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Our ref: 542737  
Your ref: EN010154



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**BY EMAIL ONLY**

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Dear Grahame Gould

**NSIP Reference: Fosse Green Energy Project  
Consultation: Examining Authorities Second Written Questions**

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Please find Natural England's responses to the Examining Authorities second written questions at **Annex A** below.

For any further advice on this consultation please contact [consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk).

Yours sincerely

Sustainable Development Team  
East Midlands Area Delivery  
Natural England

## Annex A

Question Reference	Question	Natural England Response
DCO.2.09	<p><b>Permitted Preliminary Works</b></p> <p>In responding to ExQ1 DCO.1.03 [REP2-029], the applicant has stated that the permitted preliminary works would be governed by the parameters assessed in the ES and the provisions of the framework management plans, which are intended to ensure that those works would not result in new or materially different effects from those assessed in the ES impacts.</p> <p>However, there does not appear to be a clear statement in all of the framework management plans to demonstrate that the permitted preliminary works would be governed by their provisions. For example, the Framework Construction Environmental Management Plan (FCEMP) [REP2-013] does not appear to expressly refer to the proposed permitted preliminary works. In responding to ExQ1 DCO.1.03, NKDC [REP2-045], LCC [REP2-043] and Natural England [REP2-053] raised concerns about the approach to permitted preliminary works, which the ExA shares. The ExA considers there are three options:</p> <ol style="list-style-type: none"> <li>1. To have no permitted preliminary works and remove their definition in Article 2 of the dDCO</li> <li>2. To have a shortened list of permitted preliminary works defined in Article 2, with those retained being justified in the EM [REP2-007]</li> <li>3. To extend the use of exceptions in the relevant requirements to exclude preliminary works on a specific basis</li> </ol> <p>Comment on the acceptability or otherwise of the identified options, providing the reasons for your position. Your comments should also include, where relevant, activities</p>	<p>Natural England advise that it may not be necessary to completely remove reference to permitted preliminary works within the DCO (Option 1), however, would advise that it may be appropriate to either reduce the list of permitted preliminary works (option 2), or extend the use of exceptions in relevant requirements to exclude preliminary works on a specific basis (Option 3).</p> <p>One instance to note is that it is unclear exactly what above ground site preparation includes; tracking of machinery, whilst not involving soil stripping, can compact soils and cause adverse effects to the soil resource. It may be appropriate to further define this point, or include exception at Requirement 15 (Soil Management Plan).</p> <p>NE note that the LEMP is already included in those plans which are required to be complete prior to any permitted preliminary works which include vegetation removal commence, which is welcome.</p>

	which you consider should not be included in the list of permitted preliminary works and the permitted preliminary works which should be excluded on a specific basis.	
<b>DCO.2.30</b>	<p><b>Schedule 15 – deemed approval provisions</b></p> <p>a) <b>Applicant:</b> Paragraphs 2(3) and 2(4) appear to allow for a situation where an application to discharge a requirement could give rise to materially new or materially different environmental effects compared to those in the ES. Explain how such a situation could arise, given that the ES adopts a ‘Rochdale Envelope’ approach which, as paragraph 3.3.2 of ES Chapter 3 [REP1-015] advises, seeks to ensure the likely significant effects of the proposed development would not exceed the reasonable worst-case scenario presented in the ES.</p> <p>b) <b>All:</b> Paragraph 2(2) provides that a deemed approval would be granted to an application for the discharge of a requirement if the relevant planning authority did not give notice of its decision prior to the expiry of the time periods specified in paragraph 2(1). The exception to this is where the subject matter of the discharge application would be likely to give rise to any materially new or materially different environmental effects. In such cases, where the relevant planning authority did not determine the application within the specified period, then the application would be deemed to have been refused at the expiry of the time periods specified in paragraph 2(1).</p> <p>Comment on whether a deemed refusal would or would not be a more appropriate approach for all discharge applications if the relevant planning authority did not give notice of its decision prior to the expiry of the time periods specified in paragraph 2(1).</p>	Natural England are not an approving body for DCO Requirements, and so defer to LPAs for their advice on this matter. However, it is agreed that the assumption of refusal is most common. By way of example, for SSSI Consents determined by NE, where NE do not respond within the statutory timeframe, it is classified as a ‘deemed refusal’, as per the Wildlife and Countryside Act.
<b>FS.2.06</b>	<b>Framework Soil Management Plan – aftercare</b>	It is acknowledged that these details are likely to be provided in the final SMP; as NE are a noted consultee,

	<p>In responding to ExQ1 FS.1.15 [REP1-029], the applicant suggests that the host authorities and Natural England would agree whether aftercare intervention is required following the review of each monitoring report. Comment on whether that should be stated in the FSMP.</p>	<p>their inclusion in the fSMP is not a necessity, however, fSMP sections 6.9.1, or 7.1.3, could be briefly amended to make specific reference to consultation with host Authorities and NE on each monitoring report &amp; agreements on aftercare actions to ensure these details are not missed in the final SMP.</p>
<p><b>FS.2.08</b></p>	<p><b>Framework Soil Management Plan – monitoring</b></p> <p>In responding to ExQ1 FS.1.17 [REP2-029], the applicant sets out information on the aims for monitoring and what it would cover. Comment on whether the level of detail currently provided in the FSMP [REP1-037] and the approval mechanism in Requirement 15 would be sufficient to secure appropriate monitoring or whether more detail, such as that described by the applicant on page 77 of [REP2-029], should be included in the FSMP.</p>	<p>Natural England consider that further detail is not required at this stage and the approval mechanism in place is sufficient to secure appropriate monitoring is set out in the final SMP.</p>