

# Statement of Case for Driffield Solar & Storage Limited

## In respect of its objection to the National Grid Electricity Transmission plc (Scotland to England Green Link 2) Compulsory Purchase Order 2023

9<sup>th</sup> February 2024

### 1. INTRODUCTION & BACKGROUND

This is the Statement of Case of Driffield Solar and Storage Limited (“**DSSL**”), the tenant of the land forming the registered titles YEA94574, YEA68076 and HS224148 (‘the Order Land’) which is the land comprising Plots 34/960, 34/965, 34/965c, 34/965d, 34/965f, 34/966, 34/967 and 34/968, of the National Grid Electricity Transmission plc (Scotland to England Green Link 2) Compulsory Purchase Order 2023 (“**the Order**”). The Order has been made by National Grid Electricity Transmission plc (“**the Acquiring Authority**”) to enable the installation of a High Voltage Direct Current Link from Peterhead to Drax (“**the Order Project**”).

DSSL has secured planning permission for the construction and operation of an approximate c.50 megawatt peak (MWp) solar and storage renewable energy project (“**the DSSL Development**”) on land north of Order Land plots 34/960, 34/965, 34/965c, 34/965d, 34/965f, 34/966, 34/967 and 34/968. The land is owned by Carol Dixon and Andrew Dixon (“**the Landlords**”), and DSSL entered into a 40 year lease with the Landlords in 2022. The approved planning permission has been implemented and the DSSL Development is already under construction. Electricity export and operation is anticipated to be achieved in early 2025.

DSSL submitted an objection to the Order in October 2023, including grounds of objection related to the potential negative impacts the Order presents to:

- The sole access to and from the DSSL Development;
- The operation of the DSSL Development as a result of the construction practices permitted by the Order; and
- DSSL’s ability to fulfil its planning obligations (that are required by the planning conditions for the consented DSSL Development);

DSSL objects to the Order, without appropriate and measurable modifications to the Order to minimise the impacts on the DSSL Development.

This Statement of Case provides further information to support the above grounds of objection.

### Site and Land Agreements

The Landlords are registered owners of titles YEA94574, YEA68076 and HS224148. DSSL entered an option agreement to enter into a lease with the Landlords in 2020, and subsequently entered into the lease in November 2022 “**the Lease**”.

The Lease grants DSSL a number of rights, with the permitted use defined as: “*the development, operation and use of solar energy generation facilities with a maximum installed capacity of 50 MWs DC...and its associated apparatus and equipment and the ancillary, storage, export, transmission, supply and sale of electricity (and matters ancillary to those activities including the exercise of access rights and installation of a substation and transformers and Service Media Connection)*”.

The Lease term is 40 years and is due to expire in November 2062.

Importantly, the extent of the area subject to Lease includes all Order Land within Plot 34/968, and the lease affords access rights over all land within Plots 34/960, 34/965, 34/965c, 34/965d, 34/965f, 34/966, 34/967 (which is owned by the Landlords).

#### **DSSL Planning Permission and Planning History**

East Riding of Yorkshire Council granted planning permission for the DSSL Development, in accordance with the Town and Country Planning Act 1990, in October 2020 (Council reference 20/01962/STPLF).

The approved development description in the planning permission is: *Installation and operation of a solar farm with associated infrastructure, including photovoltaic panels, mounting frames, transformers/inverters, substation, access tracks, pole mounted CCTV cameras and fencing.*

The planning permission is a temporary permission for 40 years from the date of first electricity export, and is therefore anticipated to expire in 2064.

Since application 20/01962/STPLF received planning permission, amendments have been submitted to East Riding of Yorkshire Council and subsequently approved.

Each of the relevant planning permissions is summarised in Table 1 below:

<b>Council Reference</b>	<b>Permission Sought</b>	<b>Date of Approval</b>
20/01962/STPLF	Full Planning Permission for Solar Farm & associated infrastructure.	23 <sup>rd</sup> October 2020
21/03189/STVAR	Variation of conditions to incorporate battery infrastructure and minor amendments to the solar farm layout.	14 <sup>th</sup> December 2021

22/40138/NONMAT	Non material amendment to alter equipment specifications and internal track alignment.	16 <sup>th</sup> December 2022
23/40097/NONMAT	Non material amendment to alter equipment specifications, fence line design and internal track alignment,	13 <sup>th</sup> October 2023

### **Interaction between the Order Land and DSSL Land – DSSL Development Access Track**

The Order Land (Plots 34/960, 34/965, 34/965c, 34/965d, 34/965f, 34/966 and 34/967) currently interacts with an existing access track which forms the sole access to the DSSL Development.

There is no alternative access to the DSSL Development.

### **Interaction between the Order Land and DSSL Land – DSSL Planning Boundary**

The Order Land (Plot 34/968) currently interacts within the approved planning permission boundary of the DSSL Development, impinging on an area of the DSSL Development which has received planning permission for implementing landscape enhancement measures; specifically planting species rich grassland in this area in order to satisfy the requirements of the planning permission.

## **2. THE NEED FOR THE DSSL DEVELOPMENT**

The Government, through the Climate Change Act 2008, made the UK the first country in the world to set legally binding carbon budgets, aiming to cut emissions (versus 1990 baselines) by 34% by 2020 and by at least 80% by 2050, before increasing that commitment to 100%, i.e. being zero carbon, by 2050. At the same time, the UK needs to ensure it has a secure, reliable and affordable energy system.

As recognised within the documents submitted in support of its planning application, notably the Planning Statement, dated June 2020 prepared by PWA Planning, the DSSL Development has been designed to ensure there are no unacceptable environmental impacts whilst making meaningful contributions to the Government’s climate change targets. As acknowledged in the Planning Statement, the DSSL Development is capable of providing energy for the equivalent of 8,000 homes. The DSSL Development fully accords with local and national planning policy.

Demonstrated in its grant of planning permission for the DSSL Development, East Riding of Yorkshire Council has accepted the need for the DSSL Development. This is explicitly noted in the Report for the Director of Planning and Economic Generation for application 20/01952/STPLF which states:

Paragraph 7.7: *“The development proposal is for a substantial array of solar panels, which is a form of renewable energy. The applicant states that the resulting development will have an exporting capacity of 30MW. Local planning policy and guidance in the NPPF and its associated PPG are supportive of the development proposal, subject to specific considerations, which are discussed below.”*

Further, at paragraph 8.1: *"In conclusion planning policy supports the principal of the proposed development and there are no design, landscape, visual amenity; agricultural land use; flood risk and drainage; impact on living conditions; impact on heritage assets; nature conservation and ecology; access, parking, highway and railway safety or mineral safeguarding concerns."*

DSSL has now implemented the planning permission and is proceeding through the construction phase of the DSSL Development, with energisation anticipated to be achieved in early 2025.

Given the meaningful contribution that the DSSL Development will make to UK climate targets, that construction has commenced with the DSSL Development well on track to export electricity from early 2025, and that significant investment has been committed to realise the DSSL Development, it is imperative that the construction and operation of the DSSL Development is able to proceed without the unacceptable impacts presented as a result of the Order.

### **3. GROUNDS FOR OBJECTION**

DSSL does not object to the principle or purpose of the Order. However, as currently proposed, the Order has the potential to significantly impact on the construction and/or operation of the DSSL Development. This would compromise the ability of DSSL to operate the DSSL Development commercially, and detrimentally affect the contribution of the DSSL Development to UK climate change targets.

DSSL therefore objects to the Order as proposed by the Acquiring Authority. If the Order is confirmed, modifications should be incorporated to the Order to safeguard the deliverability of the DSSL Development.

The reasons for objection are as follows:

#### **Prevention of Access:**

There is a single point of access to the DSSL Development, with rights currently secured in the Lease.

DSSL requires 24-hour use of this point of access to:

1. **Complete construction of the DSSL Development.** Without maintaining access to the DSSL Land, construction of the DSSL Development would not be able to proceed. If access was limited to less than 24 hours, the completion of construction would be delayed significantly. This would jeopardise the likelihood of the DSSL Development reaching operation and making any contributions to UK Climate Change Targets, as envisioned when granted consent by East Riding of Yorkshire Council.

- 2. Safely and Successfully Operate the DSSL Development.** Whilst the DSSL Development is anticipated to be unmanned during its 40-year operational phase, there will be regular site attendance to conduct routine maintenance of the solar modules and associated infrastructure; respond to any unscheduled repairs and investigate faults; respond to any health and safety issues; and generally maintain site conditions, all in compliance with the requirements of the Lease and the planning permission. Restricting access during the operational period of the DSSL Development and subsequently preventing access to the site to repair operational faults poses a significant risk that the DSSL Development would be unsafe, at risk of long-term damage and ultimately unable to generate at these times. This would compromise the contributions of the DSSL Development to UK Climate Change targets.

Prevention or restriction of access would fundamentally jeopardise the commercial viability of the DSSL Development as there would be no guarantee that the DSSL Development could be adequately serviced and maintained during its 40 year operational period.

DSSL requests that modifications and commitments are secured as part of the Order to ensure that there is uninterrupted, unimpeded, 24-hour access permitted to the DSSL Land for the duration of its construction, operation and decommissioning periods. Specifically, DSSL should be permitted unimpeded access over Plots 34/960, 34/965, 34/965c, 34/965d, 34/965f, 34/966, 34/967 and 34/968 for the duration of the DSSL Development construction, operation and decommissioning phases.

### **Construction Interactions**

Section 16 of the Acquiring Authority's Statement of Case outlines that the commencement of the Order Project is programmed for Q4 2024 and is anticipated to last 5 years. To date, no further detailed programme has been shared with DSSL.

Based on this available information, there is a potential that the construction periods between the DSSL Development and the Order Project works planned to take place at Plots 34/960, 34/965, 34/965c, 34/965d, 34/965f, 34/966, 34/967 and 34/968 will overlap. This could adversely hinder and interfere with the construction of the DSSL Development; resulting in health and safety concerns and a delay to the construction programme; this would likely delay the energisation date. Critically, if the target energisation date of the DSSL Development is missed even by a short period, there is a significant risk of delay by several further months if the Distribution Network Operator is not able to reschedule the energisation immediately.

In a recognised climate emergency, this would cause unnecessary delay to the DSSL Development's ability to generate renewable energy and contribute to UK Climate Change Targets.

DSSL requests that commitments are secured as part of the Order to ensure that, in the event there is an overlap in construction periods between the DSSL Development and the Order Project works at

Plots 34/960, 34/965, 34/965c, 34/965d, 34/965f, 34/966, 34/967 and 34/968, there is formal commitment of the Acquiring Authority to grant appropriate covenants to DSSL and agree suitable interface arrangements with DSSL.

### **Construction Impacts from the Acquiring Authority Works**

When construction of the DSSL Development progresses to a stage where solar panels are installed, which is currently programmed to occur prior to commencement of the Order Project works proposed at Plots 34/960, 34/965, 34/965c, 34/965d, 34/965f, 34/966, 34/967 and 34/968, the Order Project works construction methods pose risks to the operation of the DSSL Development.

Specifically, according to the installation measures proposed by the Acquiring Authority, there is the potential for excess dust and debris to impact the DSSL Development solar modules. This would affect the generation ability of the solar modules (either via collection of dust on the modules affecting their performance, or by causing damage to the modules that may ultimately result in their repair or replacement). This impact would reduce the generation of the DSSL Development.

DSSL requests that modifications and commitments are secured as part of the Order to take appropriate mitigation measures to remove any risk of damage to the DSSL Development during construction of the Order Project. As an example; the Order should ensure a minimum buffer of 200 m between any construction and installation works of the Order Project and any of the approved solar module locations of the DSSL Development.

### **Delivery of Landscape Commitments**

Plot 34/968 of the Order encroaches within the extent of the planning permission boundary of the DSSL Development. The Order appears to consider the DSSL Development design and does not directly impact on electrical infrastructure proposed - the extent of the Order borders the consented fenceline of the DSSL Development. However, whilst there is no impact on electrical infrastructure, there are landscaping measures proposed as part of the DSSL Development within the area shown as Plot 34/968. A commitment to plant species rich grassland in this area has been made within the DSSL Development planning application, and this must be fulfilled to comply with the approved planning permission.

DSSL requests that modifications are secured as part of the Order to ensure that the planning permission requirements of the DSSL Development can be met by DSSL. Specifically, the following is requested:

- The area subject to the Order within Plot 34/968 is removed from the Order; OR
- DSSL is afforded rights to fully implement its approved landscaping measures over the extent of Plot 34/968.

#### **4. NEGOTIATIONS TO DATE**

The Department for Levelling Up, Housing and Communities published guidance, most recently updated on 16 July 2019, titled “Compulsory Purchase Process and the Crichel Down Rules” (“**the CPO Process Guidance**”). Additional guidance was published on 17<sup>th</sup> December 2021, titled “**Compulsory Purchase and Compensation**”, guides 1 to 4 (“**the CPO Compensation Guidance**”).

Section 2 of the CPO Process Guidance states that “*The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement*”.

Section 17 of the CPO Process Guidance states that: “*Acquiring authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted, save for lands where land ownership is unknown or in question*”.

Para 24 of the CPO Compensation Guidance states that “*Compulsory purchase is intended as a last resort and acquiring authorities are expected to try to acquire land by agreement before resorting to compulsory purchase*”.

Due to potential significant and unacceptable impacts on the construction and operation of the DSSL Development, objections to the Order have been lodged separately by both DSSL and the Landlords. Whilst the extant planning permission for the DSSL Development appears to have influenced the design of the Order Project, and preliminary discussions having taken place between the Acquiring Authority and both DSSL and the Landowners, the Acquiring Authority has not yet produced any form of written agreement detailing how the aforementioned impacts to the DSSL Development will be avoided.

Per the CPO Process Guidance and CPO Compensation Guidance, Acquiring Authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted. Whilst a few preliminary discussions have taken place, no formal proposals have been presented which would demonstrate a genuine attempt by the Acquiring Authority to reach agreement with DSSL.

The Acquiring Authority has therefore not met the requirements of the CPO Guidance in respect of meaningful attempts at negotiation.

#### **5. CONCLUSIONS**

Whilst preliminary discussions have taken place between DSSL and the Acquiring Authority, there is no certainty that the Order will safeguard the construction and operation of the DSSL Development a c.50 MWp solar and storage renewable energy development that will make significant contributions to

the UK's binding climate targets. Without modification to the Order, the viability of the DSSL Development will be significantly compromised.

DSSL does not object to the principle of the Order however DSSL objects on the basis that fundamental modifications are required to ensure that both the DSSL Development and the works subject of the Order can coincide and ultimately both be delivered to decarbonise the UK electricity network.

Modifications and required commitments for the Acquiring Authority proposed by DSSL include:

- Modifications and commitments to provide any works associated with the DSSL development 24-hour, unrestricted and unimpeded access over Plots: 34/960, 34/965, 34/965c, 34/965d, 34/965f, 34/966, 34/967 and 34/968;
- In the event there is a likely overlap in the construction of the DSSL Development and works subject to the Order, covenants and suitable interface arrangements are secured between DSSL and the Acquiring Authority, to minimise impacts to the delivery of both schemes;
- Modifications to ensure a minimum of at least 200 metres separation distance is maintained between the construction works subject to the Order and the solar modules associated with the DSSL Development;
- The area within Plot 34/968 is removed from the Order.

Based on engagement to date as of 9<sup>th</sup> February 2024, the Acquiring Authority has not met the requirements of the CPO Process Guidance and CPO Compensation guidance by attempting meaningful attempts at negotiation.

Therefore, in the absence of any agreed position with the Acquiring Authority, DSSL upholds its objection to the Order and anticipates providing evidence at the forthcoming Public Inquiry.