

SUNNICA ENERGY FARM

EN010106

Volume 3

Consents and Agreements Position Statement

APFP Regulation 5(2)(q)

Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and
Procedure) Regulations 2009



Planning Act 2008

**The Infrastructure Planning
(Applications: Prescribed Forms and
Procedure) Regulations 2009**

Sunnica Energy Farm

Consents and Agreements Position Statement

Regulation Reference:	Regulation 5(2)(q)
Planning Inspectorate Scheme Reference	EN010106
Application Document Reference	EN010106/APP/3.3
Author	Sunnica Energy Farm Project Team

Version	Date	Status of Version
Rev 00	18 November 2021	Application version
Rev 01	11 November 2022	Submitted at Deadline 2

Table of contents

Chapter	Pages
1. Introduction	2
1.1 Overview	2
1.2 Purpose of this document	2
2. Approach to Consenting requirements incorporated within the draft DCO	3
3 Consents incorporated in the draft DCO	4
4 Other consents and licences	5

1. Introduction

1.1 Overview

- 1.1.1 Sunnica Limited (the "**Applicant**") has made an application for a Development Consent Order ("**DCO**") under the Planning Act 2008 ("**PA 2008**") for a new solar farm which comprises the construction, operation (including maintenance) and decommissioning of ground mounted solar photovoltaic ("**PV**") panel arrays to generate electricity energy from the sun and combine these with a Battery Energy Storage System ("**BESS**") which will connect to the Burwell National Grid Substation in Cambridgeshire. This document has been prepared as part of that DCO application (the "**Application**") and should be read in conjunction with the other documents submitted with the Application.
- 1.1.2 Sunnica Energy Farm (the "**Scheme**") will provide vital new energy infrastructure required to ensure security of supply to the UK, supporting the Department for Business, Energy and Industrial Strategy's aim of delivering responsible energy generation that provides a more sustainable, low carbon economy. Solar power provides an important role in moving the UK away from its reliance on fossil fuels.

1.2 Purpose of this document

- 1.2.1 The purpose of this document is to provide information on the additional consents and licences that are, or may be, required to construct and operate the Scheme.
- 1.2.2 Section 37 of the PA 2008 governs the content of an application for a DCO, including the requirements for the necessary accompanying documents specified in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 ("APFP Regulations").
- 1.2.3 Regulations 5 and 6 of the APFP Regulations provide the statutory requirements for what must accompany a development consent application. Guidance issued by the Department for Communities and Local Government: 'Planning Act 2008: Application Form Guidance' (June 2013) (paragraphs 45 and 46) requires that:

"Where the proposed development will also require other consents, licences, permits, etc, to enable it to be constructed and/or operational, and for which the Secretary of State is not the authorising body under the Planning Act, then the applicant must list and briefly describe these in Box 24. Reference should be made to any that have already been applied for, and a copy enclosed of any that the applicant may already be in the possession of."

"The applicant should also, either in Box 24 or elsewhere in one of their application documents, set out whether there are, in principle, any reasons why such consents etc. might not be granted. In providing this information the applicant should reference responses received from the relevant authorising bodies regarding the likelihood of such consents etc. being granted."

- 1.2.4 This document lists those consents which the Applicant currently anticipates could be required. Further consents may be required as the project develops due to

unforeseen circumstances and the Applicant will keep the Examining Authority up to date with any such developments.

2. Approach to Consenting requirements incorporated within the draft DCO

- 2.1 Section 33 of the PA 2008 makes it clear that there is no requirement for certain principal conventional consents to be obtained where a DCO is required to authorise a project (as is the case for the Scheme). In the case of the Scheme, section 33(1)(h) provides that a section 36 consent under the Electricity Act 1989 is not required
- 2.2 Part 7 of the PA 2008, in particular section 120, makes it clear that the following can be included within a DCO:
- Ancillary matters (including those listed in Part 1 of Schedule 5 to the PA 2008);
 - The application, modification or exclusion of statutory provisions for which the provision may be made in the DCO;
 - Amendment, repeal or revocation of any local legislation, where thought necessary or expedient by the Secretary of State in consequence of or in connection with the DCO; and
 - Incidental, consequential, supplementary, transitional or transitory provisions and savings.
- 2.3 Section 150 of the PA 2008 states that a requirement to obtain certain prescribed consents, or authorisations, under the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 can be removed by the DCO with the consenting body's agreement.
- 2.4 From the above, it is clear that the intention of the PA 2008 is to encourage as many consents to be 'wrapped up' in a DCO as possible creating a 'one-stop-shop' approach for construction related consents.
- 2.5 The Applicant considers that the approach to including consents with a DCO should apply for both those that do, and those that do not, require the agreement of the relevant body under section 150 in order for them to be included in the DCO. The Applicant envisages the approach being as follows:
- The DCO contains an express provision disapplying the requirement for the consent in question.
 - In exchange, the DCO includes 'protective provisions' for the benefit of the body concerned. Protective provisions are incorporated into the draft DCO for the Scheme at Schedule 12 [EN010106/APP/3.1].

- These protective provisions are specifically stated to have effect unless otherwise agreed between the Applicant and the body concerned.
- Compliance with the provisions is a matter as between the parties and can be enforced accordingly.
- Either way, the protective provisions provide a means for the body concerned to monitor, enforce compliance and to review the effectiveness of the approval regime enshrined in the protective provisions.
- The mechanism of approval being given under the protective provisions allows the body concerned to approach a project in two stages (i) the DCO application stage, where the principle of the project is accepted by the body concerned and the detail of the protective provision is negotiated and (ii) the subsequent approval stages under the protective provisions which cannot be unreasonably refused but where detailed matters going to construction can be properly considered.

2.6 This is a tried and tested approach adopted in numerous local and public (hybrid) Acts, Harbour Act Orders, Transport and Works Act Orders for many decades and which is now firmly established in the case of DCOs.

3. Consents Incorporated in the draft DCO

3.1 The principal consent for the Scheme will be a DCO. The DCO process enables land acquisition, along with many consents and powers, to be dealt with at the same time. The DCO application may, however, need to be supplemented by other applications because:

- A particular consent cannot be contained in the DCO;
- A consenting authority declines to allow a consent to be contained in the DCO; or
- It is not desirable or it is inappropriate to include a consent within the DCO due to the stage of design development and the level of detail available at the time the DCO is made.

3.2 The majority of consents required are included, or addressed, within the draft DCO submitted with the Application **[EN010106/APP/3.1]**, as permitted by various provisions of the PA 2008, although discussions in some of these respects are continuing with the principal stakeholders. These fall into the following categories:

- Authorisation of all permanent and temporary works for the Scheme, which is described as the "authorised development" in Schedule 1 to the draft DCO (equivalent to planning permission). Article 3 is the principal power in this respect;
- Compulsory acquisition of land and of rights over land, and the temporary possession of land. Articles 18 to 31 of the draft DCO provide these powers;

- Consent to carry out street works. Article 8 of the draft DCO provide this power;
- Consent to alter the layout of streets and to form new, or alter or improve existing, accesses. Articles 9 and 10 provide this power.
- Traffic regulation matters required during construction that are equivalent to Traffic Regulation Orders made under the Road Traffic Regulation Act 1984 and the Traffic management act 2004. Articles 11 and 44 of the draft DCO provide this power;
- Consent to undertake 'flood risk' activities. Article 6 provides this power, which is linked to the protective provisions in Schedule 12 of the draft DCO;
- Consent to obstruct ordinary watercourses Article 6 provides this power, which is linked to the protective provisions in Schedule 12 of the draft DCO;;
- Consent or approval for the carrying out of the works required under any relevant byelaws made under the Water Resources Act 1991. Article 6 provides this power, which is linked to the protective provisions in Schedule 12 of the draft DCO;
- Consent or approval for the carrying out of the works required under any relevant byelaws made under the Land Drainage Act 1991 Article 6 provides this power, which is linked to the protective provisions in Schedule 12 of the draft DCO;

3.3 Some of these consents are prescribed in the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015. As a result, under section 150 of the PA 2008, the relevant consenting body must agree to the inclusion of these consents within (i.e. disapplied by) the DCO. Discussions between the Applicant and these consenting bodies are ongoing, and the Applicant is confident that the necessary agreements will be obtained before or during the examination of its application, in exchange for the Applicant including in the DCO appropriate protective provisions (Schedule 12 to the draft DCO [EN010106/APP/3.1]).

4. Other consents and licences

- 4.1 A summary of the additional consents and licences likely to be required is set out in Table 1-1 below.
- 4.2 Table 1-1 lists the type of consent or licence required, the relevant consenting body, any agreement that has been reached with that body, actions to be undertaken and the status of the relevant application (e.g. whether the consent or licence has been granted or the anticipated application submission date).
- 4.3 Agreements with third parties may be required in parallel to the DCO process and may take a variety of forms.

- 4.4 A fundamental part of the DCO process is the preparation and agreement of Statements of Common Ground (SoCG) with third parties to identify the matters on which we are in agreement, in order to narrow the focus for examining the Application concerned and to make the examination process more efficient. These will be progressed by the Applicant where appropriate.

Table 1-1 Summary of Additional Consents and Licences Likely to be Required

Nature of Consent/Licence		Key Legislation	Consenting Authority	Status/Comment
1.	Electricity Generation Licence	Electricity Act 1989	Office of Gas and Electricity Markets (OFGEM)	Required for electricity generation under the Scheme in the areas specified in Schedule 1 to the licence. The generation licence was granted on 11 November 2020.
2.	Water abstraction or impoundment licence	Water Resources Act 1991 (as amended by the Water Act 2003), Environment Act 1995, Water Resources (Abstraction and Impounding) Regulations 2006	Environment Agency	If groundwater pumping / dewatering is required then applications to be made by the contractor before the abstraction or impoundment commences as appropriate.
3.	Water discharge	Environmental Permitting (England and Wales) Regulations 2016	Environment Agency	If water discharge activities are required then an application for water discharge activity environmental permit will be made by the contractor before water is discharged.
4.	Bilateral Connection Agreement To connect the Scheme to the NETS	N/A - Commercial Agreement	National Grid	The Applicant accepted a grid connection offer in December 2018 further details of which are given in the Grid Connection Statement [EN010106/APP/7.4APP-265] . <u>The Bilateral Connection Agreement was completed 13 February 2019 and an Agreement to Vary was entered 23 August 2021.</u>
5.	Permit for transport of abnormal loads For delivery by road of loads	Road Vehicles (Authorisation of Special Types) (General) Order 2003 or with authorisation from the Secretary of	Department for Transport, Highways Agency, Local Highway Authority or the police and bridge	Appropriate applications, in accordance with the Construction Traffic Management Plan (Appendix 13C to the Environmental Statement

Nature of Consent/Licence		Key Legislation	Consenting Authority	Status/Comment
	that fall outside standard practice (if required)	State under the Road Traffic Act 1988	owners (if any) as appropriate	[EN010106/APP/6.2APP-118] , will be made by the contractor in advance of the delivery of abnormal load.
6.	Section 61 consent Control of noise on construction sites	Control of Pollution Act 1974	Suffolk County Council / Cambridgeshire County Council	Applications will be made by the contractor a minimum of 28 days before construction commences.
7.	Health and Safety related consents	Health and Safety at Work Act 1974 and subsidiary legislation	Health and Safety Executive (HSE)	Applications to be made by the contractor before construction commences as appropriate.
8	Protected species licence	Protection of Badgers Act 1992	Natural England	It is proposed that the formal application process will take place and licence granted prior to the commencement of construction The Applicant is not aware of any reason why a licence would not be granted should one be required.
<u>9.</u>	<u>Hazardous Substance Consent</u>	<u>The Planning (Hazardous Substances) Regulations 2015</u>	<u>West Suffolk Council and East Cambridge District Council</u>	<u>Applications to be made by the Applicant following detailed design, if that is necessary.</u> <u>The Applicant is not aware of any reason why a consent would not be granted should one be required.</u>