



CLEVE HILL SOLAR PARK

**ADDITIONAL SUBMISSION - JOINT POSITION PAPER
DRAFT DECOMMISSIONING REQUIREMENT 16
POST-ISH2 VERSION (INCLUDING EXQS 2.4.10-2.4.13)**

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Cleve Hill Solar Park DCO

Joint Position Paper – Draft Decommissioning Requirement 16

Post—ISH2 Version (including ExQs 2.4.10—2.4.13)

Context:

1. On 3 July 2019 representatives of the Environment Agency ("EA") and the Applicant (Cleve Hill Solar Park Limited) attended a conference call to discuss the version of revised Requirement 16 (decommissioning) that was submitted to the Examining Authority ("ExA") at Examination deadline 2 ("DL2").
2. The EA agreed with the Applicant that:
 - (i) the sole justification for placing a time limit on any DCO granted for the authorised development is the EA's proposed managed realignment of the flood defence as described in the draft MEASS;
 - (ii) in the event of managed realignment not being required, the EA has no interest in impeding other uses of the land, including continued power generation from the authorised development; and
 - (iii) for so long as the authorised project is capable of generating power, the decommissioning of the authorised development should not be required on any land within the Order limits not needed for managed realignment of the flood defence.
3. The EA also confirmed its agreement in principle to the revised Requirement submitted at DL2 and its conditionality, which broadly reflects the stage of the EA's internal approval process for its flood defence projects at which the full business case is approved (currently known as "Gateway 3").
4. However, the EA expressed concerns with the timescales set out in the revised Requirement, in particular, whether or not the EA would have satisfied the conditionality by the 39th anniversary of the date of final commissioning of the authorised development. The EA also expressed a desire for a review mechanism by which the EA and undertaker could meet, discuss the progress made towards discharging the conditionality set out in the Requirement, and agree a programme to complete that exercise and decommissioning of the authorised development.
5. Therefore, the Applicant agreed to redraft Requirement 16 to remove the 39th anniversary trigger and introduce a review mechanism at the 35th anniversary, which could be repeated in the event any timescales agreed in one review could not subsequently be met by the EA.
6. The Applicant provided that revised drafting to the EA on 3 July 2019 and after further discussion and amendment on 9 July 2019, the revised drafting was agreed between the Applicant and the EA's officers on 12 July 2019, subject to the revised drafting being approved by the EA's senior management.
7. Requirement 16 was considered at ISH2 (draft DCO) on 18 July 2019 and Graham Thomas, on behalf of the relevant planning authority, Swale Borough Council, identified some points of detail that required correcting, and asked that the drafting be reviewed and simplified where possible. That exercise has been undertaken by the Applicant as set out below.
8. On 9 August 2019 the ExA published its Further Written Questions ("ExQ2"). ExQ2s 2.4.10 – 2.4.13 (inclusively) related to the drafting of draft Requirement 16. Those are addressed in the drafting below.

9. The drafting below has been agreed between the Applicant, the Environment Agency and Swale Borough Council, and the Environment Agency confirms for the purposes of:
- (a) ExQ2.4.10, the proposed arrangements would provide sufficient flexibility, yet certainty, and adequately safeguard and facilitate managed realignment; and
 - (b) ExQ2.4.11, that the retention of the flood defence bund under Requirement 16(13)(c) is acceptable.

Proposed requirement 16 (decommissioning):

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.

(2) No later than the 35th anniversary of the date of final commissioning, the Environment Agency must:

- (i) undertake a review of the progress made by the Environment Agency in respect of managed realignment of the flood defence, with particular regard to the timescales for achieving:
 - (a) all necessary consents and approvals;
 - (b) all the land and/or rights over land; and
 - (c) funding, required for managed realignment of the flood defence; and
- (ii) as soon as reasonably practicable following that review, submit a managed realignment programme to the relevant planning authority, which sets out the timescales for achieving the matters prescribed in sub-paragraph (2)(i)(a)-(c) inclusively and the anticipated date by which the parts of the authorised development required for managed realignment of the flood defence must be decommissioned.

(3) If the Environment Agency is unable to satisfy the requirements of paragraph (2) on or before the 35th anniversary of the date of final commissioning, the process set out in that sub-paragraph must be repeated every five years thereafter until the Environment Agency is able to submit a managed realignment programme to the relevant planning authority compliant with that sub-paragraph.

(4) The Environment Agency must consult, and have regard to any representations received from, the undertaker in respect of the managed realignment programme before it is submitted to the relevant planning authority and if the undertaker and Environment Agency cannot agree the timescales to be included in the managed realignment programme those timescales shall be determined pursuant to Article 35 (Arbitration).

(5) The Environment Agency may submit an application to the relevant planning authority for a decommissioning notice to be served on the undertaker in accordance with the managed realignment programme submitted pursuant to sub-paragraph (2) or (3) provided that it has first consulted, and had regard to, any submissions on the application made by the undertaker.

(6) The application made pursuant to sub-paragraph (5) must be accompanied by evidence that the Environment Agency has secured the matters prescribed in sub-paragraphs (2)(i)(a)-(c) inclusively.

(7) Within 8 weeks of receiving an application pursuant to sub-paragraph (5), or such other timescale as may be agreed in advance with the undertaker, the relevant planning authority must serve a decommissioning notice on the undertaker.

- (8) Before serving the decommissioning notice, the relevant planning authority must:
- (i) be satisfied on the evidence before it that the Environment Agency has secured the matters prescribed in sub-paragraphs (2)(i)(a)-(c) inclusively; and
 - (ii) consult, and have regard to, any submissions made by the undertaker.
- (9) The decommissioning notice must:
- (i) give reasons for the relevant planning authority determining that the Environment Agency has secured the matters prescribed in sub-paragraphs (2)(i)(a)-(c) inclusively;
 - (ii) include a plan detailing the extent of land within the Order limits required for managed realignment of the flood defence;
 - (iii) not be served:
 - (a) within a period of 40 years from the date of final commissioning, or until such later time as any appeal, arbitration or judicial review of any decommissioning notice served pursuant to this Requirement has been determined, and provide that the authorised development may continue to generate and store electricity on a commercial basis until the later of those periods has been determined; and
 - (b) in respect of any land within the Order limits that is not required for managed realignment of the flood defence as shown on the plan required by (ii) of this sub-paragraph.
- (10) The undertaker must submit a decommissioning and restoration plan to the relevant planning authority for approval within 3 months of the earlier of:
- (i) all or part of the Order land ceasing to be used for the purposes of electricity generation or storage (either actively generating electricity or being available to generate electricity on a standby basis); or
 - (ii) the date of the decommissioning notice served pursuant to sub-paragraph (7) ; or
 - (iii) such other timescale as may be approved by the relevant planning authority in writing.
- (11) Before submitting the decommissioning and restoration plan required by sub-paragraph (10) the undertaker must consult, and have regard to representations received from, the Environment Agency in relation to the proposed content of that plan.
- (12) The decommissioning and restoration plan required by sub-paragraph (10) must:
- (a) accord with the outline decommissioning and restoration plan;
 - (b) state the date by which the authorised development will be decommissioned; and
 - (c) not require the undertaker to decommission the flood defence located within the Order limits.
- (13) The decommissioning and restoration plan must be implemented as approved.
- (14) In this requirement the following definitions have effect:
- "date of final commissioning" means the date on which the authorised development commences operation by generating electricity on a commercial basis but excluding the generation of electricity during commissioning and testing;

"decommissioning and restoration plan" means the decommissioning and restoration plan approved by the relevant planning authority pursuant to sub-paragraph (10) which sets out how the authorised development should be decommissioned and the specification to which the land should be restored having regard to the outline decommissioning and restoration plan and whether or not that land is required for managed realignment of the flood defence;

"decommissioning notice" means the notice to be served by the relevant planning authority on the undertaker pursuant to sub-paragraph (7) which confirms the requirement for the authorised development to be decommissioned having regard to the managed realignment programme and the matters prescribed in sub-paragraph (8);

"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); and

"managed realignment programme" means the managed realignment programme required to be submitted to the relevant planning authority by the Environment Agency pursuant to sub-paragraph (2) or (3) which sets out the timescales within which the Environment Agency reasonably expects the matters prescribed in sub-paragraphs (2)(i)(a)-(c) inclusively to be secured such that managed realignment of the flood defence can be achieved.

END

Pinsent Masons LLP

21 August 2019