

**Byers Gill Solar
EN010139**

Statement of Common Ground with the Environment Agency

Planning Act 2008

APFP Regulation 5(2)(q)

Infrastructure Planning (Applications: Prescribed Forms
and Procedure) Regulations 2009

Volume 8

October 2024

Revision 2



Table of Contents

Page

1.	Introduction	1
1.1.	Purpose of this document	1
1.2.	Terminology	1
1.3.	Status of this document	1
2.	Current position	2
A.1	Record of Engagement	6

Table of Tables

Table 1	Current position of matters relevant to the parties' discussions.	2
---------	---	---

1. Introduction

1.1. Purpose of this document

- 1.1.1. This Statement of Common Ground (SoCG) has been prepared to support the Examination of the Development Consent Order (DCO) application for Byers Gill Solar (the Proposed Development).
- 1.1.2. This SOCG has been prepared jointly by **RWE (the Applicant)** and the **Environment Agency (EA)** in order to clearly identify the current position of the respective parties on specific matters that are, or have been, under discussion. It seeks to confirm to the Examining Authority (ExA) where there are points of agreement between the parties and where agreement has not been reached to date. It therefore aids the ExA in identifying any specific issues that may need to be addressed during the Examination and provides a structure to any further discussions for the parties engaged in the SoCG.
- 1.1.3. This document has been prepared in response to a specific request from the ExA as per the Rule 6 Letter [PD-003] issued on 25 June 2024.

1.2. Terminology

- 1.2.1. Section 2 of this document sets out the relevant matters raised through discussion between the parties. It provides a summary of the position of each party and identifies the status of discussions on each matter:
- “Agreed” means that a matter has been resolved between the parties and is not anticipated to be subject to further discussion;
 - “Under discussion” means that a matter remains in active dialogue between the parties and a final position has not been reached;
 - “Not agreed” means that the parties have established a final position that they cannot resolve the matter and will remain a point of difference.
- 1.2.2. In accordance with the request from the ExA in the Rule 6 Letter [PD-003], a **Low**, **Medium** and **High** ‘traffic light’ system is applied to each matter to indicate the likelihood of their resolution during the Examination period.

1.3. Status of this document

- 1.3.1. This document is currently in draft form and is unsigned.
- 1.3.2. When a final position has been reached on all matters, the respective parties shall sign the SoCG and submit it into the Examination as final and signed.

2. Current position

- 2.1.1. The table below provides a summary of the current position of the Applicant and the EA in relation to specific matters that have been under discussion to date.
- 2.1.2. Where a matter is not represented in the table, it should be assumed that it is either: (i) agreed between the parties and has never required detailed discussion; or, (ii) not relevant to the discussion between the parties.
- 2.1.3. Appendix A of this document provides a record of engagement undertaken between the parties in relation to the Proposed Development. This is limited to engagement which is materially relevant to the contents of this SoCG and does not seek to include every correspondence between the parties (e.g. that which was primarily administrative).

Table 1 Current position of matters relevant to the parties’ discussions.

Row ID	Topic	EA Position	Applicant Position	Status
EA1	Flood Risk	<p>Flood risk has not been appropriately assessed. The assessment has not demonstrated that the Sequential Test has been passed. The applicant must fully assess the flood risk over the development’s lifetime and use that information to demonstrate that the Sequential Test is passed.</p> <p>The development should include an assessment of flood risk over at least 75 years, in line with the PPG.</p> <p>For a development of this scale with a vulnerability classification of ‘essential infrastructure’ we would expect any assessment of fluvial flood risk to be based on detailed flood modelling.</p>	<p>Since receipt of the Relevant Representation, the Applicant has engaged further with the EA in relation to the points raised. In relation to the Flood Risk concerns, the Applicant and EA have discussed and agreed on a way forward. This includes:</p> <ul style="list-style-type: none"> • Updates to the FRA in relation to the sequential test and how this has been addressed. • Undertaking modelling to consider fluvial flooding in an area at risk. The methodology and approach to this modelling has been discussed and agreed. <p>The Applicant and EA are continuing to engage on this matter and will provide an updated position during the Examination once the EA have had the opportunity to review the Applicant’s updated documents.</p>	Under Discussion
EA2	Flood Risk	<p>The EA considers the vulnerability classification to be ‘essential infrastructure.’</p>	<p>The Applicant notes and agrees with the EA’s classification.</p>	Agreed

Row ID	Topic	EA Position	Applicant Position	Status
EA3	Flood Risk	Detailed flood modelling.	The Applicant sent the EA an updated FRA and flood modelling on 5 September 2024 and acknowledges that the EA is currently reviewing this information. It is anticipated that an update will be provided at Deadline 4.	Under discussion
EA4	Ecology	Outline Construction Environmental Management Plan (CEMP) (mitigation/ management measures to protect Otter and its habitat) (RR Point 4i)	The Applicant will provide an update to its ES Errata and Management Plan Proposed Updates [REP2-012] at a future deadline, which secures this commitment via the oCEMP.	Under discussion
EA5	Ecology	<i>Fisheries (Directional Drilling) (RR Point 4ii)</i> 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 and oCEMP should be amended to reflect this update.	The Applicant has accepted that additional control should be included within the outline CEMP to address this concern, which will be included in the next iteration of that document to be submitted to examination and has been committed to via the Environmental Statement (ES) Errata and Management Plans Proposed Updates (page 6) [REP2-012]. The final iteration of the outline CEMP will be a certified document under the dDCO, and there is therefore no need for any further amendment to be made to Requirement 4(2).	Under discussion
EA6	Ecology	<i>Water Framework Directive (WFD) Assessment regarding Directional Drilling (RR Point 3)</i> 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.	The Applicant notes the request of the EA and commits to providing an updated WFD assessment at a future deadline.	Under discussion
EA7	Ecology	The development included installation of a drainage outfall into a main river and these activities have not been assessed as part of the WFD assessment. The impacts of this outfall and directional drilling under a main river should be considered within the WFD.	Deadline 2 Submission - Other Consents and Licences [REP2-005] has been updated. The reference to a new permanent drainage outfall installation has been removed. The Applicant and the EA have engaged on this matter since the Applicant's update to its Other Consents and Licences [REP2-005] and understands this correction has been and is now agreed.	Agreed
EA8	Groundwater protection	<i>Directional Drilling and Control Measures (groundwater/ surface water interaction) (RR Point 6)</i>	The Applicant has accepted that additional control should be included within the outline CEMP to address this concern, which	Under discussion

Row ID	Topic	EA Position	Applicant Position	Status
		<p>The EA notes 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 and oCEMP should be amended to reflect this update.</p>	<p>will be included in the next iteration of that document to be submitted to examination and has been committed to via the Environmental Statement (ES) Errata and Management Plans Proposed Updates (page 6) [REP2-012].</p> <p>The final iteration of the outline CEMP will be a certified document under the dDCO, and there is therefore no need for any further amendment to be made to Requirement 4(2).</p>	
EA9	Groundwater protection	<p><i>CEMP to include Bentonite Breakout Plan (new issue not included in RR)</i></p> <p>The EA notes that Table 4 - 6 of the oCEMP [APP-110] is to be updated to include a commitment (ID HFR22-CEMP) which secures the development of a Bentonite Breakout Plan which seeks to assess potential leakages, their effects and proposed mitigation, subject to consultation with the EA. Requirement 4(2) of the dDCO and oCEMP should be amended to reflect this update.</p>	<p>The Applicant has accepted that additional control should be included within the outline CEMP to address this concern, which will be included in the next iteration of that document to be submitted to examination and has been committed to via the Environmental Statement (ES) Errata and Management Plans Proposed Updates (page 6) [REP2-012].</p> <p>The final iteration of the outline CEMP will be a certified document under the dDCO, and there is therefore no need for any further amendment to be made to Requirement 4(2).</p>	Under discussion
EA10	Surface Water Quality	<p>Construction Environment Management Plan (CEMP) in relation to Construction Surface Water Management Plan (RR Point 5). Requirement 4 (2) should include a Construction Surface Water Management Plan. EA waiting for CEMP Requirement to be updated to reflect this.</p>	<p>The Applicant has accepted that additional control should be included within the outline CEMP to address this concern, which will be included in the next iteration of the Environmental Statement (ES) Errata and Management Plans Proposed Updates (page 6) [REP2-012].</p> <p>The final iteration of the outline CEMP will be a certified document under the dDCO, and there is therefore no need for any further amendment to be made to Requirement 4(2).</p>	Under discussion
EA11	DCO	<p>Disapplication of Flood Risk Activity Permits (FRAP) under the Environmental Permitting Regulations (2016) (RR Point 2).</p>	<p>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.</p>	Agreed

Row ID	Topic	EA Position	Applicant Position	Status
EA12	DCO	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, in consultation with the Environment Agency.' RR Point 4i).	The Applicant notes the position of the EA. Schedule 2, Part 1, Requirement 4 (Construction Environment Management Plan (CEMP)) of the dDCO [REP2-030] has been updated to reflect this request.	Agreed
EA13	DCO	<p>The EA advise that Requirement 4 is amended to include: For the purposes of Requirement 4 (1) “commence” includes site preparation works comprising:</p> <ul style="list-style-type: none"> ▪ remedial work in respect of any contamination or other adverse ground conditions. ▪ site clearance (including vegetation removal, demolition of existing buildings and structures). EA await an update from the Applicant. 	The Applicant notes the request of the EA and will continue to engage with them on this matter. The Applicant will provide an update at a future deadline.	Under discussion

A.1 Record of Engagement

Date	Method of engagement	Purpose / Description
November 2022	Emails	Initial emails between the Applicant and EA to request and understand data and modelling held which could be used by the Applicant in assessment work.
September 2022	Codesign workshops	EA invited to attend codesign workshops
April 2023	Project newsletter	Newsletter issued to co-design workshop invitees to provide update on application.
May 2023	Statutory consultation	EA notified of statutory consultation
4 August 2023	Email	Issued project programme, as part of Early Adopter's Programme (EAP) trial
16 August 2023	Meeting (MS Teams)	Meeting to discuss EA's response to statutory consultation and draft Principle Areas of Disagreement Summary Statement (PADSS)
September 2023	Emails / Sharing of Draft Documents	Applicant issued Policy Compliance Document and Design Approach Document in draft for EA comment. Applicant issued PADSS.
24 October 2023	Email / Issue of Documents	Applicant issued draft ES Documentation in advance of meeting scheduled for 16 November 2023.
November 2023	Meeting (MS Teams)	Meeting to discuss draft PADSS and presentation of matters in advance of submission of the DCO Application.
November 2023	Email	Applicant issued updated PADSS and draft Protective Provisions (PPs) to EA for review and comment.
January 2024	Email	Correspondence between EA and the Applicant which confirms acceptability of not submitting a draft PADSS with the DCO Application due to having no 'principal' areas of disagreement at that time.
5 May 2024	Email	Introductory email from EA to the Applicant from the new centralised EA NSIP team.
17 May 2024	Email	Environment Agency issued their Relevant Representation to the Applicant.
12 June 2024	Meeting (MS Teams)	Meeting to discuss points raised within the EA Relevant Representation. The meeting focussed on the flood risk concerns raised but also touched upon the wider points, actions and next steps.
17 June 2024	Email	Modelling Methodology issued from Phil Sale (Modelling Specialist) to inform next steps and as discussed / agreed in meeting on 12 June 2024.
18 June 2024	Email from EA	Email following meeting on 12 June following internal EA discussions in relation to Fisheries (point 4ii) and Groundwater (point 6) points within the EA RR. Confirmation that the EA consider the concerns raised can be dealt with through Requirements and Management Plans.
16 July 2024	Email	Applicant issued draft SoCG and progress update regarding updated modelling to EA.
5 September 2024	Email	Applicant issued the Hydraulic Modelling Note and Appendix, as well as updated FRA which reflects the findings of that note.