



HELIOS RENEWABLE
ENERGY
PROJECT

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Draft Statement of Common Ground with Natural England

January 2025



Helios Renewable Energy Project

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Planning Inspectorate Reference: EN010140

January 2025

Prepared on behalf of Enso Green Holdings D Limited

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1. Introduction

1.1. Overview

- 1.1.1. This Statement of Common Ground ('SoCG') has been prepared by Enso Green Holdings D Limited (the 'Applicant') in conjunction with the Natural England in respect of the Helios Renewable Energy Project Development Consent Order (the 'Proposed Development').
- 1.1.2. The SoCG sets out the matters of agreement between the Applicant and Natural England and also explains those matters which, at the time of writing, remain in progress, or where agreement has not been achieved.
- 1.1.3. This SoCG is based on Natural England's Relevant Representation received on 10 October 2024 [RR-268].
- 1.1.4. The SoCG will be amended as the examination progresses to enable a final version to be submitted to the Examining Authority.
- 1.1.5. [This SoCG covers all the matters which are relevant to Natural England.]

2. Record of Engagement

2.1. Summary of consultation and engagement

- 2.1.1. There have been various meetings and correspondence between the Applicant and the Natural England relating to the Proposed Development, which is set out in full at ES Chapter 8: Biodiversity [APP-028].
- 2.1.2. In addition to the consultation undertaken as part of statutory consultation, the Applicant has proactively engaged with Natural England throughout the pre-application process, a service level agreement has been put in place to facilitate discussions and this is anticipated to continue throughout the examination process.
- 2.1.3. Since receiving the Natural England's Relevant Representation, the Applicant has acknowledged the requirement for further engagement with Natural England and this will be taking place through the examination period.

3. Current Position

- 3.1.1. Table 3.1 provides a schedule that summarises the position on key matters between the Applicant and Natural England. Appendix A details the position between the Applicant and Natural England on each relevant representation.
- 3.1.2. Each matter is attributed a status as follows:

Agreed	The matter is agreed between the parties, or there are no significant disagreements such that the matter is considered closed.
Under discussion	This matter is neither 'agreed' or 'not agreed'. Technical work is being undertaken with the aim of achieving agreement, though the risk of disagreement remains.
Not agreed	The matter is not agreed between the parties and the outcome of the approach taken by the Applicant or the Natural England is considered to result in a materially different impact to the assessment conclusions.

Table 3.1: Key Matters

Matter	Status	Date
International Designated Sites: Humber Estuary SPA / Humber Estuary Ramsar / Lower Derwent Valley SPA / Lower Derwent Valley Ramsar	Yellow	Nov 2024
International Designated Sites: All relevant international designated sites	Yellow	Nov 2024
International Designated Sites: River Derwent SAC / Lower Derwent Valley SAC / Humber Estuary SAC	Green	Nov 2024
International Designated Sites: Skipworth Common SAC / Thorne Moors SAC	Green	Nov 2024
International Designated Sites: Thorne and Hatfield Moors SPA	Yellow	Nov 2024
International Designated Sites: In-combination impacts on all relevant international designated sites	Yellow	Nov 2024
Nationally Designated Sites: All relevant nationally designated sites	Yellow	Nov 2024
Nationally Designated Sites: Humber Estuary SSSI	Yellow	Nov 2024
Nationally Designated Sites: Derwent Ings SSSI / Melbourne & Thornton Ings SSSI / Brighton Meadows SSSI	Yellow	Nov 2024
Nationally Designated Sites: Eskamhon Meadows SSSI	Yellow	Nov 2024
Nationally Designated Sites: Thorne, Crowle & Goole Moors SSSI / Hatfield Moors SSSI	Green	Nov 2024
Nationally Designated Sites: River Derwent SSSI	Green	Nov 2024
Protected Species	Green	Nov 2024
Best and Most Versatile Agricultural Land	Yellow	Nov 2024
Biodiversity Net Gain (BNG)	Yellow	Nov 2024

4. Signatures

4.1.1. This Statement of Common Ground is agreed upon:

On behalf of the Natural England:

Name:

Signature:

Date:

On behalf of the Applicant:

Name:

Signature:

Date:

Appendix A: Detailed Matters

Table A.1: Key Matters

Ref.	Matter	Natural England – Current Position Relevant Representation	Applicant’s Response	Status
NE-01.1	International Designated Sites Humber Estuary SPA Humber Estuary Ramsar Lower Derwent Valley SPA Lower Derwent Valley Ramsar	Potential loss of functionally linked land (FLL) for the relevant qualifying bird features of the listed SPA / Ramsar sites and comments on the conclusions of the HRA.	Attached at Appendix B is the Applicant’s current position in relation to Functionally Linked Land. The Appendix provides clarity on the methodology adopted for the assessment and the consideration of FLL. In summary, the Applicant considers that the methodology and information provided is sufficient. Natural England make reference to their paper ' <i>Evidence review of the impact of solar farms on birds, bats and general ecology 2016 (NEER012)</i> ', the Applicant has reviewed this paper with regard to the Proposed Development and notes that the paper includes generic information only and that all points relevant to the Proposed Development have been addressed in the ES. The Applicant does not propose to provide any further discussion on Natural England paper NEER0012.	Under discussion
NE-01.2		Potential loss of functionally linked land (FLL) for the relevant qualifying bird features of the listed SPA / Ramsar sites and comments on Ornithology report (APP-145)	Natural England provide a number of comments on the desk study aspect of the assessment, and request a comparison of desk study records and field survey results and further assessment to demonstrate how this informs conclusions of the HRA, the Applicant’s response is set out below with regard to these points: <ul style="list-style-type: none"> • Compare desk study to field results – the Applicant will provide this information to Natural England by Deadline 2. 	Under discussion

Ref.	Matter	Natural England – Current Position Relevant Representation	Applicant’s Response	Status
			<ul style="list-style-type: none"> • Consultation with county ecologist – the Applicant has previously consulted with the NYC ecologist in May 2023 and December 2023. • Consultation with local bird groups and other organisations that may hold relevant information – the Applicant will (if available) obtain records from the local bird club with specific records for the Site including a 500m buffer and the Applicant will provide this information to Natural England by Deadline 2. • Use of the BTO’s WeBs data to examine the collected survey data against peak bird counts for the estuary as a whole, and for the most relevant sectors – the Applicant will provide Natural England with a comparison for the Humber Estuary overall population relevant sections of the Humber SPA by Deadline 2. • A desk-based assessment using aerial photography, mapping, habitat maps and relevant ecological literature of the suitability for SPA birds of the habitats present on the proposed site and adjacent fields - the Applicant will provide this information to Natural England by Deadline 2. <p>With regard to Wintering/passage bird surveys the Applicant will provide the relevant figures of the transect routes, explanation regarding the data collection and varied coverage, and clarification on the peak count of Lapwings and how this is calculated to Natural England by Deadline 2.</p> <p>Finally, Natural England welcome the inclusion of Nocturnal surveys (January to March 2024) though wish to see more justification around the sufficiency of the surveys. The Applicant considers, that based on the current survey information (both daytime and nocturnal) there is no evidence of FLL on Site and therefore the survey work is appropriate, the</p>	

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Ref.	Matter	Natural England – Current Position Relevant Representation	Applicant’s Response	Status
			Applicant will provide further justification to Natural England by Deadline 2.	
NE-01.3		Potential loss of functionally linked land (FLL) for the relevant qualifying bird features of the listed SPA / Ramsar sites and comments on Ornithology HRA	The Applicant agrees that the additional information requested under NE1.2 (above) will be incorporated into the HRA. Regarding the definition of FLL this is considered in Avian technical note (Appendix B). The Applicants’ position is that Natural England has not provided a clear definition of FLL against which an assessment can be made. However the Applicant will provide Natural England with the additional information requested by NE (as outlined in NE 01.2 above) and an updated HRA by Deadline 2.	Under discussion
NE-02		Noise and visual disturbance during construction to potential FLL for the relevant qualifying bird features of the listed SPA/Ramsar sites	The Applicant will provide Natural England with further assessment of construction noise and disturbance along grid corridor to field 339 by Deadline 2.	Under Discussion
NE-03		Operational impacts (visual disturbance) to any adjacent FLL for the relevant qualifying bird features of the listed SPA / Ramsar sites	The Applicant will provide Natural England with an updated HRA with consideration of Appendix 2.5 Solar Photovoltaic Glint and Glare Study [APP-117] by Deadline 2.	Under Discussion
NE-04	International	Potential air quality impacts	The Applicant will provide the relevant air quality information within the HRA	Under

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Ref.	Matter	Natural England – Current Position Relevant Representation	Applicant’s Response	Status
	<p>Designated Sites All relevant international designated sites</p>	<p>from construction traffic on international designated sites.</p>	<p>and an updated copy will be issued to Natural England for review by Deadline 2.</p>	<p>Discussion</p>
NE-05	<p>International Designated Sites River Derwent SAC Lower Derwent Valley SAC Humber Estuary SAC</p>	<p>Potential impacts on the designated features of the River Derwent SAC, Lower Derwent SAC and Humber Estuary SAC - Natural England note that the River Derwent SAC, Lower Derwent SAC and Humber Estuary SAC are also designated for mobile features including otter and fish and there are unlikely to be impacts on these sites and they will not raise this through examination.</p>	<p>The Applicant acknowledges Natural England’s comments regarding the River Derwent SAC, Lower Derwent SAC and Humber Estuary SAC and agree that there are unlikely to be impacts on these sites and welcome that Natural England will not raise this through examination [RR-268].</p>	<p>Agreed.</p>
NE-06	<p>International Designated Sites</p>	<p>Potential impacts on the designated features of</p>	<p>The Applicant agrees with Natural England that impacts to Skipworth Common SAC and Thorne Moors SAC are unlikely [RR-268].</p>	<p>Agreed.</p>

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Ref.	Matter	Natural England – Current Position Relevant Representation	Applicant’s Response	Status
	Skipworth Common SAC Thorne Moors SAC	Skipworth Common SAC and Thorne Moors SAC – Natural England identifies that impacts to Skipworth Common SAC and Thorne Moors SAC are unlikely.		
NE-07	International Designated Sites Thorne and Hatfield Moors SPA	Potential impacts on breeding nightjar associated with Thorne and Hatfield Moors SPA	Both parties agree that significant effects on breeding nightjar associated with Thorne and Hatfield Moors SPA are unlikely and the Applicant will provide an updated HRA to Natural England by Deadline 2.	Under discussion
NE-08	International Designated Sites In-combination impacts on all relevant international designated sites	In-combination impacts on all relevant international designated sites	The Applicant will provide an updated cumulative assessment with consideration of East Yorkshire Solar Farm and will be provided to Natural England by Deadline 2.	Under discussion
NE-09	International Designated Sites	General advice on HRA procedure for the project	The Applicant will provide Natural England with an updated HRA including the information from Table 8.12 of ES Chapter 8 Biodiversity [APP-028] regarding LSE by Deadline 2.	Under discussion

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Ref.	Matter	Natural England – Current Position Relevant Representation	Applicant’s Response	Status
	All relevant international designated sites			
NE-10	Nationally Designated Sites All relevant nationally designated sites	Potential air quality impacts from construction traffic on nationally designated sites.	The Applicant will provide Natural England with the relevant air quality information by Deadline 2.	Under discussion
NE-11	Nationally Designated Sites Humber Estuary SSSI	Potential impacts on the Humber Estuary SSSI	The Applicant will provide Natural England with consideration of the Humber Estuary SPA/Ramsar site by Deadline 2.	Under discussion
NE-12	Nationally Designated Sites Derwent Ings SSSI Melbourne & Thornton Ings SSSI Brighton Meadows SSSI	Potential impacts on the Derwent Ings, Melbourne & Thornton Ings and Brighton Meadows SSSI	The Applicant will provide Natural England with consideration of the Derwent Ings, Melbourne & Thornton Ings and Brighton Meadows SSSIs by Deadline 2.	Under discussion
NE-13	Nationally	Potential impacts on the	The Applicant will provide Natural England with the relevant air quality	Under

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Ref.	Matter	Natural England – Current Position Relevant Representation	Applicant’s Response	Status
	Designated Sites Eskamhon Meadows SSSI	Eskamhorn Meadows SSSI	information by Deadline 2.	discussion
NE-14	Nationally Designated Sites Thorne, Crowle & Goole Moors SSSI Hatfield Moors SSSI	Potential impacts on breeding nightjar associated with Thorne, Crowle & Goole Moors SSSI and Hatfield Moors SSSI	As detailed above at NE-05, Natural England have no further comments [RR-268].	Agreed
NE-15	Nationally Designated Sites River Derwent SSSI	Impacts on the interest features of River Derwent SSSI – Natural England identify that the River Derwent SSSI is also designated for mobile features including otter and fish and there are unlikely to be impacts on these sites and they will not raise this through examination.	The Applicant agrees with Natural England that there are unlikely to be impacts to the River Derwent SSSI and no further information is required [RR-268].	Agreed
NE-16	Protected Species	Protected Species – General	The Applicant agrees to Natural England’s comments regarding licences [RR-268].	Agreed

Ref.	Matter	Natural England – Current Position Relevant Representation	Applicant’s Response	Status
			Summary: Approach is agreed.	
NE-17	Biodiversity Net Gain (BNG)	BNG – General and advisory note on delivery	The Applicant has submitted a BNG assessment to demonstrate that a net gain can be achieved. The Applicant will not be providing any additional assessment as the statutory regime does not apply to NSIPs.	Under discussion
NE-18	Best and Most Versatile Agricultural Land	Soils and BMV Agricultural Land – Detailed Comments	<p>The Applicant notes that Defra’s Construction Code of Practice is already referred to in the Outline Soil Resource Management Plan (oSRMP) and extracts from the Code of Practice are even attached to the oSRMP at Appendix KCC4. Furthermore, the Institute of Quarrying’s Good Practice Guide is already referred to in the oSRMP at paragraph 4.15 and Table 4.2 is already appended at Appendix KCC2, and the oSRMP, at 4.6 to 4.18, including using the services of a soil expert as necessary and using the Institute of Quarrying’s soil suitability tests.</p> <p>The Applicant commits to restoration to the same ALC grade as before construction starts. This includes the BESS areas where there is attenuation pond construction.</p> <p>The Applicant agrees with Natural England’s comments about winter recovery being slower. The oSRMP at 7.10 and 12.1 already sets out that timing of works is important, specifying that a suitably qualified soil scientist</p>	Under discussion

Ref.	Matter	Natural England – Current Position Relevant Representation	Applicant’s Response	Status
			<p>shall be engaged “<i>prior to decommissioning to update the guidance and timing</i>”.</p> <p>With regard to the ALC of the cable route corridor the Applicant is not clear what Natural England are referring to, but the principles of 30cm topsoil over 90cm subsoil (if that was the depth pre-construction) are noted and will be adhered to.</p> <p>The cable trench will be a relatively narrow excavation, with topsoil stripped over the working width prior to trenching. The working width may vary depending on details such as coring or restrictions such as hedgerow gaps.</p> <p>A detailed soil survey and ALC assessment will be carried out for the final Soil Resources Management Plan once the route of the trench has been determined more accurately, so that large areas of land are not assessed unnecessarily.</p> <p>That approach will accord with the conclusions of the Examining Authority, as confirmed by the Secretary of State, as set out in paragraph 4.72 of the decision letter, as described in the ExA’s report summarised at 4.63 and 4.64 of the SoS decision letter.</p> <p>Natural England’s advice that seeding with grass seed needs to take place</p>	

Ref.	Matter	Natural England – Current Position Relevant Representation	Applicant’s Response	Status
			<p>at certain times of the year to be successful is noted and agreed. Seeding is normally done in the spring or the autumn. This is a basic growing technique, and this can be clarified in the final SRMP if considered necessary.</p> <p>The comments by Natural England on the oSRMP set out in 4.2.6 of their S42 response on 19th December 2023 have been largely cut and pasted into the comments above and have been addressed. All comments are important, but all relate to small matters of clarification of detail. To clarify, it is proposed that the cable corridor is surveyed post consent but prior to construction once the final route is known. The Applicant also notes that the ALC methodology remains unchanged and the ALC gradings for the Site is therefore correct and has not been overstated.</p>	

Appendix B: Response to NE Position on Functionally Linked Land

Client Name: Enso Green Holdings D Limited
Site Name: Helios Renewable Energy Project
Date: 18/09/2024

Response to Natural England Position on Functionally Linked Land

To whom it may concern,

This response letter has been prepared by Avian Ecology Ltd. ('AEL'), in relation to the proposed Helios Renewable Energy Project ('the Proposed Development'), a Nationally Significant Infrastructure Project (NSIP) located on land close to Drax in North Yorkshire ('the Site').

The response letter is provided in response to Natural England (NE) comments regarding the Proposed Development Site's potential to constitute Functionally Linked Land (FLL) in relation to the Humber Estuary Special Protection Area (SPA) and the Lower Derwent Valley SPA. NE's comments were provided in a letter dated 26th April 2024 (NE reference DAS/A009135).

NE's letter was provided in response to the Applicant's technical note (AEL, dated 9th April 2024) and submitted under NE's Discretionary Advice Service (reference DAS UDS-A008017). In their subsequent response letter of 26th April, NE stated that they were unable to comment on the conclusions of the technical note until updated versions (final reports) were received; however, NE did include commentary on the determination of FLL.

Subsequently, the purpose of this response letter is not to address each point raised by NE, as the large majority of requested information has subsequently been included in the project Environmental Statement (ES), its purpose is to clarify the Applicant's position on FLL in relation to the project Site.

Definition of Functionally Linked Land

According to NE report NECR361¹, FLL is a term '*often used to describe areas of land or sea occurring outside a designated site which is considered to be critical to, or necessary for, the ecological or behavioural functions in a relevant season of a qualifying feature for which a Special Areas of Conservation (SAC)/ Special Protection Area (SPA)/ Ramsar site has been designated. These habitats are frequently used by SPA species and supports the functionality and integrity of the designated sites for these features*'.

NECR361 then goes on to state that '*There is a requirement for competent authorities to consider the importance of functionally linked habitats in Habitats Regulation Assessments (HRAs) when assessing new plans or projects to ensure the Conservation Objectives for the site can still be delivered. The impact of the loss of functionally linked land on European sites can be difficult to determine as there is often limited information available*'.

¹ Natural England Report NECR361 'Identification of Functionally Linked Land supporting Special Protection Areas (SPAs) waterbirds in the North West of England (NECR361)'. Available at: <https://publications.naturalengland.org.uk/publication/6303434392469504> [accessed 17th September 2024].

NECR361 goes on to define FLL as ‘areas of land occurring within 20 km of an SPA, that are regularly used by significant numbers of qualifying bird species’.

It is noted and accepted that NE report NECR361 relates to the northwest of England; however, the definition of FLL remains valid for any plan or project. The Applicant accepts that establishing whether the Helios site constitutes FLL is critical requirement of the HRA process.

NE have also published a review of authoritative decisions on how FLL has been determined (report NECR 207²). This notes that ‘Natural England advisers need to judge whether the impacts on habitats that are functionally linked to a site, may adversely affect its integrity and whether the effects are significant in light of the conservation objectives for the site. This report [NECR 207] aims to provide an analysis of authoritative decisions that have considered functional linkages in cases assessed under the Habitats Directive and Regulations. It will be used as a referencing tool for Natural England and other decision makers, in particular Natural England advisers involved in casework. This document provides a useful summary of previous decisions as to whether other development sites were considered to represent FLL and has been reviewed in the preparation of this response letter.

To the AEL’s knowledge, there is no other NE published guidance on how FLL should be defined, in terms of the levels of usage of a site by SPA (or SAC) qualifying features, except for specific guidance covering the northwest of England (as detailed in NE report NECR361).

For bird populations (SPAs), the long established ‘accepted norm’ followed to establish FLL has been to count numbers of birds using a site and the frequency of presence, which is derived from field surveys, against the most up-to-date population data for the corresponding SPA. Should on-site surveys regularly exceed 1% of an SPA species population, then the proposed development site and/or adjacent land are subsequently considered to be FLL. Population data for wetland birds, as is relevant to the Helios project, is usually derived from ‘Wetland Bird Survey’ (WeBS) data³, available from the British Trust for Ornithology (BTO).

This established approach has been accepted by NE, statutory bodies and other consultees across the UK for at least fifteen years and has conventionally formed the basis of requirements for Habitats Regulations Assessment (HRA).

NE report NECR361 defines potential FLL more prescriptively, whereby a site must be **regularly used** by **significant numbers** of qualifying bird species.

The NECR361 report defines a significant number as 0.5% of the GB population, or 1,000 individuals. The report states that this was preferred, rather than deferring to 1% of the qualifying population of multiple separate SPAs, as there are a series of inter-connected estuarine SPAs in the northwest of England which some qualifying species regularly commute between.

According to NECR361, defining regular usage means counting the number of times the significance threshold is surpassed. NECR361 refers to Stroud *et al.* (2001), which defined ‘regular’ as when a

² CHAPMAN, C. & TYLDESLEY, D. 2016. Functional linkage: How areas that are functionally linked to European sites have been considered when they may be affected by plans and projects - a review of authoritative decisions. Natural England Commissioned Reports, Number 207.

³ Woodward, I.D., Calbrade, N.A., Birtles, A., Feather, G.A., Peck, K., Wotton, S.R., Shaw, J.M., Balmer, D.E. and Frost, T.M. 2024.

Waterbirds in the UK 2022/23: The Wetland Bird Survey and Goose & Swan Monitoring Programme. BTO/RSPB/JNCC/NatureScot. Thetford.

Contains Wetland Bird Survey (WeBS) data from Waterbirds in the UK 2022/23 © copyright and database right 2024. WeBS is a partnership jointly funded by the BTO, RSPB and JNCC, with fieldwork conducted by volunteers and previous support from WWT.

threshold is met in two thirds of the season for which adequate data are available. Clearly use of this threshold is dependent on the availability of extensive site-specific data.

It is acknowledged that Section 5 (Limitations) of NE report NECR361 notes that other ways of defining FLL may be more appropriate, if circumstances differ.

The Applicant is not aware of any other definition of significance or frequency thresholds which relate to wetland and estuarine SPAs, as applicable to the Proposed Development.

Natural England Position letter dated 26th April 2024

In the response letter of 26th April 2024, NE states that SPA populations are now known to be increasingly vulnerable due to a variety of pressures. NE therefore no longer considers the 1% threshold appropriate in isolation, stating it should be used as a 'rule of thumb', but combined with other assessment.

With regards to other assessment, NE state this can include 'how birds are using the project site in each season, even if numbers are below 1%, and could include assessment of factors such as frequency of use and vulnerability of the species present. To expand on the latter point, for example, where species are particularly vulnerable due to declines in the Humber population, it may not be appropriate to rely on the 1% of the estuary population, and mitigation measures may be required where lower numbers of vulnerable species are using a site that is proposed for development. Factors such as site characteristics can also inform the assessment, for instance, through assessment of the habitat type in the years of survey. For example, this could include any cropping regimes that may impact its suitability to support SPA birds'

At the time of writing (26th April 2024), NE had not been provided with the full set of survey information which has subsequently been submitted in the project ES. As such it is accepted that NE's position may change.

Use of the Application Site by SPA Species

Bird surveys of the Site and adjacent land are detailed in Appendix 8.2 of the ES, and a separate 'Information to inform HRA report' forms Appendix 8.9 of the ES.

These two documents detail survey effort and results, along with assessing the potential for the Site to constitute FLL based on the widely adopted 1% threshold.

No evidence of regular use of significant numbers (which was defined as >1% of the recent, 2021/22 5-year mean SPA population for alone qualifying species, and appropriate threshold for waterbird assemblage only species) within the Site was identified over the course of the survey period for any Humber Estuary or Lower Derwent Valley SPA qualifying species.

During the surveys, there was evidence that the Site was used by very low numbers of golden plover and shelduck, both of which are SPA qualifying species; however, this was limited to one occasion for each species across the entire survey period, with peak counts of both being just two birds. As such records were not regular, nor were counts anywhere close to representing a potentially significant threshold. It was therefore adjudged that no individual SPA qualifying species met FLL criteria at any time.

The Site was also used by typically low numbers of lapwing, mallard and oystercatcher, which are listed as part of the 'waterbird assemblage' of the SPAs. Numbers of mallard and oystercatcher onsite were very low during the survey period (peak of only respectively six and four mallard and oystercatcher).

Whilst lapwing were recorded more frequently, numbers were low. During the 2021/22 season, over the 12 field surveys, numbers ranged from 0 to 211 birds, with an average count of 55. During the passage periods (and nocturnal surveys) the number of lapwings recorded onsite was reduced (≤ 14 birds), and during the 2022/23 season no lapwings were recorded onsite at all. As such, lapwing usage of the Site was sporadic. Subsequently Appendix 8.9 to the ES concludes that there is no evidence that the Site constitutes FLL for assemblage species.

Consideration of NE position letter with regards to FLL

It is acknowledged that that FLL is not fully defined and therefore subject to a degree of interpretation. However, the use of the 1% population threshold has become an accepted norm across most of the UK (aside from northwest England), and one which regularly forms an important part of the decision-making process. To AEL's knowledge, there is no precedent for use of an alternative approach in establishing FLL for waterbirds, or an example of where mitigation has been required should survey data demonstrate counts remained below the 1% threshold.

Extensive Site surveys have been undertaken and the results are fully reported in the submission documents. The application also includes an Information to Inform HRA report (as Appendix 8.9 of the ES), and so the potential for impacts on European sites has been fully considered.

It is considered relevant that the 1% threshold has also been adopted on other directly comparable developments. Recent NSIP examples include East Yorkshire Solar Farm (EYSF) and Tween Bridges Solar Farm, both of which are similar to the Site of the Helios project, both in terms of habitats, potential species present and proximity to the Humber SPA. EYSF is also close to the LDV SPA, and so very similar to the Proposed Development in this respect.

As such, the additional consideration and information requested by NE (letter of 26th April) is not considered to be consistent with other applications in this region.

Whilst AEL accepts that further data and analysis could have been necessary, it is our professional view that this would only be required should there be evidence that the Site is regularly used by significant numbers of birds, and so additional context and consideration would become a necessary requirement for the Appropriate Assessment (AA) stage of HRA. Had numbers of qualifying species approached the 1% threshold, or had there been evidence of regular use, then it is accepted that further analysis would have been necessary. Numbers of qualifying species recorded on Site were extremely low and records very infrequent (irregular). As such there is no basis on which to assume that mitigation would be required, and AA is not considered necessary.

It is highlighted that NE's letter of 26th April notes frequency of use as a potential reason for justifying additional analysis. As outlined above, Appendices 8.2 and 8.9 of the ES do fully consider frequency of use, and therefore this information is available for consideration by NE.

It is therefore not clear as to how any additional information, e.g., on cropping patterns or vulnerability of species as suggested by NE, could lead to a conclusion of a potential for Likely Significant Effect (LSE) on the two relevant European sites and a subsequent need for AA.

AEL therefore politely requests that NE reconsiders its request for additional information, having subsequently been provided with the full submission documents (ES and corresponding appendices) and on review of the comments made in this letter.

Yours sincerely,

Howard Fearn MSc MCIEEM

Managing Director, Avian Ecology Ltd.