

**Nationally Significant Infrastructure Project: EN01027 Mallard Pass Solar Farm**

**Response to Examining Authority's commentary and questions on the draft  
Development Consent Order Issued on Wednesday 18 October 2023**

**October 2023**

Lincolnshire County Councils (“LCC”) response to Examining Authority’s commentary and questions on the draft Development Consent Order is set out below. The following comments take into account the revised versions of documents and responses provided by the Applicant at Deadline 8.

DCO1.1 1.	Party directed to: Part 1: Preliminary	Question and/or commentary:	LCC Response
Q1.0.1	The Applicant LCC RCC SKDC	<p><b>Article 2 (Interpretation) “maintain”</b></p> <p>a) Confirm whether or not you agree with the related wording in section 2.2 of the updated outline Operation Environmental Management Plan (OEMP) [REP7-018]. If disagreement remains, including in relation to the maintenance schedule approval provision, please provide justification along with any alternative suggested drafting for consideration.</p> <p>b) Can the Applicant confirm whether or not it agrees to LCC’s [REP7-040] suggested drafting for paragraph 2.2.2 of the outline OEMP? Please provide clear justification for any disagreement in addition to your preferred drafting.</p>	<p>Part a) – Section 2.2 has been updated and now includes paragraph 2.2.4 which makes a distinction between maintenance works that involve panel replacement and other more general works. In light of this addition LCC is content that this provides the necessary comfort/control that had been sought and as such is agreeable to this as an alternative to the revised wording which we had suggested in <a href="#">REP7-40</a>.</p> <p>Part b) – This question is not directed to LCC but as indicated above LCC is now content with the revision made to the oOEMP and version submitted by the Applicant at Deadline 8 <a href="#">[REP8-012]</a>.</p>
3.	Part 3: Streets		
Q3.0.2	The Applicant LCC	<p><b>Article 12 (Claimed public right of way)</b></p> <p>The Applicant explains in its Summary of Oral Submissions for ISH5 [REP7-037] that this Article has been further updated to account for comments from LCC.</p> <p>a) Can LCC confirm whether or not it is now in agreement with the drafting of this Article in the latest draft DCO [REP7-010]?</p>	<p>Part a) – Yes LCC can confirm it is now content with the drafting of Article 12 as set out in the latest version of the dDCO <a href="#">[REP8-006]</a> with the exception of a minor tweak to sub-paragraph (5) which should be amended to read as follows:</p> <p><i>(5) A notice referred to in paragraph (3) is deemed to be a legal event for the purposes of section 53(3)(a)(i)(39) of the Wildlife and Countryside Act 1981.</i></p> <p>Parts b) and c) – N/A given response to part a)</p>

		<p>b) If outstanding concerns do remain the parties are also asked to continue discussions in order to seek to achieve an agreeable wording by Deadline 8A (Wednesday 1 November 2023).</p> <p>c) For any remaining concerns, both parties are requested to set out what these are with justification and suggest any alternative drafting that might overcome the concerns?</p>	
<b>6. Schedule 2: Requirements</b>			
Q6.0.1	<p>The Applicant</p> <p>LCC</p> <p>RCC</p> <p>SKDC</p>	<p><b>R5 (Approved details and amendments to them)</b></p> <p>The ExA seeks views on whether it would be appropriate to add the following wording to R5(2) in order for certainty that any proposed changes are non-material:</p> <p>‘Approval under sub-paragraph (1) for the amendments to any of the Approved Documents, Plans, Details or Schemes must not be given except for <u>non-material changes</u> and where it has been demonstrated to the satisfaction of the relevant planning authority or both relevant planning authorities (as applicable) that the subject matter of the approval sought <del>is unlikely</del> would not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.</p>	<p>LCC agrees with the Applicants response at Deadline 8 <a href="#">[REP8-020]</a> on this matter. As the drafting makes clear changes are not able to give rise to materially new or different effects then this provides sufficient control already and so see no need to include the wording “non-material”. LCC is therefore agreeable to the drafting included in the dDCO submitted at Deadline 8 <a href="#">[REP8-006]</a></p>
Q6.0.2	<p>The Applicant</p> <p>LCC (b)</p> <p>RCC (b)</p> <p>SKDC (b)</p>	<p><b>R6 (Detailed design approval)</b></p> <p>a) Is it intended that R6(f) includes electrical cables as proposed under Work Nos. 1, 2 and 3? The current drafting refers to ‘power and communication’</p>	<p>Part a) – LCC notes the Applicants response at Deadline 8 <a href="#">[REP8-020]</a> on this matter and takes a fairly neutral position given electrical cables may well be underground and so not impact on the external design of the scheme. However, we also see no harm in their route/position being shown on the layout plans that</p>

	MPAG (b)	<p>cables which should be clarified for the avoidance of any doubt and to ensure that the detailed design of the electrical cables falls for approval under this Requirement.</p> <p>b) With further regard to the proposed cabling, would a requirement for the submission and approval of a method statement for the construction and maintenance of the proposed cabling be necessary for the Proposed Development in this case?</p>	<p>would need to be approved as part of R6 and so should the ExA be minded to grant the DCO then the wording of R6(f) could be revised to read as follows:</p> <p><i>(f) drainage, water, power, <b>electrical</b> and communication cables and pipelines;</i></p> <p>Part b) – As this is to be contained within the CEMP then LCC does not consider it necessary to have a further requirement.</p>
Q6.0.3	The Applicant LCC	Please confirm whether the Applicant is in agreement with the suggested additions [REP7-040] to R6(2) in the event that the Secretary of State considers that additional trial trenching is required under Requirement 10 (Archaeology). If not, can agreement be reached between the parties on appropriate alternative drafting?	LCC notes and welcomes confirmation from the Applicant that they would be agreeable to the additional wording in the event the SoS considers additional trenching is required.
Q6.0.6	The Applicant LCC RCC	Notwithstanding the other considerations relevant to this Requirement, the current drafting of R10 is inconsistent with that for other Requirements where final versions of documents (which must be substantially in accordance with the relevant outline plan) require approval. For consistency, should it be amended to require the approval of a detailed WSI for each phase which must be substantially in accordance with the outline WSI?	LCC has reviewed the latest version of the oWSI submitted by the Applicant at Deadline 8 <a href="#">[REP8-018]</a> and is still of the view that this is unacceptable - principally for the reasons set out in our response to the Rule 17 request regarding paragraph 3.2 <a href="#">[REP8-024]</a> . Notwithstanding this position, had the oWSI been considered acceptable, whilst it might be preferable to draft the Requirement so that it is consistent in its approach to that adopted for other Requirements/management plans, given the oWSI does contain a commitment which makes clear that subsequent WSIs would still need to be submitted and agreed by the relevant authorities (and Schedule 16 of the dDCO has been updated at Deadline 8 so as to make clear such subsequent agreements would fall within the meaning of “discharge” and therefore follow the same approval route as Requirements made

			under Schedule 16) then we are satisfied this provides the control needed.
Q6.0.8	The Applicant Environment Agency LCC RCC SKDC	<b>R19 (Long-term flood risk mitigation)</b> a) If still required, please provide an update on whether the wording of this newly proposed Requirement has been agreed with the EA along with the relevant authorities. If not required, please provide reasons. b) Is it appropriate for the matters in R(2)(a) to be approved by the EA, rather than in consultation with the EA. What is the justification for this when usually such matters would fall for the approval of the relevant planning authority (and local lead flood authority)? c) Comments from relevant interested parties are invited on this proposed Requirement and related flood risk matters.	Part a) – LCC’s views on the principle and approach regarding long-term flood risk and mitigation remains as set out in our response to the Rule 17 request [REP8-024]. We therefore maintain the view that this is not needed as the life of the DCO should be limited to 40 years and not 60 years.  Part b) – Notwithstanding the above, should the ExA recommend, and the SoS be minded to grant, the DCO on the basis of 60 years and this information is therefore required, LCC would agree to the retention of R19 and support its revision to have that requirement subject to LPA approval with EA consultation as per the ‘without prejudice’ drafting contained in the Applicants response to Q6.0.8 submitted at Deadline 8 <a href="#">[REP8-020]</a> .
<b>8. Schedule 16: Procedure for Discharge of Requirements</b>			
Q8.0.1	The Applicant	<b>Applications made under Requirement</b> The ExA is of the view that there is merit in there being a consistent ten-week determination period for the discharge of all requirements taking account of the potential need for consultation with relevant parties along with the benefits for consistency and certainty that would result for all parties. Whilst understanding the Applicant’s comments that this is a nationally significant infrastructure project and that there is a need to ensure there is unacceptable delay to implementation, why would an additional two weeks determination time for the discharge of certain	Whilst this question is directed to the Applicant and not LCC, LCC notes the Applicants response to Q8.0.1 at Deadline 8 <a href="#">[REP8-020]</a> but disagrees and maintains its view a single and consistent 10 week determination period for discharging all requirements would be appropriate. We agree with the ExA’s view that a single timeframe would have benefits for consistency and certainty for all parties.

		Requirements cause any material delay to implementation?	
Q8.0.2	RCC LCC SKDC	Please provide any final comments on the drafting of Schedule 16 by Deadline 8A (Wednesday 1 November 2023), including justification for any proposed change and any proposed alternative drafting where any disagreement remains.	<p>LCC maintain that the determination period for all Requirements should be 10 weeks. Therefore Schedule 16 should be amended to reads as follows:</p> <p><b>2.—(1)</b> <del>Subject to sub-paragraph (2), w</del><sup>W</sup>here an application has been made to the relevant planning authority for any discharge, the relevant planning authority must give notice to the undertaker of its decision on the application within a period of <del>eight</del><sup>ten</sup> weeks beginning with the later of—</p> <p>(a) the day immediately following that on which the application is received by the authority;</p> <p>(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph <del>2</del><sup>3</sup>; or</p> <p>(c) such longer period that is agreed in writing by the undertaker and the relevant planning authority.</p> <p><del>(2) Where an application has been made to the relevant planning authority for any discharge required by requirement 6, 7, 8, 9, 11, 12 or 18, the relevant planning authority must give notice to the undertaker of its decision on the application within a period of ten weeks beginning with the later of—</del></p> <p><del>(a) the day immediately following that on which the application is received by the authority;</del></p> <p><del>(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3; or</del></p> <p><del>(c) such longer period that is agreed in writing by the undertaker and the relevant planning authority.</del></p>

			<p>(<del>2</del>3) Subject to paragraph <del>3</del>4, in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1) <del>or sub-paragraph (2)</del>, the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.</p> <p>(<del>3</del>4) Any application made to the relevant planning authority pursuant to sub-paragraph (1) <del>or (2)</del> must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.</p> <p>(<del>4</del>5) Where an application has been made to the relevant planning authority for any discharge and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1) <del>or (2)</del> —</p> <p>(a) and the application is accompanied by a report pursuant to sub-paragraph (<del>3</del>4) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or</p> <p>(b) the relevant planning authority considers that the subject matter of such applications will give rise to any materially new or materially different environmental effects compared to those in the environmental statement,</p> <p>then the application is to be taken to have been refused by the relevant planning authority at the end of that period.</p>
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			(56) Where an application has been made to the relevant planning authority for any discharge, the undertaker will also submit a copy of that application to any requirement consultee.
Q8.0.3	The Applicant	<p><b>Appeals</b></p> <p>a) Under Schedule 16 4(2), would it be appropriate to insert a time period (e.g. 42 days) within which the undertaker has to make any appeal? This could take the form of the following wording (notwithstanding Q8.0.1):</p> <p><i>‘Any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the relevant time period set out in paragraphs 2(1) or 2(2), giving rise the appeal referred to in sub-paragraph 4(1).’</i></p>	<p>Whilst this question is directed to the Applicant and not LCC, LCC notes the Applicants response to Q8.0.3 at Deadline 8 <a href="#">[REP8-020]</a> and has no issue with the amendments made to the DCO to include a 6 month period for the Applicant to lodge an appeal. It is however ironic that the Applicant is happy to propose a much longer period to that proposed by the ExA on this specific matter whereas they have disagreed to the proposal that the determination period for all Requirements should be set at 10 weeks on the grounds of the need to ensure there is not an unacceptable delay to implementation.</p> <p>LCC submits that if the Applicant is prepared to extend the period to lodge an appeal from 42 days to 26 weeks then an additional 2 weeks determination time for the discharge of Requirements is hardly significant and would not cause any material delay to implementation.</p>