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# **FENWICK SOLAR FARM**

**Fenwick Solar Farm  
EN010152**

**Applicant's Summary of Oral Submissions at the Issue Specific  
Hearing (ISH1) on the Draft Development Consent Order and  
Post Hearing Note**

**Document Reference: EN010152/APP/8.14**

**The Infrastructure Planning (Examination Procedure) Rules 2010**

**April 2025  
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## Revision History

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Prepared for:  
Fenwick Solar Project Limited

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# **1. Introduction**

- 1.1.1 An Issue Specific Hearing was held at 10:00 on Thursday 20 March 2025 at Doncaster Racecourse, Doncaster in relation to the Draft Development Consent Order.
- 1.1.2 Representatives from the Examining Authority (ExA), Pinsent Masons LLP (the Applicant's legal advisers for the Application), City of Doncaster Council, Able UK Limited and Elba Securities Limited were present at the Issue Specific Hearing. It is these parties' oral submissions that are summarised in this document.

**Table 1-1 Applicant's Summary of Oral Submissions and Post Hearing Notes**

#	Agenda Item	Post-Hearing Notes
1.	<b>Welcome, opening remarks and introductions</b>	<p>The following parties were present at the hearing:</p> <ul style="list-style-type: none"> <li>• Taylor Power, Associate and Alex Tresadern, Associate, both at Pinsent Masons LLP, the solicitors for Fenwick Solar Project Limited (<b>the Applicant</b>).</li> <li>• Emyr Thomas, Partner and Parliamentary Agent at Sharpe Pritchard LLP, the solicitors for City of Doncaster Council (<b>the Council</b>). Several officers from the Council were also present, of whom Roy Sykes, Head of Strategic Planning for the Council, made submissions.</li> <li>• Angus Walker, Partner at Broadfield LLP, the solicitors for Able UK Limited (<b>Able</b>) and Elba Securities Limited (<b>Elba</b>).</li> </ul>
2.	<b>The purpose of the hearing and how it will be conducted</b>	<p>The ExA explained that the purpose of the hearing was to examine the draft Development Consent Order (<b>the dDCO</b> or <b>the Order</b>) and related matters and invited certain parties to make oral representations about those matters.</p>
3.	<b>The purpose and overall structure of the dDCO</b>	<p>The ExA asked the Applicant to summarise the structure of the Fenwick Solar Farm (<b>the Scheme</b>) dDCO.</p> <p>Ms Power, for the Applicant, provided a summary of the dDCO [<b>APP-220</b>]:</p> <ul style="list-style-type: none"> <li>• Part 2 of the Order sets out the Principal Powers – including granting the undertaker consent for the authorised development, as constrained by the Order limits and numbered areas shown on the Works Plans. This part of the Order also authorises the maintenance and operation of the authorised development.</li> <li>• Part 3 of the Order provides a suite of powers in relation to street works, including carrying out street works within streets, altering the layout of streets, creating accesses, temporarily</li> </ul>

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prohibiting or restricting use of streets and public rights of way, entering into agreements with street authorities, and traffic regulation measures. These provisions give effect to Schedules 4 to 8.

- Part 4 contains supplemental powers, relating to discharge of water, protective works to buildings, and the authority to survey and investigate the Order land.
- Part 5 of the Order sets out the powers of acquisition or temporary possession. These include powers to compulsorily acquire rights in land, to extinguish rights in land, or to take temporary possession of land. These articles relate only to the Order land, as shown on the Land Plans **[APP-006]**. There are also standard provisions relating to compensation payable to affected persons, and powers in relation to land and apparatus of statutory undertakers. These articles give effect to Schedules 9 to 11.
- Part 6 includes various miscellaneous or general provisions. These cover:
  - Articles 34 and 35 give the benefit of the Order to the Applicant (and National Grid in respect of Work No 4(b)) and set out provisions relating to the transfer of the benefit of the Order.
  - Articles 36 and 37 provide for how landlord and tenant law apply in relation to the Order and that the Order land will be "operational land" for the purposes of the Town and Country Planning Act (**TCPA**) 1990.
  - Articles 38 and 39 set out the powers and restrictions that apply in respect of the lopping of trees, shrubs or hedgerows and the management of protected trees.
  - Article 43 provides protection for statutory undertakers through the protective provisions (set out in Schedule 14).

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- Articles 40-42 and 44-47 include provisions relating to the certification of plans and documents relevant to the Order; service of notices under the Order; procedure in relation to approvals required under the Order; arbitration; guarantees in respect of the payment of compensation; incorporation of the mineral code to the compulsory acquisition of land, and Crown rights.

Ms Power explained that there are 15 Schedules to the dDCO. Ms Power summarised as follows:

- Schedule 1 – sets out the authorised development;
- Schedule 2 – sets out the requirements that relate to construction, operation and decommissioning of the Scheme. Ms Power explained that requirements in such Orders act similarly to consent conditions within planning permissions granted under the TCPA regime. They set controls for the construction and operation of the Scheme. This is primarily achieved by requirements for various Management Plans, which control matters relating to the scheme, including (by way of example) battery safety, landscape matters, and the construction period. Ms Power noted that the Framework Management Plans provided as part of the application will be updated post-consent to reflect minor design changes but must substantially align with the submitted versions. Ms Power stated that comments from Interested Parties and the Council on these Management Plans and the requirements generally were appreciated and would be considered by the Applicant throughout the Examination.
- Schedule 3 – sets out legislation to be disapplied. Ms Power noted that this was explained in the Explanatory Memorandum **[APP-222]** but said that this generally reflects historical legislation found in searches which may conflict with the Order and so is disapplied only to the extent it conflicts.

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- Schedule 4 (Streets subject to street works) – sets out the streets that are to be subject to street works by reference to the Streets, Rights of Way and Access Plans **[APP-215]**. The Schedule relates to Article 8 (Street works).
  - Schedule 5 (Alteration of streets) – sets out the streets that are to be permanently altered (Part 1) and temporarily altered (Part 2) by reference to the Streets, Rights of Way and Access Plans **[APP-215]**. This Schedule relates to Articles 9 (Power to alter layout, etc., of streets) and 10 (Construction and maintenance of altered streets).
  - Schedule 6 (Streets and public rights of way) – sets out the locations of the streets and public rights of way which will be temporarily managed or closed and diverted, used by vehicles temporarily and permanently, or permanently closed and diverted. It references the Streets, Rights of Way and Access Plans **[APP-215]**. This Schedule relates to Articles 11 (Temporary closure of streets and public rights of way) and 12 (Permanent closure of public rights of way).
  - Schedule 7 (Means of access to works) – sets out the permanent means of accesses to works (Part 1) and temporary means of accesses to works (Part 2). It references the Streets, Rights of Way and Access Plans **[APP-215]**. The Schedule relates to Article 14 (Access to works).
  - Schedule 8 (Traffic regulation measures) – sets out the locations and extent of temporary traffic signal and banksman control areas or changes to traffic regulation. It references the Traffic Regulation Measures Plans. The Schedule relates to Article 16 (Traffic regulation measures).
  - Schedule 9 (Land in which only new rights etc. may be acquired) – sets out the areas of land over which only new rights may be acquired by the undertaker and the nature of the rights that may be acquired. The plot numbers in column 1 of that table correlate with the relevant plot reference numbers on the Land Plans **[APP-006]** and the nature of the rights in column 2 explains the purposes for which rights over land may be acquired and restrictive covenants imposed. The Schedule relates to Article 22 (Compulsory acquisition of rights).



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- Schedule 10 (Modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants) – modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965.
  - Schedule 11 (Land of which temporary possession may be taken) – sets out the land of which only temporary possession may be taken, pursuant to Article 29 (Temporary use of land for constructing the authorised development). The plot numbers in column 1 of that table correlate with the relevant plot reference numbers on the Land Plans and the column 2 explains the purposes for which temporary possession may be taken.
  - Schedule 12 (Documents and plans to be certified) – lists the documents that the undertaker must have certified as true copies by the Secretary of State pursuant to Article 40 (Certification of plans and documents, etc.).
  - Schedule 13 (Arbitration rules) – sets out the procedures for arbitration in accordance with Article 42 (Arbitration).
  - Schedule 14 (Protective provisions) – sets out protective provisions for the benefit of statutory undertakers whose equipment may be affected by the authorised development. At the time of ISH1, this schedule contained: protective provisions for the benefit of defined classes of service undertaker (electricity, gas, water and sewerage undertakers at Part 1, electronic communications code operators at Part 2 and drainage authorities at Part 3), and Parts 4 to 5 contain bespoke provisions for the benefit of statutory undertakers. Some of these provisions are agreed with the relevant statutory undertakers, while others represent the Applicant's latest position whilst the drafting is still being agreed with the relevant statutory undertaker.
  - Schedule 15 (Procedure for discharge of requirements) – sets out the procedure for discharge of requirements.

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4.	<b>Main discussion points – Recitals dDCO</b>	
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The ExA asked the Applicant to review the references in the Order to section 105 of the Planning Act 2008 and confirm if these were intended to be references to section 104.

Ms Power, for the Applicant, confirmed the only reference to section 105 was in the recitals and was included as a typo. Ms Power confirmed this would be updated at Deadline 1 to section 104.

*Post hearing note: The Applicant has amended the reference to section 105 to section 104 within the dDCO submitted for Deadline 1 [EN010152/APP/3.1(Rev02)].*

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**Article 2 – Interpretation**

“Authorised development”

In relation to the definition of ‘authorised development,’ the ExA queried if the definition was too broad, and referenced the Secretary of State’s decision in recent solar DCOs to narrow the definition to only include development referred to in Schedule 1.

Ms Power, for the Applicant, responded that the Applicant had adopted the same drafting as used in the Gate Burton Energy Park Order 2024. However, Ms Power acknowledged that the definition was slightly unclear regarding whether it enables both general powers under section 32 of the Planning Act 2008 and those matters captured within Schedule 1. Ms Power proposed adopting the definition from the Cottam Solar Project Order 2024 to avoid this ambiguity. Ms Power said that the Applicant would amend the version of the dDCO submitted at Deadline 1.

*Post hearing note: The Applicant has included the amended drafting for “authorised development” within the dDCO submitted for Deadline 1 [EN010152/APP/3.1(Rev02)].*

### "Working Day"

The ExA raised the definition of "working day". It was noted that the definition in Article 2 did not include Saturdays but that the Construction Environmental Management Plan (CEMP) **[APP-196]** did include working hours on Saturdays until 1pm.

Ms Power, for the Applicant, explained that the term "working day" in Article 2 is used only in two places within the dDCO:

- Article 35, which relates to the consent to transfer the benefit of the Order and its timeframes; and
- Schedule 15, which outlines the procedure for discharging requirements.

These references pertain to timeframes for approvals or actions by the undertaker and the relevant Planning Authority, not the working days for the Scheme (which Ms Power agreed were broader for both construction and operation than provided in this definition). Instead, the working days for the Scheme are appropriately managed within the CEMP **[APP-196]** and Operational Environmental Management Plan (OEMP) **[APP-197]**. On this basis, the Applicant considered the definition in the Order remained appropriate.

Mr Thomas, for the Council, raised queries regarding the use of "working days" versus "days" throughout the Order, and sought a consistent approach.

Ms Power, for the Applicant, confirmed the Applicant would review the use of "working days" versus "days" throughout the Order and engage further with the Council following the hearing as to any further changes if required.

*Post hearing note: Further to the queries raised by the Council at ISH1, the Applicant undertook a review of the use of "days" vs "working days" throughout the dDCO. Subsequent to this review, the Applicant has updated the dDCO **[EN010152/APP/3.1(Rev02)]** at Deadline 1 to change time periods measured in "days" to "working days" in Articles 16 (Traffic regulation measures) and 42 (Arbitration),*

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*as well as Schedule 2, Requirement 2 (Approved details and the amendments to them) and Schedule 15, paragraph 4 (Procedure for discharge of requirements).*

*It is noted that time periods in “days” have been retained for some articles and schedules. The reasoning for this is as follows:*

- Articles 18 (Protective works to buildings), 19 (Authority to survey and investigate the land), 29 (Temporary use of land for constructing the authorised development), 30 (Temporary use of land for maintaining the authorised development) and 44 (Service of notices), as well as Schedule 10 (Modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants). The time periods within these align to existing time periods within associated legislation, primarily those within the Compulsory Purchase Act 1965. It is considered preferable to stay in alignment with this legislation, should those with affected land interests be using agents who are used to standard timeframes.*
- Article 35 (Consent to transfer the benefit of the Order) – this relates to notification to the Secretary of State. As the Secretary of State has used the existing timeframe in previous Orders, the Applicant has retained this per that preference.*

*While it is understood from the meetings held with the Council on the dDCO since ISH1 that this approach is acceptable, the Applicant notes that Council has reserved its position on the dDCO until it provides further comments to the Applicant, post Deadline 1. The Applicant hopes to provide confirmation that this matter is agreed at Deadline 2.*

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### **Article 6(1)(f) – Application and modification of statutory provisions**

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The ExA noted that the Environment Agency (**EA**) in its relevant representation has reserved its acceptance of the drafting in Article 6(1)(f), which disapplies the requirement to obtain an environmental permit. The ExA enquired as to how this issue would be resolved.

Ms Power, for the Applicant, confirmed that discussions with the EA were ongoing. Ms Power said the Applicant understood the EA may be minded to accept the disapplication once protective provisions were agreed between the parties to appropriately replace this permitting requirement.

*Post hearing note: The Applicant has provisionally agreed a form of protective provisions for the benefit of the Environment Agency which are included within the Draft DCO [EN010152/APP/3.1(Rev02)] as Part 5 of Schedule 14. Subject to the resolving of outstanding technical matters, the Applicant understands that the parties will be in a position to agree disapplication under the Environmental Permitting (England and Wales) Regulations 2016.*

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### **Article 12 – Permanent closure of public rights of way**

#### Basis for article

The ExA noted that recent solar DCOs have not included an article for the permanent closure of public rights of way (**PRoW**). The ExA indicated they had a number of questions on the drafting of the Article and generally asked the Applicant to explain the purpose of the provision.

Ms Power, for the Applicant, explained that permanent closures of PRoW have not been included in previous solar DCOs, as changes or diversions were only temporary during construction and reverted to the original routes. For this site, some PRoW will have permanent rerouting. It is the Applicant's understanding, on the basis of discussions with the Council, that these new routes are preferred as they align with routes already used by the community. Article 12 allows these routes to be undertaken by the statutory undertaker. The Applicant reviewed other Orders, such as the Drax Power Generating Stations Order 2019, the A66 Northern Trans-Pennine Development Consent Order 2024, and the Sizewell C Order 2022, which included permanent closures and diversions of PRoW. Article 12 of the

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dDCO adopts the approach taken in these Orders, with some novel drafting to align the Article to the other street works and PRow articles within the dDCO.

### General power to close PRow (Article 12(1))

The ExA enquired as to the inclusion and intention behind the general power for the closure of PRow at Article 12(1) in addition to those closures and diversions specified in Schedule 6.

Ms Power confirmed that the current drafting of the dDCO included a general power for the closure of PRow, in addition to the closure of specified PRow as outlined in Part 6, Schedule 6. Ms Power noted this general power is still constrained by requirements for any closure to:

- be related to the construction of the authorised development;
- be replaced by suitable new, permanent routes, to the satisfaction of the street authority; and
- only be on land which the undertaker owns, due to the drafting in sub-paragraph 12(3) which specifies the undertaker may only appropriate for the use of the authorised development the land on which a closed PRow is located if that land is bounded on both sides by land owned by the undertaker. This prevents the undertaker to use this Article to make general closures of PRow throughout the district without ownership.

Ms Power explained that this drafting approach is similar to Article 9 of the dDCO, which includes a broader general power for street works as well as referring to specified street works in Schedule 5.

Ms Power further explained that the inclusion of the general power was primarily to enable a specific closure, requested by the Council, of the PRow "Sykehouse 29", as captured within Schedule 6, Part 6 and Sheet 4 of the Streets, Rights of Way and Access Plans **[APP-215]**. With reference to Sheet 4, it was shown that most of Sykehouse 29 is located within the Order limits, and that the proposed alternative route was entirely within the Order limits and would start and end at the same location as the existing route. However, a small "dog leg" of the existing route falls outside of the Order limits. The exclusion of the land with the "dog leg" within the Order limits was intentional, as it falls within an area of ancient woodland (Bunfold Shaw), which the Applicant has committed not to impact with any

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works, and for which the Applicant therefore requires no rights of compulsory acquisition over. It was therefore considered inappropriate to capture this area of the PRoW within Schedule 6.

Ms Power explained that the Council has however requested this “dog leg” be closed “on paper” to tidy up the Council’s definitive map. Ms Power confirmed there would be no physical works undertaken to close it. The general power was proposed as a way to do this.

The ExA acknowledged the context for the drafting, and indicated it did not have issues with the closure of the “dog leg”, but requested that the general power be limited where possible.

*Post hearing note: Article 12 has been amended in the dDCO at Deadline 1 [EN010152/APP/3.1(Rev02)] to remove the general power. Instead, the closure of the “dog leg” has been provided for by a minor amendment to the Streets, Rights of Way and Access Plans [EN010152/APP/2.3(Rev02)] which indicate the full extent of PRoW Sykehouse 29, including the “dog leg”, are to be closed by the specified area in Schedule 6, Part 6 of the dDCO.*

### Temporary and permanent diversions before closure (Articles 12(2) and (3))

The ExA next raised a question about the drafting of sub-paragraphs (2) and (3) within Article 12, and specifically the concern that the current drafting could suggest a PRoW could be permanently closed with only a temporary route being included in place, instead of the final permanent route.

Ms Power confirmed this was not the intention of the Applicant, and confirmed the drafting could be updated to avoid that implication and ensure permanent closure could only occur once the new permanent route had been established.

*Post hearing note: Sub-paragraphs (2) and (3) of Article 12 have been amended in the dDCO at Deadline 1 [EN010152/APP/3.1(Rev02)] to clarify that the permanent closure of PRoW will not occur until the permanent substitute has been established.*

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### Terminology for closure

The ExA requested that the Applicant review how terminology was used within Article 12, including in respect of the term “closure”. Ms Power confirmed the Applicant would undertake this review as part of the amendments being made to Article 12.

*Post hearing note: The Applicant has made amendments throughout Article 12 in the dDCO at Deadline 1 [EN010152/APP/3.1(Rcv02)] to ensure a consistent use of terms in respect of closure and diversion of PRow.*

### Prescribed form for definitive map amendments (Article 12(4) & (5))

In relation to sub paragraphs (4) and (5) of Article 12, the ExA also enquired as to whether the Article should specify that the Applicant should use a prescribed form in order to update the definitive map.

Ms Power, indicated that the Applicant would be willing to update the Article to refer to a prescribed form, should the Council have a preferred form for reference.

Mr Thomas, for the Council, said that Article 12 would be discussed at a meeting between the Applicant and the Council following the hearing, and any amendment in respect of a prescribed form would be confirmed from the Council at that stage.

*Post hearing note: The Applicant and the Council have had initial discussions on the preferred form for any documents or plans provided to update the definitive map. The Applicant understands the Council is still liaising with its PRow team as to the preferred form, and hopes to provide any update in drafting addressing this matter at Deadline 2, once that feedback is received.*

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## Article 13 – Use of private roads



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The ExA said that the general power included to use private roads appeared broad and enquired as to whether specific road closures could be referred to in a schedule.

Ms Power noted that the drafting used for Article 13 was identical to that included in the dDCO for the East Yorkshire Solar Farm and in the final drafting of the Cottam Solar Project Order 2024. Ms Power noted that the intention of the Article is to avoid the more onerous acquisition of land or property rights to access such roads. Ms Power referred to the Streets, Rights of Way and Access Plans **[APP-215]** to indicate the limited number of private roads within the Order limits which would be able to be closed under this Article. Ms Power suggested adjusting the article to specify the private roads as captured in the Streets, Rights of Way and Access Plans **[APP-215]** for clarity.

*Post hearing note: Article 13 has been updated in the dDCO at Deadline 1 **[EN010152/APP/3.1(Rev02)]** to specifically refer to the closure only of those private roads specified in the Streets, Rights of Way and Access Plans.*

Mr Walker, for Able and Elba, indicated that his client had concerns with the use of public rights of way on their land. Ms Power noted that while the Applicant could not commit to removing any roads from the extent of the power at this stage, the Applicant remained open to discussing the particular needs and impacts with Able and Elba directly.

The ExA requested an update on these discussions at either Deadline 1 or Deadline 2.

*Post hearing note: As outlined within the Cover Letter **[EN010152/APP/8.3]** Able and Elba and the Applicant have had initial discussions in respect of the interaction interests since ISH1. These discussions continue, and the parties intend to provide an SoCG outlining the status of discussions at Deadline 2.*

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## Article 21 – Time limit for exercise of authority to acquire land compulsorily

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The ExA requested further information regarding the novel drafting inserted in Article 21 by the Applicant compared to recent solar DCOs.

Ms Power, for the Applicant, explained that there were two themes of changes to the article.

The first involved minor amendments to sub-paragraphs (1) and (2) to align with the Levelling Up and Regeneration Act 2023. Ms Power noted that similar to changes were made in the West Burton Solar Project Order 2024.

The second provided new wording in sub-paragraphs (3) to (5) to address potential delays caused by judicial reviews under s118 of the Planning Act 2008. This would extend the applicable period by the duration of the judicial review, or, where the judicial review was resolved in less than a year, a minimum delay of one year, to acknowledge the disruption such reviews can cause to project timelines and agreements.

The ExA suggested reviewing the drafting to ensure clarity and to amend the reference to Article 29 to Article 21. Mr Thomas, for the Council, indicated the Council may be able to provide further inputs to the Applicant on the drafting of Article 21 to align with similar changes in other recent DCOs. Ms Power confirmed the Applicant would discuss this drafting further with the Council and provide revised wording at Deadline 1.

*Post hearing note: The Applicant has updated the drafting within Article 21 in the dDCO submitted at Deadline 1 [EN010152/APP/3.1(Rev02)] to clarify the intended meaning as explained at ISH1. The Applicant has had initial discussions with the Council on this drafting since ISH1, but understands the Council is finalising its review and will provide comments post Deadline 1. The Applicant hopes to update the ExA if this drafting is agreed by Deadline 2.*

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## Schedule 2 – Requirements

### Requirement 1 – Commence

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The ExA queried if the use of “begin” in this Requirement should instead refer to “commence” in line with the defined terms. Ms Power, for the Applicant, confirmed it would make this change.

*Post hearing note: Requirement 1 has been updated in the dDCO at Deadline 1 [EN010152/APP/3.1(Rev02)] to refer to “commence”.*

### Requirement 7 – Biodiversity Net Gain

The ExA asked the Applicant to explain how Requirement 7 relates to Requirement 6 and why it does not specify the expected biodiversity net gain (**BNG**) identified in the BNG Assessment [**APP-200**].

Ms Power explained that Requirement 7 mandates that construction cannot commence until a BNG strategy, prepared substantially in accordance with the Framework Landscape and Ecological Management Plan (**LEMP**), is submitted and approved by the relevant planning authority. The final LEMP is secured against the Framework LEMP within Requirement 6.

The Framework LEMP submitted with the application [**APP-203**] commits at paragraph 2.1.3 to achieving a minimum of 10% BNG, as stated in the BNG Assessment [**APP-200**]. The current estimations in the BNG Assessment predict a net gain of 36.46% for area habitat units, 62.75% for hedgerow units, and 24.97% for watercourse units. However, Ms Power explained that the exact final percentages recorded in the BNG metric may change as a result of minor amendments in layout during detailed design, or a change in the baseline habitat values between now and construction which ultimately impact net gain percentages under the trading rules. The Applicant commits that, at a minimum, these changes would ensure at least 10% BNG for each of the assessment categories, but acknowledges the final percentages may be above or below the exact numbers set out in the BNG Assessment. This approach aligns with the Gate Burton Energy Park Order 2024, which Ms Power noted was confirmed by the Secretary of State in the Decision Letter as being an appropriate approach.

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*Post hearing note: This is outlined at paragraphs 4.13 and 7.4 of the Secretary of State's Decision Letter for the Gate Burton Energy Park Order 2024 and paragraph 5.2.14 of the Examining Authority's Recommendation Report for the Gate Burton Energy Park Order 2024.*

Ms Power noted the outcome of this approach is that the planning balance will reflect the minimum 10% commitment, and not the higher percentages estimated in the BNG Assessment. Ms Power acknowledged that other solar DCOs (such as the Cottam Solar Project Order 2024) have been able to apply greater weight to their BNG commitments by directly committing to the higher percentages in their BNG Assessments. The Applicant has not sought that additional weight for this Scheme.

### Requirement 10 – Archaeology

The ExA requested clarifications in relation to definitions and terminology used in this Requirement and generally within Article 2 where these related to this requirement, particularly those for the terms "Overarching Written Scheme of Investigation" and "Draft Archaeology Mitigation Strategy".

Ms Power clarified that minor changes to the definitions and wording of Requirement 10 would be proposed at Deadline 1.

Ms Power explained that at the time of application, the Applicant submitted a Draft Archaeology Mitigation Strategy (**AMS**) [**APP-209**], which reflected the starting point for archaeological mitigation. This document has been subject to further discussions with South Yorkshire Archaeological Services (the entity utilised by the Council for its inputs in respect of archaeological matters). Ms Power confirmed an updated version of this strategy will be submitted at Deadline 1 and would be renamed from "Draft AMS" to "Framework AMS" to reflect its near-final status. The Framework AMS will be finalised (with any necessary updates post final surveys and detailed design) and agreed upon, discharged with the relevant planning authority (the Council), and form the final AMS before the commencement of the authorised development.

Ms Power then noted that the Framework AMS sets out the requirement for site-specific written schemes of investigation (**WSI**) for each part within the Scheme where additional surveys or mitigation

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has been identified. This requirement will be taken through to the Final AMS. These WSIs will be required to be approved prior to commencement of the authorised development, and prior to any permitted preliminary works where relevant, and will need to be substantially in accordance with the Framework AMS. Ms Power therefore noted the Applicant proposed deleting the definition of the overarching WSI at Deadline 1 since a final version will not be provided as part of this application.

Mr Thomas, for the Council, did not comment on the above matters but further requested specific reference in Requirement 10 for South Yorkshire Archaeological Service (SYAS) to be consulted in respect of the final AMS and WSI. Ms Power said that the Applicant would discuss this matter further with the Council directly, and update the Requirement if required.

*Post hearing note: Requirement 10 has been updated in the dDCO at Deadline 1 [EN010152/APP/3.1(Rev02)] to make the amendments explained above. This also includes an addition to specify the written scheme of investigations will be "site-specific" as per a requested amendment by SYAS, engaged in respect of the Council's interests. The Applicant understands the Council is still considering whether it will seek for SYAS to be included as a prescribed consultee within the Requirement, and hopes to update the Examining Authority at Deadline 2, once confirmation has been provided by the Council.*

### **Additional requirements proposed by the Environment Agency**

The ExA noted that the relevant representation for the EA raised several potential amendments or additions to the requirements.

Ms Power noted that ongoing discussions with the EA were taking place, and that initial discussions indicated many of these suggested changes could be addressed through updates to the relevant management plans or minor amendments to the requirements.

The ExA requested an update on these matters and a draft Statement of Common Ground with the EA at Deadline 1.

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*Post hearing note: A Statement of Common Ground has been prepared with the EA for Deadline 1 [EN010152/APP/8.6]. This outlines the position between the parties in respect of the various requests for requirements made by the EA. The Applicant's position as outlined within that SOCG is that these requests are either already secured in requirements in the dDCO or can be addressed through amendments proposed to relevant management plans.*

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### Schedule 12 – Documents and Plans to be Certified

The ExA requested that the Applicant explain the process and plans and documents to be certified.

Ms Power explained that with each iteration of the dDCO submitted at each deadline throughout the Examination, Schedule 12 would be updated to reflect any new or updated documents. This includes the date and revision number of each document. The original Environmental Statement (**ES**) will be certified, and where individual chapters within it are updated during Examination they will be separately listed within Part 2 of Schedule 12. Ms Power also noted new documents, such as the Framework Archaeological Mitigation Strategy, would be included in Part 3. This approach ensures that only updated chapters are listed, while the rest of the original ES remains as submitted at application.

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5. **Schedule 14 – Protective Provisions** At the ExA's request, Mr Tresadern provided an update on the status of negotiations on protective provisions with the various statutory undertakers as listed in the Schedule of Negotiations and Powers Sought [APP-021].

Mr Walker requested protective provisions for Able and Elba. Mr Tresadern responded that the Applicant remained open to discussions with Able and Elba in order to understand their interests.

*Post hearing note: Since ISH1, the Applicant has continued to make progress with statutory undertakers regarding protective provisions. The latest position in relation to these can be found in the Land Rights Tracker [EN010152/APP/8.15] submitted at Deadline 1.*

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*The Applicant and Able and Elba have met subsequent to ISH1. Discussions between the parties remain ongoing at this stage in respect of managing Able and Elba's interests, but as outlined within the Cover Letter [EN010152/APP/8.3] the parties consider these interests may be able to be managed in the first instance through an agreed property agreement.*

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### 6. Opportunity for interested parties to comment on other aspects of the dDCO and raise any matters not covered in items 1-5 above.

#### Able and Elba

The ExA invited submissions from Mr Walker, on behalf of Able and Elba.

Mr Walker, for Able and Elba, expressed concerns in relation to the impact on his client's land and interests from:

- Article 22 (Compulsory acquisition of rights);
- Article 29 (Temporary use of land for constructing the authorised development), including the 14 day notice period to take temporary position of land under this article; and
- Work No. 4 (Cable rights) in Schedule 1, including the associated cable rights listed at Schedule 9 and the drafting of the general associated development works enabled in Schedule 1.

Ms Power, for the Applicant, noted that the concerns in respect of Article 22 and 29 largely related to general compulsory acquisition concerns and would be more appropriately addressed in direct discussions between the Applicant and Able and Elba.

Regarding Article 29, Ms Power noted that the 14 day notice period is consistent with other made solar DCOs and is considered by the Applicant to be reasonable, given that parties within the Order limits are already on notice about future acquisitions from the making of any DCO. However, the Applicant intends to engage directly with affected parties and intends not to use these powers unless absolutely necessary.

Ms Power explained that the list of associated development in Schedule 1 has been adopted from other made solar DCOs and is a generally accepted approach to capture ancillary works or associated

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development needed to facilitate the main works. While the exact works are listed in the Works Plans [APP-007], the list includes potential minor diversions and embankments that might be needed. The intention is not to perform all listed works on every portion of the land but to avoid needing variations for minor site-specific changes. Ms Power said that the Applicant would be happy to discuss this further with Able and Elba.

Ms Power also explained that the definitions for cable rights in Schedule 9 have been adopted from recent solar DCOs, reflecting the range of rights needed to accommodate cables or construct them. It was therefore considered by the Applicant that these remain appropriate and proportionate to the requirements of the Scheme.

*Post hearing note: As outlined above, the parties have met subsequent to ISH1, and are continuing discussions in respect of agreed terms for the voluntary transfer of any land rights for the cable route through Able and Elba's land.*

### City of Doncaster Council

Mr Thomas, for the Council, raised further points it sought to discuss with the Applicant regarding:

- demolition as part of the permitted preliminary works definition in Article 2(1);
- an outstanding comment the Council may have on the street works powers and the progress of a highway side agreement between the Council and Applicant;
- clarification on how the Council's permit scheme would apply;
- inconsistencies in respect of requirements specifying "accordance or "substantial accordance" with framework documents;



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- whether agreed terms could be drafted and agreed during Examination for the Community Liaison Group (**CLG**);
  - the fees to be paid to the Council for the discharge of requirements.

Ms Power confirmed that the points would be discussed at the upcoming meetings between the Applicant and the Council but, as a preliminary response:

- Demolition of buildings is not anticipated for this scheme, and the definition for permitted preliminary works could be updated at Deadline 1 to provide comfort to the Council of this point.
- Regarding the streets works powers, Ms Power noted the scope of powers aligns with other made solar DCOs, but discussions with the Council will continue to ensure proper management of street works and alignment with their highways teams to ensure any concerns are addressed.
- Ms Power confirmed that the current dDCO does not disapply the Council's permit scheme, so it will continue to apply. Ms Power offered that drafting from other recent DCOs could be incorporated into the dDCO at Deadline 1 to clarify the interaction of the dDCO and the permit scheme.
- Ms Power confirmed the Applicant will review and tidy up any differences in the "substantial accordancy" and "accordancy" within Schedule 2 (Requirements).
- Ms Power confirmed the Applicant would be open to discuss the terms of reference for the CLG with the Council.
- Ms Power noted points regarding fees and timings are best discussed directly with the Council, and recent DCOs may provide guidance on specifying fees for requirements.

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The ExA requested an update on these matters at Deadline 1.

*Post hearing note: The Applicant and the Council have had further meetings on the dDCO since ISH1. Further to these meetings, and the above matters as raised at Deadline 1, the Applicant has proposed the following changes to the dDCO for Deadline 1 [EN010152/APP/3.1(Rev02)] and/or responses to the Council:*

- The definition of “permitted preliminary works” in Article 2(1) has been updated to delete “buildings” from the Applicant’s demolition powers, per the confirmation no buildings are proposed to be demolished.*
- The Applicant has progressed discussions with the Council as to the street works powers and is discussing the negotiation of a highway agreement with the Council under Article 15 of the Order which will manage how these are exercised. While these discussions are continuing, the Applicant does not understand further amendments are required to Article 8 (Street works) at this stage.*
- A new Article 8A has been added to prescribe the interaction with CDC’s existing permit scheme for street works alongside the management of street works under the Order. This drafting is based largely on the example provided by the Council to the Applicant from the National Grid Bramford to Twinstead Reinforcement Order 2024, with some amendments to align with the drafting in the Fenwick Order.*
- The Applicant reviewed the use of “accordance” vs “substantial accordance” within Schedule 2 (Requirements). The only use identified use of “accordance” was in Requirement 4 (Detailed design) in respect of accordance of final detailed designs with the outline design parameters statement (**ODPS**). This is considered appropriate as the ODPS sets out strict maximum and minimum parameters, so the detailed design must accord strictly with these (as opposed to the more general “substantial” accordance which is appropriate for*

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*management plans and strategy documents which set out controls which are more general in nature).*

- *The Applicant discussed with the Council following ISH1 the reasoning behind leaving the preparation of the terms of reference for the CLG until its establishment; namely, so that the community members who comprise the CLG can set terms which reflect their intentions for the focus of the group and its work. The Applicant provided examples of terms of reference to the Council from other recent solar projects so the Council had an example of the general nature of what these terms may include.*
- *The Applicant and the Council have continued discussions on fees since ISH1. No amended drafting is proposed at this stage to the dDCO in respect of fees, but it remains a focus of discussion between the parties.*

*The Applicant has had initial discussions with the Council on the above approach since ISH1 and understands the parties are generally agreed, but that the Council is finalising its review of the dDCO as amended, and will provide any comments post Deadline 1. The Applicant hopes to update the ExA further at Deadline 2.*

## **Appendix A Confidential Note Regarding Land Interests of HJ Banks Company and Fidra Energy Ltd**