

From: Mike Bird [REDACTED] >

Sent: 11 July 2019 17:33

To: Jones, Hefin <HEFIN.JONES@planninginspectorate.gov.uk>; Cleve Hill Solar Park <CleveHillSolarPark@planninginspectorate.gov.uk>

Cc: PHILLIPS Gareth <G[REDACTED]>; COLE Peter <[REDACTED]>; [REDACTED]; Simon McCarthy <[REDACTED]>; Emily Marshall <[REDACTED]>; James Senior <[REDACTED]>; Clare Walters <[REDACTED]>; Paul Phillips <[REDACTED]>

Subject: EN010085 - Cleve Hill Solar Park - Additional Submission by the Applicant

Hefin,

EN010085 - Cleve Hill Solar Park - Additional Submission by the Applicant

As discussed earlier in the week, the Applicant wishes to submit the following documents (6 no.) in advance of the commencement of the examination hearings next week:

- The Applicant's Comments on Responses to ExQ1
- Accompanied Site Inspection Maps
- Equality Impact Assessment
- Updated ES Figure 5.3(a)
- Written Representation by the Applicant on Heritage Policy
- Progressed Statement of Common Ground between the Applicant and the Marine Management Organisation (July 2019)

I would be grateful if you could confirm receipt.

Kind regards,

Mike

Michael Bird

Tel: 01904 715470

Mob: [REDACTED]

Email: [REDACTED]

Arcus

1C Swinegate Court East
3 Swinegate
York
YO1 8AJ

www.arcusconsulting.co.uk





CLEVE HILL SOLAR PARK

PROGRESSED STATEMENT OF COMMON GROUND BETWEEN CLEVE HILL SOLAR PARK LTD AND THE MARINE MANAGEMENT ORGANISATION

July 2019
Revision A

Submitted: Additional Submission

www.clevehillsolar.com



CLEVE HILL
SOLAR PARK



CLEVE HILL SOLAR PARK

DCO APPLICATION REFERENCE EN010085

STATEMENT OF COMMON GROUND (SOCG)

JULY 2019

BETWEEN:

- 1) CLEVE HILL SOLAR PARK LTD; AND**
 - 2) THE MARINE MANAGEMENT ORGANISATION (MMO)**
-

TABLE OF CONTENTS

1	INTRODUCTION	1
2	AGREEMENT	1
3	RELEVANT REPRESENTATION COMMENTS	2
	APPENDIX A – POSITION PAPER - FLOOD DEFENCE WORKS & CONSENTS.....	8
	APPENDIX B – THE MMO'S LETTER DATED 26 SEPTEMBER 2018.....	9
	APPENDIX C – THE MMO'S LETTER DATED 23 OCTOBER 2018.....	10
	APPENDIX D – THE MMO'S EMAIL DATED 1 NOVEMBER 2018	11
	APPENDIX E - DEVELOPMENT DESCRIPTION CLARIFICATION NOTE	12

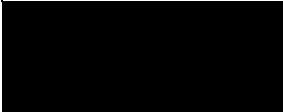
1 INTRODUCTION

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 by PINS on 14th December 2018.
2. The Development includes works located below mean high water springs, and therefore within the remit of the Marine Management Organisation (MMO). A deemed marine licence has been included within the Application, for which the MMO is the delivery body responsible. The MMO's responsibilities include post consent monitoring, variation, enforcement and revocation of provisions relating to the marine environment.
3. This SoCG is being prepared as a means of clearly stating any areas of agreement and disagreement between the Applicant and the MMO which are set out in section 2.
4. The SoCG is supported by the following appendices:
 - Appendix A: Position Paper – Flood Defence Works & Consents;
 - Appendix B: the MMO's email and letter dated 26 September 2018;
 - Appendix C: the MMO's email and letter dated 23 October 2018;
 - Appendix D: the MMO's email dated 1 November 2018; and
 - Appendix E: Development Description Clarification Note.

2 AGREEMENT

5. Confirmation that Table 2 of this SoCG reflect the points of agreement at the stated date is provided in Table 1.

Table 1: Confirmation of Agreement

Date	Signatory	Signature
11 July 2019	Laura Calvert	

3 RELEVANT REPRESENTATION COMMENTS

Table 2: Relevant Representation Comments

MMO Comments	Applicant Comments	Status (MMO to complete)
<p><i>Relevant Representation Comments</i> <i>(RR reference in bold, MMO-X)</i></p>	<p><i>Applicant's response</i></p>	<p><i>E.g., Agreed / Not Agreed / N/A</i></p>
<p>MMO-6 Part 6, s29 of the draft DCO includes provisions for the Applicant to apply the above marine licence exemption to any maintenance works undertaken in relation to the Project by the Applicant, as if it had been carried out by the Environment Agency.</p> <p>The MMO has significant concerns around a proposal which purports to extend the exemptions intended to cover activities carried out by statutory authorities for statutory purposes to private companies. As such, the MMO is unable to support the inclusion of the above provision.</p> <p>The Applicant is aware of the MMO's concerns regarding Part 6 s29 of the draft DCO, and that it is our preference to include a DML to permit ongoing maintenance activities. To support this, the Applicant has also included a draft DML within their application.</p> <p>Further work is required on this document to ensure that it is fit for purpose to enable the MMO to carry out its obligations relating to</p>	<p>The MMO confirmed in a letter dated 26 September 2018 that the works proposed to the flood defence would fall within articles 19 and 20 of the Marine Licensing (Exempted Activities) Order 2011, i.e. exempt maintenance works if undertaken on behalf of the EA.</p> <p>The MMO confirmed in a letter dated 23 October 2018 that:</p> <ul style="list-style-type: none"> • the MMO did not formally object to including drafting in the DCO to modify the Order such that the marine licence exemptions available to the EA, may apply to CHSPL; • agreed that section 120(5) of the Planning Act 2008 does allow a DCO to apply, modify, or exclude a statutory provision; • recommended that as an alternative to the above, the DCO could include a DML; and • requirements for maintenance of an existing flood defence are very minimal and as such any draft DML would not be overly complex or burdensome and would provide [the Applicant] with certainty both through the DCO process and into operation should consent be granted. <p>The Applicant has agreed to solely pursue the inclusion of a DML and has updated the dDCO [REP2-003] to reflect this position.</p>	<p>The MMO does, support at Part 6, 29 of the dDCO the inclusion of a deemed marine licence under the 2009 Act.</p>

MMO Comments	Applicant Comments	Status (MMO to complete)
<p>post consent monitoring, variation, enforcement and revocation of provisions relating to the marine environment.</p>	<p>The MMO's letter dated 23 October 2018 enclosed an example of a marine licence granted for flood defence works.</p> <p>The applicant drafted a DML based on the example marine licence provided by the MMO and sent this to the MMO for review.</p> <p>The MMO confirmed in an email dated 1 November 2018 that it had "reviewed the attached DML which appears to capture requirements that MMO would likely request. There is nothing in there currently we would wish to dispute, nor do I have any additions at this time".</p> <p>The dDML included in the dDCO submitted with the Application was that approved by the MMO on 1 November 2018.</p> <p>The Applicant will continue to work with the MMO to ensure the dDML is fit for purpose.</p>	
	<p>Part 2, Conditions, of the Deemed Marine Licence (DML) included in the draft DCO (PINS document reference APP-016) contains appropriate conditions to control flood defence maintenance activities.</p>	<p>Agreed (subject to the updates set out below in the next iteration of the dDCO to be submitted at Deadline 3).</p> <p>The MMO agrees with the content of the draft DML conditions. The MMO notes the inclusion of a maintenance condition (condition 7) in the dDCO submitted at Deadline 2 [REP2-003].</p> <p>Amendments to the dDCO are required to enable the MMO to fulfil its obligations post consent; for example, the inclusion of contact details for the</p>

MMO Comments	Applicant Comments	Status (MMO to complete)
		<p>Marine Pollution Response Team at Part 2, 5(1)(c). The MMO has provided wording for the necessary amendments to the Applicant and understands that the next iteration of the dDCO will include these amendments.</p> <p>It should also be noted that further consideration may be required regarding licence conditions should things be raised by other parties during the examination stage, which would be best captured as mitigation measures held within the DML.</p> <p>As previously noted, the MMO will continue to work with the Applicant to ensure the conditions meet the requirements.</p>
<p>MMO-7</p> <p>The MMO will continue to engage with the Applicant regarding the drafting of the DML and the development of Statements of Common Ground (SoCG) but would like to highlight the following issues in the first instance;</p> <p>Any activities permitted under a DML must be detailed within the DCO and supporting information. This includes methodologies on how these activities are likely to be undertaken. Whilst we accept that finite details of works may only be confirmed in the future (i.e. via a post-consent licence condition),</p>	<p>The information contained with the ES, as supplemented by the Clarification Note in Appendix E to this SoCG and the addition of Condition 7, Maintenance to the dDCO [REP2-003] is adequate.</p>	<p>Agreed</p> <p>The MMO welcomes the inclusion of a maintenance condition (condition 7) within the DML in the dDCO submitted at Deadline 2 [REP2-003].</p>

MMO Comments	Applicant Comments	Status (MMO to complete)
<p>there is very little to no coverage of works in the current DCO and supporting Environmental Statement ("ES").</p>		
<p>MMO-8 Additionally, in order to ensure that the impacts of activities authorised within the DML have been mitigated via the inclusion of relevant and specific conditions within the DML, a robust assessment of impacts must be undertaken within the ES. The MMO is unable to find any assessment of the impacts of the flood defence maintenance activities within the submitted ES. It may be considered that the environmental impacts are 'minimal' as the proposed works are only 'maintenance' of existing flood defence already undertaken by the Environment Agency, but the ES should be updated to ensure that this has been considered. This is line with the high-level principles of EIA and the Rochdale Envelope where the worst-case 'project as a whole' is considered.</p>	<p>No specific flood defence works over and above those likely to, or able to be undertaken on an ongoing basis by the EA to maintain the current standard of protection are included in the Development Description within the ES or Schedule 1 of the dDCO.</p> <p>Therefore, for the purposes of EIA, there is no change predicted to the future baseline as a result of the Development, and therefore no likely significant effects as a result of the Development in respect of flood defence maintenance.</p> <p>This is set out in paragraph 131 of Chapter 5 - Development Description of the ES (PINS document reference APP-035).</p> <p>As requested by the MMO, a clarification note in respect of the Development Description Chapter of the ES has been produced and is provided as Appendix E. This includes all of the maintenance activities proposed and the legislation that is engaged in undertaking each activity.</p> <p>The information contained with the ES, as supplemented by the Clarification Note in Appendix E to this SoCG and the addition of Condition 7, Maintenance to the dDCO [REP2-003] is adequate.</p>	<p>Agreed</p> <p>The MMO welcomes the inclusion of a maintenance condition (condition 7) within the DML in the dDCO submitted at Deadline 2 [REP2-003].</p>
	<p>Any maintenance activities carried out following the DML route would be controlled by the conditions of the DML which would be additional to the existing requirement for the EA (currently controlled through the EAs statutory provisions), and the EA's Environmental Permit Regulations and associated conditions (as is required by the EA in the baseline scenario).</p>	<p>Agreed</p>

MMO Comments	Applicant Comments	Status (MMO to complete)
<p>MMO-9 The MMO will engage with the Environment Agency (and any other relevant parties we may deem necessary) to ensure that the activities proposed are sufficient to manage the existing flood defence and that provisions within the DML are sufficient.</p>	<p>The Applicant has already engaged with the EA on this point, and the activities proposed in Section 3 of the position statement included as Appendix A to this SoCG (which have been translated into the dDCO [REP2-003] and the ES Development Description chapter (PINS document reference APP-035) serve as an appropriate definition of flood defence maintenance activities.</p> <p>This has been supplemented by the Clarification Note in Appendix E to this SoCG which the EA has reviewed and is confirmed they were happy with by email on 6 June 2019.</p>	<p>Where necessary, the MMO will continue to engage with the Environment Agency (and any other relevant parties we may deem necessary) during the examination process to ensure that the details of the flood defence maintenance activities are sufficient and that provisions within the DML are sufficient.</p>
<p>MMO-10 The MMO object to the inclusion of Part 6, s29 of the draft DCO, but do support the alternative proposal inclusion of a DML. While some work is required to ensure that it is fit for purpose, we do not consider that this will be burdensome for the Applicant. We strongly recommend that the Applicant engage with the MMO throughout the process in order to ensure the assessment is as smooth as possible and agreements can be reached through a SoCG.</p>	<p>The Applicant has agreed to solely pursue the inclusion of a DML and has updated the dDCO [REP2-003] to reflect this position.</p>	<p>Agreed (subject to the updates set out below being included in the next iteration of the dDCO to be submitted at Deadline 3).</p> <p>The MMO supports the proposal at Part 6, 29 of inclusion of a deemed marine licence under the 2009 Act.</p> <p>Amendments to the dDCO are required to enable the MMO to fulfil its obligations post consent; for example, the inclusion of contact details for the Marine Pollution Response Team at Part 2, 5(1)(c). The MMO has provided wording for the necessary amendments</p>

MMO Comments	Applicant Comments	Status (MMO to complete)
		to the Applicant and understands that the next iteration of the dDCO will include these amendments.

APPENDIX A – POSITION PAPER - FLOOD DEFENCE WORKS & CONSENTS

1. INTRODUCTION

- 1.1 The Cleve Hill Solar Park (the "project") proposals comprise a solar generation station and energy storage facility. The project is proposed to be located on the north Kent coast near Faversham and adjacent to an existing flood defence beneath the Saxon Shore Way public footpath.
- 1.2 The project constitutes a Nationally Significant Infrastructure Project ("NSIP") under the Planning Act 2008 (the "2008 Act"). An application for a development consent order ("DCO") in respect of the project is expected to be submitted by Cleve Hill Solar Park Ltd ("CHSPL") to the Planning Inspectorate by 31 October 2018 for determination by the Secretary of State.
- 1.3 This note sets out the position agreed between CHSPL and the Environment Agency (the "EA") in relation to the inclusion of the existing flood defence within the project's Order limits (i.e. redline boundary), and the powers and rights needed to maintain it, in the DCO application. This note explains:
- 1.3.1 the pre-application consultation undertaken between CHSPL and the EA;
 - 1.3.2 the works that CHSPL seeks the powers and rights to undertake to the existing flood defence that would constitute "maintenance" and/or "emergency" works;
 - 1.3.3 the EA's powers to undertake works to the flood defence;
 - 1.3.4 the marine licencing exemptions available to the EA in respect of maintenance and emergency works; and
 - 1.3.5 the exemptions sought by CHSPL in the draft DCO.

2. PRE-APPLICATION CONSULTATION

- 2.1 CHSPL has engaged in pre-application consultation with the EA and the EA's proposals for management of the existing flood defence, set out in the draft Medway Estuary and Swale Strategy ("MEASS"). In summary, the EA has confirmed that in the event the project is built it would not maintain that flood defence. The maintenance of the flood defence is necessary to protect the project during its operational phase. Therefore, CHSPL proposes to include the flood defence in the project's Order limits in the DCO application, along with the powers and rights necessary to maintain it. This would enable CHSPL to effectively "step in to the shoes" of the EA in terms of maintaining the flood defence.
- 2.2 The EA confirmed in a letter to CHSPL dated 8 May 2018 that:

"The proposed policy set out within MEASS will become adopted once the strategy is officially signed off. We would therefore respond to any formal Development Consent Order application stating, as outlined within MEASS, that publicly funded maintenance of the defences is not economically viable without the associated justification of managed realignment in the future. We would expect major infrastructure owners such as CHSPL, National Grid and BTLAL [Blue Transmission London Array Limited] to undertake maintenance of the defences whilst occupying the site. In the case of CHSP, we would expect this to come into effect once construction / use of the site commences."

"We discussed your proposal to extend the [project's] red line boundary to include the flood defences protecting the site, and the inclusion of powers and rights in your DCO to enable CHSPL to undertake maintenance works to the defences. We would not have any concerns or objections with this approach in order to give CHSPL the ability to maintain the defences in the future. The defences beyond the [project's] site boundary would be maintained by the Environment Agency within MEASS Benefit Area 7.2b (subject to partnership funding being available)."

- 2.3 Therefore, since May 2018, CHSPL and the EA have engaged further to help CHSPL better understand the flood defence maintenance regime undertaken to date by the EA and identify a scope of maintenance works that should be included in the DCO application and accompanying environmental statement ("ES") as part of the baseline assessments.
- 2.4 On 23 July 2018 representatives of CHSPL met with those of the EA and were able to agree a scope of maintenance and emergency works, which is set out in section 3 of this note. Subsequent to that further dialogue took place between the legal representatives of CHSPL and the EA respectively, and the EA confirmed its agreement with the content of this note.

3. MAINTENANCE & EMERGENCY WORKS TO THE FLOOD DEFENCE

- 3.1 CHSPL's marine engineering consultants, JBA, have suggested four parameters and a scope for day to day maintenance works to the flood defence, which has been agreed with the EA as follows.
- 3.2 The four parameters are:
- 3.2.1 use the same materials as those present to date;
 - 3.2.2 not alter the plan form or cross section of the original defences;
 - 3.2.3 not provide an overall increase/reduction in flood level; and
 - 3.2.4 not require excavations of beach material deeper than 1.5m.
- 3.3 The scope of day to day maintenance works comprises the following non-exhaustive list of the type of works/activities undertaken:

(i)	Inspection
(ii)	Investigation (above MHWS, inclusive of trial pitting)
(iii)	Replacement of expansion joint material
(iv)	Concrete repair (to BS EN 1504)
(v)	Replacement of concrete toe beam
(vi)	Vegetation management (grass cutting, removal of larger vegetation)
(vii)	Replacement of loose and missing block work
(viii)	Repair of voids

(ix)	Fencing repair / replacement
(x)	Servicing outfalls
(xi)	Cleaning outfall ancillary structures
(xii)	Topping up of embankment crest levels at localised low spots
(xiii)	Vermin control
(xiv)	Repairs of rutting in crest
(xv)	Repointing of jointed structures
(xvi)	Replacing modular blocks
(xvii)	Replacement of toe armour as required
(xviii)	Reinstatement of timber toe piles (on river frontage)
(xix)	Timber groyne plank replacement
(xx)	Replacement of bolts on groyne
(xxi)	Placement of timber rubbing boards on groyne
(xxii)	Localised movements of beach material
(xxiii)	Cleaning/dredging of drainage ditch channels
(xxiv)	Replacement of pitching where present
(xxv)	Replacement of access structures
(xxvi)	Painting
(xxvii)	Any other activities required to be undertaken within the four parameters set out in 3.1.1 to 3.1.4.

3.4 The EA has also confirmed that works required in an emergency would be defined as activities carried out in response to any flood, or in response to the imminent risk to property (including the project's infrastructure) from flooding.

3.5 Therefore, CHSPL intends to include in the DCO the powers and rights necessary to undertake maintenance and emergency works of the nature described above.

4. THE EA'S POWERS

4.1 The EA has powers to undertake flood and coastal risk management works relating to main rivers and the sea under section 165 of the Water Resources Act 1991 ("WRA").

4.2 In summary, section 165 of the WRA provides the EA with the power to undertake flood risk management works and those may include:

Cleve Hill Solar Park
Application for a DCO under the Planning Act 2008
Position Paper – Flood Defence Works & Consents
August 2018



- (a) to maintain existing works (including buildings or structures) including cleansing, repairing or otherwise maintaining the efficiency of an existing watercourse or drainage work;
 - (b) to operate existing works (such as sluice gates or pumps);
 - (c) to improve existing works (including buildings or structures) including anything done to deepen, widen, straighten or otherwise improve an existing watercourse, to remove or alter mill dams, weirs or other obstructions to watercourses, or to raise, widen or otherwise improve a drainage work;
 - (d) to construct or repair new works (including buildings, structures, watercourses, drainage works and machinery);
 - (e) for the purpose of maintaining or restoring natural processes;
 - (f) to monitor, investigate or survey a location or a natural process;
 - (g) to reduce or increase the level of water in a place; and
 - (h) to alter or remove works.
- 4.3 In order to undertake (a) to (f), the conditions are: (i) that the EA must consider the work desirable having regard to any national flood and coastal erosion risk management strategy; and (ii) that the purpose of the work is to manage a flood risk from the sea or a main river. The works in (g) and (h) require only that condition (i) be satisfied.
- 4.4 In addition to section 165, under section 38 of the Flood and Water Management Act 2010 ("FWMA") the EA has a power to carry out the kinds of works "*in the course of flood or coastal erosion risk management*" (e.g. erecting or maintaining structures) that will or may cause flooding or coastal erosion where certain conditions have been satisfied. These include if it is in the interest of nature conservation and the benefits outweigh the harmful consequences.
- 4.5 The national flood and coastal erosion risk management strategy was published in 2011¹, and provides a framework for managing flood and coastal erosion. That strategy contains broad principles such as to implement risk management measures to reduce risk of flooding from rivers and the sea, and to maintain flood risk management systems to reduce likelihood of harm to people and damage to the economy, environment and society. Therefore, principle of maintaining the flood defence in question accords with the strategy.
- 4.6 Section 165 of the WRA states that it only authorises entry onto land of any person for maintenance of existing works. Whilst it does not mention emergency works, it does not either specify any conditions which would prevent works being undertaken in an emergency. There is no clarification of the term "land" beyond this, nor any terms or conditions set for it. The EA has confirmed that in practice it agrees entry onto third party land, for maintenance purposes, via correspondence.
- 4.7 Neither section 165 of the WRA or section 38 of the FWMA provide development consent for the works it sets out, but the EA has the benefit of such consent in other legislation, e.g. permitted development rights and exemptions (see below).

¹ "*Understanding the risks, empowering communities, building resilience*" DEFRA/Environment Agency 2011 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228898/9780108510366.pdf

- 4.8 Section 165 of the WRA contains the ability for the EA's powers under this section to be delegated to a local authority. However, there is no provision for this to effectively be delegated to a third party. Section 38 of the FWMA does not provide for delegation.
- 4.9 The EA also has wide powers under section 37(1) of the Environment Act 1995 to do anything "*which, in its opinion, is calculated to facilitate, or is conducive or incidental to, the carrying out of its functions*" which may permit a third party, such as CHSPL, to benefit from the power.

5. THE EA'S MARINE LICENCE EXEMPTION

- 5.1 Section 65 of the Marine and Coastal Access Act 2009 ("MCAA") provides that defined licensable activities require a marine licence. Such activities largely relate to the deposit of materials seaward of mean high water springs, or undertaking works in that area. The works described in section 3 above constitute licensable activities, such that normally a marine licence would be required by a party carrying out those works.
- 5.2 Section 74 of the MCAA permits exemptions to the requirement for a marine licence. These are contained in the Marine Licensing (Exempted Activities) Order 2011 (the "Order"). Of relevance here are Articles 19 and 20, which provide an exemption to marine licencing for:

Article 19: "an activity carried on by or on behalf of the Environment Agency for the purpose of maintaining any—

(i) coast protection works;

(ii) drainage works; or

(iii) flood defence works,"

Article 20: "an activity carried on by or on behalf of the Environment Agency for the purpose of executing emergency works in response to any flood or the imminent risk of any flood".

- 5.3 Guidance we have seen from the MMO², which it also made as part of a representation in the Galloper Offshore Wind Farm Order examination³ defines maintenance as "*upkeep, repair or reasonable improvement of works*". This would cover the type of maintenance works set out in section 3 of this note.
- 5.4 The only qualifications in respect of the scope of works that may be covered by the exemption in Article 19 are that the works must be undertaken within the "*existing boundaries*" of the works being maintained and cannot include beach replenishment. Article 20 does not define emergency works. However, the MMO provides guidance on its website⁴ which says that "*“emergency” has been defined by the MMO as imminent risk to human health, property or the environment*".
- 5.5 The works defined within section 3 above would fall within the marine licence exemptions available to the EA, such that it would not be required to apply for a marine licence in respect of day to day maintenance or emergency works.

² MMO: *Marine Licensing of Emergency Activities*, <http://www.se-coastalgroup.org.uk/wp-content/uploads/2014/08/Marine-Licensing-of-emergency-activities.pdf>

³ [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010003/EN010003-001672-121129%20EN010003%20MMO%20response%20to%20Rule%2017%20request%20\(2\).](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010003/EN010003-001672-121129%20EN010003%20MMO%20response%20to%20Rule%2017%20request%20(2).)

⁴ <https://www.gov.uk/government/publications/marine-licensing-exempted-activities/marine-licensing-exempted-activities>

6. DCO PROVISIONS – EXEMPTIONS FOR CHSPL

6.1 CHSPL proposes to include the flood defence in the Order limits for the project's DCO application, along with the powers and rights necessary to maintain it. This would enable CHSPL to effectively "*step in to the shoes*" of the EA in terms of maintaining the flood defence. Without the benefit of the exemption held by the EA, CHSPL would need the benefit of a deemed marine licence under the 2008 Act or a marine licence under the MCAA.

6.2 Given that CHSPL only proposes to do those works that would be carried out by the EA on a day to day basis, it makes sense for CHSPL to benefit from the same marine licence exemption as the EA in relation to those works. Otherwise it would need to apply for a marine licence in relation to works for which the EA would not need to apply for such consent. That would be an undesirable and unnecessary administrative burden for all concerned.

6.3 A DCO may include provisions to apply, modify or exclude existing legislation. Section 120(5) of the Planning Act 2008 provides that a DCO may:

"(a) apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order;"

6.4 Therefore, CHSPL proposes to include drafting in the DCO to modify the Order such that the marine licence exemptions available to the EA, may apply to CHSPL.

6.5 Similar drafting is used regularly within DCOs to apply, or disapply, statutory provisions that would otherwise apply to an undertaker or activity. The amendments are known as "non-textual" as they amend the legislation in relation to another legislative instrument only, in this case, the DCO for CHSP.

6.6 The draft DCO extends the exemption to CHSP as follows:

(1) Subject to paragraph (2), article 19 (Maintenance of coast protection, drainage and flood defence works) and article 20 (Emergency works in response to flood or flood risk) 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 8 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) of article 19 and paragraph (2) of article 20 are substituted by—

"Paragraph (1) is subject to the condition that the activity is carried on within the Order limits."

6.7 Work No. 8 of the draft Order only comprises the flood defence and land on the foreshore required for access to the flood defence and the description of the development in that Work would include the scope of works referred to in section 3 above.

7. Entry onto third party land

7.1 CHSPL would undertake maintenance and emergency works to the existing flood defence under the powers and rights contained in the DCO and not pursuant to the EA's powers under section 165 of the WRA, or other legislation.

**Cleve Hill Solar Park
Application for a DCO under the Planning Act 2008
Position Paper – Flood Defence Works & Consents
August 2018**



7.2 CHSPL would obtain entry onto third party land in order to undertake works authorised by the DCO either: (a) by private agreement, e.g. a deed of licence or easement; or (b) compulsorily via compulsory acquisition or temporary use powers in the DCO. CHSPL would not be reliant on the EA's powers of entry onto land. CHSPL has commenced negotiations with relevant interested parties with the objective of having agreements in place before construction starts.

7.3 In view of the above, in practice third party landowner consent would either have been obtained by CHSPL, or would not be required, by the time maintenance or emergency works are required to be undertaken. CHSPL does not intend to rely on the EA's powers generally, or specifically in relation to powers of entry onto or possession of land.

8. Conclusion

8.1 This note sets out the joint position of CHSPL and the EA. It explains why CHSPL requires the powers and rights to carry out works to the existing flood defence in order to protect the project during its operational phase. It also explains the exemption to marine licencing of benefit to the EA and why CHSPL requires the same so that it may, in effect, carry out the same works to the existing flood defence as may be undertaken by the EA, without having to apply for a deemed marine licence under the 2008 Act or a marine licence under the MCAA.

Pinsent Masons LLP (for Cleve Hill Solar Park Limited)

Environment Agency

APPENDIX B – THE MMO'S LETTER DATED 26 SEPTEMBER 2018

Mike Bird

From: Champney, Tracey (MMO) <[REDACTED]>
Sent: 26 September 2018 10:54
To: Mike Bird; Paul Phillips
Cc: Short, Jamie (MMO)
Subject: MMO response to Cleve Hill Solar Park
Attachments: CHSP_MMOResponse.pdf

Dear Mike / Paul

Please see attached letter confirming MMO position on Cleve Hill Solar Park following the agreement with EA re maintenance of the existing flood defence.

For reasons set out in the attached letter, providing the works are undertaken in accordance with the agreement and satisfy the requirements of the exemption, then no deemed marine licence is required and we have no remit within the forthcoming DCO.

This may address any questions you may have, and if so you may wish to cancel tomorrows call (and associated costs). However, if you have any further questions, or points of which you require clarification, I am of course happy to discuss tomorrow.

Kind Regards

Tracey

Tracey Champney | Marine Licensing Case Manager | Her Majesty's Government - Marine Management Organisation.
Direct Line: 0208 225 6664 | [REDACTED] | Lancaster House, Newcastle Business
Park, Newcastle upon Tyne, NE4 7YH

[Website](#) | [Twitter](#) | [Facebook](#) | [Linkedin](#) | [Blog](#) | [Instagram](#) | [Flickr](#) | [YouTube](#) | [Google+](#) | [Pinterest](#)

Your message is ready to be sent with the following file or link attachments:

CHSP_MMOResponse

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

The Marine Management Organisation (MMO) The information contained in this communication is intended for the named recipient(s) only. If you have received this message in error, you are hereby notified that any disclosure, copying, distribution or taking action in reliance of the content is strictly prohibited and may be unlawful. Whilst this email and associated attachments will have been checked for known viruses whilst within MMO systems, we can accept no responsibility once it has left our systems. Communications on the MMO's computer systems may be monitored and/or recorded to secure the effective operation of the system and for other lawful purposes.



Marine
Management
Organisation

Marine Licensing
Lancaster House
Hampshire Court
Newcastle upon Tyne
NE4 7YH

T +44 (0)300 123 1032
F +44 (0)191 376 2681
www.gov.uk/mmo

Our reference: DCO/2018/00013

Mr Michael Bird
Arcus Consulting

By email only

26 September 2018

Dear Mr Bird,

RE: Cleve Hill Solar Park

Thank you for your email dated 30/08/2018, confirming the joint position being undertaken between CHSPL and the Environment Agency with regard to Cleve Hill Solar Park.

As confirmed in the Position Paper, the Marine Licensing (Exempted Activities) Order 2011 states that the following activities are exempt from requiring a marine licence:

- *"an activity carried on by or on behalf of the Environment Agency for the purpose of maintaining any—
(i) coast protection works;
(ii) drainage works; or
(iii) flood defence works;"*
- *"an activity carried on by or on behalf of the Environment Agency for the purpose of executing emergency works in response to any flood or the imminent risk of any flood".*

It is up to you as the applicant to determine whether or not works meet the exemption criteria and notify MMO accordingly. However, in this instance the information you have provided appears to confirm that the works required below Mean High Water Springs falls in to articles 19 and 20 of the Marine Licensing (Exempted Activities) Order 2011. If you feel this is the case, the MMO would not require any further input into the DCO process, unless the details of the proposed projects were to change.

The MMO do not require notification of works undertaken under this exemption. Further information can be found on our webpage using the following link;



<https://www.gov.uk/government/publications/marine-licensing-exempted-activities/marine-licensing-exempted-activities>

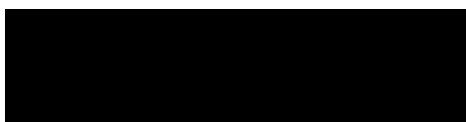
Please note that should future works require an activity which extend beyond the current boundary of the existing flood defence, then that may be subject to an application for a new marine licence.

Your feedback

We are committed to providing excellent customer service and continually improving our standards and we would be delighted to know what you thought of the service you have received from us. Please help us by taking a few minutes to complete the following short survey (<https://www.surveymonkey.com/r/MMOMLcustomer>).

If you require any further information please do not hesitate to contact me using the details provided below.

Yours Sincerely,



Jamie Short
Marine Licensing Case Officer

D 0208 225 6469

E 

APPENDIX C – THE MMO'S LETTER DATED 23 OCTOBER 2018

Mike Bird

From: Champney, Tracey (MMO) <[REDACTED]>
Sent: 23 October 2018 15:18
To: Mike Bird
Cc: PHILLIPS Gareth; Stephenson, Paul (MMO)
Subject: MMO response to advice requested re CHSPL
Attachments: Maintenance licence conditions.pdf; CHSP_MMOResponse (002) (002).pdf

Hi Mike

I have attached our response, along with a copy of a recent marine licence issued in respect of maintenance activity so you can see the type of conditions we may request should you decide to proceed with a DML rather than exemption.

Once you review please let me know if you wish to discuss.

Kind Regards

Tracey

Tracey Champney | Marine Licensing Case Manager | Her Majesty's Government – Marine Management Organisation.
Direct Line: 0208 225 6664 | [REDACTED] | Lancaster House, Newcastle Business Park, Newcastle upon Tyne, NE4 7YH

[Website](#) | [Twitter](#) | [Facebook](#) | [Linkedin](#) | [Blog](#) | [Instagram](#) | [Flickr](#) | [YouTube](#) | [Google+](#) | [Pinterest](#)

The Marine Management Organisation (MMO) The information contained in this communication is intended for the named recipient(s) only. If you have received this message in error, you are hereby notified that any disclosure, copying, distribution or taking action in reliance of the content is strictly prohibited and may be unlawful. Whilst this email and associated attachments will have been checked for known viruses whilst within MMO systems, we can accept no responsibility once it has left our systems. Communications on the MMO's computer systems may be monitored and/or recorded to secure the effective operation of the system and for other lawful purposes.



Marine
Management
Organisation

Marine Licensing
Lancaster House
Hampshire Court
Newcastle upon Tyne
NE4 7YH

T +44 (0)300 123 1032
F +44 (0)191 376 2681
www.gov.uk/mmo

Our reference: DCO/2018/00013

Mr Michael Bird
Arcus Consulting

By email only

23 October 2018

Dear Mr Bird,

RE: Cleve Hill Solar Park

We previously wrote to you on 24 September 2018 to provide advice on the Marine Licensing (Exempted Activities) Order 2011 and how it may be applied in regards to the maintenance of existing flood defence at the proposed Cleve Hill Solar Park in Kent. Since then we have had further discussion with yourself and representatives from Pincent Mason and established that your actual proposal was more complex than originally considered.

Proposal from Cleve Hill Solar Park Limited

You have proposed that in order to avoid a Deemed Marine Licence (DML) within the Development Consent Order (DCO), you wish to make use of the exemption that benefits the Environment Agency (EA), because Cleve Hill Solar Park Limited (CHSPL) will acting in the role of the Environment Agency for the purposes of articles 19 and 20 of the Marine Licensing (Exempted Activities) Order. However, you have confirmed that you will not be undertaking the works *on behalf* of the EA which is the current requirement of article 19 and 20 set out as follows:

- "an activity carried on by or on behalf of the Environment Agency for the purpose of maintaining any—
(i) coast protection works;
(ii) drainage works; or
(iii) flood defence works;"
- "an activity carried on by or on behalf of the Environment Agency for the purpose of executing emergency works in response to any flood or the imminent risk of any flood".



You have highlighted that a DCO may include provisions to apply, modify or exclude existing legislation. Section 120(5) of the Planning Act 2008 provides that a DCO may:

“(a) apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order;”

You therefore propose to include drafting in the DCO to modify the Order such that the marine licence exemptions available to the EA, may apply to CHSPL.

MMO response

MMO do not formally object to your proposal, but at this early stage we are not yet in a position to agree. We have some clear concerns around a proposal which purports to extend the exemptions intended to cover activities carried out by statutory authorities for statutory purposes to private companies. We have taken on board your opinions, including additional information provided by email on 8 October 2018 from Gareth Phillips, but still feel that without sight of the draft DCO we are unable to confirm our position.

We agree that section 120(5) of the Planning Act 2008 does allow a DCO to apply, modify, or exclude a statutory provision but it is not a general power to do so which can be applied to any statutory provision, the statutory provision to be applied, amended, modified or excluded **must** relate to any matter for which provision may be made in the order.

Section 120 of the Planning Act sets out what can be included in the order (i.e. the matters for which provision may be made in the order) and that is

- requirements corresponding to conditions which could have been imposed on the grant of any permission, consent or authorisation, or the giving of any notice, which would have been required for the development if the development was to be granted outside of the DCO process;
- requirements to obtain the approval of the Secretary of State or any other person, so far as not caught by the bullet point above;
- provision relating to, or to matters ancillary to, the development for which consent is granted, and
- provisions for or relating to of the matters listed in Part 1 of Schedule 5.

Without sight of the draft DCO we are unable to provide a view on whether we agree. We are open to you providing more information during the application process on this issue in order to alleviate our concerns that what is proposed is both in accordance with the Planning Act 2018 and is appropriate in the circumstances of this particular application.

MMO recommendation

It is up to CHSPL to determine if you wish to proceed down this route within the DCO. It does however appear to be a more complex approach to attempt to have this agreed during the process rather than drafting a DML for the DCO when we are unable to give you certainty at this time if further information would mean we could reach an agreement.

The requirements for maintenance of an existing flood defence are very minimal and as such any draft DML would not be overly complex or burdensome and would provide you with certainty both through the DCO process and into operation should consent be granted. I have attached a copy of a licence recently issued for maintenance works to this email. While the project itself is not the same as what you propose, the conditions in Section 5 outline the type of requirements that we would consider in a DML. We would of course adapt this to be specific to your project once we view the draft DCO. The DML also provides opportunity for any requirements below MHWS that may be requested from other stakeholders (for instance Natural England) to be captured and enforced.

Conclusion

I am sorry we are unable to give you assurance at this time whether we object to your proposal, but further information would be required, including sight of the draft DCO before we are able to commit. It is still our strong preference that you apply a DML within the DCO which would not be overly burdensome yet could be agreed early on in the process and remove any uncertainty for both CHSPL and MMO. It is up to CHSPL on how you wish to proceed but we request that you keep us updated on the DCO application process. We are of course more than willing to engage and work to a solution which satisfies both of our requirements

Your feedback

We are committed to providing excellent customer service and continually improving our standards and we would be delighted to know what you thought of the service you have received from us. Please help us by taking a few minutes to complete the following short survey (<https://www.surveymonkey.com/r/MMOMLcustomer>).

If you require any further information please do not hesitate to contact me using the details provided below.

Yours Sincerely,

Tracey Champney
Marine Licensing Case Manager

D 0208 225 6664

E [REDACTED]



Marine Management Organisation Marine Licence

1 Introduction

This is a licence granted by the MMO on behalf of the Secretary of State to authorise the licence holder to carry out activities for which a licence is required under Part 4 of the Marine and Coastal Access Act 2009.

The licence does not absolve the licence holder from seeking any other consents or approvals which may be required before you commence with the activities to which it refers.

1.1 Licence number

The licence number for this licence is L/2018/00381/1

1.2 Licence holder

The licence holder is the person or organisation set out below:

Name / company name	THOMAS ARMSTRONG (CONSTRUCTION) LIMITED
Company registration number (if applicable)	00818913
Address	Workington Road Flimby Maryport Cumbria CA15 8RY
Contact within company	
Position within company (if applicable). State if company officer or director	Civil Engineering Director

1.3 Licence date

Version	1
Licence start date	21 September 2018
Licence end date	20 September 2019
Date of original issue	21 September 2018

1.4 Licence validity

This licence is valid from the licence start date to the licence end date.

2 General

2.1 Interpretation

In this licence, terms are as defined below:

- "licensed activity" means any activity set out in section 4 of this licence.
- "licence holder" means the person(s) or organisation(s) named in section 1 above to whom this licence is granted.
- "MMO" means the Marine Management Organisation.
- "mean high water springs" means the average of high water heights occurring at the time of spring tides.
- "sea bed" or "seabed" means the ground under the sea.
- "the 2009 Act" means the Marine and Coastal Access Act 2009.
- All times shall be taken to be the time on any given day.
- All geographical co-ordinates contained within this licence are in WGS84 format (latitude and longitude degrees and minutes to three decimal places) unless stated otherwise.

2.2 Contacts

Except where otherwise indicated, the main point of contact with the MMO and the address for email and postal returns and correspondence shall be:

Marine Management Organisation

Lancaster House

Hampshire Court

Newcastle upon Tyne

NE4 7YH

Tel:0300 123 1032

Fax:0191 376 2681

Email:marine.consents@marinemanagement.org.uk

Any references to any local MMO officer shall be the relevant officer in the area(s) located at:

Marine Management Organisation

Neville House

Central Riverside

Bell Street

North Shields

NE30 1LJ

Tel: 0191 257 4520

Fax: 0191 257 1595
Email: northshields@marinemanagement.org.uk

3 Project overview

3.1 Project title

Construction, alteration or improvement of any works: Maintenance of existing structures or assets

3.2 Project description

Minor maintenance

Minor maintenance comprising the upkeep or small scale repair of an existing structure or asset within its existing 3 dimensional boundaries described in the associated application, subject to the criteria and conditions contained in the licence document. Minor maintenance includes the replacement or reasonable improvement of removable items or ancillary equipment which form part of the structure/asset.

4 Licensed activities

This section sets out the licensed activities. The licensed activities are authorised to be carried on only in accordance with the activity details below and with the licence conditions as set out in section 5 of this licence.

Please note that where licensed quantities are displayed with reference to their constituent materials, the relative quantities given for the constituent materials are indicative only.

Site 1 - Maryport Seawall Groyne Repairs	
Activity 1.1 - Construction	
Activity type	Maintenance of existing structures or assets
Description	<p>Minor maintenance</p> <p>Minor maintenance comprising the upkeep or small scale repair of an existing structure or asset within its existing 3 dimensional boundaries described in the associated application, subject to the criteria and conditions contained in the licence document. Minor maintenance includes the replacement or reasonable improvement of removable items or ancillary equipment which form part of the structure/asset.</p>

5 Licence conditions

5.1 General conditions

5.1.1 Notification of commencement

Notification must be sent to the MMO prior to the commencement of the first instance of any licensed activity. This notice must be received by the MMO no less than 24 hours before the commencement of that licensed activity.

5.1.2 Licenced conditions binding other parties

Where provisions under section 71(5) of the 2009 Act apply, all conditions attached to this licence apply to any person who for the time being owns, occupies or enjoys any use of the licensed activities for which this licence has been granted.

5.1.3 Agents / contractors / sub-contractors

Notification must be sent to the MMO in writing of any agents, contractors or subcontractors that will carry on any licensed activity listed in section 4 of this licence on behalf of the licence holder. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity.

The licence holder must ensure that a copy of this licence and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors or sub-contractors that will carry on any licensed activity listed in section 4 of this licence on behalf of the licence holder.

5.1.4 Vessels

Notification must be sent to the MMO in writing of any vessel being used to carry on any licensed activity listed in section 4 of this licence on behalf of the licence holder. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity. Notification must include the master's name, vessel type, vessel IMO number and vessel owner or operating company.

The licence holder must ensure that a copy of this licence and any subsequent revisions or amendments has been read and understood by the masters of any vessel being used to carry on any licensed activity listed in section 4 of this licence, and that a copy of this licence is held on board any such vessel.

5.1.5 Change of circumstance and licence validity

The licence is deemed to be invalid in the event that the circumstance on which the granting of this licence was based change to an extent that the activity is no longer representative of what was applied for and or no longer meets self-service licence criteria.

5.2 Project specific conditions

This section sets out project specific conditions relating to the licensed activities as set out in section 4 of this licence.

Project wide conditions	
5.2.1	<p>If the licensed activity is to be undertaken outside of the jurisdiction of a harbour authority, local marine users who may be impacted by the activity must be notified at least 5 days before the commencement of the licensed activities via a local notice to mariners.</p> <p>Reason: <i>To make local users aware of licensed activities and minimise risk to navigational safety and other users of the sea.</i></p>
5.2.2	<p>Any oil, fuel or chemical spill within the marine environment must be reported to the MMO Marine Pollution Response Team within 12 hours.</p> <p>Within office hours: 0300 200 2024. Outside office hours: 07770 977 825. At all times if other numbers are unavailable: 0845 051 8486. dispersants@marinemanagement.org.uk</p> <p>Reason: <i>To ensure that any spills are appropriately recorded and managed to minimise the risk to sensitive receptors and the marine environment.</i></p>
5.2.3	<p>All paint, solvents and other chemicals must be stored in designated areas that are isolated from surface water drains, open water and within a container or bund to contain any spillage. The licence holder must be familiar with the environmental risk of the paint, solvents or other chemicals used in the maintenance process by reading the Chemical/Product data sheet (detailing hazards associated with its use).</p> <p>Reason:</p>

	<i>To minimise the risk of paint, solvents and other chemicals entering the marine environment.</i>
5.2.4	<p>Bunding and/or storage must be installed to contain and prevent the release of fuel, oils, and chemicals associated with plant, refuelling and construction equipment, into the marine environment. Secondary containment must be used with a capacity of no less than 110% of the container's storage capacity.</p> <p>Reason: <i>To minimise the risk of marine pollution incidents.</i></p>
5.2.5	<p>All coatings and treatments must be suitable for use in the marine environment. Priority substances and polluting chemicals listed under the Environmental Quality Standards Directive (EQSD) must not be utilised during works.</p> <p>Reason: <i>To minimise the risk of marine pollution incidents.</i></p>
5.2.6	<p>Waste concrete, slurry or wash water from concrete or cement works must not be discharged into the marine environment. Concrete and cement mixing and washing areas must be contained and sited at least 10 metres from any watercourse or surface water drain.</p> <p>Reason: <i>To avoid damage to the marine environment by concrete wash water contamination which is highly alkaline and contains high levels of suspended sediment.</i></p>
5.2.7	<p>Suitable protective sheeting must be used to prevent dust, debris (including paints and solvents) and rebounded or windblown concrete from entering the water environment. Rebounded material must be cleared away before the sheeting is removed.</p> <p>Reason: <i>To minimise risk of damage to the marine environment by wet concrete contamination which is highly alkaline and contains high levels of suspended sediment.</i></p>
5.2.8	<p>All equipment, temporary structures, waste and/or debris associated with the licensed activities must be removed within 6 weeks of completion of licensed activities.</p>

	<p>Reason: <i>To minimise impacts to the marine environment and other users of the sea/seabed.</i></p>
5.2.9	<p>Work in or within 200m of a designated or proposed Marine Protected Area (SAC, SPA, Ramsar, SSSI, MCZ) must be undertaken in accordance with a method statement approved by Natural England and submitted to the MMO as part of the marine licence application. All mitigation highlighted by Natural England must be adhered to.</p> <p>(Excluding activities limited to:</p> <ul style="list-style-type: none"> - Deposit of marker buoys - Removal of marine growth from structures or assets - Repainting of structures or assets - Deposit of scaffolding or access towers) <p>Reason: <i>To minimise damage and disturbance to sensitive habitats or species from activities, plant and personnel.</i></p>
5.2.10	<p>Any vehicular access across intertidal coastal habitats which form part of a Marine Protected Area must be undertaken in accordance with a method statement approved by Natural England and submitted to the MMO as part of the marine licence application. All mitigation highlighted by Natural England must be adhered to.</p> <p>Reason: <i>To minimise damage and disturbance to sensitive habitats or species from activities, plant and personnel.</i></p>
5.2.11	<p>Work to or within a heritage designation must be undertaken in accordance with a valid consent or method statement approved by Historic England (or relevant local authority) and submitted to the MMO as part of the marine licence application.</p> <p>Reason: <i>To minimise risk to heritage assets.</i></p>

5.2.12	Any vehicular access through a designated heritage designation must be undertaken in accordance with a valid consent or method statement approved by Historic England (or relevant local authority) and submitted to the MMO as part of the marine licence application. Reason: <i>To minimise risk to heritage assets.</i>
5.2.13	If the licensed activity is to be undertaken within the jurisdiction of a harbour authority, the harbour authority must be notified at least 7 days prior to the commencement licensed activities. Reason: To ensure the harbour authority is aware of the licensed activities occurring within its jurisdiction and can facilitate the issue of appropriate communications, such as local notices to mariners.

6 Compliance and enforcement

This licence and its terms and conditions are issued under the Marine and Coastal Access Act 2009.

Any breach of the licence terms and conditions may lead to enforcement action being taken. This can include variation, revocation or suspension of the licence, the issuing of an enforcement notice, or criminal proceedings, which may carry a maximum penalty of an unlimited fine and / or a term of imprisonment of up to two years.

Your attention is drawn to Part 4 of the Marine and Coastal Access Act 2009, in particular sections 65, 85 and 89 which set out offences, and also to sections 86, 87 and 109 which concern defences. The MMO's Compliance and Enforcement Strategy can be found on our website (<https://www.gov.uk/government/publications/compliance-and-enforcement-strategy>).

APPENDIX D – THE MMO'S EMAIL DATED 1 NOVEMBER 2018

Mike Bird

From: PHILLIPS Gareth [REDACTED]
Sent: 27 March 2019 13:07
To: PHILLIPS Gareth
Subject: FW: MMO response to advice requested re CHSPL & Draft DML for comment

From: Champney, Tracey (MMO) [mailto:[REDACTED]]
Sent: 07 November 2018 12:07
To: PHILLIPS Gareth
Subject: [EXTERNAL] FW: MMO response to advice requested re CHSPL & Draft DML for comment

Hi Gareth

My sincere apologies. I replied last week but it appears I only copied in Mike and Peter. I have attached a copy of my response.

In summary, we are currently content with what you have proposed as the draft DML, but reserve the right to comment further, once we have full sight of the DCO.

Kind Regards

Tracey

Tracey Champney | Marine Licensing Case Manager | Her Majesty's Government – Marine Management Organisation.
Direct Line: 0208 225 6664 | [REDACTED] | Lancaster House, Newcastle Business Park, Newcastle upon Tyne, NE4 7YH

[Website](#) | [Twitter](#) | [Facebook](#) | [Linkedin](#) | [Blog](#) | [Instagram](#) | [Flickr](#) | [YouTube](#) | [Google+](#) | [Pinterest](#)

From: Champney, Tracey (MMO)
Sent: 01 November 2018 15:39
To: Stephenson, Paul (MMO) [REDACTED]
Cc: 'Mike Bird' <[REDACTED]>; COLE Peter <[REDACTED]>
Subject: MMO response to advice requested re CHSPL & Draft DML for comment

Hi Gareth

I have reviewed the attached DML which appears to capture requirements that MMO would likely request. There is nothing in there currently we would wish to dispute, nor do I have any additions at this time.

You should note that should any other interested party raise any requirements that apply below MHWS, then those would be added to the DML. MMO would require engagement with CHSPL and any other interested parties to ensure that any such requirements are drafted in a way which is fit for purpose/enforceable.

We reserve the right to amend our requirements once we have sight of the full draft DCO.

Please give me a call if you have any questions

Kind Regards

Tracey

From: PHILLIPS Gareth [REDACTED]
Sent: 24 October 2018 10:01
To: Champney, Tracey (MMO) <[REDACTED]>
Cc: Stephenson, Paul (MMO) <[REDACTED]>; Mike Bird <[REDACTED]>; COLE Peter [REDACTED]
Subject: RE: MMO response to advice requested re CHSPL & Draft DML for comment

Dear Tracey

Thanks again for your letter yesterday. We are still considering whether or not to pursue the exemption modification approach in the DCO application. However, without prejudice to that, I attach a draft DML for your consideration and comment please. Some points to note please:

1. The draft DML is work in progress and subject to potential further amendment.
2. The draft DML covers only those works to the existing flood defence, which have already been agreed with the EA and MMO fall within both organisations' understanding of maintenance works, and would fall within the ML exemption if they were to be carried out by, or on behalf of, the EA. Those works form "Work No. 9" and would be undertaken in the area shown red on the attached draft works plan.
3. All works would be carried out on land and no vessels would be engaged.
4. The conditions incorporate those attached to the example ML you helpfully provided yesterday, which relate to notifications and pollution control measures.
5. It has been agreed with the EA, that the maintenance works in question would require an Environmental Permit from the EA prior to commencement. Therefore, it is not necessary to duplicate any conditions relevant to that permit in this DML.

CHSPL intends to submit its DCO application in the w/c 12 November 2018 and PINS has been notified of this. Therefore, I'd be grateful to receive your comments on the draft DML asap, and by the end of next week at the latest please.

Kind regards,

Gareth Phillips
Partner
for Pinsent Masons LLP

D: [+44 20 7054 2538](tel:+442070542538) M: [+ \[REDACTED\]](tel:+442070542538) I: [812538](tel:+442070542538)

Winner – 'Law Firm of the Year' at The Lawyer Awards 2018

From: Champney, Tracey (MMO) [REDACTED]
Sent: 23 October 2018 15:18
To: Mike Bird
Cc: PHILLIPS Gareth; Stephenson, Paul (MMO)
Subject: [EXTERNAL] MMO response to advice requested re CHSPL

Hi Mike

I have attached our response, along with a copy of a recent marine licence issued in respect of maintenance activity so you can see the type of conditions we may request should you decide to proceed with a DML rather than exemption.

Once you review please let me know if you wish to discuss.

Kind Regards

Tracey

Tracey Champney | Marine Licensing Case Manager | Her Majesty's Government – Marine Management Organisation.

Direct Line: 0208 225 6664 | [REDACTED] | Lancaster House, Newcastle Business Park, Newcastle upon Tyne, NE4 7YH

[Website](#) | [Twitter](#) | [Facebook](#) | [Linkedin](#) | [Blog](#) | [Instagram](#) | [Flickr](#) | [YouTube](#) | [Google+](#) | [Pinterest](#)

The Marine Management Organisation (MMO) The information contained in this communication is intended for the named recipient(s) only. If you have received this message in error, you are hereby notified that any disclosure, copying, distribution or taking action in reliance of the content is strictly prohibited and may be unlawful. Whilst this email and associated attachments will have been checked for known viruses whilst within MMO systems, we can accept no responsibility once it has left our systems. Communications on the MMO's computer systems may be monitored and/or recorded to secure the effective operation of the system and for other lawful purposes.

If you consider this email spam, please block using the Mimecast option on your Outlook toolbar. See the Information Security Intranet pages for details. If you have clicked on a suspect link or provided details please report to the IT Service Desk immediately.

IMPORTANT NOTICE: This email is sent on behalf of Pinsent Masons LLP, a limited liability partnership registered in England & Wales (registered number: OC333653) authorised and regulated by the Solicitors Regulation Authority and the appropriate regulatory body in the jurisdictions in which it operates. Its registered office is at 30 Crown Place, London EC2A 4ES.

Reference to 'Pinsent Masons' is to the international legal practice of Pinsent Masons LLP and/or one or more of the affiliated entities that practise under the name 'Pinsent Masons' as the context requires. The word 'partner', used in relation to Pinsent Masons, refers to a member of Pinsent Masons or an employee or consultant with equivalent standing. A list of members of Pinsent Masons LLP, those non-members who are designated as partners, and non-member partners in affiliated entities, is available for inspection at our offices or at www.pinsentmasons.com

The contents of this e-mail and any attachments are confidential to the intended recipient. It may also be legally privileged. If you are not the intended recipient please do not use or publish its contents, contact Pinsent Masons immediately on +44 (0)20 7418 7000 then delete. Contracts cannot be concluded with Pinsent Masons nor service effected on Pinsent Masons by email. Emails are not secure and may contain viruses. Pinsent Masons may monitor traffic data.

For information about how we use your personal data at Pinsent Masons, including your rights, please see our [privacy policy](#).

Further information about us is available at www.pinsentmasons.com

The Marine Management Organisation (MMO) The information contained in this communication is intended for the named recipient(s) only. If you have received this message in error, you are hereby notified that any disclosure, copying, distribution or taking action in reliance of the content is strictly prohibited and may be unlawful. Whilst this email and associated attachments will have been checked for known viruses whilst within MMO systems, we can accept no responsibility once it has left our systems. Communications on the MMO's computer systems may be monitored and/or recorded to secure the effective operation of the system and for other lawful purposes.

If you consider this email spam, please block using the Mimecast option on your Outlook toolbar. See the Information Security Intranet pages for details. If you have clicked on a suspect link or provided details please report to the IT Service Desk immediately.

APPENDIX E - DEVELOPMENT DESCRIPTION CLARIFICATION NOTE

CLEVE HILL SOLAR PARK – DCO APPLICATION (EN010085)

ENVIRONMENTAL STATEMENT

CLARIFICATION NOTE - DEVELOPMENT DESCRIPTION

Introduction

1. The Marine Management Organisation (MMO) has asked the Applicant for clarification of the flood defence maintenance works that form part of the Authorised Development in the draft DCO (dDCO) and which were considered in the assessments reported in the Environmental Statement (ES) submitted with the Application. More particularly, the MMO asked for clarity over the maintenance works considered as part of the Development Description, which was then assessed throughout the ES. That clarification is set out in this note, which is intended to supplement the ES - Development Description - Chapter 5 (PINS reference [APP-035](#)).
2. The same section numbering has been used, but only updated sections have been reproduced in this clarification note.

5.4 Development Description and Candidate Design

5.4.6 Flood Defences

3. The MMO requested additional details on the materials to be used, the frequency of maintenance activities and which consenting regime is engaged (Environmental Permit and/or Marine Licence).

5.4.6.1 Materials

4. Table 5.6 of the ES includes applicable design principles. This includes a design principle that:

"Flood defence maintenance activities will include works that

- *use the same materials as those present to date;"*

5. The range of materials assumed for the purposes of the assessment are those included in the dDCO (PINS reference [APP-016](#)). That includes a Deemed Marine Licence (DML) at Schedule 8, Part 1, Section 3, which states:

"The substances or articles authorised for deposit at sea include -

(a) iron and steel, copper and aluminium;

(b) stone and rock;

(c) concrete;

(d) sand and gravel;

(e) timber;

(f) plastic and synthetics;

(g) marine coatings; and

(h) material extracted from within the offshore Order limits."

5.4.6.2 Frequency

6. The MMO suggested that a likely frequency of works being undertaken is included in the Development Description. It is worth noting that there is no limit on the frequency of maintenance activities undertaken by the Environment Agency (EA) or requirement on the EA to notify the MMO of the same. Therefore, unlimited frequency of maintenance works has been assumed in the existing and future baseline without the Development. However, the potential frequency of maintenance visits falling within the description of maintenance works provided has been assumed to be approximately 24 visits per annum (two per month), but could be more or less than this in any particular year depending on the extent of works required. Nonetheless, based on discussions with the EA this number of visits is considered to be realistic.
7. There is no limit to the Environment Agency's (EA) frequency of maintenance activities in the existing or future baseline without the Development. Examples of maintenance work undertaken by the EA in recent years includes:
- Vegetation management;
 - Patch repairs to concrete sections; and
 - Replacement of toe beam at beach lowered areas to prevent loss of blockwork.

5.4.6.3 Environmental Permit and Marine Licence Engagement

8. Most flood defence maintenance activities are subject to The Environmental Permitting (England and Wales) Regulations 2016 and where they occur below Mean High Water Springs (MHWS), a Marine Licence may also be required (a DML forms part of the dDCO). Table 5.6a sets out each potential maintenance activity included in Table 5.6 of the Development Description chapter, and states the legislative regime that would be engaged. Those maintenance activities listed have been agreed as representative of works typically undertaken by the EA (see the Pinsent Masons Position Paper - Flood Defence Works and Consents, August 2018 (PINS reference [AS-010](#))).

Table 5.6a Flood Defence Maintenance Activities and Relevant Consents

Flood Defences Candidate Design			Environmental Permit?	Marine Licence?
Examples of Flood Defence Maintenance activities have been agreed with the Environment Agency and the Marine Management Organisation, and included within the design principles definition (non-exhaustive)	(i)	Inspection	No	No
	(ii)	Investigation (above MHWS, inclusive of trial pitting)	Yes	No - always landward of MHWS
	(iii)	Replacement of expansion joint material	Yes	Yes - if below MHWS
	(iv)	Concrete repair (to BS EN 1504)	Yes	Yes - if below MHWS
	(v)	Replacement of concrete toe beam	Yes	Yes - if below MHWS
	(vi)	Vegetation management (grass cutting, removal of larger vegetation)	No	Yes - if below MHWS
	(vii)	Replacement of loose and missing block work	Yes	Yes - if below MHWS
	(viii)	Repair of voids	Yes	Yes - if below MHWS
	(ix)	Fencing repair / replacement	Yes, unless: (a) the fencing is not	Yes - if below MHWS

Flood Defences Candidate Design			Environmental Permit?	Marine Licence?
			located on the bed or banks of the main river, and (b) the fencing is constructed of— (i) post and rail, (ii) post and wire mesh of at least 100 mm spacing, or (iii) post and wire strands.	
(x)	Servicing outfalls		Yes	Yes - if below MHWS
(xi)	Cleaning outfall ancillary structures		No	Dependent on nature of cleaning activity.
(xii)	Topping up of embankment crest levels at localised low spots		Yes	No - crest always landward of MHWS
(xiii)	Vermin control		No	Yes - if below MHWS
(xiv)	Repairs of rutting in crest		Yes	No - crest always landward of MHWS
(xv)	Repointing of jointed structures		Yes	Yes - if below MHWS
(xvi)	Replacing modular blocks		Yes	Yes - if below MHWS
(xvii)	Replacement of toe armour as required		Yes	Yes - if below MHWS
(xviii)	Reinstatement of timber toe piles (on river frontage)		Yes	Yes - if below MHWS
(xix)	Timber groyne plank replacement		Yes	Yes - if below MHWS
(xx)	Replacement of bolts on groyne		Yes	Yes - if below MHWS
(xxi)	Placement of timber rubbing boards on groyne		Yes	Yes - if below MHWS
(xxii)	Localised movements of beach material		Yes	Yes - if below MHWS
(xxiii)	Cleaning/dredging of drainage ditch channels		Yes	No - drainage ditch channels always landward of MHWS
(xxiv)	Replacement of pitching where present		Yes	Yes - if below MHWS
(xxv)	Replacement of access structures		Yes	Yes - if below MHWS
(xxvi)	Painting		No	Yes - if below MHWS
(xxvii)	Any other activities required to be		Dependent on	Dependent on

Flood Defences Candidate Design		Environmental Permit?	Marine Licence?
	undertaken within the four parameters set out in the Outline Design Principles document.	activity.	activity.
Emergency Works		Yes	Yes

5.4.6.4 Emergency Works

9. The MMO has asked for clarity of what would constitute emergency works to the flood defence. In addition to the definition of emergency provided in the ES chapter (Table 5.6), the Environmental Permitting Regulations provide the following definition:

"emergency" means an occurrence which presents a risk of—

(a) serious flooding;

(b) serious detrimental impact on drainage;

(c) serious harm to the environment;

10. The MMO defines "emergency" as imminent risk to human health, property or the environment¹.

¹ MMO (April 2018). Do I need a Marine Licence? webpage. Available at: <https://www.gov.uk/guidance/do-i-need-a-marine-licence> [accessed 07/05/2019]