



Fosse Green Energy

EN010154

3.3 Consents and Agreements Position Statement (Tracked)

VOLUME

3

Planning Act 2008 (as amended)

Regulation 5(2)(q)

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

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Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulation 2009 (as amended)

Fosse Green Energy

Development Consent Order 202[]

3.3 Consents and Agreements Position Statement

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1.1 Introduction

- 1.1.1 This document has been prepared on behalf of Fosse Green Energy Limited (the Applicant) in relation to an application for a Development Consent Order (DCO) (the Application) for the construction, operation and maintenance, and decommissioning of Fosse Green Energy (hereafter referred to as the 'Proposed Development') to be made to the Secretary of State for the Department for Energy Security and Net Zero (Secretary of State), pursuant to the Planning Act 2008 (PA 2008).
- 1.1.2 The Proposed Development comprises the construction, operation (including maintenance), and decommissioning of a ground-mounted solar photovoltaic (PV) electricity generating station with access provision, battery storage, Onsite Substation, underground cabling and associated infrastructure to generate and export and import electricity; and areas of landscaping and biodiversity enhancement. The Proposed Development will export and import electricity to the national electricity transmission network.
- 1.1.3 The Proposed Development also includes a 400kV underground Cable Route Corridor of approximately 10km in length connecting the Onsite Substation to the proposed National Grid substation near Navenby (that substation does not form part of this application but is being promoted by way of a separate consent by National Grid under the Town and Country Planning Act 1990). A full description of the Proposed Development is included in **Chapter 3: The Proposed Development** of the ES [EN010154/APP/6.1].

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 Proposed Development.
- 1.2.2 Section 37 of the PA 2008 sets out the requirements in relation to the content of an application for a DCO.
- 1.2.3 Regulations 5 and 6 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP Regulations) provide the statutory requirements for the documents that must accompany a development consent application. Guidance issued by the Department for Communities and Local Government (now Ministry of Housing, 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 that the Applicant anticipates to be required either within the **Draft Development Consent Order (DCO) [EN010154/APP/3.1]** or within other consents and licences.

1.3 The Development Consent Order

1.3.1 Section 33 of the PA 2008 makes it clear that, to the extent development consent is required for development, this removes the requirement to secure certain other consents. In particular, the need to secure separate planning permission (s33(1)(a)) and consent under s36 of the Electricity Act 1989 are not required.

1.3.2 Section 120 PA 2008 sets out what can be included within a DCO, including:

- Ancillary matters (including those listed in Part 1 of Schedule 5 to the PA 2008);
- The application, modification or exclusion of statutory provisions which relate to any matter for which provision may be made in the DCO;
- Amendment, repeal or revocation of any local statutory provisions, where thought necessary or expedient by the Secretary of State in consequence of a provision of, or in connection with, the DCO; and
- Incidental, consequential, supplementary, transitional or transitory provisions and savings.

1.3.3 Section 150 of the PA 2008 and Regulation 5 of the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 provide that an order granting development consent may include provisions the effect of which is to remove a requirement for a prescribed consent or authorisation to be granted, provided the relevant body has consented to the inclusion of such a provision in the DCO.

1.3.4 The disapplication of prescribed consents under section 150 of the PA 2008 is sought on the basis that protective provisions are included within the **Draft DCO [EN010154/APP/3.1]** to protect the relevant statutory bodies. So, whilst the draft DCO includes express provisions to disapply other consenting requirements, the inclusion of protective provisions secures the interests of the statutory body concerned.

1.3.5 The protective provisions are specifically stated to have effect unless otherwise agreed between the Applicant and the statutory body concerned. Compliance with the provisions is a matter between the parties and can be enforced accordingly. The protective provisions provide a means for the statutory body concerned to monitor, enforce compliance with and to review the effectiveness of the approval regime within the protective provisions.

1.3.6 The mechanism of approval being given under the protective provisions allows the statutory 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 provisions is negotiated and (ii) the subsequent approval stages under the protective provisions, which cannot be unreasonably refused, and which allow detailed matters relating to construction to be considered.

1.3.7 The **Draft DCO [EN010154/APP/3.1]** includes generic protective provisions for the protection of electricity, gas, water and sewerage undertakers and operators of electronic communications code networks. The Applicant is also actively engaging with a number of statutory and non-statutory bodies to seek to agree specific protective provisions. Those discussions are on-going, and the **Draft DCO [EN010154/APP/3.1]** will be updated as agreed positions on those protective provisions are reached.

1.4 Consents Incorporated in the Draft DCO

1.4.1 The principal consent for the Proposed Development 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.

1.4.2 The majority of consents required are included, or addressed, within the **Draft DCO [EN010154/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 Proposed Development, which is described as the "authorised development" in Schedule 1 to the **Draft DCO [EN010154/APP/3.1]** (equivalent to planning permission). Article 3 (Development consent etc. granted by this Order) is the principal power in this respect;
- Compulsory acquisition of land and of rights over land, and the temporary possession of the land. Articles 19-33 of the **Draft DCO [EN010154/APP/3.1]** provide these powers;
- Consent to carry out street works. Articles 8 and 9 of the **Draft DCO [EN010154/APP/3.1]** provide this power;
- Consent to alter the layout of streets and to form new, or alter or improve existing, accesses. Articles 10 and 14 of the **Draft DCO [EN010154/APP/3.1]** provide this power.

- e. Consent to temporarily and permanently stop up public rights of way. Articles 12 and 13 of the **Draft DCO [EN010154/APP/3.1]** provide these powers.
- f. Traffic regulation measures required during construction that are equivalent to Traffic Regulation Orders made under the Road Traffic Regulation Act 1984 and the Traffic Management Act 2004. Article 16 of the **Draft DCO [EN010154/APP/3.1]** provides this power;
- g. Land drainage consent(s) under section 23 of the Land Drainage Act 1991. Article 6 of the **Draft DCO [EN010154/APP/3.1]** provides this power;
- h. Consent or approval for the carrying out of the works required under any relevant byelaws made under the Land Drainage Act 1991. Article 6 of the **Draft DCO [EN010154/APP/3.1]** provides this power;
- i. Consent or approval for the carrying out of the works required under any relevant byelaws made under the Water Resources Act 1991; Article 6 of the **Draft DCO [EN010154/APP/3.1]** provides this power; and
- ~~j. Flood risk activity permit(s) from the Environment Agency under the Environmental Permitting (England and Wales) Regulations 2016. The need for the Applicant to obtain a flood risk activity permit has been disapplied under Article 6 of the draft DCO, with matters relating to flood risk activity to be agreed by way of protective provisions for the benefit of the Environment Agency, which will be included in Schedule 14 of the Draft DCO [EN010154/APP/3.1]; and~~
- ~~j. k. Requirement of licence for felling under section 9 of the Forestry Act 1967. Article 6 of the **Draft DCO [EN010154/APP/3.1]** provides this power.~~

1.4.3 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. that are being disapplied by) the DCO. Discussions between the Applicant and these consenting bodies are ongoing, and the Applicant is confident that the necessary approvals will be obtained before or during the examination of the Application.

1.5 Other Consents and Licences

1.5.1 A summary of the additional consents likely to be required is set out in ~~Error! Reference source not found.~~ [Table 1-1](#) below. This lists the type of consent or licence required, the relevant consenting body, its purpose in relation to the Proposed Development and the status of agreement with the relevant body.

1.5.2 This document will be updated by the Applicant during the examination of the Application as required.

1.6 Agreements

- 1.6.1 Agreements with third parties may be required in parallel to the DCO process and may take a variety of forms, including alongside protective provisions.
- 1.6.2 The preparation of Statements of Common Ground (SoCG) with third parties to identify the matters on which the parties are, or are not, in agreement serves to narrow the focus for examining the Application and to make the examination process more efficient. SoCGs will be progressed with relevant parties by the Applicant where appropriate.

Table 1-1 - Summary of additional consents likely to be required

Nature of Consent	Key Legislation	Consenting Authority	Purpose / Function	Status
Grid Connection				
Electricity generation licence	Electricity Act 1989	Office of Gas and Electricity Markets (OFGEM)	Required at the operational stage of the Proposed Development in relation to generating activities. Required for electricity generation under the Proposed Development in the areas specified in Schedule 1 of the Draft DCO [EN010149/APP/3.1].	In line with OFGEM best practice, an application for a generation licence will be sought post consent. The Applicant is not aware of any reason why a generation licence would not be granted.
Bilateral Connection Agreement	N/A	National Grid Electricity System Operator Limited (NGESO)	Commercial Agreement – To connect the Proposed Development to the NETS	The Applicant accepted a grid connection offer on 24 November 2022. Further details of which are given in the Grid Connection Statement [EN010154/APP/7.5].
Highways				
Permit for transport of abnormal loads for	Road Vehicles (Authorisation of	Department for Transport,	Required prior to commencement / delivery of	Appropriate applications, in accordance with the Framework Construction

Nature of Consent	Key Legislation	Consenting Authority	Purpose / Function	Status
delivery by road of loads that fall outside standard practice	Special Types) (General) Order 2003 or with authorisation from the Secretary of State under the Road Traffic Act 1988	Highways Agency, Local Highway Authority or the police and bridge owners (if any) as appropriate	the relevant Abnormal Indivisible Load (AIL).	Traffic Management Plan (CTMP) [EN010154/APP/7.18] , will be made by the contractor in advance of the delivery of any AILs.
Section 171 Licence	Highways Act 1980	Local Highways Authority	Required to erect temporary apparatus on the highway e.g. signage	Appropriate applications, in accordance with the Framework CTMP [EN010154/APP/7.18] , will be made by the contractor in advance of the erection of temporary construction signage to the site prior to the commencement of the relevant construction activities.
Ecology				
European Protected Species Mitigation Licence	Conservation of Habitats and Species Regulations	Natural England	At this stage, it is not anticipated that any protected species licences will be required owing to the	Requirements to be reviewed prior to commencement.

Nature of Consent	Key Legislation	Consenting Authority	Purpose / Function	Status
	2017		embedded avoidance and mitigation measures proposed. However, should pre-commencement checks identify that the locations of protected species has changed and/or features cannot be avoided, then Natural England will be consulted at the earliest opportunity to discuss any licensing requirements.	
Environmental Permit – FR2 licence	Environmental Permitting (England and Wales) Regulations 2016	Environment Agency	Any work requiring a fish rescue would need an FR2 permit - S27A authorisation to use fishing instruments other than rod and line	Applications are to be made by the contractor before any fish rescue commences.
Water				
Environmental Permit -	Environmental Permitting	Environment	Effluent from the welfare facilities may be treated and	If discharging to groundwater an application for a water discharge activity

Nature of Consent	Key Legislation	Consenting Authority	Purpose / Function	Status
Water Discharge	(England and Wales) Regulations 2016	Agency	discharged to groundwater or stored in a cesspit and tankered offsite by a management company.	environmental permit will be made by the contractor before water is discharged.
<u>Flood Risk Activity Permit (FRAP) - standard permit/bespoke permit for temporary or permanent works: i) on or near a main river; ii) on or near a flood defence structure; iii) in a flood plain; and iv) on or near a sea defence.</u> <u>The Applicant is not seeking to disapply the requirement for this consent within the draft DCO</u>	<u>Environmental Permitting (England and Wales) Regulations 2016</u>	<u>Environment Agency</u>	<u>Required for works within 8m of a main watercourse (16m for tidal watercourses) or within 8m of flood defences (or 16m of a sea defence structure).</u> <u>A Flood Risk Activity Permit is required for the temporary activities associated with cable crossings of the River Brant and River Witham, both of which are main rivers, and the cable works (horizontal directional drilling) within the Witham Wash Flood Storage Area.</u>	<u>Flood Risk Activity Permits will be obtained from the EA prior to construction, if required.</u>

Nature of Consent	Key Legislation	Consenting Authority	Purpose / Function	Status
Environmental Permit - Abstraction / impounding licence	Water Resources Act 1991, Environment Act 1995, Water Resources (Abstraction and Impounding) Regulations 2016	Environment Agency	<p>A temporary water impoundment licence in connection with the laying of cables.</p> <p>A full or temporary abstraction licence will be required if more than 20 m³/d is to be dewatered/over-pumped and exemptions do not apply.</p>	Applications are to be made by the contractor before abstraction commences as appropriate
Environmental Permit - Water activity permit(s)	Environmental Permitting Regulations (England and Wales) 2016	Environment Agency	An Environmental Permit would be required for temporary construction and permanent operational discharges.	An application for a water activity environmental permit will be made by the contractor.
Land Drainage Consent(s)	Land Drainage Act 1991	Internal Drainage Board (IDB)	Consent will be required from the IDB for works affecting the flow in Ordinary Watercourses.	Application is to be submitted prior to start of construction.
Internal Drainage	IDB Byelaws	Internal Drainage	Under IDB byelaws, prior	An application for written consent will

Nature of Consent	Key Legislation	Consenting Authority	Purpose / Function	Status
Board Consent		Board (IDB)	written consent is needed for certain works that may affect IDB watercourses such as any works within the channel or any drainage into an IDB watercourse.	be submitted by the contractor prior to the relevant works which affect the IDB watercourses being carried out.
Trade effluent consent	Water Industry Act 1991	Anglian Water	This is required for the purposes of discharging trade effluent from welfare facilities during construction.	Application is to be made and consent will be obtained prior to discharging trade effluent from welfare facilities.
Other				
Health and Safety related consents	Health and Safety at Work Act 1974 and subsidiary legislation	Health and Safety Executive (HSE)	Health and Safety related consents to ensure this is managed and that risks of incidents are reduced during construction.	Applications are to be made by the contractor before construction commences as appropriate
Section 61 consent control of noise on construction sites	Control of Pollution Act 1974	Local Authority	To agree construction noise limits.	Any applications will follow the DCO being made by the Secretary of State and would be applied for prior to specific construction activities outside of

Nature of Consent	Key Legislation	Consenting Authority	Purpose / Function	Status
				the standard construction hours.
Building Regulations Approval	The Building Regulations 2010 (as amended)	Local Authority	This is required in respect of buildings and structures forming part of the Project.	Building Regulations Approval is to be sought prior to and during construction if necessary.

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