Dean Moor
Solar Farm

Applicant Response to ExA's Rule 17 Letter and Schedule of Changes to dDCO

on behalf of **FVS Dean Moor Limited**

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DEAN MOOR SOLAR FARM

APPLICANT RESPONSE TO EXA'S RULE 17 LETTER AND SCHEDULE OF CHANGES TO DDCO

PLANNING INSPECTORATE REFERENCE EN010155

PREPARED ON BEHALF OF FVS DEAN MOOR LIMITED

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Contents

Tables

1 Introduction

1.1.1 This 'Applicant Response to the Examining Authority's ('ExA') Rule 17 Letter and Schedule of Changes to the dDCO' ('ARSOC') [**D6.7**] has been produced for FVS Dean Moor Limited (the 'Applicant') to support the application for a Development Consent Order (the 'DCO application') for Dean Moor Solar Farm ('the Proposed Development') located between the villages of Gilgarran and Branthwaite in West Cumbria (the 'Site'), which is situated within the administrative area of Cumberland Council ('the Council').

1.1.2 This ARSOC has been produced in response to the Rule 17 Letter – Request for Further Information [**PD-017**] (the 'Rule 17 Letter') and the ExA's 'Schedule of Changes to the draft Development Consent Order' (ExA'sSoC) [**PD-018**], both published on 5 December 2025.

1.1.3 The Rule 17 Letter requests responses to points on both the dDCO [**REP5-004**] and the Explanatory Memorandum (EM) [**REP5-006**] to be considered in the Deadline 6 (D6) submission.

1.1.4 A response to each point made within Annex A of the Rule 17 Letter is provided in Table 2.1 of this document.

1.1.5 The ExA's SoC sets out the ExA's proposal that the Applicant considers inserting an additional Requirement relating to Biodiversity Net Gain (BNG) into the dDCO. Suggested drafting for the requirement is provided by the ExA and the Applicant is asked to consider this. A response to this proposal is provided within Table 1.2 of this document.

1.2 Applicant Response to the Rule 17 Letter

Table 1.1: Applicant Response to the Rule 17 Letter

Article / Schedule	ExA's suggested considerations in relation to dDCO & EM and reasoning and comments	Applicant Response
Application, modification or exclusion of statutory provisions (various Articles including 9, 12, 19, 21)	**Suggested Considerations**: *Applicant to review draft Development Consent Order (dDCO) and Explanatory Memorandum (EM) to provide robust justification, including details of agreements with those affected by the changes, or explicit reference to details within the respective Articles of any consent mechanisms, or separate protective provisions for those potentially affected by disapplication or modification.* **ExA Reasoning/Comments:** *Disapplication or modification of protective legislation should be justified and, where possible, mitigated by consultation, consent mechanisms or other provisions within the dDCO. Please see Planning Inspectorate Advice Note Fifteen. Therefore, for provisions that seek to disapply or modify statutory provisions, the EM should explicitly set out mitigation measures (for example, consent processes, cross reference relevant parts of protective provisions) for each relevant Article. Also state, for each relevant Article, where affected bodies have been consulted and agree to the approach proposed.*	Under section 120(5)(a) of the Planning Act 2008 (PA 2008) DCOs may apply, modify or exclude existing statutory provisions. The power to do so should be set out in an article to the DCO and the proposed application, modification or exclusion should be clearly identified. Good practice point 10 in Advice Note 15 (referred to by the ExA) confirms that the applicant's EM should provide a clear justification for the inclusion of such provisions. The Applicant has complied with this advice. Good practice point 10 goes on to state that: "*Where such a modification is novel or unprecedented, particularly where it relates to the proposed modification of public general legislation, applicants should seek the views of any relevant authority or government department which has responsibility for the provisions that would be modified*….". The Applicant would make the point that many of the modifications proposed are not '*novel or unprecedented*'; the EM [**D6.6**] confirms examples where the disapplication / modification sought is precedented in other solar DCOs. The Applicant has consulted relevant stakeholders including the Council, Natural England (NE), Historic England (HE), National Highways (NH), and the Environment Agency (EA) and their respective positions are set out in the various agreed (final) Statements of Common Ground.

		The Applicant has also included in the dDCO protective provisions and agreed with United Utilities a form of protective provisions to reflect concerns it had raised (see the response below with regards to Article 19). Taking each of the articles referenced in turn: **Article 9** (*Disapplication and modification of legislative provisions*) Paragraphs 4.3.14 – 4.3.16 of the EM [**D6.6**] set out justification for the various modification and disapplications of statutory provisions in this article. The Applicant's response to Q11.0.8 [**REP2-010**] set out additional justification for each of the provisions. The Applicant has updated the EM submitted at Deadline 6 to provide that additional justification including in relation to the disapplication of the various local Acts set out in Schedule 3 to the dDCO. None of the above provisions require a consent under section 150 of the Planning 2008 Act and Regulation 5 and Schedule 2 of the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015. The Applicant would also highlight that all the provisions in Article 9 are routinely disapplied by DCOs including the Tillbridge Solar Order 2025 (Tillbridge), The Stonestreet Green Solar Order 2025 (Stonestreet),The East Yorkshire Solar Farm Order 2025 (East Yorkshire), The West Burton Solar Project Order 2025 (West Burton), The Cottam Solar Project Order 2024 (Cottam), The Gate Burton Energy Park Order 2024 (Gate Burton), The Sunnica Energy Farm Order 2024 (Sunnica), The Mallard Pass Solar Farm DCO 2024 (Mallard Pass) and the Longfield Solar Farm Order 2023 (Longfield). **Article 12** (*Application of the 1991 Act*) Justification of the disapplication of certain provisions of the New Roads and Street Works Act 1991 (the 1991 Act) is set out in paragraphs 4.4.7-4.4.8 of the EM. The Applicant has also provided explanation and justification in the following responses

		submitted during the examination Q11.0.10 [**REP2-010**], Agenda Item 1(b) [**REP3-015**], and ISH AP10 [**REP5-013**]. Crucially, the position has been explained and agreed with the Highways Authority which has not objected to the inclusion of these disapplications. **Article 19** (*Discharge of water*) The Applicant does not believe that this article modifies or disapplies legislation. This article establishes statutory authority for the Applicant to make discharges but subject to the Applicant obtaining the consent of the owner of the sewer, watercourse or drain. This is not a novel or unprecedented approach. Nevertheless, the Applicant has agreed protective provisions with United Utilities with have effect in relation to sewers operated by United Utilities. **Article 21** (*Authority to survey and investigate the land*) This article does not modify or disapply any statutory provisions. Sub-paragraph (7) does apply section 13 of the Compulsory Purchase Act 1965, and clarifies that the provisions of the 1965 Act will apply to the refusal by the owner of the land to grant the Applicant access to enter land for the purpose of surveying and investigating it. This is not novel or unprecedented. To be clear, the Applicant must seek the consent of the landowner first and is required to compensate for any loss or damage that maybe caused exercising powers under this article.
Article 12	**Suggested Considerations:** *Matters to be considered: - Whether works should be defined as major highway works only where they materially alter the highway. - Disapplication as proposed does not appear to be focused on the street works set out in*	Article 12 *(Application of 1991 Act)* The Applicant considers that the disapplication of provisions of the 1991 Act contained in Article 12 are justified because the Applicant would be undertaking the

	Schedules 4 – 6. - Notwithstanding the above, whether the Article is proportionate and necessary. **ExA Reasoning/Comments** *The ExA consider that current drafting includes disapplying statutory provisions which may be disproportionate for minor works, potentially failing the test of necessity under the Planning Act 2008. The other precedents cited in previous written submissions made by the applicant do not appear to be comparable in terms of scale and nature. ExA 'matters to be considered' within this table derives from a point of concern regarding proportionality and that the street works required for the proposed development would be relatively minor and not major (see Action point 1(h) – [REP5-010]), whereas the powers sought appear extensive in this context.* *The applicant should review these comments to determine a suitable response, including any revisions they wish to make to the dDCO.*	street works under the specific authority granted by the DCO and subject to the further approvals required under the DCO, rather than the 1991 Act. The Applicant would note that Article 12, and the disapplication provisions contained within it, apply to any works executed under the DCO in relation to a highway. Cumberland Council, as highways authority, have confirmed that the proposed street works have been discussed and agreed in principle with the Applicant. The Applicant's justification of the disapplication of certain provisions of the 1991 Act is set out in paragraphs 4.4.7-4.4.8 of the EM [**D6.6**]. The Applicant has also provided explanation and justification in the following responses submitted during the examination: Q11.0.10 of AREQ1 [**REP2-010**], Agenda Item 1(b) of ARISH [**REP3-015**], and ISH AP10 of ARAAP-ISH[**REP5-013**]. The Applicant has previously acknowledged that other schemes including these provisions may not be directly comparable in terms of type and scale. However, the type of project (e.g. whether it's a highways or energy project) is not considered relevant as different project types can still include works to streets. Notwithstanding this, the Applicant would note there is now made solar DCO precedent for the disapplication of provisions of the 1991 Act in Article 11(4) of The Helios Renewable Energy Project Order 2025 (Helios).
Article 17	**Suggested Considerations** *The ExA notes that no agreement would be needed from any landowner, nor is any notice period included within the dDCO. Whilst compensation provisions are included, this is a more reactive mechanism and the ExA question whether those with an interest/owners of private roads/tracks within the order limits have been made aware of the powers sought under this Article.* **ExA Reasoning/Comments** *The ExA's comments relate to necessity and proportionality. The applicant*	Article 17 (*Use of private roads*) As set out in the Applicant's response to Q11.0.13 [**REP2-010**], by including this article, it provides the Applicant with the opportunity to use private roads within the Order limits without taking temporary possession and therefore not extinguishing or suspending the private rights of the landowner. The article is therefore included to provide the Applicant with the ability to adopt a better solution if appropriate.

	should review the dDCO but should also ensure that the EM clearly justifies the position and explains any mitigation measures/safeguards.	The Applicant's position, therefore, is that this article is both necessary and proportionate. The Applicant would reiterate that the wording of this wording is standard and has been included in many made DCOs including Tillbridge (Article 14), Stonestreet (Article 13), East Yorkshire (Article 12), West Burton (Article 12) and Cottam (Article 12). The Applicant's EM sets out the justification for inclusion of Article 17 at paragraphs 4.4.31-4.4.34 of the EM [**D6.6**]. The Applicant's EM contains no less detail on this provision than any of the other Orders cited above. The Applicant would also note that it has entered into agreements with the main landowners and, in doing so, extensive discussions have taken place between the parties regarding the use of their land. Use of the private roads would likely be dealt with via those agreements, this article provides a fallback the voluntary agreements fail.
Article 19(9)	**Suggested Considerations** *Notwithstanding that the ExA, when making his recommendation, will need to determine whether a deemed consent period would be appropriate as a matter of principle; the 28 days included in the Article appears unreasonable. Suggest extending timeframe to 56 days.* **ExA Reasoning/Comments** *Deemed consent after 28 days may not allow sufficient time for review of environmental impacts. Please review the dDCO.*	**Article 19** (*Discharge of water*) Paragraphs 4.1.2-4.1.4 of the EM [**D6.6**] provide the Applicant's general justification for deemed consent provisions within the dDCO including Article 19(9). The inclusion of deemed consent provisions is not novel and is well precedented in DCOs including solar DCOs. The Applicant considers that the 28-day period is necessary to remove the possibility for delay and provide certainty that the Proposed Development can be delivered by the Applicant in a timely fashion. Justification for the inclusion of Article 19(9), and the 28-day period provided for, is set out in paragraph 4.5.4 of the EM. That paragraph of the EM also cites precedent for the 28-day period in other made solar DCOs, namely The Byers Gill Solar Order 2025 (Byers Gill) (Article 18(10)), The Heckington Fen Solar Park Order 2025 (Heckington Fen) (Article 14(10)) and The Cleve Hill Solar Park Order 2020 (Cleve Hill) (Article 13(9)). Like these projects, the Proposed Development is a nationally significant infrastructure project which has

		been examined and scrutinised by the ExA and other parties during the Examination and which will be considered by the Secretary of State. If the Secretary of State decides to make the DCO, after consideration of the various representations made and considered during the Examination, then the Applicant considers that it would be disproportionate for a nationally significant infrastructure project to be at risk of being held up due to a failure by a secondary consenting authority to respond to an application for consent. The Applicant would note that it has agreed a set of protective provisions with United Utilities and those protective provisions provide for a longer period of 42 days in respect of consents sought in respect of sewers operated by United Utilities (see paragraph 28(4) of Part 4 of Schedule 14 to the dDCO).
Article 21(6)	**Suggested Considerations** *Notwithstanding that the ExA, when making his recommendation, will need to determine whether a deemed consent period would be appropriate as a matter of principle; the 28 days included in the Article appears unreasonable. Suggest extending to a more reasonable timeframe.* **ExA Reasoning/Comments** *Deemed consent after 28 days may not allow sufficient time for review of environmental impacts. Please review the dDCO.*	**Article 21** (*Authority to survey and investigate the land*) Please see the response to the same point raised in relation to Article 19(9) above. The Applicant has updated the EM [**D6.6**] to provide further justification for Article 21(6), and the 28-day period provided for, at paragraphs 4.5.12-13 of the EM. Those paragraphs of the EM also cites precedent for the 28-day period in other made solar DCOs, namely Helios (19(6)), Stonestreet (20(6)), Byers Gill 20(6)), The Oaklands Farm Solar Park Order 2025 (Oaklands) (16(6)), Heckington Fen (16(7). The Applicant notes that no objection to the 28-day period in this article has been raised by the highway authority or street authority.
Articles 33 and Article 34	*Article 33 does not include any 'reasonably necessary' requirement, so potential for prolonged unnecessary possession of land.*	As set out in response to the Applicant's response to ISH Actions Points (AP) (ARAP-ISH) for AP1 in ARAP-ISH Appendix A comparison with the Stonestreet Green Solar Order 2025 [**REP5-013**], the Applicant does not deem it necessary to add the '*reasonably necessary'* wording to Article 33 of the dDCO because the

	No requirement to expedite restoration when land is no longer needed. **ExA Reasoning/Comments** *The ExA recognise the overall requirements to restore land for TP would cease no later than one year following final commissioning. However, in the interests of minimising interference, and having regard to proportionality and necessity, the ExA question whether the dDCO as drafted could lead to prolonged possession, which is not justified, with limited emphasis on expediting restoration once land is not required. Please review the dDCO and EM.*	provisions in sub-paragraphs (a) and (b) of Article 33(4) provide stringent controls on the length of time that the undertaker can remain in temporary possession of land. The timeframes stipulated in sub-paragraphs (a) and (b) of Article 33(4) of the dDCO are not novel and are well precedented in recently made solar DCOs including Article 30(4)(a) and (b) of Tillbridge, Article 30(4)(a) and (b) of Byers Gill and Article 29(4)(a) and (b) of East Yorkshire Solar. It is understood that the ExA is keen to minimise interference of the land. The Applicant's position is that an expedited restoration provision will not result in any shorter a period for possession. The timeframes for returning the land temporarily possessed are set out in the article(s) as is explained above. An expedited restoration provision does not circumvent the timeframes specified in the articles. Sub-paragraph (5) confirms that before giving up possession the Applicant must remove the temporary works and restore the land to reasonable satisfaction of landowner. It is incumbent on the Applicant to keep this timeframe in mind and to allow itself enough time to be able to reinstate and return the land within the specified period. Crucially, the Applicant also must compensate the landowner whilst in temporary possession of the land, so it is in the Applicant's interest to minimise the length of time that it is in possession. It is the inclusion of sub-paragraph (13), which permits occupation of the land to occur more than once, which provides the Applicant with the ability to be able to minimise the length of possession required. Without this provision the Applicant would only be able to take possession once and it is likely that it would retain temporary possession for longer (possibly for the full duration of the year allowed) until the Applicant was completely satisfied that its

		temporary possession of the land was no longer required and that the land could be returned as it was no longer required. Each time the land is occupied temporarily it will have to be reinstated before it is returned. It is this inherent flexibility, to be able to occupy the land more than once, during the 12 month period that helps the Applicant to minimise any interference caused.
Articles 3, 20, 21, 42	**Suggested Considerations:** *Within the dDCO the link between Article 3 and Articles 20, 21, 42 appears ambiguous. It is not clear that the powers sought under Article 3 would include land outside the order limits by virtue of the aforementioned Articles.* **ExA Reasoning/Comments** *The ExA note that the applicant has responded to similar points previously raised by the ExA [REP5-013 – Action point 6]. However, in relation to Articles 20, 21 and 42, the ExA remains concerned that the powers sought, insofar as they relate to potential works outside the order limits, remain ill-defined and geographically vague. Specifically: Article 20 refers to any building or structure '…which may be affected by the authorised development'. The ExA are concerned that this terminology means the powers sought have no clear spatial limit and would create uncertainty regarding the powers' scope. Article 42 refers to 'near' the order limits as opposed to being geographically specific (for example, 'overhanging' or 'immediately adjacent'). Moreover, Article 3 relates to 'development consent granted by the order' and therefore sets out the principal powers conferred by the dDCO. However, it does not clearly set out that powers are sought outside the order limits (by virtue of Articles 20, 21 and 42.*	The Applicant does not agree that the current drafting is ambiguous and maintains its position regarding the exclusion of the words '*within the Order Limits'* from Article 3 as set out in its response to Q11.0.3 in AREQ1 [**REP2-010**]. Explanation and justification for the approach to the drafting of Article 3(1) is set out in paragraphs 4.2.4(a) (in relation to the definition of 'authorised development') and 4.3.1 of the EM [**D6.6**]. Regarding the drafting in Articles 20, 21 and 42, in response to ISH AP6 in ARAP-ISH [**REP5-013**], the Applicant clearly explained why the wording in each article is sufficiently clear and referred to precedent for the wording. In relation to Article 21, the drafting is the same as in the equivalent articles in all the made solar DCOs to date including the most recently made, Helios (see Article 12(1)). This drafting has been accepted by the Secretary of State all solar DCOs to date, the Applicant sees no reason why the position should be any different for the Proposed Development. In relation to Article 20, the Applicant has set out its position in response to ISH AP6 in ARAP-ISH [**REP5-013**]. The wording of this article is included for the benefit of

	The applicant should review the dDCO and EM.	nearby landowners to ensure the Applicant could undertake protective works if necessary. The drafting deliberately does not include a defined spatial limit because to do so would potentially undermine the ability of the Applicant to be able to carry out any protective works to a building where required, for example a property which is located just outside of any defined spatial limit. The drafting permits any required remedial works to be carried out to any property that maybe affected by the development In relation to Article 42 (Felling or lopping of trees and removal of hedgerows), the Applicant set out its position fully in response to ISH AP6 in ARAP-ISH [**REP5-013**] and its position remains the same. This drafting is not novel and is well precedented and has been accepted by the Secretary of State all solar DCOs to date. It is provided to allow the Applicant to be able to construct, operate and maintain the development as well as allowing proactive action to be taken in situations where there is a risk of danger to anyone using the authorised development. As such, the Applicant sees no reason why the position should be any different for the Proposed Development. Additional text has been added to the EM [**D6.6**] in respect of each of these articles to further explain this position.

1.3 Applicant Response to the Schedule of Changes

Table 1.2: Applicant Response to the Schedule of Changes

Article / Schedule	ExA's proposed changes and ExA's reasoning and comments	Applicant Response
Schedule 2 – Article 2 – Part 1 (Requirements)	**Proposed changes:** *Suggested Requirement:* *(1) No part of the authorised development may commence until a biodiversity net gain strategy has been submitted to and approved by the relevant planning authority for that part, in consultation with the relevant statutory nature conservation body.* *(2) The biodiversity net gain strategy must include details of how the strategy will secure a minimum of 60% biodiversity net gain in area-based habitat units, a minimum of 20% biodiversity net gain in hedgerow units, and 5% biodiversity net gain in watercourse units for all of the authorised development during the operation of the authorised development, using the Department of Environment, Food and Rural Affairs' 4.0 metric to calculate those percentages (or such other biodiversity metric approved by the relevant planning authority in consultation with the relevant statutory nature conservation body). (3) The biodiversity net gain strategy must be substantially in accordance with the outline landscape and ecological management plan and must be maintained throughout the operation of the relevant part of the authorised development to which the plan relates.* **Reasoning and Comments:** *The ExA propose that the applicant inserts an additional Requirement relating to Biodiversity Net Gain (BNG). This is precedented in a number of Solar DCO cases including, but not limited to: East Yorkshire, Tillbridge, Oaklands, Stonestreet Green.* *The ExA recognise that the BNG strategy has been refined during the course of the application such that the proposed methodology and*	In response to Q2.1.2 [**REP4-004**], the Applicant explained that the minimum Biodiversity Net Gain (BNG) figures are secured via the OLEMP [**REP5-016**] (see sections 1.2 and 7). Accordingly, the Applicant does not consider it necessary for an additional Requirement relating to BNG to be added to the dDCO. The Applicant would also note there has been no objection from either Natural England or the Council to this approach. The Applicant's position remains that it is not necessary to add to the dDCO a specific requirement referring to BNG. Should the Secretary of State be minded, however, to include either a new requirement relating to BNG or make an amendment to an existing requirement, the Applicant, without prejudice to its position that such a change is not required, considers that it would be more appropriate to make an amendment to the wording of existing Requirement 7 relating to the LEMP, rather than providing an additional requirement relating to BNG. The Applicant considers this to be the more appropriate approach given the OLEMP is the securing mechanism for BNG. Furthermore, this approach would also reduce duplicative work

	minimum commitment figures are contained within section 7 of the outline landscape ecology management plan [REP5-016]. This also includes a commitment to achieve figures beyond the minimum figures. However, the ExA consider that the minimum BNG commitment should be clearly set out and secured as part of separate DCO requirements so as to avoid ambiguity and so that the minimum BNG proposed would be properly secured at the time a decision on the application is made. The ExA suggest the wording as proposed but the applicant may wish to incorporate their own wording should they consider it more robust and precise in the context of this proposal	for the Council in having to discharge an additional Requirement when this can instead be dealt with within the discharge of the LEMP. This approach is precedented in recently made solar DCOs including in Helios, Byers Gill, Oaklands and Heckington Fen. Therefore, should the Secretary of State be minded to include such a reference to BNG then, on a without prejudice basis, the Applicant's preferred drafting is an amendment to Requirement 7(2) as follows: "*and must demonstrate how a minimum biodiversity net gain of 60% for area habitat units, 20% for hedgerow units and 5% for watercourse units, calculated using the Department of Environment, Food and Rural Affairs' Statutory Biodiversity Metric (February 2024), or other biodiversity net gain metric agreed between the undertaker and the local planning authority in consultation with Natural England, would be delivered.*"