

Byers Gill Solar EN010139

8.4.6 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

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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 final and signed, with all matters agreed.

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.1 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.</p> <p>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><i>Deadline 6 update</i> - It is the position of the EA that the Flood Risk Assessment and Drainage Strategy [REP5-018] includes a section on the Sequential Test but that it is for the relevant Local Planning Authority(s) to determine if the Sequential Test has been passed.</p>	<p>Since receipt of the Relevant Representation, the Applicant has engaged further with the EA in relation to the points raised.</p> <p>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 have continued to engage on this matter and it is now agreed between both parties that the Flood Risk Assessment and Drainage Strategy [REP5-018] includes a section on the Sequential Test.</p>	Agreed

Row ID	Topic	EA Position	Applicant Position	Status
EA2	Flood Risk	The EA considers the vulnerability classification to be 'essential infrastructure.'	The Applicant notes and agrees with the EA's classification.	Agreed
EA3	Flood Risk	Detailed flood modelling <i>Deadline 6 update</i> - The EA have reviewed the hydraulic modelling and the associated outputs and have no comments to raise with regards to the model construct or calculated flows. The EA are 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). The EA 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 Applicant notes the agreement from EA in relation to the hydraulic modelling note and associated outputs [REP4-013].	Agreed
EA4	Ecology	Outline Construction Environmental Management Plan (CEMP) (mitigation/ management measures to protect Otter and its habitat) (RR Point 4i). <i>Deadline 6 update</i> - 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].	The Applicant has provided an update to the Outline Construction Environmental Management Plan (oCEMP) [REP5-013] which now includes: 'In order to protect otter during construction, the following measures shall be implemented: <ul style="list-style-type: none"> a pre-construction checking survey for otter to be completed in advance of any works within 50 m of any watercourse on the site 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.' 	Agreed
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	The Applicant has accepted that additional control should be included within the outline CEMP to address this concern, which was included in an update to the Outline Construction Environmental Management Plan (oCEMP) [REP5-013] and now includes: 'An impact assessment of Directional Drilling on fish and appropriate mitigation will be fully addressed within the CEMP, if	Agreed

Row ID	Topic	EA Position	Applicant Position	Status
		<p>watercourses. Requirement 4(2) of the dDCO and oCEMP should be amended to reflect this update.</p> <p><i>Deadline 6 update - 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></p>	<p>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:</p> <ul style="list-style-type: none"> ▪ The distance from the watercourse that the drilling will take place ▪ The depth and width of the drilling. ▪ Vibration and noise impact assessment on potential fish species residing in the watercourses. <p>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).'</p> <p>The final iteration of the oCEMP 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>	
EA6	Ecology	<p><i>Water Framework Directive (WFD) Assessment regarding Directional Drilling (RR Point 3)</i></p> <p>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.</p>	<p>The Applicant notes the request of the EA and has provided an updated WFD at Deadline 6 [REP6-015].</p>	Agreed
EA7	Ecology	<p>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.</p> <p>The impacts of this outfall and directional drilling under a main river should be considered within the WFD.</p>	<p>Deadline 2 Submission - Other Consents and Licences [REP2-005] has been updated. The reference to a new permanent drainage outfall installation has been removed.</p> <p>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.</p>	Agreed
EA8	Groundwater protection	<p><i>Directional Drilling and Control Measures (groundwater/ surface water interaction) (RR Point 6)</i></p> <p>The EA notes that Table 4-6 of the oCEMP [APP-110] is to be updated to include a commitment (ID HFR21-CEMP),</p>	<p>The Applicant has accepted that additional control should be included within the outline CEMP to address this concern, which was included in an update to the Outline Construction</p>	Agreed

Row ID	Topic	EA Position	Applicant Position	Status
		<p>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><i>Deadline 6 update - 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></p>	<p>Environmental Management Plan (oCEMP) [REP5-013] and now includes:</p> <p>'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::</p> <ul style="list-style-type: none"> ▪ The depth of drilling. ▪ The ground conditions/superficial geology where drilling is occurring. ▪ The likelihood for groundwater to be intersected. <p>The EA will be consulted on this assessment'</p> <p>The final iteration of the oCEMP 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><i>Deadline 6 update - 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 regarding bentonite breakout.</i></p>	<p>The Applicant has accepted that additional control should be included within the outline CEMP to address this concern, which was included in an update to the Outline Construction Environmental Management Plan (oCEMP) [REP5-013] and now includes:</p> <p>'The contractor will produce a Bentonite Breakout Plan which seeks to assess potential leakages, their effects and proposed mitigation, subject to consultation with the EA.'</p> <p>The final iteration of the oCEMP 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>	Agreed
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</p>	<p>The Applicant has accepted that additional control should be included within the outline CEMP to address this concern, which was included in an update to the Outline Construction</p>	Agreed

Row ID	Topic	EA Position	Applicant Position	Status
		<p>Construction Surface Water Management Plan. EA waiting for CEMP Requirement to be updated to reflect this.</p> <p><i>Deadline 6 update</i> - 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.</p>	<p>Environmental Management Plan (oCEMP) [REP5-013] and now includes commitment HFR2-CEMP which includes a commitment to produce a Construction Surface Water Management Plan (CSWMP) as part of the CEMP.</p> <p>The final iteration of the oCEMP 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>	
EA11	DCO	Disapplication of Flood Risk Activity Permits (FRAP) under the Environmental Permitting Regulations (2016) (RR Point 2).	Article 7b of the dDCO [REP5-002] (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.	Agreed
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 [REP5-002] has been updated to reflect this request.	Agreed
EA13	DCO	<p>The EA advise that Requirement 4 is amended to include:</p> <p>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. 	In response to the position of the EA, the Applicant has amended Requirement 4(1) in the draft DCO as submitted at Deadline 6 [REP6-002].	Agreed

Row ID	Topic	EA Position	Applicant Position	Status
EA14	Watercourse crossings	<p>EA welcomes the Applicant's approach to watercourse crossings in that they will be designed with appropriate freeboard for flood flow capacity.</p> <p>The EA advise that any proposed crossings should be designed so that the soffit level of any bridges sits above the design flood level. The design flood level for permanent crossings in this case would be the 1% (1 in 100) annual exceedance probability (AEP) plus higher central climate change scenario. For temporary crossings, the present day (without climate change) 1% (1 in 100) AEP scenario can be used.</p> <p>The proposed crossings should be designed such that they do not increase flood risk elsewhere.</p>	<p>Based on mapping, nine watercourse crossings have been identified where new access track is proposed. Seven of these will utilise existing crossings and the remaining two will require new crossings. One is required for access to panel area A, west of Brafferton (E: 429789, N: 520251). This crossing is required for construction only and therefore will not be retained during operation. The other crossing will be required for operational access to Area D south of Great Stainton (E: 433858, N: 521327) over a tributary of the Little Stainton Beck. These are both ordinary watercourses so the design will be agreed with the LLFA. The crossings will be designed to ensure they do not disconnect the watercourses at times of low flow and will be designed with appropriate freeboard for flood flow capacity.</p> <p>The new temporary crossing will have a soffit level above the 1.0% AEP design event. The new operational crossing will have a soffit level above the 1.0% AEP design event plus a higher central climate change allowance of 40% for the Tees management catchment. Prior to construction, these levels will be determined by undertaking hydraulic modelling and agreed alongside the crossing design with the LLFA as part of the ordinary watercourse consent process. The modelling will also determine and demonstrate that the selected crossing design will not result in increased flood risk to third parties. If at the design stage it is decided that instead of detailed modelling, existing flood risk products will be used to determine the crossing soffit levels, it will be clearly justified why this is a suitable proxy and agreed with the LLFA.</p> <p>If the temporary crossing west of Brafferton needs to be reinstalled at the decommissioning phase, flood risk will be reviewed again prior to reinstallation and designed in accordance with policy at that time.</p>	Agreed

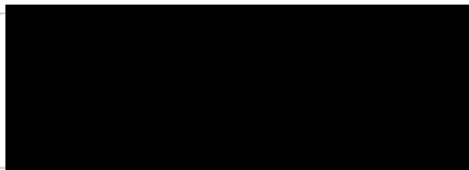
Row ID	Topic	EA Position	Applicant Position	Status
			This is further set out on an updated Flood Risk Assessment and Drainage Strategy (Document Reference 6.4.10.1, Revision 6), submitted at Deadline 8.	

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 attended 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 [REDACTED] (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.
November - December 2024	Email	Correspondence between the EA and the Applicant to provide an update to the SoCG and Work Package Tracker to be submitted at Deadline 6.
January 2025	Email	Correspondence between the EA and the Applicant with regards to watercourse crossings, and agreeing a final, signed SoCG for Deadline 8.

A.2 Signing sheet

Signature	
Name	Lewis Pemberton
Position	Planner
On behalf of	The Environment Agency
Date	16/01/2025

Signature	
Name	Michael Baker
Position	Development Project Manager
On behalf of	RWE
Date	16/01/2025