



Marine Management Organisation

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Your Reference: EN010081
**Our Planning Inspectorate
Reference:** EGGB-SP011
Our Internal Reference:
DCO/2016/00006

By email only

26 October 2017

Dear Richard Allen,

RE: EGGBOROUGH CCGT – SECTION 89 AND THE INFRASTRUCTURE PLANNING (EXAMINATION RPROCEDURE) RULES 2010: EXAMINING AUTHORITY’S “RULE 8 LETTER”

The Marine Management Organisation (MMO) has reviewed the Examining Authority’s (ExA) ‘Rule 8 Letter’ dated 04 October 2017.

The MMO is an interested party for the examination of Development Consent Order (DCO) applications for Nationally Significant Infrastructure Projects (NSIPs) in the marine area. The MMO received notification on 28 June 2017 stating that the Planning Inspectorate (PINS) (on behalf of the Secretary of State for Business, Energy and Industrial Strategy) had accepted an application from Eggborough Power Limited (“the Applicant”), for a DCO for The Eggborough CCGT (Generating Station).

The development will consist of the construction and operation of up to 2.5 gigawatt (GW) gas-fired power station to be constructed largely within the site of the existing Eggborough coal-fired power station near Eggborough, North Yorkshire. The development will include associated infrastructure including a gas connection to the National Grid gas transmission system approximately 3.1 kilometres (km) to the north of the existing coal-fired power station site.

The gas-fired power station will comprise up to three combined cycle gas turbine (CCGT) units and a gas-fired peaking plant and black start facility. A peaking plant is a fast-response generating plant that only runs for short periods when there is a peak in electricity demand on the National Grid. A black start facility is a small generating plant used to restore the National Grid in the unlikely event that it should fail.

The Applicant for the DCO is Eggborough Power Ltd (EPL). EPL owns and operates the 2 GW existing coal-fired power station at Eggborough, as well as a significant part of the land required for the Proposed Development.



The MMO has an interest in this project because the development contains the construction of an outfall for a discharge point as well as cofferdams on the River Aire. The DCO application includes a deemed marine licence (DML) under Section 65 of the Marine and Coastal Access Act 2009 (MCAA 2009). Should consent be granted for the project, the MMO will be responsible for monitoring, compliance and enforcement of DML conditions.

The following constitutes the MMO's formal response to the matters arising within the Rule 8 letter. For purposes of clarity and completeness, the MMO's formal response to each of the 7 matters within Item 5 (Deadline 2 of Rule 8, Annex B) are addressed together within this packaged response.

1 Comments on Relevant Representations (RRs)

1.1 The Canal and River Trust, 07 August 2017

The MMO notes that the Canal and River Trust has raised concerns in relation to navigation; it is the MMO's opinion that provided the working area defined within Document 4.14 (Indicative Deemed Marine Licence Area for Work No. 4) and as specified within Table 12 (Work No. 4) is adhered to, the River Aire will remain navigable. To further assist in the mitigation of any potential minor impacts, during pre-application discussions and as has been noted within our section 56 response dated 09 August 2017 (item **3.4.1**), the MMO has requested that a Notice to Mariners be issued. The draft condition text is as follows: 'A notice to mariners must be issued prior to activities commencing and a copy sent to the MMO within 5 working days of issue'.

1.2 The Environment Agency, 07 August 2017

The MMO notes that as well as the MMO, EA have requested details of the cofferdam construction (item **10.1**). The MMO has secured and formalised their own method of receiving these details as part of a wider method statement condition within the draft DML.



2 Summaries of all RRs exceeding 1500 Words

2.1 The MMO's Relevant Representation dated 09 August 2017 exceeds 1500 words.

2.2 The MMO welcomes consultation on this proposal and wishes to reiterate the value of the pre-application engagement that has taken place between the applicant and the MMO prior to this submission.

2.3 The MMO is of the opinion that the Environmental Statement (ES) generally provides a thorough assessment of the potential impacts on the marine environment from the construction activities surrounding the plant abstraction and discharge points. The MMO is content with the boundaries of the environmental scoping report which the MMO were given the opportunity to comment upon in September 2016. Following the definition of assessment boundaries to underpin the ES, the MMO is content that the resulting ES accurately and fully addresses the key receptors to be considered in relation to the development and its impact on the marine area.

2.4 During pre-application engagement between the MMO and the applicant, the MMO made comments on the draft ES, draft DCO and draft Licence documents. Despite comments being made by the MMO, the documents that have been submitted to the Planning Inspectorate in support of the DCO application remain unchanged since the last consultation response that the MMO issued.

2.5 We advise that the matters raised above, particularly those in relation to the DCO and DML, are addressed should the proposal be granted development consent via a DCO. In light of this, the MMO would welcome future engagement from the developer to ensure that the issues are resolved in a timely manner.



3 Written Representations (WRs)

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

3.2 As has been clarified during pre-application, the MMO's main item of interest is the Outfall Discharge located partly below Mean High Water Springs (MHWS) within the River Aire. For clarity, as has been noted during pre-application engagement, the MMO cannot agree to the inclusion of the gas pipeline within the DML as based on the information supplied to date, this is an exempt activity within the Marine and Coastal Access Act 2009.

3.3 Despite the removal of the pipeline from the DML being agreed with the applicant, having reviewed the National Infrastructure Planning Portal, the MMO is aware that Document 4.14 continues to reference the working area required for the pipeline ('INDICATIVE DEEMED MARINE LICENCE AREA FOR WORK NO.6'). This misrepresents the locations agreed and therefore the plans must be amended.

3.4 As was noted in our Section 56 (Relevant Representation) to the ExA dated 09 August 2017, the ES provides a thorough assessment of potential environmental impacts arising from the project.

3.5 Again, as our Section 56 response to the ExA noted, during pre-application engagement between the MMO and the applicant, the MMO made comments on the draft ES, draft DCO and draft DML. Despite comments being made by the MMO, the documents that have been submitted to the Planning Inspectorate in support of the DCO application remain unchanged since the last consultation response that the MMO issued. We do however note that we have been working with the Applicant to agree the content of the draft DML and that further progress has been made since our Section 56 response was submitted.

3.6 Notwithstanding the above, the key remaining issue of disagreement between the MMO and the applicant is the presence Sub-Paragraph 4 (b) within section 3 of the Deemed Marine Licence. As we made clear within our response to the ExA's Deadline 1 (Rule 8 Letter) on the 11 October, the MMO was unable to agree with the SoCG as drafted and submitted to the ExA due to the unreasonable time allocated for our review and the ongoing disagreement about this matter.

For clarity, the MMO disagrees with Part 2 (Licenced Activities), Section 3, Paragraph (4)(b) of the draft DML (hereafter 'Part 2, 3 (4) b'). The MMO is of the firm position that the area defined by Document 4.14 ('INDICATIVE DEEMED MARINE LICENCE AREA FOR WORK NO. 4') and as specified by the coordinates provided in the DML (Table 12, Work Number 4) sufficiently defines the working area required for the outfall. All of our comments and review to date are based on this working area. If development is permitted for a wider area (as would be the case if Part 2, 3 (4) b is included in the DCO) the MMO would have to reassess potential impacts given the different project envelope, specifically the potential for works to take place across the entire river width.

The MMO recognises that the working area for the Gas Pipeline is not covered within the working area defined by Table 12 (Work No. 4). As per item **3.2** and **3.3** above, this is not



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a valid justification to warrant the inclusion of the extended boundary that Part 2, 3 (4) b would afford as the Gas Pipeline does not require licensing by the MMO.

3.7 As has been requested during pre-application engagement with the applicant, the DML must include a number of additional conditions to ensure the protection of the marine environment. As has been noted above, whilst informal agreement has been reached between the MMO and the applicant on this matter, the versions of the DCO and DML uploaded for the ExA's consideration remain unchanged. The MMO raise this issue ahead of item **3.8** below which is of relevance to maintenance and cofferdam removal questions.

3.8 Regarding the removal of the Cofferdam required for the construction of the Outfall, as the MMO have been informed that the firm details of construction are not currently available and as such, have not been provided in support of the application, the MMO has requested the following condition:

'The licence holder must submit a method statement to the MMO at least 6 weeks prior to the proposed commencement of the licensed activities. (2) The licensed activities must not commence until written approval is provided by the MMO'.

Such a condition will enable to the MMO to review and where required consult upon the exact details of construction which will include the use of a cofferdam to provide a dry and safe working area for contractors. The MMO re-state the comments made in our Section 56 response dated 09 August 2017 (item **1.3.2**) which reiterate that 'any cofferdam to be placed below mean high water springs should be included as part of the method statement supporting the DML'.

3.9 Regarding maintenance activities which are partly addressed within the ExA's first written questions, the DML includes scope for 'the construction, maintenance and operation' of work number 4 – the outfall structure. Firstly, as has been identified during pre-application engagement with the developer, significant maintenance is unlikely. Additionally, it has been identified and agreed within the ES that the impacts associated with the maintenance of the outfall are highly unlikely to be over-and-above those reviewed for its original construction. As per our comments below within item **6.6** ('Question COD 1.9 Maintenance'), if there are additional activities required which fall outside the scope of 'maintenance' (i.e. beyond those required 'to alter or improve any works within the UK Marine Licensing Area', Section 66, Marine and Coastal Access Act), there may be additional requirements for licensing under MCAA.

3.10 We note that maintenance activities have been assessed within the ES and are covered within the DML; the MMO is satisfied that the likely impacts from maintenance are within the parameters of those assessed within the ES. Demolition is not currently covered within the DML although the MMO understands that at the time of submission, the applicant does not have any clear defined plans for demolition of the outfall.



4 Summaries of all WRs exceeding 1500 Words

Not applicable.

5 Local Impact Reports from any local authorities

The MMO does not have any comments to make regarding the matters addressed within the Local Impact Reports.

6 Responses to ExA's Written Questions

6.1 The Marine Management Organisation (MMO) has reviewed the Examining Authority's (ExA) written questions dated 04 October 2017. The following constitutes the MMO's formal response to both direct questions and any other questions which the MMO feels are of relevance to our remit and/or interests.

6.2 Question BE 1.6 Mitigation

This question was directed at "Statutory Bodies" but the MMO feels that as Requirement 17 is in relation to Protected Species, this question would be best answered by Natural England (NE). The protected species licences covered in the indicative landscape and biodiversity strategy all relate to terrestrial species and would therefore be granted by NE; no requirements for Marine Wildlife licence have been identified. Generally, aside from specific protected species, the MMO is content with the potential impacts identified and mitigation supplied; the MMO notes the agreement between the applicant and NE as has been identified in NE's relevant representation dated 31 July 2017.

6.3 Question BE 1.7 Mitigation

In relation to the Landscape and Biodiversity Strategy, the MMO considers sections 4.29 (fish), 4.31 (fish management plan) and 4.32 (eel screens) to be within our remit. The MMO welcomes that the cofferdam will be installed and removed outside of the main Salmonid migration period, that a fish management plan will be produced and that eel screens will be put in place. The MMO defers further comment on this topic to the Environment Agency as they have expertise on migratory fish and the suitability of fish management plans and eel screens.

6.4 Question CA 1.5 Protected Provisions under Schedule 12 (also question DCO 1.38)

These questions were directed at 'Statutory Bodies' and although the contents of Schedule 12 do not fall within the remit of the MMO, we note that within (C – i), (C – ii), (D-i) and (D-ii), the schedule makes reference to the requirement for the relocation and/or construction of alternative utility apparatus. The MMO notes that this appears to be largely in reference to land based utilities but for clarity and as per preceding pre-application discussions that the MMO have had with the applicant, should the construction or relocation of these utilities take place within the marine environment, there may be separate licensing requirements under MCAA. The location of these utilities should be clearly defined as above or below mean high water springs as any work below mean high water springs not assessed under the DML will require a separate marine licence.

6.5 Question COD 1.1

This question was directed at "Statutory Bodies" and while the MMO is not aware of any statutory diversions that would be required, based on the location of the works specified in Application Document 4.14 and coordinates supplied in Table 12 ('Work No. 4') we do not



consider the works contained within the Deemed Marine Licence (DML) to be of such scale that a navigational diversion would be required. As was noted in the MMO's response to the Rule 8 Letter dated 11 October 2017, we continue to be in discussions with the applicant regarding the locations specified within the DML.

6.6 Question COD 1.9 Maintenance

While this question was directed at the applicant, should these 'major overhauls' require works within the UK Marine Area (Section 42 of the Marine and Coastal Access Act (MCAA)) not already considered within the DML, there may be additional requirements for licensing under MCAA.

6.7 DML Questions 1.1 – 1.10

Whilst none of the questions in relation to the DML were directed toward the MMO, we would like to point out that as per the comments in our Section 56 response dated 09 August 2017, our comments to the applicant on the draft DML have not been carried forward to the versions uploaded to the Planning Inspectorate web portal. However, the Applicant has confirmed that these changes will be incorporated into the next draft.

6.8 DML question 1.3

As was noted in the MMO's response to the Rule 8 Letter dated 11 October 2017, we continue to be in discussions with the applicant regarding the locations specified within the DML. The MMO is content that the working area is defined with sufficient clarity through Table 12 (Work No. 4). The inclusion of Part 2, 3 (4) b) is unnecessary and has the potential to consent to marine-works across the river that have not been assessed by the MMO to-date.

6.9 Question CO 1.1 (Authorised Development) and Question DCO 1.3 (Interpretation)

Whilst the question was not directed at the MMO, as we have reiterated throughout pre-application engagement with the developer, any additional works within the UK Marine Area need to be either within the scope of the DML or addressed through an additional licence should these 'other works' not be assessed under the original plans and DCO/DML.

6.10 Question FW 1.11 Cofferdam Removal

In our Relevant Representation, the MMO stated that a condition must be added to of the DML with the following wording; 'The licence holder must submit a method statement to the MMO at least 6 weeks prior to the proposed commencement of the licensed activities. The licensed activities must not commence until written approval is provided by the MMO'. The removal of the cofferdam is a constituent component of the outfall works and the licensed activities set out within the DML. As such, the removal of the cofferdam will be addressed within this method statement and circulated to the MMO for approval at least 6 weeks before the commencement of works.

7 Updated Compulsory Acquisition Schedule

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



8 Concluding Comments

8.1 Generally, as has been noted above, the MMO is largely in agreement with the proposal however, as noted above, whilst informal agreement may have been gained outside of the ExA's process, the formal versions of these updated documents must be uploaded for the MMO to confirm agreement formally.

8.2 Additionally, and of more prominent disagreement, as is identified within item **3.2**, **3.3**, and **3.6**, there are some items which the applicant must review and amend in order to achieve agreement with the MMO. Specifically, this is largely in relation to the licenced areas depicted within the draft DML; as we have noted above, the MMO is not in agreement with the current location depicted by the DML.

8.3 As noted in our Rule 8 Response to the ExA dated 11 October, the MMO have pursued formal agreement with the applicant via Statement of Common Ground as early as 22 March 2017. At the time of writing, the MMO is awaiting a revised SoCG following our feedback to the applicant on the application.

If you would like to discuss any specific matter further or require additional clarity, please do not hesitate to contact me directly.

Yours Sincerely



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