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Date: 29 April 2026
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Dear Sir/Madam

Application by Frodsham Solar Limited for an order granting development consent for Frodsham Solar [PINS Ref. EN010153]

As you will be aware, we are instructed to act on behalf of INOVYN Chlorvinyls Limited ("**ICL**") (IP Ref. [redacted]). We write to provide our client's closing submissions in respect of the above-mentioned Application.

Firstly, regarding the Option Agreement and the draft Deed of Easement, the position remains as confirmed at Deadline 6. We await the comments of the Applicant's property solicitors on the travelling draft – with our mark-up having been returned to them on 21 April 2026. Following the close of the examination, ICL will continue to engage with the Applicant with a view to settling the terms of and completing the Option Agreement. An update can be provided to the Secretary of State in due course.

We have had regard to the 'Applicant Response to Interested Parties D5 Submissions' **(EN010153/DR/8.50) [REP6-040]** (the "**D5 Response**"). Our response to the Applicant's submissions in respect of ICL (contained in Section 3.10 of the D5 Response) is set out below.

The Applicant's submissions are made in two parts by reference to ICL's proposed changes to the draft Development Consent Order **[REP5-062]** (with the latest version of the draft Order having been submitted at Deadline 6: **(EN010153/DR/3.1) [REP6-004]** (the "**dDCO**")).

Firstly, the Applicant addresses ICL's Option 1, the effect of which is to remove the power of compulsory acquisition conferred under Article 21 of the dDCO in respect of plots 5-3 and 5-4 (the "**ICL Land**"). It remains our client's position that the Applicant has failed to make out the case for compulsory acquisition in respect of the ICL Land. In this regard (noting the Applicant's submissions in paragraphs 3.10.4 and 3.10.5 of the D5 Response), we would ask the Examining Authority to take particular note of the following points:

1. With regard to the ICL Land, the Land and Rights Negotiations Tracker **(EN010153/APP/4.4) [REP4-010]** (the "**LRNT**") states as follows (our emphasis):

   *"…the land is needed as part of the **flexibility** required for delivery of the SPEN Cable Connection (overhead line) and associated landscaping, and that engagement will continue as the design for this connection continues and the **exact nature of rights required** is confirmed."*

2. Notwithstanding the statement contained in the LRNT concerning the requirement for the ICL Land, the Indicative Operational Site Layout Plan (Figure 2-2 of the Environmental Statement: Volume 3) **(EN010153/DR/6.3) [APP-106]** ("**ES Figure 2-2**") shows no works (including an overhead line or cable connection) being carried out and retained on the ICL Land.[1]

   Furthermore, Figure A1.5 (Illustrative Environmental Masterplan Sheet 4) of the Outline Landscape and Ecology Management Plan **(EN010153/DR/7.13) [REP6-026]** ("**oLEMP Figure A1.5**") shows only existing vegetation within the ICL Land – no new landscaping is proposed on the relevant land parcels.

3. In paragraph 3.10 of the D5 Response, the Applicant notes the following in relation to the ICL Land (our emphasis):

   *"…the land **may be required** to enable the connection of the Proposed Development to the grid. It is therefore, **likely to be critical** to the operation of the Proposed Development and the benefits it seeks to bring, which the Applicant has shown in the Statement of Reasons to be compelling."*

   Even in the Applicant's own terms, it can be seen that acquisition of the ICL Land is not required for the project subject of the Application (the "**Project**") – the *possibility* of land being required or the *likelihood* of land being needed falls woefully sort of the pre-conditions for the authorisation of compulsory acquisition powers, provision for which is made in section 122 of the Planning Act 2008 (the "**2008 Act**") (the "**S122 Requirements**").

   The first of the pre-conditions demands necessity, i.e. either the relevant land must be *required* for the development to which the development consent relates or it must be *required* to facilitate or be incidental to that development (see subsections 122(2)(a) and (b) of the 2008 Act). The second of the pe-conditions imposes a requirement that the case for compulsory acquisition of the relevant land be compelling and in the public interest (see subsection 122(3)). It is not simply a case of the benefits of the project in connection with which powers of compulsory acquisition are sought being demonstrated to be compelling (which is the point made by the Applicant in paragraph 3.10 of the D5 Response).

   By the Applicant's own admission, noting the statement contained in the LRNT, acquisition of the ICL Land is not a requirement of the Project – it is no more than a 'nice to have' in so far as it secures *flexibility* (in the most general of terms) with regard to the grid connection for the Project. Furthermore, we note that no attempt has been made by the Applicant (in the D5 Response and at no stage of the examination) to explain the impact should the ICL Land not be available for the Project – a telling omission.

In light of the above, we submit (and it necessarily follows) that the S122 Requirements are not satisfied.

As such, there is no sound basis upon which development consent for the Project can be granted including powers of compulsory acquisition which are exercisable in respect of the ICL Land (together with the existing rights in the "**Order Land**" (as defined in the dDCO) in respect of which ICL and Ineos Fluor Limited ("**IFL**") are the beneficiaries (the "**ICL/IFL Rights**")).

We turn now to consider the Applicant's submissions in respect of ICL's Option 2, the effect of which is to limit the Applicant's powers of compulsory acquisition in respect of the ICL Land to the creation and acquisition of new rights and restrictions under Article 23 of the dDCO. As previously stated, Option 2 is put forward 'in the alternative', but strictly without prejudice to ICL's primary position which requests the removal of the ICL Land (and the carving out of the ICL/IFL Rights) from the Order Land.

[1] See our Written Summary of Oral Representations made at CAH1 [REP4-072].

We turn now to the relevant paragraphs of the D5 Response, taking each paragraph in turn.

1. **Paragraph 3.10.6**: it is stated that ICL's Option 2 is not suitable as it imposes undue restrictions on the Applicant – this being on the basis that if the case is made for the compulsory acquisition powers being sought, this must override our client's private interests.

   The 'restrictions' to which the Applicant refers are not particularised. Furthermore, our client's position is that the case for the grant of compulsory acquisition powers in respect of the ICL Land and the ICL/IFL Rights isn't made out. For the reasons already stated, the Applicant has failed to satisfy the S122 Requirements. Accordingly, in the instant case, the balance as between 'public benefit' and 'private loss' weighs firmly in our client's favour.

   It should also be noted that the private treaty negotiations being conducted between our client and the Applicant concern the grant of an option for the purpose of taking an easement, thereby securing the grant of rights in connection with the installation of an overhead line / existing substation connection on the ICL Land. The 'rights package' which is detailed in ICL's Option 2 (and which the Applicant is broadly content with) is aligned with the aforesaid grant of rights. Accordingly, it is untenable (and indeed nonsensical) for the Applicant to suggest that ICL's Option 2 is not suitable and unduly restrictive when it is in essence the precise basis upon which the ongoing private treaty negotiations are being conducted.

2. **Paragraph 3.10.7**: in respect of Articles 19, 24 and 27 of the dDCO, the Applicant proposes the insertion of *"unless otherwise agreed"* wording into the textual amendments we have proposed on behalf of our client, the reason being – *"to enable an agreed different position to be able to be reached without there being a breach of the DCO"*. The Applicant's reasoning is not understood and we are unclear as to the necessity for the *"unless otherwise agreed"* wording.

   It would seem that the wording is intended to apply in a scenario where an agreement is reached (as a result of private treaty negotiations), as between ICL and the Applicant, to secure the necessary land rights in respect of the ICL Land. Where this is the case, the agreement will govern the scope of the land rights and the terms of their exercise and we cannot envisage a circumstance in which it would be necessary to fall back on the compulsory acquisition powers secured in the DCO.

   Accordingly, we are instructed to reject the insertion of the Applicant's *"unless otherwise agreed"* wording into our client's proposed changes to the dDCO.

3. **Paragraph 3.10.8**: taking the bullets points under this paragraph in turn:

   - Bullet point 1 – the requirement for *"full compulsory acquisition"* of the ICL Land is not supported by the Applicant's own documents – in this regard, we would draw the Examining Authority's attention to ES Figure 2-2 and oLEMP Figure A1.5 (see our submissions at point 2 at the top of page 2 of this letter).

   - Bullet point 2 – we accept that the Applicant may have a point regarding the DCO being "operative" such that changes to the Land and Crown Land Plans **(EN010153/DR/2.2) [REP4-002]** may not be required to give effect to our client's proposed changes to the dDCO. However, we note that the definition of "**Order Land**" in the dDCO makes specific reference to the colouring which is shown on the plans. Noting that the Land and Crown Land Plans will be a certified document, the Secretary of State – should he be minded to grant development consent for the Project and to accept our client's proposed changes to the dDCO – may require the plans to be updated.

     In respect of Articles 30 and 31 of the dDCO, the changes we have proposed (these changes being sought under Option 1 only) are necessary in

circumstances where Article 21 is amended to explicitly remove the power of compulsory acquisition conferred under the article in respect of the ICL Land. The aforesaid powers go hand in hand – the powers in Articles 30 and 31 should not be permitted to be exercised (indeed there will be no necessity for them to be exercised) where the power in Article 21 is not secured.

The Applicant's proposed amendments to the 'rights package' which is detailed in ICL's Option 2 (consisting of an additional limb to authorise the planting, maintenance and replacement of new landscaping) are rejected. The Applicant seeks these amendments to ensure that the commitments under the LEMP (i.e. the Landscape and Ecology Management Plan) can be met. However, as already stated, oLEMP Figure A1.5 shows no new landscaping on the ICL Land. Furthermore, our client is resistant to any works of an intrusive nature (including new planting and root removal in respect of existing planting) being undertaken on the ICL Land. This has been our client's position from the outset and is reflected in the latest set of comments provided to the Applicant's property solicitors in respect of the rights which are proposed to be granted upon the Deed of Easement being entered into.

Closing Remarks

Our client's closing position is as follows:

1. With regard to the ICL Land and the ICL/IFL Rights, the S122 Requirements are not made out.

   Accordingly, in the event of development consent for the Project being granted, we invite the Secretary of State to reflect our client's proposed amendments to the dDCO – as per Option 1 (as updated and enclosed with this letter) – in the made Order.

2. In the alternative, should the Secretary of State consider that the S122 Requirements are satisfied, we submit that the extent and type of the compulsory acquisition powers being sought by the Applicant (i.e. full compulsory acquisition) are wholly disproportionate. Any such powers which may be granted in respect of the ICL Land should be limited to the creation and acquisition of new rights and restrictions. We note that the LRNT supports this, with the Applicant referring in this document to confirmation of the exact nature of *rights* required being confirmed in due course once the design of the SPEN cable connection is sufficiently progressed.

   In this regard, we invite the Secretary of State to reflect our client's proposed amendments to the dDCO – as per Option 2 (as updated and enclosed with this letter) – in the made Order (and to reject the Applicant's proposed amendments thereto, as detailed in their D5 Response).

Should there be any queries regarding the content of these submissions, please do not hesitate to contact our [redacted] (Legal Director) of this office (contact details above).

Yours faithfully,

[redacted]

EVERSHEDS SUTHERLAND (INTERNATIONAL) LLP