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29th June 2023

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**MALLARD PASS SOLAR PROJECT REF: 01027**

**SOUTH KESTEVEN DISTRICT COUNCIL – DEADLINE 3 SUBMISSION – 29.6.23**

I write with reference to the above and following the comments made by the applicant at Deadline 2 on the ExA's Written Questions, South Kesteven District Council (SKDC) would wish to make the following further comments, made in response to the comments provided by the applicant at Deadline 2.

Please do not hesitate to contact me should you need clarification on any of the points raised in this response.

Yours sincerely

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SOUTH  
KESTEVEN  
DISTRICT  
COUNCIL

ExA Written Question	Applicant Deadline 2 Response	SKDC – Further comments
<p><b>Q1.0.11</b> - Paragraph 5.13.8 of the ES [APP-035] sets out the core construction hours which would run from 07:00 to 19:00 Monday to Saturday, and no working on Sundays or Bank Holidays.</p> <p><b>a)</b> Please provide further explanation and justification for these proposed core hours, including the start/finish times and the continuation of construction working hours until 19:00 on Saturdays.</p> <p>The Local Planning Authorities and Mallard Pass Action Group are requested to provide their comments on the acceptability of the Applicant's proposed core construction hours.</p>	<p>Noise and vibration from construction and decommissioning activities have been assessed in accordance with the guidance of BS 5228 Parts 1 and 2. The assessment has determined that noise and vibration construction effects associated with the Project would be negligible to minor adverse and not significant. This takes into account the proposed working hours which are based on the standard construction hours set out in BS 5228 Part 1, Annex E.</p> <p>The oCEMP [APP-207] sets out further detail on the proposed working hours and the management of noisy activities beyond 13:00 on Saturdays. The proposed working hours will be agreed with the Local Authority and Section 61 Consents (as set out at paragraph 2.6.4) would be obtained which would include agreed construction noise limits for nearby noise sensitive receptors. Noise disturbance will be minimised as far as reasonably practicable through the use of Best Practical Means with reference to relevant guidance in BS 5228.</p> <p>The start and finish times directly equate to the proposed working hours; works will start at 07:00 and finish at 19:00 under the core working hours.</p> <p>The continuation of construction activities until 19:00 on Saturdays are justified given that the following activities will be excluded on Saturday afternoons (13:00 to 19:00):</p> <ul style="list-style-type: none"> <li>• Works likely to generate substantial levels of noise (including earthworks, trench construction and any piling)</li> <li>• HGV deliveries and movements</li> </ul> <p>Only other construction activities that are unlikely to generate high noise levels (e.g., site access and inductions, light vehicle movements etc.) may continue during these hours. Furthermore, if percussive piling is used within close proximity of Noise Sensitive Receptors</p>	<p><i>SKDC would refer to its response in relation to this same question as submitted at Deadline Two and would ask that the applicant consider the proposed approach as recommended.</i></p>



	<p>(NSRs), this will be restricted to no more than two periods of four hours each with at least one hour of no piling between these four- hour periods and restricted to the hours of 08:00 to 18:00 Monday to Friday and 08:00 to 12:00 on Saturdays.</p> <p>Horizontal Directional Drilling (HDD) could be required outside of the assumed day- time construction hours (i.e., evening, Sundays, Bank Holidays or at night) and would be agreed with the relevant planning authority as set out in paragraph 2.7.2 of the oCEMP. Table 3.5 of the oCEMP sets out that trenchless/HDD works will be completed in the shortest practical timescale and night-time noise generation minimised. To minimise the potential impacts on noise sensitive receptors, HDD will be at a minimum distance of 500m from the nearest residential property. If night- time operation is required, the closest residents to the works shall be notified of the start and completion of the works. The HDD plant would be installed and operated such that noise levels do not exceed a level of 45dB LAeq at the closest neighbouring noise-sensitive locations during night-time operation. Depending on the plant used, location, pit depth etc., this may require acoustic screening using temporary solid barriers with a height of at least that of the drilling equipment, located in proximity (around 10m or less) of the trenchless drilling work.</p>	
<p><b>Q5.2.4 - Requirement 7</b> (Landscape and ecology management plan)</p> <p>b) Should existing hedgerow measures be included?</p>	<p>The Outline LEMP (Rev 1) states that existing hedgerows will largely be retained and managed via a rotational cutting regime. The existing hedgerow protection measures will be set out further in the detailed Landscape and Ecology Management Plan.</p>	<p><i>SKDC note this comment, but at present, there is no specific obligation to include hedgerow protection measures as an item to consider within the Landscape and Ecology Management Plan (LEMP). A simple revision to the current wording of requirement 7(b) within the draft DCO would cover this point and confirm hedgerow protection measures are to be included within the LEMP. This would ensure the measures are subject to both approval and subsequent implementation.</i></p>



<p><b>Q5.2.4</b> - Requirement 7 (Landscape and ecology management plan)</p> <p>c) Should details of existing trees to be removed be included?</p>	<p>Details of existing trees to be removed will be set out in the detailed Landscape and Ecology Management Plan.</p>	<p><i>Again, SKDC note this comment, but at present, there is no specific obligation to include existing tree removal as an item to consider within the LEMP. A simple revision to the current wording of requirement 7(c) within the draft DCO would cover this point and ensure tree removal is subject to an approval process. Further to this, to ensure any suitable mitigation is provided, SKDC would also suggest that details of any replacement trees to be provided is also included within the wording at 7(c).</i></p>
<p><b>Q5.2.4</b> - Requirement 7 (Landscape and ecology management plan)</p> <p>e) Is there any conflict between the provision for landscaping management and maintenance measures 'during the operational life of the authorised development' in 2(f) and the five year replacement period for any shrub or tree planted under part 3 of this requirement?</p>	<p>Requirement 7(2)(f) (now Requirement 7(2)(g) in Rev 2) is subject to Requirement 7(3). The Applicant will maintain landscaping and ecological measures throughout the operational phase but will not be required to replace a planted tree or shrub during the entirety of the operational phase. The Applicant is only required to replace a tree or shrub that, within 5 years from its planting, dies or becomes seriously damaged or diseased as this allows for fixes to take place if growth rates are not being met – this is precedented in the Cleve Hill Solar Park Order 2020.</p>	<p><i>SKDC Note the clarification provided, including the typical approach to a 5-year maintenance period. However, SKDC remain concerned that the scale of the proposed development and the associated landscape and visual effects requires a more robust approach, to ensure a longer-term commitment to replace planting as necessary beyond the 5 year period. SKDC would also comment that the approach suggested by the applicant presents a potential disconnect between how the proposed development has been assessed and the commitment to mitigate its impacts. For example the LVIA ES Chapter notes that: “The landscape features within the Order limits will be subject to ongoing management to ensure the amenity and/or screening effects of this vegetation are achieved in the long term as detailed within the LEMP.”</i></p> <p><i>This raises question on the reliance that can be placed on mitigation, particularly where the ES Chapter only considers the effects at year 1 and year 15 during the operational period. SKDC considers that the period for maintenance to replace planting that dies or is removed should in the circumstances extend beyond the proposed 5-year period and should be safeguarded as a 15 year period, as set out in the SKDC deadline 2 submission.</i></p>
<p><b>Q5.4.2</b> - Part 2(1) of Schedule 16 requires that the relevant planning authority must give notice</p>	<p>a) The Applicant has updated the dDCO (Rev 2) submitted at Deadline 2 to provide a notice period of eight weeks. This reflects the notice period in similar</p>	<p><i>SKDC welcome the Applicant’s proposal to increase the notice period to 8 weeks and the reference made to other similar DCO’s. SKDC would also</i></p>



<p>of its decision within a period of six weeks (subject to the criteria set out in 2(1) (a), (b) and (c).</p> <p>a) Is a determination period of six weeks generally appropriate, including when taking account of the likely content of the submissions to be considered, the relevant procedures of each relevant planning authority and the possible need for publicity and consultation?</p> <p>b) Where new or different environmental effects are reported in any application under part 2(3) of Schedule 16, would a longer determination period be appropriate, including when taking into account circumstances where the relevant planning authority might need to carry out further publicity and consultation?</p>	<p>DCOs, including the Cleve Hill Solar Park Order 2020 and the LittleCrow Solar Park Order 2022.</p> <p>b) Part 2 of Schedule 16 of the dDCO (Rev 2) has been updated to provide further clarity. However, additional time for notification and consultation is provided in Part 3, with the period extended under Part 2(1)(b) to start the day immediately following on from which the further information has been supplied under Part 3. This takes into account a further period where consultation is required. This approach has been preceded in the Eggborough Gas Fired Generating Station Order 2018.</p>	<p><i>wish to refer to the Longfield Solar DCO scheme, which provided a 10 week period and a more flexible approach, which SKDC would also advocate would be appropriate for Mallard Pass. The wording from the Longfield DCO states the following:</i></p> <p><i>(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement the relevant planning authority must give notice to the undertaker of its decision on the application within a period of ten weeks beginning with the later of— (a) the day immediately following that on which the application is received by the authority; (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3; or (c) such longer period that is agreed in writing by the undertaker and the relevant planning authority.</i></p>
<p><b>Q5.4.3</b> – a) Would it be appropriate to include provision for the payment of fees to the discharging authority for applications made under Schedule 16?</p>	<p>The Applicant does not consider it necessary to include a provision for the payment of fees to the discharging authority. The need and/or detail of any fees will be discussed and agreed with the relevant planning authorities outside of the Order. This aligns with the approach taken in a large number of DCOs, including the Cleve Hill Solar Park Order 2020 and the Little Crow Solar Park Order 2022.</p>	<p><i>SKDC note the comments of the applicant but would reiterate that this is a significant resourcing obligation on the LPA and therefore to ensure it is able to proactively respond to and resource such requests a fee to the discharging authority is reasonable. A revision to the draft DCO to enable charging (with details to be agreed) is therefore considered appropriate and justifiable.</i></p>
<p><b>Q8.0.18</b> - Requirement 7 (Landscape and Ecology Management Plan (LEMP)) of the dDCO [APP-017] includes a five years maintenance period which is generally reflected in the Management Programme Schedule (Appendix 1) of the outline LEMP. Paragraph 6.2.5 of the ES [APP-036] explains that the</p>	<p>The oLEMP [APP-210] has been updated in at para 2.1.2 to clarify that maintenance will be undertaken for the duration of the operation of the Proposed Development.</p> <p>Appendix 1 of the oLEMP summarises the maintenance requirements that are required every year and every 5 years for the duration of the Proposed Development operation, with further</p>	<p><i>SKDC would refer to its previous response to this question at Deadline 2 and the importance of ensuring full landscape mitigation is delivered over a minimum period of 15 years. Reference is also made to the comments made on the applicant's response in relation to question Q5.2.4.</i></p>



LVIA assesses the landscape and visual effects at years 1 and 15 of operation to account for the visual screening provided by the proposed planting over time. It recognises that the exact timescales for visual screening can never be guaranteed as growth rates would be variable depending on a number of factors. Is the proposed maintenance period of five years appropriate, taking into account any benefits arising from the proposed landscaping in mitigating effects? If an alternative maintenance period is considered necessary, provide justification for this.

details to be set out in the detailed LEMPs.

Paragraph 6.2.2 of the oLEMP states that monitoring of the LEMP(s) will be undertaken every 5 years following completion of construction with a report of that monitoring to be submitted to the LPAs. This has been expanded in the updated oLEMP at paragraph 6.2.3 submitted at Deadline 2 to set out that replacement planting for planting that has failed to establish will form part of the remedial actions that will be taken during that 5 year period. This would allow for fixes to take place if growth rates are not being met.

