



CLEVE HILL SOLAR PARK

STATEMENT OF COMMON GROUND BETWEEN THE APPLICANT AND KENT WILDLIFE TRUST

November 2019
Revision A

Document Reference: 16.2.2
Submitted: Final Submission

www.clevehillsolar.com



CLEVE HILL
SOLAR PARK



CLEVE HILL SOLAR PARK

DCO APPLICATION REFERENCE EN010085

STATEMENT OF COMMON GROUND (SOCG)

NOVEMBER 2019

BETWEEN:

- 1) CLEVE HILL SOLAR PARK LTD; AND**
 - 2) THE KENT WILDLIFE TRUST (KWT)**
-

TABLE OF CONTENTS

1	INTRODUCTION	1
2	AGREEMENT	1
3	THE PLANNING INSPECTORATE RULE 6 LETTER ANNEX E SOCG INCLUSIONS	2
4	AREAS OF FURTHER DISCUSSION	4
5	RELEVANT REPRESENTATION COMMENTS	8
6	SUMMARY OF ORAL REPRESENTATIONS GIVEN AT ISSUE SPECIFIC HEARING 6 - COMMENTS.....	13
7	COMMENTS ON RESPONSES TO THE EXAMINING AUTHORITY'S FURTHER WRITTEN QUESTIONS AND COMMENTS ON RESPONSES SUBMITTED FOR DEADLINE 4 - COMMENTS.....	16

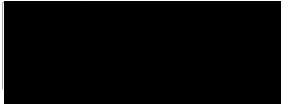
1 INTRODUCTION

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 on 14th December 2018.
2. This SOCG has been prepared as a means of clearly stating any areas of agreement and disagreement between the Applicant and the Kent Wildlife Trust (KWT), which are set out in sections 3 to 7.
3. Rather than seeking to address all submissions by KWT, the Applicant has retained the section on the Relevant Representation from the draft version of the SoCG submitted at Deadline 3 [REP3-019], in order to update the status of agreements based on more recent discussion and added the most recent submissions made at Deadline 5 by KWT for agreement:
 - Summary of Oral Representations Given at Issue Specific Hearing 6 [REP5-048]; and
 - Comments on responses to the Examining Authority's Further Written Questions and Comments on responses submitted for Deadline 4 [REP5-049].

2 AGREEMENT

4. Confirmation that the Tables 2 to 6 of this SoCG reflect the points of agreement between the Applicant and KWT at the stated date is provided in Table 1.

Table 1: Confirmation of Agreement

Date	Signatory	Signature
22 nd November 2019	Greg Hitchcock	

3 THE PLANNING INSPECTORATE RULE 6 LETTER ANNEX E SOCG INCLUSIONS

5. The Planning Inspectorate provided an Initial Assessment of Principal Issues as set out in Annex B of the Rule 6 Letter dated 18 April 2019. In relation to those Principal Issues, the Examining Authority (ExA) set out a number of recommended inclusions for the SoCG with KWT with regards to biodiversity and nature conservation (including Habitats Regulations Assessment). Table 2 lists out the areas for inclusion. The issues raised in the Rule 6 Letter are addressed in the Sections 3, 4, 5, 6 and 7 of this SOCG.

Table 2: SOCG Areas for Inclusion

Area for Inclusion	Applicant Comments	KWT comments
<i>SOCG to include:</i>	<i>Applicant's response</i>	<i>KWT's response</i>
Survey areas, assessment of baseline data and data collection methodologies.	The data analysis and presentation of results are set out fully in Appendix A9.1 [APP-223]. It was agreed in the pre-submission SOCG with Natural England [APP-256] that the survey coverage and methodology of baseline surveys completed are sufficient to enable a thorough assessment of potential effects on SPA/Ramsar birds.	Agree with NE's analysis.
Analysis of data and the presentation of results, including the use of expert judgements and assumptions.	The data analysis and presentation of results are set out fully in Appendix A9.1 [APP-223]. It was agreed in the pre-submission SOCG with Natural England [APP-256] that the bird-days metric using 'peak-mean' counts was an appropriate method to measure and mitigate for use of arable land by brent goose, lapwing and golden plover.	Agree that Peak-Mean metric is an appropriate figure for measuring and mitigating impacts on brent geese, lapwing and golden plover.
Methodology for Environmental Impact Assessment and Habitats Regulations Assessment, including assessment of cumulative and in-combination effects.	The methodologies for EIA and HRA, including cumulative and in-combination effects are set out in Section 9.2.5 of Chapter 9: Ornithology of the ES [APP-039] and in the RIAA [APP-026].	Agree
Likely effects on any protected species and on special interest features of sites designated or notified for nature conservation purpose.	The likely effects on special interest features of sites designated or notified for nature conservation purpose are assessed in Section 9.5 of Chapter 9: Ornithology of the ES [APP-039] and in the RIAA	Agree. Updated surveys on protected species are required and expected.

Area for Inclusion	Applicant Comments	KWT comments
<p>Mitigation and enhancement measures, including likely effectiveness, monitoring procedures and method for securing such measures within the DCO.</p>	<p>[APP-026].</p> <p>Following embedded mitigation measures in the design of the project and applied mitigation measures implemented through the latest versions of the Outline CEMP, Breeding Bird Protection Plan (BBPP, Appendix B of the outline CEMP), outline SPA Construction Noise Mitigation Plan (SPA CNMP), and Outline Landscape and Biodiversity Management Plan (LBMP), all submitted at Deadline 7, the Development has been assessed as having the potential to result in adverse and positive effects of low magnitude. No effects are considered to be significant in terms of the EIA Regulations.</p>	<p>We recognise the revisions that have been made to the documents mentioned during the examination process, and these have resulted in improvements to the mitigation. Specific remaining areas of disagreement are covered in our DL7 response [REP7-107] and elsewhere in this SoCG.</p> <p>We defer noise issues to the judgement of NE.</p>
<p>DCO drafting.</p>	<p>The draft DCO [APP-016] includes the following relevant Requirements:</p> <ul style="list-style-type: none"> 5 – Landscape and Biodiversity Management Plan (LBMP) 11 – Construction Environmental Management Plan (CEMP) 13 – Special Protection Area Construction Noise Management Plan (SPA CNMP) 14 –Protected Species 	<p>These are appropriate DCO inclusions.</p>

4 AREAS OF FURTHER DISCUSSION

Table 3: Scope and Methodology of the Assessment

Applicant Statement	KWT Comments	Status (KWT to complete)
<i>Applicant Statement</i>	<i>KWT Comments</i>	<i>E.g., Agreed / Not Agreed</i>
The 5 km and 10 km search parameters are appropriate for identifying European sites (of non-avian and avian interest respectively) with potential impact pathways and beyond those distances, likely significant effects of the Development on European sites can be reasonably discounted. (Section 5.1 of the RIAA, [APP-026]).	These are correct	Agreed
Potential impact pathways only exist for The Swale SPA/Ramsar Site and likely significant effects on other European sites within the search areas (Outer Thames Estuary SPA, Thanet Coast and Sandwich Bay SPA/Ramsar Site and Blean Complex SAC) can be reasonably discounted. (Section 5.1 of the RIAA, [APP-026]).	Does not seem likely that there will be impacts upon the Outer Thames Estuary SPA or Blean Complex SAC.	Agreed
<p>The scope of qualifying features associated with The Swale SPA/Ramsar Site and screened into the RIAA are (Section 5.2.4 of the RIAA, [APP-026]):</p> <p>Wintering:</p> <ul style="list-style-type: none"> • dark-bellied brent goose; • European white-fronted goose; • shelduck; • shoveler; • wigeon; • pintail; • teal; • little egret; • oystercatcher; • avocet; • lapwing; • golden plover; • grey plover; • curlew; • bar-tailed godwit; • black-tailed godwit; • knot; • ruff; • sanderling; • dunlin; • green sandpiper; and • greenshank 	Appears to be an accurate list.	Agreed

Applicant Statement	KWT Comments	Status (KWT to complete)
<p>Breeding:</p> <ul style="list-style-type: none"> • shelduck; • mallard; • moorhen; • coot; <p>and as other characteristic species:</p> <ul style="list-style-type: none"> • breeding ducks; • breeding waders; <p>Breeding and wintering:</p> <ul style="list-style-type: none"> • short-eared owl. <p>Notable invertebrates:</p> <ul style="list-style-type: none"> • <i>Bagous cylindrus</i> (a weevil); • <i>Erioptera bivittata</i> (a crane fly); • <i>Lejops vittata</i> (sea club-rush hoverfly); • <i>Peocilobothris [Poecilobothrus] ducalis</i> (a dancefly); • <i>Philonthus punctus</i> (a rove beetle); 	<ul style="list-style-type: none"> • lapwing; • redshank; • reed warbler; • reed bunting; <ul style="list-style-type: none"> • yellow wagtail; and • marsh harrier. <ul style="list-style-type: none"> • <i>Micronecta minutissima</i> (a water boatman); • <i>Malchius [Malachius] vulneratus</i> (a malachite beetle); • <i>Campsicnemus majus [magius]</i> (fancy-legged fly); • <i>Elachiptera rufifrons</i> (a true fly); and • <i>Myopites eximia</i> (a true fly). 	
<p>The Conservation Objectives of The Swale SPA have been correctly identified. (Section 5.2.2 of the RIAA, [APP-026])</p>		<p>Agreed</p>
<p>The coverage and methodology of baseline surveys completed are sufficient to enable a thorough assessment of potential effects on SPA/Ramsar birds. (Technical Appendices A9.1, A9.2, A9.3 and A9.4 to the ES [APP-039]).</p>		<p>Agreed</p>
<p>Screening of likely significant effects in the absence of mitigation are as follows (Section</p>		<p>Agreed</p>

Applicant Statement	KWT Comments	Status (KWT to complete)
5.2.6 of the RIAA, [APP-026]): Screened in: Noise/visual disturbance during construction/decommissioning on breeding and wintering bird assemblages; Loss/change in habitats during operation on breeding marsh harrier and wintering dark-bellied brent goose, lapwing and golden plover; Hydrological changes during construction and decommissioning on breeding and wintering bird assemblages and the Ramsar invertebrate community; and Dust emission during construction and decommissioning on breeding and wintering bird assemblages and the Ramsar invertebrate community. Screened out: Noise/visual disturbance during operation; Habitat fragmentation; Operational collision; Recreational access changes; and Invertebrate attraction to solar panels.		
The cumulative assessment in the ES (Section 9.8, [APP-039]) and in-combination assessment in the RIAA (Deadline 7 document reference 5.2, Revision B, Section 6.2) are comprehensive.		
Following embedded mitigation measures in the design of the project and applied mitigation measures implemented through the latest versions of the Outline CEMP, Breeding Bird Protection Plan (BBPP, Appendix B of the outline CEMP), outline SPA Construction Noise Mitigation Plan (SPA CNMP) and Landscape and Biodiversity Management Plan (LBMP), all submitted at Deadline 7, the Development has the potential to result in adverse and positive effects of low magnitude. No effects are significant in terms of the EIA Regulations.	There is a shortfall in mitigation for brent geese as measured by the Peak Mean mitigation requirement. Uncertainty remains regarding the mitigation for marsh harrier.	Not agreed
Following embedded mitigation measures in the design of the project and applied mitigation measures implemented through the latest versions of the Outline CEMP, Breeding Bird Protection Plan (BBPP, Appendix B of the outline CEMP), outline SPA Construction Noise Mitigation Plan (SPA CNMP) and Landscape and Biodiversity Management Plan (LBMP), all submitted at Deadline 7, the Development is not predicted	There is a shortfall in mitigation for brent geese as measured by the Peak Mean mitigation requirement. Uncertainty remains regarding the	Not agreed

Applicant Statement	KWT Comments	Status (KWT to complete)
to result in an adverse effect on the integrity of The Swale SPA/Ramsar Site (Section 8 of the RIAA (Deadline 7 document reference 5.2, Revision B)).	mitigation for marsh harrier.	

5 RELEVANT REPRESENTATION COMMENTS
Table 4: Relevant Representation Comments

KWT Comments	Applicant Response	Status (KWT to complete)
<i>Relevant Representation Comments</i> (RR Reference in bold, KWT-X)	<i>Applicant's response</i>	<i>E.g., Agreed / Not Agreed / N/A</i>
KWT-2 It is clear from the survey results that the site of the proposed solar park plays a role in supporting populations of species for which the Special Protection Area (SPA) is notified, and is therefore 'Functionally Linked'. As such, we believe it is incumbent on the Statutory Agencies to consider revision of the SPA boundary to include this land.	The Applicant has recognised that the land proposed for development is functionally linked to The Swale SPA/Ramsar Site (paragraph 75 of Section 9.3.1 of Chapter 9: Ornithology of the ES [APP-039] and in paragraph 52 of Section 5.2.1 of the RIAA (Deadline 7 submission document reference 5.2, Revision B).	Agreed
	The assessment presented in Chapter 9 - Ornithology of the ES [APP-039] and the HRA documented in the RIAA (Deadline 7 submission document reference 5.2, Revision B) has taken The Swale SPA into consideration.	Agreed
	Natural England confirmed in the pre-submission Statement of Common Ground, November 2018, [APP-256] that a SPA boundary review has not taken place for The Swale and there is no evidence of a timetable for it taking place. It is appropriate for the assessment to consider The Swale SPA based on the boundaries as they currently stand at the time of the Application, noting that the Development site is functionally linked to The Swale SPA.	Agreed
KWT-3 The success of the Habitat Mitigation Area for Brent geese relies upon achieving a density of 2,097 goose days per hectare, a very specific figure from a study of various management techniques in East Anglia. We do not think it wise	Technical Appendix A9.1 to Chapter 9 Ornithology of the ES [APP-223] summarises a number of studies into the density of foraging brent geese on grassland, including others with higher capacity than 2,097 goose-days per hectare. For example, Owen (1977) reported capacity of	Agree that 2,097 goose-days per hectare is theoretically possible. See point below. The Peak-Mean has been

KWT Comments	Applicant Response	Status (KWT to complete)
<p>to just adopt such a figure without understanding more of the variables that might affect it, not least of which is that the study site was established grassland, rather than arable reversion as is the case here. While a number of studies are also cited, including re-seeding using clover that achieved 1,258 goose days per hectare, as none are directly applicable, we consider the approach insufficiently precautionary for mitigation of a SPA feature.</p>	<p>2,250 goose days per hectare; Summers and Critchley (1990) recommended that alternative feeding areas to alleviate grazing on cereals should be an area of 50 ha for 1,000 brent geese – equivalent to 120,000 goose-days for the core winter period which exceeds the 101,940 goose-days requiring mitigation.</p> <p>The measure of bird days on the site (as set out in Technical Appendix A9.1 to Chapter 9 Ornithology of the ES [APP-223]) also uses a precautionary peak-mean statistic (using only the highest count in each month to calculate the mean) to provide confidence in the predicted success of the AR HMA to host at least as many goose-days as the arable land within the site as a whole. The approach is suitably precautionary and was agreed with Natural England (see lines 28 and 33 of Table 4 of the SoCG between the Applicant and Natural England [AS-050].</p> <p>NE agrees that the management of the mitigation grassland should be focussed on providing optimal conditions for brent geese (e.g., bottom line of Table 3 on page 13 of the SOCG between the Applicant and Natural England [AS-050].</p>	<p>established as the mitigation target.</p> <p>Management of mitigation grassland focussed on brent geese a sensible starting point, but still need to deliver adequate mitigation for lapwing and golden plover.</p>
<p>KWT-3 Concerns have been raised previously regarding the conflict between stated increases in water quality from the cessation of fertiliser use, and the use of fertiliser to maintain grassland biomass for brent geese. In response it is stated that application of fertiliser is restricted in spatial application in fields to avoid spreading near the field boundaries. However, reference to this in the document referred to appears to be missing, or at least we have not found it. Regardless, it is unclear if the necessary exclusion of the ditches and boundaries to them have been excluded from the functional area of the HMA.</p>	<p>Paragraph 412 in Section 15.4.3 of the last iteration (D) of the Outline LBMP [REP6-005] states that application of the fertiliser in the AR HMA will be excluded from within 10 m of the drainage ditches, in line with DEFRA best practice guidance.</p>	<p>Agreed.</p>

KWT Comments	Applicant Response	Status (KWT to complete)
<p>KWT-4 It is unclear what impact the significant change to the landscape will have on Marsh Harrier, which at present forages across the site. While we appreciate the distance between the ditch bank tops and the fence line has been increased compared to the original design – giving more habitat that can be managed for Marsh Harrier and increasing the distance between areas of panels – there remains uncertainty as to if the effectiveness of this.</p>	<p>The outline LBMP [REP6-005] sets out the prescriptions for establishment of large areas of ‘grazing marsh grassland’ between the solar panel arrays deployed in each field and has been developed further to include objectives and prescriptions for enhancing the water environment, including establishment of new reedbed. There is no published evidence either way regarding the reaction of marsh harriers to solar arrays of this scale, or any other scale, in the landscape. The inter-array grasslands will be a minimum of 30 m wide (or more, allowing for the ditch width), extending up to 80 m wide in some places and will be unbroken for substantial lengths spanning the site. A marsh harrier was witnessed foraging along a narrow grassland strip adjacent to a solar array on the Isle of Sheppey; the Applicant accepts the difference in scale, but the observation demonstrates that they are not averse to the presence of solar panels.</p> <p>On the basis of the provision of large quantity of good foraging habitat over and above the baseline availability and the absence of evidence that marsh harriers would be displaced at landscape scale, the assessment in Chapter 9 – Ornithology of the ES [APP-039] concluded that harriers will continue to forage at the site and will benefit from utilising the substantially increased area of suitable foraging habitat.</p> <p>The Applicant has also submitted a written representation on Marsh Harrier (draft version appended to the SoCG between the Applicant and Natural England (November 2019), and updated version with supporting figures submitted at Deadline 7 (document reference 15.6.2) to the examination, which sets out the potential impact on The Swale SPA under two different scenarios:</p>	<p>Not agreed. There is still uncertainty regarding the response of marsh harriers. There is no new information within the document that would remediate the loss of this area as marsh harrier foraging.</p> <p>More detail is included in our DL7 response [REP7-107]. We note from the figures within the marsh harrier document provided at Deadline 7 [REP7-037] (that we did not see before DL7) that the areas measured as providing optimum habitat include areas of scrub planted for landscape screening.</p>

KWT Comments	Applicant Response	Status (KWT to complete)
	<p>one where marsh harries are not excluded from the inter-array grassland areas and one where they are excluded from those areas. Natural England's view is that this is helpful in demonstrating the areas of foraging habitat with or without excluding marsh harriers from the solar array. NE's position is that there is sufficient precaution built into the assumptions such that they can advise that when a formal appropriate assessment is undertaken, the evidence before the Secretary of State is sufficient to support a conclusion of no adverse effect on the integrity of the SPA.</p>	
<p>KWT-5 There remain a number of questions regarding the aims of some of the areas of new habitats and how these might be achieved, for example cutting vs grazing, stocking densities (based on 'traditional' solar farms), ivermectins in cattle dung etc. that would be hard to summarise here. These may or may not be resolved via further discussions of the HMSG, but it would be worth allowing for these to be discussed at examination as a number of the conclusions in the ES are based upon their success.</p>	<p>Further discussions were held with the HMSG over the course of the Examination and as a result, the Outline LBMP has been amended through a number of iterations. The Applicant believes that the updates to the Outline LBMP submitted at Deadline 6 [REP6-005] and submitted at Deadline 7 (Revision E) will address these questions.</p>	<p>Agreed. The revisions to the LBMP and the HMSG have addressed these concerns.</p>
<p>KWT-6 The Medway Estuary and Swale Strategy proposes Managed Realignment at the development site in order to compensate for habitat loss in the SPA from coastal squeeze. The site provides a unique opportunity for Managed Realignment in the area, and creating a continuum of habitats from mud flat to grazing marsh is a more appropriate use of the site, consistent with wider national aims with regard the environment, biodiversity and landscape. The solar park would prevent this.</p>	<p>The presence of the Development and the opportunity for Managed Realignment (MR) are not mutually exclusive. In the absence of the Development, MR on the Cleve Hill site is unlikely to take place until at least 2039.</p> <p>The EA in the MEASS proposes MR from year 20 (Epoch 2) in the absence of the solar park, as there are a number of technical constraints to delivering MR on the Cleve Hill site in Epoch 1 (2019 to 2039).</p>	<p>Agreed</p> <p>Agreed</p>

KWT Comments	Applicant Response	Status (KWT to complete)
	<p>The Applicant expects the Development to operate for a finite period, anticipated to be 40 years. Whilst the DCO is not time limited, the Applicant has incorporated a suitably worded DCO Requirement which would result in the end of the operational phase of the Development after 40 years of operation subject to the EA (or equivalent body at the time) demonstrating that the MR proposals can be delivered on the Cleve Hill site.</p> <p>The Applicant discussed the wording of Requirement 17 (previously 15 and 16) during the Issue Specific Hearing 2 on the draft DCO [REP3-015]. Updated wording for this Requirement was provided in the version of the draft DCO submitted at Deadline 6 [REP6-003].</p>	<p>We recognise EA's acceptance of the revised Requirement wording with regard to the MEAS. The significant delay to the managed realignment is unacceptable given the imperative for realignment projects of this type and the lack of opportunity elsewhere (outside of the relatively narrow remit of the MEAS).</p>
<p>KWT-7 Kent Wildlife Trust's objective is to secure the best possible outcome for wildlife, and for the reasons above we believe refusal of the application would achieve that. However, should the Planning Inspectorate and Secretary of State grant the DCO, we will continue to work in good faith with all parties in the interests of biodiversity.</p>	<p>As described above, the Development does not exclude the opportunity for MR within suitable timescales in Epoch 2, subject to the EA (or equivalent body at the time) demonstrating that the MR proposals could be delivered on the Cleve Hill site. As well as addressing the wider ecological benefits of decarbonisation through renewable electricity generation, the Development can deliver biodiversity net gain as demonstrated in the submitted biodiversity metric calculations [REP4-052]. The Applicant welcomes KWT's continuing involvement in the HMSG.</p>	<p>Net gain would likely be higher with managed realignment (creating mudflat-saltmarsh-grazing marsh gradient). There are more alternative sites for solar parks than managed realignment.</p>

6 SUMMARY OF ORAL REPRESENTATIONS GIVEN AT ISSUE SPECIFIC HEARING 6 - COMMENTS

Table 5 - Summary of Oral Representations Given at Issue Specific Hearing 6 [REP5-048] - Comments

KWT Comments	Applicant Response	Status (KWT to complete)
<i>Comments in Submission [REP5-048] (KWT Reference in bold)</i>	<i>Applicant's response</i>	<i>E.g., Agreed / Not Agreed / N/A</i>
<p>Carrying Capacity of AR HMA for Brent goose The revised calculations for the carrying capacity for the AR HMA with regard to Brent geese that take into account the necessary avoidance of spreading manure within 10m of the ditches has resulted in the carrying capacity being 360 bird-days short of the mitigation target. Kent Wildlife Trust sticks to the principle of meeting the mitigation target.</p>	<p>The Applicant and Natural England have agreed in the November 2019 SoCG 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."</p>	<p>Not agreed. We don't consider this a precautionary approach given the principle established to mitigate the peak mean.</p>
<p>Ivermectin-free Manure The outline LBMP goes no further to secure ivermectin-free manure as the phrase 'where possible' is not defined, and could incorporate a wide range of situations. This includes the actual availability of ivermectin-free manure, which we can appreciate cannot be quantified at this time, and the financial implications of using it. As stated in our answer to ExQ2.1.7 the applicant's preference for using ivermectin-free manure is in order to 'avoid an adverse effect on invertebrates'. Given that plovers feed on invertebrates this raises uncertainty with regard to the management of Brent geese compromising the carrying capacity for lapwing and golden plover. We have requested that whether or not the manure used in the AR HMA is ivermectin-free or not be a variable recorded to assist with monitoring, alongside invertebrate biomass</p>	<p>The Applicant has included monitoring of ivermectin content of fertiliser and invertebrate density as part of the monitoring proposals for the AR HMA as set out in Appendix J of the Outline LBMP [REP6-005] (e.g., at Section 15.5.2). This has been agreed with Natural England (e.g., line 5 of Table 5 of the SoCG between the Applicant and Natural England [AS-050]). The Applicant does not believe it is necessary to further restrict use of ivermectins, however making alterations to the ivermectin content of fertiliser following monitoring is listed as a potential remedial measure should it be demonstrated that it is potentially having a negative effect on achieving the aims of the LBMP.</p>	<p>We welcome the monitoring of ivermectin content of manure and invertebrate density, and also to the potential for altering the ivermectin content should a negative effect be seen.</p>
<p>Lapwing and Golden Plover Carrying Capacity Measure from Gillings et al. We confirm that as Dr Gillings has confirmed that the figures</p>	<p>The Applicant welcomes KWT's agreement on this matter.</p>	

KWT Comments	Applicant Response	Status (KWT to complete)
for lapwing and golden plover carrying capacity from his study can be combined, this particular issue has been dealt with.		
Timing of AR HMA establishment With regard to the timing of establishment of the AR HMA as detailed within the LBMP, this is still an issue that requires 'correction', and we will be providing further suggested changes to that document to the applicant as requested.	The Applicant believes that the updates to the Outline LBMP submitted at Deadline 6 [REP6-005] and updated at Deadline 7 (Revision E) address this issue and make clear that the AR HMA will be established in advance of the first winter season of construction, (e.g., Sections 15.2.1 and Section 17).	Agreed.
Grazing of Grazing Marsh Grassland and AR HMA The revisions to the LBMP appear to be acceptable, but they relate to other parts of the LBMP which have been discussed elsewhere and require changes, for example the role of the HMSG. We were aware of the flexibility within the LBMP to allow either cutting or grazing to achieve the desired sward height. This flexibility may work in association with issues relating to cattle and ivermectins.	The Applicant believes that the updates to the Outline LBMP submitted at Deadline 6 [REP6-005] address these issues.	Agreed.
Triggers with the LBMP With regard to triggers and the LBMP, things are moving in the right direction, though further changes are still necessary. The HMSG attempted to deal with as many of the issues as possible. We welcome the applicant's willingness to make further changes, including on the role of the HMSG.	The Applicant believes that the updates to the Outline LBMP submitted at Deadline 7 will address this issue, following further consultation with the HMSG (including KWT) and LPAs on the role and governance of the HMSG.	Agreed (notwithstanding specific issues below on marsh harrier).
Remedial measures for marsh harrier The behavioural response of marsh harrier to the development is an unknown. If it is negative the LBMP does not provide any remedial measures that can address it. There are still changes required to the LBMP with regard to triggers and remedial actions. For example, a suggested remedial measure is to adapt the survey methodology – this is not a remedial measure, as survey methodologies will need to be robust enough to monitor changes from the start. We are	The Applicant believes that the updates to the Outline LBMP submitted at Deadline 6 [REP6-005] address these issues. The Applicant has provided a further submission on marsh harrier to the examination (draft version appended to the SoCG between the Applicant and Natural England (November 2019), and updated version with supporting figures submitted at Deadline 7	Not agreed. There is still uncertainty regarding the response of marsh harriers. There is no new information within the document that would remediate the loss of this area as marsh harrier foraging. More detail is included in our

KWT Comments	Applicant Response	Status (KWT to complete)
<p>also conscious that the presence of the development will make it harder to monitor the marsh harriers, owing to their hunting behaviour.</p> <p>As this is a unique project, we have nothing to compare it to with regard to marsh harriers' reaction their reaction, and the success of the mitigation remains an uncertainty with no remedial measures in LBMP. The applicant has done what they are able to do within the constraints of the development design. We provided a hypothetical example at the HMSG that if marsh harriers were seen to use a minimum width of corridor decommissioning of solar panels to ensure that all corridors were of this minimum width could be undertaken. Essentially what would be needed would be to increase the available habitat.</p>	<p>(document reference 15.6.2).</p> <p>The Applicant is clear that it is not necessary to incorporate measures in the DCO such as decommissioning solar panels for marsh harrier to increase the available habitat.</p>	<p>DL7 response [REP7-107]. We note from the figures within the marsh harrier document provided at Deadline 7 [REP7-037] (that we did not see before DL7) that the areas measured as providing optimum habitat include areas of scrub planted for landscape screening.</p>
<p>Further Detail in LBMP As per our response to ExQ2.1.6 and 2.1.8 we are happy with the further detail with regard to the grazing management and water level control.</p>	<p>The Applicant welcomes KWT agreement on this matter.</p>	<p>Agreed.</p>

7 COMMENTS ON RESPONSES TO THE EXAMINING AUTHORITY'S FURTHER WRITTEN QUESTIONS AND COMMENTS ON RESPONSES SUBMITTED FOR DEADLINE 4 - COMMENTS

Table 6 - Comments on responses to the Examining Authority's Further Written Questions and Comments on responses submitted for Deadline 4 [REP5-049]- Comments

KWT Comments	Applicant Response	Status (KWT to complete)
<p><i>Comments in Submission [REP5-049]</i> <i>(KWT Reference in bold)</i></p>	<p><i>Applicant's response</i></p>	<p><i>E.g., Agreed / Not Agreed / N/A</i></p>
<p>Marsh Harrier</p> <p>Owing to the lack of progress regarding impacts on this species, we have initially 're-capped' the issue so that we can respond to the information provided at Deadline 4, and incorporate further evidence we have found, in context.</p> <p>Displacement</p> <p>The development site is important for marsh harrier, forming an important foraging area throughout the year, and supporting nesting sites. The Report to Inform Appropriate Assessment stated that without mitigation, a Likely Significant Effect on Marsh harriers resulting from the loss of functionally linked land cannot be discounted (APP-026, paragraph 81).</p> <p>Owing to the significant change in the landscape, including reduction of foraging area to linear strips between arrays, we have contended that marsh harriers, given their habitat preferences and foraging behaviour, may not use the mitigation provided, either in whole or in part. The phrase 'in whole or in part' can be taken to refer to either individual birds or the Swale population as a whole, but in both cases the result is a reduction in the carrying capacity of the Swale SPA</p>	<p>Other examples of marsh harriers breeding near urban environments are at Radipole Lake in Dorset² and Potteric Carr in Doncaster³.</p> <p>KWT provided information from a paper by Alves et al. (2014) regarding the habitat use by marsh harrier. However, the Applicant disagrees with the interpretation by KWT of the conclusions of this study. The paper states "our field observations showed clear disturbance and avoidance behaviour of birds when, for instance, farmers and machines were operating in the area", but later qualifies that "The degree of disturbance caused by other human constructions, such as houses or warehouses, showed little or no relevance in the results but we believe they must also be considered. In fact, the consequences of this type of disturbance are often difficult to detect and quantify, especially because they are not immediate. Yet, birds may be affected indirectly by them, for instance in terms of reproductive success (Fernández and Azkona, 1993)." This research is therefore not as clear cut as KWT describe when alleging similar comparisons between this study and the potential for displacement effects of the solar arrays; it is perhaps the element of human activity associated with the "human constructions" that has the negative association,</p>	<p>Not agreed. There is still uncertainty regarding the response of marsh harriers. There is no new information within the document that would remediate the loss of this area as marsh harrier foraging.</p> <p>More detail is included in our DL7 response [REP7-107]. We note from the figures within the marsh harrier document provided at Deadline 7 [REP7-037] (that we did not see before DL7) that the areas measured as providing optimum habitat include areas of scrub planted for landscape screening.</p>

² http://www.bbc.co.uk/dorset/content/articles/2009/06/12/marsh_harriers_feature.shtml

³ <https://www.ywt.org.uk/sites/default/files/2018-07/June%202018.pdf>

KWT Comments	Applicant Response	Status (KWT to complete)
<p>for this species. Until recently the Applicant has not acknowledged this potential outcome of the mitigation being constrained by the development design, though the widening of the space between the arrays in response to Regulation 20 consultation to provide more habitat was welcomed.</p> <p>Within the Ornithology Chapter of the Environmental Statement (App-039, paragraph 360) and Report to Inform Appropriate Assessment (App-026, paragraph 209) the Applicant predicts that marsh harriers will continue to forage between the arrays. An example of a marsh harrier nesting within 100m of a haul road at Kemsley is also given, though as there are an estimated 80-100 breeding females in the County as a whole, we suspect this may be the 'exception that proves the rule'. An observation of a marsh harrier foraging along the edge of a solar park on Sheppey is also reported, though it is acknowledged that it was a casual observation, not part of a quantitative study, and this would still appear to be a much more open landscape than that proposed.</p> <p>In the most recent version of the Statement of Common Ground between the applicant and Natural England (REP4-039), the Applicant states "<i>There is no published evidence either way regarding the reaction of marsh harriers to solar arrays of this scale, or any other scale, in the landscape</i>" and "<i>...absence of evidence that marsh harriers would be displaced at landscape scale.</i>" We have undertaken another literature search (necessarily limited to that freely available online) with slightly broader search parameters (i.e. not specifying solar parks) and found a paper titled "Habitat Use and Selection of</p>	<p>rather than the constructions themselves. The solar park will operate with less intense human and vehicular activity than baseline farming operations.</p> <p>The Applicant has acknowledged KWT's assertion regarding the uncertainty of birds' responses to the presence of the Development but considers that there is sufficient certainty to conclude no adverse effect on integrity.</p> <p>The Applicant has provided a further submission on Marsh Harrier (draft version appended to the SoCG between the Applicant and Natural England (November 2019), and updated version with supporting figures submitted at Deadline 7 (document reference 15.6.2)) to the examination, which sets out the potential impact on The Swale SPA under two different scenarios: one where marsh harries are not excluded from the inter-array grassland areas (the Applicant's position) and one where they are excluded from those areas. Natural England's view is that this is helpful in demonstrating the areas of foraging habitat with or without excluding marsh harriers from the solar array. NE's position is that there is sufficient precaution built into the assumptions such that they can advise that when a formal appropriate assessment is undertaken, the evidence before the Secretary of State is sufficient to support a conclusion of no adverse effect on the integrity of the SPA.</p>	

KWT Comments	Applicant Response	Status (KWT to complete)
<p>the Marsh Harrier <i>Circus aeruginosus</i> in an Agricultural-Wetland Mosaic" by Alves <i>et al.</i>¹</p> <p>Alves <i>et al</i> identified the factors that influenced the occurrence and abundance of marsh harriers in an agricultural wetland landscape in Portugal. They identified that there was a negative association (with a strong statistical significance) between roads and 'Human constructions' (stated as "e.g. buildings, industry") and the presence of marsh harriers during the breeding season. While solar arrays are not mentioned per se, given the industrial look and scale of the solar arrays proposed for Cleve Hill, we see no reason why marsh harriers would react to them any differently than to any other form of building or industry. Alves et al state "<i>Human disturbance variables, such as agricultural machinery, constructions, road occupancy and cattle, presented a general negative effect on marsh harriers.</i>" This latter variable, cattle, also has potential implications for the LBMP, though it was only detected in the non-breeding period, so may not be an issue.</p> <p>In the absence of anything better, this study appears to be the best available evidence regarding the impact of industrial development on marsh harriers, and casts doubt on whether the proposed mitigation will avoid a Likely Significant Effect. As stated in our answer to ExQ2.1.15 (REP4-068) and at ISH6 there are no remedial measures in the LBMP that would 'remediate' this impact.</p>		
<p>Carrying capacity of the development site for small mammals</p>	<p>With respect to carrying capacity, the Applicant agrees that the future capacity and availability of prey for marsh harriers cannot be definitively quantified; however</p>	<p>Agree that the habitats created are likely to have a higher carrying capacity for</p>

¹ Alves, M., Ferreira, J., Torres, I., Fonseca, C., and Matos, M. (2014). Habitat Use and Selection of the Marsh Harrier *Circus aeruginosus* in an Agricultural-Wetland Mosaic. *Ardeola*. 61. 351-366. 10.13157/arla.61.2.2014.351. Available at https://www.researchgate.net/publication/269706421_Habitat_Use_and_Selection_of_the_Marsh_Harrier_Circus_aeruginosus_in_an_Agricultural-Wetland_Mosaic

KWT Comments	Applicant Response	Status (KWT to complete)
<p>In their answer to ExQ2.1.5 the Applicant states "<i>Whilst it is acknowledged that individual birds may be dissuaded from utilising the site by the presence of the Development, the greater availability of prey and the more favourable habitat created is expected to at least maintain the carrying capacity of the Order area at a population level</i>" (REP4-022). We welcome this acknowledgement that marsh harriers may be displaced from the site by the development. This is slightly confused by the statement shortly after "The Applicant is confident that the separations achieved are sufficiently wide that marsh harriers would not be deterred from entering the solar array area from the borrow dyke" as the two statements could be considered contradictory. We assume that the birds being referred to in this latter case are those individuals that have not been dissuaded from utilising the site by the presence of the solar panels.</p> <p>The shift from the potential positive effect on marsh harrier predicted in the Report to Inform Appropriate Assessment (APP-026, paragraph 363) to 'at least maintain the carrying capacity of the Order area' quoted above puts even more importance on the question of the effective carrying capacity of the development site.</p> <p>In support of the answer to ExQ2.1.15 the Applicant has provided a comparison of the carrying capacity of pre- and post-development habitats for small mammals (REP4-022). This is necessarily quantitative and relative, given the lack of empirical evidence available, including a baseline for the development site. While we would agree that the carrying capacity of the site for small mammals is likely to be higher owing to the change from arable to 'grazing marsh grassland', we would state that this does not necessarily translate into a higher carrying capacity for marsh harrier. The key unknown with regard to this is the availability of these small mammals</p>	<p>additional information was provided at Deadline 4 [REP4-022] in support of the expectation that the carrying capacity of the site for small mammals will be higher. The Applicant's position is that the new grassland extents both between the arrays and in the open landscape habitats of the AR HMA and areas of lowland grassland meadow will provide an increase in accessible foraging resources for foraging marsh harrier. In the baseline condition, when crop growth is high in the summer months (when marsh harriers are breeding), they present a physical barrier to the birds' prey, so birds are restricted in foraging extent to the narrow field margins. With the Development, the extent of favourable grassland resources (between arrays and in other HMAs) will be substantially larger than the baseline and it is available at all times of year and not limited, as is the case with arable crops that dominate the baseline landscape at the site.</p>	<p>small mammals compared to the current habitats and we welcome the commitment to monitoring these in the LBMP.</p>

KWT Comments	Applicant Response	Status (KWT to complete)
<p>to foraging marsh harrier, specifically those living under the panels.</p> <p>At present, mammals within the arable areas are available to the marsh harriers whenever the crops are not at a stage that provides a physical barrier, and marsh harriers have been shown to forage within different crops depending on the stage of growth (E.G. Cardador & Mañosa, 20112). The small mammals living in the grassland under the solar array will not be directly available to the marsh harriers. In order for the small mammal carrying capacity to translate into a marsh harrier carrying capacity we would have to assume that the rates of recolonisation of the available habitat strips by small mammals from under the array could maintain the hunting pressure exerted by the marsh harriers.</p> <p>Putting aside the displacement issue, maintaining the current carrying capacity of the site postdevelopment will mean providing enough available prey to maintain current hunting pressure. Taking into account the displacement issue and the Applicant's arguments made in REP4-022, it means individuals not displaced by the development foraging at a greater rate (or more individuals foraging) to make up for those that are. It seems unlikely that this can be quantified.</p>		
<p>Habitat Management Steering Group</p> <p>In our response to ExQ2.1.8 (REP4-068) we expressed concern regarding the 'enforceability' of the decisions of the HMSG and the existence of the HMSG itself. Given the 'adaptive management' approach taken in the Landscape and Biodiversity Management Plan, and the flexibility this requires, including regarding triggers and remedial actions – essentially meaning a lack of something specific that can be enforced if necessary – the framework within which the HMSG operates</p>	<p>The Applicant consulted the HMSG on a draft governance for the HMSG and has incorporated KWT's comments into the Outline LBMP submitted at Deadline 7 (document reference 6.4.5.2, Revision E).</p>	<p>Agreed. We are happy with the governance arrangements for the HMSG as set out in the DL7 LBMP.</p>

KWT Comments	Applicant Response	Status (KWT to complete)
<p>needs to be robust.</p> <p>The Applicant has expressed a willingness to accept further input into the role of the HMSG and how it may be secured. During the Issue Specific Hearing 6 where this issue was discussed, including the potential role of Swale, as the LPA, in the process, it occurred to us (but too late to raise) that were the LPA to chair the meetings of the HMSG (were the DCO to be granted, and as part of any further consenting, either as part of the LBMP or a separate requirement) it would go some way to addressing these concerns, I.E. by the LPA overseeing the HMSG decision making process. This was suggested briefly to Natural England and the representative from the LPA and the response was favorable, though it requires more discussion.</p>		
<p>Landscape and Biodiversity Management Plan</p> <p>At ISH6 the LBMP was discussed both as its own issue and in relation to other issues. We noted that the Applicant is intending to update the LBMP for Deadline 6, which is welcome as it gives more time for the HMSG to give feedback on Revision C (REP4-007 & REP4-008).</p> <p>Revision C did incorporate many of the changes suggested by Kent Wildlife Trust, though we necessarily concentrated on Appendices A and J. As discussed at ISH6, there are tweaks needed to the document. Some of these are more important, and relate to monitoring, triggers and remedial measures, and as mentioned above we would like to see the HMSG defined further (though if not in the LBMP, then as a separate requirement). Some are just corrections to errors that have crept in as the document has been revised, E.G. the discrepancy between the text and Section 16 (with regard to implementation of the AR HMA and construction). As they key</p>	<p>The Applicant is grateful for comments received from KWT and incorporated in Revision D of the Outline LBMP [REP6-005].</p>	<p>Agreed.</p>

KWT Comments	Applicant Response	Status (KWT to complete)
changes necessary were discussed at ISH6 and the corrections required relate largely to clarity we do not intend to provide these here, rather we will send them direct to the Applicant as part of the HMSG so the required changes can be made to the LBMP for Deadline 6.		