



CLEVE HILL SOLAR PARK

OTHER DEADLINE 2 SUBMISSIONS SCHEDULE OF CHANGES TO THE DDCO AT DEADLINE 2

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Revision A

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DEADLINE 2 CHANGES

Article / Schedule (Application Version)	Stakeholder concerned	Comments from stakeholder / explanation (where necessary)	Amendment
PART 1 Preliminary			
Article 2 – Interpretation “Commence”	Applicant/MMO	MMO not comfortable that the extension of the exemption afforded to the Environment Agency should be granted to a private company which does not have the same statutory obligations as the Environment Agency.	“commence”, means, (a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licence, save for pre-construction monitoring surveys approved under the deemed marine licence, OR activities that are covered by the exemption in article 29 and
Article 2 – Interpretation “Commence”	Examining Authority	<p>First Written Question 1.4.1:</p> <p><i>Could the Applicant explain how exclusions from the statutory definition of commencement in draft Article 2 can be justified? How could the Examining Authority and Secretary of State be certain that early works such as site clearance and laying of services do not damage unknown archaeology or nature conservation interests and render draft Requirements 7, 9 and 13 ineffective?</i></p> <p>Amended to provide a definition of pre-commencement works for ease of reference when carving requirements 7, 9 and 13 of these provisions.</p>	<p>....(b) in respect of any other works comprised in the authorised project, the first carrying out of any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project save for site preparation works operations consisting of pre-construction surveys and/or monitoring, site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and the words “commencement” and “commenced” must be construed accordingly;...</p>

Article 2 – Interpretation “Maintain”	Examining Authority	First Written Question 1.4.2: <i>The definition of ‘maintain’ in draft Article 2 is unclear. It currently implies that some activities (‘inspect, upkeep, repair, adjust and alter’) could be carried out beyond the extent assessed in the Environmental Statement. Could the Applicant explain what is intended and provide clarification?</i>	“maintain” includes inspect, upkeep, repair, adjust, and alter, and further includes remove, reconstruct and replace to the extent assessed in the environmental statement; and “maintenance” must be construed accordingly;
Article 2 – Interpretation “Requirements”	Examining Authority	First Written Question 1.4.3: <i>Could the Applicant check if the definition of ‘Requirements’ in draft Article 2 should refer to Part 2 of Schedule 1 rather than Part 3?</i>	“requirements” means those matters set out in Part 3 2 of Schedule 1 (requirements) to this Order;
Article 2 – Interpretation “Site Preparation Works”	Examining Authority	First Written Question 1.4.1: <i>Could the Applicant explain how exclusions from the statutory definition of commencement in draft Article 2 can be justified? How could the Examining Authority and Secretary of State be certain that early works such as site clearance and laying of services do not damage unknown archaeology or nature conservation interests and render draft Requirements 7, 9 and 13 ineffective?</i> Amended to provide a definition of pre-commencement works for ease of reference when carving requirements 7, 9 and 13 of these provisions.	<i>“site preparation works” means operations consisting of pre-construction surveys and/or monitoring, site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements;</i>
PART 2 Principal Powers			
Article 4 – Power to maintain authorised project	Applicant/MMO	See comments against Article 2 above (first line).	(2) The power to maintain conferred under paragraph (1) does not relieve the undertaker of any requirement to obtain any further licence under Part 4 of the 2009 Act (marine licensing) for offshore works not covered by the the deemed

			marine licence} [the exemption provided by article 29] .
Article 5 - Benefit of the Order	Applicant/MMO	See comments against Article 2 above.	<p>(a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order { (including the deemed marine licence, in whole or in part)} and such related statutory rights as may be agreed between the undertaker and the transferee; and</p> <p>(b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of the Order { (including the deemed marine licences, in whole or in part)} and such related statutory rights as may be so agreed;</p> <p>...</p> <p>(4) {The Secretary of State shall consult the MMO before giving consent to the transfer or grant to another person of the whole or part of the benefit of the provisions of the deemed marine licence.}</p> <p>...</p> <p>(9) Prior to any transfer or grant under this article taking effect the undertaker must give notice in writing to the Secretary of State{, and if such transfer or grant relates to the exercise of powers in their area, to the MMO} and the relevant planning authority.</p> <p>...</p> <p>(13) {Sections 72(7) and (8) of the 2009 Act do not apply to a transfer or grant of the whole or part of the benefit of the provisions of the deemed marine licences to another person by the undertaker pursuant to an agreement under paragraph (1).}</p>
Article 10 – Temporary stopping up of streets	Examining Authority	First Written Question 1.4.9: <i>In relation to compensation for the suspension of public rights of way, could the Applicant explain the absence of equivalent provisions under draft Article 11 as those</i>	<p>(6) Any person who suffers loss by the suspension of any private public right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.</p>

		<i>included for draft Article 10?</i> This is a drafting error – corrected.	
PART 6 Operations			
Article 29 – Marine licence exemption	Applicant/MMO	See comments against Article 4 above.	[Marine licence exemption 29.—(1) Subject to paragraph (2), article 19 (Maintenance of coast protection, drainage and flood defence works) of the Marine Licensing (Exempted Activities) Order 2011() applies to any activity carried on by the undertaker as part of, for the purposes of or in connection to Work No 9 of Schedule 1 to this Order as it would as at the date of this Order have applied to any such activity if it had been carried out by the Environment Agency. (2) In its application to such activities, paragraph (2) is substituted by— “Paragraph (1) is subject to the condition that the activity is carried on within the [limits of deviation for Work No 9] / [Order limits].”]
PART 7 Miscellaneous and General			
Article 33 - Trees subject to tree preservation orders	Applicant	Correct drafting error.	..and after [insert date of application] 16 November 2018 or cut back its roots...
SCHEDULE 1 — Authorised Project			
PART 2 — Requirements			

Requirement 7 - Fencing and other means of enclosure	Examining Authority	See comments against Article 2 “Commence” above.	<p>7.—(1) ...</p> <p><i>(2) The term commence as used in requirement 7(1) shall include any site preparation works.</i></p> <p>(2) (3) ..</p>
Requirement 8 – Surface and foul water drainage	Environment Agency	<p>Written Representation dated 25 June 2019:</p> <p>We suggest Kent County Council, as the Lead Local Flood Authority and the Lower Medway Internal Drainage Board (IDB) are consulted on this requirement rather than us as we no longer lead on surface water and have no drainage interests in this area.</p>	<p>8.—(1) No phase of the authorised development may commence until details of the surface and (if any) foul water drainage system (including means of pollution control) for that phase have, after consultation with <i>Kent County Council as lead local flood authority and the Lower Medway Internal Drainage Board</i> the relevant sewerage and drainage authorities and the Environment Agency the Environment Agency, been submitted to and approved by the relevant planning authority.</p>
Requirement 9 - Archaeology	Examining Authority	See comments against Article 2 “Commence” above.	<p>9. —(1) ...</p> <p><i>(2) The term commence as used in requirement 9(1) shall include any site preparation works.</i></p> <p>(2) (3) ...</p>
Requirement 10 – Construction environmental management plan	Examining Authority	<p>First Written Question 1.4.5:</p> <p><i>Does the Applicant believe that, for clarity, draft Requirement 10 of the dDCO should explicitly specify the plans that sit within the CEMP?</i></p>	<p><i>(2) The construction environmental management plan must include the following documents relevant to the phase of the authorised development in respect of which it is submitted—</i></p> <ul style="list-style-type: none"> <i>(a) site waste management plan;</i> <i>(b) breeding bird protection plan;</i> <i>(c) new watercourse crossing inventory; and</i> <i>(d) upgraded watercourse crossing inventory.</i>

Requirement 13 – European protected species	Examining Authority	See comments against Article 2 “Commence” above.	<p>13. —(1) ...</p> <p><i>(2) The term commence as used in requirement 13(1) shall include any site preparation works.</i></p> <p>(2) (3) ...</p>
Requirement 13 – European protected species	Examining Authority	<p>First Written Question 1.4.6:</p> <p><i>Could the Applicant update draft Requirement 13 of the dDCO (European Protected Species) to reflect the Conservation of Habitats and Species Regulations 2017 (which consolidate the 2010 Regulations)?</i></p>	<p>(5) In this Requirement, “European Protected Species” has the same meaning as in regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2017 70.</p>
Requirement 15 – Local skills, supply chain and employment	Applicant	Noted as a mitigation measure in Paragraph 236 of Chapter 13 of the Environmental Statement [APP-043].	<p><i>Local skills, supply chain and employment</i></p> <p><i>15—(1) No phase of the authorised development may commence until for that phase a skills, supply chain and employment plan in relation to the authorised development has been submitted to and approved by the relevant local planning authority.</i></p> <p><i>(2) The skills, supply chain and employment plan shall identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with the construction, operation and maintenance of the authorised development, and means for the publicising such opportunities.</i></p> <p><i>(3) The skills and employment plans shall be implemented as approved.</i></p>

Requirement 16 – Decommissioning	Environment Agency	<p>Following discussions between the EA and the Applicant regarding adding a limitation on the lifespan of the development of 40 years. The principle and conditionality of this is agreed, but negotiations continue in terms of the timescales referred to.</p>	<p><i>16.—(1) Within 14 days of the date of final commissioning the undertaker must serve written notice on the relevant planning authority and the Environment Agency of the date of final commissioning.</i></p> <p><i>(2) Subject to sub-paragraphs (3) and (4), the authorised development must cease generating power on a commercial basis on the 40th anniversary of the date of final commissioning.</i></p> <p><i>(3) Sub-paragraph (2) applies if the relevant planning authority has served the decommissioning notice on the undertaker within 39 years of the date of final commissioning provided that:</i></p> <p><i>(a) prior to serving the decommissioning notice pursuant to sub-paragraph (3), the relevant planning authority must be satisfied on the evidence before it that all of the following have been unconditionally secured by the Environment Agency to construct and maintain the managed realignment of the flood defence—</i></p> <p><i>(i) all necessary consents and approvals;</i></p> <p><i>(ii) all the land and/or rights over land;</i></p> <p><i>(iii) funding; and</i></p> <p><i>(iv) any additional evidence required by the relevant planning authority.</i></p> <p><i>(b) the relevant planning authority shall consult with the undertaker and have regard to any submissions made by the undertaker prior to serving the decommissioning notice; and</i></p> <p><i>(c) the decommissioning notice must:</i></p> <p><i>(i) give reasons for the relevant planning</i></p>
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			<p><i>authority determining that the Environment Agency's proposals for implementing managed realignment of the flood defence are viable; and</i></p> <p><i>(ii) include a plan detailing the extent of land within the Order limits required for managed realignment of the flood defence.</i></p> <p><i>(4) The authorised development may continue to generate and store power on a commercial basis—</i></p> <p><i>(a) until such time as any appeal, arbitration or judicial review of any decommissioning notice served by the relevant planning authority on the undertaker in accordance with sub-paragraph (3) has been determined; and</i></p> <p><i>(b) on any land within the Order limits that is not required for managed realignment of the flood defence as shown on the plan included in the decommissioning notice pursuant to sub-paragraph (3)(c)(ii).</i></p> <p><i>(5) Within 3 months of all or part of the Order land ceasing to be used for the purposes of electricity generation or energy storage (either actively generating electricity or being available to generate electricity on a standby basis) the decommissioning and restoration plan relating to such parts of the Order land must be submitted to and approved by the relevant planning authority.</i></p> <p><i>(6) The decommissioning and restoration plan required by subparagraph (5) must:</i></p> <p><i>(a) accord with the outline decommissioning and restoration plan (to the extent relevant); and</i></p> <p><i>(b) not require the undertaker to decommission the flood defence located within the Order limits.</i></p>
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			<p><i>(7) The decommissioning and restoration plan must be implemented as approved.</i></p> <p><i>(8) In this requirement the following definitions have effect—</i></p> <p><i>"date of final commissioning" means the date on which the authorised development commences operation by generating power on a commercial basis but excluding the generation of power during commissioning and testing;</i></p> <p><i>"decommissioning notice" means written notice confirming the relevant planning authority's opinion that the Environment Agency's proposals for implementing the managed realignment of the flood defence are viable; and</i></p> <p><i>"managed realignment of the flood defence" means the physical realignment of the flood defence located within the Order limits (that would require the removal of all or any part of Work No. 1, 2 and 3) as it exists at the date of this Order and as described in the Medway Estuary and Swale Strategy published on [insert date] or as otherwise agreed between the undertaker and the Environment Agency, or determined by Article 35 (Arbitration)</i></p> <p>(1) Within three months of the cessation of commercial operation of the authorised development a decommissioning and restoration plan (which must accord with the outline decommissioning and restoration plan) must be submitted to and approved by the relevant planning authority.</p> <p>(2) The decommissioning plan must be implemented as</p>
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			approved.
SCHEDULE 4 — Public rights of way to be temporarily stopped up			
	Applicant	Due to changes in underlying plans.	<i>Between the points marked A as shown on figures 2 and 3 of the rights of way plan</i>
	Applicant	Due to changes in underlying plans.	<i>Between the points marked B A as shown on figure 2 of the rights of way plan</i>
	Applicant	Due to changes in underlying plans.	<i>Between the points marked C A as shown on figure 3 of the rights of way plan</i>
	Applicant	Due to changes in underlying plans.	<i>Between the points marked D A as shown on figure 3 of the rights of way plan</i>
	Applicant	Due to changes in underlying plans.	<i>Between the points marked E A as shown on figure 3 of the rights of way plan</i>
	Applicant	Due to changes in underlying plans.	<i>Between the points marked F A as shown on figure 3 of the rights of way plan</i>
SCHEDULE 7 — Protective provisions			
Part 1 - Protection for electricity,	Applicant	Confirmation added that this Part does not apply to National Grid	For the protection of the affected undertakers referred to in this part of this Schedule (<i>save for National Grid which is protected by Part 2 of this Schedule</i>) the following provisions must, unless otherwise agreed in writing

gas, water and sewerage undertakers			between the undertaker and the affected undertaking concerned, have effect
Part 1 - Protection for electricity, gas, water and sewerage undertakers	Applicant	Confirmation added that this Part does not apply to National Grid	...for the area of the authorised development but, for the avoidance of doubt, does not include the undertakers specified [in Part [] 2 Part [] Part [], Part []] of this Schedule (National Grid), and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained;
Part 1 - Protection for electricity, gas, water and sewerage undertakers	Applicant	Correction of drafting error.	Retained apparatus 7.—(1) Not less than 28 days before ...
SCHEDULE 8 — Deemed Marine Licence under the 2009 Act			
Condition 7 – Maintenance	MMO	Requested detail on control of flood defence maintenance activities.	Maintenance 7.— (1) Unless otherwise agreed by the MMO, the licenced activities may not commence until a maintenance plan has approved by the MMO,. (2) The maintenance plan must be submitted at least 6 weeks prior to the commencement of any maintenance activity, and shall include details of the maintenance

			<p>activities required including location, duration, timings, methodology and materials to be used.</p> <p>(3) Maintenance activities must be undertaken in accordance with the agreed plan.</p>
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