



CLEVE HILL SOLAR PARK

THE APPLICANT'S RESPONSE TO THE REPORT ON IMPLICATIONS FOR EUROPEAN SITES (RIES)

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CLEVE HILL
SOLAR PARK

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List of Abbreviations

AEoI	Adverse Effect on Integrity
AR HMA	Arable Reversion Habitat Management Area
DCO	Development Consent Order
ExA	Examining Authority
ExQ	Examining Authority's Question
ExQ2	Examining Authority's Second Written Questions
FGM HMA	Freshwater Grazing Marsh Habitat Management Area
HMSG	Habitat Management Steering Group
HRA	Habitat Regulations Assessment
KWT	Kent Wildlife Trust
LBMP	Landscape and Biodiversity Management Plan
LGM HMA	Lowland Grassland Meadow Habitat Management Area
MEASS	Medway Estuary and Swale Strategy
NE	Natural England
PINS	Planning Inspectorate
RIAA	Report to Inform an Appropriate Assessment
RIES	Report on the Implications for European Sites
SoCG	Statement of Common Ground
SPA	Special Protection Area

1 INTRODUCTION

1. This document provides Cleve Hill Solar Park Ltd's (the Applicant's) comments on the Report on Implications for European Sites: Proposed Cleve Hill Solar Park (RIES) published by the Planning Inspectorate (PINS) on 23 October 2019, relating to the Development Consent Order Application (the DCO Application) for Cleve Hill Solar Park (the Development).
2. The Applicant has reviewed the RIES and responded where necessary (i.e., where the ExA has identified that there is an issue which requires clarification, or an issue remaining unresolved at the time of writing) in Section 2 of this document. The responses cross reference to other examination submissions by the Applicant which address the points raised.
3. References to the Application documentation are provided where necessary according to the reference system set out in the [Cleve Hill Solar Park Examination Library](#).
4. Table 1.1 lists the RIES sub-headings covered in this document.

Table 1.1: List of Topics

PINS Reference	Section of the Document	Topic
2	2.1	Overview (European Sites Considered)
3	2.2	Likely Significant Effects
4	2.3	Adverse Effects on Integrity
5	2.4	Summary

2 THE APPLICANT'S COMMENTS ON RIES

2.1 Overview (European Sites Considered)

Table 2.1: Applicant's responses

Ref.	Paragraph	Applicant's Comments
2.1.10	Figure 1 of the RIAA [APP-026] illustrates the Thanet Coast and Sandwich Bay Ramsar site as covering the same area as the Thanet Coast and Sandwich Bay SPA. However, the Thanet Coast and Sandwich Bay Ramsar site is not identified in Table 1 of the RIAA [APP-026] as being potentially affected by the Proposed Development and no conclusion is presented in terms of potential for LSE (Likely Significant Effect) on this site. As these sites cover the same geographical area, the ExA has assumed that the Applicant's conclusions presented in the RIAA in respect to the Thanet Coast and Sandwich Bay SPA also apply to the Ramsar site.	The Applicant confirms that the conclusions presented in the RIAA in respect of the Thanet Coast and Sandwich Bay SPA also apply to the Thanet Coast and Sandwich Bay Ramsar site.

2.2 Likely Significant Effects

Table 2.2: Applicant's responses

Ref.	Paragraph	Applicant's Comments
3.1.11	At Deadline 5, the Applicant [REP5-001] noted that the MEASS had now been finalised and adopted by the EA. At the time of writing this RIES, the Applicant had not submitted an update to the in-combination assessment as indicated in Table 2 of the SoCG [AS-017].	The in-combination assessment in the RIAA (Deadline 7 submission document reference 5.2, Revision B) has been updated to refer to the findings of the HRA undertaken in respect of the MEASS. The aim of the MEASS HRA is to identify any aspects of the Strategy that would have the potential to cause a likely significant effect on Natura 2000 or European sites and to begin to identify appropriate mitigation strategies where such effects were identified. In summary, the MEASS HRA identified adverse effects on the integrity of The Swale SPA/Ramsar site and sets out the required compensatory measures, having concluded there are IROPI (Imperative Reasons of Overriding Public Interest) and no suitable alternatives. The Cleve Hill site is identified as a managed realignment site for Epoch 2 (20-50 years). The MEASS HRA states that if the solar park is developed, managed realignment plans at Chetney Marshes could be accelerated to provide the saltmarsh and intertidal habitats necessary to compensate for coastal squeeze during Epoch 1 (0-20 years), with further compensation assessed and developed at the individual project level to compensate for associated loss of designated freshwater habitat. Managed realignment could be undertaken at the Cleve Hill site in the latter part of Epoch 2 (20-50 years) following decommissioning of the solar park after 40 years in order to compensate for loss of intertidal habitats in Epoch 2, if it is demonstrated by the Environment Agency that MR at the site at that time is viable (as secured by Requirement 17 of the dDCO (Deadline 7 submission document reference 3.1, Revision H). The updated in-combination assessment in the RIAA concludes that there is no AEoI of The Swale SPA/Ramsar as a result of the solar park in combination with the MEASS as the solar park does not contribute to the AEoI predicted by the MEASS. Under either scenario (with or without solar park) the MEASS identifies an approach to providing the required compensatory measures.

2.3 Adverse Effects on Integrity

Table 2.3: Applicant's responses

Ref.	Paragraph	Applicant's Response
4.2.20 & 4.2.49 – 4.2.51	<p>In the RIAA, the Applicant calculated that the AR HMA would support 2,097 foraging brent goose days/ha. The necessary 101,940 brent goose days would therefore require 48.6ha of grassland within the AR HMA. On a precautionary basis, the RIAA concluded that the AR HMA would provide 50.1ha of grassland habitat for geese – over the required amount. The RIAA concluded that there would be no net loss of habitat for brent goose [APP-026].</p> <p>As recommended by NE in [REP2-096], the Applicant also considered whether the exclusion of fertiliser within 10m of ditches would have any impact on the calculations (as presented in the RIAA) for the capacity of the AR HMA for brent geese. The Applicant provided calculations to demonstrate the impact in Table 2.17 (ref. 29) of [REP3-020]. The Applicant reiterated these findings at Deadline 4, explaining that the recalculation without the fertilised area around the ditches resulted in a capacity of the AR HMA at 101,580 goose days, versus the 101,940 goose days previously calculated (i.e. a difference of 360 goose days) [ExQ2.1.11, REP4-020].</p> <p>NE's response to ExQ2.1.11 [REP4-069] and the Applicant's Deadline 4 SoCG with NE [Table 4, REP4-039] both provide confirmation that: <i>"NE considers that the difference of 360 goose-days when taking into account the unfertilised buffer along the ditches is not significant in the context of the number of goose-days supported by the whole AR HMA"</i>. This point is reiterated in NE's Deadline 5 submission [REP5-050].</p> <p>KWT [REP5-048] noted that the revised calculations result in the carrying capacity of the AR HMA for brent geese being 360 goose days short of the mitigation target. KWT confirmed that it <i>"...sticks to the principle of meeting the mitigation target"</i> [REP5-048]. At Deadline 6, the Applicant [REP6-015] acknowledged KWT's position in this regard and referred to its earlier submissions to the Examination (response to ExQ2.1.11 [REP4-020]; response 4 in Table 2.15 [REP4-041]; and response 4 in Table 2.16 [REP3-020]).</p>	<p>Natural England agreed that in terms of operational impacts, subject to the updates to the Outline LBMP discussed at the hearing [REP5-011], and implemented in the Outline LBMP submitted at Deadline 6 [REP6-005] the AR HMA is sufficient to avoid an adverse effect on the integrity of the SPA/Ramsar for brent geese (see Line 15 of Table 5 of the SoCG between the Applicant and Natural England [AS-050]).</p>

Ref.	Paragraph	Applicant's Response
4.2.48	However, the Applicant's updated outline LBMP at Deadline 4 [revision C, REP4-008] removed Table 3: AR HMA (and consequently, the reference to application of 12 tonnes of organic fertiliser per hectare per year) from the outline LBMP [REP4-008]. This situation was unchanged in the updated outline LBMP submitted at Deadline 6 [revision D, REP6-006].	The details of application of fertiliser in the AR HMA in Table 3 of previous iterations of the Outline LBMP were deleted in error and have been reinstated in Revision E of the Outline LBMP to be submitted at Deadline 7.
4.2.81	KWT also advised that in the event the establishment of the AR HMA does not go according to expectations, leading to a reduction in carrying capacity for the target species, it would be advisable to halt construction with respect to avoiding further loss of carrying capacity until habitats have established [REP4-068]. The ExA explored this point at ISH 6 [EV-027], with the Applicant stating [paragraph 6.30 of REP5-011 refers] that temporary loss during construction was assessed in the ES as not significant, on the premise that in some years those species for which the grassland mitigation is provided do not use the site. It is unclear whether the Applicant's statement in [REP5-011] would also be applicable to conclusions on AEoI as presented in the RIAA. A Rule 17 request has been issued alongside the RIES for clarification.	The Applicant's statement in [REP5-011] is also applicable to the conclusions on AEoI. Paragraphs 163 to 169 of the RIAA (Deadline 7 submission document reference 5.2, Revision B) set out that temporary loss of foraging resources during construction would not result in the conservation objectives being undermined, therefore no AEoI was concluded. This is also confirmed in the Applicant's response to the Rule 17 request (Deadline 7 submission document reference 15.3.1) in response to R17.2.1.
4.2.86	At the time of writing this RIES, NE and KWT had not submitted comments on the updated outline LBMP [REP6-006] to the Examination. As such it is unclear whether NE and KWT are content with the updates made to the outline LBMP at Deadline 6 [REP6-006] in relation to the AR HMA, including the Applicant's updated proposals for: <ul style="list-style-type: none"> • inspection of the grassland and water levels; • monitoring/ sampling of ivermectin content of manure and invertebrate biomass and implementation of any necessary remedial measures following discussions with the HMSG; and • timings for implementation/ establishment of the AR HMA grassland. 	<p>Natural England is satisfied with updates to the Outline LBMP submitted at Deadline 6 [REP6-006] in relation to the AR HMA (see Lines 5, 6, 8, 9, 10, 11, 12, 14 of Table 5 of the SoCG between the Applicant and Natural England [AS-050]).</p> <p>The Applicant will continue to progress discussions with KWT to reach agreement on a SoCG to be submitted prior to the close of the Examination.</p>
4.2.102	At the time of writing this RIES, NE and KWT had not submitted comments on the updated outline LBMP [revision D, REP6-006] to the Examination. As such, it was unclear whether NE and KWT considered the measures within [REP6-006] to be sufficient to conclude no AEoI of the Swale SPA and Ramsar site for lapwing, golden plover and brent goose. A Rule 17 request has been issued alongside the RIES for clarification.	The Applicant believes that Natural England considers that measures within REP6-006, with updates to be provided in Revision E of the Outline LBMP at Deadline 7, are sufficient to conclude no AEoI for lapwing, golden plover and brent goose (see Line 15 of Table 5 of the SoCG between the Applicant and Natural England [AS-050]).

Ref.	Paragraph	Applicant's Response
4.2.124	At the time of writing this RIES, it was unclear what would be involved in the sampling of small mammal populations and when the results of the monitoring would be reported to the HMSG.	Section 6.5.2 of the Outline LBMP [REP6-006] confirmed that sampling of the small mammal population would be undertaken (in relation to marsh harrier prey availability). The next iteration (E) of the Outline LBMP submitted at Deadline 7 has been updated to include reference to agreement on the scope of small mammal monitoring surveys with the HMSG (section 6.5.2).
4.2.31 – 4.2.134	<p>At the time of writing this RIES, information has not been provided to demonstrate what proportion of marsh harrier foraging habitat would be affected and/ or lost as a result of the Proposed Development, in the context of the Swale SPA and the applicable functionally-linked land. The ExA has issued a Rule 17 question alongside the RIES in this regard.</p> <p><i>Level of certainty regarding no AEoI</i></p> <p>As reported above, NE's view [REP3-082] is that to be confident in a conclusion of no AEoI of the Swale SPA for marsh harriers, the Applicant should ensure that there is no net loss of foraging resource. Subject to details on habitat management being set out in the outline LBMP, NE is in agreement that the proposed habitat enhancements will result in more food for marsh harriers in both the ditch corridors and the AR HMA. However, NE is concerned that if marsh harriers are deterred from using the application site by the presence of the panels, this food will not be available to them [REP3-082].</p> <p>NE considers that absolute certainty over the response of marsh harriers to solar panels will not be possible as there are no equivalent sites and the Proposed Development has not yet been built [REP3-082 and REP5-050].</p> <p>NE's view in [REP5-050] regarding the triggers and remedial actions for marsh harrier (as proposed in Appendix A, paragraph 55, of the Deadline 4 outline LBMP [REP4-008]) is that these relate to actions the Applicant can take within the application site boundary. However, NE considers there is a gap in that there is no remedial action in the event that marsh harriers are deterred from using the application site due to the presence of the solar panels [REP5-050]. The triggers and remedial actions for marsh harrier have been</p>	<p>The Applicant has submitted a written representation on marsh harriers to the Examination (Deadline 7 submission document reference 15.6.2), which demonstrates that there would be no AEoI if they are displaced from the areas between solar array fields, such that additional remedial measures beyond those described in the Outline LBMP [REP6-006] are not required.</p> <p>The updated proposals added in Revisions D [REP6-006] and E (Deadline 7 submission document reference 6.4.5.2, Revision E) of the Outline LBMP together satisfy Natural England's concerns in this respect (see Line 13 and 15 of Table 5 of the SoCG between the Applicant and Natural England [AS-050]). This is also confirmed in the Applicant's responses in section 2.2 of the Rule 17 request (Deadline 7 submission document reference 15.3.1).</p>

Ref.	Paragraph	Applicant's Response
	<p>updated in the outline LBMP submitted at Deadline 6 [REP6-006] (Appendix A, Section 6.5.3). NE has not yet submitted comments on [REP6-006] to the Examination and it is currently unclear whether this update addresses NE's concerns in [REP5- 050] regarding the gap in remedial actions. A Rule 17 request has been issued alongside the RIES for clarification. However, it is noted that the outline LBMP [REP6-006] now states at paragraph 75 that remedial measures will be agreed with the HMSG.</p>	
4.2.143	<p>At the time of writing this RIES, it was unclear whether the Applicant intended to pursue available mechanisms to deliver any additional land that might be required (as suggested by NE in [REP5-050] as a way of resolving the uncertainties it has identified surrounding marsh harriers) and how any such additional land would be secured through the DCO or other legal mechanism. A Rule 17 request has been issued alongside the RIES for clarification.</p>	<p>The Applicant has submitted a written representation on marsh harriers to the Examination (Deadline 7 submission document reference 15.6.2), which demonstrates that there would be no AEoI if they are displaced from the areas between solar array fields, such that additional remedial measures beyond those described in REP6-006 and revision E of the Outline LBMP submitted at Deadline 7 are not required (document reference 6.4.5.2, Revision E). The updated proposals added in Revisions D [REP6-006] and E satisfy Natural England's concerns in this respect (see Lines 13, 15, 17 of Table 5 of the SoCG between the Applicant and Natural England [AS-050]). In light of having reached consensus of no AEoI, even in the worst case scenario, it is not necessary to pursue any mechanisms to deliver any additional off-site land.</p>

2.4 Summary

Table 2.4: Applicant's responses

Ref.	Paragraph	Applicant's Response
5.0.2	Whether the Applicant's statement in paragraph 6.30 of [REP5- 011], regarding the assessment of temporary habitat loss during construction in the ES, would also be applicable to conclusions on AEoI as presented in the RIAA;	<p>The Applicant has responded to the Rule 17 request R17.2.1 to address this point at Deadline 7 (document reference 15.3.1).</p> <p>The issue raised is also addressed in the response to paragraph 4.2.81 in Table 2.3.</p>
	What proportion of marsh harrier foraging habitat would be affected and/ or lost as a result of the Proposed Development, in the context of the Swale SPA and the applicable functionally-linked land;	<p>The Applicant has responded to the Rule 17 request R17.2.4 to address this point at Deadline 7 (document reference 15.3.1).</p> <p>The issue raised is also addressed in the Written Representation on Marsh Harrier submitted at Deadline 7 (document reference 15.6.2).</p>
	In light of NE's comments in [REP5-050], which suggest that offsite habitat creation could be a way of resolving the uncertainty it has identified surrounding marsh harriers, whether the Applicant intended to pursue available mechanisms to deliver any additional land that might be required and how any such additional land would be secured through the DCO or other legal mechanism; and	<p>The Applicant has responded to the Rule 17 request R17.2.6 to address this point at Deadline 7 (document reference 15.3.1).</p> <p>The SoCG agreed between the Applicant and Natural England also addresses this issue [AS-050].</p>
	Noting that details of the constitution and status of the HMSG have yet to be added to the outline LBMP [REP6-006], whether NE and KWT consider the measures within [REP6-006] to be sufficient to conclude no AEoI of the Swale SPA and Ramsar site for lapwing, golden plover and brent geese.	<p>The Applicant has responded to the Rule 17 request R17.2.4 (whilst noting the question is directed to Natural England and KWT) to address this point at Deadline 7 (document reference 15.3.1).</p> <p>The SoCG agreed between the Applicant and Natural England also addresses this question throughout [AS-050].</p> <p>The issue raised is also addressed in the response to paragraph 4.2.86 in Table 2.3.</p> <p>The Applicant will continue to progress discussions with KWT to reach agreement on a SoCG to be submitted prior to the close of the Examination.</p>