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MMO Reference: DCO/2023/00007
Planning Inspectorate Reference: EN010128

17 January 2025

Dear Sir or Madam,

Planning Act 2008, Cory Environmental Holdings Limited (CEHL), Proposed Cory Decarbonisation Project Order

Deadline 3 Submission

On 18 April 2024 the Marine Management Organisation (the “MMO”) received notice under section 56 of the Planning Act 2008 (the “PA 2008”) that the Planning Inspectorate (“PINS”) had accepted an application made by Cory Environmental Holdings Limited (the “Applicant”) for determination of a development consent order for the construction, maintenance and operation of the proposed Cory Decarbonisation Project (the “DCO Application”) (MMO ref: DCO/2023/00007; PINS ref: EN010128).

The Applicant seeks authorisation for the construction, operation, maintenance and decommissioning of a carbon capture facility, including supporting plant and ancillary infrastructure.

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

Yours faithfully

A. Nichols

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...ambitious for our
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1. MMO Comments on Applicant's update to Draft Development Consent Order (dDCO): 3.1 (Rev E) [REP2-004]

1.1. Please see Table 1 for the MMO's outstanding comments on the dDCO and draft Deemed Marine Licence (dDML).

Table 1 – MMO's outstanding comments on the dDCO and dDML

Main DCO		
Part 2 Principal Powers		
	9. Benefit of the Order	<p>The MMO notes that the benefit of the order is typically solely reserved for the undertaker. In this order, the benefit of the order is solely for the undertaker save for any benefit in relation to Works No 2 (in which case the benefit is for the undertaker, REPL and RRRL) and then for Works No 1E(iv) to (vi), 2A (1) to (ii) and 3B where the benefit is for the undertaker and any company operating a heat network.</p> <p>The MMO requests that the Applicant explains why this is required. The MMO is concerned that this would cause a problem for enforcement purposes because it may be unclear who has the benefit or not at any specific point in time.</p>
	10. Consent to transfer benefit of the Order	<p>The MMO objects to the provisions relating to the process of transferring and/or granting the deemed marine licences set out in the draft DCO at Article 10(2)-(11) insofar as these are intended to apply to the MMO and requests paragraphs 10(2)(a)-(b) and (3) be removed in their entirety and all references to the MMO be removed from Article 10, with a clarification added to specifically exclude these provisions from applying to the MMO (with corresponding wording added where appropriate in Schedule 11 Deemed Marine Licence).</p> <p>The MMO is concerned that the procedure proposed represents an unnecessary duplication of the existing statutory regime set out in s72 of the Marine and Coastal Access Act 2009 and that it will give rise to significant enforcement difficulties for the MMO. The MMO also considers that it has the potential to prejudice the operation of the system of marine regulatory control in relation to the proposed development. The MMO also</p>

		<p>regards the proposed procedure as cumbersome, more administratively burdensome, slower and less reliable than the existing statutory regime set out in s72 of the 2009 Act.</p> <p>In short, the MMO considers that little advantage is gained for the Applicant by these provisions and the tangible risks and disadvantages that it poses can be avoided by retaining the existing statutory regime in full.</p>
	Part 4 Interpretation	
	Title and wording immediately below the 'Part 4' title	<p>This "<i>Part 4 Interpretation</i>" seems to be in the middle of Part 3 and is not referenced in the contents at the beginning of the dDCO.</p> <p>The wording immediately below the title does not need to have the number 30 in front of it (if it does need numbering this is out of synch as it follows 35 and is before 36). The sentence also leads with "<i>In this schedule</i>", however this text is not within a schedule.</p>
	Part 4 Miscellaneous and General	
	Deemed marine licence 42	<p>This Article has been added as a response to the amendments made to Article 49 to be clear that the MMO is not to be subject to the arbitration provisions. The MMO does not agree with the inclusion of this Article because if this is included, it would apply the statutory appeals process that ordinarily applies only to MMO decisions to refuse to grant a licence, or to decisions to attach conditions to a licence we grant, to the approval of the method statement and the sediment sampling plan under conditions 10 and 11 of the DML.</p> <p>This is not required because there is already a way to challenge our decision to refuse to approve it and that is via a Judicial Review. Therefore, the MMO requests that Article 42 be removed.</p>
	Schedule 11 – Deemed Marine Licence	
	Part 1 General	
1	" <i>the licence holder</i> " means Cory Environmental Holdings Limited [...] and any transferee pursuant to article 10 (consent to transfer benefit of the Order) of the Order	<p>The MMO recommends that the latter part of the definition should be removed here: "<i>the licence holder</i>" means Cory Environmental Holdings Limited [...] and any transferee pursuant to article 10 (consent to transfer benefit of the Order) of the Order</p>

		To ensure that the transferee/lessee is clearly bound by the conditions of the DML, which is required for enforcement purposes, the MMO requests that a provision be included within Article 10 (consent to transfer benefit of the Order) that states something along these lines: “(12) Where an agreement has been made in accordance with paragraph [*] or [*] references in this Order to the undertaker, except in paragraphs [*],[*],[*] and the first reference in paragraph [*] include references to the transferee or lessee.”
1	“the licence holder”	The MMO has transitioned away from using the term ‘Licence Holder’ to the term ‘Undertaker’. The MMO has noted that this phraseology has been used here and throughout the document and urges the Applicant to amend the term ‘Licence Holder’ to ‘Undertaker’ throughout the DML going forward.
1	“the order”	The MMO notes that the definition of the Order refers to the “ <i>Riverside Decarbonisation Order 202[*]</i> ”. Should the Order not refer to the “ <i>Cory Decarbonisation Project Order 202[*]</i> ”?
1	“the River”	The MMO does not consider this definition, or the use of the term “ <i>the River</i> ”, to be necessary and request that this be removed. The Order has a definition of what the “ <i>authorised development</i> ” means, and Works No.4 of the Order should already have been properly defined. Therefore, there is no need to add in a definition of “ <i>the River</i> ” and refer to works within “ <i>the River</i> ” in 3(2). The interpretation of “ <i>authorised development</i> ” should be the same in the DML as is set out in the Order.
1		The MMO considers that following definitions should be included within the DML. We would be happy to discuss wording for these definitions if required. "Local Planning Authority" "MCMS" "Notice to Mariners" "Percussive Piling" "Seabed" "Vessel" "TH070"

2	Contacts	The MMO notes that 2(1) states “ <i>the main point of contact</i> ” and then proceeds to list two contacts. We suggest this wording be updated to “ <i>the points of contact</i> ”. When a notification to the MMO is required, both the Marine Licensing Team and the Hastings Office need to be notified.
2	Contacts	Paragraph 2(3) states “ <i>Unless otherwise agreed in writing by the MMO, all applications or notifications required under this licence must be sent by the undertaker to the MMO using the MMO’s marine case management system</i> ”. However, this does not work with condition 16(b) which says that the licence holder must report spills of oil, fuel, or chemicals into the Marine Environment pursuant to 2(2), which in turn directs that notification directly to the pollution response team via a telephone number and/or a dedicated email address which is not via the marine case management system (MCMS). Paragraph 2(3) needs to reflect this and be amended to make it clear this does not include notifications under 16(b) which should go via the route set out in 2(2) rather than MCMS. This is to avoid the need for any separate written approval from the MMO to allow pollution incidents to be notified to the MMO other than through MCMS.
3	Details of such licenced marine activity	The MMO has concerns regarding this drafting, in particular the general right to alter, clean, modify, dismantle, refurbish, reconstruct, remove, relocate or replace any work or structure at (3(2)(b)(i)), very broad rights to carry out excavations and clearance, deepening, scouring, cleansing, dumping and pumping operations at (3(2)(b)(ii)), dispose of any materials (3(2)(b)(iii)) and remove and relocate any vessel whether lawfully or not (3(2)(b)(iv)). The MMO requests that these are amended or clarified as to whether these will be addressed further in the method statement. As drafted, these are very vague and the very broad nature of the provisions as they stand, especially given the absence of the other standard plans and statements, the MMO would expect to see references.
		The MMO previously requested in our Relevant Representation and Deadline 1 submission that the exact coordinates be provided in Part 1 of the DML. The Applicant has stated in AS-043 that these were in the Works Plans so are not required here. However, the DML is a standalone document and it cannot refer to containing information in different documents or plans. We again request that these be provided in the DML.

Part 2 Conditions		
6	Notifications regarding licensed activities	<p>The current wording of this condition suggests that it only applies to agents/contractors that are carrying out licensable activities which require the involvement of a vessel. The MMO recommends this is amended to the following for clarity:</p> <p><i>“The licence holder must ensure that a copy of this licence has been read and understood by any agents and contractors that will be carrying out any licensed activity on behalf of the licence holder as well as any masters or transport managers responsible for any vessels involved with or used during the carrying out of any licensed activities on behalf of the licence holder.”</i></p>
8	Notifications regarding licensed activities	<p>The obligation to make a copy of this licence available for inspection should be directly on those carrying out the licensed activity. The MMO suggests a potential wording change for this below:</p> <p><i>“The masters or transport managers responsible for the vessels that will be carrying out any licensed activity on behalf of the licence holder as notified to the MMO under condition 5 must make a copy of this licence available for inspection on board such vessels during the carrying out of any licensed activity.”</i></p>
	Construction environmental management plan	<p>The MMO would expect to see some provisions along these lines:</p> <p><i>“Construction environmental management plan —(1) No licensed activities may be commenced until a construction environmental management plan for them has been submitted to and approved by the MMO following consultation with the relevant planning authority, the Environment Agency and Natural England on matters related to their function; and the submitted construction environmental management plan must be in accordance with the outline construction environmental management plan, unless otherwise approved by the MMO. (2) Any construction environmental management plan submitted pursuant to sub-paragraph (1) and any construction environmental management plan submitted pursuant to paragraph 6(1) of Schedule 2 (requirements) of the Order may be comprised in the same document or separate documents.”</i></p>

		<p>And “all licensed activities must be carried out in accordance with the construction environmental management plan for those activities approved pursuant to paragraph [*] of this Schedule where applicable, unless otherwise approved by the MMO.”</p>
	Marine Noise Registry	<p>As works include piling, the MMO would expect to see a condition regarding the Marine Noise Registry, for example as below:</p> <p><i>“(1) Only when impact driven or part-driven pile foundations or detonation of explosives are proposed to be used as part of the foundation installation the undertaker must provide the following information to the Marine Noise Registry (MNR)—</i></p> <p><i>a) prior to the commencement of the licensed activities, information on the expected location, start and end dates of impact pile driving/detonation of explosives to satisfy the Marine Noise Registry’s Forward Look requirements; and</i></p> <p><i>(b) within 12 weeks of completion of impact pile driving/detonation of explosives, information on the exact locations and specific dates of impact pile driving/detonation of explosives to satisfy the Marine Noise Registry’s Close Out requirements.</i></p> <p><i>(2) The undertaker must notify the MMO of the successful submission of Forward Look requirements.”</i></p>
11	Sediment sampling	<p>The MMO considers that this condition is not appropriate as drafted and lacks detail. A requirement to carry out the sediment sampling in accordance with the approved plan should be included here.</p>
	Marine written scheme of archaeological investigation	<p>The MMO considers that a marine written scheme of archaeological investigation should be included within the DML, and we suggest potential wording for this below:</p> <p><i>“Archaeological method statements, together with a written report on any consultation carried out with Historic England and the relevant planning authority on matters related to their respective functions in their preparation, must be submitted to and approved by the MMO in writing in</i></p>

		<p><i>accordance with the provisions of the outline marine written scheme of investigation and a subsequent update must be provided to the MMO six weeks before commencement of any licensed activity to which the method statement relates.”</i></p>
	Notice to Mariners	<p>The MMO would expect to see provisions covering this along these lines:</p> <p><i>“Notice to Mariners —(1) Local mariners, fishermen’s organisations and the UK Hydrographic Office must be notified of any licensed activity or phase of licensed activity through a local Notice to Mariners. (2) A Notice to Mariners must be issued at least 5 days before the commencement of each licensed activity or phase of licensed activity. (3) The MMO and Maritime and Coastguard Agency must be sent a copy of the notification within 24 hours of issue. The Notice to Mariners must include— (a) the start and end dates of the work; (b) a summary of the works to be undertaken; (c) the location of the works area, including coordinated in accordance with WGS84; and (d) any markings of the works area that will be put in place. (4) A copy of the notice must be provided to the MMO via MCMS within 24 hours of issue of a notice under sub-paragraph (1).”</i></p>
12	Piling	<p>The mitigation measures included for piling in the outline code of construction practice document [REP2-008] and the mitigation set out in the ‘Statutory nature conservation agency protocol for minimising the risk of injury to marine mammals from piling noise’ document by Joint Nature Conservation Committee (JNCC) that the Ecological Clerk of Works (ECoW) will be following, must be included in the DML.</p> <p>The MMO considers this condition is not detailed enough and we request the following conditions are added:</p> <p><i>“Between 1 March and 30 June (inclusive), in any given year, no piling of any type must take place in the water.”</i></p> <p><i>“No piling of any type is permitted between sunset and sunrise each day. The times of sunset and sunrise should be set in accordance with HM Nautical Almanac Office data.”</i></p>

13	Dredging	The MMO notes that this is a very spartan provision with significant information gaps, such as a detailed description of water injection dredging, to make it clear what should not be undertaken within this period. This should be updated in line with other DCOs of a similar nature. Alternatively, this should be covered in detail in the method statement.
16	Pollution and spills	Consider including the below: <i>“16.—(d) The undertaker must comply with the existing marine pollution contingency plan in place as detailed in the construction environmental management plan.”</i>
17	Post activities	The MMO requests that we be notified in writing when this has been completed, within five business days following completion of the removal.
22	Dropped objects	Should it be required, the MMO will provide a copy of the Dropped Object Procedure Form. The MMO notes that there is an error in 22(3) in the second sentence where it states <i>“obstructions form the seabed”</i> where it should say <i>“obstructions from the seabed”</i> .
Part 3 Procedure for the discharge of conditions		
		The MMO strongly disagrees with the inclusion of Part 3 as currently drafted. Further explanation should be provided by the Applicant as to why Part 3 is considered necessary within the DML. It is unusual for a DML to place obligations on the regulator, and whilst this uses language of <i>“the MMO may”</i> in many places, it moves to <i>“the MMO must”</i> within 26(2) and 27. If the MMO does not grant the application, grant it subject to conditions, or refuse it as soon as is reasonably practicable after the application is received, then the MMO will breach a condition of the DML. This would be an offence (the offence in s85 of the Marine and Coastal Access Act 2009 (MCAA) is an any person offence not a licence holder offence). The wording of a DML should not place obligations on the regulator for which there is criminal liability in the way this does.
25	Further information regarding application	25 just says that the MMO may require further information, which is to some extent simply a statement of fact and therefore is considered to be unnecessary here.

26	Determination of application	<p>26(1) just sets out what the MMO may have regard to. The MMO can have regard under public law rules to what is relevant, so this is considered to be unnecessary in the DML.</p> <p>26(2) is not appropriate. This will place the MMO under an obligation to do something and it brings with it a criminal liability under s85 of MCAA if we fail to do so. This is not acceptable and should not be included in the DML.</p> <p>This goes further than MCAA does in relation to the MMO’s standalone marine licence application decisions. Considering that s69 of MCAA says the MMO must have regard to the need to protect the environment, need to protect human health, need to prevent interference with legitimate uses of the sea, when determining application for licences but it is not obliged in relation to standalone marine licence applications to grant the licence unconditionally, grant it subject to the conditions we see fit or refuse it. The MMO can see no reason for justification for going beyond this for discharging conditions under this DML.</p>
27	Notice of determination	<p>This again places an obligation on the MMO as it states that we “<i>must give notice</i>” of our decision as soon as is reasonably practicable and we “<i>must state the reasons</i>” with a refusal notice. This is not appropriate and should not be included in the DML. There is an established route for challenges for the MMO either failing to approve plans, or attaching conditions to approvals, through the Judicial Review process.</p>
28	Variations of approvals of Part 2 Conditions	<p>The MMO does not consider 28 relevant in Part 3 of the DML, as it is not about the procedure for discharging conditions, but rather about ensuring when the undertaker has to carry out an activity in accordance with an approved plan, they do so in accordance with the plan or any approved variation to it.</p> <p>28(1) would perhaps be more relevant in Part 2 of the DML, for example directly in the clauses which say activities must be carried out in accordance with approved plans.</p>

		28(2) is not considered necessary in the DML. The MMO also notes that the environmental statement considers likely significant effects (positive or negative). Therefore, the use of “ <i>worse than</i> ” is inappropriate in this context.
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2. MMO Comments on Applicant's Response to Interested Parties' Deadline 1 Submissions: 9.12 [REP2-019]

- 2.1. The MMO notes that the Applicant has submitted a response to Interested Parties' Deadline 1 Submissions [REP2-019] at Deadline 2. Due to the time taken to review, we have not been able to provide further comments regarding the Applicant's response at Deadline 3. We will now look to provide these at Deadline 4 on 25 February 2025.

3. MMO Response to Examining Authority's (ExA) First Written Questions (ExQ1) [PD-007]

- 3.1. Q1.7.0.1 List of cumulative schemes assessed

The MMO are content that all other developments, plans and projects (including relevant marine licensed projects) that have the potential to result in cumulative or in-combination effects together with the proposed development have been identified and appropriately assessed by the Applicant in the Environmental Statement [APP-118] and the HRA Report [APP-090].

- 3.2. Q1.8.4.1 MMO comments on draft Deemed Marine Licence (dDML)

The MMO has reviewed the Applicant's updated dDCO submitted at Deadline 2 [REP2-004]. Outstanding comments on the dDCO and dDML are detailed in Table 1 above.

4. Comments on stakeholders Deadline 2 submissions

- 4.1. The MMO has reviewed the Deadline 2 submissions of the following interested parties:
- Port of London Authority [REP2-026]
 - Natural England [REP2-027]
- 4.2. The MMO has no comments on these and will maintain a watching brief on any further discussions or issues, in particular if any mitigation should be secured within the DML.

5. MMO Response to ExA Rule 13 and 16 Letter [PD-009]

- 5.1. The MMO can confirm that we will not be attending the Compulsory Acquisition Hearing 2 (CAH2) on Tuesday 11 February 2025 or the Issue Specific Hearing 2 (ISH2) on Wednesday 12 February 2025.
- 5.2. The MMO can confirm that we do not wish to attend the Accompanied Site Inspection (ASI) on Thursday 13 February 2025.

6. Statement of Common Ground Marine Management Organisation: 8.1.7 (Rev C)



- 6.1. The MMO are currently reviewing the Statement of Common Ground Marine Management Organisation: 8.1.7 (Rev C) document. This document was provided to the MMO via email on 15 January 2025.
- 6.2. The MMO will look to provide comments to the Applicant ahead of Deadline 4 on 25 February 2025.
- 6.3. The MMO requests that until we have completed our review of the document, any matters added since Revision B (November 2024) be considered as “*Matters under discussion*”.

7. References

JNCC, M.A., House, I. and Street, B., 2010. Statutory nature conservation agency protocol for minimising the risk of injury to marine mammals from piling noise.

