



# **CLEVE HILL SOLAR PARK**

**DCO APPLICATION REFERENCE EN010085**

**STATEMENT OF COMMON GROUND (SOCG)  
RELEVANT REPRESENTATION COMMENTS**

**MAY 2019**

**BETWEEN:**

- 1) CLEVE HILL SOLAR PARK LTD; AND**
- 2) ENVIRONMENT AGENCY (EA)**

## **TABLE OF CONTENTS**

<b>1</b>	<b>INTRODUCTION .....</b>	<b>1</b>
<b>2</b>	<b>AGREEMENT .....</b>	<b>1</b>
<b>3</b>	<b>RELEVANT REPRESENTATION COMMENTS .....</b>	<b>2</b>
	<b>APPENDIX A – LETTER FROM THE EA TO CHSPL, MEDWAY ESTUARY AND SWALE STRATEGY: UPDATE FOLLOWING CONSULTATION .....</b>	<b>8</b>

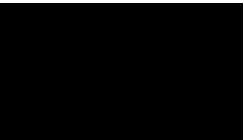
## 1 INTRODUCTION

1. This Statement of Common Ground (SOCG) has been prepared in relation to an application (the Application) made to the Secretary of State (SoS) for the Department for Business, Energy & Industrial Strategy (BEIS), under section 37 of the Planning Act 2008, seeking a Development Consent Order (DCO) for the Cleve Hill Solar Park (hereafter referred to as the Development). The application was accepted on 14<sup>th</sup> December 2018.
2. This SOCG has been prepared as a means of clearly stating any areas of agreement and disagreement between the Applicant and the Environment Agency (EA), which are set out in section 3.
3. The SoCG is supported by an appendix:
  - Appendix A: Letter from EA to CHSPL, Medway Estuary and Swale Strategy: Update Following Consultation.

## 2 AGREEMENT

4. Confirmation that the Table 2 of this SoCG reflect the points of agreement at the date of this agreement, based on the information provided to date, is provided in Table 1.

***Table 1: Confirmation of Agreement***

Date	Signatory	Signature
22 May 2019	Karolina Allu	

### 3 RELEVANT REPRESENTATION COMMENTS

**Table 2: Relevant Representation Comments**

Environment Agency RR Comments	Applicant Comments	Status (EA to complete)
<i>Relevant Representation Comments (RR Reference in bold, <b>EA-X</b>)</i>	<i>Applicant's response</i>	<i>E.g., Agreed / Not Agreed / N/A</i>
<b>EA-3</b> The application does not fully explain the strategic value of the land on which the proposal is made to the Environment Agency. The Medway Estuary and Swale Coastal Flood and Erosion Strategy (MEASS) sets out the Flood and Coastal Erosion Risk Management (FCERM) Strategy for the Tidal Medway Estuary, mainland Swale and the Isle of Sheppey. The aim of the Strategy is to protect people, properties, designated habitats and agricultural land. We have developed the strategy in partnership with Natural England and local authorities and through public consultation. The Strategy has been finalised and will be published shortly. Under European Directive 92/43/EEC on the Conservation of Natural Habitats and Wild Fauna and Flora (also known as the 'Habitats Directive'), and the resulting Conservation of Habitats and Species Regulations 2010 (as amended), a Habitats Regulations Assessment is required where a plan or project may give rise to significant effects on European designated sites, known as Natura 2000 sites. The Habitats Regulations Assessment for the MEASS	<p>The Applicant acknowledges the strategic importance of the Cleve Hill site to the EA.</p> <p>The MEASS is clearly referenced in the Environmental Statement (ES) where appropriate, and where possible prior to the adoption of the MEASS, such as in the explanation of the "Do Nothing" scenario in in section 10.3.16 of Chapter 10 - Hydrology, Hydrogeology, Flood Risk and Ground Conditions of the ES (PINS document reference <a href="#">APP-040</a>).</p> <p>In the event the MEASS becomes adopted policy before determination of the DCO application it should be treated as "a plan" for the purposes of in-combination EIA and HRA. However, that exercise will already have been undertaken by the EA in the RIAA for the MEASS. Therefore the RIAA for the application can be updated to include the findings from the MEASS RIAA, when it has been adopted.</p>	<p>Document 5.2 <i>Report to Inform Appropriate Assessment</i> section 6.2 does not take MEASS into account in the 'in-combination' effects. This should be addressed assessment.</p> <p>The EA agree that following the adoption of MEASS, the RIAA for the Development should be updated to refer to the findings of the HRA undertaken in respect of the MEASS.</p>

Environment Agency RR Comments	Applicant Comments	Status (EA to complete)
<p>concluded that we need to create 535ha of intertidal habitat over the 100-year life of the strategy in order to allow the strategy to go ahead with providing flood protection to some 17,000 homes in the MEASS area. The normal method for creating intertidal habitat is by carrying out managed realignment, which entails building set-back defences inland of their current position, removing sections of the existing coastal defence, and allowing inundation of the site through successive tides. Our analysis of sites through MEASS, as well as predecessor strategies, highlights Cleve Hill as one of the top-ranking sites for managed realignment in the area, expected to yield around 200ha of intertidal habitat towards our requirements. It is one of eight sites which have been considered as suitable for creating intertidal habitat, all of which are needed to meet our 535ha obligation. Through our discussions with the Applicant, we have been assured that the solar park land use will be for a period of 40 years. We have adjusted our proposed delivery programme in MEASS in response. However, there is no reference to a time limit within the application. If the solar park was not being proposed, we would seek to carry out managed realignment at Cleve Hill in the near future (5-10 years hence). Whilst we are able to delay managed realignment to a later stage, as indeed we have done, we are not able to indefinitely as this will prevent us from meeting our obligations under the Habitats Regulations. We therefore request a 40 year time limit is placed on the development in order that the planned managed re-alignment at the site can be taken forward in future years.</p>	<p>A substantial number of RRs received incorrectly state that not undertaking managed realignment (MR) on the Cleve Hill site would have a direct impact on flood risk elsewhere in the MEASS area. The Kent County Council Flood Risk to Communities – Swale document<sup>1</sup> recognises that Faversham Creek is “...<i>prone to tidal flooding during particularly high astronomical tides or storm surges when significant volumes of water propagate up their channels</i>”. Under tidal surge or high astronomical tides the process of fluvial flows within Faversham Creek being restricted from discharging into coastal waters would still occur under a MR scenario.</p> <p>The Applicant is of the view that the EA's reference in the EA RR to “providing flood protection to some 17,000 homes in the MEASS area” is in the context of the MEASS overall addressing the requirements of the Habitats Regulations, and that it is not suggesting that the Development would prevent the EA from providing flood protection to 17,000 homes. As set out in the letter in Appendix A, there are several other factors which affect the ability of the EA to deliver MR in Epoch 1 (2019 to 2039).</p>	<p>The primary aim of managed realignment at Cleve Hill is to create intertidal habitat to compensate for that which is being lost elsewhere in the MEASS area. While it is sometimes the case that managed realignment can also have flood risk benefits (by reducing water levels elsewhere), that is not the driver behind selecting Cleve Hill as a suitable site. At present, we do not have enough evidence to conclude what impact managed realignment at the site would have on Faversham or other locations in the Swale.</p> <p>Regarding the ‘providing flood protection to 17,000 homes’ statement, we agree that it should be taken in the context of the wider Habitats Regulations requirements. However, we do not want to disassociate the two, as managed</p>

<sup>1</sup> Kent County Council (June 2017). Flood Risk to Communities Swale Appendix 5: Faversham: NaFRA mapping. Available at: [https://www.kent.gov.uk/data/assets/pdf\\_file/0010/71668/Flood-risk-to-communities-in-Swale.pdf](https://www.kent.gov.uk/data/assets/pdf_file/0010/71668/Flood-risk-to-communities-in-Swale.pdf) [Accessed 28/03/2019]

Environment Agency RR Comments	Applicant Comments	Status (EA to complete)
		<p>realignment (and the associated habitat creation) is strongly driven by the need to provide flood protection to properties elsewhere in the MEASS area.</p> <p>If the Development is time-limited as proposed in this SoCG, with managed realignment taking place on the site in the long-term, then we do agree the Development will have no impact on our ability to provide flood protection to 17,000 homes in the MEASS area.</p>
	<p>With reference to previous correspondence (Appendix A), the Applicant's understanding of the status of the Cleve Hill MR site, if the Development were not being proposed, is that commencement of MR physical implementation would not occur until at least year 20 (2039). Also, MR may not cover the entire site to avoid conflicts with existing infrastructure such as the pylons and the existing Cleve Hill Substation.</p>	<p>The MEASS policy here is for MR in the second epoch (from 2039), due to constraints onsite (substation, pylons etc.) as well as the development proposal.</p>

Environment Agency RR Comments	Applicant Comments	Status (EA to complete)
	The reference to MR in 5 - 10 years in the EA RR refers to the commencement of discussions, agreements and investigations rather than construction works to implement the MR project.	Agreed – this time period is not of any particular relevance, especially in the context of other timescales outlined (eg. 2039)
	The Applicant expects the Development to operate for a finite period, anticipated to be 40 years. Whilst the Applicant has not drafted the application draft DCO to be time limited, the Applicant would accept a suitably worded DCO requirement which would result in the end of the operational phase of the Development after 40 years of operation subject to the EA (or equivalent body at the time) demonstrating that the MR proposals remain capable of implementation on the Cleve Hill site at that time. The Applicant intends to add drafting to the next iteration of the dDCO.	This is welcomed.
<p><b>EA-8</b></p> <p>5.1 Consultation Report. This document states that we have indicated that managed realignment could take place around 50 to 100 years in the future. This figure is inaccurate. We are currently planning managed realignment for some point between the years 2039 and 2069.</p>	<p>The Consultation Report (PINS document reference <a href="#">APP-022</a>) refers to 50 to 100 years in the future following a letter from the EA dated 18/06/2018 (Appendix A), received in relation to CHSPL's consultation response to the EA on their MEASS consultation. The letter states:</p> <p>""Plan B" will bring forward the compensatory habitat being created at Chetney Marshes, and delay the Managed Realignment site at Cleve Hill between 50 and 100 years."</p> <p>We understand that the MEASS has not yet been published in its final form, and therefore the Applicant seeks agreement for its understanding that the EA's current position is that if the Development is</p>	<p>We referred to a 50 - 100 year timeframe in response to the public consultation feedback received from CHSPL. Since then we have refined and finalised the policy and timings for MR at Cleve Hill and this will be reflected in the final version of the MEASS.</p> <p>The MEASS policy in the with solar park scenario is for managed realignment in epoch 2 (2039 to 2069)</p>

Environment Agency RR Comments	Applicant Comments	Status (EA to complete)
	constructed, MEASS would be proposed in either Epoch 2 (2039 to 2069) following the cessation of commercial operation of the Development or in Epoch 3 (2069 to 2119) following the cessation of commercial operation of the Development.	following the cessation of operation of the development.
<b>EA-9</b> Flood Risk Assessment (appendix 6.4.10.1): We are satisfied with the breach flood modelling undertaken to inform the Flood Risk Assessment and consider the flood mitigation measures included in the design of the site as suitable. The proposed site area is located within Flood Zone 3, and the FRA makes reference to the proposed solar park use as 'Essential Infrastructure' i.e. 'Essential utility infrastructure which has to be located in a flood risk area for operational reasons'. The Secretary of State should be satisfied that there is sufficient justification to locate the development within an area of high flood risk. The submitted FRA and breach flood modelling only account for climate change to 2070, therefore if development is proposed for a longer period, further climate change allowance to 2115 would be required.	The DCO is not time limited however the Development is assessed against an operational lifetime of 40 years, therefore modelling on the basis of climate change sea level rise to 2070 is appropriate.	The EA welcomes the Applicant's proposals to include a requirement in the DCO which would result in the end of the operational phase of the Development after 40 years of operation subject to the EA (or equivalent body at the time) demonstrating that the MR proposals remain capable of implementation on the Cleve Hill site at that time. On that basis the EA is satisfied with the flood modelling in the FRA, i.e. accounting for climate change to 2070.
	Electricity generating power stations and grid and primary substations are identified as being essential utilities infrastructure within the 'Essential Infrastructure'	Development would only be classified as 'Essential Infrastructure' IF it has to be located in a flood risk area for operational reasons. Therefore in determining the DCO it needs to be considered whether the site needs to be located within flood zone 3 for operational reasons.



Environment Agency RR Comments	Applicant Comments	Status (EA to complete)
	<p>category in Table 2: Flood risk vulnerability classification of the Planning Practice Guidance<sup>2</sup>:</p> <p><i>"Essential utility infrastructure which has to be located in a flood risk area for operational reasons, including <b>electricity generating power stations and grid</b> and primary substations; and water treatment works that need to remain operational in times of flood."</i></p> <p>The Flood Risk Assessment (FRA) submitted with the Application (<a href="#">APP-227</a>) addresses the sequential test requirement in Section 8. At paragraph 153, the FRA cross-references Chapter 4: Site Selection, Development Design and Consideration of Alternatives (<a href="#">APP-034</a>) and Technical Appendix A4.1: Sequential Test Analysis (<a href="#">APP-201</a>) of the submitted ES.</p> <p>The Applicant seeks agreement from the EA that the submitted information adequately demonstrates the requirement to locate the development in Flood Zone 3 for operational reasons, and therefore the Development is classed as Essential Infrastructure.</p>	<p>This is effectively the sequential test, as set out in the NPPF.</p> <p>The EA acknowledges that there are wider considerations leading to the selection of the Cleve Hill development site. We are satisfied with the submitted FRA and proposed design mitigation measures, however the classification of the site use as Essential Infrastructure (as described in the Planning Practice Guidance) is a wider planning issue, taking into account issues other than flood risk alone. Therefore the classification of the site as Essential Infrastructure should be considered by the Secretary of State in determining the DCO, taking account of the application as a whole.</p>

<sup>2</sup> Ministry of Housing, Communities and Local Government (March 2014). Guidance: Flood Risk and Coastal Change. Available at: <https://www.gov.uk/guidance/flood-risk-and-coastal-change#Table-2-Flood-Risk-Vulnerability-Classification> [Accessed 28/03/2019]

**APPENDIX A – LETTER FROM THE EA TO CHSPL, MEDWAY ESTUARY AND  
SWALE STRATEGY: UPDATE FOLLOWING CONSULTATION**

Cleve Hill Solar Park Ltd  
Woodington House  
East Wellow  
Hants  
SO51 6DQ

RECEIVED

21 JUN 2018

18/06/2018

Dear Hugh Brennan

## Medway Estuary and Swale Strategy: Update following consultation

Thank you for your comments on the draft Medway Estuary and Swale Strategy (MEASS). Consultation on the Strategy is now complete. Please find our response to the concerns you raised about specific Benefit Areas (BA) below.

Currently within the Strategy, a Managed Realignment site is proposed at Cleve Hill (Benefit Area 6.2) from year 20 (2039). This is our preferred option at this location because:

- hard defences along the coast, that provide protection to a number of towns and villages within the strategy, prevent the movement of coastal habitats landwards as sea levels rise. This is known as coastal squeeze. The Strategy must provide compensatory habitat to meet the requirements of the Habitats Directives Regulations due to the number of international designations within the estuaries. Cleve Hill is a large area which could be used as intertidal habitat to offset habitat lost by coastal squeeze,
- the alternative management option for the site if MR is not taken forward is for Government funding of the flood defences to be withdrawn. In the absence of private funding, this would lead to deterioration of the flood defences over time. This is due to the limited funding available from central government for this area as a result of the limited benefits. A Managed Realignment option enables the transition to intertidal areas in a more controlled manner, with set back embankments to protect infrastructure and properties,
- the existing topography means that Cleve Hill would provide a good distribution and variety of habitat environments.

However, as we developed the Strategy, we identified that there are a number of critical infrastructure assets within the site which could increase the costs associated with works and complicate the Managed Realignment option. We considered different alternatives and potential ways to adapt the site alongside the infrastructure. We used information obtained from previous studies and comments from key stakeholders to assess the risks associated with undertaking a MR site at Cleve Hill. It was agreed that despite the complexities, the alternative areas in the Medway and Swale Estuaries that are available to provide the required compensation were much more costly and had wider adverse impacts. Risk mitigation related to the interactions with the infrastructure and the MR site design include:

- delay the managed realignment site construction until year 20 (originally it was proposed much earlier) to allow the required discussions, agreements, and investigations to be carried out by the Environment Agency,
- assume that the final managed realignment layout may not cover the entire site – for example a different plan may include only realigning up to the existing pylons for part of the site,
- ensure setback embankments are situated to protect any houses and infrastructure, such as the substation, to the required standard of protection,

customer service line  
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incident hotline  
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floodline  
03459 88 11 88



- increase project costs for the scheme to allow for additional works required to potentially raise/relocate/provide access to infrastructure.

The Strategy is a high level document that aims to identify the policies along the coastline. It is only the first stage of planning and taking forward policies for coastal management. Therefore the details around the final mitigation measures have not yet been fully developed, but will form an important part of the implementation plan for the Strategy moving forwards.

Since summer 2017, whilst we were consulting on the Strategy, the plans for the potential solar park at Cleve Hill have been developed. These plans and the Strategy option are in conflict.

Mott MacDonald, the Environment Agency and Natural England have discussed these issues. Unfortunately, the timings of finalising and getting the Strategy approved, and the ongoing work by Cleve Hill Solar Park Ltd are not completely aligned, and there is a push to get the Strategy finalised so some of the critical areas around the coastline that need works in the short term can be progressed. Due to uncertainties around the timings and nature of the solar park, it is proposed that the Strategy continues to recommend Managed Realignment from year 20, however highlights that there are potential plans which could change this. As soon as plans for the solar park are more definite, the "plan B" for the site will be included within the Strategy and the Implementation Plan for the Strategy updated.

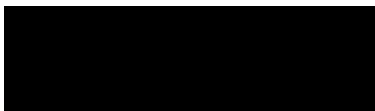
"Plan B" will bring forward the compensatory habitat being created at Chetney Marshes, and delay the Managed Realignment site at Cleve Hill between 50 and 100 years. Under this option, it must be highlighted that the Cleve Hill area would become a "No Active Intervention" policy which means that we would stop maintaining and repairing the defences. Under the No Active Intervention policy the Strategy does not recommend the full removal of any of the defences. However, the defences will be left to degrade over time. The consequences of leaving some defences to degrade or breaching defences will vary depending on the specific location along the section and the health and safety implications of this. We will carry out further assessment of these impacts over the coming years as MEASS continues to progress.

Although there is no government funding for defences in these areas of No Active Intervention, landowners may be able to maintain or construct new defences to protect their property. This will be subject to achieving the relevant permits and licences including Planning Permission and a Flood Risk Activity Permit from ourselves.

It should be noted that this Strategy document set outs the preferred options to manage the coastline, however, there are residual risks which will be assessed through the implementation, discussed with key stakeholders, and the Strategy will be updated where necessary. The complications around the Cleve Hill site is an example of one of these areas and we will work closely and collaboratively with yourselves as well as other key stakeholders in the area.

If you have further comments and questions please do not hesitate to contact using the details below. We will keep you updated on progress with MEASS as we work towards sign off and approval of the Strategy. We are also keen to continue to keep up to date with progress on the solar park development to ensure that, where possible, the latest plans are accounted for within MEASS.

Yours sincerely,



Jon Byne

Partnership and Strategic Overview Team - West Kent

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