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The Sizewell C Project Case Team
National Infrastructure Planning
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(By email only)

6 August 2021

Planning Inspectorate Reference: EN010012
Our Identification Number: 20025459

Dear Sir or Madam,

Planning Act 2008 – Application by NNB Generation Company (SZC) Limited for an Order Granting Development Consent for The Sizewell C Project

Deadline 6 Submission

On 24 June 2020, the Marine Management Organisation (the "MMO") received notice under section 55 of the Planning Act 2008 (the "PA 2008") that the Planning Inspectorate ("PINS") had accepted an application made by NNB Generation Company (SZC) Limited (the "Applicant"), for determination of a Development Consent Order ("DCO") for the construction, maintenance and operation of the proposed Sizewell C Nuclear Power Station (the "DCO Application").

Since then, the Applicant submitted a request to make fifteen changes to the original DCO Application, and these changes were accepted by the Examining Authority ("ExA") on 21 April 2021. The MMO note that a further request for additional changes was submitted by the Applicant at Deadline 2.

The Applicant seeks authorisation for the construction, operation, and maintenance ("O&M") of the DCO Application, comprising of two nuclear reactor units, together with associated onshore and offshore infrastructure and associated development (the "Project"). The marine elements of the Project include a cooling water system comprised of intake and outfall tunnels, a combined drainage outfall in the North Sea, a fish return system, two beach landing facilities, and sections of the sea defences that are, or will become, marine over the life of the project. These marine elements fall within a Deemed Marine Licence ("DMLs") with is under Schedule 20 of the DCO.

The MMO was established by the Marine and Coastal Access Act 2009 ("MCAA") to make a contribution to sustainable development in the marine area and to promote clean, healthy, safe, productive and biologically diverse oceans and seas.

The responsibilities of the MMO include the licensing of construction works, deposits and removals in the marine area by way of a marine licence. Under Part 4 of MCAA, a marine licence is required for all deposits or removals of articles or substances below the level of mean high water springs ("MHWS"), unless a relevant exemption applies.

For Nationally Significant Infrastructure Projects (“NSIPS”) the PA 2008 enables DCOs for projects which affect the marine environment to include provisions which deem marine licences. Where applicants choose to have a marine licence deemed by a DCO, applicants may seek to agree the draft marine licence with the MMO prior to submitting their DCO application to PINS. The MMO’s primary roles under the PA 2008 regime are as an interested party during the examination stage, and as a licensing and consenting body for the DML at the post consent stage

The MMO is responsible for regulating and enforcing marine licences, regardless of whether these are 'deemed' by DCOs or are consented independently by the MMO. This includes discharging of conditions, undertaking variations and taking enforcement action, when appropriate.

This document comprises the MMO’s comments submitted in response to Deadline 6.

Although the MMO have endeavoured to review the information in line with the Deadline 6 date, we note that there are some areas that we have been unable to thoroughly review in this time, and as such we will be commenting on these at a later deadline. Specifically, the MMO notes that this deadline contained a request for ‘comments on Written Representations received at Deadline 5 from additional Interested Parties, Interested Parties and additional affected persons’. However, unfortunately due to time restraints, the MMO have been unable to complete this action in time for this deadline. The MMO therefore advises that we are still reviewing the responses provided by other stakeholders and will provide any comments we have at a future deadline where appropriate.

The MMO also notes the Deadline request for ‘Comments on any revised/updated Statement of Common Ground (“SoCG”). The MMO has updated our comments on the SoCG, however, due to time restraints, it is anticipated that the applicant will submit the next updated SoCG at Deadline 7. The MMO defers to the Applicant for further comment.

Further, the MMO are currently still reviewing the following Applicant’s submissions from Deadline 5: Acoustic Fish Deterrent Report [REP5-123], the Underwater Noise Report [REP5-124], and the Coastal Processes Monitoring and Mitigation Plan, revision 2 [REP5-059].The MMO will provide comments on these documents at a future deadline. The MMO are still waiting for the requested fish sensitivity analysis report, which we believe is due at Deadline 6.

The MMO also notes that there has still been no Marine Plan Policy Assessment provided by the Applicant. The MMO requires this assessment from the Applicant to advise if the project is compliant with the relevant marine plans. The MMO has requested this assessment to be provided since our Relevant Representation [RR-0744].

The MMO therefore submits comments on the following as part of Deadline 6:

1. **Comments on Applicant's revised draft DCO**
2. **Notification of wish to speak at Issue Specific Hearings ("ISH") in August 2021**
3. **Comments on any additional information/submissions received by D5**
4. **Responses to any further information requested by the ExA for this Deadline**

This written response is submitted without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This representation is also submitted without prejudice to any decision the MMO may make on any associated application for consent, permission, approval or any other type of authorisation submitted to the MMO either for the works in the marine area or for any other authorisation relevant to the proposed development.

Yours faithfully,

[redacted]

Ellen Mackenzie
Marine Licensing Case Officer

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Table of Contents

1. Comments on Applicant's revised draft DCO

1.1 The MMO notes that many of our comments remain unchanged from our comments regarding DCO version 4 [REP2-013], held within section 4 of our Deadline 3 response [REP3-070], due to the minor changes made within our area of interest in DCO version 5 [REP5-030] and version 6 [REP5-027] submitted at Deadline 5 by the Applicant. However, a summary of our main comments on the revised draft DCO are as follows.

Appeals

1.2 Although not new, the MMO stresses it's concerns regarding appeals which remain unchanged, please see our most recent comments on the matter within our Deadline 5 response (which will be published at Deadline 6), and within section 4 of our Deadline 3 response [REP3-070]. It is also outlined further within section 4.1 of this deadline response, within our answer to the ExA's question referenced DCO1.124.

Vertical Deviation

1.3 In relation to Part 2 Article 4 (1)(a), the MMOs comments remain within section 4 of our Deadline 3 response [REP3-070]. We note further that, as currently drafted "the undertaker may deviate vertically to any extent found necessary or convenient" allows marine structures to deviate vertically to any extent found necessary or convenient. The MMO outline that there should be maximum limits on horizontal and vertical deviations in line with what has been assessed in the Environmental Statement ("ES").

Authorised Development

1.4 The MMO advised that rock protection (anti-scour protection) and disposal should be listed in "other associated development" in Schedule 1, and we note this has now been added. However, Schedule 1 remains set out in different sections, and the MMO advises that this is split this into below MHWS, intertidal, and above MHWS, so that it is clearer what works are relevant to different authorities. See Schedule 1 of the Norfolk Boreas Draft DCO at this link as an example: https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010087/EN010087-002585-3.1%20Norfolk%20Boreas%20Updated%20Draft%20DCO%20(Version%209)%20(Clean).pdf

Explanatory note

1.5 The MMO notes that Explanatory Note has still not been amended. It's advised that the Note contains both the reference to where maps of the project can be accessed, both in hard copy and in electronic form, and the details on the Harbour Empowerment Order.

Timeframes for submitting documents

1.6 The MMO notes that the conditions for pre-construction plans have been updated to state that plans will be submitted to MMO at least 6 months prior to the commencement of works, unless otherwise agreed by the MMO. The MMO welcomes and supports this update.

1.7 MMO notes that Condition 20(3) still states the Fisheries Liaison and Coexistence Plan will be submitted 3 months prior to commencement. The MMO would advise this is updated to at least 4 months prior to commencement to allow sufficient time for approval.

1.8 The timeframe for Condition 17(3) relating to the Coastal Processes Monitoring and Mitigation Plan ("CPMMP") has also been extended to 6 months which MMO supports. However, we note that 17(4) does not reflect this and should be updated.

1.9 Condition 11 has been updated to state that detailed method statements for the works must be submitted to the MMO at least 6 months prior to the start of construction. The MMO supports this change.

1.10 The MMO noted that conditions in Part 4 requiring details for each activity have been updated to state that these details will be submitted to MMO at least 6 months prior to commencement. The MMO supports this change.

1.11 The MMO consider that matters regarding 'determination dates' remain outstanding and the inclusion of Schedule 20A which proposes a new Appeals procedure for the Applicant which is not available to other marine licence users. Our previous comments relating to determination dates remain.

1.12 MMO also objects to the inclusion of "On the date that requirement 7A of this Order is discharged, this condition 17 is deemed discharged." within DML condition 17(5). The DML will become a separate consent document, for which the MMO are responsible for enforcing, and so having a "deemed discharge" by another authority is inappropriate.

Coastal Defence Features

1.13 The MMO notes that part 2, article 4 of the DML now states:

"(c) Work No 1A(n) – a Soft Coastal Defence Feature (SCDF) comprising—

(i) The initial placement of sacrificial sediments comprising sand and shingle not in exceedance of 120,000m³;

(ii) Replacement of sacrificial sediments with similar sand and shingle, or by-pass (movement of accreted sediment alongshore past obstructions), as defined in the Coastal Processes Monitoring and Mitigation Plan (CPMMP);

(iii) Supporting vessel and vehicle movements to by-pass and/or landscape the material"

The MMO has concerns with the wording of this condition, as the replacement of sediments with "*similar"* sand and shingle is vague and would not be enforceable by the MMO. The wording of this condition should be discussed further with the MMO. Additionally, there are ongoing discussions with East Suffolk Council, MMO and the Applicant to determine how the SCDF should be conditioned in the DCO/DML.

1.14 The MMO also notes that Condition 41 relating to the SCDF should be amended. The "source of sediment" and "evidence of the suitability of the sediment" for that area should be listed as part of the details required by the MMO.

1.15 The MMO are reviewing whether sampling of the sediment prior to placement should be required. This would usually be for particle size analysis, and would be required to prove that the sediment to be placed is appropriate for the existing marine environment.

1.16 The MMO notes that Part 2(4)(c) lists the maximum volume of sediments that will be initially placed for the SCDF. However, it does not list the total volume that will be placed for the recharge throughout the lifetime of the project. It is stated this will be agreed via the CPMMP. We advise that the total maximum "worst case" is contained within the DML and the ES, so that it is clear what was considered as part of the "authorised development" within this DCO consent assessment.

Licensed Activities

1.17 The MMO's concerns with the drafting of 'Licensed Activities' in Part 2, 4 of the DML remains unchanged and is held within section 4 of our Deadline 3 response [REP3-070]. However, we note that further information has also been provided within part 4.1 of this representation, in answer to the ExA question referenced DCO 1.107.

Interpretations

1.18 The MMOs comments on 'Interpretations' remain within section 4 of our Deadline 3 response [REP3-070].

1.19 However, we note that the definition of "commence" in Part 1, Article 1 (1), "Interpretation" of the DML has been updated to: '"commence" means beginning to carry out any licensed activity or any phase of licensed activity and "commenced" and "commencement" are to be construed accordingly'. The MMO are overall content with this definition within the DML. We note that it is different to the definition within the DCO, however the MMO is content.

1.20 As a further point to note, capital dredging is a licensable activity and should be covered by this definition of "commence".

Scour Protection

1.21 The MMO notes that our comments on this subject within section 4 of our Deadline 3 response [REP3-070] have not been addressed.

1.22 The MMO further requests a new condition is added that requires a pre-construction scour protection plan to be submitted to MMO. The plan should include details of the need, type, sources, quantity, distribution and installation methods for any rock/scour protection to be installed.

Monitoring and Mitigation

1.23 The MMO notes our comments on underwater noise mitigation remain the same as section 4 of our Deadline 3 response [REP3-070].

1.24 The Mitigation Route Map [REP5-081] now includes the Marine Mammal Mitigation Protocol ("MMMP"), Southern North Sea Special Area of Conservation ("SAC") Site Integrity Plan and the MMO are currently reviewing these plans. However, the MMO cannot see the Offshore Written Scheme of Investigation ("WSI") listed in the route map.

1.25 The MMO welcomes the inclusion of the above within the mitigation route map. However, notes that there is mitigation stated in the map that is not yet secured on the DML. All known mitigation for the marine area must be secured clearly within the DML conditions, and so the applicant should cross check this and update accordingly.

1.26 For example, the Sabellaria Monitoring section notes that two pre-construction geophysical surveys will be undertaken, a post construction survey will be undertaken, and ongoing surveys every 3-5 years during the operational phase will be undertaken until satisfactory evidence has been gathered of no adverse effects. Although we note that DML condition 45 does state a Sabellaria monitoring plan will be submitted to the MMO, MMO advises that the frequency of monitoring surveys should be stated on the DML. This applies throughout the marine works where monitoring surveys will be required. The MMO is waiting for an in-principle Sabellaria Monitoring and Mitigation Plan to be submitted to the examination, which the Applicant has stated they are preparing. This plan should outline the mitigation that will be implemented if *Sabellaria spinulosa* can not be avoided.

1.27 Furthermore, the MMO request that an in-principle monitoring plan is submitted to the MMO that outlines all of the proposed pre-construction, construction, and post construction monitoring that will take place.

1.28 The MMO further advises that Condition 40(2)(b) (for the MMMP) should state that the plan will follow current best practice as advised by the relevant statutory nature conservation bodies.

1.29 The MMO notes that Condition 40(2)(c) has been updated to include a 'site integrity plan'. However, all that is stated is '(2) Should impact piling be required, the impact piling must not commence until: (c) a Site Integrity Plan has been submitted to and approved by the MMO.'

1.30 We advise that there is not enough detail about what the Site Integrity Plan is for. The MMO advises that the Applicant reviews Condition 26 in the DML for the East Anglia Two Offshore Wind Farm project for drafting advice. The DML can be found in REP8-0004 in the East Anglia Two Offshore Windfarm Examination Library: https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010078/EN010078-001676-East%20Anglia%20Two%20Examination%20Library.pdf.

Marine enforcement authority

1.31 The MMO notes that Article 86 of the DCO states "For the purposes of section 173 of the 2008 Act, the Marine Management Organisation will be the relevant local planning authority in respect of land seaward of the mean high water springs". The previous statement that MMO would also be the enforcement authority for the limits of deviation of works outside of MHWS has been removed, and the MMO supports this update. However, the MMO only enforce licensable activities under MCAA and not the full DCO requirements. The MMO is still reviewing this article, and as such, this matter is ongoing.

Navigation DML Conditions

1.32 The MMO notes that the condition under part 3, 14 has been updated. However, advises that only the MMO requires this information, the Maritime and Coastguard Agency ("MCA") and the United Kingdom Hydrographic Office ("UKHO") do not need this and can be removed from this condition. For clarity, only the notice to mariners required under condition 13 should be sent to MCA as well. The MMO also notes that the Condition has been updated to state that the licence will just be "provided", instead of "read and understood", and that this is better than the previous condition. However, we note that this is still difficult to enforce unless the condition states that the applicant will obtain written confirmation from the contractor that this has been done which must then either be provided to the MMO or kept by the licence holder for the duration of the licence, this also applies to condition 16.

1.33 We note that condition 15(2) must also state "*no less than 24 hours before the vessel engages in the licensed activities"*.

1.34 The MMO notes that our advice on Part 3, 33, has been actioned, however requests that the normal Dropped objects procedure as detailed in Condition 32 should be followed in this situation. Therefore, there is no need for condition 33, and it should be removed.

Harbour Powers

1.35 The MMO notes that we are still awaiting a response from Applicant to address our comments and questions on harbour powers. The MMO have requested this from the applicant to aid our advice. The MMO's review of the updated harbour powers section is "ongoing" whilst we await the response to our previous comments explaining the Applicant's rationale behind changes made. The MMO further notes that a new revision of the Explanatory Memorandum ("EM") has been submitted by the applicant at Deadline 5, we will review this before commenting on whether our comments on the EM have been addressed. However, some general comments on the updates are as follows:

1.36 Regarding Article 46(9), *"All fines and forfeitures…*" has been removed. The MMO welcomes this.

1.37 MMO still awaits clarification on who is intended to be the harbour authority.

1.38 Article 55 Power to dredge has been removed. The MMO supports this as dredging will be managed via the DML instead.

1.39 The MMO notes that the applicant has removed articles 58 to 61 in their entirety. This is not advisable, as these provisions are essential for all Harbour Orders and Harbour Authorities. The MMO advises that these are re-added and that our advice regarding adding penalties (why there is no penalty against the undertaker for failing to comply with the provision) remain. The MMO further advises that where these provisions have been added into the DML conditions, they should be removed, and that standard navigation condition wording is used within the DML.

2. Notification of wish to speak at Issue Specific Hearings ("ISH") in August 2021

2.1 The MMO may attend and wish to be heard orally at Issue Specific Hearing 8, 9 or 10. However, the MMO will wait to review the detailed agenda for the hearing before confirming this. If the MMO does not attend the hearing, we will review the transcript and respond to any relevant points in our written deadline responses. The MMO is fully committed to engaging in this examination as an interested party and will provide written representations at each future deadline until such time as the examination comes to a close.

3. Comments on any additional information/submissions received by D5

3.1 Comments on Report TR545 - Two dimensional modelling of the Soft Coastal Defence Feature - [REP3-048]

3.1.1 The MMO has reviewed the modelling for the SCDF that has been submitted to PINS by the Applicant. We have provided our comments on the one dimensional modelling [REP2-115] within section 5 of our Deadline 5 response. To summarise our comments on this modelling, we raised concerns about the proposal to use much coarser material for the SCDF than the native grain size present within the area as there has been no evidence provided to show that this will not have a negative impact on the neighbouring coastline and nearshore morphology. This is a very significant gap in the evidence in the MMO's view. We also raised concerns about the approach taken in this report to assess the suitability of the crest height for the SCDF. MMO asked for clarity from the Applicant on whether a proper flood risk study has been performed to assess the critical height for the Hard Coastal Defence Feature ("HCDF"), as the SZC facility will be protected against flooding by the HCDF structure, behind the SCDF.

3.1.2 Our main concerns after reviewing the two dimensional modelling are very much the same as those we have raised in relation to the one dimensional modelling. See our detailed comments on REP3-048 below.

3.1.3 As the project area is quite complex, the MMO recognises that there may not be a model available that is suited to assess the specific coastal geomorphology impacts that could occur in this area from the SCDF. XBeach contains up to date science and knowledge on nearshore wave dynamics and the resulting erosion for sand, and XBeach- G is a recent development that is more suitable for gravel beaches and SCDF structures with uniform coarse material. However, XBeach does not deal well with mixed sediments or spatially varying grain sizes. Therefore, whereas the MMO agree that the modelling is appropriate to assess the stability of the SCDF, the model is unable to reliably model the impact of the SCDF on the wider area, including the beach in front of the SCDF and the coast immediately north and south of it. This would require a model that is better suited to represent the mixed sediment conditions at the site.

3.1.4 As a result of the uncertainty concerning impacts on the wider area, the MMO advise that further modelling should be provided. We recommend that as a minimum, the 2D XBeach model is run with a sand fraction with and without the SCDF, to compare the impact on the coastline to the south and north of the SCDF. Ideally this would be done with a model that can deal with spatially varying grain sizes. As the model is unable to use multi grain fractions, the SCDF should be modelled as a hard structure, and the natural beach should be modelled with sand to provide a worst case scenario.

3.1.5 In relation to the size of the sediment used for the SCDF, the MMO agree with the Applicant's conclusion that larger particles for the SCDF will increase the stability of the SCDF and this is beneficial from a site protection point of view. However, coarser material will be less mobile. This will increase the risk of scour

around the SCDF. Moreover, the coarser material will interrupt the longshore littoral drift, rather than facilitate it as was the original aim. The coarse gravel SCDF might start acting as a sediment sink, trapping sand and fines in the pores in between the coarse material and removing it from the natural system. Furthermore, the SCDF is predicted to be stable enough, based on the design requirements, when it consists of coarse sand. The SCDF is not supposed to provide overtopping protection, the HCDF behind the SCDF is designed to prevent overtopping. Therefore, the MMO considers that there is insufficient justification to risk the neighbouring shores by increasing the sediment size of the SCDF to the extent proposed, based on the information provided.

3.1.6 In relation to the SCDF's potential to be overtopped by waves, the MMO considers that the Applicant's conclusion is reasonable and conservative. The Applicant concludes that the SCDF, if maintained with replacement material, will provide enough protection for the HCDF. However, the MMO notes that this conclusion is based on the limited set of model runs that have been undertaken in the XBeach-G modelling. This conclusion should ideally be substantiated by a full, probabilistic wave overtopping analysis.

3.1.7 In relation to Section 5 of the report 'Conclusions', MMO generally agree with the conclusions presented. However, MMO do not agree with the point stated below:

> *"Areas of erosion and accretion from the simulated storms are predicted to occur in similar locations for the Baseline and SCDF cases. In all scenarios, a dominant cut and fill beach response is predicted with sediment losses on the subaerial beach face and gains on the subtidal beach face. Most of the sediment deposited on the subtidal part of the profile is expected to return to the subaerial beach face during intervening mild conditions (not simulated in this study)."*

MMO notes that the modelling uses artificially high grain sizes, without including the fine fractions which are present in the natural beach. These fractions make up a considerable part of the beach material. Unlike the coarse fractions that are modelled, these fine fractions are unlikely to stay on the subtidal beach face. Instead they will be moved away by the significant longshore currents. No evidence from the calibration data suggests that eroded natural material stays in the beach profile, whereas the model predicts it all will stay in the profile. Therefore, the MMO considers that the last sentence above is an assumption, not based on any evidence, and is disputable for both the natural beach material (which is likely to move alongshore) and the very coarse material proposed for the SCDF, which is likely to stay where it deposits after the storm, as less energetic conditions will not be able to move this material.

3.1.8 As a result of our review of the modelling for the SCDF the MMO does not agree that using coarser material for the sacrificial outer layer of the SCDF is the best option at this stage. The modelling concludes that the use of a finer sediment will only involve a limited number of recharges (6 or 7 times over the course of

the operational phase), and therefore the MMO does not consider that the use of a much coarser material is justified based on the concerns we have detailed.

3.1.9 Furthermore, due to the high uncertainty of the impact on the surrounding foreshores from the SCDF, the area coverage of the monitoring surveys proposed in the CPMMP should be carefully considered, and should possibly be extended further than initially indicated by the modelling to monitor impacts on the wider area.

4. Responses to any further information requested by the ExA for this deadline

4.1 Responses to ExA's Written Questions ("ExQ1")

4.1.1 At Deadline 2 the MMO provided responses to the ExA's written questions ("ExQ1"). However, we were not able to answer all questions at that stage. Please find below our responses to the questions that we were not able to answer previously. These questions all relate to the draft DCO and were included in Part 4 of 6 of ExQ1 [PD-020].

Reference	Question directed to	Question	MMO Response
DCO.1 Draft Development Consent Order ("DCO")			
DCO1.106	The Applicant, MMO	**Sch 20 Para 3 – transfers of the DML. Page 174** *This appears to allow transfers which do not fall within Art 9 of the DCO to take place, in other words for the DML to be separated from the DCO. Is it not the intention to ensure that only the transfer of both together should be possible?*	The MMO confirms that we share concerns regarding the transfer of the DML based on the current drafting of the DCO/DML [REP5-027]. The MMO requests that the following amendments are made: • All references to the MMO and DML should be removed from Articles 8 and 9 of the DCO. • The definition of "undertaker" within Article 1 "interpretations" of the DML should be amended to: '*"undertaker" means NNB Generation Company (SZC) Limited (company number 09284825)*'. If the applicant wants to transfer the DML under Section 72 of the Marine and Coastal Access Act ("MCAA"), through the MMO, then this definition in the DML would be varied to update the details of the new licensee.

			• Part 2, Article 3 of the DML is appropriate if these changes are made. However, as a general point, there is no need to say in the DML at Article 3 that MCAA applies. MCAA applies because this is a marine licence which is deemed to be granted under Part 4 of MCAA and therefore MCAA applies. Our reasoning for requesting such amendments are as follows: • The intention under the Planning Act Section 149A is only to amend the method by which a marine licence is obtained, it does not, of itself, make a DML part and parcel of the Order. As currently drafted, the DML becomes part of the DCO by having the benefit of the Order and the DML covered within Article 8 and the transfer provisions in Article 9 applying to the DML. • The MMO doesn't consider that there is a need to have the Order make provision for transferring of the DML in Articles 8 and 9, as there is already a mechanism for transferring the DML under MCAA. • In the MMO's view Article 8 and Article 9 should be reserved to the transfer of the Order and not refer to the DML, and the DML should be considered separately and dealt with under MCAA, as would happen for any other marine licence.

			• Regarding the definition of “undertaker” within the DML, it is currently defined as NNB Generation Company (SZC) limited or any person who has the benefit of the Order in accordance with Articles 8 and 9 of the Order. Article 9 allows NNB to lease the benefit of the order elsewhere, the lessee would be the licensee for the purpose of Section 72(7) of MCAA. Therefore, the lessee could apply to transfer the DML which could allow divergence between the person who has the benefit of the DCO and the DML. The MMO agrees that this approach would be abnormal.
DCO 1.107	The Applicant, MMO	**Sch 20 Para 4. Page 174** *This is the heart of the licence and para 4(1) licences any licensable marine activities under s.66(1) of the MCAAct 2009 which form part of the authorised development which are not already exempt under a s.74 provision. The attention of the Applicant and MMO is drawn at this point to the definition of “authorised development” in Art 2 of the DCO and to the definition on para 1 of Sch 20 which is apparently to the same effect. What is the purpose of Para 4(2)? It is not stated whether it expands or limits the authorisation given by para 4(1). Please will the Applicant and MMO consider, explain and amend the drafting as necessary.*	The MMO shares the ExA’s concerns here, and whilst this is a matter for the Applicant to explain, it appears to the MMO that: 4(1) states that the licence holder is authorised to carry out any licensable marine activities under 66(1) of MCAA if: • they form part of, or are related to, the *marine works*, • they are not already exempt, and • providing they are within the impacts assessed in the EIA which has been undertaken. There is a definition of what is meant by *marine works* in the ‘Interpretations’ section of the DML

			(Part 1, 1) which links this back to the project authorised under the DCO. Under 4(1) the licence holder will be able to carry on any licensable marine activity in the UK marine area which is part of or related to the part of the authorised development as it is described in Schedule 1 of the Order. Paragraph 4(2) then states that the licensable marine activities in 4(1) can be carried out where they relate to the operation, construction, and maintenance of the works which are then described in 4(2) which appear to set out again the parts of the authorised development. This appears to be unnecessary duplication, and we agree that it appears unnecessary for the order to contain both 4(1) and 4(2) as currently drafted. The applicant may be intending to replicate the approach taken in other DMLs, but in doing so has made an error. As an example, looking at the DML in Schedule 11 of the DCO for Hornsea Three Offshore Wind Farm (here), paragraph 2 of the DML authorises the carrying on of the licensable marine activities described in paragraph 2. Paragraph 2 is a very wide provision which is then subject to the restrictive provision set out in paragraph 3 which limits the wide authorisation set out in paragraph 2 to those licensable marine activities that are required in relation to the construction, operation, maintenance

			of those bits of the authorised development which are carried out in the marine area, which are then listed in paragraph 3. In this case, the MMO considers that this could be resolved by either removing 4(1)(a) entirely (because 4(1) would then allow any marine licensable activity under s66(1) of MCAA which is not exempt and which is within the parameters of the environmental information to be carried out, and then 4(2) would restrict the wide authorisation under 4(1) to the construction, operation and maintenance of the works described in 4(2)). Or the applicant could choose to follow the language used in Hornsea 3 and other wind farm DMLs (see the DCO for Dogger bank and Sofia here). If 4(1)(a) was amended as the MMO has suggested, this would require reconsideration as to whether the definition of marine works is required in this DML. The MMO notes that the current definition of this term appears incomplete, and requires revisiting if it is to remain. Additionally, MMO notes that 4(1)(c) authorises the carrying on of any licensable activities that '*do not give rise to any materially new or materially different environmental effects to those assessed in the environmental information'*. This would authorise activities to take place that have not been robustly assessed within the environmental impact assessment. The MMO advises that activities should be restricted to those that have been assessed within the environmental impact assessment, and the wording should be updated to secure this.

DCO 1.110	MMO, ONR	**Sch 20 Para 8. Page 178** *This states that certain failures by the licence holder "may render this licence invalid". This would appear to be a draconian penalty or remedy where essential elements of a nuclear power station are concerned, a remedy which cannot in reality be used when it is borne in mind that the licensed activities include maintenance and replacement of for example the cooling water intakes, outfalls and tunnels. It is obviously important that the DML is observed and that effective sanctions exist. Is invalidity a legal consequence which follows from certain failures by the licence holder? Please will the MMO explain what other remedies are available to it short of revocation whether it considers them to be adequate on the assumption that the licence could not in reality be revoked. Should there be some consultation or liaison between the MMO and ONR if invalidity or revocation were to be contemplated? These questions are addressed primarily to the MMO, and also to the ONR, but the Applicant should feel free to contribute.*	There is no provision in MCAA which makes a marine licence invalid if a condition of a marine licence is not complied with, in the way that was set out in condition 8 of the DML. Where a marine licence is not complied with then the MMO has powers under s72 of MCAA to vary the licence; suspend the licence; revoke the licence; and/or to prosecute for the breach. The licence would not be made 'invalid' through the wording of a condition. Whilst it would be incredibly rare, and it would only arise in the most extreme circumstance, the MMO is able to revoke the DML under s72 where it was appropriate to do so. This is the same position for any other DML granted through a DCO or any marine licence issued independently by the MMO. Section 72 of MCAA allows the MMO to vary, suspend, or revoke a marine licence in response to a breach in the provisions of the licence; where the information supplied as part of the application was false or misleading; or to react to a change in circumstances relating to the environment, human health and navigational safety; as a result of increased scientific knowledge; or for any other reason which appears to the MMO to be relevant. The MMO accepts these are quite wide discretionary powers, but they are subject to the appeals process set out in the Marine Licensing (Notices Appeals) Regulations 2011 and normal public law decision making principles would apply. Persons other than the licence holder could

			challenge these decisions via judicial review. Whilst the Applicant has now removed DML Condition 8 [REP5-027] in its entirety, the MMO does still wish to require the licence holder to inform MMO if the licence holder becomes aware of any changes in the information on which the decision to grant the DML in this form was based. Whilst the MMO agrees that the wording "*the licence may be rendered invalid"* should be removed, we would request that the remainder of Condition 8 is added back in to the DML. In our view an amended Condition 8 should be included in the DML in the following terms: "*Should the undertaker become aware that any of the information on which the granting of this deemed marine licence was based has changed or is likely to change, the undertaker must notify the MMO of this in writing as soon as is reasonably practicable. This notification must include details of what information has changed and how that information has changed".* Once the MMO has received the notification about a change to the information the MMO will consider what, if any action, is needed to respond to that change in information. That will need to be determined on a case by case basis. The MMO may need to react to that change and in doing so it would rely on s72 of MCAA, to vary the licence and/or its conditions, suspend it, or revoke it as is necessary.

			If Condition 8 is removed completely then there is no legal obligation for the Applicant to notify the MMO that the information on which the licence and the conditions are based has changed. This could have implications given that the MMO control the activities through the licence and the conditions attached, based on the information in the application.
DCO1.124	MMO	**Sch 23. Page 195** *The ExA notes that the MMO in its RR-0744 has concerns about Sch 23 and seeks instead that disputes over approvals pursuant to the DML should be dealt with by way of judicial review (para 2.1.12 and following). The norm in the case of regulatory approvals is for there to be an appeal process on the merits before a right to review on the law is available. Whilst the PA2008 does not contain such a process for approvals pursuant to requirements it is now common for a process along the lines of Sch 23 to be included in DCOs. Should not the comparison be with the appeal system under s.73 of the MCAAct 2009 suitably adapted for approvals pursuant to conditions of a DML, rather than judicial review? Will the MMO please outline the process which applies to disputes over submissions for approvals under a DML?*	The MMO agrees that it is not unusual for a merits based appeals process to be applied to regulatory approvals before a right to review on the law is available, however the MMO's view is that in many cases these statutory appeals processes apply to the decisions to attach conditions to a regulatory approval/permission or to refuse to grant the regulatory approval and that they do not, in the main, apply to any further approvals which may be required in order to discharge the conditions of the approval or permission As noted in the question, the PA2008 does not set out a statutory appeals route for decisions around an approval which is required under a condition of a DCO or to do so conditionally and neither does the Environmental Permitting Regulations (England and Wales) Regulations 2016 which sets out the framework for the environmental permitting regime under which the Environment Agency operate. The only statutory appeals process which applies to decisions to refuse consent, agreement or approval required by a condition imposed on a regulatory permission, or grant it subject to conditions, that the

			MMO is aware of is the process that is set out in section 78(1)(b) of the Town and Country Planning Act 1990 and which applies to planning permissions. The statutory appeals process which applies to marine licensing decisions is set out in section 73 of the MCAA, as supplemented by the Marine Licensing (Licence Application Appeals) Regulations 2011. This statutory appeals process applies only to decisions made by the MMO under section 71(1)(b) or (c) of MCAA, i.e. decisions to grant a licence subject to conditions, and to decisions to refuse to grant a licence. This process does not provide an appeal route against the MMOs refusal to give an approval which is required under a condition of a marine licence or to grant a conditional approval. Such decisions are challengeable initially via the MMOs internal complaint process and thereafter, if not satisfactorily resolved, by way of Judicial review ("JR"). What the Applicant is proposing here would apply the marine licensing statutory appeals process to decisions which sit outside of that process. What the Applicant is proposing is a significant shift in terms of the appeal routes available to those who apply to marine licences issued by the MMO outside of the DCO process. PINS Advice Note 11B notes that wherever possible any deemed licence should be generally consistent with those issued independently by the MMO. The MMO remains strongly of the view that to apply an appeals process through Schedule 20 to approvals that are required under the conditions of a deemed marine licence is

			inconsistent with the approach taken in relation to marine licences issued independently by the MMO. It creates an unnecessary two-tier approach which favours licences granted under a DCO over those issued directly by the MMO, and creates an unfair playing field across this regulated community. The MMO's view is this is simply unnecessary given there is an established route for challenging these decisions via internal complaint and then JR.