

**From:** [REDACTED]  
**To:** [Cleve Hill Solar Park](#)  
**Cc:** [REDACTED]  
**Subject:** MMO Response to Deadline Rule 8 Letter Cleve Hill Solar Park  
**Date:** 25 June 2019 17:00:36  
**Attachments:** [REDACTED]

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Dear Sir/Madam,

Your ref: EN010085

Please find attached the MMO Response to Deadline Rule 8 Letter for Cleve Hill Solar Park.

If you have any queries on the above response please do not hesitate to contact me.

Kind regards

Lindsey

Lindsey Mullan | Marine Licensing Case Officer | Her Majesty's Government – Marine Management Organisation.

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**Your Reference:** EN010085  
**Our Internal Reference:**  
DCO/2018/00013

## By email only

25 June 2019

Dear Sir/Madam,

### **RE: Cleve Hill Solar Park – SECTION 89 AND THE INFRASTRUCTURE PLANNING (EXAMINATION RPROCEDURE) RULES 2010: EXAMINING AUTHORITY’S “RULE 8 LETTER”**

The Marine Management Organisation (MMO) has reviewed the Examining Authority’s (ExA) ‘Rule 8 Letter’ dated 07 June 2019.

The MMO is an interested party and statutory consultee for the examination of Development Consent Order (DCO) applications for Nationally Significant Infrastructure Projects (NSIPs) which have an interaction with the UK Marine Area (Section 42, Marine & Coastal Access Act 2009). The MMO received notification on 14 December 2019 stating that the Planning Inspectorate (PINS) (on behalf of the Secretary of State for Business, Energy and Industrial Strategy) had accepted an application from Cleve Hill Solar Park Limited (“the Applicant”), for a DCO for Cleve Hill Solar Park.

The proposed development site is located near Graveney, approximately 2 km north east of Faversham and 5 km west of Whitstable on the north Kent coast, where Faversham Creek forms the western site boundary and The Swale Channel forms the northern boundary. The proposed development site extends over 491.2 hectares and includes areas of arable land, freshwater grazing marsh, flood defences and the existing Cleve Hill substation. The MMO understands that the Project will comprise an electricity generating facility (by way of a Solar Photovoltaic Array) and an electrical energy storage facility, with a total capacity exceeding 50 Megawatts (‘MW’), together with associated infrastructure and development required by the project.

The MMO has an interest in this project because the development will require maintenance of an existing coastal flood defence, currently maintained by the Environment Agency.

The following constitutes the MMO’s formal response to the matters arising within the rule 8 letter. For purposes of clarity and completeness, the MMO’s formal response to each of



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the 7 matters within Item 5 (Deadline 2 of Rule 8, Annex B) are addressed together within this packaged response.

## **1 Comments on Relevant Representations (RRs)**

### **1.1 Environment Agency (EA), 25 January 2019**

The majority of the Environment Agency (EA) response relates to their own third-party permits and consents, and matters outside of the MMO's jurisdiction under the Marine and Coastal Access Act 2009. In their representation, the EA state that the future maintenance of the existing flood defences become the responsibility of the applicant in the event that the Authorised Project is implemented.

The MMO note that the EA support the proposals for achieving this. As has been expressed to the applicant directly on a number of occasions, we encourage the implementation of a DML. We reiterate our previous disagreement to the application of an EA Exemption whilst noting the applicant has engaged positively with the MMO to pursue the inclusion of a DML.

The MMO notes that Cleve Hill is critical to achieving the objectives of the Medway Estuary and Swale Coastal Flood and Erosion Strategy (MEASS), which necessitates the creation of 353ha of intertidal habitat. The EA have requested a 40 year time limit on the development so that they can undertake managed realignment in line with their Habitats Regulations Assessment. The MMO observes this timescale and considers it relevant to the duration of the DML.

### **1.2 Natural England, 28 January 2019**

The Natural England (NE) response focuses on statutorily designated nature conservation sites, namely The Swale Special Protection Area (SPA), Ramsar site and Site of Special Scientific Interest (SSSI). The MMO is pleased to note that progress has been made between the Applicant and Natural England with regards to mitigating potential impacts. The MMO notes that in their representation NE support the EA with regards to a recommendation for a time limit on the proposal.

The MMO propose to include a maintenance condition within the DML and will involve NE in any future consultation so as to ensure any future impacts are considered, controlled and mitigated against when required.

### **1.3 Historic England, 28 January 2019**

The response from Historic England (HE) is concerned with heritage matters above Mean High Water Springs and is therefore outside of the MMO's jurisdiction under the Marine and Coastal Access Act 2009.

## **2 Summaries of all RRs exceeding 1500 Words**

**2.1** The MMO's Relevant Representation dated 24 January exceeds 1500 words. For brevity, a summary of this representation totalling 261 words is found below.

**2.2** The MMO welcomes consultation on this proposal but would like to note that the MMO was not consulted on the original scoping opinion for the project, as the site boundary at that time was entirely above MHWS. Subsequently, it was identified by the Applicant that there was a requirement to maintain the existing coastal flood defences which run around the northern and western sides of the proposed development site. Following an



amendment to the site boundary, the MMO was consulted by the Applicant under section 42 of the 2008 Act in May 2018. Responses were provided by the MMO in June 2018 and November 2018.

**2.3** The MMO had concerns around the applicant's proposal to 'adopt' the provisions of the Marine Licensing (Exempted Activities) Order 2011 (as amended). This proposal purported to extend the exemptions intended to cover activities carried out by statutory authorities (such as the EA) for statutory purposes to private companies. The MMO is unable to support the inclusion of the above provision.

**2.4** The Applicant is aware of the MMO's concerns regarding Part 6 s29 of the draft DCO, and that it is our preference to include a DML to permit ongoing maintenance activities. To support this, the Applicant has also included a draft DML within their application. Further work is required on this document to ensure that it is fit for purpose to enable the MMO to carry out its obligations relating to post consent monitoring, variation, enforcement and revocation of provisions relating to the marine environment.

**2.5** The MMO will continue to engage with the Applicant regarding the drafting of the DML and the development of Statements of Common Ground (SoCG).

### **3 Written Representations (WRs)**

**3.1** Following engagement with the Applicant, the MMO is largely in agreement with the scheme in relation to the areas which fall under our jurisdiction (i.e. working areas within the UK Marine Area, as defined by Section 42 of the Marine and Coastal Act).

**3.2** As has been clarified during pre-application, the MMO's main item of interest are the coastal flood defences located partly below Mean High Water Springs (MHWS) within The Swale.

**3.3** The MMO supports the Applicant's decision to include a DML with this DCO application, removing reference to the exemption. The MMO are working with the Applicant to agree the drafting of the DML.

**3.4** [The MMO is working with the Applicant to establish a Statement of Common Ground (SoCG). The MMO believes that the SoCG can eliminate the areas of disagreement with the inclusion of a maintenance condition applicable to this project.

### **4 Summaries of all WRs exceeding 1500 Words**

Not applicable.

### **5 Local Impact Reports from any local authorities**

The MMO has the following comments to make regarding the matters addressed within these reports.

**5.1** The MMO note Swale Borough Council's reference to the London Array, and the subsea cables which reach land at Saxon Shore Way, landward of which is above Mean High Water Springs. The MMO is satisfied that within its jurisdiction under the Marine and Coastal Access Act (2009) this application will not have a cumulative or in combination effect with the maintenance licence for these cables.



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**5.2** The MMO notes the concern of Faversham Town Council with regards to the flood defence and the potential for change in its footprint. The MMO continues to engage with The Applicant with regards to the flood defence.

## **6 Responses to Examining Authority's (ExA's) Written Questions**

**6.1** The MMO has reviewed the Examining Authority's (ExA) written questions. The following constitutes the MMO's formal response to both direct questions and any other questions which the MMO feels are of relevance to our remit and/or interests.

### **6.2 Question 1.4.19**

This question was directed at "the Applicant" and the MMO. It was verbally confirmed with the Applicant that they would draft a response on behalf of both parties which would be sent to the MMO for agreement. The Applicant has confirmed in writing that they are in agreement with the maintenance condition supplied by the MMO, the MMO continue to work to finalise the SoGC with the applicant.

### **6.3 Question 1.5.11**

This question was directed at the MMO, Natural England, Swale Borough Council, Kent County Council, Canterbury City Council and any other local authority. The MMO is satisfied that of the developments, plans and projects discussed in Table 2.2, the potential cumulative or in-combination effects together with the proposed development have been identified and appropriately assessed by the Applicant in the Environmental Statement. The MMO notes that the Applicant has not discussed the Marine Licences granted to the London Array Offshore Wind Farm Export Cable Corridor, or Southern Water. Based on the information available, it is deemed unlikely that the licensed activities will have a cumulative or in combination effect with Cleve Hill Solar Park.

## **7 Updated Compulsory Acquisition Schedule**

The MMO do not have any comments to make regarding the matters addressed within this schedule.



## 8 Concluding Comments

**8.1** As was noted in our Section 56 Response to the ExA dated 24 January 2019, the MMO have pursued formal agreement with the Applicant via a Statement of Common Ground.

**8.2** As discussed in the Section 56 Response the MMO was not consulted on the original scoping opinion for the project owing to the site boundary being above MHWS. Subject to reaching final agreement with The Applicant in relation the maintenance of the flood defence via the SOCG, the MMO is largely in agreement with the proposal.

**8.3** The MMO would like notify the ExA of a wish to participate in the Issue Specific Hearings. The MMO anticipate the need to attend one hearing.

**8.4** The MMO is of the opinion that the response above addresses all of the matters relevant to the Examining Authority's (ExA) 'Rule 8 Letter' dated 07 June 2019. However, if you would like to discuss any specific matter further or require additional clarity, please do not hesitate to contact me directly.

Yours Sincerely

Lindsey Mullan  
Marine Licensing Case Officer

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