Vattenfall Wind Power Ltd

Thanet Extension Offshore Wind Farm

Appendix 3 to Deadline 7 Submission: Responses to IP Comments on the ExA's DCO Commentary

Relevant Examination Deadline: 7

Submitted by Vattenfall Wind Power Ltd

Date: June 2019

Revision A

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Revision A	Original document submitted to the Examining Authority

DL7 APPLICANT RESPONSES TO IP'S COMMENTS ON THE EXA'S DCO COMMENTARY

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
	MCA			
1.	**30. Schedule 1 Part 3 Possible New Requirement Navigation safety and shipping impact mitigation plan** 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 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. By Deadline 6: 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	a) This provision is not sufficient to address our concerns listed above. We would expect a construction programme and monitoring plan to include "details of the works to be undertaken within the structures exclusion zone, anyway; b) The construction programme and monitoring plan should be conditioned, and we would expect the MMO to consult the MCA prior to the approval of this document. c) DML conditions are approved by the MMO in consultation with the relevant consultee(s). The MMO consults the MCA on the construction and monitoring plan before signing off the licence condition and we would expect the MMO to consult the MCA for such a plan for the SEZ.	(a) The Applicant is unsure why the drafting does not address the MCA's concerns based on the response provided – the construction programme and monitoring plan now must contain sufficient details of the SEZ, which the MMO will then approve. (b) The MMO would as a matter of course consult with any bodies on which their input would be required prior to the approval of any aspects of the DML, of which the MCA would be such a body of matters relevant to them. (c) As stated at Deadline 6, the Applicant considers that an additional requirement is unnecessary, principally because the MMO is responsible for the enforcement of marine licenses.	No amendments to the dDCO are proposed.

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	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.			
	Trinity House			
2.	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. a) In the marine environment: are there circumstances in which the nature or scale of any of the pre-commencement works shown underlined 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 (n.b. - 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):	TH has no comments other than to state that this is standard wording.	The Applicant agrees that this is standard wording and has no further comments.	No amendments to the dDCO are proposed.

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	• 8: (aids to navigation and the need for any notice to and direction on these by Trinity House); • 13: (submission and approval of any pre-construction plans or documents) • 20: (the fisheries liaison and co-existence plan) b) In the terrestrial environment: are there circumstances in which the nature or scale of any of the pre-commencement works shown underlined 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: • R14 (access management); • R17 (highway access); • R18 (Construction Environmental Management Plan); • 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			

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	• R25 (Landscape and Ecological Mitigation plan)? 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? IPs and Other Persons are requested to respond by Deadline 6 with the Applicant making a final response at Deadline 7.			
3.	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 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. However, as currently drafted, this provision and Art 37 mean that there could be differences between how some disputes would	TH notes that this question is directed principally towards those bodies which perform approval functions in relation to the requirements in Part 3 of Schedule 1 to the dDCO. TH is not one of those bodies. In relation to point (b), however, TH emphasises the point made in previous submissions that, in its view, it is currently not sufficiently clear that the arbitration procedures provided for do not apply to considering the appropriateness of determinations made by public bodies exercising regulatory functions on behalf of the Secretary of State. This is especially relevant in the context of decisions on the discharge of conditions under the Deemed Marine Licences **("DMLs")** in Schedules 11 and 12 of the dDCO, which TH is an important contributor to, in a number of instances, both in its own right and as one of the Marine Management Organisation's **("MMO")** statutory consultees.	The Applicant maintains that arbitration should apply to Schedules 11 and 12, but has now included an appeal procedure for use in relation to the approval of details (akin to the discharge of requirements) by the MMO under Conditions 13 and 14 in Schedule 11 and Conditions 11 and 12 in Schedule 12. This appeal procedure would exist instead of arbitration for those conditions, however the remainder of the DML would still be subject to arbitration. For the Applicant's full response please see the Applicant's responses to the ExA's Commentary on the dDCO submitted as	Amendments made at Deadline 6, no further amendments proposed.

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	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. a) Are potential differences of this nature intended and are the mechanics and effect of these differences well understood? 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? 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.	TH does not consider that it should be open to the Applicant to seek to refer to arbitration questions as to the appropriateness, or otherwise, of determinations made by the MMO (in consultation with its statutory consultees) or other public bodies under the DMLs. There is plainly no provision made for any form of arbitration in relation to conventional marine licences granted under the Marine and Coastal Access Act 2009 **("the 2009 Act")** and no indication that Parliament intended, in passing the Planning Act 2008, that marine licences deemed granted under Orders granting development consent should be treated differently. TH notes that, when this question arose in the context of the recently made Port of Tilbury (Expansion) Order 2019 **("Tilbury 2"),** the Examining Authority, in its report and recommendations to the Secretary of State dated 20 November 2018, found in favour of the MMO. This view was subsequently adopted by the Secretary of State. The relevant extract from the Examining Authority's report and recommendations reads as follows: *'The Applicant stated that an arbitration clause should be included in the DML, as detailed in its closing statement [REP7-036, paragraph 6.9]. The MMO maintained that this clause should not be included [REP7-033].*	Appendix 24 to the Applicant's Deadline 6 submission [REP6-034]. As the Applicant has explained previously, Arbitration has existed in numerous DCOs and have applied to the entirety of the Order (and indeed, the model provision wording refers to any difference under any aspect of the Order). The application of arbitration to the MMO was also considered in the recent Tilbury 2 Order. The MMO was not expressly excluded from the arbitration article, which states: *"Arbitration* *60. Except where otherwise expressly provided for in this Order and unless otherwise agreed in writing between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement,*	

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		The arbitration clause, paragraph 27, was *included in the DML in the Applicant's final submitted draft DCO [AS-089], The Applicant asserted that the principle of the PA2008* was *to ensure a "one stop shop" regime, and that the MMO's position in general* was *not prejudiced, since the proposed clause made it clear that it* was *not to be taken, or to operate, so as to fetter or prejudice the statutory rights, powers, discretions or responsibilities of the MMO.* *In the MMO's submission at Deadline 7 [REP7-033], the MMO stated that it strongly opposed the inclusion of such a provision, based on its statutory role in enforcing the DML. According to the MMO, the intention of the PA2008 was for DMLs granted as part of a DCO in effect to operate as a marine licence granted under the MCCA2009. There* was *nothing to suggest that after having obtained a licence it should be treated any differently from any other marine licence granted by the MMO (as the body delegated to do so by the SoS under the MCAA).* *Having considered the arguments of the Applicant and the MMO, the Panel finds in favour of the MMO in this matter for the reasons stated in the paragraph above.* ***Accordingly, the Panel recommends that paragraph 27 is deleted from the DML at Schedule 9 of the draft DCO.'*** TH does not, therefore, consider that the Applicant's previous submissions to the	*to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers."* However, the Examining Authority for Tilbury 2 recommended that an express condition applying arbitration in the DML should be removed, and this was not included in the final Tilbury 2 Order. The express condition stated as follows: *"Arbitration* *27.—(1) Subject to condition 27(2) any difference under any provision of this licence must, unless otherwise agreed between the MMO and the licence holder, be referred to and settled by a single arbitrator to be agreed between the MMO and the licence holder or, failing agreement, to be appointed on the application of either the MMO or the licence holder (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.*	

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		effect that determinations made by the MMO (in consultation with its statutory consultees) and other public bodies, such as TH, under the DMLs should be arbitrable is tenable in the light of the Secretary of State's decision on the Tilbury 2 application. TH notes that the Applicant has obtained a legal opinion which purports to provide confirmation that decisions reached by public bodies, including those reached by the MMO (in consultation with its statutory consultees) under the DMLs, should be referable to arbitration. A written opinion to this effect was included in the Applicant's Deadline 5A submissions and **TH's detailed response to it will follow shortly upon Deadline 6.** In TH's preliminary view, however, the strength of the arguments put forward on behalf of the Applicant in the written opinion are substantially weakened by the absence of any reference to the Secretary of State's decision on the Tilbury 2 application or the principles which underscore that decision as set out in the Examining Authority's report and recommendation. Whilst TH's full response to the Applicant's written opinion will, as noted, follow shortly, TH does not consider that the arguments advanced on behalf of the Applicant change its view regarding the arbitrability of determinations made by public bodies in the context of the dDCO. TH does not	*(2) Nothing in this condition 27 is to be taken, or to operate so as to, fetter or prejudice the statutory rights, powers, discretions or responsibilities of the MMO."* In the Examining Authority's recommendation Report (page 233) to the Secretary of State (SoS). The Examining Authority found in favour of the MMO noting: *"…The MMO stated that it strongly opposed the inclusion of such a provision, based on its statutory role in enforcing the DML. According to the MMO, the intention of the PA2008 was for DMLs granted as part of a DCO in effect to operate as a marine licence granted under the MCCA2009. There was nothing to suggest that after having obtained a licence it should be treated any differently from any other marine licence granted by the MMO (as the body delegated to do so by the SoS under the MACAA).* *Having considered the arguments of the Applicant*	

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		consider that those determinations should be capable of arbitration and accordingly wishes, in particular, to see express wording on the face of the dDCO to that effect.	*and the MMO, the Panel finds in favour of the MMO in this matter for the reasons stated in the paragraph above.* *Accordingly, the Panel recommends that paragraph 27 is deleted from the DML at Schedule 9 of the draft DCO."* he Applicant's position is that the Tilbury 2 decision can be distinguished. This is because it is of a wholly different scale of project to an offshore wind farm. The Tilbury 2 project is for the development of a new port terminal and associated facilities. Offshore, only new berthing facilities are proposed. There is a 6 week period for the discharge of plans under the DML, which clearly emphasises the difference in scale and complexity of the schemes, given the 6 month period sought by the MMO for discharge of plans for offshore wind farm projects. Finally, the project is a transport project, not an energy project for which the Applicant considers that	

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			special considerations should apply. Numerous representations have been provided in relation to this previously. The Applicant entirely disagrees with TH that arbitration is not capable of being included in DMLs and has provided numerous representations on this point previously and does not propose to repeat them here.	
4.	Arbitration: application to determinations under Requirements (Schedules 1 and 10) and Conditions (Schedules 11 and 12) Is it sufficiently clear and, if not, is any further drafting required to place beyond doubt that the 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)?	As set out in the response to Question 24 above, TH considers that clarity is required on the face of the dDCO that article 36 must not apply to determinations made by the MMO (in consultation with its statutory consultees) or other public bodies under the DML conditions in Schedules 11 and 12 of the dDCO. In TH's view, this is the necessary consequence of the Secretary of State's decision on the Tilbury 2 application, which confirms that, once deemed granted under an Order granting development consent, any DML should operate in the same way as any other marine licence granted under the 2009 Act. TH is aware that the Examining Authority's report and recommendations in relation to the Tilbury 2 application turned on the inclusion of an express arbitration clause within the DMLs. That is not in issue here.	Please see the response to item 3 above.	Please see the response to item 3 above.

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		However, the same principle must apply, in TH's view, in relation to article 36, since the Applicant seeks to rely upon that article as the basis of its purported authority to refer to arbitration determinations under the DMLs. TH also notes that there is no express wording in the Tilbury 2 Order (as made) clarifying that arbitration does not apply to determinations made by the MMO under the DMLs. TH would make two submissions in this respect. First, the principal issue under consideration in the context of the Tilbury 2 application was the inclusion of an express arbitration clause in the DMLs, which is not the case here. Second, TH considers that it is important, in the context of both this and other offshore wind farm Orders, in the interests of promoting legal certainty for all parties involved in those Orders and more generally, for it to be made clear that arbitration does not apply in the context of the DMLs. For completeness, TH has previously suggested drafting which would address this concern and provide the clarity referred to above. This drafting can be found at Appendix 2 of TH's written submissions dated 4 March 2019, which is set out again in the appendix to these submissions for completeness.		

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5.	Arbitration: general appropriateness of provision: effects on statutory authority duties etc. 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: 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], 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.	As noted, TH's detailed response to the recently received Counsel's Written Opinion will be submitted to the examination shortly. TH's preliminary observations in relation to that Opinion are set out in the responses to Comment Nos. 23 and 24 above. TH remains of the view that, as a minimum, express wording needs to be included in the dDCO to make it clear that article 36 (Arbitration) does not extend to enabling an Arbitrator to consider the appropriateness of decisions made by the MMO (in consultation with its statutory consultees) or other public bodies, such as TH, under the DMLs. TH considers that the drafting set out at Appendix 2 of its written submissions dated 4 March 2019 (please see the appendix to these submissions) would be appropriate in this regard. This suggested drafting also aligns with that which TH has proposed should be included in both the Norfolk Vanguard and Hornsea Three Orders.	Please see the response to item 3 above. The Applicant would welcome the Written Opinion as soon as possible, and if TH is able to be e-mailed directly, in order that they might be able to respond for Deadline 8.	Please see the response to item 3 above.

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6.	Structures Exclusion Zone and navigation risk mitigation 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. 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. 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). 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.	TH are content with the applicants draft wording submitted at DL5 in document EN010084- 001860 page 35 & 36	The Applicant has no further comments.	No amendments proposed.

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7.	Navigation safety and shipping impact mitigation plan 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 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. By Deadline 6: 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. By Deadline 7: d) The Applicant, Port of London Authority, Port of Tilbury London Ltd. and London	TH consider this style of provision would not deliver significant risk mitigation in addition to the existing provisions. If it does get included it would be for the MMO and MCA to approve as it would need to encompass post consent requirements.	As stated at Deadline 6, the Applicant considers that an additional requirement is unnecessary, principally because the MMO is responsible for the enforcement of marine licenses.	No amendments to the dDCO are proposed.

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	Gateway Port Ltd. are to respond on the need for and form of any such provision. It follows that a final response by the Applicant to drafting arising from this comment can be made at Deadline 8.			
8.	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?	TH remains of the view that it should be added to the bodies receiving monitoring reports but will await the Applicant's response at Deadline 6 before making further submissions (if any) in relation to this issue.	The Applicant added TH to the bodies receiving such monitoring reports at Deadline 6.	Amendments made at Deadline 6, no further amendments proposed.

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9.	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. 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, or to the provision of services by the Maritime and Coastguard Agency and/ or the MMO?	TH remains of the view that it should be added to the bodies receiving monitoring reports but will await the Applicant's response at Deadline 6 before making further submissions (if any) in relation to this issue.	The Applicant has added Trinity House to the bodies receiving such monitoring reports.	A report must be submitted to the MMO, Trinity House and the MCA at the end of each year of the three year period
	Port of Tilbury and London Gateway			
10.	N/A	The Ports note that one of the Deadline 6 deliverables is to provide comments on the Examining Authority's DCO commentary. The Ports provided comments in respect of the draft DCO (with reference to the proposed SEZ) at Deadline 5A and at this stage have no further comments in respect of the draft DCO. The Ports note that there are a number of points in the Examining Authority's DCO commentary which require Interested Parties (IPs) to comment on the DCO. The Ports will consider the responses	The Applicant notes this representation.	No amendments to the dDCO are proposed.

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		of IPs and respond as appropriate at Deadline 7.		
	Natural England			
11.	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. a) In the marine environment: are there circumstances in which the nature or scale of any of the pre-commencement works shown underlined 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 (n.b. - 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):	The definition of commence is currently unacceptable. The exclusion of Seabed Preparation works and clearance from the definition of commence means that the impact to the benthic marine environment will be able to proceed without sufficient regulatory oversight. a) By the very nature and size of these works they are likely to lead to impacts that have significant effect on the environment. These works encompass the vast majority of the environmental impacts to the seabed and must be appropriately mitigated. The required mitigation must be appropriately regulated and secured through a condition. The applicant's proposed condition 23 does take some steps to secure mitigation by submission of methodology for approval. However, the condition refers to the biogenic reef mitigation plan which is currently expected 4 months prior to commencement and is unlikely to be approved until much nearer to	The Applicant has sought to address this point and ensure that sufficient mitigation is secured for any works carried out prior to formal commencement. At Deadline 6, the Applicant: updated the definition of "pre-commencement works" in the DCO to ensure it includes all works which could have likely significant effects and therefore require mitigation; and inserted a new requirement in Schedule 1 and a new condition in each DML in relation to pre-commencement works. The requirement and conditions secure the submission and approval of any relevant information	Amendments made at Deadline 6, no further amendments proposed.

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	• 8: (aids to navigation and the need for any notice to and direction on these by Trinity House); • 13: (submission and approval of any pre-construction plans or documents) • 20: (the fisheries liaison and co-existence plan) b) In the terrestrial environment: are there circumstances in which the nature or scale of any of the pre-commencement works shown underlined 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: • R14 (access management); • R17 (highway access); • R18 (Construction Environmental Management Plan); • 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	commencement. This would seem to specifically contradict the intent of the new definition and condition i.e.it doesn't extradite preparation works from the pre-construction commencement documentation/conditions and timings. Additionally, there is little definition of what that methodology would contain and the only mitigation secured is the biogenic reef plan and Archaeological plans. There are many other mitigations/plans that might need to be included depending on the works proposed. Furthermore, the condition has no proposed time for when the methodology needs to be submitted, or how long the regulator can expect to consider the information provided. The condition needs to be amended to ensure that all mitigation required for the pre-commencement works is secured. Additionally, a reasonable time period must be given within the condition for submission, review and approval of this information. However, it is questionable if this can be achieved due to the need to cross reference much of the mitigation with the requirements of condition 13. Previously developers, and regulatory bodies have used the wording at condition 13 (1) to avoid this issue: *The licensed activities or any part of those activities must not commence until the following (as relevant to that part) have been submitted to and approved in writing by the MMO.*	required pursuant to the various requirements or conditions listed above in relation to the pre-commencement works before they can begin. In the Applicant's view all mitigation required for the pre-commencement works is adequately secured and it welcomes Natural England's views on the updated drafting.	

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	• R25 (Landscape and Ecological Mitigation plan)? 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? IPs and Other Persons are requested to respond by Deadline 6 with the Applicant making a final response at Deadline 7.	The pre-construction works have been considered as their own part of construction, and documentation that is submitted for them need only be relevant to that part. This has worked for all previous DCO offshore wind projects and Natural England, therefore, questions if there is a real necessity for the proposed change		
12.	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.. 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. However, as currently drafted, this provision and Art 37 mean that there could be differences between how some disputes would	Natural England has no further comment regarding this comment currently.	The Applicant notes this representation.	No amendments proposed.

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
	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. a) Are potential differences of this nature intended and are the mechanics and effect of these differences well understood? 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? 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.			
13.	**Arbitration:** application to determinations under Requirements (Schedules 1 and 10) and Conditions (Schedules 11 and 12) Is it sufficiently clear and, if not, is any further drafting required to place beyond doubt that the provisions of Art 36 do not apply to determinations under, discharges or appeals in	Natural England notes that the article 36 wording states: *any difference under any provision of this Order, unless otherwise provided for.* Is this wording intended to mean provided for within the order (which is not made explicit) or provided for elsewhere, such as	The Applicant updated the dDCO at Deadline 6 to make it explicitly clear that arbitration does not apply to Schedule 10 and the discharge of requirements.	Amendments made at Deadline 6, no further amendments proposed.

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
	relation to Requirements (Schs 1 and 10) or to determinations under and discharges of Conditions in the DMLs (Schs 11 and 12)?	through other legislation or Judicial Review? Natural England considers that if the requirements (Schedules1 and 10) and determinations under and discharge of conditions in Schedules 11 and 12 are to be excluded from arbitration, then the current wording does not make this sufficiently explicit	Additional wording was also included to make it clear that the discharge of specific conditions in Schedule 11 and 12 are subject to an appeal procedure, however that any other dispute arising under the DMLs is subject to resolution by arbitration. The wording in the Applicant's view is clear on this point but this will be reviewed again prior to Deadline 8 following receipt of any additional responses at Deadline 7. In this regard, it is important to note that Norfolk Vanguard Offshore Wind Farm project is in discussions with the MMO regarding an appeal mechanism contained within the DMLs and the most appropriate way to agree this. The Applicant would stress to statutory bodies, including Natural England but also of course the Examining Authority, that it is of importance to ensure that consistency exists throughout offshore wind farm development consent orders and the way that	

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			approvals are managed. The Applicant is therefore content that if such an appeal mechanism is to apply for specific conditions relating to approvals of plans for Norfolk Vanguard, the Applicant is content for such an appeal mechanism to apply. To reiterate however, the Applicant would not agree that arbitration should not then exist at all elsewhere in other parts of the Order, unless it is explicitly stated that another approval mechanism applies (such as Schedule 10).	
14.	**Seasonal restriction** The Applicant amended the DCO at Deadline 5 to insert a provision applying seasonal restrictions on construction Page 9 of 15 activities (including piling) in respect of non-breeding waterbirds. Is Natural England now content with the scope and duration of security for the seasonal restriction on construction activities? If any additional provisions 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.	It is clear at condition 26 there is a seasonal restriction in place between the 1st October and the 31st March for works 3A and 3B. These works are primarily within the intertidal and saltmarsh area and Natural England welcome these restrictions. However, we would like to draw the ExA's attention to the latest OLEMP (Revision B), in particular paragraphs 5.3.18 to 5.3.21. Here, the applicant also states "In addition, all driven/ percussive piling within **Pegwell Bay Country Park**, if required, would also be subject to a timing restriction and would not take place during the period October to March inclusive. "Further still the applicant	The Applicant's view is that this mitigation is adequately secured by requirement 25, which requires the implementation of a landscape and ecological mitigation plan, which must accord with the outline landscape and ecological mitigation plan. Not only does this plan secure the mitigation but, because of the more nuanced application of a timing restriction within	No changes to the dDCO are proposed.

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
		states “Any works **within 250 m** of intertidal habitats (i.e. any works to the east of the black dashed line shown in Figure 4) that are in **direct line of sight of intertidal habitats** (e.g. works on the TJBs) would only take place during the period October to March following the erection of screening fencing to avoid visual disturbance to non-breeding waterbirds.” This mitigation outlined above is required to rule out any AEoI on the SPA. As a result, Natural England advises that this mitigation is included in the DCO to ensure the Applicant carries out the necessary actions.	Pegwell Bay Country Park (as opposed to the blanket restriction in the intertidal), it allows for discussion and agreement on matters such as which works are in direct line of sight, and the nature of screening fencing, to ensure that Natural England’s concerns are addressed. This plan as such secures the mitigation referred to by Natural England.	
15.	**Pre-construction plans and documentation: site integrity plan** Natural England has welcomed its addition as a consultee on the preparation of a site integrity plan (SIP) for the Generation Assets DML [REP5A005]. 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. The Applicant is requested to review Condition 11(1)(l) of Sch 12 and present its final wording and reasoning at Deadline 6	Natural England agree that the same amendment should be made to the parallel provision in the Export cable System DML at condition 11(i)(l).	The Applicant amended the wording of this condition within Schedule 12 for consistency with Schedule 11 at Deadline 6.	Amendments made at Deadline 6, no further amendments proposed.
16.	**Construction monitoring: noise measurements and cessation of piling** Natural England [RR-053][REP2-045] and the MMO [REP5-062][REP5A-003] have requested a mechanism within DML conditions	Natural England is still of the opinion that the condition regarding the cessation of piling is still required. The MMO is better positioned to provide a drafting of this condition, however we are happy to work alongside them and the applicant to get the	The Applicant proposed additional wording at Deadline 6 as requested but would welcome Natural	Amendments made at Deadline 6, no further amendments proposed.

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
	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.) 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. 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. Natural England and the MMO may comment and provide drafting by Deadline 7, with final Applicant comments at Deadline 8 if required. 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 Harbour Porpoise feature of the Southern North Sea SAC.	best outcome. With regard to the ExA's final point regarding AEoI, securing this condition would not make any difference to the current conclusion of AEoI. As stated above, the condition regarding cessation of piling is requested to ensure that if the construction noise monitoring demonstrates the piling works are significantly louder than assessed in the EIA, they can be stopped from continuing until further mitigation and/or monitoring can be agreed and implemented. This issue is not related to the SIP and our current advice regarding AEoI on the SNS SAC.	England's comments on the proposed wording.	

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17.	**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. The Applicant is requested to either accede to this request at Deadline 6 or to explain why such an approach is not warranted.	Natural England has no further comment beyond what was stated at Deadline 5 / 5A.	The Applicant notes this representation.	No amendments to the dDCO proposed.
18.	**Pre-construction monitoring and surveys: (good drafting and referencing error)** 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. 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]. The Applicant is requested to review its approach on these matters and present its final position at Deadline 6.	In line the ExAs query is the reference to sub-paragraph 2C correct and appropriate?	The Applicant reformatted the Article as recommended at Deadline 6. The Applicant has also amended the reference to state 2(d), rather than 2(c).	Amendments made at Deadline 6, no further amendments proposed.

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19.	**Pre-construction monitoring and surveys: "interpreted geophysical monitoring" and survey effort** Can the Applicant please explain what "interpreted geophysical monitoring" means? 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 preconstruction and post construction, with equal survey method and effort at both stages	Natural England would also welcome further information form the Applicant regarding this point which was raised by ourselves at Deadline 5 / 5A.	The Applicant provided further information in Appendix 24, item 50 of its submissions Deadline 6 [REP6-034] and has updated the dDCO to refer to ground truthing.	Amendments made at Deadline 6, no further amendments proposed.
20.	**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.	To reiterate, within the BRMP it is made clear that post-construction monitoring will be undertaken to validate the success of any micrositing. However, there is no reference to this within condition 15 and 17 of Schedule 11 Part 4. For completeness, it should explicitly state within this condition that this monitoring will be carried out. This will ensure a clear mechanism is there. Also, in line with the applicant's assertions that ground truthing data will be collected pre-construction for the BRMP this should be committed to post-construction to aid in determining the success of any micrositing.	The Applicant has provided post construction monitoring in the BRMP on the face of the Condition in the dDCO as submitted for Deadline 6.	Amendments made at Deadline 6, no further amendments proposed.
	MMO			
21.	**Comment no. 5–Interpretation: "commence"**	The ExA identifies that the current definition retains scope for some substantial operations relevant to environmental effects	The Applicant has sought to address this point and ensure that sufficient	Amendments made at Deadline 6, no further

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	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. a) In the marine environment: are there circumstances in which the nature or scale of any of the pre-commencement works shown underlined 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): • 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) b) In the terrestrial environment: are there circumstances in which the nature or scale of any of the pre-commencement works shown underlined in column 3 might lead them to have significant effects that should be taken into account prior to the finalisation of relevant	to take place before formal commencement of the authorised development and the discharge of relevant requirements and/or DML conditions. This would create a situation in which marine licensable activities could be taking place outside of any authorisation contained within the marine licence which the order will deem to have been granted, which is unacceptable. The nature and scale of seabed preparation and clearance is such that it might lead to significant effects that should be taken into account prior to the finalisation of relevant plans or strategies and in decisions to discharge DML conditions. Such conditions are correctly listed by the ExA in the commentary, namely 8 (aids to navigation),13 (submission and approval of pre-construction plans or documents) and 20: (the fisheries liaison and co-existence plan). As such, the MMO has requested the applicant make necessary drafting amendments to ensure those requirements relevant to the undertaking of seabed preparation and clearance are reflected throughout the dDCO and DMLs, as if it were included in the definition of 'commence'. The applicant has suggested they will make the amendments accordingly.	mitigation is secured for any works carried out prior to formal commencement. At Deadline 6, the Applicant: updated the definition of "pre-commencement works" in the DCO to ensure it includes all works which could have likely significant effects and therefore require mitigation; and inserted a new requirement in Schedule 1 and a new condition in each DML in relation to pre-commencement works. The requirement and conditions secure the submission and approval of any relevant information required pursuant to the various requirements or conditions listed above in relation to the pre-commencement works before they can begin. In the Applicant's view all mitigation required for the pre-commencement works is adequately secured and it welcomes the MMO's views on the updated drafting.	amendments proposed.

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	plans or strategies and in decisions to discharge any of the following requirements: • R14 (access management); • R17 (highway access); • R18 (Construction Environmental Management Plan); • 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)? 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? IPs and Other Persons are requested to respond by Deadline 6 with the Applicant making a final response at Deadline 7.			
22.	**Comment no. 22 - Arbitration: proposed role for the Centre for Effective Dispute Resolution**	Given our fundamental opposition to the application of the arbitration provision to the MMO, it is not appropriate for us to	The Applicant notes this representation.	No amendments to the dDCO are proposed.

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	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'. 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. 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? 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?	comment on who might be appointed as an arbitrator.		
23.	**Comment no. 23 –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	Article 37 has no application to the MMO, we are not therefore likely to experience the situation the ExA outlines in relation to the application of Article 37 and have therefore no comment to make in relation to this comment.	The dDCO has been amended at Deadline 6 to explicitly apply arbitration to Schedules 11 and 12 and the Applicant awaits further comments from the MMO.	No amendments to the dDCO are proposed.

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	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.. 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. However, as currently drafted, this provision and Art 37 mean that there could be differences 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. a) Are potential differences of this nature intended and are the mechanics and effect of these differences well understood? 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			

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	arbitration and a Sch 10 process is sufficiently clear and justified? 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.			
24.	**Comment no. 24 –Arbitration: application to determinations under Requirements (Schedules 1 and 10) and Conditions (Schedules 11 and 12)** Is it sufficiently clear and, if not, is any further drafting required to place beyond doubt that the 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)?	The MMOs view is it is not sufficiently clear on the current drafting of Article 36 that the arbitration provisions set out in of Article 36 do not apply to the MMOs decisions and determinations in respect of the DMLs set out in Schedules 11 and 12 of the Order. As such, the MMO requests amendments to the drafting that make it explicit that the MMO is not subject to the provision. An example of such appropriate revised drafting to article 36 has been put forward by Trinity House (TH) in their deadline 3 submission (REP3-071),the MMO preference is that the applicant uses similar wording in this dDCO. Please also see comments at 2.5.11 in respect of preferred wording.	The Applicant updated the dDCO at Deadline 6 to make it explicitly clear that arbitration does not now apply the discharge of certain conditions in Schedule 11 and 12. Instead the approval of details is subject to an appeal procedure (mirroring that set out in Schedule 10), but any other dispute or difference arising under the DMLs is still subject to resolution by arbitration. The Applicant notes the ongoing discussions taking place with the Norfolk Vanguard Wind Farm project team and would cite that consistency in obtaining certain approvals – and ensuring a robust mechanism exists to appeal,	Amendments made at Deadline 6, no further amendments proposed.

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
			or arbitrate, against such decisions made by the MMO, is of paramount importance. The Applicant understands that Norfolk Vanguard have been making submissions on this and will review their most recent responses, in order to ensure that this is submitted into the Examination at Deadline 8.	
25.	**Comment no. 25 –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 MMO does not believe the reasons for the extension of the arbitration process to its decisions and determinations has been properly justified. Since its inception the MMO has undertaken licensing functions on ~130 DCOs comprising some of the largest and most complex renewable energy operations globally. The MMO is not aware of an occasion whereby any dispute which has arisen in relation to the discharge of a condition under a DML has failed to be resolved satisfactorily between the MMO and the applicant, without any recourse to an 'appeal' mechanism. The MMO is an open and transparent organisation that actively engages with and maintains excellent working relationships with industry and those it regulates. The MMO discharges its statutory responsibilities in a manner which is both timely and robust in order to fulfil the public functions vested in it by Parliament. The	The Applicant has set out at length in previous submissions why it is necessary to insert some form of mechanism in order to ensure that delay, non-determination or refusals have a mechanism and recourse. Please see the response to item 25 of Appendix 24 of the Applicant's submission at Deadline 6 [REP6-034]. Although there is no current precedent, the Applicant hopes and anticipates that through Norfolk Vanguard, Hornsea Project 3 and the proposed development that a robust and effective mechanism is provided for in development consent orders	No amendments to the DCO are proposed.

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	the Order (Art 13 grants the licences with their conditions). 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. The Applicant and the MMO are asked for their observations at Deadline 6. a) Is such an effect intended? b) If it is, what are the reasons for it and is it justified? 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? 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? e) Are the implications of this procedure, including the distribution of new benefits, costs and burdens on the MMO and the public fully understood?	scale and complexity of an NSIP creates no exception in this regard and indeed it follows that where decisions are required to be made, or approvals given, in relation to these developments of significant public interest only those bodies appointed by Parliament should carry the weight of that responsibility. There is no compelling evidence as to why the applicant in the case of TEOWF should be an exception to the rule and treated differently to any other marine licence holder. The MMO sees no reason why it should be subject to a provision for which there is no clear precedent and which is unnecessary. If there were a problem to resolve, and its resolution would be achieved by extending the arbitration provisions to decisions/determinations to be taken/made by the MMO, then what the applicant proposes would be more readily understood. The practical result of the ExA allowing the arbitration process in Article 36 to expressly apply to the MMO's decisions would be the ExA establishing a new procedure and recourse for this applicant to address an issue which has not as yet, ever arisen. No clear or convincing justification has been put forward by the applicant as to why the discharge of conditions under a deemed marine licence should be subject to arbitration, nor has the applicant explained why they should be able to avail themselves of a dispute mechanism around the determinations the MMO will make in	going forward and sees no reason as to why certain deemed marine licences cannot have in then an appropriate arbitration and appeal mechanism. As the Applicant has explained previously, it does not agree at all that judicial review is an appropriate mechanism by which to manage disagreements, or non-determination of approvals, by the MMO. The Applicant of course will engage positively with the MMO and enjoys a good working relationship with those involved on the project and that is not disputed. The MMO should note the appeal mechanism provided for in Schedules 11 and 12 for the discharge of specific conditions requiring approval and would welcome comments on this for Deadline 8. The Applicant has responded previously to the distinguishing of Tilbury 2. The Applicant has responded at length on the applicability of arbitration,	

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		relation to the discharge of conditions under a licence deemed to have been granted via the NSIP process in circumstances where the holder of a licence granted directly by the MMO under Part 4 of the 2009 Act will not have any such dispute mechanism. The inclusion of such a provision as drafted will create inconsistency with decisions made under DMLs and those made in relation to those marine licences issued directly by the MMO. This will create a 2-tier licensing approach. The MMO reiterates in the strongest possible terms that DMLs granted as part of a DCO should not be treated differently to a marine licence granted directly by the MMO under the Marine and Coastal Access Act 2009 (MACAA), as this will lead to disparity between licence holders, and an uneven playing field across a regulatory regime. There is no indication, under either the Planning Act 2008 or the Model Clauses provisions that this is what was intended by Parliament or the Secretary of State: namely, that licences or consents deemed granted by reference to a specific provisions of another enactment, and which required further approvals by a named body, should be subject to a different regime in the event of the applicant being dissatisfied by the outcome of that further approvals than would be the case for a licence expressly granted under the same provisions of the same enactment. Such a suggestion would also seem inconsistent	intention of parliament through the model provision drafting and why it is entirely appropriate to include such a mechanism.	

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		with the guidance set out in PINS Guidance Note 11, namely that: *"the MMO will seek to ensure wherever possible that any deemed licence is generally consistent with those issued independently by the MMO".* This could also result in different processes applying to different licences relating to the same project: please refer, in this regard, to Article 4(2) of the draft Order which envisages a situation where the applicant could need to apply for a further licence under the 2009 Act not deemed granted by Article 30 there will be no arbitration process applied in relation to any licence granted for this development, directly by the MMO, in the future. In addition, the effect of the proposed change, in this case, would be to replace the review of the MMOs decision making on conventional public law grounds(via the process of judicial review)(for discharge of conditions under an expressly granted licence) with a merits review by an arbitrator. This is a fundamental departure from what Parliament intended, and the MMO can see no justification whatsoever for such a fundamental change –particularly where the purpose of the deemed licence regime under the Planning Act 2008 is to essentially remove the need for a separate application for a licence alongside or following the making of the Order and not to fundamentally change the regulatory regime that applies.		

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		Furthermore, clear justification would be needed for removing the decision making from the MMO –the body entrusted by Parliament with such decisions under the 2009 Act (subject to review by the Courts) – to a private body or person, whose role would be to adjudicate the point as between the applicant and the MMO. The MMO draws the ExA's attention to the clear and well-established principle that the Courts will be very slow to conclude that an *"expert and experienced decision-maker assigned the task by statute has reached a perverse scientific conclusion"*: *Mott v Environment Agency* [2016] 1 W.L.R. 4338 (CA). In light of this, the MMO's view is that it would require clear and compelling evidence that it was necessary and appropriate (and/or what had been intended by Parliament) to conclude that that heightened level of defence to decisions of a statutory body in the technical/environmental field be displaced by a decision, on the merits, by a private third party arbitrator. The Applicant has not provided any compelling reasons why this is necessary. In addition, whilst the MMO understand each case is examined on its own merit, it equally understands that the PINS recognises the importance of consistency in its recommendations to Secretaries of State. As such, the MMO highlights that in the case of Tilbury2port facility the ExA's Recommendation Report to the Secretary		

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		of State found in favour of the MMO for reasons stated in its submissions, noting: *The MMO stated that it strongly opposed the inclusion of such a provision, based on its statutory role in enforcing the DML. According to the MMO, the intention of the PA2008 was for DMLs granted as part of a DCO in effect to operate as a marine licence granted under the MCCA2009. There was nothing to suggest that after having obtained a licence it should be treated any differently from any other marine licence granted by the MMO (as the body delegated to do so by the SoS under the MACAA).* *"Having considered the arguments of the Applicant and the MMO, the Panel finds in favour of the MMO in this matter for the reasons stated in the paragraph above.* *Accordingly, the Panel recommends that paragraph 27 is deleted from the DML at Schedule 9 of the draft DCO."* Similarly, the MMO notes that on 26 February 2019, the ExA for the Hornsea 3 offshore wind farm published its schedule of changes to the dDCO amending arbitration in favour of submissions made by the MMO. They proposed the following: *"Any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order shall not be subject to arbitration."*		

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		The MMO would be supportive of this wording as with that noted above at 2.4.2. In its commentary the ExA questioned whether inclusion of such a provision could establish a precedent for DMLs under the Planning Act to be treated differently from marine licences granted under MACAA. The MMOs view is that the inclusion of this provision would do just that. Whilst each DCO application is considered on its own merits and in light of the particular circumstances of the development to be authorised under the Order, applicants regularly bring forward dDCO's which are very heavily based on the drafting of orders which have previously been granted. Whilst it is not the case that any order granted creates a legally binding precedent for applications which follow, the reality is that applicants will cite orders which have been granted as justification for the inclusion of the same provisions within their dDCO's. In the MMOs view, if this application were to be granted on terms which would allow the MMOs decisions to be made subject to the arbitration process, this will be relied on by other applicants in order to have their orders granted on the same basis. Should the ExA in this case was to allow the arbitration provision set out in Art 36 of this dDCO to apply to the MMOs decisions around the discharging of conditions under the deemed marine licences, then should the Secretary of State grant the order on the same terms, this		

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		would in a very short space of time create a dual regulatory regime in which marine licences issued under the NSIP process would be treated very differently to those issued directly by the MMO. Extending the arbitration process to the MMO's regulatory decisions will affect its capability to undertake the responsibilities Parliament expressly vested in it.		
26.	**Comment no. 26 –Arbitration general appropriateness of provision: effects on statutory authority duties etc.** 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: 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]. Public authorities whose determinations might be subject to arbitration and who have expressed concerns about the proposed approach are requested to review these	The MMO has reviewed the submissions made on the approaches taken in the Norfolk Vanguard and Hornsea 3 examinations and the Counsel's written Opinion the applicant has provided in support of its application. The MMO's position, as it outlined above in relation to Comment 25, is that there is nothing in these submissions which justify why there is any need to change the current position and to extend the arbitration process to the decisions of a regulatory body. The MMO's view remains that it is both inappropriate and unnecessary to extend arbitration to the decisions it will take in the discharging of any conditions under the marine licences which will be granted under the terms of the dDCO. There is no justification for dispensing with the judicial review process that is already available to the applicant to challenge any public law decision the MMO may take, or fail to take, in determining	The Applicant has now amended specific conditions within the DMLs to allow for an appeal mechanism and also deemed approval. The Applicant has provided clear comments on the engagement with Norfolk Vanguard, the need for consistent approach and dialogue between all parties across Vanguard and Hornsea Project 3. The Applicant disagrees with the MMO that there is an effective way of dealing with any disputes, or lack of approval, of plans and documentation. Norfolk Vanguard disagrees with this, as does Hornsea Project 3. With respect to the MMO, the Applicant understands that both Vattenfall and Ørsted consider that a lack of any appeal or	No amendments to the DCO are proposed.

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
	documents and to make final written submissions on their preferred approach at Deadline 6.	whether to discharge any conditions under the DMLs. The MMO recognises that there may be circumstances where the applicant submits documents/plans to the MMO for approval and the MMO will decline to approve the documents/plans as submitted. Disputes arising in relation to this are almost always resolved by discussion between the MMO and the applicant and where agreement cannot be reached the applicant can seek to challenge this using the established public law process of judicial review. It is the MMO's position that the applicant, in trying to introduce arbitration provisions, is attempting to resolve a problem that does not exist. The MMO also recognises that there may be circumstances where the applicant submits documents/plans to the MMO for approval and the MMO will not determine whether or no tto approve the documents/plans as submitted within the timescales the applicant would wish. The MMO does not unnecessarily delay such decisions, these matters are complex and require views to be sought from other statutory consultees, all of which takes time. Again, any disputes arising in relation to how long the MMO takes to determine an application to discharge a condition of a DML can almost always be resolved by discussion between the MMO and the applicant, but if the MMO 'fails' to make its determination within a timescale the	arbitration mechanism is causing such delay, frustration and prevention of expedient approvals that they all consider, independently, that a separate mechanism is needed. There is clearly enough of an issue as to warrant serious discussion – and submissions – throughout three independent Examinations and the Applicant considers it absolutely necessary to include an appropriate mechanism in the DCO to resolve it.	

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		applicant feels is reasonable again the applicant can seek to challenge this 'failure to make a decision' using the established public law process of judicial review. As a public body, the MMO has a number of specific statutory powers and duties, and a responsibility to act in the public's interest. The MMO is therefore rightly subject to public scrutiny on the decisions it makes which often fall to be taken only after public consultation. Article 36 in the dDCO applies to 'differences' which arise under the provisions in the Order. The MMO maintains its position that such an approval is a regulatory decision, it is not 'agreeing' or 'disagreeing' with the applicant so that a divergence of views can properly be characterised as a 'difference'. When discharging a condition, the MMO is making a decision as a public body in response to an application, taking account of the broad sweep of its statutory responsibilities. The MMO is able to make other decisions in relation to the DMLs once the order is granted, these include decisions to vary licences, revoke licences, transfer licences. The MMO also makes decisions around enforcement in the event that the provisions of marine licences are not complied with. If the 'decisions' of the MMO are to be made subject to the arbitration provisions, then any 'differences' between the MMO and the applicant around enforcement would also be made subject to the arbitration process. Whilst it seems this would be an inadvertent		

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		extension of the arbitration process, it is a practical consequence of extending Article 36 to decisions made by the MMO. This is again unnecessary, is not justified in the submissions made on behalf of the applicant, and is unacceptable. The written Counsel's opinion supplied to the ExA by the applicant cites cases at§23, in support of the applicants position on this issue. Whilst the MMO does not dispute that public authorities are, in principle, capable of being a party to arbitration as discussed in the applicant's advice from Counsel(REP5-023)the MMO does not agree that that the cases cited at §23 of Counsel's Opinion are directly applicable to issue currently being considered. The MMO and the applicant have not entered into an agreement providing for arbitration and the question in relation to this application is therefore whether the Order, if confirmed, should provide for disagreements relating to the discharge of conditions under the deemed marine licence to be subject to arbitration. This is a different scenario to the circumstances in *Fulham Football Club (1987) Ltd v Richards* [2011] EWCA Civ 8552 and *Assaubayeve v Michael Wilson Partners Ltd* [2014] EWCA Civ 1491. The MMO does not agree that the wider analysis set out at §25-26 for the reasons set out below. The analysis at §25-36 of Counsel's Opinion is clearly premised on the		

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		presumption that arbitration is appropriate (or available)and analyses whether the exclusion of the subject matter from arbitration *is "a safeguard...necessary in the public interest"*. With respect, that is not the starting point for these discussions; what has to be considered in the case of this application is whether the Order should provide for the discharge of conditions to be subject to arbitration in the event of a refusal by the MMO when decisions as to discharge of conditions under a licence granted directly by the MMO under the 2009 Act would be subject only to review by a Court on judicial review grounds (i.e. creating a separate marine licencing regime where the powers of the MMO are determined by a private arbitration process). As mentioned above, the MMO does not consider that there is an issue with the current process as the vast majority of disputes are resolved by way of discussion between the MMO and the applicant. In addition it should be noted that in relation to Town & Country planning, provisions in relation to the discharge of conditions have been considered by Parliament and are contained in statutory instruments. No cogent reasons have been put forward to suggest why further restrictions(over and above those placed on all public bodies by way of judicial review) on the MMO's decision-making ability are required in this instance or why if they are needed they		

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
		shouldn't be introduced by way of statutory instrument. The MMO considers there are serious legal and practical issues in trying to implement an arbitration process onto the MMO's existing public law regulatory functions. The emphasis lies on the fact that Parliament has vested the public law functions such as discharging marine licence conditions upon the MMO. The removal of this decision–making function and their placement into the hands of a private arbitration process is inconsistent with the MMO's legal function, powers and responsibilities. Furthermore, there was no indication that Parliament ever considered that in passing the 2008 Planning Act it would be authorising this kind of usurpation of public functions. Section 2 of MACAA 2009, which came into power after the 2008 Planning Act, sets out a series of broad statutory purposes and functions vested onto the MMO to achieve certain environmental objectives in the discharge of activities and to take certain matters into account in a consistent and coordinated way. None of those obligations would bind an arbitrator, which is a serious issue for the MMO given that Chapter 3 of Part 1 in MACAA 2009 itself contains a provision on how the functions the MMO performs can only be delegated to eligible parties under s.16 with the agreement of the Secretary of State.		

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
		Furthermore, the applicant previously argued in their deadline 4c submission(REP4C-007)that: *"...the arbitration process is not solely to be utilised following a decision being made by a stakeholder as part of the DMLs. The arbitration process can be used to resolve disagreements between the parties and to minimise the delay caused by this. This could include, for example, disagreements about the type or production of evidence."* Such examples are technical decisions which fall correctly on the MMO to take. The MMO questions whether an independent arbiter with no technical background would be best placed to make such a decision on evidence requirements. Nonetheless, an arbitration mechanism involving the MMO would in practice only be related to an approval process. Since Parliament has vested the public-law functions regarding discharging marine licence conditions in the MMO, removing its decision-making functions and placing them into the hands of a private arbiter is inconsistent with the MMO's responsibilities. Another consideration is that allowing the MMO's statutory functions to be undertaken by an arbitrator removes the ability of both the MMO and the applicant to appeal decisions that they disagree with on public law grounds. The judicial review procedure has been created to ensure public scrutiny of decisions. This strikes a balance of		

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
		allowing the public body charged with making the decision to make its decision, whilst ensuring that decisions made by public bodies are made correctly and are susceptible to public scrutiny. If either party disagrees with the decision of the High Court then this can be appealed to the Court of Appeal and ultimately the Supreme Court. NSIPs are some of the most important projects in the country. It is essential that they are undertaken correctly. To entrust the final decision in the event of a dispute to an arbitrator, who is not susceptible to the same public scrutiny or appeal is in the MMO's opinion inconsistent with the objectives of the 2008 Planning Act. The MMO recognises the intention of the arbitration provision to resolve disputes between the applicant and third parties, however maintains that this provision should not be used to remove the decision making powers from the MMO (as the regulator delegated by Parliament to take such decisions) and place this in the hands of an independent arbiter.		

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
27.	**Comment no. 40 –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 relevant staff and stakeholders know how to navigate and apply the provisions of the DML. 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. The MMO may comment by Deadline 7.	Prior to deadline 6 the MMO had discussions with the applicant in respect of the parameters required on the DMLs and the applicant has suggested they will include these. Nonetheless the MMO acknowledges the comment raised by the ExA and will review the applicant's response and final dDCO following submission.	The Applicant provided a full response to the MMO's response to ExAQ 2.4.7 about parameters and awaits comments from the MMO at Deadline 7 [REP6-032].	No amendments to the dDCO are proposed.

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
28.	**Comment no. 44 –Construction monitoring: noise measurements and cessation of piling** 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.) 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. 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. Natural England and the MMO may comment and provide drafting by Deadline 7, with final Applicant comments at Deadline 8 if required. In framing final drafting, parties are requested to clarify whether or not, in their view, the amended wording would be necessary to	The MMO welcomes the ExA's observations in respect that the adequacy of control in the dDCO remains unresolved and that it is not clear that the MMO's statutory powers provide for piling to cease quickly in a situation where construction noise monitoring confirms there is a significant adverse effect. The MMO has continued discussions on this matter with the applicant and has not reached an area of common ground. The applicant considers current drafting to be sufficient and does not intend to accede to the request. Should alternative drafting be provided at deadline 6, the MMO will review and respond accordingly. In respect of whether the amended wording would be required to secure a conclusion of No Adverse Effect on Integrity, the MMO defers to the expertise of Natural England as the Statutory Nature Conservation Body on this matter. Please also see comments at 3.9.6	The Applicant acceded at Deadline 6 and proposed additional wording as requested.	Amendments made at Deadline 6, no further amendments proposed.

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
	secure a conclusion of No Adverse Effect on Integrity in relation to the Harbour Porpoise feature of the Southern North Sea SAC.			
29.	**Comment no. 45 –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.	In respect of condition 17(3) and schedule 11 and condition 16(3) at schedule 12, the ExA has requested the MMO review the concluding terms, namely: *"[t]he assessment of this report by the MMO will determine whether any further noise monitoring is required"* to provide clarity on the scope and effect of the determination as currently stated. The MMO advises that the condition as currently worded, requires that in order to comply with the condition, the undertaker must carry on noise monitoring. It does not make clear that any further compliance is required in the event that noise levels are observed to be greater than predicted. Without this clarification the MMO's power is limited to instructing on the need for additional monitoring only, with no remit to instruct cessation of piling whilst this is explored. The MMO does have the power to stop works if it is determined there is a	The Applicant added to this condition that the MMO is able to request further noise monitoring measures as may be necessary at Deadline 6. The Applicant would welcome the MMO's comments on this amendment made. The Applicant has provided numerous submissions on their views for the powers that exist to enforce a licence, including the ability to threaten the issue of a stop notice. As the MMO rightly points out, the powers are wide and any inclination that the Applicant would have to cease all works would ensure proper and expedient compliance with any request for information	Amendments made at Deadline 6, no further amendments proposed.

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
		danger to human health or the environment. However, this broader instruction as currently defined would require the cessation of all licensable activities, not piling only, and therefore would not allow the developer to continue to undertake other construction activities that do not generate significant levels of impulsive noise whilst the mitigation is reviewed. In the event that the monitoring reports indicate the failure of mitigation measures as set out in the MMMP, the proposed amendment would require the undertaker to cease piling until further appropriate mitigation actions have been agreed which would mitigate noise impacts sufficiently for piling to recommence. The MMO consider that this recommendation is justified, considering the location of the project in proximity to the Southern North Sea candidate Special Area of Conservation (cSAC) and the potential impacts of the project on harbour porpoise as a qualifying feature of the cSAC and an EPS. Furthermore as currently drafted, the condition requires the Undertaker to submit noise monitoring six weeks following the installation of the first four piled foundations. This could potentially allow for six weeks of piling to be undertaken that exceeds the predicted noise values before the report is submitted to the MMO. The MMO may then require review and consultation of the report before it can determine that observed noise was in fact	or necessary actions to the undertaken.	

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
		greater than predicted. The MMO seeks to ensure that it is notified as soon as possible of any issues that indicate noise levels may be greater than predicted in order to agree any potential additional monitoring or mitigation measures in a timely manner. The ExA rightly identifies a lack of clarity in the condition, hence the suggested drafting provided previously, most recently at deadline 5A provides greater certainty on the requirements. In summary, for reasons outlined above the present drafting could lead to a potential situation whereby a detrimental impact on the environment results because piling is allowed to continue. In addition, use of the 'blanket' broader instruction would require the cessation of all licensable activities, not piling only and could unnecessarily hinder the developer from undertaking other activities that do not generate significant levels of impulsive noise.		
30.	**Comment no. 47 – 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. The Applicant is to consider this request and by Deadline 6 is either to accede to it, or to	The MMO acknowledges that Trinity House (TH) has requested the amendment to Condition 18 to provide for operational vessel traffic modelling. The MMO defers to the expertise of TH on such matters and has no concerns in respect of DML drafting. The MMO advises the ExA that the provision of VTS is not directly relevant to the provision of services by the MMO. VTS only bears relevance to the MMO insomuch that it impacts on TH to execute their	The Applicant included wording in Condition 18(4) of Schedule 11 at Deadline 6, in order to allow for post construction traffic monitoring for a period of three years, as is standard practice.	Amendments made at Deadline 6, no further amendments proposed.

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
	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, or to the provision of services by the Maritime and Coastguard Agency and/ or the MMO?	responsibilities under the terms of the DMLs effectively.		
	Environment Agency			
31.	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. a) In the marine environment: are there circumstances in which the nature or scale of any of the pre-commencement works shown underlined 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 (n.b. - 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): • 8: (aids to navigation and the need for any notice to and direction on these by Trinity House);	In terms of the highlighted yellow activities [see left hand column], we do not believe these would lead to “significant effects” in relation to ground conditions and Ground water impacts. We are assuming other pre-commencement work, i.e. ground investigations will be before they move on to site substantially, so they will understand how to do site compounds, demolition works and provision of hard standing with the relevant “understanding” of any issues that these activities may cause and therefor provide suitable mitigation to ensure that “significant effects” will not arise.	The Applicant has included a new requirement at Deadline 6, which ensures that any mitigation required in relation to any pre-commencement works is secured in any event.	Amendments made at Deadline 6, no further amendments proposed.

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
	• 13: (submission and approval of any pre-construction plans or documents) • 20: (the fisheries liaison and co-existence plan) b) In the terrestrial environment: are there circumstances in which the nature or scale of any of the pre-commencement works shown underlined 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: • R14 (access management); • R17 (highway access); • R18 (Construction Environmental Management Plan); • 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)? c) Generally: as a consequence of drafting in Art 2, are there any remaining proposals for			

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
	pre-commencement works that are not (for reasons that must be stated) subject to appropriate control in the dDCO? IPs and Other Persons are requested to respond by Deadline 6 with the Applicant making a final response at Deadline 7.			
32.	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.. 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. However, as currently drafted, this provision and Art 37 mean that there could be differences 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	Having looked at the arbitration provisions in light of what we are concerned with in the draft DCO, we believe the provisions are sufficiently clear for our purposes and we do not require/request for them to be amended.	The Applicant notes this representation.	No amendments to the dDCO are proposed.

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
	a highway authority under Art 11(1)(b) would appear to be handled under the arbitration provisions. a) Are potential differences of this nature intended and are the mechanics and effect of these differences well understood? 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? 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.			
33.	Arbitration: application to determinations under Requirements (Schedules 1 and 10) and Conditions (Schedules 11 and 12) Is it sufficiently clear and, if not, is any further drafting required to place beyond doubt that the 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)?	As already advised about having looked at the arbitration provisions in light of what we are concerned with in the draft DCO, we believe the provisions are sufficiently clear for our purposes and we do not require/request for them to be amended.	The Applicant notes this representation.	No amendments to the dDCO are proposed.

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
	Historic England			
34.	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. a) In the marine environment: are there circumstances in which the nature or scale of any of the pre-commencement works shown underlined 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 (n.b. - 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): • 8: (aids to navigation and the need for any notice to and direction on these by Trinity House); • 13: (submission and approval of any pre-construction plans or documents) • 20: (the fisheries liaison and co-existence plan) b) In the terrestrial environment: are there circumstances in which the nature or scale of any of the pre-commencement works shown	Our initial concern with regard to the definition of ‘commence’ stemmed from how it was phrased, which we considered, could permit certain intrusive activities out with the definition of ‘pre-commencement’. Since our last submission, in consultation with the MMO, it has come to our attention that the inclusion of condition 12 (2) states: “Any pre-commencement works of an intrusive nature must not take place prior to the approval of the onshore written scheme of investigation submitted in accordance with sub-paragraph (1)”. Which we think when noted in conjunction with the referred to above sub-paragraph (1) issues acceptable provisions - subject to consent – covering activities, intrusive and non-intrusive, within all areas of the permitted development up to mean high water springs.	Noted. The Applicant has included a new requirement at Deadline 6, which ensures that any mitigation required in relation to any pre-commencement works is secured in any event.	Amendments made at Deadline 6, no further amendments proposed.

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
	underlined 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: • R14 (access management); • R17 (highway access); • R18 (Construction Environmental Management Plan); • 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)? 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? IPs and Other Persons are requested to respond by Deadline 6 with the Applicant making a final response at Deadline 7.			

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
35.	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.. 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. However, as currently drafted, this provision and Art 37 mean that there could be differences 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. a) Are potential differences of this nature intended and are the mechanics and effect of these differences well understood?	In discussions we have internally with our legal team, we feel as the primary responsibility, as relevant to specific measures in the draft DCO (and DMLs), rests with the Marine Management Organisation and Kent County Council, we are not in a position to offer any alternative comments on this matter at this time.	The Applicant notes this representation.	No amendments to the dDCO are proposed.

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
	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? 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.			
36.	**'Handshake' between offshore and onshore archaeological written scheme of investigation** 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? Comments are sought from all relevant IPs at Deadline 6 with final drafting (if required) from the Applicant at Deadline 7.	We welcome the Examining Authorities attention to this matter. Over the course of the examination period we have looked closely at the content of the onshore and offshore WSI's, and in particular the need for requirements to manage unexpected discoveries along this part of the proposed export cable. Furthermore the geoarchaeological potential the deposits may hold in presenting new information and contributing to an overall, integrated deposit model for the Wantsum Channel Area. We can confirm that Historic England is satisfied with both the onshore and offshore WSI in this regard, given that any works planned in the intertidal area should ensure that both onshore and offshore curators are consulted. Additionally offshore and onshore geoarchaeological teams will liaise	The Applicant notes and welcomes this representation.	No amendments to the dDCO are proposed.

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
		closely to ensure that mitigation is designed where it is most effective to obtain the best results.		
	Dover District Council			
37.	**Comment no. 5–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. a) In the marine environment: are there circumstances in which the nature or scale of any of the pre-commencement works shown underlined 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): • 8: (aids to navigation and the need for any notice to and direction on these by Trinity House); and	DDC can advise that it would normally expect the following matters to be submitted prior to any works commencing on site including clearance, services or temporary structures: • Access Management • Construction Environmental Management Plan • Temporary Fencing • Contamination land and Ground water plan • Construction noise and vibration management plan • Construction management plan • Archaeological investigations Without these details before any works commence it is possible that site clearance, plant, temporary structures and management of construction vehicles, noise, etc. are not adequately controlled or addressed by the proposed development. Most of these aspects would normally be	The Applicant has sought to address this point and ensure that sufficient mitigation is secured for any works carried out prior to formal commencement. At Deadline 6, the Applicant: updated the definition of "pre-commencement works" in the DCO to ensure it includes all works which could have likely significant effects and therefore require mitigation; and inserted a new requirement in Schedule 1 and a new condition in each DML in relation to pre-commencement works. The requirement and conditions secure the submission and approval of any relevant information required pursuant to the various requirements or conditions listed above in relation to the pre-	Amendments made at Deadline 6, no further amendments proposed.

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
	• 13: (submission and approval of any pre-construction plans or documents) • 20: (the fisheries liaison and co-existence plan) b) In the terrestrial environment: are there circumstances in which the nature or scale of any of the pre-commencement works shown underlined 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: • R14 (access management); • R17 (highway access); • R18 (Construction Environmental Management Plan); • 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)? c) Generally: as a consequence of drafting in Art 2, are there any remaining proposals for pre-commencement works that are not (for	pre-commencement conditions that cover all associated works.	commencement works before they can begin. In the Applicant's view all mitigation required for the pre-commencement works is adequately secured and it welcomes DDC's views.	

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
	reasons that must be stated) subject to appropriate control in the dDCO? IPs and Other Persons are requested to respond by Deadline 6 with the Applicant making a final response at Deadline 7.			
38.	Trees subject to tree preservation orders Why has July 2017 been chosen here?	DDC do not know why this date has been identified, all Tree Preservation Orders are relevant if the trees are still alive/on-site.	July 2017 refers to the date on which the relevant surveys to establish any trees subject to tree preservation orders were carried out which confirmed that no TPOs were present within the Order Limits as of this time. Therefore the Order seeks to override any TPO which was made in relation to the development land after the surveys were carried out. This is a standard provision in DCOs to ensure the NSIP is deliverable.	No amendments to the dDCO are proposed.
39.	Arbitration: proposed role for the Centre for Effective Dispute Resolution 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'.	DDC have no further comments on this matter.	The Applicant notes this representation.	No amendments to the dDCO are proposed.

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
	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. 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? 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			
40.	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.. 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	DDC agree with the Inspectors comments on this point but have no further comments on this matter.	The Applicant notes this representation.	No amendments to the dDCO are proposed.

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
	provided for", and Art 37 would be such an alternative provision. However, as currently drafted, this provision and Art 37 mean that there could be differences 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. a) Are potential differences of this nature intended and are the mechanics and effect of these differences well understood? 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? 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.			

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
41.	Arbitration: application to determinations under Requirements (Schedules 1 and 10) and Conditions (Schedules 11 and 12) Is it sufficiently clear and, if not, is any further drafting required to place beyond doubt that the 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)?	DDC agree that there may be some need for further clarity on this Article, but have no further comments.	The Applicant notes this representation.	No amendments to the dDCO are proposed.
42.	Procedure in relation to certain approvals Please review the list of requirements set out in Art 37(2) where an agreement or approval is required. a) Is it clear that these are the correct provisions? b) If not, what provisions should be added and what provisions should be removed? c) Has renumbering over recent deadline submissions affected the referencing? Any public authority which considers that it does not benefit from this procedure but that it should do is requested to: d) set out the purpose and reason(s) for which it should be included in this provision; and e) frame a preferred means of drafting to address its request. The Applicant is requested to comment on any such requests at Deadline 7.	DDC would comment that these are very strict deadlines that give no consideration to the number of such applications received by an authority. A 3 day turnaround is impractical on a day to day basis and does not account for most eventualities that are experienced at a local authority level. Additional information to consider the initial submission would normally be at least 5 working days and such information would normally be requested by a consultee who would have 21 days to comment once consulted. In practice comments arrive after the 21 day period due to pressure of resources and workloads. DDC would suggest that these time periods need to be extended and the terms set out do not allow sufficient time to consider detailed and complex matters appropriately.	This response does not appear to address the question being asked. The Applicant notes DDC's comment on the timescales and following a review of other confirmed DCOs, has updated the timescale from 3 business days to 5 business days. This mirrors the provisions included in the Tees Combined Cycle Power Plant Order 2109 and the Port of Tilbury (Expansion) Order 2019.	(2) If the requirement specifies that consultation with a requirement consultee is required, the discharging authority must issue the consultation to the requirement consultee within ~~35~~ business days of receipt of the application, and must notify the undertaker in writing specifying any further

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
				information requested by the requirement consultee within ~~35~~ business days of receipt of such a request and in any event within 28 days of receipt of the application.
43.	'Handshake' between offshore and onshore archaeological written scheme of investigation 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? Comments are sought from all relevant IPs at Deadline 6 with final drafting	DDC have no further comments on this matter and would refer to KCC Archaeology and Historic England for their guidance on this matter.	The Applicant notes this representation.	No amendments to the dDCO are proposed.
	Port of London Authority and Estuary Services Limited			

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
44.	Public rights of navigation: justification for extinguishment of rights 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. 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? 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.	The PLA notes the ExA's comments and the ExA's invitation to the PLA to comment on the Applicant's response at Deadline 7.	The Applicant provided a full response as requested at item 13 of Appendix 24 of the Applicant's submission at Deadline 6 [REP6-034].	No amendments to the dDCO are proposed.
45.	Public rights of navigation: notification of Port of London Authority 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 issue notice to mariners and advise pilots in advance of the construction of	The PLA notes that the DCO has not been amended by the Applicant as requested by the PLA; the Applicant is therefore not required to give the PLA advance notice of the construction of new permanent structures, even though it is the PLA that is responsible for London Vessel Traffic Services (VTS) within the western side of the proposed wind farm extension. The aims and objectives of the VTS offered by	The Applicant added the Port of London Authority to Article 16(2) at Deadline 6.	Amendments made at Deadline 6, no further amendments proposed.

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
	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. The Applicant is requested to either: a) Make the change sought; or b) Provide a final explanation why such drafting is not warranted. Port of London Authority and Estuary Services Ltd. are asked to make concluding submissions on this point at Deadline 7.	the PLA are to ensure safety of life at sea, safety and efficiency of navigation, and to protect the marine environment, adjacent shore areas, work sites and offshore installations from the possible adverse effects of maritime traffic. Under the DCO as currently drafted, the PLA will be unaware of the precise location of new structures, which will compromise its ability to ensure those aims and objectives are met. The DCO should therefore be amended to enable the PLA to carry out its VTS functions. The PLA notes the ExA's comments about this omission. The PLA will comment on the Applicant's response at Deadline 7, as requested by the ExA.		
46.	Public rights of navigation: additional security for navigation safety in construction 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. The Applicant is requested at Deadline 6 to either: a) Propose relevant changes; or	The PLA notes the ExA's comments and the ExA's invitation to the PLA to comment on the Applicant's response at Deadline 7.	The Applicant feels that Schedule 11 Condition 8 and Schedule 12 Condition 7 adequately secure the mitigation measures sought by Port of Tilbury London Ltd. and London Gateway Port Ltd.	No amendments to the dDCO are proposed.

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
	b) Provide an explanation why such drafting is not warranted. The relevant IPs and Other persons are asked to make concluding submissions on this point at Deadline 7.			
47.	**Structures Exclusion Zone and navigation risk mitigation** 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. 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. 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). The Applicant is requested to respond to all such drafting requests at Deadline 7 and in	The PLA and ESL welcome the latest amendments made by the Applicant to the dDCO. However, concerns raised by the PLA and ESL at Deadline 5A remain (Document PLA 20/ESL 20). The amendment to paragraph 6 of Part 3 of Schedule 1 helpfully clarifies that no infrastructure that forms part of Work No. 1 (a) to (c), Work No. 2, in connection with Work No.s 1 to 3, Further Work (a), nor Ancillary Works (a), (c) and (d) may be installed within the structures exclusion zone (SEZ) and no part of any wind turbine generator, including its blades, may oversail into the SEZ. This, together with the deletion of the "subject to" wording in Part 1 of Schedule 1 resolves the PLA and ESL's concerns with that previous wording and the uncertainty as to which of Work Nos. 1 to 3 were being excluded and that the "temporary" nature of the exclusion. *Cabling works within SEZ* The laying and maintaining of cabling will still be permitted within the SEZ. The PLA and ESL recognise the need for cabling, to provide a connection for the proposed wind farm extension. However, it is still unclear as to where precisely these cables will be	It is the Applicant's position that a) cable installation within constrained waters is well established and should not therefore be considered a relevant or long term interference with navigation, and b) the project ES provides a programme which includes durations of cable installation. Any extension of this would be not in accordance with the ES as a certified document. As such the ExA can give weight to the supporting documentation that any construction duration would not be for an unlimited period as suggested by the PLA/ESL. Further to this the Applicant can confirm that there exists other conditions requiring mitigation and/or controls which are *inter alia* notices to mariners to be issued, layout and design plans to be agreed with the MMO and MCA, and	No amendments to the DCO are proposed.

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
	doing so, if it remains resolved not to adopt requested changes, to explain why these are not necessary. **Navigation safety and shipping impact mitigation plan** 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 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. By Deadline 6: 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.	and the timing of cabling works. As a result, the Applicant would be permitted by the DCO to interfere with navigation within the SEZ for an unlimited period and over an unlimited area within the SEZ. This clearly does not achieve the certainty which the PLA and ESL are seeking when it comes to resolving their concerns in so far as they relate to the use of the SEZ by the Applicant and the impact of that use on navigational safety. The PLA and ESL's concerns would be resolved if the DCO and DCO works plans were amended to show reasonable corridors in which the works for the four offshore subsea export cables and fibre optic cables (Work No. 3) are to be authorised, instead of authorising those works anywhere within the SEZ. *Construction, operation, maintenance and decommissioning* The amendment to paragraph 6 of Part 3 of Schedule places a limitation on the "installation" of certain Works within the SEZ. It does not limit the use of the SEZ for the operation, maintenance or decommissioning of Works which are not within the SEZ. The Applicant will therefore have the power to use the SEZ in connection with the operation, maintenance and decommissioning of the rest of the wind farm. These activities, if undertaken within the SEZ, could be highly disruptive to navigation and pose a risk to navigational safety, as described in detail in the PLA and ESL's previous submissions and those of	construction method statements to be submitted and approved by the MMO. As the MMO is the relevant regulator within the proposed project boundary, and the MCA the relevant statutory authority the ExA can take comfort that sufficient certainty is provided to those authorities, both of whom may consult with other parties where it is considered appropriate to do so.	

	Examining Authority commentary on the draft DCO	IP's DL6 submission	Applicant's response at Deadline 7	Amendments made to the dDCO
	By Deadline 7: 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. It follows that a final response by the Applicant to drafting arising from this comment can be made at Deadline 8. **Offshore decommissioning** As this provision is currently worded, the decommissioning works can commence as soon as the decommissioning programme has been submitted. 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? 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.	other IPs. The PLA and ESL would therefore request that the DCO be amended to exclude the use of the SEZ other than for cabling, provided that the cable locations and associated works are clearly identified and limited on the works plans.		

	IP's comments on the draft DCO Revision E (issued 29 April 2019)	Applicant's response at Deadline 7	Amendments made to the dDCO
	MMO		
48.	**Arbitration, article 36** The MMO recognises the intention of the arbitration provision to resolve disputes between the applicant and third parties, however maintains that this provision should not be used to remove the decision making powers from the MMO (as the regulator delegated by Parliament to take such decisions) and place this in the hands of an independent arbiter. As such, the MMO maintains that the current dDCO drafting does not make it explicit that arbitration provisions do not apply to approvals under the DMLs and requests it is amended accordingly. Recent discussion with the applicant has suggested they maintain their view that arbitration should be the primary mechanism to resolve disputes. However the applicant has informally suggested they may submit further proposals at this deadline 6 which the MMO has not currently had sight of. The MMO remains concerned as to the suggested proposals and should they be submitted in the manner proposed, would wish to comment on why these are not acceptable.	The Applicant has responded at length and is engaging with the MMO and refers the MMO and Examining Authority to previous responses already made in this document on this matter.	No amendments to the draft DCO are proposed.
49.	**Interpretation of commence/pre-commencement** Please see comments in section 2.1 on this matter in response to questions raised by the ExA's dDCO commentary.	Please see the response to item 21 above.	Please see the response to item 21 above.

50.	**Maximum parameters in the DMLs** The following parameters should be included on the DMLs to ensure the maximum impacts remain within those assessed and approved in the Environmental Statement (ES): **Footprint for disposal activities** - The MMO welcomes the inclusion of the disposal volumes, respective activities and disposal sites on the DMLs however requests that the maximum footprint (area) is also included. The footprint is an important metric in assessing the overall impact of an activity in combination with the volume. **Maximum permitted cable protection footprint** **Maximum permitted scour protection footprint** **Maximum number of cable crossings** **Hammer Energy** – the MMO requests the maximum hammer energy be stated on the DMLs. The maximum hammer energy is an important metric in ensuring that impulsive noise is within the maximum that was assessed in the ES (and potentially the HRA). If the proposed hammer energy is to increase, the implication is that underwater noise impacts will increase, and further modelling would be required to demonstrate the scale of this impact. Such a change would most appropriately be dealt with through a variation to the DML. In recent discussions with the applicant the MMO clarified it is not requesting all parameters cited in the ES be included on the face of the DMLs however those outstanding above should be. The applicant has suggested they will make this revision to the dDCO.	Noted. The Applicant provided a full response as requested at item 26 of Appendix 44 of the Applicant's submission at Deadline 6 [REP6-066].	No amendments to the dDCO are proposed.

51.	**Notifications and inspections** Condition 6(10) at schedule 11 stipulates that "Copies of all notices must be provided to the MMO within 5 days." The same condition in schedule 12 should be revised to also include this timeframe. This matter has been raised with the applicant who has suggested they will revise the dDCO accordingly.	Noted. The Applicant provided a full response as requested at item 28 of Appendix 44 of the Applicant's submission at Deadline 6 [REP6-066].	Amendments made at Deadline 6, no further amendments proposed.
52.	**Timescales for approval of pre-construction plans and documentation** The MMO and applicant disagree on the required timescales required for approval of documentation. As stated at deadline 5a the MMO suggests condition 15 is amended to allow a six month approval period, except where otherwise agreed in writing by the MMO. This recommendation is not taken lightly and is based on our experience and detailed understanding of the process required for approval. Indeed it is in the interest of the applicant that the DMLs reflect a realistic and pragmatic timescale and does not present an unrealistic ambition which could adversely impacting on their undertaking of operations. The MMO and its advisors need an appropriate timeframe to analyse technical information, consult and make informed judgements and decisions. In most circumstances a 4 month pre-construction submission date is unrealistic and potentially counterproductive. The MMO always endeavour to remain as flexible as possible in relation to developer requirements, and a formalising of timescales could lead to MMO resources reducing this flexibility to prioritise the suggested statutory timescale obligations. It should also be noted that developers can occasionally submit discharges late due to unforeseen circumstances, and while the MMO should officially seek to introduce licence enforcement measures at this point, the MMO would prefer to maintain a flexible approach and work with the developer to reach a timely resolution. However, again	Noted. The Applicant provided a full response as requested at item 29 of Appendix 44 of the Applicant's submission at Deadline 6 [REP6-066].	No amendments to the dDCO are proposed.

	the introduction of formal timescales for decisions may require the MMO to revert to enforcement measures for late or staged submissions to ensure that it, and the applicant, can avoid missing their statutory schedule milestones. An approximate overview of the decision making process for discharged documents is outlined as follows: 1. 4 weeks to acknowledge and review the document within the MMO 2. External consultation of this documentation could take up to 6 weeks 3. Once consultation is closed the MMO has to review the response and possibly ask for additional information from the applicant. At this stage the MMO and the applicant would be in discussion to agree on an approach to the responses. This could be for up to 4 weeks 4. The MMO could then request further information from the applicant, which dependent on the level of detail, could represent a further significant time period of for example 4 further weeks 5. Once this is returned by the applicant, the MMO would begin the consultation process again. It is noted from the above that, even if discharge documentation were to follow the current timescales, and no further communication was required from the applicant (which is highly unlikely) the current turnaround equates to 18 weeks, which is longer than the 16 weeks suggested by the applicant. It should also be noted that the above timescale applies to only one document, when in reality, the number of in-depth discharge requirements could far exceed 30 in total. The request for 6 months also reflects the increasing complexity of existing OWF projects due to HRA, case law, an increasing volume of documents and a rise in in-combination issues associated with other projects. Of particular note is the anticipated growth in the UK offshore wind sector – noting an		

	additional 8 proposed extension projects and the Crown Estate's round 4 leasing underway.		
53.	**Site Integrity Plan** Current wording in the dDCO suggests the Site Integrity Plan (SIP) is to be approved prior to 'operation' of the scheme. The MMO queries whether this is an error and that the applicant intended the wording to schedule 11, part 4 condition 13(k) and schedule 12 part 4 condition 11(l) to require the SIP to be submitted prior to commencement of the licensed activities. The condition should also be amended to recognise that the timescales on the DMLs are not currently consistent with the draft SIP which proposes two 4-month review stages. These matters have been raised with the applicant who has suggested they will revise the dDCO accordingly.	The Applicant provided a full response as requested at item 30 of Appendix 44 of the Applicant's submission at Deadline 6 [REP6-066].	Amendments made at Deadline 6, no further amendments proposed.
54.	**Dredge Disposal** Sub-paragraph (2) of condition 22 states: *"Any man-made material must be separated from the dredged material and disposed of on land, where reasonably practical."* The MMO questions whether the reference to 'disposed' could contradict the purpose of the WSI. In addition, were the material to be 'landed' the MMO may not have the full power to enforce the WSI. The MMO is in discussion with the applicant to seek clarification on this matter and ascertain if further amendments are required.	The Applicant can confirm that in line with the WSI any material of archaeological importance that would require removal will be reported and recorded with the appropriate authority, in addition to the removal being approved. Non archaeologically important material will be disposed of appropriately.	(2) Any man-made material, which is not deemed of archaeological interest by the reporting and recording protocols as set out in the offshore written scheme of

			archaeological investigation, must be separated from the dredged material and disposed of on land, where reasonably practical.
55.	**Certified documents, schedule 13** The MMO notes the applicant intends to certify a number of documents in order that they are "complied with as certified". The MMO advises that current drafting does not provide a mechanism to undertake revisions for those documents where this may be required such as in the case of the Biogenic Reef Mitigation Plan which is not finalised and the Fisheries Liaison and Co-existence Plan which is considered a 'live' document subject to ongoing changes throughout the project. Furthermore please note the Fisheries Liaison and Co-existence Plan is listed incorrectly at the 'Fishing Liaison and Co-existence Plan' in schedule 13. These matters has been raised with the applicant who has suggested they will revise the dDCO accordingly. The MMO further notes that there does not currently appear to be any provision within the DMLs stating that the documents in Schedule 13 must be complied with as certified. The MMO that article 35 in Part 7 of the DCO 'Certification of Plans' includes sub-paragraph (4) stating: *Each programme, statement, plan, protocol or scheme listed in Schedule 13 must be complied with as certified.*	Noted. The Applicant provided a full response as requested at item 31 of Appendix 44 of the Applicant's submission at Deadline 6 [REP6-066].	Amendments made at Deadline 6, no further amendments proposed.

	In order to ensure compliance the MMO has requested the applicant revise the dDCO and including drafting to ensure that once 'deemed' the DMLs can ensure compliance in respect of Schedule 13 as outlined above. The applicant has confirmed they are considering this request. Finally the MMO highlights that several documents in schedule 13 require amendments to titles as raised by the ExA in order to reflect that they are outline/draft versions and not finalised, such as the Operations and Maintenance plan. This matter has been raised with the applicant who has suggested they will revise accordingly.		
56.	**Cessation of piling – noise levels** – The MMO reiterates its position at deadline 5a, please also see comments at 2.8.4 following the ExA's dDCO commentary. The MMO submitted its response at deadline 3 providing further detail on its powers to stop works, and the limitations in regards to the current wording of the condition at schedule 12, condition 16(3) and schedule 11, condition 18(3). The MMO seeks to ensure that it is notified as soon as possible of any issues that indicate noise levels may be greater than predicted in order to agree any potential additional monitoring or mitigation measures in a timely manner. As such, the MMO supports the amended condition wording proposed by Natural England and outlined below. Similar recommendations were made for the Norfolk Vanguard and Hornsea 3 OWF dDCO representations. Indeed, the ExA's schedule of changes to the dDCO for Hornsea 3 issued on 26 February 2019 includes the amended condition wording as follows: *"The results of the initial noise measurements monitored in accordance with condition 18(2)(a) must be provided to the MMO within six weeks of the installation of the first four piled foundations of each piled foundation type. The assessment of this report by the MMO will determine whether any further noise monitoring is required.* ***If, in the opinion of the MMO in consultation with Natural England, the assessment shows***	Noted. The Applicant provided a full response as requested at item 32 of Appendix 44 of the Applicant's submission at Deadline 6 [REP6-066].	No amendments to the dDCO are proposed.

	significantly different impact to those assessed in the environmental statement or failures in mitigation, all piling activity must cease until an update to the MMMP and further monitoring requirements have been agreed." With the amendment being justified *"In the interests of protecting the integrity of the Site of Community Interest."* This is a noted area of disagreement on the SoCG with the applicant.		
57.	**Pre-construction monitoring and surveys in Goodwin Sands** The MMO notes the revision made to schedule 12, condition 15 regarding monitoring provisions for Goodwin Sands pMCZ on the DML, however suggests the following amendments: At 15(2)(b)(i) – the MMO questions whether reference to "sub-paragraph (2)(c)" in this section is correct given this refers to a different set of surveys related to saltmarsh. At 15(2)(b)(i) and (ii) – the current wording only provides for surveys to be undertaken post-construction – i.e. after cable protection has been installed. This wording needs to be amended to make it clear that surveys will also be undertaken pre-construction – i.e. where it is anticipated cable protection will be installed and prior to such works being carried out. At 15(2)(b)(i) – the current wording should also be amended to provide for surveys taken out pre-construction and post-construction for sandwave clearance and post-construction, in order to be able to fully assess the potential impact if sandwave clearance were undertaken in the pMCZ.	Noted. The Applicant provided a full response as requested at item 33, 34 and 35 of Appendix 44 of the Applicant's submission at Deadline 6 [REP6-066].	Amendments made at Deadline 6, no further amendments proposed.

58.	**Mitigation for herring and sole spawning grounds** As discussed extensively in response to ExQ3.1.5 at 1.1 the MMO has suggested mitigation in the form of a temporal piling restriction is conditioned on the licence to coincide with herring spawning in the area. The MMO has also suggested alternative mitigation solutions such as the use of bubble curtains or a phased/targeted construction schedule which may avoid the need for a piling restriction. With respect to sole, as noted in 1.1 the MMO has been unable to fully assess potential impacts to sole given requested modelling has not been provided. This has been raised with the applicant and a series of clarification points submitted in an effort to reach resolution. The MMO will provide full and final comment at deadline 7 on whether it considers mitigation for sole spawning grounds should be conditioned on the licence.	The Applicant considers that given the seasonal restriction for the existing Thanet OWF was removed, combined with having provided a robust comprehensive assessment which confirms the risks associated with the proposed Thanet Extension project being minimal, or indeed *de minimis* in the context of a 0.07% effect on spawning potential for herring larvae, and 0.78% spawning potential for sole, there is no reasonable justification for a seasonal restriction. The Applicant can confirm that in essence 3 scenarios have been considered. When a time series of herring larval density data (10 years IHLS data) are considered there is limited interaction with any spawning ground at all. Alternatively, when the spawning grounds endorsed by MMO/Cefas are considered (Coull et al 1998; Ellis et al 2012) the impact is <1% of spawning potential being affected by all piling, and 0.049% being affected from piling at the worst case location for the Downs stock. This conclusion is drawn on the highly precautionary assumption that a receptor will not flee. For the Thames stock there is no anticipated interaction. The Applicant is therefore unclear on which basis the MMO consider the effect to require a 4.5 month seasonal restriction. Under any relevant scenario there is no significant effect predicted. Whether this is a scenario comprising a period for a spawning ground with which there is demonstrably no interaction, a period for a historical spawning ground with which there is a *de minimis* impact on spawning potential, or a period for spawning grounds defined by the 10 year IHLS time series with which there is a de minimis interaction. The MMO have not therefore provided a reasonable justification for significant mitigation measures such as seasonal restrictions and/or other measures. Any such mitigation measure would be disproportionate	

		when considered against the scale of effect and is not supported scientifically or in policy.	