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To all parties invited to the Preliminary Meeting

Our Ref: EN010085

By email only

Date: 23 October 2019

Dear Sir/Madam

Planning Act 2008 (as amended) and The Infrastructure Planning (Examination Procedure) Rules 2010 - Rule 17

Application by Cleve Hill Solar Park Ltd for an Order Granting Development Consent for the Cleve Hill Solar Park

Request for further information

We write to request further information from the parties listed below:

The Applicant
Natural England
Kent Wildlife Trust
Environment Agency
Kent County Council
Marine Management Organisation

The ExA asks that the information requested at Annex A be provided by **Deadline 7: 13 November 2019**.

Yours faithfully
David Rose

David Rose
Lead Member of the Examining Authority

ANNEX A - Rule 17 23rd October 2019

Reference	Respondent:	Deadline for Response:	Question:
R17.1	Statement of Common Ground		
R17.1.1	Applicant	D7	The Applicant's Deadline 6 SoCG tracker [REP6-016] appears to suggest that several of the unsigned SoCGs will not be resubmitted as signed SoCGs. Does the Applicant believe that the ExA and Secretary of State should give equal weight to unsigned SoCGs as signed SoCGs?
R17.2	HRA		
R17.2.1	Applicant	D7	In its response to ExQ2.1.5, [REP4-068], Kent Wildlife Trust considered that, should the establishment of the AR HMA not go according to expectations, construction should be halted until habitats have established. In response, at ISH6 and at paragraph 6.30 of its follow up submission [REP5-011], the Applicant noted that habitat loss during construction is already assessed in the ES as a temporary but not significant impact. Could the Applicant explain its view as to whether this also applies to the findings of its RIAA?
R17.2.2	Natural England	D7	The Applicant has added the creation of additional surface water features, including scrapes, to the operational management prescriptions for the FGM HMA in the updated outline LBMP at Deadline 6 (in table 2 on page 26 and at Appendix K [REP6-006]). The Applicant considers that the further details of the management of the FGM HMA in the SSSI are such that ' <i>NE should be able to conclude no adverse effect on integrity with regards to lapwing and golden plover</i> ' [REP6-015]. However, the ExA notes that details of the constitution and status of the HMSG are yet to be added to the outline LBMP

			<p>[REP6-006], as addressed in R17.3.2 below. Further to its view set out in [REP5-050], can Natural England confirm if the Applicant's assertion in [REP6-015] is correct and provide its current position on whether an Adverse Effect on Integrity (AEoI) of the Swale SPA and Ramsar site for brent goose, lapwing and golden plover can be excluded?</p>
R17.2.3	Natural England and Kent Wildlife Trust	D7	<p>At the Environmental Matters ISH (ISH6), the likelihood of marsh harriers using the habitat 'corridors' between array fields was discussed. The conservation interests thought that monitoring surveys, triggers and remedial measures were still needed to determine firstly if marsh harrier use is as predicted by the Applicant, and secondly to respond positively to a shortfall in predicted use, should it arise. (E.g. small mammal/ prey species monitoring as well as behavioural observations.) These points were reiterated in Natural England and Kent Wildlife Trust's Deadline 5 submissions [REP5-050] and [REP5-048].</p> <p>The Applicant's Deadline 6 version of the outline LBMP [REP6-005] includes behavioural monitoring/ flight surveys and small mammal sampling surveys (in relation to marsh harrier prey availability) to inform triggers and remedial actions. Do these updated proposals satisfy Natural England's and Kent Wildlife Trust's concerns in this respect?</p>
R17.2.4	Applicant	Prior to D7	<p>Using the context of the marsh harrier foraging habitat currently available within the Swale SPA designation together with the recognised functionally linked foraging habitat available to the Swale SPA population, can the Applicant provide two estimates of the proportion of the total foraging habitat that would be lost or affected to such an extent that it would effectively become unavailable as a result of the Proposed Development?</p> <p>The first estimate should assume that the Applicant's conclusion that the corridors of reedbed and grassland</p>

			<p>habitat between the solar array fields will be used post-construction by marsh harriers is correct. The second estimate should assume that marsh harriers do not use the corridors of reedbed and grassland habitat between the solar array fields post-construction for behavioural reasons, as postulated by some IPs.</p> <p>Assumptions made regarding the suitability of the existing arable land that will be lost to the Proposed Development as favoured foraging habitat for marsh harrier should be clearly described and justified. Any assumptions about the current and predicted future use of the reedbeds and wetland habitats immediately to the south of the existing coastal defences by foraging marsh harriers should also be clear and justified.</p> <p>Please can these estimates be communicated to Natural England and Kent Wildlife Trust sufficiently in advance of Deadline 7 to allow them to provide the ExA with a response to the following question (R17.2.5)?</p>
R17.2.5	Natural England and Kent Wildlife Trust	D7	<p>Based on the Applicant's answer to question R17.2.4 above, can Natural England and Kent Wildlife Trust provide an opinion on the robustness of the estimates provided, and explain whether they consider each to represent such a high percentage loss or change in overall availability of foraging habitat that it could lead to a finding of AEoI relating to the marsh harrier population associated with the Swale SPA?</p> <p>Also, in each case, should you consider the estimated change to be small but the judged effect on integrity nevertheless adverse, would the Applicant's proposals to improve the remaining foraging habitats and foraging resource and to monitor and respond to any shortfall of use by marsh harriers combine to address any remaining uncertainties, such that the mitigated situation can be judged to be one of no AEoI?</p>

R17.2.6	Applicant	D7	The Applicant's position [REP6-015] that further remedial measures for marsh harrier are not required to conclude beyond reasonable scientific doubt that there will not be an AEoI of the Swale SPA is noted. Notwithstanding this, in light of Natural England's suggestions regarding off-site habitat creation for marsh harrier [REP5-050], does the Applicant intend to pursue available mechanisms to deliver any additional land that might be required? How would any such additional land be secured through the DCO or other legal mechanism?
R17.3	Outline Landscape and Biodiversity Management Plan		
R17.3.1	Applicant	D7	In the updated outline LBMP provided at Deadline 4 [REP4-008], Table 3 in relation to the AR HMA had been removed, so the specification and control over this now relies on Appendix J of that document. This situation appears to remain in the Deadline 6 version [REP6-005]. The reference to the application of 12 tonnes of organic fertiliser per hectare per year to the AR HMA that previously appeared in Table 3 does not seem to be included in Appendix J, and so the commitment to this measure and the ability to secure it through the dDCO seems to have been lost. Please could the Applicant restore this commitment or provide a reasoned argument as to why it is no longer considered necessary?
R17.3.2	Applicant	D7	The outline LBMP provided at Deadline 6 [REP4-008] includes two sections about the HMSG (sections 1.4 and 19), but these are currently blank. Could the Applicant advise when the ExA will be provided with the information about the constitution and role of the HMSG, as agreed with the HMSG members, including how the essential mitigation and possible response measures that will be guided or decided by the HMSG will be secured through any DCO?
R17.3.3	Applicant	D7	The outline LBMP provided at Deadline 6 [REP4-008] does not appear to include a section 17. Could the Applicant

			advise if anything is missing and, if not, renumber the sections following section 16 to avoid future confusion?
R17.3.4	Applicant	D7	At ISH6, in response to an observation by an IP, Mr Gomes, the Applicant agreed to check the species of poplar to be used in the species mixes for woodland and shelterbelt planting. Table 9.1 (shelterbelt planting mix) of the Deadline 6 outline LBMP [REP6-005] still includes <i>Populus (sic) nigra</i> / Black Poplar, but with no percentage figure for the mix. Similarly, the woodland mix in Table 10.1 includes <i>Populus (sic) nigra</i> / Black Poplar, but at 5%. Please could the Applicant provide clarification about the situation, and update the tables as necessary?
R17.3.5	Applicant	D7	In submission [REP5-024] the Applicant notes that the Environment Agency will need to be notified under the Eels Regulations prior to ditch removal to facilitate the construction of the electrical compound. The Applicant states that this will also be added to the updated outline LBMP at Deadline 6 [REP6-006]. Could the Applicant please indicate where in the document this has been done, and if not yet addressed, please submit an updated version of the outline LBMP that includes this detail?
R17.3.6	Environment Agency	D7	Assuming that the Applicant updates the outline LBMP in the manner set out in R17.3.5 above, is the Environment Agency able to provide final confirmation that it is content that the measures set out in the updated outline LBMP [REP-006] are sufficient to ensure compliance with the Eels Regulations 2009?
R17.3.7	Kent County Council	D7	Does KCC consider the content of paragraph 283 of the updated outline LBMP [REP6-005] to be sufficient in terms of public or permissive rights of way?
R17.3.8	Natural England and Kent Wildlife Trust	D7	Do Natural England or Kent Wildlife Trust have any further comments or outstanding concerns on the updated outline LBMP provided by the Applicant at Deadline 6 [REP6-006]

			that are not covered elsewhere in your responses to these Rule 17 ExA questions?
R17.4	Draft DCO, Mitigation Route Map and other outline Management Plans		
R17.4.1	Marine Management Organisation	D7	In its SoCG with the Applicant [AS-028], MMO previously noted that amendments to the dDCO were 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). Is the MMO now content that all such requests have been met in the Deadline 6 version of the dDCO [REP6-003]?
R17.4.2	Applicant	D7	The Applicant's Mitigation Route Map [REP6-013] has been helpfully updated to provide a list of mitigation measures that were relied upon in the EIA and how these could be secured in any DCO. Does the Applicant believe that this document would benefit from similarly identifying measures relied upon in the RIAA? Does the Applicant further believe that it would be useful if the Mitigation Route Map could be comprehensively updated before the end of the Examination to reflect any further mitigation measures that have been agreed during the course of the Examination?
R17.4.3	Applicant	D7	Please could the Applicant remove the 'cut-and-paste' errors from the outline CEMP IRP [REP6-007] (references to SEPA and SNH, and any others that may occur)?
R17.4.4	Applicant	D7	Could the Applicant advise if there is any text missing from Table 1.1 of the Deadline 6 outline Decommissioning and Restoration Plan [REP6-009], specifically from the entry at the intersection of the line referring to the flood protection bund and column 3 (removal works)? (This currently starts, ' <i>Otherwise...</i> ')
R17.4.5	Applicant	D7	Can the Applicant confirm that the definition of the documents and information that comprise the ES will be updated in its final dDCO at Deadline 7, as suggested in paragraph 3.8 of [REP5-010]?

R17.5	Outline Design Principles (ODPs)		
R17.5.1	Applicant	D7	<p>The ODPs [REP6-011] limit cable circuit depth in Work No. 4 and the grid connection cable depth in Work No. 5 to 2m (except in stated circumstances). There are no such parameter limits for the width of the associated trenching and none at all for the trenches for other types of undergrounded electrical cabling. Could the Applicant explain how the dimensions of these could be controlled and secured through any DCO? The ExA notes the Applicant's response to ExQ1.4.36 [REP2-006], which confirmed that the relevant dimensions that had been used in the EIA were those of the 'candidate design', and invites the Applicant to address the suggestion that these parameters need to be secured through the ODPs and any DCO. Could the Applicant also comment on the apparent conflict between the dimensions that were provided for the EIA of the 'candidate design' and those in the ODPs.</p>
R17.5.2	Applicant	D7	<p>The ODPs [REP6-011] do not appear to include any parameters to limit the location, width or depth of works for the new site access road, the altered site access road or the internal access tracks, other than ensuring minimum 'pillar of support' clearance distances from the overhead line towers and a limit to the width of the spine road of 4m. Could the Applicant explain how these roads and tracks could be controlled and secured through any DCO? The ExA notes that the 'candidate design' [Table 5.4, APP-035] specifies the length of the spine road (Work No.4) as 2,160m and that the area of spine road and the estimated volume of stone are also included in 'candidate design' but not in ODPs. Similarly, the 'candidate design' [Table 5.4, APP-035] also specifies parameters for the northern and southern access routes (including length and width) that are not currently included in the ODPs. The Applicant is invited</p>

			to address the suggestion that these parameters need to be secured through the ODPs and any DCO.
R17.5.3	Applicant	D7	The ODPs [REP6-011] do not appear to include any parameters to limit the location, dimensions or depth of works for the temporary construction compounds, other than to locate them at least 10m away from drainage ditches. Could the Applicant explain how these could be controlled and secured through any DCO?
R17.5.4	Applicant	D7	During the Examination, the ExA has put several questions to the Applicant to explain the relationship between the ES 'candidate design' (on which the ES assessment of likely significant effects has been based) and the Outline Design Principles referenced in the dDCO. Despite the responses to these questions, concerns still exist about this relationship in the light of the fundamental principle of the assessment process – that what is allowed in the DCO must reflect what has been assessed. In the absence of certainty, there remains a concern that the Applicant's current approach could result in an authorisation for development beyond what was assessed. As a result, the ExA is inclined to include amended or additional Requirement(s) in the recommended DCO. Can the Applicant please provide a suitably drafted Requirement that secures these parameters and restricts any development beyond that which is presented in the 'candidate design' and assessed in the ES? In doing so, can the Applicant also address subsequent commitments that are reflected in the updated ODPs [REP6-011] but which do not appear in the 'candidate design' defined in ES Chapter 5 [APP-035] insofar as these are also relevant to the assessment as a whole?
R17.5.5	Applicant	D7	Can the Applicant provide further confirmation as to the height of the proposed security fencing to the electrical compound? The height of the bund is now potentially

			increased to 6.28m AOD; would the highest part of the security fencing still remain a maximum of 5.316m AOD?
R17.6	Socio-Economics		
R17.6.1	Applicant	D7	Can the Applicant provide an update of the discussion held with KCC regarding the 'hierarchy of actions' for the potential closures of PRow?
R17.6.2	Kent County Council	D7	Does KCC consider the 'hierarchy of actions' for potential closures of PRow to be satisfactory?
R17.6.3	Kent County Council and Applicant	D7	Can the Applicant provide an update on discussions with KCC regarding potential path closures and diversions? Does KCC consider the outcome of these discussion to be satisfactory?
R17.7	Traffic and Access		
R17.7.1	Kent County Council and Applicant	D7	The ExA notes KCC's request in [REP5-032] for further measures beyond those currently proposed in the outline Construction Traffic Management Plan [REP4-014] to manage HGV movements in a more controlled manner. The Applicant, in its submission at Deadline 6 [REP6-015], states at section 2.1.1 that it is committed to further discussions with KCC with regards to mitigation measures proposed within the Outline CTMP. Can both parties confirm if discussions have been held and whether the issues have been resolved to the satisfaction of KCC? If not, what matters remain outstanding and what further measures are intended with a view to seeking agreement.
R17.7.2	Applicant	D7	The ExA notes that if the energy storage facility was not constructed, or constructed at a later date, the average number of vehicle movements would reduce significantly throughout the 24-month construction period. Can the Applicant provide vehicle movement figures for both scenarios?
R17.7.3	Kent County Council	D7	Following the response by the Applicant in [REP6-015] regarding carriageway width constraints, can KCC confirm

			overhanging vegetation is cut by landowners at least twice a year?
R17.7.4	Applicant	D7	The ExA notes that it is proposed that HGV deliveries will not be able to enter or leave the site between 0830 and 0930 and 1500 and 1600 in order to avoid Graveney Primary School start and finish times. Has Graveney Primary School been consulted regarding the proposed timings?
R17.7.5	Applicant	D7	In regard to the requested new public footpath between existing public footpath CW90 and CW55, further to the discussion at Issue Specific Hearing 6 [EV-027] can the Applicant confirm whether a response has been received from the relevant landowners regarding the correspondence sent on 19 August 2019?
R17.7.6	Kent County Council and Applicant	D7	In KCC Deadline 5 submission [REP5-032] it is stated that there would be costs associated with the creation of a new PRow and that funding would be required to cover the legal costs of the Footpath Creation Agreement and any physical establishment works that may be required on the ground (such as signage, vegetation clearance and surfacing). KCC acknowledge that the act of dedication may be beyond the control of the Applicant. However, KCC requested whether the Applicant would be willing to cover these costs, potentially through a proposed Community Benefit Agreement. Please can parties confirm whether recent discussions have covered this topic? If not, please can the Applicant provide a response?
R17.7.7	Natural England	D7	The ExA notes the response provide by Natural England to question ExQ2.8.17 in [REP-069]. However, please can Natural England provide an updated response in regard of progress of the designation of the proposed England Coast Path?

R17.7.8	Applicant	D7	The submission of the topographic survey data at Deadline 5 [REP5-019] is noted by the ExA. However, can the Applicant confirm whether the northern and southern access routes have undergone a physical assessment?
R17.7.9	Applicant	D7	At Deadline 4, Mr Tom King provided 25 measurements of the stretch of road from the junction between Whitstable Road and Head Hill Road to the entrance of the London Array substation [REP4-068]. The ExA notes the response by the Applicant at Deadline 5 [REP5-016] and the topographic survey data [REP5-019]. Can the Applicant confirm how the topographic data was sourced and whether or not it was by physical measurement and assessment – full supporting details are requested. If it was not by physical means, what steps does the Applicant intend to take to provide verifiable measurements in light of those supplied by Mr Tom King. Has the Applicant considered meeting Mr Tom King and/or KCC to provide a joint statement setting out an agreed position, or otherwise, regarding the width of the carriageway at the relevant points?
R17.7.10	Kent County Council and Applicant	D7	In the event of the 25 measurements referred to in R17.7.9 not being agreed by joint verification, and if the ExA was to base its consideration on the worst-case measurements, is the Applicant/KCC content with its assessment of traffic impacts and the adequacy of Head Hill Road/ Seasalter Road as the route for construction and related vehicles?
R17.8	Miscellaneous Matters		
R17.8.1	Kent County Council and Applicant	D7	Can parties provide an update with regard to discussions in relation to the proposed Minerals Assessment? Can the Applicant confirm whether this is going to be submitted into the Examination and, if so, when?
R17.8.2	Applicant	D7	As part of the ES the Applicant undertook a Human Health Impact Assessment (contained within Ch17, section 17.3 of

			<p>the ES [APP-047]) and also submitted an Equality Impact Assessment [AS-025]. In terms of the health assessment, the conclusion states that the development is unlikely to negatively affect people's health and wellbeing in its widest sense. The Equality Impact Assessment concluded that only one aspect had been found to have the potential to affect groups of people with protected characteristics differently to the general population, that being traffic and transport effects with respect to Graveney Primary School during the construction phase of the Development.</p> <p>The Applicant will, however, be aware of [RR-364] and the writer's concerns about the effect of the Proposed Development. The Applicant, during the course of the Examination, indicated discussions were on-going and the ExA would be updated. Could the Applicant clarify the current position, and any agreement reached. The ExA understands the sensitive and confidential nature of such matters and the Applicant should have regard to these in its response. The ExA has the duty (General Data Protection Regulation 2018) to redact any information necessarily provided which should otherwise be kept private and confidential.</p>
R17.8.3	Applicant	D7	<p>The Applicant's summary of its oral submissions at ISH6 [REP5-011] advised that the Environment Agency's Medway Estuary and Swale Strategy ('MEASS') has been finalised and will be published soon. The Applicant confirmed that the MEASS had been shared with the Applicant on 10 September and suggested that the Environment Agency's view was that there are no substantive changes from the consultation version in relation to the proposed Cleve Hill Solar Park proposals. The Applicant further advised that, once published, the MEASS will be submitted to the Examination with the Applicant's comments. Does the Applicant intend to</p>

			submit all or part of the published MEASS into the Examination and to provide any comments on it, further to those set out in [REP5-001]?
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