which lists the documents and plans to be certified, is blank.
14.	<b>Appendices B and C</b>	It should be ensured that the information contained in the screening and integrity matrices and their evidence notes is consistent with that contained in the body of the Report.
15.	<b>General</b>	It is recommended that the HRA Report cross-references to the relevant application documents containing the mitigation measures referenced in this Report and to where the measures are secured.

<b>Draft Development Consent Order</b>		
<b>Ref No.</b>	<b>Article/ Requirement/ Schedule</b>	<b>Comment/Question</b>
16.	<b>General Consistency</b>	The contents page of the draft DCO does not reflect the actual DCO schedules, eg 'Documents and plans to be certified' is listed as Schedule 13 but is contained in Schedule 15. The Applicant may wish to review this and ensure that there is consistency within this and other documents, and between all application documents.



Draft Development Consent Order		
Ref No.	Article/ Requirement/ Schedule	Comment/Question
		The Applicant may wish to review their Draft Development Consent Order and ensure that not only is the Draft Order in the Statutory Instrument template but to follow guidance and best practice for drafting in accordance with the latest version of the guidance from the Office of the Parliamentary Counsel and Advice Note 15. The Draft Development Consent Order should be fully audited to ensure there are no inconsistencies within the Order and its constituent parts.
17.	<b>General</b>	<p>The Applicant may wish to review their Draft Development Consent Order and ensure that not only is the Draft Order in the Statutory Instrument template but to follow guidance and best practice for drafting in accordance with the latest version of the guidance from the Office of the Parliamentary Counsel and Advice Note 15. The Draft Development Consent Order should be fully audited to ensure there are no inconsistencies within the Order and its constituent parts.</p> <p>The Application may wish to review and check the Order to ensure that all required information has been entered into the order.</p>
18.	<b>Article 2 and Article 3</b>	Limits of deviation are provided with a definition which include the words limits of deviation in Article 2 and this is then used in Article 3 (2) of the draft Development Consent Order as part of optional text within square brackets. It is unclear whether it is intended to include limits of deviation within the draft Development Consent Order, despite the current inclusion of this text in the order and the inclusion of limits of deviation text in the legend of the Works Plan. Limits of deviation however, do not appear to be shown on the Works Plan sheets model space. The Applicant may wish to reflect on whether they wish to include limits of deviation and to ensure the decision made is reflected in the documents submitted with an application for Development Consent.
19.	<b>Article 2 – Generating Station</b>	There does not appear to be a clear definition provided for Generating Station which is a term used in Article 4 and the Explanatory Note. As far as can be seen this draft Development Consent Order neither provides its own definition or points to an existing definition in other legislation. The Applicant may wish to review their



Draft Development Consent Order		
Ref No.	Article/ Requirement/ Schedule	Comment/Question
		approach and give consideration as to which definitions should be included in the Draft Development Consent Order.
20.	<b>Article 11</b>	This article refers to temporary stopping up of public rights of way and this terminology may be inaccurate to the legal situation with respect to the action being undertaken to close or restrict the passing and repassing of traffic in the highway by this provision. The Applicant may wish to review the terminology used and ensure that the description of the intended action is in accordance with the temporary nature of the action.
21.	<b>Articles 27 and Part 4 Interpretation Article 30</b>	There is the appearance of there being at two Articles identified as Article 30 due to the modification of other legislation. The Applicant may wish to review their approach so to make it clear what is happening in these Articles for the benefit of all parties should the Application be Accepted for Examination.
22.	<b>Schedules 1 – 8 and 12 – 13</b>	These schedules appear to be missing content and so will need completing as appropriate prior to submission. The Applicant may wish to review these schedules and populate as required.
23.	<b>Schedule 9, Part 1, Article 1</b>	It is stated that ““MMO” means the Marine Management Agency” however the correct name is the Marine Management Organisation. The Applicant may wish to review this.
24.	<b>Schedule 9, Part 1, Article 4</b>	The Inspectorate is not aware that there is an interface with the watercourse referred to in the deemed marine licence. This part of the Draft Development Consent Order states that it is the river Trent, but it seems more likely that this should be the River Ouse. The Applicant may wish to review the text to ensure it is accurate and complete. It may also be of value to ensure that the co-ordinate system designated in subparagraph 2 as being used in subparagraph 1 is that commonly used in law in England and Wales law, rather than Ordnance Survey National Grid reference system.





<b>Draft Development Consent Order</b>		
<b>Ref No.</b>	<b>Article/ Requirement/ Schedule</b>	<b>Comment/Question</b>
25.	<b>Schedule 10 table</b>	The table in this schedule appears to be missing content and so will need completing as appropriate prior to submission. The Applicant may wish to review this table and populate as required.
26.	<b>Content, Article 2, Schedule 13, Schedule 14, and Schedule 15</b>	<p>The draft Development Consent Order refers in the contents to documents and plans to be certified being in Schedule 13 to the Order. In Article 2 where cross referenced in definitions these documents are claimed to be in Schedule 14. Neither appears to be correct as the Schedule to the Order titled documents and plans to be certified is Schedule 15. The presence of these documents in Schedule 15 is reflected in the relevant Article, which is Article 40, according to Schedule 15. The Applicant may wish to review and amend the draft Development Consent Order and any other application documents cross-referencing the Schedule containing a list of documents being certified to ensure that this inconsistency is resolved.</p> <p>As noted in reference number 13, it is not clear how the Framework Construction Environmental Management Plan (CEMP) is secured. It is assumed that the Framework CEMP will be a certified document secured via the DCO, however Schedule 15 of the dDCO, which lists the documents and plans to be certified, is blank. The Applicant may wish to review this and satisfy itself that the way the Framework CEMP is secured is clear.</p>
27.	<b>Schedule 17, Part 3, Article 27</b>	This Article appears to be missing content and it is not clear whether it is intended for there to be a protective provision here or no article 27 is intended to be included in this part of the order. The Applicant may wish to review the order to ensure this, and any similar issues that may exist are resolved in the order for the benefit of the Applicant and any other parties, should the Application be Accepted for Examination.
28.	<b>Explanatory Note</b>	The Explanatory Note appended to the order refers to East Yorkshire Solar Farm Limited without its registered company number, which has been included on other occasions when the company is referenced by name within the order. It is also noted that the location where a copy of the order, book of reference and certified documents may be inspected has not yet been added to the note. The Applicant may wish to reflect on their approach and ensure that information that is not currently included is added to the order, should it be required.



Works Plan		
Ref No.	Plan ref	Comment/Question
29.	EN010143/AP P/2.3	The Infrastructure Planning (Applications Prescribed Forms and Procedure) Regulations 2009 (as amended), which is also referred to as APRP 2009 by in documentation submitted for Draft Document Review, outline the requirements against which these documents would be assessed at Acceptance Stage should an application be made. A plan has been provided titled Works Plan Sheet Extents with a Legislation Reference of APFP 2009 Regulation 5 (2) (j). This plan appears to be intended to be meaning to meet Regulation 5 (4) and Regulation 5 (3) is also of importance. It is noticed that this sheet is scaled at 1:20000 at A1 with a north point and includes the Ordnance Survey licence number and Crown Copyright attribution.
30.	60683115-2.3-WP – Cut Lines and Labelling	Whilst the plans do show cut lines and are labelled in a way to identify the next relevant sheet, these lines and labels may not be as distinctive as may be desirable. The use in the paper space of a dot, short dash, long dash, short dash pattern may render on occasion a similar colour as the background mapping and a similar comment on text colour for labels can be made. This could make the plan less easy to understand the drawing for parties to a future Examination if the application is Accepted for Examination by the Secretary of State. The Applicant may wish to reflect on readability of the plan for all parties to the examination, especially when the plan is not expanded to 100% or greater magnification or viewed on a small computer screen or printed out at sizes below A1.
31.	60683115-2.3-WP	Placement of north arrow over cut lines and features showing works may impede the use of the Works Plan sheets by parties. The Applicant may wish to give further consideration to the placement of the north arrow within the paper space.
32.	60683115-2.3-WP	No symbol appears to be shown on the legend for limits of deviation despite the inclusion of text suggesting there should be. The Applicant may wish to reflect on this and amend the legend as appropriate to ensure it is clear whether there are limits of deviation intended to be shown on the plan.
33.	60683115-2.3-WP – Sheet 3 of 21	Work No.3 is shown running along Tottering Lane and separated into two separate sections due to a section of this highway being located outside the Order Limits. The Applicant may wish to reflect on how this presents



Works Plan		
Ref No.	Plan ref	Comment/Question
		and whether this may cause confusion for parties to a future Examination should the application be accepted for Examination and consider how their intended works are presented on the Works Plan.

Book of Reference		
Ref No.	Paragraph/Section	Comment/Question
34.	General	The sample of the Book of Reference provided does not include background information on the purpose and structure of the Book of Reference. This may be included in the full Book of Reference for the application for Development Consent and is not necessarily a requirement for Acceptance of the Application. However, the Applicant may find that this helps to contextualise this document should the application be accepted for Examination. The Applicant may wish to reflect on this and take a view on how to ensure that application documents assist an Examination, should one take place following an application for Development Consent.
35.	General	The Applicant may wish to reassure itself that it is including the right parties in terms of rights and property in cases where there may be a split of rights and responsibilities between organisations and subsidiaries. Corporate structures may in some cases result in two or more legally separate parts of a corporate group having split responsibilities for infrastructure or land. An example might be found in the Secretary of State for Energy Security and Net Zero request for clarification on 5 May 2023 as part of the Longfield Solar Farm application process for Development Consent.
36.	Part 1	The sample of the Book of Reference appears to show Part 1 demonstrating standard elements of the table structure used by many Development Consent applications, but the applicant may find that is it clearer to use None or N/A in place of – for categories of Category 1 and 2 persons not found for a particular plot. The Applicant may wish to reflect on their approach and consider if it would be better to explicitly state that there are no parties in a particular category for a specific land parcel.



<b>Book of Reference</b>		
<b>Ref No.</b>	<b>Paragraph/ Section</b>	<b>Comment/Question</b>
<b>37.</b>	<b>Part 1</b>	It is not clear from the table provided what extent of new rights are being sought for each parcel in terms of Temporary Possession, Permanent Acquisition of New Rights or Permanent Acquisition of Land. The Applicant may wish to reflect on whether this should be reflected in Part 1 and make any appropriate changes.
<b>38.</b>	<b>Part 2</b>	The Applicant may wish to reassure themselves that there are no identified Category 3 parties that have not been listed in Part 2 of the Book of Reference.
<b>39.</b>	<b>Part 3</b>	The Applicant will wish to reassure themselves that there are no identified Persons with Easements or other private rights proposed to be interfered with, suspended or extinguished that have not been listed in Part 3 of the Book of Reference.
<b>40.</b>	<b>Part 4</b>	The Inspectorate notices that no Crown Interests have been identified in the sample Part 4 of the Book of Reference. Due to the presence of a tidal waterway within the order limits and the inclusion of a Deemed Marine Licence in the draft Development Consent Order the Applicant may wish to reassure itself that there is no Crown Land or Crown Interests that should be reflected in Part 4 of the Book of Reference. Any such interests should also be reflected in Parts 1 – 3 as appropriate. Should there be a need to add such interests, the Applicant is reminded that due to the demise of the Crown in September 2022 references should be made to His Majesty in place of Her Majesty.
<b>41.</b>	<b>Part 5</b>	Part 5 indicates that there is no Special Category and Replacement Land within the Order Limits. As part of their final pre-submission due diligence the Applicant may wish to reassure themselves that this is the case.



Land Plan		
Ref No.	Plan ref	Comment/Question
42.	EYSF_ARD_A QC – Sheet 14 of 24	<p>The Applicant is referred to The Infrastructure Planning (Applications Prescribed Forms and Procedure) Regulations 2009 (as amended), with specific reference to Regulation 5 (2) (i), Regulation 5 (3), Regulation 5 (4) and Regulation 5 (4A). The Land Acquisition Plan provided is provided at a scale of 1:6,000 and does not reference the Regulation it satisfies. It is recognised that it is no larger than A0 size and shows the direction of North, in the paper space, as required by Regulation 5 (3) of The Infrastructure Planning (Applications Prescribed Forms and Procedure) Regulations 2009 (as amended).</p> <p>The Applicant may wish to reflect on this and amend the Land Plan required in order to meet the aforementioned Regulations assessed at Acceptance Stage of the application process.</p>
43.	EYSF_ARD_A QC – Sheet 14 of 24	<p>No clear cut lines or references to adjacent sheets appear to have been included, which may make it harder for users to review and understand the relationship between sheets of the Land Plan.</p> <p>The Applicant may wish to reflect on this and amend the Plan as appropriate for the use of Parties to an Examination, should the application be Accepted for Examination following submission.</p>
44.	EYSF_ARD_A QC – Sheet 14 of 24	<p>The clarity of this plan appears to be less than desirable due to layering on plan with labelling seemingly from the mapping layer being layered above the land parcel and order limit layers of the model space, when shown within the paper space.</p> <p>The Applicant may wish to reflect on this can consider how to make the Land Plan as easy to review as possible for the use of Parties to an Examination, should the application be Accepted for Examination following submission.</p>

**General**

1. Where references are provided to other draft application documents it would be beneficial to provide the full title thereof inclusive of document reference number. Should further draft documents be provided for review, the Applicant may wish to consider providing a full list of known application documents (for purpose of signposting) as well as their respective reference number.



2. [\[MHCLG\] Application form guidance](#), paragraph 3, states: “*The application must be of a standard which the Secretary of State considers satisfactory: Section 37(3) of the Planning Act requires the application to specify the development to which it relates, be made in the prescribed form, be accompanied by the consultation report, and be accompanied by documents and information of a prescribed description. The Applications Regulations set out the prescribed form at Schedule 2, and prescribed documents and information at regulations 5 and 6.*”