

Planning Inspectorate

[via PINS portal]

Our ref: XA/2026/100516/05-L01

Your ref: EN010154

Date: 31 March 2026

Dear Sir/Madam

Fosse Green Energy – Development Consent Order Application

Land approximately 9km south and south west of Lincoln

Deadline 4 (31 March 2026)

Please find below the Environment Agency's Deadline 4 submission in relation to the following matters:

1. Update on resolution of outstanding issues and other matters
2. Additional comments on submissions received at deadlines 3 and 3A
3. Additional clarification: Action Point 6 from 'Action Points from Issue Specific Hearing 4 (ISH4)' [EV6-002]

1. Update on resolution of outstanding issues and other matters

We have reviewed the documents submitted at deadlines 3 and 3A, insofar as it relates to our remit, and we wish to make the following comments in relation to issues we raised in our Relevant Representation [RR-089]:

EA11 - Stopping works where potentially contaminated land is encountered

We have reviewed the following documents as submitted at Deadline 3 and we are satisfied that this RR issue is resolved:

- Framework Construction Environmental Management Plan (Revision 4) [REP3-016 / REP3-017]
- Framework Operational Environmental Management Plan (Revision 4) [REP3-018 / REP3-019]
- Framework Decommissioning Environmental Management Plan (Revision 4) [REP3-020 / REP3-021]

EA12 - Assessment of impacts on groundwater quality

We have reviewed the revised Environmental Statement (ES) Chapter 9 Water Environment [REP3-008 / REP3-009] as submitted at Deadline 3 and we are satisfied that this RR issue is resolved.

EA16 - BESS – penstock valves and swales

We have reviewed the following documents as submitted at Deadline 3 and we are satisfied that this RR issue is resolved:

- Framework Operational Environmental Management Plan (Revision 4) [REP3-018 / REP3-019]
- Framework Battery Safety Management Plan (Revision 3) [REP3-030 / REP3-031]

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

We have reviewed the revised Framework Surface Water Drainage Strategy (FSWDS) [REP3-014 / REP3-015] as submitted at Deadline 3 and we are satisfied that this RR issue is resolved.

EA22 - Storage of waste batteries

We have reviewed the following documents as submitted at Deadline 3 and we are satisfied that this RR issue is resolved:

- Framework Operational Environmental Management Plan (Revision 4) [REP3-018 / REP3-019]
- Framework Decommissioning Environmental Management Plan (Revision 4) [REP3-020 / REP3-021]
- Framework Battery Safety Management Plan (Revision 3) [REP3-030 / REP3-031]

Other matters – Water Management Plan

This is regarding item 33 '9.0 Water Management Plan – water quality monitoring' in the Applicant's Response to Relevant Representations (Revision 1) [REP1-047] and item 4.6.18 in the Final SoCG [REP3A-009].

We have reviewed the revised Framework Operational Environmental Management Plan (Revision 4) [REP3-018 / REP3-019], as submitted at Deadline 3, and we are satisfied that this matter is resolved.

Summary

Given the above, all issues raised by the Environment Agency in our Relevant Representation [RR-089], and any additional matters covered in our Statement of Common Ground (SoCG) with the Applicant, have been resolved.

2. Additional comments on submissions received at deadlines 3 and 3A

Statement of Common Ground with the Environment Agency (Revision 1) [REP3A-009]

We have reviewed the Final SoCG as submitted at Deadline 3A and we confirm that that this is in the agreed form. We have no outstanding issues or other matters in the Final SoCG.

ES Appendix 9-C: Flood Risk Assessment (Revision 3) [REP3-012 / REP3-013]

In our Deadline 3 submission [REP3-061], we provided a response to ExQ2 question WE.2.01(b), in which we mentioned that we had reviewed details provided to us by the Applicant outside of the examination following a meeting (27 February 2026) where they presented this information to us. We also reviewed the draft revised Flood Risk Assessment (FRA) prior to being submitted into the examination at Deadline 3, and we stated that we had not identified any concerns with the updates to the FRA.

We have reviewed the revised FRA (Revision 3) as submitted at Deadline 3 and we are satisfied that the mitigation measures proposed where panels are located within the design flood event ensure that the project will remain safe for its lifetime. While the floodplain volume calculations do not show a reduction in flood risk, they do ensure that there will be no increase as a result of the project.

Given the above, insofar as it relates to our remit, we remain satisfied that the project meets the requirements of the part (b) of the Exception Test, i.e. the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

For the avoidance of doubt, our position on the FRA is reflected in the Final SoCG [REP3A-009].

Sequential Test

It is the role of the decision maker, in this case the Secretary of State (SoS) for Energy Security and Net Zero, to determine whether the Sequential Test has been passed, based on the examination process.

Exception Test

The Exception Test is in two parts, described in paragraph 5.8.11 of the Overarching National Policy Statement (NPS) for Energy (EN-1) and paragraph 178 National Planning Policy Framework (NPPF). In order for the test to be passed it must be demonstrated that:

- a) the development would provide wider sustainability benefits to the community that outweigh flood risk; and
- b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

Paragraph 5.8.11 of NPS EN-1 and paragraph 179 of the NPPF make clear that both parts need to be met for the test to be satisfied. It is for the Applicant to demonstrate this.

The Environment Agency provides advice on the second part of the test (part b), but it is for the decision maker to consider the first part of the test, accounting for the findings of the FRA and our flood risk advice, and to determine whether the test, overall, has been satisfied.

Draft Development Consent Order (Revision 4) [REP3A-004 / REP3A-005]

We have reviewed the updated dDCO (Revision 4), insofar as it relates to our remit, in conjunction with the Schedule of Changes to the Draft DCO (Revision 3) [REP3A-023 / REP3A-024] and Explanatory Memorandum (Revision 4) [REP3A-006 / REP3A-007]. We wish to confirm that we are satisfied with the updated dDCO (Revision 4), as submitted.

Preliminary Permitted Works Environmental Management Plan (PPW EMP)

We note that, in the ‘Applicant's Response to the Examining Authority's Second Written Questions (Revision 1)’ [REP3-045] and ‘Applicant's Response to Deadline 2 Submissions (Revision 1)’ [REP3A-025], the Applicant is proposing to prepare a Preliminary Permitted Works Environmental Management Plan (PPW EMP) to be submitted into the examination no later than Deadline 5. We are aware that the PPW EMP will set out the full mitigation in accordance with which the PPW must be undertaken and will be a certified document under Article 41, and that compliance with the mitigation contained in the PPW EMP will be secured within the Requirements of the draft DCO.

We note that the Draft Development Consent Order (Revision 4) [REP3A-004 / REP3A-005] as submitted at Deadline 3A has been updated to take this into account.

We have no objection to this approach and we are aware of a similar approach with other DCOs, such as the A46 Newark Bypass (granted by the SoS for Transport on 1 October 2025), which includes a Pre-commencement Plan for PPWs and corresponding DCO Requirement to secure that “any pre-commencement works must be carried out in accordance with the pre-commencement plan”.

3. Additional clarification: Action Point 6 from ‘Action Points from Issue Specific Hearing 4 (ISH4)’ [EV6-002]

In our Deadline 3 submission [REP3-061], the EA provided a response to Action Point 6 (“Action Points from Issue Specific Hearing 4 (ISH4)” [EV6-002]. Our comments focus on the action as specified by the ExA in relation to “whether sufficient water would be available in the event of the proposed battery energy storage system being subject to a fire.”

In ISH4, clarification was also sought by Mrs Overton on whether the EA has sufficient powers to deal with any potential water pollution concerns, in light of the EA not requiring protective provisions to be included in the Order. We did not address this point in our Deadline 3 submission and therefore wish to clarify the following:

In the absence of EA protective provisions in the Order, the EA maintains regulatory and pollution-control powers (under separate legislation) to deal with water pollution.

Protective provisions are mainly required by the EA when an Order seeks to disapply

specific EA-related legislation, such as the Environmental Permitting Regulations in respect of flood risk activities, in particular. No such legislation is sought to be disapplied in the Order therefore protective provisions are not required in this case.

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 – 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
EA12	Assessment of impacts on groundwater quality	Agreed
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
EA17	Use of gravel in drainage systems around BESS and substation	Agreed
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
EA23	Water supply assessment and strategy	Agreed
EA24	Waste classification and soil reuse	Agreed

Appendix 2 – 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