

From: [REDACTED]
To: [Cleve Hill Solar Park](#); [Jones, Hefin](#)
Cc: [REDACTED]
Subject: EN010085 - Cleve Hill Solar Park - The Applicant's Deadline 3 Submission (email 6 of 7)
Date: 01 August 2019 23:20:11
Attachments: [REDACTED]

Dear Hefin,

EN010085 - Cleve Hill Solar Park - The Applicant's Deadline 3 Submission (email 6 of 7)

Please find attached the Applicant's Deadline 3 submission.

Please do not hesitate to get in touch if you have any queries.

Kind regards,

Mike

Michael Bird

Tel: 01904 715470
[REDACTED]

Arcus
1C Swinegate Court East
3 Swinegate
York
YO1 8AJ

www.arcusconsulting.co.uk





CLEVE HILL SOLAR PARK

WRITTEN SUMMARIES OF ORAL SUBMISSIONS ISSUE SPECIFIC HEARING 4 ON BIODIVERSITY AND NATURE CONSERVATION MATTERS

August 2019
Revision A

Document Reference: 11.1.6
Submitted: Deadline 3
www.clevehillsolar.com



CLEVE HILL
SOLAR PARK

**WRITTEN SUMMARY OF CLEVE HILL SOLAR PARK LIMITED'S ('THE APPLICANT')
ORAL CASE PUT AT ISSUE SPECIFIC HEARING 4 ON 25 JULY 2019**

1. INTRODUCTORY REMARKS

- 1.1 Issue Specific Hearing 4 ('ISH') was held at 10:00am on 25 July 2019 at The Alexander Centre, 17 Preston Street, Faversham, ME13 8NZ.
- 1.2 The ISH took the form of running through items listed in the agenda published by the ExA on 8 July 2019 (the '**Agenda**'). The format of this note follows that of the Agenda. The Applicant's substantive oral submissions commenced at item 3 of the Agenda, therefore this note does not cover item 1 which was procedural and administrative in nature.

2. AGENDA ITEM 2 – INTRODUCTION OF THE PARTICIPATING PARTIES

- 2.1 The Examining Authority ('**ExA**'):- David Rose (Lead Panel Member) and Andrew Mahon.
- 2.2 The Applicant:
- 2.2.1 **SPEAKING ON BEHALF OF THE APPLICANT:** - Gary McGovern (Pinsent Masons LLP).
- 2.2.2 Present from the Applicant: - Simon McCarthy.
- 2.2.3 The Applicant's legal advisors:- Claire Brodrick, Peter Cole and Ruth Taylor (Pinsent Masons LLP).
- 2.2.4 The Applicant's consultants:
- (a) Mike Bird, Mark Topping and David Hope-Thomson (Arcus Consultancy Services)
- (b) Mike Armitage (RPS Group)
- 2.3 Swale Borough Council ('**SBC**') - Graham Thomas and Anna Stonor
- 2.4 Natural England ('**NE**') - Alison Giacomelli
- 2.5 Kent Wildlife Trust ('**KWT**') – Greg Hitchcock
- 2.6 CPRE Kent – Vicky Ellis and Richard Knox Johnson,
- 2.7 GREAT - Lut Stewart
- 2.8 Stephen Ledger, local farmer
- 2.9 Swale Labour Party – Anne Salmon
- 2.10 Heritage Harbour Group and Faversham Creek Trust – Sue Ackhurst
- 2.11 Faversham Society – Harold Goodwin
- 2.12 Swale Green Party – Ken Pugh
- 3. AGENDA ITEM 3 – APPLICANT'S UPDATE ON NEGOTIATIONS AND AGREEMENTS WITH NATURAL ENGLAND AND THE NATURE CONSERVATION**

INTEREST GROUPS, INCLUDING STATEMENTS OF COMMON GROUND AND 'LETTERS OF NO IMPEDIMENT'

- 3.1 Mike Bird for the Applicant confirmed that updated versions of the outline Landscape and Biodiversity Management Plan ('**LBMP**') and the outline SPA Construction Noise Management Plan ("**SPACNMP**") would be submitted at Deadline 3, subject to implementing outstanding changes. He also confirmed that NE and KWT's submissions would be included and addressed.
- 3.2 Mr Bird, in response to a query from the ExA on the statement of common ground ("**SoCG**") negotiations confirmed that the parties were continuing to discuss matters in the draft SoCG, as well as making amendments to the Special Protection Area ('**SPA**') construction noise management plan so as to integrate comments made by interested parties and the outcomes of recent discussions. He advised that the current plan is to submit updated documents at Deadline 3, then discuss and review comments from relevant stakeholders and have an agreed SoCG for Deadline 4. Mr Bird also confirmed that there would be a meeting on 23 August with the Habitat Management Steering Group ('**HMSG**'), which will provide further opportunity to discuss the SoCG and updates to plans for Deadline 4.
- 3.3 Mr Bird confirmed that the Applicant had provided documents to Natural England in relation to the letter of no impediment and were awaiting a response.
- 4. **AGENDA ITEM 4 – APPLICANT TO SUMMARISE UPDATES AND AMENDMENTS TO RELEVANT DOCUMENTS AND ASSESSMENTS BETWEEN THE APPLICATION DATE AND TODAY, INCLUDING THE REPORT TO INFORM APPROPRIATE ASSESSMENT**
- 4.1 Mr Bird provided a summary of the updates to the documents to be submitted at Deadline 3. He noted that at Deadline 2 the Applicant had submitted the following:
 - 4.1.1 Updated version of the mitigation schedule (Revision B) [REP2-005] with more information and fuller list of mitigation measures along with sign-posting as to how the mitigation is secured via the DCO. Mr Bird advised that this will be updated again for Deadline 3 to reflect discussions at ISH2 on the DCO. The updates concern how to audit mitigation in the Environmental Statement ('**ES**') to develop the mitigation route map;
 - 4.1.2 Responses to first written questions and appendices relevant to nature conservation matters, including a clarification on figure 2 of the report to inform appropriate assessment (the "**RIAA**") (Appendix 8 to written question responses [REP2-104]);
 - 4.1.3 Updated biodiversity metrics requested by the Royal Society for the Protection of Birds ('**RSPB**') and
 - 4.1.4 a legal submission providing a summary of recent case law on appropriate assessments under the Habitats Regulations [REP2-027];
- 4.2 In terms of updates to be submitted at Deadline 3, Mr Bird confirmed that at Deadline 2 a document update tracker [REP2-042] was submitted outlining the further updates proposed for Deadline 3 and/or 4. By reference to the update tracker, Mr Bird confirmed that updated versions of the following would be submitted at Deadline 3,:
 - 4.2.1 The Outline LBMP including further details on habitat creation measures and the management of those measures. Mr Bird also confirmed that Figure A5.1 would be updated, as well as some wider updates to the document such as adding additional detail on water control measures and eel friendly measures;

- 4.2.2 The Outline Construction Environmental Management Plan ('**CEMP**') will be submitted with the main change being to clarify the interaction in hierarchy between that document and other documents such as the LBMP and the SPACNMP;
- 4.2.3 Mr Bird also confirmed there would be updates to the CEMP relating to noise impacts assessed at Castle Coote, which were raised at consultation and discussed with nature conservation consultees, as this is a more sensitive area within the south Swale Nature Reserve; and
- 4.2.4 Updates will also be made to address the impacts of phasing in the CEMP.
- 4.2.5 Mr Bird also stated that the integrity matrices attached to the RIAA would be updated in response to first written question 1.2.22.
- 4.3 Regarding an updated note on baseline agricultural inputs, Mr Bird stated that the Applicant expects to provide this for Deadline 4.
- 5. **AGENDA ITEM 5 – APPROACH TO THE ASSESSMENT AND METHODOLOGIES USED**
- 5.1 **Guidance employed for determining survey areas; scope of surveys; survey methodologies; survey age; approach to determining significance of effect; assumptions made in relation to phasing of the development and parameters beyond the indicative design used in the assessment:**
- 5.2 Mr Bird responded to a question from the ExA to clarify the answer to written question 1.5.3 on the terms “medium” and “moderate” in the ecological assessment in the ES, stating that the terms are generally treated with equivalence in environmental assessments. Applicant confirms that the conservation value of phase 1 habitats in Table 8.6 informs the identification of important ecological features set out in Table 8.7. However, a ‘moderate’ value for a habitat identified in the phase 1 habitat survey does not necessarily equate to overall importance / sensitivity of ‘medium’ according to the methodology set out in Table 8.2. Therefore, it is appropriate to use different terms, as although the terms are equivalent in a separate context, one is a subset of the other, and the use of the same term could result in confusion.
- 5.3 Mike Armitage for the Applicant explained in answering an ExA question as to the relevance of the Arna Woods Solar Farm scheme referred to in the ES and the RIAA in light of the evidence submitted at Deadline 2 [REP2-012 – REP2-013] that the noise threshold of 70dB was chosen initially as the level above which would cause disturbance, which is the same as for the Arna Wood piling report, and which was found acceptable. Following review of consultation responses to the Preliminary Environmental Information ("**PEI**"), Mr Armitage stated that the Applicant had looked at a lower threshold of 55dB to determine the area of intertidal habitat where wintering birds could potentially be disturbed by piling activity. Mr Armitage explained that Arna Woods is relevant in that the 70dB noise contour does not extend beyond the seawall, so one would not expect to see significant disturbance of birds in the intertidal area during winter months due to piling activity.
- 5.4 Responding to an ExA question, Mr Bird confirmed the use of the candidate design in the ES and explained that the candidate design is the maximum extent of the design within the broader design principles. Mr Bird also confirmed that the candidate design was used for purposes of the assessment and that as a result the Applicant had confidence in the assessment's findings.
- 5.5 On the degree of confidence the Secretary of State can have that the effects on ecology in the ES and RIAA would not be exceeded, Mr Bird advised the ExA that the Secretary of State could have full confidence, and that the amendment to the SPA CNMP in respect of phasing would add to this confidence.

- 5.6 **Mitigation route map for those measures identified as necessary in the Environmental Statement, and where and how they will be secured in any DCO:**
- 5.7 Mr Bird confirmed that the Applicant is reviewing the ES and RIAA and outline design principles and developing a mitigation route map to ensure that the design principles and all mitigation are captured accurately. Mr Bird confirmed that it will submit an updated version of the Mitigation Schedule at Deadline 3 (document reference 7.2, revision C).
6. **AGENDA ITEM 6 - HRA; EFFECTS ON EUROPEAN AND RAMSAR SITE QUALIFYING FEATURES AND ADEQUACY OF, AND MECHANISMS FOR SECURING, THE NECESSARY MITIGATION MEASURES, TRIGGERS AND REMEDIAL ACTIONS WHERE NECESSARY, AND ONGOING MONITORING AND MAINTENANCE**
- 6.1 Mr Armitage confirmed that the Applicant had undertaken a shadow appropriate assessment in the RIAA which concluded that with the implementation of the various management plans that there would be no adverse effects on the integrity of the SPA.
- 6.2 **Arable Reversion Habitat Management Area ("AR HMA")**
- 6.3 Mr Armitage confirmed that in the ES and RIAA the 10 metre buffer areas not receiving fertiliser were not taken into account in the calculations for goose days for Brent geese. Mr Armitage stated that since the queries have been raised, the Applicant had looked into the effect if the buffer is excluded from the fertilised capacity value for an unfertilised grass capacity value and the conclusion was that the functional area of grass comes extremely close to providing the same capacity of birds days from the development site as the peak mean count bird days metric from the baseline surveys. To quantify this, Mr Armitage explained the difference was approximately 300 goose days out of 109,000 requiring mitigation. Mr Armitage was therefore confident that the conclusions in RIAA remain the same, as the difference in goose days in the two scenarios was trivial. He also confirmed this would be updated in the responses to written representation by Natural England and Kent Wildlife Trust submitted for Deadline 3 (document reference 11.3.1).
- 6.4 On the impact of this on the calculations for lapwing and Golden Plover, Mr Armitage considered that there would be none as the capacities for those species was not based on fertilised or unfertilised grass.
- 6.5 Mr Armitage confirmed that the Applicant would confirm in writing if any of the cited studies used in the assessment relate to projects of comparable scale.
- 6.6 The Applicant confirms in response to an ExA question on the Applicant's response to WQ1.1.26 that the studies referred to are of an appropriate scale to inform the mitigation area. The AR HMA is approximately 50 ha in extent. The key study referred to in deriving capacity factors for brent geese in the AR HMA was Vickery et al. (1994) The management of grass pastures for brent geese. This was a study in a 20 ha coastal grassland field in Essex and is therefore of suitably large scale open grassland in a similar coastal environment. Other studies of geese foraging capacity for comparable scale cited in the assessment include:
- 6.6.1 Percival (1993) The effects of reseeded on the use of grasslands by wintering barnacle geese. Study of four pairs of fields on Islay in Scotland totalling 29.1 ha, 24.7 ha, 38.9 ha and 32.1 ha.
- 6.6.2 Round (1982) Inland feeding by brent geese *Branta bernicla* in Sussex, England. Landscape scale study of inland feeding sites around the Chichester Harbour estimating bird-days capacity from 117 ha of grassland.

- 6.6.3 Owen (1977) The role of wildfowl refuges on agricultural land in lessening the conflict between farmers and geese in Britain. A BACI study of geese using 130 ha grassland in Gloucestershire.
- 6.7 The key study referred to in deriving capacity factors for golden plover and lapwing in the AR HMA was Gillings et al. (2007) Winter field use and habitat selection by Eurasian Golden Plovers *Pluvialis apricaria* and Northern Lapwing *Vanellus vanellus* on arable farmland. This landscape scale study identified occupancy of approximately 160 ha of agricultural fields within the wider 2063 ha study area. Other comparable studies referred to include:
- 6.7.1 Barnard & Thompson (1985) Gulls and plovers: the ecology and behaviour of mixed species feeding groups.
- 6.7.2 Milsom et al. (1985) Diurnal use of an airfield and adjacent agricultural habitats by Lapwings *Vanellus vanellus*. An 804 ha study area comprising, in part, 91 ha grassland and 35 ha arable fields.
- 6.8 Mr Armitage responded to an ExA question on the Applicant's response to WQ1.1.34 in relation to management prescriptions by confirming that the reference to red clover was in error and should be a reference to white clover.
- 6.9 In response to an ExA question, Mr Bird confirmed that checking the seed mix in table 7.1 of Appendix J to the LBMP was part of the ongoing consistency review of the LBMP. He stated he was not suggesting the LBMP was inaccurate but wanted to double check that the correct species were consistently included.
- 6.10 Mr Armitage stated that LBMP Appendix J at table 7.1 sets out the seed mix for the AR HMA which includes white clover and two other grass species, as opposed to the general seed mix over the rest of the site. He stated that the Applicant was aware of the points made by Mr Gomes in his Deadline 2 submission and that they would be considered within the next meeting of the HMSG.
- 6.11 Mr Armitage responded to points from the ExA stating that since the Deadline 2 response there has been considerable discussion with Natural England regarding whether there is capacity for the three key species, Brent geese, lapwing and golden plover, to be accommodated together, and the transferability of capacity bird days between species. Mr Armitage stated there have also been discussions with Dr Gillings and additional detail concerning his study can be made available. The Applicant considers that its position is still supported because grassland for Brent geese is also suitable for golden plover and lapwing as they can forage on short-sward grass pastures. Mr Armitage stated that the species favour old pastures with a close sward, so a close grass sward maintained for brent goose is suitable for lapwing and golden plover as they can access prey at and under the soil surface. Mr Armitage stated that the application of manure is also attractive for golden plovers, a view supported by the conclusions of the Gillings (2007) study: "*Application of farmyard manure increased the probability of field occupancy, as previously reported by Tucker (1992).*" The Applicant advises that Dr Gillings also confirmed during a phone call with Mr Armitage that application of manure would provide attractive conditions for golden plover and lapwing. In response to a question during the phone call on competition between the two species and the transferability of capacity from one species to the other, Dr Gillings agreed that they compete for the same resources to some extent and therefore transferring capacity would be applicable.
- 6.12 In reply to an ExA question, Mr Armitage advised that muddy patches as preferred by waders could be incorporated into the AR HMA as part of the adaptive management plan, but the initial idea is to create a complete grassland sward.
- 6.13 Mr Armitage responded to points from NE and KWT stating that at the Preliminary Environmental Impact Report stage the Applicant had presented evidence that

grassland can provide more capacity than arable land for golden plover and lapwing. In response to the s.42 consultation the Applicant took on the advice and responses and adopted a more precautionary measure that the grassland would only be equivalent in capacity to arable land for golden plovers and lapwings. In terms of the landscape scale study, and the applicability of the Gillings study, Mr Armitage agreed that the landscape in the Gillings study is different from the proposed grassland for the development, as most fields were of arable nature in that study. In terms of capacity of fields just used by the birds in the Gillings study, Mr Armitage stated that the Applicant considered that the capacity values cited in the Gillings study are applicable because they excluded fields that were unsuitable for those species to use, for example where the fields were too small, or there was unharvested maize and cereal crops in the fields. Mr Armitage stated that with correct management, the AR HMA grassland will be completely available for the whole winter.

- 6.14 Mr Armitage responded to points from the CPRE stating that the AR HMA is not designed to provide for 3,000 Brent geese throughout the winter. He advised that it is designed to provide for a variable number of geese as measured by the peak mean metric on the arable land during baseline surveys. In theory, he advised, it would not provide for 3,000 geese, but nor is it required to do so in order to fulfil the functions of the AR HMA.

- 6.15 Mr Armitage responded to points from Swale Labour Party that baseline studies conducted by the Applicant over four winters show that geese use various areas of the site depending on the crop available. For example, in one winter they favoured land at the west end of the site close to the mouth of Faversham Creek, whereas in other winters they used the fields at the eastern end of the site including those proposed for the AR HMA. There is a good distribution of favoured forage species, *Zostera* eelgrass, just offshore near the AR HMA. On this basis, Mr Armitage stated that the Applicant expects the geese to use the AR HMA. Further to discussions at the hearing, paragraph 120 of the Ornithology Technical Appendix [APP-223] describes that 55% of the brent geese counted during the baseline surveys were located in the fields that will make up the AR HMA.

- 6.16 Mr Armitage responded to points from the CPRE stating that he did not recall the use of scarers but agreed to check the point. He also confirmed to the ExA that the methodology for the surveys would have ensured that had scarers been used, their use would have been recorded.

- 6.17 The Applicant has subsequently reviewed the CPRE written representation. CPRE refer to Table A9.8 (and related tables A9.6 and A9.7) of the Ornithology Technical Appendix [APP-223], stating that bird scarers were in use when four of the seasonal bird counts took place. The Applicant confirms that no deliberate bird scaring activity was recorded during the baseline surveys between winter 2013/14 and winter 2017/18. Table A9.8 presents desk study information provided by KWT on the peak numbers of lapwings recorded by the warden during each month between winter 2008/09 and 2016/17. Similar data are presented for brent goose and golden plover in Tables A9.6 and A9.7 respectively. The numbers of birds presented in these tables have not been used in the calculations of the baseline peak-mean counts used in the assessment.

- 6.18 Regarding an ExA question on the timing of the sowing of the grassland in the habitat management area, Mr Bird confirmed that the update to the LBMP would look at different potential start dates to ensure that the AR HMA is in place ahead of the first winter during construction. Mr Bird also confirmed that the next update would also address the first two of KWT's three issues: grazing density, water control and cattle. Mr Bird confirmed that the Applicant is still waiting for confirmation that manure will be available.

- 6.19 Mr Bird responded to an ExA query on the response to WQ1.1.33 on remedial adaptive land measures stating that the update to the LBMP at Deadline 3 will address the effectiveness of remedial measures and that the detail and acceptability of it will be

discussed at the HMSG in order to provide further updates. The Deadline 4 submission will be updated to include the outcome of HMSG discussions.

- 6.20 Mr Bird clarified for the ExA that the RSPB had stated they did not want to agree a SoCG but had agreed to remain involved in the HMSG. In response to an ExA question on the composition of the HMSG, Mr Bird confirmed that a member of the Environment Agency also attends HMSG meetings with a nature conservation remit. In response to a point by the Faversham Society as to why RSPB is not participating in the Examination, Mr Bird stated that it was his understanding that the RSPB were happy to assist the other conservation organisations in their responses.
- 6.21 Mr Bird responded to a point from Swale Labour Party regarding the duration of monitoring (currently proposed for 5 years) saying that they would further consider the monitoring proposals, with due regard to the effects of climate change, as part of amendments to the LBMP. An updated LBMP has been submitted at Deadline 3 (document reference 6.4.5.2, revision B) with additional detail regarding monitoring beyond 5 years. The anticipated effects of climate change over the lifetime of the Development are set out in Chapter 15 - Climate Change of the ES [APP-045] and the clarification note submitted at Deadline 2 [REP2-043]. The climate change predictions for the lifetime of the Development are not likely to affect the successful implementation and management of the measures set out in the outline LBMP.
- 6.22 GT for Swale Borough Council raised the point that it was his understanding that the AR HMA is designed to ensure no net loss and queried whether it should provide a net gain, given planning policy relating to biodiversity enhancement. Mr Mahon advised that biodiversity enhancement was a broader point that would be picked up under a later item of the Agenda, whereas the focus on no net loss was appropriate focus in the context of the requirements of the Habitats Regulations.
- 6.23 **Habitat within the solar array for marsh harrier:**
- 6.24 Mr Armitage confirmed to the ExA that the Applicant's position was that there would be no adverse effect on the SPA based on creating suitable areas of habitat for foraging for Marsh Harriers between solar arrays, and the aquatic management plan (Appendix H of the Outline LBMP [APP-203] to improve ditch water quality, and the reed bed.
- 6.25 Mr Armitage stated that a plan for monitoring Marsh Harrier behaviour was not included at present but would be considered further in the updated LBMP. He advised that any remedial measure would aim to vary grazing pressure and water levels in ditches to create an appropriate sward to make conditions appropriate for their prey.
- 6.26 Mr Armitage, replying to comments from the CPRE that it was the Applicant's view that the grassland creation between panels would result in more suitable habitat for prey compared to the current agricultural baseline, which has narrow strips along the edges, and so would be better on balance.
- 6.27 Following comments from Mr Bob Gomes, Mr Armitage stated that the Applicant would respond fully in writing to his points ahead of Deadline 4. In terms of Brent geese, Mr Armitage explained that during the baseline surveys the Applicant's team had witnessed considerable yearly and seasonal variation in use of the site in terms of timing. He confirmed that the peak mean metric had been used as a measure of overall average use, which is a precautionary approach, as the highest count of each month was used for the yearly average.
- 6.28 Mr Armitage stated that the functional mitigation area of 50.1 hectares is sufficient based on bird days capacity from the Vickery 1994 study, which itself is not a maximum, rather a capacity measure of geese feeding on grass in experimental conditions. Mr Armitage highlighted that RSPB guidance states that there should be 15-30 hectares provided for every 1,000 geese. Mr Armitage stated that the peak mean metric measured was 850 geese so the area proposed exceeds that recommended in the guidance.

- 6.29 In terms of where the geese feed, Mr Armitage stated that baseline surveys have recorded birds within the site further than 500 metres from the sea wall (390 birds approximately 550 m from the sea wall on 15/12/15; 900 birds c. 550 m from the sea wall on 18/2/15 and 26/2/15) and also during a supplementary survey on the Isle of Sheppey (350 birds at Leysdown Marshes approximately 1.2km inland on 6/3/18). On this basis, Mr Armitage stated that the Applicant is confident the geese would use the whole of the AR HMA. He further stated that in terms of marsh harriers the Applicant still believes the corridors and improvements are sufficient to provide areas for the birds to feed sufficient to compensate the loss.
- 6.30 Mr Armitage confirmed that monitoring and adaptive management measures mentioned by KWT would be addressed in the Deadline 3 update to the outline LBMP (see document reference 6.4.5.2, revision B). The Applicant expects to discuss the updates with the Habitat Management Steering Group ahead of Deadline 4 and to provide further updates ahead of Deadline 4 if necessary.
- 6.31 **Other issues:**
- 6.32 Mr Bird confirmed that the Applicant would provide an update to the appendices to the RIAA [APP-026] including the integrity matrices will be provided at Deadline 3.
- 6.33 Mr Armitage responded to the ExA stating that no additional measures would be included beyond those already included to mitigate the effect of habitat loss during operation. Mr Armitage stated that if there was any change it would be clarification that the AR HMA would be created before the first winter of construction.
- 6.34 In reply to a question from Swale Labour Party, Mr Armitage stated that updates are being made to the SPA CNMP to include an assessment of the noise impacts of construction haulage to the AR HMA.
- 6.35 Mr Bird confirmed to the ExA that they expected to submit a report on the current use of herbicides and pesticides at Deadline 4 subject to receiving information from landowners.
- 6.36 The ExA then asked if the Applicant had made any updates to the decommissioning and restoration plan.
- 6.37 Mr Bird responded to an ExA query regarding the decommissioning and restoration plan, stating that the wording in Requirement 16 of the dDCO would be updated following the DCO hearing and that the Applicant expects further updates to the decommissioning plan based on the outcome of ongoing discussions in respect of the CEMP. Mr Bird confirmed that the plan refers to a decommissioning environmental management plan that will secure mitigation measures during decommissioning in a similar way to the CEMP.
7. **AGENDA ITEM 7 – EFFECTS ON NATIONALLY AND OTHER IMPORTANT WILDLIFE AND HABITATS AND ADEQUACY OF, AND MECHANISMS FOR SECURING, THE NECESSARY MITIGATION MEASURES, TRIGGERS AND REMEDIAL ACTIONS WHERE NECESSARY, AND ONGOING MONITORING AND MAINTENANCE**
- 7.1 **Impacts on the SSSI:**
- 7.2 Mr Bird commented that the measures to be implemented within the freshwater grazing habitat management area ("**FG HMA**") are subject to ongoing discussions, and that the focus will be on physical structures to control water levels across the site. Mr Bird stated that the HMSG would discuss this and decide on further detail to be included in the LBMP with regards to the SSSI area.

- 7.3 Mr Bird commented that this will be reflected in the SoCG with NE and that it was the Applicant's intention to provide further information for Deadline 3 and then update this after the HMSG meeting for Deadline 4.
- 7.4 **Water voles:**
- 7.5 Mr Bird confirmed that the Applicant would, amend the LBMP in relation to ongoing maintenance (see document reference 6.4.5.2, revision B, submitted at Deadline 3) regarding timing and management of ditches so that this is effectively defined in the mitigation route map, and so there is a clear audit trail.
- 7.6 **Ground nesting birds and farmland birds:**
- 7.7 No Applicant comments.
- 7.8 **European eels:**
- 7.9 In response to an ExA request to clarify the nature of 'fish-friendly' structures, Mr Bird confirmed that since European Eels are understood to be present in the area, water control structures and culverts would be designed to allow safe passage for small mammals and eels. This would allow birds through the site under a range of conditions. Mr Bird confirmed that these measures will be more clearly captured in the updated LBMP.
- 7.10 Mr Bird stated in reply to comments from the Faversham Society that the Applicant believes there is an appropriate suite of ecological surveys that accompany the application that can be relied on.
- 7.11 **Other issues:**
- 7.12 The ExA then noted the Applicant's response to WQ1.1.41 relating to marsh frogs. The ExA asked for clarification that in the unlikely event that the frogs are identified in construction works, would construction personnel be able to distinguish between marsh frogs (which would be humanely killed by appropriate licensed persons) and other native species.
- 7.13 Mr Bird confirmed that the LBMP and Construction Environmental Management Plan both refer to an Ecological Clerk of Works ("**ECOW**") being in place throughout construction and as part of that there will be tool box talks at the outset and provision of information on site. Mr Bird confirmed that if there were any changes to personnel, the ECOW would be available on site to aid in the distinction of frog species.
- 7.14 Mr Bird responded to comments from CPRE regarding the potential for dormice that they had seen CPRE's records for a dormouse nest but from these it was not possible to definitely conclude there were any on the site. Mr Bird commented further that the Applicant's wider assessment of the habitat has concluded that the site is suboptimal for dormice. Mr Bird stated that the CPRE observation was made in a peripheral area of the site, unlikely to be affected by any works as part of the development, and that the Applicant did not consider there to be any likely significant effects. It is noted that the ExA asked if CPRE could provide any further information or evidence to substantiate its contention that dormice use the site.
- 7.15 Mr Bird responded to comments from CPRE on the presence of great crested newts stating that the Applicant had submitted a draft licence application including mitigation proposals, and that the Applicant was expecting a letter of no impediment from NE imminently. Mr Bird commented that as a result the Applicant considers they have adequately addressed this point.
8. **AGENDA ITEM 8 – PROPOSALS FOR HABITAT CREATION WITHIN THE FIELDS HOSTING THE SOLAR ARRAYS**

- 8.1 Mr Bird explained to the ExA that a key control is grazing pressure to differentiate between different areas in the solar fields. He advised that the Applicant intends to manage this through the deployment of temporary stock proof fencing to control the location of grazing sheep. Mr Bird confirmed that the Applicant has been asked to provide more detail on how areas will be demarcated and how the fencing will be delivered and which areas of the site will be demarcated. Mr Bird confirmed that this detail will be submitted through the LBMP submitted at Deadline 3 and discussions will continue with the HMSG with tweaks to be submitted in due course at later deadlines.
- 8.2 Mr Bird confirmed that grazing is specified in the LBMP but that references would be made more specific for future deadlines.
9. **AGENDA ITEM 9 – ANY OTHER BIODIVERSITY AND NATURE CONSERVATION MATTERS**
- 9.1 Gary McGovern on behalf of the Applicant responded to comments from Swale Labour Party about the People Over Wind case, who suggest that it is necessary to consider whether an overriding public interest arises in this case. He stated there appeared to be a misunderstanding of points made in the Applicant's legal submission on People Over Wind [REP2-027]: the case concerned stage 1 of the HRA process and ability to rely on screening. Mr McGovern confirmed that the Applicant is aware of this case and has not relied mitigation to screen out adverse effects at HRA stage 1. Mr McGovern stated that HRA stages 3 and 4 (where it would be necessary to consider imperative reasons of overriding public interest) are not engaged in this case because of the conclusion at HRA stage 2 that there is no adverse effects on integrity of the SPA. He added that NE are not saying that HRA stages 3 and 4 are engaged. Mr McGovern stated that therefore the need to consider overriding public interest does not arise.
- 9.2 Mr Armitage responded to comments from the Heritage Harbour Group regarding the chance of birds colliding with panels owing to confusion of panels for bodies of water, stating that the assessment has considered evidence of collision risk and concluded that the issue was low risk. Mr Armitage noted that there is very little evidence for it in the UK and the studies that have been highlighted relate to desert solar farms in the US, which are clearly a different environment to the Swale.