

Planning Inspectorate

[via PINS portal]

Our ref: XA/2026/100516/03-L01

Your ref: EN010154

Date: 20 March 2026

Dear Sir/Madam

Fosse Green Energy – Development Consent Order Application

Land approximately 9km south and south west of Lincoln

Deadline 3 (20 March 2026)

Please find below the Environment Agency's Deadline 3 submission in relation to the following matters:

1. Update on the Environment Agency's position on Relevant Representation (RR) [RR-089] issues and other matters
2. Post-hearing submission (Issue Specific Hearing 4) – summary and action point response
3. Responses to the Examining Authority's Second Written Questions (ExQ2)

1. Update on the Environment Agency's position on Relevant Representation (RR) [RR-089] issues and other matters

We have the following update to the Examining Authority on progress with issues we raised in our RR [RR-089] and other matters. Please refer to Appendix 1 for summary of the resolution status of Environment Agency these issues.

EA05 - Disapplication of Water Resources Act 1991 byelaws

This issue is resolved. We provide an update on this in Issue Specific Hearing 4 – please see comments in 2.1 below for details.

EA11 - Stopping works where potentially contaminated land is encountered

We have been in discussion with the Applicant about this issue outside of the examination. We have reviewed proposed updated wording relating to this issue and draft revised Framework Construction Environmental Management Plan (FCEMP),

Framework Operational Environmental Management Plan (FOEMP) and Framework Decommissioning Environmental Management Plan (FDEMP) documents intended for submission at Deadline 3. We are satisfied with the outcome and consider the issue to be Agreed in principle, subject to submission of the revised FCEMP, FOEMP and FDEMP documents into the examination.

EA12 - Assessment of impacts on groundwater quality

We have been in discussion with the Applicant about this issue outside of the examination. We have reviewed proposed updated wording relating to this issue and the draft revised Environmental Statement (ES) Chapter 9 Water Environment document intended for submission at Deadline 3. We are satisfied with the outcome and consider the issue to be Agreed in principle, subject to submission of the revised ES Chapter 9 Water Environment document into the examination.

EA16 - BESS – penstock valves and swales

We have been in discussion with the Applicant about this issue outside of the examination. We have reviewed proposed updated wording relating to this issue and draft revised Framework Battery Safety Management Plan (FBSMP) and FOEMP documents intended for submission at Deadline 3. We are satisfied with the outcome and consider the issue to be Agreed in principle, subject to submission of the revised FBSMP and FOEMP documents into the examination.

EA17 - Use of gravel in drainage systems around BESS and substation

We have been in discussion with the Applicant about this issue outside of the examination. We have reviewed proposed updated wording relating to this issue and the draft revised Framework Surface Water Drainage Strategy (FSWDS) document intended for submission at Deadline 3. We are satisfied with the outcome and consider the issue to be Agreed in principle, subject to submission of the revised FSWDS document into the examination.

EA22 - Storage of waste batteries

We have been in discussion with the Applicant about this issue outside of the examination. We have reviewed proposed updated wording relating to this issue and draft revised FBSMP, FOEMP and FDEMP documents intended for submission at Deadline 3. We are satisfied with the outcome and consider the issue to be Agreed in principle, subject to submission of the revised FBSMP, FOEMP and FDEMP documents into the examination.

Other matters – Water Management Plan

Regarding item 33 '9.0 Water Management Plan – water quality monitoring' in the Applicant's Response to Relevant Representations (Revision 1) [REP1-047]:

We have been in discussion with the Applicant about this matter outside of the examination. We have reviewed proposed updated wording relating to this issue and draft revised FOEMP document intended for submission at Deadline 3. We are satisfied with the outcome and consider the matter to be fully resolved once the revised FOEMP document has been submitted into the examination.

2. Post-hearing submission (Issue Specific Hearing 4) – summary and action point response

Development Consent Order matters

2.1 ISH4 agenda item 3.1c – Article 6 (Application and modification of statutory provisions)

This relates to the Environment Agency's relevant representations [RR-089] issue EA05 on the disapplication of the Water Resources Act 1991 byelaws under draft Development Consent Order (dDCO) [REP2-005 / REP2-006] Article 6 paragraph 1 (d).

We provided an update on this issue in relation to this agenda item. This issue is now resolved for the Environment Agency. We have reviewed the Applicant's Response to Written Representations (Revision 1) [REP2-030] and we are satisfied with the Applicant's response to this issue in Table 2-2. We are therefore content to agree to the disapplication of these byelaws in this case.

2.2 ISH4 agenda item 3.3c – Schedule 14 (Protective Provisions) any matters not addressed during the course of Compulsory Acquisition Hearing 2

We confirmed that we do not require any protective provisions to be included in the dDCO for our benefit. This does not affect the Environment Agency's regulatory duties and powers, which remain applicable.

We usually require protective provisions to be included in dDCOs when certain legislation is disappplied, such as the requirement for flood risk activity permits under the Environmental Permitting Regulations (England and Wales) 2016. In this case, the Applicant has not sought the disapplication of this legislation, therefore our protective provisions in this regard are not required. We also do not require protective provisions for the disapplication of the Water Resources Act 1991 byelaws, in this case.

Mrs Overton asked a question relating to whether sufficient water would be available in the event of the proposed battery energy storage system being subject to a fire. We were unable to respond to this question as it required technical input and we deferred to respond in writing as an action point. This has been published by the ExA as action point 6 in examination library reference EV6-002.

2.3 Action Point 6 from 'Action Points from Issue Specific Hearing 4 (ISH4)' [EV6-002]

Respond in writing to the points raised by Mrs Overton during ISH4 relating to whether sufficient water would be available in the event of the proposed battery energy storage system being subject to a fire.

Environment Agency response:

The Framework BSMP [REP1-041] states that there will be provision of two 230,000 litre storage tanks. The Water Resources Assessment [REP1-049] submitted by the applicant specifies that Anglian Water have agreed that they are able to supply this water. We have no concerns therefore about the availability of water supply for firefighting.

With regards to the requirement to cool the site for long periods. For firefighting water capacity required, we defer to the National Fire Chief's Council (NFCC).

With regards to the risk of water company supply being unavailable, we defer the water company to evaluate risks and contingency to agreed supply.

3. Responses to the Examining Authority's Second Written Questions (ExQ2)

Please refer to Appendix 2 for our responses to ExQ2.

We trust this advice is useful.

Yours faithfully


Planning Specialist - National Infrastructure Team

E-mail: NITeam@environment-agency.gov.uk

Appendix 1 – Summary table of Environment Agency (EA) position on issues raised in Relevant Representation [RR-089]

Appendix 2 – Environment Agency responses to ExQ2

Appendix 3 – Summary of overall Environment Agency position

Appendix 1 – Summary table of Environment Agency (EA) position on issues raised in Relevant Representation [RR-089]

EA RR ID	Title	Resolution Status
EA01	Requirement 10 (Surface and foul water drainage)	Agreed
EA02	Permitted Preliminary Works	Agreed
EA03	Discharge of Requirements procedure	Agreed
EA04	Disapplication of flood risk activity permits (FRAPs)	Agreed
EA05	Disapplication of Water Resources Act 1991	Agreed
EA06	Environment Agency land interests	Agreed
EA07	Witham Washlands (Lincoln) Flood Storage Area – HDD construction compound	Agreed
EA08	Flow direction of main rivers	Agreed
EA09	Protection of fish during spawning	Agreed
EA10	Invasive species – Signal Crayfish	Agreed
EA11	Stopping works where potentially contaminated land is encountered	Agreed in principle
EA12	Assessment of impacts on groundwater quality	Agreed in principle
EA13	HDD – drilling fluid breakout (groundwater)	Agreed
EA14	HDD – drilling fluid breakout (surface water)	Agreed
EA15	Swales around BESS – treatment of surface water	Agreed
EA16	BESS – penstock valves and swales	Agreed in principle
EA17	Use of gravel in drainage systems around BESS and substation	Agreed in principle
EA18	BESS – firewater containment and disposal	Agreed
EA19	Foul water strategy	Agreed
EA20	Wheel wash water	Agreed
EA21	PFAS in PV cells	Agreed
EA22	Storage of waste batteries	Agreed in principle
EA23	Water supply assessment and strategy	Agreed
EA24	Waste classification and soil reuse	Agreed

Appendix 2 – Environment Agency responses to ExQ2

Question Number	Question to:	Question	Environment Agency comments
GC.2.03	Applicant Environment Agency	<p>Waste Management – battery storage</p> <p>At Deadline 1, updates were made to the Framework Battery Safety Management Plan (FBSMP) [REP1-042] and Framework Operational Environmental Management Plan (FOEMP) [REP1-033, further updated at Deadline 2 as REP2-015] to address the potential for on-site storage of waste batteries, as described on pages 35 and 36 of [REP1-047].</p> <ul style="list-style-type: none"> a. As MW-D1 of the Framework Decommissioning Environmental Management Plan (FDEMP) [REP2-017] also includes a reference to the storage of waste batteries, should a similar amendment be made to the FDEMP? b. If waste and/or damaged batteries could be stored onsite rather than being removed immediately, would that require any additional consents not already referenced in the draft Development Consent Order 	<p>a) The Environment Agency agree with this suggestion. In light of this, we asked the Applicant outside of the examination if they could amend the wording of MW-D1 of the FDEMP. We have reviewed the proposed wording and draft revised FDEMP intended to supersede REP2-017 when it is submitted into the examination, and we are satisfied with the outcome. We will confirm if we are satisfied with the FDEMP as submitted into the examination at the next relevant deadline.</p> <p>b) It is unlikely that a separate waste permit would be required, as this would be waste stored at the site of production and the requirements for temporary storage where waste is produced would apply. As such, an exemption (depending on temporary duration) would be required by the Applicant. The Applicant can find guidance on GOV.UK under ‘Waste exemption guides’ (https://www.gov.uk/government/collections/waste-exemption-guides).</p>

		(dDCO) [REP2-005] or the Consents and Agreements Position Statement [REP1-011]?	
DCO.2.09	Applicant NKDC LCC Environment Agency Historic England Natural England	<p>Permitted Preliminary Works 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</p>	<p>1. The Environment Agency would be content with this option. As there would be no defined permitted preliminary works, the activities currently listed would not be able to commence until the relevant DCO requirements for the detailed environmental management plans (e.g. Requirement 12 Construction Environmental Management Plan) and associated documents/plans have been approved.</p> <p>2. The Environment Agency would be content with retaining activities (a) environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions, and (d) remedial work in respect of any contamination or other adverse ground conditions, which are our primary interests. Outside of the examination, we have reviewed updated wording for the Framework Construction Environmental Management Plan (FCEMP) measure GC-C1 as proposed by the Applicant, and the draft revised FCEMP which is intended for submission at Deadline 3 and will supersede REP2-013 & REP2-014. We are satisfied with the updated wording and that the FCEMP will have the necessary measures in relation to activities (a) and (d) without a detailed</p>

		<p>permitted preliminary works, which the ExA shares. The ExA considers there are three options:</p> <ol style="list-style-type: none"> 1. To have no permitted preliminary works and remove their definition in Article 2 of the dDCO 2. To have a shortened list of permitted preliminary works defined in Article 2, with those retained being justified in the EM [REP2-007] 3. To extend the use of exceptions in the relevant requirements to exclude preliminary works on a specific basis <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 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.</p>	<p>CEMP being in place. We will confirm if we are satisfied with the FCEMP as submitted into the examination at the next relevant deadline.</p> <p>3. The Environment Agency would be content with this option. In the case that activities (a) and (d) would not apply to Requirement 12, provided the activities are carried out in accordance with the approved FCEMP, we are satisfied that the Applicant's proposed amendments to measure GC-C1 in the FCEMP, which is to be submitted at Deadline 3, provide the appropriate controls. We will confirm if we are satisfied with the FCEMP as submitted into the examination at the next relevant deadline.</p>
--	--	--	--

DCO.2.30	Applicant LCC NKDC Historic England Environment Agency National Highways Natural England	<p>Schedule 15 – deemed approval provisions</p> <p>a. Applicant: 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. All: 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</p>	<p>b) The Environment Agency consider that deemed refusal would be more appropriate, as it would ensure DCO Requirements cannot be 'discharged' prematurely and aligns with the precautionary principle.</p> <p>Given the nature and scale of DCO projects, discharging requirements involves often complex and large amounts of technical information which must be adequately reviewed by consultees such as the Environment Agency. Allowing deemed approval risks environmental harm/increases in flood risk where mitigation has not been agreed, or further information or resolution of technical matters is required before a Requirement can be discharged. There are also potential issues with which document and plan versions are 'approved' if a Requirement is deemed to be approved. Furthermore, there is also a risk of non-compliance in relation to other environmental legislation if certain risks and mitigation measures have not been identified.</p> <p>The deemed refusal approach aligns with our protective provisions when applications are required where flood risk activities under the Environmental Permitting Regulations 2016 are disapplied. For clarity, we do not require protective provisions in the DCO for this project as the Applicant has not sought disapplication of the EPR in respect of flood risk activities.</p>
----------	--	--	--

		<p>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>	
DCO.2.32	Environment Agency LCC	<p>Schedule 15 – time periods Paragraph 2(5) of schedule 15 was amended at Deadline 1 in [REP1-007] to include a reference to giving consultees no less than 15 working days to respond to the relevant planning authority. This amendment was made to address the Environment</p>	<p>a) This question relates to the Environment Agency's relevant representation [RR-089] issue EA03: <i>As a named consultee on the discharge of several Requirements, we request the provision of at least 21 calendar / 15 business days in which to respond to the discharge authority. This should be reflected in the dDCO.</i></p>

		<p>Agency's EA03 issue in [RR-089] and [REP1-071].</p> <p>However, LCC in [REP2-043] considers that addition to be unnecessary on the basis that timescales to respond are already referenced within the schedule at paragraphs 2(1) and 3(3) and the addition of a further timescale could create confusion, particularly when if timescales were running concurrently.</p> <ul style="list-style-type: none"> a. Environment Agency: Explain why a specific consultation period is required in addition to the timescale stated in paragraph 2(1), which gives the relevant planning authority 10 weeks to make a decision on the discharge of a requirement. b. LCC: Explain in what way there could be confusion with the various timescales as they appear to relate to different matters. 	<p>This was to seek alignment with the 21 day consultation period (or equivalent working/business day period) for planning application consultations in The Town and Country Planning (Development Management Procedure) (England) Order 2015, and to secure this as the minimum time period in which to adequately carry out our duties in responding to discharge of requirement consultations.</p> <p>The Applicant presented an amendment to Schedule 15, Article 46, paragraph 2, section 5, in the dDCO Revision 2 [REP1-007 / REP1-008] to specify that requirement consultees are to be given no less than 15 working days in which to respond to the relevant planning authority, which we are content with. We consider that the specified consultation period ensures that the discharge authority (LPA) specifies a consultation deadline of no less than 15 working days (this is a minimum rather than a fixed period) when the consultation is issued to the requirement consultees. It avoids any doubt that we will be given a short timescale in which to respond to them.</p> <p>Regarding LCC's comment in [REP2-043], as a fellow consultee, the Environment Agency is unclear how confusion would arise based on our understanding of the wording. Our interpretation of Schedule 15, Article 46, paragraph 2, section 5, is that it is the discharge authority (LPA) who</p>
--	--	---	---

			<p>specifies the consultation deadline date in accordance with the minimum 15 working day requirement. In this case, there would be any separate deadlines.</p> <p>If it is resolved to remove the addition made by Applicant to Schedule 15, Article 46, paragraph 2, section 5 (concerning the 15 working days), the Environment Agency consider that, while the procedure could facilitate a consultation timescale that would accommodate a 15 working day / 21 calendar day consultation period, there is no guarantee that this would be possible. Therefore, it presents uncertainty for discharge of requirement consultees, when we are dealing with more complex projects than those under the Town and Country Planning regime, which does specify a minimum consultation period.</p>
WE.2.01	Applicant Environment Agency LCC	<p>Sequential Test The Flood Risk Assessment [APP-146] identifies that three solar panel fields would be at least partly within Flood Zone 2 (field 45) and the climate change extent of Flood Zone 3 (fields 54 and 57). Paragraph 6.3.71 of the Planning Statement [AS-098] identifies that this has arisen because of the need to balance areas for solar generation with the provision of environmental mitigation and there being no reasonably available</p>	<p>b) The submitted Flood Risk Assessment (FRA) [APP-146] sets out the layout of proposed solar panels within the design flood extent, including appropriate allowances for climate change. It also includes mitigation measures to ensure that these panels are raised above the flood level, with a freeboard allowance. The panels are therefore considered to be safely positioned in the event of a flood occurring. The Applicant has also provided an assessment of the volume of floodplain taken by the panel legs in order to ensure that there are no negative impacts on floodplain storage, or increases in flood risk elsewhere. We are satisfied</p>

		<p>locations within the site itself in order for the proposed development to maximise the delivery of low carbon renewable energy.</p> <p>a. Applicant - How critical are the areas of solar panels within the higher flood risk areas to the proposed development? If the areas of higher flood risk were not used for the siting of solar arrays, what implications would that have for the generating capacity for the proposed development? In responding to this question, the applicant should identify what the reductions in installed MW capacity and generated output in MWh there would be if fields 45, 54 and 57 were not used for electricity generation purposes.</p> <p>b. Environment Agency and LCC – Are you satisfied that, based on the submitted evidence, the proposed development would remain safe from current and future flood risk for the lifetime of the development, without increasing flood risk elsewhere?</p>	<p>with the mitigation provided for the lifetime of the proposed development.</p> <p>We are, however, aware that the Applicant is to submit an updated FRA at Deadline 3. This will include changes and updates relating to increases in the number of panels located within the design flood extent. The Applicant has presented this us in a meeting and we have reviewed the details they provided to us. While we did not identify any particular concerns, we will need to review these changes to ensure that all proposed layouts and mitigation measures remain acceptable in the fully updated FRA, as submitted into the examination, before confirming if we are satisfied.</p>
--	--	--	--

WE.2.02	Applicant	<p>Assessment of effects – groundwater quality</p> <p>Paragraph 9.7.48 of the ES Chapter 9: Water Environment was updated at Deadline 1 [REP1-021] to reflect the most recent guidance on good practice for assessing impacts on ground water quality, as identified in the Environment Agency’s RR [RR-089]. However, that is still caveated with “if and where necessary”. Explain the situations where the guidance would not be followed and the decision-making process for determining “if and where necessary”.</p>	<p>Although this question is direct to the Applicant, we wish to provide the following comments for clarity:</p> <p>This question relates to the Environment Agency RR [RR089] issue EA12.</p> <p>The Applicant has proposed to remove “if and” from the text of ES Chapter 9: Water Environment paragraph 9.7.48 [REP1-021]. We have reviewed a draft version of the revised ES Chapter 9: Water Environment document which the Applicant intends to submit at Deadline 3, which will supersede REP1-021. We are therefore satisfied that this issue (EA12) is resolved pending the submission of the document into the examination.</p>
---------	-----------	---	---

Appendix 3 – Summary of overall Environment Agency position

	Agreed / resolved
	Working on a solution / under discussion
	Not agreed

Environmental topics

Subject	Work package / topic / document	Scope	Method and Assumptions	Results of Assessment (i.e. Impact)	Mitigation / Enhancements	Requirement	Related RR ID
Ecology	Biodiversity Net Gain Strategy						
	Ecological Assessment & Landscape Ecological Management Plan (LEMP)					8	EA08, EA09, EA10
	Framework Construction Environmental Management Plan					12	EA09, EA10
	Framework Operational Environmental Management Plan					13	
	Framework Decommissioning Environmental Management Plan					20	
	Water Environment Report/ WFD						
Water Resources	Water Supply Assessment & Strategy						EA23
Flood Risk	Flood Risk Assessment						EA07
	Flood Modelling						

	Framework Construction Environmental Management Plan						EA07
Water Quality	Framework Construction Environmental Management Plan					12	EA14, EA20, EA21
	Framework Operational Environmental Management Plan					13	EA16, Water Management Plan
	Framework Decommissioning Environmental Management Plan					20	
	Framework Battery Safety Management Plan					7	EA16, EA17, EA18, EA22
	Surface and foul water drainage					10	EA01, EA15, EA16, EA17, EA18, EA19
	Water Environment Regulations Compliance/WFD						
Groundwater Protection	Framework Construction Environmental Management Plan					12	EA02, EA11, EA13
	Framework Operational Environmental Management Plan					13	EA11, EA16
	Framework Decommissioning Environmental Management Plan					20	EA11
	Groundwater Protection						EA02, EA12, EA13, EA16, EA17
	Framework Battery Safety Management Plan					7	EA16, EA17, EA22
	Contaminated Land Assessment						EA02, EA11
	Water Environment Regulations Compliance/WFD						

Waste	Waste Management Strategy						EA22, EA24
	Framework Battery Safety Management Plan					7	EA22
	Framework Construction Environmental Management Plan						EA24
	Framework Operational Environmental Management Plan						EA22
	Framework Decommissioning Environmental Management Plan						EA22
Geomorphology	Water Environment Regulations Compliance/WFD						

Development Consent Order

DCO topic	Topic	Agreed Status	Related RR ID
Articles	Preliminary permitted works – Article 2 ‘Interpretation’ – (d) remedial work in respect of any contamination or other adverse ground conditions		EA02
Disapplication of legislation	Disapplication of requirement for flood risk activity permits (FRAPs) - Article 6(1)(e)		EA04
	Disapplication of Water Resources Act 1991 byelaws - Article 6(1)(d)		EA05
Protective provisions	Disapplication of FRAPs and Water Resources Act 1991 byelaws		EA04 & EA05
Requirements	Requirement 10 (Surface and foul water drainage)		EA01
	Requirement 12 (Construction Environmental Management Plan)		EA02
	Discharge of requirements procedure – timescales for consultee responses to discharge authority – Schedule 15		EA03

END