

## **REP5A-007 Draft Development Consent Order (Rev 5) (DCO)**

1. Article 2 definitions – NKDC welcomes the addition of restoration works in the definition of Permitted Preliminary Works Environmental Management Plan (together with item (m) added to list of Work No.9 in Schedule 1).
2. Schedule 2, Requirement 19 – NKDC welcomes that this requirement now confirms that the Employment, Skills and Supply Chain Plan is to operate throughout both the construction and operational stages of the Proposed Development.
3. NKDC maintains its position that the Applicant should secure funding to ensure the full implementation of the ESSCP and provide legacy benefits for the local area, as set out in the following submissions made by the Council:
  - REP1-056 – NKDC Local Impact Report, in particular paragraphs 23.12 – 23.14 on page 81
  - REP2- 045 – NKDC Response to Examining Authority’s First Written Question PE.1.07, page 47
  - REP3-053 – NKDC Response to Examining Authority’s Second Written Question PE.2.05
4. Schedule 2, Requirement 20 – NKDC welcomes the revision to specify that the detailed Decommissioning Environmental Management Plan is to include a timetable for the completion of decommissioning.
5. However, in the interest of certainty, the Council’s view is that the DCO should set a reasonable maximum period of time within which decommissioning should be completed; and suggest that this should be 30 months, consistent with the construction duration. Please see NKDC’s earlier submissions on this topic in the following documents:
  - pages 17 – 18 of REP2-045 (response to the Examining Authority’s First Written Question DCO.1.24)
  - paragraphs 23 – 28 of NKDC Further Response to Examining Authority’s Third Written Question GC.3.01 (submitted 22 May 2026) – matters related to the decision on the Springwell Solar Farm DCO

### Schedule 15 – procedure for discharge of requirements

6. NKDC notes that substantial changes to Schedule 15 are proposed at a very late stage in the examination process. REP5A-031 states that the reason for these changes is given as:

*‘Amended in line with the Examining Authority’s Schedule of Proposed Changes to the draft DCO [PD-022]’.*

7. However, the Council considers that the revisions now proposed are significantly different from the changes set out in PD-022, which were suggested by the ExA in the interests of precision. The Applicant's revisions represent a shift in approach, such that it is difficult to justify the statement that they are merely "*in line*" with the ExA's suggestions.
  - a) Changes to paragraph 2(5)
8. NKDC does not object to the undertaker sending a copy of the application submissions to relevant application consultees; and indeed considers this to be helpful.
9. However, NKDC consider that formal consultation should be carried out by the relevant planning authority, rather than the undertaker. This is in part to avoid potential confusion for the consultees in relation to timescales. The Council takes the view that:
  - a) it is the relevant planning authority which will check whether a valid applications been made;
  - b) a valid application will only have been made when the required information and the correct fee have been received;
  - c) conversely, requirement consultees are not bodies which will carry out validation;
  - d) it is possible that an invalid application is received, but a requirement consultee will embark on its consideration of the application under the misapprehension that it has to comply with the timescales for response set out in the undertaker's notification;
  - e) if the relevant planning authority considers that the application is not valid, or becomes valid at a later point in time, it will be necessary to adjust the timescales, which could cause confusion with consultees.
10. Therefore the Council favours a process whereby the relevant planning authority is responsible for notifying consultees of a validly made application, and for setting out the consultation deadlines which are to be adhered to.
11. The Council objects to these revisions, and prefers the ExA's suggested wording for sub-paragraph 2(5) as set out on page 24 of PD-022.
12. Notwithstanding this objection, if the ExA accepts the general approach of the Applicant, the Council considers that paragraph 2 should be amended to clearly set out what constitutes a validly made application, similar to that in the Springwell DCO, including addressing the fee question. This might be achieved through amendments to paragraph 2 of the Fosse Green dDCO a follows:
  2. (1) Where an ~~an~~ **valid** application has been made to the relevant planning authority for any discharge, the relevant planning authority must give notice

to the undertaker of its decision on the application within a period of ten weeks beginning with the later of—

- (a) The working day immediately following the day on which the application is received by the authority;
- (b) the working day immediately following the day on which further information has been supplied by the undertaker under paragraph (3); or
- (c) such longer period that is agreed in writing by the undertaker and the relevant planning authority. ...

... (3) ~~For Any~~ **an application for discharge of a requirement to be valid, the undertaker must provide the following** ~~application made~~ to the relevant planning authority ~~pursuant to sub-paragraph (1) must~~—

(a) ~~include~~ a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are; and

(b) ~~include~~ confirmation that the application has been notified and provided to the requirement consultees in accordance with sub-paragraph (5), if the provision governing or requiring the application specifies that consultation with a requirement consultee is required. Such confirmation to include contact details for the requirement consultees.

(c) **a covering letter which includes confirmation of the requirement to which the submission relates;**

(d) **the respective detailed management plan, drawing or other written information to discharge the requirement as required by the requirement; and**

(e) **payment of the discharge of requirement application fee in accordance with paragraph (5).**

b) Changes to paragraph 3

13. Following on from the above comments on paragraph 2, the Council notes that the proposed changes to paragraph 3 go well beyond what was suggested by the ExA on page 25 of PD-022.
14. Sub-paragraphs (2) and (3) separate situations where the application involves a requirement where there is no requirement consultee, and situations where there is a requirement consultee. Formerly, in the previous version of the dDCO (REP3A-004) the timescales to notify the undertaker of the need for further information were different in each case. However, the proposed revisions make the timescales the same, i.e. within 20 days of receipt of the application.

15. Under paragraph 3(3), the previous 25 day period allowed for the 10 day consultee notification under paragraph 2, followed by a further 15 days for the consultee to respond. This should remain, and the Council objects to the proposed revisions.
16. Additionally, it is recommended that where paragraph 3 refers to the receipt of an application by the relevant planning authority, this should be amended to refer to receipt of a valid application (which has been defined in the proposed revisions to paragraph 2(3) set out above), so that there is no doubt about when the time periods for consultation, requests for further information and determination.
17. Notwithstanding that objection, given that the Applicant proposes timescales for 3(2) and 3(3) which are the same, the purpose for having two separate sub-paragraphs is unclear. It is suggested therefore that in the interests of clarity, subparagraphs (2) and (3) might be combined. However, this does not overcome the Council's objection to the proposed revisions to these sub-paragraphs.
18. NKDC considers that the newly introduced sub-paragraphs 3(6) and 3(7) are somewhat confusingly drafted and unnecessary. If further information supplied by the undertaker is considered inadequate by the relevant planning authority, then there will usually be - within the overall 10 week determination timescale set by paragraph 2 - sufficient time to approach the undertaker to seek further information and overcome any issues. The new sub-paragraph introduces an express '*deemed to have sufficient information*' provision after five days from the date of receipt of the further information, together with a statutory removal of the entitlement to request further information. This is considered unhelpful to the efficient working of the planning system, as it may have the unintended result of pushing the relevant planning authority towards refusal rather than discussion, and leading to a risk of more refusals and appeals and which could lead to delays in implementing the project which could have otherwise been avoided.
19. Furthermore there is imprecision through use of the terminology ...'*(including where the quantity of information is substantial or requirement consultees are involved)*'. The undertaker and relevant authority's respective interpretations of a 'substantial' quantity of information could differ leading to disagreement as to whether the suggested timescale should engage, and as above a potential default towards refusal and delay. Of course, if the undertaker considers that the submitted further information is sufficient, it can decline to provide additional information.
20. Related concerns arise for proposed sub-paragraph (7). The 15 day consultee response time had already been provided for in the previous version of the DCO. Again, within the overall 10 week determination period, the relevant planning authority may wish to seek and receive further information from consultees. The deemed 'no comments on the application' provision at (e) is unhelpful.

21. The Council therefore objects to the newly introduced sub-paragraphs (6) and (7).
  - c) Changes to paragraph 5, Fees
22. NKDC welcomes the changes to the fees charged for applications seeking approval of matters under the requirements, as set out in sub-paragraph 5(2)(a) – (c).
23. However, there continues to be no provision for indexation of fees. This should be corrected, so that fees increase in line with fees for applications under the Town and Country Planning Act 1990. The Council is very surprised that the Applicant maintains their stance on this point with no reasonable explanation provided as to why they should not be subject to the same inflationary increase in fees to which all applicants for developments under the Town and Country Planning Act 1990 are subject. We continue to object to the wording of paragraph 5 on the basis that it does not include indexation provisions.
24. The Council notes the “without prejudice” wording submitted by the Applicant in its response to the Examining Authority’s Third Written Questions (REP5A-037) DCO.3.14. NKDC can confirm that if that wording were inserted into the DCO, it would address the Council’s concerns on this point.

**REP5A-035 - Permitted Preliminary Works Environmental Management Plan (PPWEMP)**

25. NKDC notes the following changes to the PPWEMP:
  - a) Paragraph 2.3.1 indicates a qualification to the proposed activities and working hours regarding noise levels at neighbouring properties
  - b) Paragraph 3.14.1 clarifies that abortive works are to be restored within 12 months.
  - c) The Council welcomes these changes to the document.

**REP5A-019 – Framework Soil Management Plan (FSMP)**

26. NKDC notes the following changes to the FSMP:
  - a) The title of section 5.0 has been altered to now refer to soil management during operation and decommissioning, as well as construction.
  - b) Paragraph 5.7.1 has been altered with the deletion of reference to handling of wet soils, and clarified the range of acceptable soil storage bunds
  - c) Paragraph 6.1.1 has been amended to remove the reference to off-site transfer of soils; and focus instead on reuse of soils.
  - d) Paragraph 6.9.1 has been amended to include the solar array areas within the scope of the soil maintenance (aftercare) requirements through monitoring.
  - e) Paragraph 7.1.5 has been amended to clarify the Applicant’s intention to return land within the Principal Site to its current state following decommissioning of the Proposed Development.

NKDC welcomes these changes, though the Council continues to have reservations about whether the whole of the Principal Site will be returned to its original agricultural grade, especially in areas subject to development for elements of the scheme such as hardstandings and roadways. NKDC also looks forward to receiving the Applicant's further responses to comments made by the Council in REP5A-046 when answering the Examining Authority's Third Written Questions FS.3.01 and FS.3.03.

**REP5A-017 – Framework Construction Environmental Management Plan (FCEMP)**

27. NKDC notes and welcomes the change at paragraph 2.2.3 of the FCEMP, such that the Council is now named as body to be informed of date of final commissioning.

**REP5A-037 – Applicant's Responses to the Examining Authority's Third Written Questions**

**DCO.3.04 – permissive paths, requirement 17**

28. NKDC continues to take the view that the Applicant has not provided sufficient and adequate reasons for closures of permissive paths within the Site, which would be in addition to emergency and maintenance closures.

**DCO.3.05 – Requirement 20 and decommissioning fund**

29. NKDC notes the Applicant's 'without prejudice' wording. However, the Council also observes that the wording does not require approval of the mechanism to accrue a decommissioning fund; nor does it require the undertaker to implement the mechanism and actually make the fund a reality. Nevertheless, and noting the 'without prejudice' position the Council supports the proposed inclusion of an additional Requirement on this matter for the reasons set out in our earlier representations but subject to clarity and amendment in relation to the above points to ensure that the funding mechanism can be triggered and implemented as required.

**DCO.3.14 – Schedule 15 procedures for discharge of requirements**

30. The Council notes the "without prejudice" wording submitted by the Applicant in its response to the Examining Authority's Third Written Questions (REP5A-037) DCO.3.14. NKDC can confirm that if this wording is to be inserted into the DCO, it would address the Council's concerns on the question of indexation for the fees required under requirements.

**FS.3.01 – Framework Soil Management Plan – operation and decommissioning**

**FS.3.03 – Framework Soil Management Plan**

31. The Council notes the Applicant's statement that it will review comments on this topic from NKDC, LCC and Natural England; and looks forward to the Applicant's response in due course.

**HE.3.04 - SoCG – built heritage assets**

32. NKDC is very disappointed with the dearth of engagement, meaningful dialogue and additional assessment to address the Council's concerns on this matter.
33. This matter is indeed likely to remain 'not agreed'.

**TT.3.04 – Permissive Paths**

34. NKDC notes the Applicant's responses to this question.
35. NKDC is pleased to inform the ExA that further discussions between the Applicant and the Council have resulted in an agreement to fund certain measures for the Stepping Out Walks. The Applicant has indicated that further details, including the mechanism to secure this funding, will be submitted at Deadline 6.