

Application for DCO by FOSSE GREEN
Representation by Interested Party reference [REDACTED]
Deadline 5A

Summary of Submissions

The submission is divided into sections as follows:-

A Implications of the Raeshaw Farms Ltd case

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C Response to ExQ3 GC.3.01

Section A Implications of the Raeshaw Farms Ltd case

The Judgement

1.0 In Raeshaw Farms Ltd v Scottish Ministers (2026) CSIH 10 the judgment of the Court was handed down on 17 February 2026. This was an appeal against the decision of a reporter to grant planning permission for the erection of eight wind turbines which did not include the future grid connection. However, by the time of the decision the developers had a contracted the grid connection energisation date. The issue on appeal was whether the construction of the wind farm and its grid connection constituted a single project for the purposes of assessing its environmental impact.

1.2 The reporter said that the development proposal for the wind farm had been subject to an environmental impact assessment and that whatever grid connection solution was proposed would be subject to its own environmental impact assessment.

1.3 The Court cited (R) Wingfield v Canterbury City Council (2020) JPL 154 where Lang J had compiled a non-exhaustive list of relevant factors as to what constitutes a "project":-

- Common ownership
- Simultaneous decisions
- Functional interdependence
- Stand-alone projects

1.4 The Court, in quashing the decision of the reporter, found that he had erred in failing to conduct the fact specific evaluation of the proposal before reaching a conclusion whether the wind farm and grid connection constituted a single project for which an environmental impact assessment report that analysed the potentially significant cumulative effects of both aspects was required. What was needed was a careful consideration of whether the wind farm construction and grid connection were, on the basis of the available material, so closely connected as to form parts of a single project. There was no attempt to consider the

type of factors listed in Wingfield. The issue of functional interdependence was clearly relevant, as indisputably the wind farm could never become functional without a grid connection.

1.5 The Court said that the practical and commercial difficulties that flow from the details of a grid connection being unavailable early in the planning stages of a windfarm development were considered in the Irish case of Ó Grianna v An Bord Pleanála (2014) IEHC 632 where Peart J considered that a lack of formulated proposals for the design and route of the connection of a wind farm to the grid did not justify treating phase 1 of the scheme as a stand-alone project, rather it was suggestive of a permission being sought prematurely.

1.6 The appellant had also raised an irrationality challenge that the reporter had taken into account the benefits of the project that could only be realised were a grid connection to be installed without taking the disbenefits into account. The Court considered that there was force in the argument that the reporter had placed considerable weight on the wider benefits that would result from the operation of the wind farm once connected to the grid. He also had regard to renewable energy and climate change benefits which could only arise once the grid connection was in place. Specific reference was made to the predicted generating capacity of the development once operational. The Court said that the reporter's consideration of the proposed development as a whole, at least in relation to socio-economic and climate change benefits was illustrative of the potential difficulties in treating the two phases as entirely separate for the purposes of assessing the environmental impacts.

Implications for the proposed development

1.7 The judgment in the Raeshaw case is relevant to the consideration of the application for the DCO for the proposed development. The issue is whether the proposed development and the Navenby substation, amount to a single project for which an environmental impact assessment will be required that encompasses both elements. This question has not been considered during the examination but applying the factors listed in Wingfield, the issue of functional interdependence is relevant, as the proposed development could not function without a grid connection. If the proposed development and the Navenby substation are determined to constitute a single project, then the Applicant will need to submit a revised EIA that encompasses both elements of the scheme.

Section B Comments on REP5-025 Applicant's response to Deadline 4 Submissions

Decommissioning costs page 46

2.0 Applicant's response

The sum for decommissioning costs is based on experience, knowledge and industry information. The 3 pence per watt is a worst-case scenario when the end value of all plant

and equipment is 0 pence per watt. The Applicant's assumption is that at the end of the 60 year period the core material recycled will far exceed the 3 pence per watt.

2.1 Comments in reply

2.1.1 It is difficult to understand on what "experience, knowledge and industry information" the Applicant is basing its estimate of decommissioning costs given that there appears to be few projects which have been decommissioned. It is not apparent that the Applicant is relying on its own experience of decommissioning, Windel Energy is solely involved in setting up solar projects and the services that Recurrent Energy provide to its clients as advertised on its website do not include decommissioning.

2.1.2 Presumably the decommissioning costs have been based on the premise that the environmental impacts of the proposed development are temporary and reversible. The Applicant's assertion that the core material recycled will far exceed the 3 pence per watt is based on the assumption that on decommissioning there will be a market to justify material recovery from the development and that the development has been properly maintained and not run to fail. Frolova *et al* (2025) "Abandoning renewable energy projects in Europe and South America: An emerging consideration in the recycling of energy landscapes" In Energy for Sustainable Development Vol 85 April 2025 suggest that emerging research highlights that these assumptions may be flawed as energy landscapes often undergo transformation that make full restoration costly or unfeasible.

2.1.3 C Mackie and A Velenturf (2021) "Trouble on the Horizon: Securing the decommissioning of Offshore renewable energy installations in UK waters" In Energy Policy Vol 157 October 2021, suggest that the breadth of the estimated cost range of between £1.28-3.64 billion for decommissioning offshore wind farms in the UK, raises concerns as to the ability of the developer to estimate their own decommissioning costs reliably. It is suggested that there may be deliberate under-costing as the greater the estimate costs, the greater the level of security that may be required and the greater the financial burden to the developer. Skepticism around the amount of the decommissioning costs for the proposed development has been expressed by NKDC in their comment that "it strikes the Council that the decommissioning costs appear to be a relatively small proportion of the total costs (around 3%)" (paragraph 2.49 of REP4-021).

2.1.4 The Applicant has previously not included an amount for decommissioning costs in its Funding Statement as, given the timeframe (60 years+) an estimate of decommissioning costs "is likely to carry significant assumptions and limitations whereby advancements in technology by the late 21st century have the potential to significantly affect costs estimates" (REP1-047 page 352). It is therefore not credible that the Applicant is now able to provide an accurate unqualified estimate of decommissioning costs based on its "experience, knowledge and industry information".

Funding Statement page 46

3.0 Applicant's response

The Funding Statement was updated to clarify that the costs estimate includes decommissioning costs as a response to GC.1.15 of ExQ1 (REP2-009).

The amendment aligns with the equivalent document submitted in Springwell in response to a similar question posed at Q2.15.1 (PD-010). The amendments to the Springwell Funding Statement can be seen at REP4-007.

Paragraph 4.12 of the Secretary of State's decision letter on Springwell states that "the revised funding statement suitably demonstrates that the Applicant is able to fund the decommissioning of the Proposed Development".

The Applicant's position is that it is not necessary to provide any form of financial security for the decommissioning of the proposed development.

3.1 Comments in reply

Capital costs

3.1.1 The Applicant has not dealt with the point made in paragraph 2.2.2 of my submission at REP4-030 that whilst the decommissioning costs (which were originally not included in the capital costs) have now been included as part of the capital costs in the Funding Statement, the capital costs should be increased accordingly.

3.1.2 The same pattern of contradictory statements about decommissioning costs were made in the Springwell DCO. The original Funding Statement made no mention of decommissioning costs. The applicant then confirmed that the decommissioning costs were not included in the capital costs of the scheme (REP1-071). The Applicant subsequently amended the Funding Statement to include decommissioning costs without a corresponding uplift in the amount of the capital costs (REP4-007). I raised this issue in my submission to the Springwell examination in REP5-036 but the point was not addressed.

Mechanism for Funding Decommissioning Costs

3.1.3 The Applicant refers to the Secretary of State's decision letter for Springwell which states that "the revised funding statement suitably demonstrates that the Applicant is able to fund the decommissioning of the Proposed Development". Whilst the revised Funding Statement in Springwell (and the current version of the Fosse Green Funding Statement) confirm that the decommissioning costs are included in the capital costs, neither states **how** the costs will be funded. In paragraph 12.2 of my submission at REP1-106, I give examples of Funding Statements in made DCOs that include such detail.

3.1.4 In the paper by Frolova *et al* referred to in paragraph 1.1.2 above, the authors express concern that the financial mechanisms ensuring the dismantling of large scale solar farms remain insufficient and that without clear financial provisions, project developers are not always held accountable for full site restoration. The authors states that financial

guarantees for decommissioning remain weak, raising the risk of infrastructure abandonment.

3.1.5 This concern is reflected in ExAQ3 DCO.3.15, where the ExA postulates that neither Requirement 20 nor the DCO in general would adequately provide for the decommissioning of the land affected by the proposed development and has asked the Applicant to provide draft wording for inclusion in Requirement 20 to establish a mechanism for funding the decommissioning.

Permanent sealing of agricultural land page 47

4.1 Applicant's response

The Applicant has previously stated that it was not aware of other solar NSIPs which included hard infrastructure as permanently sealed except where an applicant is not proposing to decommission these works eg a bespoke access road at Beacon Fen was assessed as permanently sealed as the landowner requested that it be retained on decommissioning.

The Mallard Pass, Heckington Fen, Gate Burton and Beacon Fen projects had different baseline conditions or proposed different infrastructure to the proposed development which led to the above reasoning.

In the Gate Burton ES, the planting was assessed as permanent in the same way as the proposed development.

In Mallard Pass, the substation was assessed as permanently sealed in light of a time limit not being proposed. It was later during Examination that the applicant committed to a 60 year operational lifetime.

In Heckington Fen the infrastructure covers Grades 1 and 2 BMV. Some soil specialists have reservations as to whether these soils can be immediately restored to their former ALC grading on decommissioning and the cautious approach that considers this land as permanently sealed over is not unusual. The proposed development does not impact Grade 1 and 2 BMV and therefore follows the industry-wide assumption that soils can be reinstated to their previous condition on decommissioning and are therefore not considered as permanently lost.

The Applicant is not seeking flexibility to leave any of the above ground infrastructure in place following decommissioning and therefore the approach taken in the ES is robust.

4.2 Comments in Reply

4.2.1 The Applicant continues to put forward reasons that are not credible for distinguishing other NSIPs from the proposed development in the way that agricultural land is considered as permanently sealed over.

4.2.2 In the Appendix to this submission, I set out the four projects referred to above as well as Springwell DCO where the Secretary of State has recently determined that hard infrastructure was permanently sealed over (paragraph 4.49 of the decision letter dated 8 April 2026) and compare these against the criteria referred to by the Applicant.

4.2.3 Responding to the Applicant's specific comments:-

- Gate Burton included the substation which was also considered to be permanently sealed as well as the planting areas.
- In Mallard Pass, it was not only the substation but also the solar stations and access tracks that were considered as permanently sealed. The ES was reviewed in the light of the revised time limited consent of 60 years and there was no change to the conclusion that these areas would be permanently sealed.
- In Heckington Fen there was no distinction made between the substation which was on Grade 3b agricultural land and the access tracks and solar stations which were on higher grade agricultural land. All these areas were considered to be sealed over. The Applicant has previously argued this point in relation to Mallard Pass (REP3A-025) where it was suggested that the reason for determining that the solar stations and access tracks were considered as sealed over related to their higher ALC grading. However, as I pointed out in paragraph 1.7 of my submission REP5-045, the areas of the substation which were of a lower grade were also considered to be permanently sealed over.

4.2.4 In conclusion, the approach taken by the Applicant in the ES in considering that the areas of hard infrastructure are not permanently sealed over is not robust, there are at least five NSIPs including the recent Springwell DCO where these areas are considered to be permanently sealed and there is no distinction between those cases and the proposed development on which the Applicant can rely.

Mental Health – New permissive paths and community orchard page 51

5.0 The Applicant's response

The Applicant has not relied on any single study (referring to Ahmadi *et al* (2026) cited in REP2-045) nor claimed that mental health benefits arise irrespective of context.

The Health and Wellbeing Summary statement (REP3-047) acknowledges that noise, visual factors and individual perception influence user experience. Operational noise has been assessed and predicted to remain below relevant thresholds at public rights of way.

While some permissive paths would be located near infrastructure and roads, this does not provide a robust basis for concluding that their use, which will typically be transient, reflecting the expected predominant use of the routes as a means of exercise based on the use of the existing routes in the area, would adversely affect mental health.

It also does not undermine the population level conclusions.

5.1 Comments in reply

5.1.1 This exchange of submissions arose from ExQ2 PE2.02 which asked the Applicant to provide evidence which demonstrated that design opportunities would mitigate the adverse effects on mental health. In response the Applicant stated at REP3-045 (page 57) that “in providing leisure opportunity and new permissive paths, the proposed development will therefore have an inherent mental health benefit.” This statement is reiterated in paragraph 5.1.4 e of the Health and Wellbeing Statement (REP3-047) where the Applicant has stated that it has outlined the measures that “specifically enhance mental health and wellbeing, including the creation of new permissive paths and community access areas”. These statements were not set in any context.

5.1.2 Far from enhancing mental health, the proposed measures to create new permissive paths and the community orchard will not effectively mitigate against the negative effect of the proposed development on mental health as set out below.

Connectivity

5.1.3 The Applicant suggests that new permissive paths will enhance local connectivity (paragraph 3.8.11 of the Health and Wellbeing Statement). How does the proposed permissive path along Clay Lane, Bassingham improve connectivity? It is a circular route from and to the existing public highway around the edge of an open featureless flat arable field. Fig 1 below is a photograph of the field taken from Clay Lane and the position that the photograph was taken is shown in Fig 2.



Fig1

Panoramic view of proposed new permissive path at Clay Lane Bassingham

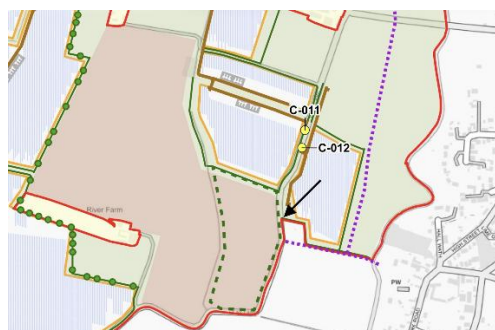


Fig 2

Direction and position of the photograph taken in Fig 1

Extent of permissive paths

5.1.4 The length of new permissive paths which the Applicant proposes to provide as part of the proposed development is unclear and it is the subject of ExQ3 TT.3.04 (PD-021). Paragraph 5.3.15 of the Planning Statement (AS-098) refers to the creation of **9.5km** of permissive paths. In response to ExQ2 TT.2.04 the Applicant confirmed that it would review the extent of the existing and proposed permissive paths which were shown in Figure 3.3 (AS-024) (REP3-045). Figure 3.3 was revised at Deadline 5 (REP5-008) and does not now differentiate between existing and proposed new permissive paths. In REP4-018 (page 90) the Applicant states that differentiating the status of retained or new permissive paths is not important and that the updated length of proposed permissive paths to be provided is **10.2 km**. However, paragraph 6.1.4 of the FLEMP (REP5-017) still states that “a permissive path network of **9.5km** will enhance the recreational value of the DCO site”. There remains inconsistency in the figures given for the total length of permissive paths (existing and new). In addition, part of the proposed permissive path along Clay Lane, Bassingham remains shown along an existing public highway (my submissions REP2-061 and REP5-045 refer).

Community Orchard

5.1.5 The Applicant suggests that the proposed 1.8ha community orchard will allow open access to the area and allow the community to pick fruit (paragraph 3.8.11 of the Health and Wellbeing Statement). The nearest access to the orchard will be through the residential estate at Witham St Hughes. The majority of proposed orchard is located behind the dwellings on Nettleton Drive.



Fig 3

Photo 3- Nettleton Drive Witham St Hughes

The proposed entrance to the orchard will be off Green Lane (Gray Lane as indicated on the map) as shown on Fig 4.



Fig 4

Photo 2 Green Lane leading from Nettleton Drive Witham St Hughes

Fig 5 is taken from the approximate location of the access point. Part of the orchard will be located in the field seen in the foreground with solar arrays behind.



Fig 5

Photo 1 View from Green Lane Witham St Hughes towards proposed orchard and solar arrays

The locations that the photographs in the above figures were taken is shown on Fig 6



Fig 6
Location and direction of photographs 1,2 and 3 at Figs 3,4 and 5

The only people who are likely to be aware of its existence or use the orchard are the residents of Nettleton Drive and the properties fronting onto Green Lane at Witham St Hughes. The proposed mitigation of the community orchard will therefore in practice benefit only a small proportion of the local community.

Visual experience of users of new permissive paths

5.1.6 The majority of the routes of the permissive paths to be provided by the Applicant are along the edges of the solar array fields which will eventually be screened by 3m high hedges. In the planning appeal by JBM Solar Projects Limited against the refusal of planning permission for a 49.9MW solar farm on land to the north of Stretton Road, Alfreton DE55 6HA dated 28 April 2026 (Appeal ref 6001477), the Inspector, in dismissing the appeal, noted in paragraph 63 that the proposal would include a circular permissive footpath around part of the site which would increase recreational access to the countryside. The Inspector went on to say “However, experientially this route would be uninspiring, being in between high hedges and security fencing which would only allow close range views over expanses of panels”. The proposed new permissive paths to be provided by the Applicant are similarly visually “uninspiring”.

Noise along new permissive paths

5.1.7 The Applicant states that operational noise has been assessed and predicted to remain below relevant thresholds at public rights of way. It is not clear whether the Applicant is also asserting that operational noise is “below relevant thresholds” along the new proposed permissive paths. I have made submissions about the operational noise along the existing PRow in REP1-106 (paragraph 5.1), REP2-061 (paragraph 7) and REP5-045 (paragraph 3). In summary, my contention is that as the Applicant has not taken sound levels along the existing PRow, it is not able to assert that the operational noise along those routes will be “akin” to or “in line with” the existing noise levels. It can be seen from the noise contour

plans (AS-063) that the operational noise along the majority of the proposed new permissive paths around Thorpe on the Hill for the distributed BESS option will be between 35 and 55dB. The route of the new permissive paths around TOTH will be alongside the A46 and Fosse Road where traffic noise will predominate.

Purpose of using new permissive paths

5.1.8 The Applicant acknowledges that the new permissive paths will be alongside infrastructure and roads but concludes that as the expected predominant use of the routes is for exercise (based on the use of existing routes) this does not provide a robust basis for concluding that their use would adversely affect mental health. The Applicant has not carried out any survey of the users of the PRoW in the area to ascertain their motives for walking those particular routes and therefore has no basis for stating that the predominant use of those routes and by extension, the proposed new permissive routes, will be for exercise.

Restriction on use of the permissive paths

5.1.9 The permissive paths (existing and proposed) will only be provided during the operational period, they are not being dedicated as permanent public rights of way. The Applicant will also be able to close the permissive paths for 7 days a year. In addition, the paths may be closed for repair and maintenance work and for emergency repairs (paragraph 6.1.2 of the FLEMP REP5-017). There is no limit on the amount of time that the paths can be closed for repair and maintenance work.

Population level impacts

5.1.10 The Applicant states that the population level conclusions are not undermined. In paragraph 2.13 of the Health and Wellbeing Summary Statement (REP3-047), the Applicant acknowledges that the general population is of medium sensitivity with some higher sensitivity receptors including those with poor mental health. Paragraph 2.7.7 acknowledges that the percentage of the population in Lincolnshire diagnosed with depression (15.8%) is higher than regional and national levels.

5.1.12 The World Health Organisation “Guidelines for Community Noise” discusses the effects of environmental noise on mental health and notes the importance of taking vulnerable groups into account, because they are not able to cope sufficiently with unwanted environmental noise and this is particularly true of children, the elderly and people with pre-existing illnesses, especially depression.

5.1.13 Paragraph 3.5.7 states that during the construction and decommissioning phases of the proposed development, the experience of using PRoW or permissive paths is not anticipated to materially change as a result of noise or vibration and there would be no adverse impacts on the human health and wellbeing of users. Similarly, the Applicant’s conclusion is that there would be no adverse impact as a result of operational noise (paragraph 3.5.15 refers). However, in it’s analysis, the Applicant does not appear to have

considered the particular vulnerability of those suffering from depression who are likely to have a higher sensitivity to unwanted noise.

5.1.14 At paragraph 3.6.15 of the Health and Wellbeing Statement, the Applicant acknowledges that there will be significant major/moderate adverse visual effects in year 15 of operation recorded on a number of PRoW but concludes in paragraph 3.6.20 that the effects will reduce in time, they are limited in nature, extent and duration and are not of a scale, frequency or magnitude that would give rise to likely significant adverse effects on health and wellbeing at a population level.

5.1.15 Research suggests that non-natural landscapes often contribute to higher rates of depression, anxiety and stress (M Sander *et al* (2025) Natural v built visual urban landscape elements around the home and their associations with mental and brain health of residents” In Psychology Vol 104 June 2025). In Guang Yang *et al* (2025) “How environmental perception influence depression and anxiety: the mediating role of social interaction” In BMC Public Health 2025 31 March a study of people in the Yangtze River Delta China showed that those with poorer environmental perceptions including their local green environment were more likely to experience symptoms of depression and anxiety.

5.1.16 In it’s analysis of the landscape and visual effects of the proposed development, the Applicant does not appear to have considered the particular vulnerability of those suffering from depression whose mental health is likely to be adversely affected by the visual change in the landscape from the current wide open views of arable fields to a landscape of energy infrastructure.

Conclusion

5.1.17 The Applicant asserts that the provision of a community orchard and new permissive paths will not only mitigate the adverse effects of mental health which will arise from the proposed development but also will provide an inherent mental health benefit. The Applicant acknowledges that noise, visual factors and individual perception influence user experience. No evidence has been submitted by the Applicant that the experience of recreational walking amongst fields of solar arrays has been seen as positive. As shown above, the extent of new permissive paths over and above what is already provided is unclear. The paths are temporary and may be closed at will for an indefinite length of time. Some of the proposed mitigation will only benefit a small proportion of the local community. If the intent of the Applicant is to alleviate the adverse mental health effects arising from the impact of the proposed development on existing PRoW, the provision of more routes with exactly the same experience will not assist. The assessment of the impacts at population level has failed to take account of the particular susceptibilities of those with poor mental health of which the percentage in Lincolnshire is higher than regional and national levels.

Section C Response to ExQ3 GC.3.01 (PD-021)

The ExA has requested all parties to submit representations about the implications of the Springwell DCO decision on any aspect of the case that has been made by any IP. One of my submissions relates to the permanent sealing of agricultural land by hard infrastructure such as the BESS, solar compounds and substation. I have quoted a number of made DCOs where hard infrastructure has been deemed as permanently sealed over. The Applicant has sought to distinguish those cases from the approach taken in the proposed development. Paragraph 4.49 of the Secretary of State's decision in the Springwell DCO also considered that the areas of hard infrastructure were to be considered as permanently sealed (paragraph 1.11 of REP5-045 refers).

Appendix

Areas of Hard Infrastructure assessed as permanently sealed over

Name of NSIP	Period of consent	Land Use	Area	ALC Grading	Removal/left in situ on decommissioning
Gate Burton	60 years	Substation (and planting)	2ha	BMV	To be agreed with LPA
Beacon Fen	40 years	Substation and BESS	10.49ha	7.87ha Grade 2, 2.62ha Grade3b	To be removed
"	"	Construction Compounds	3.31 ha	2.29ha Grade 3a, 1.02 ha Grade3b	"
"	"	Access Tracks	7.50 ha	0.18ha Grade 2, 3.04ha Grade3a, 4.24ha Grade 3b	"
"	"	Access Roads	1.81ha	0.75ha Grade 3a, 1.05 Grade3b, 0.01 Non Agricultural	"
"	"	Transformer Stations	0.25ha	0.01 ha Grade 2, 0.11 ha Grade 3a, 0.13 ha Grade 3b	"
"	"	Bespoke Access Road	3.98ha	1.47ha Grade 2, 1.95ha Grade 3a, 0.56ha Grade 3b	To be removed subject to consultation
Mallard Pass	60 years	Access Tracks	7.1ha	0.4ha Grade 2, 2.2ha Grade 3a, 4.2ha Grade 3b, 0.3 ha Grade 4	To be removed
"	"	Solar Stations	0.9ha	0.1ha Grade 2, 0.3ha Grade 3a, 0.5ha Grade 3b	"
"	"	Substation	6.4ha	1.2ha Grade 3a, 5.2 ha Grade 3b	"
Heckington Fen	40 years	Tracks	6.1ha	0.5ha Grade 1, 0.5ha Grade 2, 1.6ha Grade 3a, 3.5ha Grade 3b	To be removed

"	"	Solar Stations	0.6ha	<0.1ha Grade 1, <0.1 ha Grade 2, 0.2ha Grade 3a, 0.4ha Grade 3b	"
"	"	Substation	13.5ha	13.5ha Grade 3b	"
Springwell	40 years	Satellite Collector Compounds	3ha	1.5 ha Grade 3a, 1.5ha Grade 3b	To be removed
"	"	Substation and main collector compound	15.5ha	6.9ha Grade 3a, 8.6ha Grade 3b	"
"	"	BESS	13.5 ha	12.6 ha Grade 3a, 0.9 ha Grade 3b	"