

Planning Inspectorate
[byersgillsolar@planninginspectorate.gov
.uk]

Our ref: XA/2024/100217/01-L01
Your ref: EN010139

Date: 02 December 2024

Dear Sir

**DEADLINE 6 - COMMENTS ON ANY FURTHER INFORMATION/SUBMISSIONS
RECEIVED BY DEADLINE 5.. 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 5.

Please see below the ***Environment Agency & Byers Gill Solar Work Package Tracker*** which provides further detail on the progress of each Environment Agency Relevant Representation point following Deadline 5 submissions.

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	<u>Planning Inspectorate Red, Amber, Green (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

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Overarching Tracker							
Subject	Topics	Baseline Assessment	Impact	Solution	Agreed requirement or 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) (Relevant Representation (RR) Point 4i) [RR - 168]	Agreed	Agreed	Agreed	Agreed	4	6.4.2.6 Environmental Statement Appendix 2.6 Outline Construction Environmental Management Plan (Tracked) [REP5-013] includes the following, which satisfies our concerns outlined in our Relevant Representation regarding otter [RR-168]. <i>'In order to protect otter during construction, the following measures shall be implemented:</i> <input type="checkbox"/> <i>a pre-construction checking survey for otter to be completed in advance of any works within 50 m of any watercourse on the site</i> <input type="checkbox"/> <i>production as part of the detailed CEMP for an Otter Protection Plan (OPP) to be implemented during construction of the Proposed Development. The OPP will include details relating to any proposed watercourse crossings, modifications to existing watercourse crossings and any other in-channel works: i) detailed drawings (location and construction) ii) timing of works iii) methods and materials to be used.'</i>

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	<p>Fisheries (Directional Drilling) (RR Point 4ii)</p>	<p>Agreed</p>	<p>Agreed</p>	<p>Agreed</p>	<p>Agreed</p>	<p>4</p>	<p>6.4.2.6 Environmental Statement Appendix 2.6 Outline Construction Environmental Management Plan (Tracked) [REP5-013] includes the following, which satisfies our concerns outlined in our Relevant Representation regarding fisheries and Directional Drilling [RR-168]. <i>'An impact assessment of Directional Drilling on fish and appropriate mitigation will be fully addressed within the CEMP,, if drilling is to take place within the 10m buffer zone of a water course. The assessment should include, but not be limited to, the following:</i> <input type="checkbox"/> <i>The distance from the watercourse that the drilling will take place</i> <input type="checkbox"/> <i>The depth and width of the drilling.</i> <input type="checkbox"/> <i>Vibration and noise impact assessment on potential fish species residing in the watercourses.</i> <i>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 (EA).'</i></p>
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	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. We await the updated WFD Assessment.
	WFD Assessment regarding new surface water outfall (RR Point 3)	Agreed	Agreed	Agreed	Agreed	<i>Deadline 2 Submission - Other Consents and Licences [REP2-005]</i> 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.

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Flood Risk	Sequential Test (RR Point 1)	Agreed	Agreed	Agreed	Agreed	Compliance with policy regarding the Sequential Test is not within the remit of the EA. In regard to our Relevant Representation [RR-168] we were simply emphasising the need for the Applicant to demonstrate that the Sequential Test has been passed. The Flood Risk Assessment (FRA) now includes a section on the Sequential Test. It is within the remit of the Local Planning Authority to determine if the Sequential Test has been passed.
	Vulnerability Classification (RR Point 1)	Agreed	Agreed	Agreed	N/A so agreed	The Vulnerability Classification is 'Essential Infrastructure'.
	Exception Test (RR Point 1)	Agreed	Agreed	Agreed	Agreed	We reviewed the hydraulic modelling and the associated outputs and we're happy that the solar panel support frames would not increase flood risk off-site where they are placed in areas that flood (only area D02). We are also happy that the solar panels would be raised sufficiently to be above the 1 in 100 year plus higher central climate change level.
	The development should include an assessment of flood risk over at least 75 years, in line with the PPG (RR Point 1)	Agreed	Agreed	Agreed	Agreed	The Higher Central climate change was assessed for the 2080's epoch which is for the period from 2070 to 2125.
	Climate Change Allowance (RR Point 1)	Agreed	Agreed	Agreed	Agreed	The Higher Central climate change was assessed for the 2080's epoch which is for the period from 2070 to 2125.
	Detailed Flood Modelling (RR Point 1)	Agreed	Agreed	Agreed	Agreed	We have reviewed the Byers Gill modelling and hydrological assessment and do not have any comments to raise with regards to the model construct or the calculated flows. The model construct aligns with the method which was discussed during our meeting with the Applicant and Wallingford Hydrosolutions on the 12th June and the subsequent follow-up methodology dated 14th June 2024. We are happy that the solar panel support frames would not increase flood risk off-site where they are placed in areas that flood, for example solar panel area D02.

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Groundwater Protection	Directional Drilling and Control Measures (groundwater/ surface water interaction) (RR Point 6)	Agreed	Agreed	Agreed	Agreed	4	6.4.2.6 Environmental Statement Appendix 2.6 Outline Construction Environmental Management Plan (Tracked) [REP5-013] includes the following, which satisfies our concerns outlined in our Relevant Representation [RR-168] regarding Directional Drilling and groundwater/ surface water interaction [RR-168]. <i>Further assessment of impacts of Directional Drilling on groundwater and surface water interaction and control measures will be fully addressed within the CEMP. The assessment should include, but not be limited to, the following:</i> <input type="checkbox"/> <i>The depth of drilling.</i> <input type="checkbox"/> <i>The ground conditions/superficial geology where drilling is occurring.</i> <input type="checkbox"/> <i>The likelihood for groundwater to be intersected.</i> <i>The EA will be consulted on this assessment'.</i>
	CEMP to include Bentonite Breakout Plan (new issue not included in RR)	Agreed	Agreed	Agreed	Agreed	4	6.4.2.6 Environmental Statement Appendix 2.6 Outline Construction Environmental Management Plan (Tracked) [REP5-013] includes the following, which satisfies our concerns outlined in our Relevant Representation [RR-168] regarding bentonite breakout. <i>The contractor will produce a <u>Bentonite Breakout Plan which seeks to assess potential leakages, their effects and proposed mitigation, subject to consultation with the EA.</u></i>
	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. We await the updated WFD Assessment.

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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)	Agreed	Agreed	Agreed	Agreed	4	The Construction Surface Water Management Plan (CSWMP) and water quality monitoring requirements will be part of the CEMP (not a separate management plan) secured under commitment HFR2-CEMP within the oCEMP [REP5-012]. This ensures that the EA will be consulted on the CSWMP and water quality monitoring requirements.
	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. We await the updated WFD Assessment.



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 at a future deadline.</u>

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Yours faithfully

**Mr Lewis Pemberton
Planning Specialist**