

Planning Inspectorate
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Our ref: XA/2024/100151/01-L01
Your ref: EN010139

Date: 17 September 2024

Dear Sir/Madam

DEADLINE 3 - COMMENTS ON ANY FURTHER INFORMATION/SUBMISSIONS RECEIVED BY DEADLINE 2. BYERS GILL SOLAR. MULTIPLE LOCATIONS ACROSS DARLINGTON, STOCKTON AND DURHAM.

We write in response to the Examining Authority's invitation to respond to information submitted at Deadline 2.

Updated Draft Development Consent Order (dDCO) [\[REP2-030\]](#)

Part 1, Preliminary, Interpretation

Although this section of the dDCO was not amended at Deadline 2, we note that the "site preparation works" on page 6 of the draft dDCO include:

- (c) remedial work in respect of any contamination or other adverse ground conditions.
- (g) site clearance (including vegetation removal, demolition of existing buildings and structures).

Such works are pre-commencement activities that could be undertaken without the controls that only apply following commencement. This means that these works could take place without the Construction and Environment Management Plan (CEMP) (Requirement 4) being approved or in place.

We advise that Requirement 4 is amended to include:

For the purposes of Requirement 4 (1) "commence" includes site preparation works comprising:

- *remedial work in respect of any contamination or other adverse ground conditions.*
- *site clearance (including vegetation removal, demolition of existing buildings and structures).*

Article 7b (disapplication and modification of legislative provisions)

We note that Article 7b (disapplication and modification of legislative provisions)

regarding the disapplication of Regulation 12 (requirement for Environmental Permit) of the Environmental Permitting (England and Wales) Regulations 2016(a) in relation to carrying out a Flood Risk Activity Permit (FRAP) has been removed. The applicant no longer seeks to pursue disapplication of a FRAP.

Schedule 11, Part 4 (For the Protection of the Environment Agency)

We note that Schedule 11, Part 4 (For the Protection of the Environment Agency) has been removed. The Environment Agency (EA) agrees that these Protective Provisions are now redundant as Article 7b has been removed.

Schedule 2, Part 1, Requirement 4 (Construction environment management plans (CEMP))

We note and welcome the below change (in bold) to Requirement 4.

*No phase of the authorised development may commence until a CEMP for that phase has been submitted to and approved by the relevant planning authority, **such approval to be in consultation with the Environment Agency**. Any CEMP submitted for approval must be in accordance with the outline CEMP and any approved CEMP must be adhered to for the duration of the works in the phase of the authorised development to which the CEMP relates.*

Schedule 2, Part 1, Requirement 8 (Materials Management)

Although we did not request this, we note and welcome the below change (in bold) (1) *No phase of the authorised development is to be commenced until a materials management plan covering that phase and in accordance with the outline materials management plan for that phase has been submitted to and approved by the relevant planning authority **in consultation with the Environment Agency**.*

8.11 Environmental Statement (ES) Errata and Management Plans Proposed Updates (page 6) [REP2-012]

Point 4ii raised in Environment Agency's Relevant Representation [RR-168]

We note that Table 4-6 of the Outline CEMP (oCEMP) [APP-110] is to be updated to include a commitment (ID HFR20-CEMP), within the CEMP, which secures an impact assessment and appropriate mitigation to address our fisheries concerns in relation to Directional Drilling under watercourses. Requirement 4(2) of the dDCO should be amended to reflect this update.

Point 6 raised in Environment Agency's Relevant Representation [RR-168]

We note that Table 4-6 of the oCEMP [APP-110] is to be updated to include a commitment (ID HFR21-CEMP), within the CEMP, which secures an impact assessment and control measures to address our groundwater/surface water interaction concerns. Requirement 4(2) of the dDCO should be amended to reflect this update.

Flood Risk Assessment (FRA) (Deadline 2 – August 2024 Revision 3) [REP2-

0141

We have not reviewed this FRA as we received flood modelling and an updated FRA from the Applicant's consultant on 5 September 2024. We are currently reviewing this information and will provide an update in due course.

Yours faithfully

Mr. Lewis Pemberton
Planning Specialist

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for people and wildlife



Environment Agency – Byers Gill Work Package Tracker

	<u>PINS RAG System</u>
	Agreed - no further discussion needed
	Working on a solution - final position not yet reached
	Not agreed - final position that cannot be agreed and will remain a point of difference

Environment Agency – Byers Gill Work Package Tracker

Overarching Tracker							
Subject	Topics	Assessment	Impact	Solution	Agreed requirement/ assessment updated to resolve issue	Requirement Number in DCO	Note:
Ecology within EA Remit	Outline Construction Environmental Management Plan (CEMP) (mitigation/ management measures to protect Otter and its habitat) (RR Point 4i)	Working on solution	Working on solution	Working on solution	Working on solution	4	The Applicant has agreed by email to update the oCEMP which will fully address this point. Environment Agency (EA) are waiting for oCEMP and CEMP Requirement to be updated.
	Fisheries (Directional Drilling) (RR Point 4ii)	Working on solution	Working on solution	Working on solution	Working on solution	4	<u>Environmental Statement (ES) Errata and Management Plans Proposed Updates (page 6) [REP2-012]</u> We note that Table 4-6 of the Outline CEMP (oCEMP) [APP-110] is to be updated to include a commitment (ID HFR20-CEMP), within the CEMP, which secures an impact assessment and appropriate mitigation to address our fisheries concerns in relation to Directional Drilling under watercourses. <u>Requirement 4(2) of the dDCO should be amended to reflect this update.</u>
	Water Framework Directive (WFD) Assessment regarding Directional Drilling (RR Point 3)	Working on solution	Working on solution	Working on solution	Working on solution		As Directional Drilling will take place under a watercourse, the WFD Assessment needs to be reviewed to show that these activities won't adversely affect WFD Status.
	WFD Assessment regarding new surface water outfall (RR Point 3)	Agreed	Agreed	Agreed	Agreed		<i>Deadline 2 Submission - Other Consents and Licences [REP2-005] has been updated. The reference to a new permanent drainage outfall installation has been removed. It is now clear that a new permanent surface water outfall will not be installed.</i>

Environment Agency – Byers Gill Work Package Tracker

Flood Risk	Sequential Test (RR Point 1)	Working on solution	Working on solution	Working on solution	Working on solution		The Applicant sent the EA an updated FRA and flood modelling on 5 September 2024. We are currently reviewing this information and we will respond to the Applicant shortly after Deadline 3.
	Vulnerability Classification (RR Point 1)	Agreed	Agreed	Agreed	N/A so agreed		The Vulnerability Classification is 'Essential Infrastructure'.
	Exception Test (RR Point 1)	Working on solution	Working on solution	Working on solution	Working on solution		The Applicant sent the EA an updated FRA and flood modelling on 5 September 2024. We are currently reviewing this information and we will respond to the Applicant shortly after Deadline 3.
	The development should include an assessment of flood risk over at least 75 years, in line with the PPG (RR Point 1)	Working on solution	Working on solution	Working on solution	Working on solution		The Applicant sent the EA an updated FRA and flood modelling on 5 September 2024. We are currently reviewing this information and we will respond to the Applicant shortly after Deadline 3.
	Climate Change Allowance (RR Point 1)	Working on solution	Working on solution	Working on solution	Working on solution		The Applicant sent the EA an updated FRA and flood modelling on 5 September 2024. We are currently reviewing this information and we will respond to the Applicant shortly after Deadline 3.
	Detailed Flood Modelling (RR Point 1)	Working on solution	Working on solution	Working on solution	Working on solution		The Applicant sent the EA an updated FRA and flood modelling on 5 September 2024. We are currently reviewing this information and we will respond to the Applicant shortly after Deadline 3.
Groundwater Protection	Directional Drilling and Control Measures (groundwater/surface water interaction) (RR Point 6)	Working on solution	Working on solution	Working on solution	Working on solution	4	Environmental Statement (ES) Errata and Management Plans Proposed Updates (page 6) [REP2-012] We note that Table 4-6 of the oCEMP [APP-110] is to be updated to include a commitment (ID HFR21-CEMP), within the CEMP, which secures an impact assessment and control measures to address our groundwater/surface water interaction concerns. <u>Requirement 4(2) of the dDCO should be amended to reflect this update.</u>
	CEMP to include Bentonite Breakout Plan (new issue not included in RR)	Working on solution	Working on solution	Working on solution	Working on solution	4	The Applicant has verbally agreed to update the oCEMP which will fully address this point. EA are waiting for oCEMP and CEMP Requirement to be updated.
	WFD Assessment regarding Directional Drilling (RR Point 3)	Working on solution	Working on solution	Working on solution	Working on solution		As Directional Drilling will take place under a watercourse, the WFD Assessment needs to be reviewed to show that these activities won't adversely affect WFD Status.

Environment Agency – Byers Gill Work Package Tracker

Surface Water Quality	WFD Assessment regarding new surface water outfall (RR Point 3)	Agreed	Agreed	Agreed	Agreed		Deadline 2 Submission - Other Consents and Licences [REP2-005] has been updated. The reference to a new permanent drainage outfall installation has been removed. It is now clear that a new permanent surface water outfall will not be installed.
	Construction Environment Management Plan (CEMP) in relation to Construction Surface Water Management Plan (RR Point 5)	Working on solution	Working on solution	Working on solution	Working on solution	4	The EA request to be consulted on the Construction Surface Water Management Plan. EA waiting for CEMP Requirement to be updated to reflect this.
	WFD Assessment (RR Point 3)	Working on solution	Working on solution	Working on solution	Working on solution		As Directional Drilling will take place under a watercourse, the WFD Assessment needs to be reviewed to show that these activities won't adversely affect WFD Status.
Development Consent Order (DCO)	Disapplication of Flood Risk Activity Permits (FRAP) under the Environmental Permitting Regulations (2016) (RR Point 2)	Agreed	Agreed	Agreed	Agreed		Article 7b of the dDCO [REP2-030] (disapplication and modification of legislative provisions) regarding the disapplication of Regulation 12 (requirement for Environmental Permit) of the Environmental Permitting (England and Wales) Regulations 2016(a) in relation to carrying out a Flood Risk Activity Permit (FRAP) has been removed. The applicant no longer seeks to pursue disapplication of a FRAP.
	EA to be consulted on CEMP - 'No phase of the authorised development may commence until a CEMP for that phase has been submitted to and approved by the relevant planning authority, <i>in consultation with the Environment Agency.</i> ' RR Point 4i)	Agreed	Agreed	Agreed	Agreed	4	Schedule 2, Part 1, Requirement 4 (Construction environment management plans (CEMP) of the dDCO [REP2-030] has been updated which now addresses this issue.
	"site preparation works" on page 6 of the draft dDCO include: •(c) remedial work in respect of any contamination or other adverse ground conditions. •(g) site clearance (including vegetation removal, demolition of existing buildings and structures). Such works are pre-commencement activities that could be undertaken without the controls that only apply following commencement. This means that these works could take place without the CEMP (Requirement 4) being approved or in place.	Working on solution	Working on solution	Working on solution	Working on solution	4	We advise that Requirement 4 is amended to include: For the purposes of Requirement 4 (1) "commence" includes site preparation works comprising: •remedial work in respect of any contamination or other adverse ground conditions. •site clearance (including vegetation removal, demolition of existing buildings and structures). <u>EA await an update from the Applicant.</u>