



The Planning Inspectorate Yr Arolygiaeth Gynllunio

Application by Vattenfall Wind Power Limited for the Thanet Extension Offshore Wind Farm (EN010084)

Examining Authority commentary on the draft DCO

Irrespective of its recommendation to the Secretary of State (SoS) on the planning merits of the Application, the Examining Authority (ExA) is under an obligation to preserve the SoS' decision-making discretion. It must provide the best obtainable draft Development Consent Order (dDCO) to inform the SoS' decision about whether or not to grant development consent. A dDCO is appended to the recommendation reports of all ExAs appointed under PA2008. The purpose of this commentary is to enable the Applicant, Interested Parties (IPs) and Other Persons to make final submissions on the dDCO and to enable the ExA to form any recommendations for changes to drafting that it considers necessary and appropriate, as part of its preparation to report to the SoS.

The ExA's commentary on the dDCO is set out below, with issues and questions arising from it. The issues and questions are principally addressed to the Applicant, to statutory authorities with prospective obligations arising under draft provisions, to persons affected by Compulsory Acquisition and related requests (Affected Persons) and other individual IPs and Other Persons identified by name in the right-hand column (mainly ports, shipping and fishing interests). However, comments from any IPs, Affected Persons (APs) and Other Persons involved in the Examination are welcome.

Questions (where asked) are requests for further information made pursuant to the Infrastructure Planning (Examination Procedure Rules) 2010 (EPR) Rule 17.

Readers are requested to refer to the Applicant's most recent submitted dDCO documents in order to link the issues and questions raised to the draft provisions to which they relate. These are provided in Appendix 31 to the Deadline 5 submission [[REP5-042](#)] and Annexes including: (A) a log of changes to the dDCO [[REP5-043](#)]; (B) tracked changes to the Explanatory Memorandum (EM) [[REP5-044](#)]; and (C) tracked changes to the dDCO [[REP5-045](#)]. All provision numbering follows Appendix 31 to the Deadline 5 submission, Annex C [[REP5-045](#)], and the ExA requests all respondents to reference their responses citing the provision number from that draft and the comment number in the table below.

Individual responses to these comments may be included in a letter. Where responses to multiple comments are submitted, the ExA will be assisted by their submission in an individual document in tabulated form, based on this commentary. An editable version of this commentary in Microsoft Word can be obtained from the Planning Inspectorate Case Team at ThanetExtension@planninginspectorate.gov.uk. Please title your email: **Thanet Extension: ExA Commentary Table Request**.

Initial responses to this commentary are sought by **Deadline 6 (28 May 2019)**. Where the Applicant or any IP or Other Person needs to comment on submissions or drafting submitted at Deadline 6, these comments are due at **Deadline 7 (6 June 2019)**. The Applicant is requested to submit a final preferred dDCO at **Deadline 7 (6 June 2019)**. DCO submissions at Deadline 8 should be strictly limited to matters relevant to the material change request and to a few matters where earlier submissions cannot be provided, as identified in the table below.

Abbreviations and other references used

PA2008	<i>The Planning Act 2008 (as amended)</i>	MMO	<i>Marine Management Organisation</i>
ALARP	<i>As Low as Reasonably Practicable</i>	MCAA2009	<i>Marine and Coastal Access Act 2009 (as amended)</i>
Art	<i>Article</i>	LPA	<i>Relevant local planning authority(ies)</i>
BoR	<i>Book of Reference</i>	NSIP	<i>Nationally Significant Infrastructure Project</i>
CA	<i>Compulsory Acquisition</i>	R	<i>Requirement</i>
dDCO	<i>Draft DCO</i>	SI	<i>Statutory Instrument</i>
DML	<i>Deemed Marine Licence</i>	SoS	<i>Secretary of State</i>
EM	<i>Explanatory Memorandum</i>	Sch	<i>Schedule</i>
LIR	<i>Local Impact Report</i>	TP	<i>Temporary Possession</i>

References in this document to the Port of London Authority can be taken to include (where relevant) references to Estuary Services Ltd.

Comment No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Commentary	Response sought from
1.	All Provisions	[None]	Numbering Please review numbering of and cross-referencing in text between all provisions and ensure that numbering changes at or before Deadline 5 have not left any that are wrong, or cross refer to wrongly numbered or removed provisions as a consequence of the addition of or deletion of provisions at any point in the dDCO.	Applicant
2.	All provisions	[None]	Format and SI Template validation Prior to submission of a preferred dDCO, please ensure that all formatting is consistent with the SI Template and that a validation check has been carried out.	Applicant
3.	Pre-amble	<i>The Secretary of State in exercise of the powers conferred by sections 114, 115, 120, and 149A of the 2008 Act <u>the Secretary of State makes the following Order</u></i>	Typographic error Delete the second reference to the Secretary of State.	Applicant
4.	Art 2	<i>"commence" (a) in relation to...</i>	Interpretation: "commence" (typographic error) Add the word "means" and a colon after "commence" and before "(a)".	Applicant
5.	Art 2	<i>"commence" (a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for archaeological investigations , pre-construction surveys and monitoring, and <u>seabed preparation and clearance</u> (b) in respect of any other works comprised</i>	Interpretation: "commence" The definition of commence retains scope for some substantial operations relevant to environmental effects to take place in both the marine and terrestrial environments before the formal commencement of the authorised development and the discharge of relevant requirements and/ or DML conditions.	Applicant, MMO, Natural England, Historic England, Thanet District Council (LPA), Dover District Council (LPA),

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		<p><i>in the authorised project, any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project other than operations consisting of <u>site clearance, demolition work, environmental surveys, investigations for the purpose of assessing ground conditions, diversion and laying of services, temporary structures or hard standing, the temporary display of site notices or advertisements and the words "commencement" and "commenced" will be construed accordingly; ...</u></i></p>	<p>a) In the marine environment: are there circumstances in which the nature or scale of any of the pre-commencement works shown <u>underlined</u> in column 3 might lead them to have significant effects that should be taken into account prior to the finalisation of relevant plans or strategies and in decisions to discharge any of the following DML conditions (nb – where conditions are repeated in both Sch 11 and Sch 12, the reference here to a condition to Sch 11 shall be taken to refer also to a condition for the same purpose in Sch 12):</p> <ul style="list-style-type: none"> • 8: (aids to navigation and the need for any notice to and direction on these by Trinity House); and • 13: (submission and approval of any pre-construction plans or documents) • 20: (the fisheries liaison and co-existence plan) <p>b) In the terrestrial environment: are there circumstances in which the nature or scale of any of the pre-commencement works shown <u>underlined</u> in column 3 might lead them to have significant effects that should be taken into account prior to the finalisation of relevant plans or strategies and in decisions to discharge any of the following requirements:</p> <ul style="list-style-type: none"> • R14 (access management); • R17 (highway access); • R18 (Construction Environmental Management Plan); 	<p>Kent County Council, Trinity House, Maritime and Coastguard Agency, Thanet Fishermen's Association.</p>

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			<ul style="list-style-type: none"> • R19 (temporary fencing); • R21 (Contaminated land and groundwater plan); • R22 (Construction noise and vibration management plan); • R23 (Construction traffic management plan); • R24 (Onshore archaeological written scheme of investigation); and/ or • R25 (Landscape and Ecological Mitigation plan)? <p>c) Generally: as a consequence of drafting in Art 2, are there any remaining proposals for pre-commencement works that are not (for reasons that must be stated) subject to appropriate control in the dDCO?</p> <p>IPs and Other Persons are requested to respond by Deadline 6 with the Applicant making a final response at Deadline 7.</p>	
6.	Art 2	<i>the distance between the lowest point of the rotating blade of <u>the wind turbine generation</u> and MHWS"</i>	<p>Interpretation: "draught height" Replace "generation" by "generator".</p>	Applicant
7.	Art 5 (3) and (9)	<p><i>(3) The undertaker must consult the Secretary of State before making an application for consent under this article by giving notice in writing of the proposed application and the Secretary of State must provide a response <u>within four weeks of receipt of the notice.</u></i></p> <p>... [and]</p>	<p>Benefit of the Order: deadlines on SoS processes and decisions</p> <p>As currently drafted, the article seeks to:</p> <ul style="list-style-type: none"> • Impose a 4-week deadline on the SoS to respond to receipt of a notice (Art 5(3)); and • Impose an 8-week deadline on the SoS to determine an application (Art 5(9)). 	Applicant

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		<p><i>(9) The Secretary of State must determine an application for consent made under this article within a period of eight weeks commencing on the date the application is received by the Secretary of State, unless otherwise agreed in writing with the undertaker.</i></p>	<p>Reference is made in the Explanatory Memorandum (para 7, commentary on Art 5) to similar wording being proposed in a current DCO application and to the need to define a procedure in the absence of a statutory procedure. However, such wording has not previously been accepted by a SoS. Nor is it clear what if any particular harm, delay or cost the Applicant is seeking to control by the insertion of this wording.</p> <p>Whilst the ExA has no concluded view on this matter, it is not clear that the current drafting will be acceptable to the SoS.</p> <p>In these circumstances, the Applicant is asked to consider and respond to the following possible alternative provisions:</p> <ul style="list-style-type: none"> a) In Art 5(3), replace the text "within four weeks of receipt of the notice" by "as soon as reasonably practicable". b) Replace A5(9) by "The Secretary of State must determine an application for consent made under this article as soon as reasonably practicable". <p>If the Applicant seeks to sustain the existing drafting, it is requested to provide more detailed evidence of the particular harms that the drafting seeks to address.</p>	

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8.	Art 5(4)	<i>(4) If the undertaker transfers any of all of the benefit of the provisions of this Order pursuant to paragraph (1) and the <u>transferee is a special purpose vehicle entity specifically created for the purpose of implementing and constructing the authorised development ...</u></i>	<p>Benefit of the Order: guarantee on transfer to a special purpose vehicle</p> <p>This provision would only activate the requirement to provide a guarantee in very specific circumstances: where the transferee is a) a special purpose vehicle entity <u>and</u> b) specifically created for the purpose of implementing and constructing the authorised development.</p> <p>If (for example) the transferee was to be an existing special purpose vehicle originally created for another purpose, it would appear that no guarantee would be required.</p> <p>Whilst the ExA has no concluded view on this matter, the Applicant is asked to consider and respond to the following possible alternative drafting with the intention to ensure retention of a guarantee:</p> <ul style="list-style-type: none"> • Replace “specifically created for” by “with the”. <p>If the Applicant seeks to sustain the current drafting, it is requested to explain how it can assure the SoS that the intended guarantee will be applied in all necessary circumstances.</p>	Applicant
9.	Art 5	<i>(10) Where the Secretary of State is minded to refuse an application for consent made under this article and notifies the undertaker accordingly, or</i>	<p>Benefit of the Order: application of arbitration to SoS processes</p>	Applicant

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		<p><i>the Secretary of State fails to determine the application for consent under this article within the period prescribed in paragraph (9), the undertaker may refer the matter for determination in accordance with article 36 (arbitration)</i></p>	<p>What is the justification for seeking to impose an arbitration procedure which would appear to inappropriately fetter the discretion of the SoS?</p> <p>Is it necessary to apply an arbitration procedure to the SoS, when a decision of the SoS can be challenged by way of Judicial Review?</p> <p>How can the SoS can be satisfied at the time of making the Order that the rights of those persons subject to CA under the order will be sufficiently protected upon any transfer of the benefit of CA provisions if the arbitration procedure applies?</p> <p>Whilst the ExA has no concluded view on this matter, it is not clear that the current drafting will be acceptable to the SoS.</p> <p>In these circumstances, the Applicant is asked to consider and respond to the following possible alternative provisions:</p> <ul style="list-style-type: none"> • Delete Art 5(10) and renumber remaining paragraphs, including affected cross-references. <p>If the Applicant seeks to sustain this drafting, it is requested to provide more detailed evidence of the reasons for it and the particular harms that the drafting seeks to address.</p>	

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			Please also see comments from 20 on Art 36 further below and ensure that the response to this comment takes account of positions expressed in response to those comments.	
10.	Art 5(14) and (15)	[None]	Benefit of the Order: (format errors) Correct the formatting of sub-paragraphs Art 5(14)(b)(i) to (ii) and Art 5(15)(b)(i) to (v), Art 5(14)(a)(i) to (v) (see comment 2 above).	Applicant
11.	Part 3 Arts 8 -13 Sch 3 R14	[None]	Access management Kent County Council is asked to undertake a final review by Deadline 6 of Part 3 (Arts 8 – 3) and Sch 3 R14 and to advise whether it is now content that appropriate management of the following issues is secured: a) Access to Pegwell Bay Country Park; and b) Utilisation by the public and plant crossing of the Sustrans National Cycle Route.	Kent County Council
12.	Art 15(4)	<i>(4) No trial holes may be made under this article— (a) in land held by or in right of the Crown without the consent of the Crown</i>	Authority to survey and investigate the land onshore: (format error) Reformat to remove the “– (a)” forming a sub-paragraph which is not required, whilst leaving the words in place (see comment 2 above).	Applicant

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13.	Art 16	<i>[None]</i>	<p>Public rights of navigation: justification for extinguishment of rights</p> <p>The Applicant's attention is drawn to Deadline 5A submissions by Trinity House [REP5A-006] to the effect that it is not necessary or desirable to include a general power to extinguish public rights of navigation in the dDCO. Trinity House asserts that the Applicant has not provided a sufficiently compelling reason for a provision that would have significant effects.</p> <p>a) Please respond to these submissions fully by D6. b) Why is this provision needed in its current form? c) What would be the effect if the dDCO did not provide the extinguishment sought?</p> <p>Trinity House, Maritime and Coastguard Agency and (to the extent that this issue affects its interests) Port of London Authority are invited to comment on the Applicant's response at Deadline 7.</p>	Applicant, Trinity House, Maritime and Coastguard Agency and Port of London Authority
14.	Art 16(2)	<i>(2) The Applicant will submit a plan showing the precise locations of each permanent structure to Trinity House, the MCA, the MMO and the Secretary of State; (a) in the case of Trinity House, no later than ten weeks prior to the commencement of the works; (b) in all other cases, no later than eight weeks</i>	<p>Public rights of navigation: notification of Port of London Authority</p> <p>The Port of London Authority and Estuary Services Ltd. have requested [REP5A-002] that the Port of London Authority be added to this provision, on the basis that it provides VTS (vessel traffic services) in the area and this would enable it to</p>	Applicant, Port of London Authority and Estuary Services Ltd.

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		<i>prior to the commencement of the works.</i>	<p>issue notice to mariners and advise pilots in advance of the construction of new permanent structures. This request has been justified on the basis that it is necessary to (without prejudice to other submissions) reduce navigational risk to ALARP.</p> <p>The Applicant is requested to either:</p> <p>a) Make the change sought; or b) Provide a final explanation why such drafting is not warranted.</p> <p>Port of London Authority and Estuary Services Ltd. are asked to make concluding submissions on this point at Deadline 7.</p>	
15.	Art 16	<i>[None]</i>	<p>Public rights of navigation: additional security for navigation safety in construction</p> <p>Port of Tilbury London Ltd., London Gateway Port Ltd. have requested [REP5A-001] that Art 16 be amended to extend the navigation safety measures for permanent structures to cover temporary construction works. It flags that similar measures enabling Trinity House to give directions for the lighting and marking of works are a standard provision in Ports DCOs and Harbour Orders.</p> <p>The Applicant is requested at Deadline 6 to either:</p> <p>a) Propose relevant changes; or</p>	Applicant, Maritime and Coastguard Agency, Trinity House, Port of London Authority, Estuary Services Ltd, Port of Tilbury London Ltd., London Gateway Port Ltd.

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			<p>b) Provide an explanation why such drafting is not warranted.</p> <p>The relevant IPs and Other persons are asked to make concluding submissions on this point at Deadline 7.</p>	
16.	Art 17	<p>"the Crown Estate <u>for</u> which includes" [and] "and <u>provide</u> the Secretary of State"</p>	<p>Compulsory acquisition (CA) of land: (typographical errors) Remove superfluous "for". Replace "provide" with "provided" to give effect to apparent drafting intention.</p>	Applicant
17.	Art 19	"the undertaker <u>shall not</u> exercise"	<p>Compulsory acquisition (CA) of rights: (current drafting practice) Replace "shall not" with "must not".</p>	Applicant
18.	Art 25	[None]	<p>Temporary use of land for carrying out the authorised project (TP) While the reasons set out in the EM (para 7, commentary on Art 6) for excluding the provisions of the Neighbourhood Planning Act 2017 (NPA 2017) are noted, although the relevant parts of this statute have not yet commenced, the provisions of the statute have now been clear for some time. Given the parliamentary approval to the temporary possession regime under the NPA 2017, which was subject to consultation and debate before being enacted, could the current wording be modified to</p>	Applicant and any Affected Person subject to temporary use of land wishing to comment

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			<p>more closely reflect the incoming statutory regime where possible?</p> <p>Specifically:</p> <p>a) The notice period that will be required under the NPA 2017 Act is 3 months, substantially longer than the 14 days required under article 25(2). Whilst existing made Orders have removed the effect of the NPA 2017, this has in summary terms been argued on a transitional basis - that pre-application consultation and project design commenced at a point when there was no prospect of provisions in the NPA 2017 coming into effect and so these were not planned for by the Applicants in these cases. It is not clear that that was the case for this Application. Other than prior precedent in drafting, what is the justification for only requiring 14 days' notice in this case?</p> <p>b) Under the NPA 2017, the notice would also have to state the period for which the acquiring authority is to take possession. For the same reasons, should such a requirement be included in this case?</p> <p>c) TP powers are sometimes said to be justified because they are in the interests of landowners, whose land would not then need to be acquired permanently. The NPA 2017 Act provisions include the ability to serve a counter-notice objecting to the proposed temporary possession so that the landowner</p>	

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			<p>would have the option to choose whether temporary possession or permanent acquisition was desirable. Should this article make some such provision – whether or not in the form in the NPA 2017?</p> <p>The Applicant is asked to respond by Deadline 6.</p>	
19.	Art 34	<i>subject to a tree preservation order which was made after <u>July 2017</u></i>	<p>Trees subject to tree preservation orders Why has July 2017 been chosen here?</p>	Applicant, Thanet District Council (LPA), Dover District Council (LPA)
20.	Art 36	<i>Subject to Article 39 (Saving provisions for Trinity House), <u>any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled in arbitration in accordance with the rules at Schedule 9 of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Centre for Effective Dispute Resolution.</u></i>	<p>Arbitration: removal of SoS’ backstop power of appointment At paragraph 7.1 of the Applicant’s oral submissions to ISH7 [REP3-020], the Applicant acknowledges that the arbitration provisions set out in this dDCO are novel (in that whilst they have been proposed in other dDCOs for NSIP applications that have not yet been decided by the SoS, no equivalent provision can be found on the face of any made Orders). There are outstanding concerns about the approach taken in this provision.</p> <p>Multiple made Orders contain arbitration provisions that, in default of an agreement between the parties on appointment, empower the SoS to appoint the arbitrator. In summary, the purpose of</p>	Applicant

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			<p>this backstop is to ensure that the public purpose of the arbitration process and the fitness of the arbitrator can (in cases of dispute) be assured by the SoS.</p> <p>The Applicant has set out reasons why it seeks to vary this otherwise well preceded approach. However, the ExA remains unclear as to the underlying reasons why this backstop role for the SoS has been removed and the evidenced benefits that would flow from this reform.</p> <p>a) If the Applicant seeks to sustain a backstop power to appoint an arbitrator that is held by a person who is not the SoS, it is requested to provide a clear explanation and evidence of the administrative difficulties, avoidable costs, delays or other harms that a back-stop appointment by the SoS has given rise to in any case and that is sought to be avoided by this drafting.</p> <p>b) Alternatively, would the Applicant be content to reinstate the backstop appointing role of the SoS?</p>	
21.	Art 36	<i>[As above]</i>	<p>Arbitration: application to the SoS generally As currently worded, Art 36 appears to apply to disputes relating to the consent to be given by the SoS to any transfer of the benefit of the order (Art 5(10)).</p> <p>a) The ExA is not aware of any precedent / equivalent provision in a made Order that</p>	Applicant

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			<p>would have the same effect. If such precedent exists, please draw attention to it.</p> <p>b) It is a possible effect of the current drafting of Art 36 that this could enable a transfer of benefit decision to be taken out of the SoS' hands (which could ultimately mean that development consent had been granted to a party not approved by the SoS). (In this respect, the drafting could also fetter the SoS' discretion.)</p> <ul style="list-style-type: none"> • If that is the intended purpose, the Applicant is requested to provide a clearer explanation as to why it is considered necessary and appropriate. • If that is not the intended purpose, drafting should be prepared to address this point, excepting transfer of benefit from the operation of Art 36. <p>c) It is a possible effect of the current drafting of Art 36 that it might be argued to circumvent the need for the SoS to be satisfied when making the Order that a person ultimately granted development consent pursuant to a decision by an arbitrator has the required funding to secure CA compensation.</p> <ul style="list-style-type: none"> • If that is the intended purpose, the Applicant is requested to provide a clearer explanation as to why it is considered necessary and appropriate. 	

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			<ul style="list-style-type: none"> • If that is not the intended purpose, drafting should be prepared to address this point, providing that nothing in the operation of Art 36 can prevent the need for the SoS to be satisfied of the transferee’s capability to fund compensation. <p>d) The arbitration clause may also implicitly apply to “any difference under any provision of this Order” (Art 36) which concerns the SoS. So, it could also apply to other provisions in respect of which the SoS’ consent/ approval is required including:</p> <ul style="list-style-type: none"> • Art 19(6) (SoS’ consent for power to acquire rights to be transferred to a statutory undertaker). Could circumstances arise where the SoS was not satisfied that the power should be transferred for any reason but could be overruled by the arbitrator? • R8 (Any refusal by the SoS to approve a decommissioning scheme). Again, it appears possible that an arbitrator decision could result in approval being given for a scheme of which the SoS disapproves. • If that is the intended purpose, the Applicant is requested to provide a clearer explanation as to why it is considered necessary and appropriate. • If that is not the intended purpose, drafting should be prepared to address this point, providing that nothing in the operation of Art 36 can apply to identified consent 	

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			<p>provisions exercised by the SoS and ensuring that in any matter in respect of which the SoS requires to be satisfied, the SoS' actual satisfaction cannot be over-ruled by an arbitrator.</p> <p>In responding to these comments, it should be noted that whilst the ExA has no firm view on the merits of the currently proposed drafting, it is by no means demonstrated that Art 36 as currently drafted would be deemed acceptable by the SoS.</p> <p>If the Applicant seeks to sustain this drafting, then additional evidence of the need for and beneficial effect of this approach will be required.</p>	
22.	Art 36	<i>[As above]</i>	<p>Arbitration: proposed role for the Centre for Effective Dispute Resolution</p> <p>At paragraph 7.1 of the Applicant's oral submissions to ISH7 [REP3-020], the Applicant undertook to 'seek confirmation that the inclusion of the Centre for Effective Dispute Resolution is an appropriate body to adjudicate in matters pertaining to arbitration'.</p> <p>a) If this body is to remain on the face of the dDCO, the ExA requests the Applicant to provide a letter of remit and consent from it, demonstrating that it has the relevant expertise to perform the remit provided in this provision and agrees to perform the statutory function that the dDCO would place upon it.</p>	Applicant and all IPs / Other Persons

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			<p>b) Alternatively, if it is argued that a backstop other than the SoS should be retained, is there any other relevant body that might discharge the role provided for the Centre for Effective Dispute Resolution?</p> <p>c) Do any other IPs / Other Persons have final views to put to the ExA on the suitability of the Centre for Effective Dispute Resolution, any other relevant body or the SoS to perform the backstop appointment of an arbitrator?</p>	
23.	Art 36	<i>[As above]</i>	<p>Arbitration: application to determinations by statutory and regulatory authorities As currently drafted, Art 36 might apply to “any difference under any provision of this Order” which concerned a statutory/ regulatory body or public authority. There are multiple examples of this, affecting consents or approvals to be given by street authorities (Art 8(3) and Art 10(3), highway authority (Art 11), owners of watercourses (Art 14(3)), etc..</p> <p>The arbitration procedure would not apply to differences between the Applicant and any of the relevant bodies concerned by the requirements listed in Art 37(2) (those bodies covered by Sch 10, where an appointed person appeal procedure is set out). This is because Art 36 only applies “unless otherwise provided for”, and Art 37 would be such an alternative provision.</p> <p>However, as currently drafted, this provision and Art 37 mean that there could be differences</p>	Applicant, Thanet District Council (LPA), Dover District Council (LPA), MMO, Maritime and Coastguard Agency, Trinity House, Kent County Council, Environment Agency, Natural England, Historic England and any other relevant public authority, statutory or regulatory body

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			<p>between how some disputes would be handled, even between the same parties. For example, a difference with a highway authority under a requirement in Art 37(2) (such as R17) would be handled in accordance with Sch 10, but a difference with a highway authority under Art 11(1)(b) would appear to be handled under the arbitration provisions.</p> <p>a) Are potential differences of this nature intended and are the mechanics and effect of these differences well understood?</p> <p>b) If so, is it sufficiently clear as to whom (particularly to statutory/ regulatory bodies or public authorities) and when (in what particular circumstances) the arbitration provisions should apply and whether the cut-off between arbitration and a Sch 10 process is sufficiently clear and justified?</p> <p>There is an argument that if these distinctions are to be retained, they need to be made explicit on the face of the dDCO, in the same way that the matters to be dealt with by way of an appeal to an appointed person has been listed in Art 37(2). The Applicant is requested to set out a form of words that add additional clarity.</p>	
24.	Art 36	<i>[As above]</i>	<p>Arbitration: application to determinations under Requirements (Schedules 1 and 10) and Conditions (Schedules 11 and 12)</p> <p>Is it sufficiently clear and, if not, is any further drafting required to place beyond doubt that the</p>	Applicant, Thanet District Council (LPA), Dover District Council

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			provisions of Art 36 do not apply to determinations under, discharges or appeals in relation to Requirements (Schs 1 and 10) or to determinations under and discharges of Conditions in the DMLs (Schs 11 and 12)?	(LPA), MMO, Maritime and Coastguard Agency, Trinity House, Kent County Council, Environment Agency, Natural England, Historic England and any other relevant public authority, statutory or regulatory body
25.	Art 36	<i>[As above]</i>	Arbitration: application to the MMO and DMLs In relation to the MMO, SI provisions for appeal in the Marine Licensing (Licence Application Appeals) Regulations 2011 relate to appeals against the refusal or grant subject to conditions of an application for a marine licence under the MCAA2009, and so it is accepted that these would be an 'alternative provision' for the purposes of Art 36. The ExA is not aware of a SI applicable to a refusal or non-determination by the MMO of an application to discharge a condition of a marine licence and there is no specific provision in the MCAA2009 regarding this matter. Arguably, therefore, the effect is that the Applicant is asking the ExA to recommend imposing the arbitration process from Art 36 on the MMO in relation to applications to discharge conditions of DMLs, as these could be "differences" under a provision of	The Applicant, the MMO.

Comment No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Commentary	Response sought from
			<p>the Order (Art 13 grants the licences with their conditions).</p> <p>The consequent effect of this appears to be that the Applicant is asking for the establishment of a new procedure and recourse, which a licence holder of a marine licence that had been granted directly under the MCAA2009 (i.e. not a DML) would not have.</p> <p>The Applicant and the MMO are asked for their observations at Deadline 6.</p> <p>a) Is such an effect intended?</p> <p>b) If it is, what are the reasons for it and is it justified?</p> <p>c) Is it necessary because the marine licences in this case apply to NSIP development, or is something specific about this project which necessitates the application of this procedure?</p> <p>d) Is it relevant that this could establish a precedent for DMLs under the Planning Act to be treated differently from MLs granted under the MCAA2009?</p> <p>e) Are the implications of this procedure, including the distribution of new benefits, costs and burdens on the MMO and the public fully understood?</p>	

Comment No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Commentary	Response sought from
26.	Art 36	[None]	<p>Arbitration: general appropriateness of provision: effects on statutory authority duties etc.</p> <p>The question of the general appropriateness of the provision in Art 36 in relation to the enabling of an arbitration process to subsume the discharge of specific statutory duties placed on public authorities was argued orally at ISH9. Since then, the Applicant has provided:</p> <ul style="list-style-type: none"> a) Submissions on the approaches taken in respect of a similar provision in the Norfolk Vanguard and Hornsea Three Examinations [REP5-022]; and b) An additional Counsel’s Written Opinion on DCO drafting in relation to arbitration [REP5-023]. <p>Public authorities whose determinations might be subject to arbitration and who have expressed concerns about the proposed approach are requested to review these documents and to make final written submissions on their preferred approach at Deadline 6.</p>	All public authorities, particularly the MMO, Trinity House and Natural England
27.	Art 37(2)	<i>Schedule 10 (procedure for discharge of requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements 7, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25 and 26 in Part 2 of Schedule 1 (requirements)</i>	<p>Procedure in relation to certain approvals</p> <p>Please review the list of requirements set out in Art 37(2) where an agreement or approval is required.</p> <ul style="list-style-type: none"> a) Is it clear that these are the correct provisions? b) If not, what provisions should be added and what provisions should be removed? 	Applicant, all relevant planning authorities (Dover District Council (LPA), Thanet District Council (LPA)), the highway authority

Comment No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Commentary	Response sought from
			<p>c) Has renumbering over recent deadline submissions affected the referencing?</p> <p>Any public authority which considers that it does not benefit from this procedure but that it should do is requested to:</p> <p>d) set out the purpose and reason(s) for which it should be included in this provision; and</p> <p>e) frame a preferred means of drafting to address its request.</p> <p>The Applicant is requested to comment on any such requests at Deadline 7.</p>	<p>(Kent Country Council), any street authority or owner of an affected watercourse, sewer or drain or other public authority considering that it does or should benefit from the procedure in this article or Schedule 10.</p>
28.	Art 40	[None]	<p>Crown rights: (format errors)</p> <p>Please reformat to make the current (2) into (1)(a), make the current (2)(a) to (c) into (1)(a)(i) to (iii), make the current (2)(d) into (1)(b), and renumber the current (3) as (2).</p>	Applicant
29.	<p>Schedule 1 Parts 1 and 3</p> <p>and/ or</p> <p>Schedule 8 (Protective Provisions)</p> <p>Schedule 11 (Generation</p>	[None]	<p>Structures Exclusion Zone and navigation risk mitigation</p> <p>Without prejudice to any more general oral and written submissions about the effect and extent of the Structures Exclusion Zone (SEZ) and other controls in the dDCO which aim to reduce navigation risk to ALARP, all relevant IPs and Other Persons are requested to make final submissions on additional drafting to provide for the SEZ by Deadline 6.</p>	<p>Applicant, Maritime and Coastguard Agency, Trinity House, Port of London Authority, Estuary Services Ltd., London Pilots Council, UK</p>

Comment No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Commentary	Response sought from
	Assets Deemed Marine Licence)		<p>The submitted drafting should be prepared on the basis that, if the SoS was minded to make the Order, it would in their view bring risk as close to ALARP as can be achieved. If it remains their view that risk could be reduced further within an ALARP “band”, this should be made clear in their submission.</p> <p>Drafting proposals are sought that the relevant parties consider are best able to manage-down risk and are most likely to amend or augment provisions relevant to the Authorised Development and the SEZ (Sch 1 Part 1), the Requirements (Sch 1 Part 3), Protective Provisions (Sch 8) and/or conditions to the Generation Assets DML (Sch 11).</p> <p>The Applicant is requested to respond to all such drafting requests at Deadline 7 and in doing so, if it remains resolved not to adopt requested changes, to explain why these are not necessary.</p>	Chamber of Shipping, Port of Tilbury London Ltd., London Gateway Port Ltd.
30.	Schedule 1 Part 3 Possible New Requirement	<i>[None]</i>	<p>Navigation safety and shipping impact mitigation plan</p> <p>Port of Tilbury London Ltd. and London Gateway Port Ltd. (the Ports) [REP5A-001] highlight that whilst Sch 11 Condition 13 (Generation Assets DML) provides an approval to the MMO for a construction programme and monitoring plan to include “details of the works to be undertaken within the structures exclusion zone; and [...] the</p>	Applicant, Maritime and Coastguard Agency, Trinity House, Port of London Authority and Estuary Services Ltd, Port

Comment No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Commentary	Response sought from
			<p>proposed timetable for undertaking of such works within the structures exclusion zone..." it would be desirable for this or an equivalent plan to be approved by the Maritime and Coastguard Agency. The Ports suggest that for this to be secured, a new Requirement should be provided, translating the effect of the plan approval requirement in Sch 11 Condition 13 into the body of the DCO for approval by the Maritime and Coastguard Agency.</p> <p>By Deadline 6:</p> <ul style="list-style-type: none"> a) The Maritime and Coastguard Agency is requested to engage with Trinity House to consider whether such a provision would address their concerns and; if so b) Whether it should secure consultation or approval by either one or the other body (which one) and c) How such a provision might be drafted. <p>By Deadline 7:</p> <ul style="list-style-type: none"> d) The Applicant, Port of London Authority, Port of Tilbury London Ltd. and London Gateway Port Ltd. are to respond on the need for and form of any such provision. <p>It follows that a final response by the Applicant to drafting arising from this comment can be made at Deadline 8.</p>	<p>of Tilbury London Ltd. and London Gateway Port Ltd.</p>

Comment No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Commentary	Response sought from
31.	Schedule 1 Part 3 R8	<i>No offshore works may commence until a written decommissioning programme in compliance with any notice that may be served upon the undertaker by the Secretary of State pursuant to section105(2) of the 2004 Act has been submitted to the Secretary of State for approval.</i>	<p>Offshore decommissioning</p> <p>As this provision is currently worded, the decommissioning works can commence as soon as the decommissioning programme has been submitted.</p> <p>Does this reflect the drafting intention and, if so, for what purpose other than notice is the offshore decommissioning plan to be submitted to the SoS?</p> <p>If the intention is to establish an approval mechanism, the Applicant is asked to replace “submitted to the Secretary of State for approval” by “submitted to and approved by the Secretary of State” or equivalent words.</p>	Applicant
32.	R12	[None]	<p>Landfall works notification: “method statement”</p> <p>What is the “method statement” referred to? Should this be defined?</p>	Applicant
33.	R26 and others	[None]	<p>Seasonal restriction</p> <p>The Applicant amended the DCO at Deadline 5 to insert a provision applying seasonal restrictions on construction activities (including piling) in respect of non-breeding waterbirds.</p> <p>Is Natural England now content with the scope and duration of security for the seasonal restriction on construction activities? If any additional provisions</p>	Applicant, Natural England

Comment No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Commentary	Response sought from
			are required to give effect to it, these should be identified at Deadline 6 and the Applicant should provide final wording or reasons to make no change at Deadline 7.	
34.	Schedule 8	<i>[None]</i>	<p>Protective Provisions</p> <p>The ExA draws attention to the need to ensure that all negotiation between the Applicant and relevant statutory undertakers on the form and content of Protective Provisions must be completed by Deadline 6, with final forms of drafting available for comment at Deadline 7 and Applicant’s response at Deadline 8.</p> <p>If any commercial agreements are necessary to augment Protective Provisions in circumstances where the Applicant is seeking the withdrawal of a statutory undertaker objection relevant to ss 127 and/ or 138 PA2008, evidence that an agreement has been concluded must be provided no later than Deadline 6, on the basis that if agreements are not concluded, additional draft protective provisions can be submitted for Deadline 7 and commented on at Deadline 8.</p> <p>In that context, where the relevant statutory undertaker is content, evidence should be provided at Deadline 6 that the statutory undertaker either does not request protective provisions or is content with those already found in the dDCO.</p>	The Applicant and any statutory undertakers/ beneficiaries of Protective Provisions.

Comment No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Commentary	Response sought from
35.	Schedule 8	[None]	<p>Protective Provisions: Port of London Authority</p> <p>The Port of London Authority and Estuary Services Ltd. remain concerned that, notwithstanding that the Application affects waters where it provides VTS (vessel traffic services) and notices to mariners, Protective Provisions that it would view as normal in such circumstances have not been provided in the dDCO. It has accepted the absence of such provisions on the basis that the Application site is outwith the Port Authority statutory territory, albeit within sea space that is covered by VTS. The ExA notes however that this acceptance appears to be conditional on the inclusion of relevant provisions to benefit Port of London Authority in Art 16 (Public rights of navigation) and/ or further consideration by the Applicant of means of reducing potential conflicts between navigating vessels and construction, operational and decommissioning activities generally to ALARP and more specifically doing so in the Structures Exclusion Zone (SEZ), having regard to the primary purpose of the SEZ which is (without prejudice) to reduce navigational risk to ALARP.</p> <p>a) If the Applicant does not propose any changes to Art 16, can and should Port of London Authority's interests be protected using a new provision in Sch 8, relating to notice of construction and the location of structures?</p>	The Applicant, Port of London Authority and Estuary Services Ltd.

Comment No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Commentary	Response sought from
			<p>b) Could and should a protective provision address the issue of notice and siting of cabling works in the SEZ?</p> <p>c) Could and should a protective provision address the issue of notice and siting of other construction, operation and maintenance works with potential adverse effects on navigation in the SEZ?</p>	
36.	Schedule 8	<i>[None]</i>	<p>Protective Provisions: Southern Water The ExA draws attention to an additional submission from Southern Water accepted on 3 May 2019 on the basis that that body is a statutory undertaker, a Statutory Party and an Affected Person and so (notwithstanding that it did not make a relevant representation) is an IP [AS-015].</p> <p>If any Protective Provisions are required to address Southern Water’s concerns, please prepare and submit these on the same basis as described in Comment 34 above.</p> <p>Southern Water is asked comment on any final drafting at Deadline 7.</p>	The Applicant, Southern Water.
37.	Schedule 9	<i>[None]</i>	<p>Arbitration Rules: reference to Art 36 Add reference to Art 36 in title.</p>	Applicant

Comment No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Commentary	Response sought from
			It should be noted that if the ExA were to be persuaded that a different approach to arbitration to that provided for in current Art 36 was merited, consequential changes to the drafting of this Schedule may be required. The Applicant, IPs and Other Persons are requested to submit proposals for alternative drafting by Deadline 6, enabling comments at Deadline 7.	
38.	Schedule 10	<i>[None]</i>	Applications made under Requirements Update the list of requirements to match amended Art 37(2).	Applicant
39.	Schedules 11 and 12 (Deemed Marine Licences)	<i>[None]</i>	DMLs: (formatting generally) Further to comment 2, a substantial number of sub-paragraphs with lower case Roman numerals (i) etc. appear to be out of SI template format and require review and format correction.	Applicant
40.	Schedules 11 and 12 (Deemed Marine Licences)	<i>[None]</i>	DML security for offshore design parameters The MMO [REP5A-003] has raised the possible need to set the offshore design parameters out on the face of the DML. This approach is justified as providing a 'one stop shop' for MMO staff, enabling them to find relevant provisions within the body of each DML, rather than having to go to other sources (including the balance of the DCO) and is argued to be consistent with the approach taken to Marine Licences that are granted directed under MACAA2009 (as distinct from DMLs). Consistency of form is viewed as important to ensure that	Applicant, MMO.

Comment No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Commentary	Response sought from
			<p>relevant staff and stakeholders know how to navigate and apply the provisions of the DML.</p> <p>The Applicant is asked to set out a final position on this matter, taking account of established DML drafting practice, by Deadline 6. In particular, the Applicant should explain the reasons why it is appropriate and necessary to take a different approach to that which the MMO has identified as being its standard marine licencing approach in this case.</p> <p>The MMO may comment by Deadline 7.</p>	
41.	Schedules 11 and 12 (Deemed Marine Licences)	<i>[None]</i>	<p>'Handshake' between offshore and onshore archaeological written scheme of investigation</p> <p>The interface between the maritime and terrestrial historic environment in extensive intertidal salt marsh is complex. Is there any need for additional provisions onshore to join the MMO as a consultee prior to approval of the onshore written scheme of investigation (WSI) and to join relevant terrestrial stakeholders as consultees prior to approval of the offshore WSI?</p> <p>Comments are sought from all relevant IPs at Deadline 6 with final drafting (if required) from the Applicant at Deadline 7.</p>	Applicant, MMO, Thanet District Council (LPA), Dover District Council (LPA), Kent County Council, Historic England.

Comment No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Commentary	Response sought from
42.	<p>Schedules 11 and 12 (Deemed Marine Licences)</p> <p>Condition 7(11) Sch 11</p> <p>Condition 6 (11) Sch 12</p>	<p><i>(11) In case of damage to, or destruction or decay of, the authorised scheme seaward of MHWs or any part thereof the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify MMO, MCA, Trinity House and the UK Hydrographic Office. <u>In case of exposure of cables on or above the seabed, the undertaker must within five days following the receipt by the undertaker of the final survey report from the periodic burial survey, notify mariners by issuing a notice to mariners and by informing Kingfisher Information Service of the location and extent of exposure.</u></i></p>	<p>DMLs: (drafting practice)</p> <p>Please review the underlined text and consider whether this should form another paragraph. (Note that Condition 7(11) of Sch 11 and Condition 6(11) of Sch 12 take the same form and the same amendment could be made to both.)</p>	Applicant
43.	<p>Schedules 11 and 12 (Deemed Marine Licences)</p> <p>Condition 13(1)(k) Sch 11</p> <p>Condition 11(1)(l) Sch 12</p>	<p><i>(k) A <u>site integrity plan</u>, which must be approved in writing by the MMO in <u>consultation with Natural England</u> prior to the commencement of operation of the licensed activities and which must accord with the outline site integrity plan (as certified in accordance with article 35).</i></p>	<p>Pre-construction plans and documentation: site integrity plan</p> <p>Natural England has welcomed its addition as a consultee on the preparation of a site integrity plan (SIP) for the Generation Assets DML [REP5A-005]. It has requested that the same amendment be made to the parallel provision in the Export Cable System DML at Condition 11(i)(l) of Sch 12 which currently provides only for the MMO to approve the SIP.</p> <p>The Applicant is requested to review Condition 11(1)(l) of Sch 12 and present its final wording and reasoning at Deadline 6.</p>	Applicant, Natural England

Comment No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Commentary	Response sought from
44.	<p>Schedules 11 and 12 (Deemed Marine Licences)</p> <p>Condition 17(3) Sch 11</p> <p>Condition 16(3) Sch 12</p>	<p><i>(3) The results of the initial noise measurements monitored in accordance with subparagraph (1) must be provided to the MMO within six weeks of the installation of the first four piled foundations of each piled foundation type. <u>The assessment of this report by the MMO will determine whether any further noise monitoring is required.</u></i></p>	<p>Construction monitoring: noise measurements and cessation of piling</p> <p>Natural England [RR-053][REP2-045] and the MMO [REP5-062][REP5A-003] have requested a mechanism within DML conditions 17(3) (Generation Assets: Sch 11) and 16(3) (Export Cable System: Sch 12) for piling to cease quickly in a situation where construction noise monitoring confirms there is a significant adverse effect. (This relates to noise effects from piling on marine mammals and fish.)</p> <p>The ExA heard submissions for the Applicant at ISH5 that such a limitation is not required in the dDCO because the MMO already have a statutory power enabling it to control piling in this way. However, we are not currently clear that the MMO’s statutory powers do already provide for this eventuality and hence the matter of the adequacy of control in the dDCO remains unresolved.</p> <p>Could the Applicant by Deadline 6 please either accede to this request and propose drafting or alternatively provide further justification for its position that this provision is not necessary.</p> <p>Natural England and the MMO may comment and provide drafting by Deadline 7, with final Applicant comments at Deadline 8 if required.</p> <p>In framing final drafting, parties are requested to clarify whether or not, in their view, the amended wording would be necessary to secure a conclusion of No Adverse Effect on Integrity in relation to the</p>	<p>Applicant, Natural England, MMO</p>

Comment No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Commentary	Response sought from
			Harbour Porpoise feature of the Southern North Sea SAC.	
45.	Schedules 11 and 12 (Deemed Marine Licences) Condition 17(3) Sch 11 Condition 16(3) Sch 12	<i>[As Above]</i>	Construction monitoring: noise measurements The conditions conclude in the following terms: "[t]he assessment of this report by the MMO will determine whether any further noise monitoring is required." This does not appear to be sufficiently clear that the MMO is exercising control or that additional monitoring can be required, in what terms, where and for what duration. The Applicant and the MMO are requested to review this drafting to provide greater clarity about the scope and effect of the determination to be made by the MMO under these conditions, by Deadline 6.	Applicant, MMO
46.	Schedule 11 (Generation Assets Deemed Marine Licence) Condition 17(4)	<i>[None]</i>	Construction monitoring: vessel traffic monitoring Trinity House has requested at Deadline 5A [REP5A-006] that it should be added to the bodies receiving monitoring reports. The Applicant is to consider this request and by Deadline 6 is either to accede to it, or to provide reasons why it is not necessary to accede to it. Is such data relevant to the provision of VTS (vessel traffic services) and notices to mariners by Port of London Authority?	Applicant, Trinity House, Port of London Authority

Comment No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Commentary	Response sought from
47.	Schedule 11 (Generation Assets Deemed Marine Licence) Condition 18	[None]	<p>Post construction: vessel traffic monitoring Trinity House has requested at Deadline 5A [REP5A-006] that Condition 18 should be amended to provide for operational vessel traffic modelling in similar terms to the construction vessel traffic modelling provided for in Condition 17. It has requested to be a recipient of monitoring reports.</p> <p>The Applicant is to consider this request and by Deadline 6 is either to accede to it, or to provide reasons why it is not necessary to accede to it.</p> <p>Is such data relevant to the provision of VTS (vessel traffic services) and notices to mariners by Port of London Authority, or to the provision of services by the Maritime and Coastguard Agency and/ or the MMO?</p>	Applicant, Trinity House, MMO and Maritime and Coastguard Agency
48.	Schedule 12 (Export Cable System Deemed Marine Licence) Condition 15(2)(a)	<p>(2) The pre-construction surveys referred to in sub-paragraph (1) to be undertaken, unless otherwise agreed by the MMO, are—</p> <p>(a) <u>appropriate surveys to determine the location and extent of any biogenic reef features (Sabellaria spinulosa) inside the area(s) within the Order limits in which it is proposed to carry out construction works, as provided for in the Biogenic Reef Mitigation Plan...</u></p>	<p>Pre-construction monitoring and surveys Natural England advises [REP5A-005] that although pre-construction ground-truthing is provided for in the Biogenic Reef Mitigation Plan (BRMP), it is of sufficient importance to merit being included within a more precise description of appropriate surveys secured on the face of this Condition.</p> <p>The Applicant is requested to either accede to this request at Deadline 6 or to explain why such an approach is not warranted.</p>	Applicant, Natural England
49.	Schedule 12 (Export Cable	(b) In the event—	Pre-construction monitoring and surveys: (good drafting and referencing error)	

Comment No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Commentary	Response sought from
	<p>System Deemed Marine Licence)</p> <p>Condition 15(2)(b)</p>	<p><i>(i) cable protection is installed within the Goodwin Sands rMCZ, ground truthing of the geophysical surveys carried out in accordance with sub-paragraph (2)(c), using drop down video and to be focussed on the areas where cable protection has been installed to monitor epifaunal communities and inundation by sand, in the event that cable protection is installed within the Goodwin Sands rMCZ;</i></p> <p><i>(ii) sandwave clearance is required within the Goodwin Sands rMCZ, interpreted geophysical monitoring to monitor changes in sediment type, in the event that sandwave clearance is required within the Goodwin Sands rMCZ</i></p>	<p>As currently drafted, the formatting of Condition 15(2)(b) (i) and (ii) appears that it would be more preferably drafted with 15(2)(b) (i) as a self-contained sub paragraph (b) and then 15(2)(b) (ii) as a self-contained sub paragraph (c), with sub paragraphs (c) to (e) re-lettered accordingly.</p> <p>Is the reference “carried out in accordance with sub-paragraph (2)(c)” which calls up the Saltmarsh Mitigation, Reinstatement and Monitoring Plan (SMRMP) the correct reference? Natural England suggests not [REP5A-005].</p> <p>The Applicant is requested to review its approach on these matters and present its final position at Deadline 6.</p>	Applicant, Natural England
50.	<p>Schedule 12 (Export Cable System Deemed Marine Licence)</p> <p>Condition 15(2)(b)</p>	[As above]	<p>Pre-construction monitoring and surveys: “interpreted geophysical monitoring” and survey effort</p> <p>Can the Applicant please explain what “interpreted geophysical monitoring” means?</p> <p>Natural England suggests [REP5A-005] that the activity taking place pursuant to this drafting may require more precise definition on the face of the Condition. It also considers that ground-truthing needs to occur and to be secured at both pre-construction and post construction, with equal survey method and effort at both stages.</p>	Applicant, Natural England

Comment No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Commentary	Response sought from
			The Applicant is requested to review its approach on these matters and present its final position at Deadline 6.	
51.	Schedule 12 (Export Cable System Deemed Marine Licence) Condition 17	<i>[None]</i>	Post construction Natural England highlights [REP5A-005] an unresolved action accepted by the Applicant to secure the post construction monitoring provided for in the Biogenic Reef Mitigation Plan (BRMP) on the face of this Condition. The Applicant is requested to review its approach on this matter and present its final position at Deadline 6.	Applicant, Natural England
52.	Schedule 13	<i>[None]</i>	Documents to be certified: reference to Art 35 Add reference to Art 35 in title.	Applicant
53.	Schedule 13	<i>[None]</i>	Documents to be certified: version control audit The Applicant is requested to carry out an audit of all documents to be certified and to ensure that the preferred dDCO submitted at Deadline 7 contains references all such documents correct at that time, with correct version numbers and dates. An accompanying table should record the ExA's EL unique reference for each document, assisting the final document checking process by the ExA.	Applicant

Comment No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Commentary	Response sought from
54.	Explanatory Note	<i>A copy of the plans and book of reference referred to in this Order and certified in accordance with article 35 (certification of plans, etc.) of this Order may be inspected free of charge at the offices of [XX] Council at [XX].</i>	<p>Hard copy inspection location</p> <p>In compliance with the General Data Protection Regulation (GDPR) (EU 2016/679), the Planning Inspectorate now limits the duration in which documents associated with a made Order and which also contain the personal information of data subjects (such as the BoR) are publicly available on the national infrastructure planning website. For this reason, it is important to be clear where these documents will be retained for public inspection at a known location within the vicinity of the proposed development.</p> <p>The Applicant is requested to nominate an inspection location by Deadline 6 and to provide a letter of approval from the hosting body, demonstrating that it has agreed to the document hosting request.</p>	Applicant