City of Doncaster Council

Post-Hearing Submission for Issue Specific Hearing 2 (“ISH2”)

Project: Fenwick Solar Farm

Applicant: Fenwick Solar Project Limited

Unique Reference: B100000053

Deadline 3: 2 July 2025

Purpose of this submission

The purpose of this submission is to provide a written summary of representations made by the City of Doncaster Council ("**CDC**") at Issue Specific Hearing 2 ("**ISH2**") held on 17 June 2025.

Agenda for Issue Specific Hearing 2	
Item 1	**Welcome, opening remarks and introductions**
	CDC was represented by the following – • [redacted], Principal Legal Officer (Planning Solicitor), CDC • [redacted], Planning Development Manager, CDC • [redacted], Head of Service Planning, CDC • [redacted], (external solicitor), Sharpe Pritchard LLP
Item 2	**The purpose of the hearing and how it will be conducted**
	CDC had no representations to make under Agenda Item 2.
Item 3	**Main discussion points**
	Article 2 – Interpretation During the discussion on the definition of "commence", CDC confirmed they would expect the definition to refer to the Planning Act 2008, rather than the Town and Country Planning Act 1990. **Article 6 – Disapplication and modification of statutory provisions** CDC had no representations to make under this item. **Article 14 – Means of Access** CDC confirmed that it had shared a copy of its template s.278 agreement with the Applicant and had suggested that the template form the basis for a framework agreement under article 15 of the draft DCO. During the discussion on whether there was a requirement to "restore" land after they had been subject to temporary works, CDC said they expected the template s.278 agreement would include such a provision. **Post-hearing note: there is a requirement in the s.278 agreement to remove all construction plant, materials, rubbish and temporary works from the highway and on completion of the highway works captured under the agreement.** **Article 21 – Time limit for exercise of authority to acquire land Compulsorily** Regarding article 21(3)(b), the Council maintains its position, as articulated at ISH1, i.e. it does not consider that the time limit for exercising powers under article 29 (temporary use of land for constructing the authorised

	development) should be extended by a year if the period beginning on the day the application is made and ending on the day it is withdrawn or determined, is less than a year. Owing to this, the Council considers article 21(3)(b) can be omitted. During the hearing, CDC stated that most DCOs do not include the ability to extend time as article 21(3)(b) does. CDC referred to 3 controversial DCOs (as demonstrated in the number of Relevant Representations attracted) where the Applicant was satisfied with a five-year time limit, despite each Applicant being presumably aware of the risks of delay caused by a challenge under s.118 of the Planning Act 2008. The relevant provisions of 3 DCOs referred to during ISH2 were – • Article 40(1) of the Sizewell C DCO (2022/853) –1,291 RRs; • Article 21(1) of the Stonehenge DCO (2023/834) – 2,370 RRs. • Article 20(1) of the Mallard Pass Solar Farm DCO (2024/796) – 1,222 RRs. CDC stated that if article 21(3)(b) is to be included, it must be justified in accordance with paragraph 1.2 of Advice note fifteen which states: "A thorough justification should be provided in the Explanatory Memorandum for every article and Requirement, explaining why the inclusion of the power is appropriate in the specific case". **General: City of Doncaster Council will be asked to identify any outstanding matters or areas of concern on the drafting of the dDCO including any suggested alteration to the wording of the requirements.** CDC made three points concerning (i) Requirement 10 (archaeology) (ii) paragraph 5 of Schedule 15 (discharge of requirements) and (iii) article 15 (agreements with street authorities). <u>(i) Schedule 2, Requirement 10 (*Archaeology*)</u> CDC consider the South Yorkshire Archaeological Service ("**SYAS**") should be named as a consultee to ensure that body is consulted by CDC before the final Archaeological Mitigation Strategy is approved, notwithstanding the fact CDC could consult SYAS even if they were not named. A reason for naming SYAS in R10 is that the officer responsible for eventually discharging the requirement might be unaware that it is CDC's practice to consult SYAS on architectural matters and the naming of SYAS in the requirement will ensure this is done. It is therefore a question of good administration. CDC therefore consider R10(1) should be amended as follows – "No part of the authorised development may commence, and no part of the permitted preliminary works for that part may commence, until the final Archaeological Mitigation Strategy and site-specific written scheme

	of investigation for that part have been submitted to and approved in writing by the relevant planning authority, **in consultation with that authority's archaeological advisers**". CDC said it did not consider such a provision would be unusual in the context of the way that other requirements have been drafted. For example, requirement 13, which concerns the construction traffic management plan requires internal consultation with the relevant highway authority, and similarly, requirement 17, which concerns public rights of way. requires internal consultation with relevant highway authorities. Moreover, requirements 5 (battery safety management), seven (BNG), 11 (CEMP) and 18 (decommissioning) require consultation with the EA. CDC consider, in this context, SYAS are not dissimilar to such external advisers and that their inclusion in R10 would not prejudice the Applicant in any way. <u>(ii) Schedule 15 (discharge of requirements)</u> CDC commented on paragraph 5 of Schedule 15, which concerns fees. The first point to make is that while the Council will be required to deal with applications for consent under articles and under requirements, by paragraph 5(1) of Schedule 15, a fee is only payable in respect of requirements. The Council considers that fees should also be paid for dealing with applications under articles. The Council's approach is consistent with the standard drafting for a provision dealing with procedure for the discharge of approvals, as set out in Appendix 1 to PINS Advice Note 15, which concerns drafting DCOs. The second point to make is that the proposed fee is too low. Paragraph 5(1) applies the fee prescribed in regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012. This amounts to £145. If we assume an hourly rate of £55 for an officer to deal with this work, it would mean the officer would have to deal with any discharge application within 2 hrs and 36 minutes before dealing with the application was costing the Council money. It is unlikely that any application will be capable of determination within that time period. While the Council cannot make a profit for this work, it is reasonable for it to seek the full recovery of the actual costs incurred. This is not only about fairness but also about the way in which the Order is drafted. For example, by paragraph 2 of Schedule 15, the Council will have 8 weeks to make its decision on any application and if no decision is made within that period, consent will be deemed to have been granted. By article 45(4) of the Order, a similar regime applies in respect of consents sought under articles. Dealing with any application for consent under this Order will therefore be a matter of high priority for the Council and it is likely that external help will be sought to ensure matters are dealt with on time.

	Rather that the regime currently proposed in the Order, the Council considers it would be preferable if the Applicant and Council entered into a planning performance agreement ("**PPA**") for the full recovery of the Council's costs in discharging any application under the Order. CDC stated it is hoped agreement can be reached before the end of the Examination; however, if it was not possible to agree a PPA before the end of the Examination, CDC might seek the replacement of paragraph 5 with a Grampian condition which would prevent commencement of the authorised development until a PPA is entered into. **[Post-hearing note: The Council has provided the Applicant with its proposed form of PPA and discussions on that document are ongoing].** <u>(iii) article 15 (agreements with street authorities)</u> The third point was similar to the second. CDC explained their legal team have shared their template section 278 agreement with the applicant's solicitors who are reviewing it and, while it is hoped that a framework agreement can be agreed before the end of the examination, CDC might seek the inclusion of the Grampian preventing commencement of works under Part 3 (streets) until such an agreement has been entered into. (CDC cited article 23(3) (Agreements with street authorities) of the Sizewell C DCO (SI 2022/853) as precedent).
Item 4	**Schedule 14 – Protective Provisions**
	CDC had no representations to make under Agenda Item 4.
Item 5	**Opportunity for interested parties to comment on other aspects of the dDCO and raise any matters not covered in items 1-4 above**
	CDC had no representations to make under Agenda Item 5.
Item 6	**Any other matters**
	CDC had no representations to make under Agenda Item 6.
Item 7	**Any other matters**
	CDC had no representations to make under Agenda Item 7.