



Marine Management Organisation

Marine Licensing
Lancaster House
Hampshire Court
Newcastle upon
Tyne
NE4 7YH

T +44 (0)300 123 1032
F +44 (0)191 376 2681
www.gov.uk/mmo

The Gate Burton Energy Case Team
National Infrastructure Planning
gateburtonsolar@planninginspectorate.gov.uk
(Email only)

MMO Reference: DCO/2022/00015
Planning Inspectorate Reference: EN010131
Identification Number: GABE-SP022

04 August 2023

Dear Sir or Madam,

Planning Act 2008 – Application by Gate Burton Energy Park Limited, for an Order Granting Development Consent for the Gate Burton Energy Park

Deadline 2 Submission

On 27 February 2023, notice was given that the Secretary of State has accepted an application by Gate Burton Energy Park Limited (company number 12660764) of Stirling Square, 5-7 Carlton Gardens, London, United Kingdom, SW1Y 5AD (“the Applicant”) for a Development Consent Order under the Planning Act 2008. The Application (Reference No. EN010131) was submitted by the Applicant to the Secretary of State c/o the Planning Inspectorate on 27 January 2023 and was accepted on 22 February 2023.

The Marine Management Organisation (MMO) received a copy of the Rule of 8 letter and requests for comments as part of Deadline 2 on 12 July 2023.

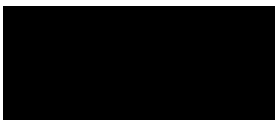
The Applicant seeks authorisation for the construction, operation and maintenance and decommissioning of a solar photovoltaic (PV) electricity generating facility and energy storage facility, based in Lincolnshire, with a total capacity exceeding 50 megawatts (MW) and export connection to the National Grid (“the “Project”).

This document comprises the Marine Management Organisation’s (MMO’s) Deadline 2 response in respect to the above Development Consent Order (DCO) Application. This is without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This is also 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. The MMO reserves the right to modify its present advice or opinion in view of any additional matters or information that may come to our attention.

Yours faithfully



Poppy Philipps
Marine Licensing Case Officer

D [redacted]
E [redacted] [@marinemanagement.org.uk](mailto:[redacted]@marinemanagement.org.uk)

Copies to:

Zoe Trott (MMO) – Case Manager: [redacted] [@marinemanagement.org.uk](mailto:[redacted]@marinemanagement.org.uk)

Amy Trakos (MMO) – Senior Case Manager: [redacted] [@marinemanagement.org.uk](mailto:[redacted]@marinemanagement.org.uk)

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1. The MMO's role in Nationally Significant Infrastructure Projects (NSIPs)

1.1. The MMO was established by the Marine and Coastal Access Act 2009 (the "2009 Act") to make a contribution to sustainable development in the marine area and to promote clean, healthy, safe, productive and biologically diverse oceans and seas. The responsibilities of the MMO include the licensing of construction works, deposits and removals in English inshore and offshore waters and for Northern Ireland offshore waters by way of a marine licence. Inshore waters include any area which is submerged at mean high water spring ("MHWS") tide. They also include the waters of every estuary, river or channel where the tide flows at MHWS tide. Waters in areas which are closed permanently or intermittently by a lock or other artificial means against the regular action of the tide are included, where seawater flows into or out from the area.

In the case of NSIPs, the Planning Act 2008 (the "2008 Act") enables DCO's for projects which affect the marine environment to include provisions which deem marine licences. As a prescribed consultee under the 2008 Act, the MMO advises developers during pre-application on those aspects of a project that may have an impact on the marine area or those who use it. In addition to considering the impacts of any construction, deposit or removal within the marine area, this also includes assessing any risks to human health, other legitimate uses of the sea and any potential impacts on the marine environment from terrestrial works.

Where a marine licence is deemed within a DCO, the MMO is the delivery body responsible for post-consent monitoring, variation, enforcement and revocation of provisions relating to the marine environment. As such, the MMO has a keen interest in ensuring that provisions drafted in a deemed marine licence ("DML") enable the MMO to fulfil these obligations.

2. Responses to the Examining Authority's First Written Questions (WQ1)

Q1.6.29 *Article 44 provides for a deemed marine licence as set out in Schedule 9. Can the MMO confirm that they are satisfied that no draft Marine Licence is required and are happy that these provisions are removed from the dDCO? Are the Applicant in agreement with this position?*

2.1. Overview of MMO's Position

The MMO's current position, based on the information that has been provided to date, is that a dML is not required. This is because there is insufficient information to determine if the DCO application contains marine licensable activities or marine licensable exempted activities, or to assess the impacts of the proposed works on the marine environment. The MMO has reviewed the following in producing this response:



- Chapter 2 – The Scheme [APP-011];
- Chapter 3 – Alternatives and Design Evolution (and associated appendices) [APP-012];
- Chapter 9 – Water Environment [APP-018];
- Chapter 15 – Other Environmental Topics [APP-024];
- Chapter 17 - Summary of Significant Environmental Effects of the Environmental Statement [APP-026];
- Draft Development Consent Order (DCO) [APP-215]; and
- deemed Marine Licence (dML) [APP-215]

The MMO are unable to provide further comments on a draft dML until clarity is provided by the applicant on the proposed works that fall under Section 66 of the Marine and Coastal Access Act 2009.

2.2. Major comment: Insufficient information to assess impacts.

The MMO have not had sufficient time to review the Environmental Statement in its entirety, due to the late-stage engagement with the MMO by the applicant to this project. Whilst the MMO did receive the Section 42 notice, the MMO was unable to be consulted on the ES due to the applicant not accepting the MMO's fee estimate for our discretionary advice in pre-examination. The MMO also received the Rule of 6 letter later than the registration date. However, the MMO has had consideration of the following chapters of the ES when providing the below response:

- Chapter 2 – The Scheme [APP-011];
- Chapter 3 – Alternatives and Design Evolution (and appendices) [APP-012];
- Chapter 9 – Water Environment [APP-018];
- Chapter 15 – Other Environmental Topics [APP-024]; and
- Chapter 17 - Summary of Significant Environmental Effects [APP-026].

The MMO can see no direct reference within the Environmental Statement to the impacts of the proposed works on the marine environment. The MMO recommend PINS request this. It is standard practice for an environmental statement to include a marine environment chapter and the environmental statement should be updated to include this chapter.

It is acknowledged that the applicant has provided a water environment chapter which concludes that there are no significant impacts of the proposed works on the water environment. However, the MMO would expect a marine environment chapter to be provided in an environmental statement for a DCO application which includes an application for a draft deemed marine licence.

The MMO note that the activities listed in the dML are not mentioned specifically within the scope of the works assessed in the Environmental Statement. Therefore,



it is unclear what the impacts of the proposed marine licensable activities are, as this is grouped with activities not listed as licensable. It is considered the Environmental Statement is insufficient to support the dML application and has not adequately considered impacts to the marine environment.

The MMO note that the Environmental Statement Marine Environment Chapter should assess the impact of the worst-case scenario.

In addition, as the proposed works lie within the East inshore Marine Plan area, the East inshore Marine Plan Policies will need to also be considered in the Environmental Statement.

2.3. Major comment: Insufficient information to identify licensable activities within the proposed works.

The MMO have undertaken a preliminary review of the draft dML in accordance with Section 66 of the Marine and Coastal Access Act 2009. The activities presented in the draft dML as described do not fall under this legislation, or insufficient information has been provided to determine if the works fall under the Marine and Coastal Access Act 2009 or The Marine Licensing (Exempted Activities) Order 2011.

Marine licensable activities are determined by their location (below mean high water springs), type of activity (as described in Section 66 of the Marine and Coastal Access Act 2009) and due to the nature of the impacts and scale of the works in accordance with parameters set out within The Marine Licensing (Exempted Activities) Order 2011.

As stated above the MMO note that there is inconsistency between the description of the draft dML activities and the scope of the works in the Environmental Statement. Within the Environmental Statement, Chapter 3 [APP-012], the applicant has proposed two cable options for crossing the River Trent, an underground cable or overhead line, “ 5.2.19 To summarise, detailed surveys consider all three Grid Connection Corridors as broadly equivalent in terms of safety, proximity to occupied buildings and infrastructure. Overhead line installation is less preferred primarily due to the prevalence of existing overhead lines in the area, the increased risk of damage and impact of weathering and resultant maintenance required and the complexity of the Trent crossing”.

The laying of cables is an activity that could require a marine licence under the Marine and Coastal Access Act 2009, Section 66(7). It is the applicant's responsibility to identify the marine licensable activities within their proposed works. However, in the dML only the underground cable activity was submitted. In the Outline Design Principles document [APP-007] the applicant confirms they are



committed to crossing the River Trent by the underground cable method, but this should be stated clearly within the DCO application and Environmental Statement.

In addition, the MMO would require further information in respect to the 'underground cable activity' described in the draft dML as:

'— (a) works to lay electrical cables including one 400 kilovolt cable circuit connecting Work No. 4A to Work No. 4C including tunnelling, boring and drilling works for trenchless crossings'.

The MMO consider this underground cable activity which involves the construction of a borehole may be exempt from requiring a [deemed] marine licence, if works are considered to not have a significant adverse impact on the marine environment in accordance with Article 35 of the 2011 Exempted Activities Order:

'35.—(1) Article 4 applies to a deposit or works activity carried on wholly under the sea bed in connection with the construction or operation of a bored tunnel.

(2) Paragraph (1) is subject to conditions 1 and 2.

(3) Condition 1 is that notice of the intention to carry on the activity must be given to the licensing authority before the activity is carried on.

(4) Condition 2 is that the activity must not significantly adversely affect any part of the environment of the UK marine area or the living resources that it supports.

(5) But article 4 does not apply to any such deposit carried on for the purpose of disposal'.

To date the applicant has only identified significant adverse impacts on the 'Landscape and Visual Amenity And Visual Receptors (Construction)' (Environmental Statement Chapter 17: Summary of Significant Environmental Effects [APP-026]). No significant adverse impacts have been identified in the Environmental Statement from the proposed marine licensable activities (borehole construction and subsequent underground cable laying). Therefore, from this and in the absence of further information from the applicant, the MMO suggest that the borehole activities are likely to fall under Article 35 of the 2011 Exempted Activities Order. However, further information is required from the applicant for the MMO to confirm this position. If the applicant is unable to provide information on whether the proposed marine licensable activities will or will not have a significant adverse impact on the marine environment, the MMO will be unable to advise further. The MMO reiterate that Environmental Statement should contain a marine environment chapter, which considers the impacts of the proposed works.



In addition, the MMO note that in the scenario that the entry and exit sites of the borehole occur above mean high water springs, and that the borehole tunnel will be below the marine substrate it is unlikely the works will pose a significant impact to the marine environment. However, further evidence and information should be provided by the applicant confirming the location of the entry and exit routes. This should be provided in a marine environment chapter of the Environmental Statement. The MMO requested the applicant to confirm whether the position of the borehole entry and exit locations are above mean high water springs by email on the 2 August 2023 and have received no confirmation response to date. If the entry and exit site for the boreholes are below mean high water springs, the MMO consider this should be stated and the impacts assessed in the Environmental Statement and the applicant should consider if the works will have a significant adverse impact.

The MMO acknowledge some information on the entry ['launch'] and exit site for each borehole has been provided in the Environmental Statement Chapter 9 [APP-018] Section 9.2.23 *'The sections of the cables that will be installed via HDD will require launch and reception pits to be installed at distances between 200m and 500m (750m in one or two exceptional circumstances) along the HDD section of the route. Launch and exit pits will be sited outside the avoidance areas, and a minimum of 10m from watercourses (measured from the centre line of the watercourse as discussed above with the exception of the River Trent) and a minimum of 16m from the toe of flood defences.'* The MMO request further clarification as to why the River Trent is the exception and the distance to the entry and exit pits for the River Trent, to enable further advice to be provided.

If the proposed works fall under an exemption, which cannot be determined to date due to the lack of information in the Environmental Statement, the applicant should follow the marine licensing exemption process. If an exempted activity is applied for during the DCO process, the applicant must note the exempted activity within the DCO and give notification of the intention to carry out the activity to the MMO before works commence.

The MMO consider that a dML cannot be granted for the proposed works, as based on the information we have received to date, the works have the potential to be an exempt activity and therefore would not require a marine licence.

The MMO therefore consider a dML should not be granted due to insufficient information, as the activities described do not clearly fall under The Marine and Coastal Access Act 2009.

2.4. MMO's position with applicant



The applicant does not agree with the MMO's current position.

The MMO is engaging with the applicant and requires further clarity regarding the proposed works and potential dML. The applicant, in discussions on the 13 July 2023, considered the borehole activity 'could' be exempt and requested that the MMO consider whether the exemption can be disapplied. There is no precedent for this and the MMO does not consider exemptions should be disapplied.

Given the current information provided to date within the dML and Environmental Statement the MMO advise that the applicant considers withdrawing the application for a dML within the DCO process.

The MMO note that the granting of a DCO does not absolve the applicant from obtaining other consents or variations to granted consents in the future if the detail of the project changes. Given the current stage of the DCO process and to avoid delays the MMO advise separate marine licence applications are made in relation to the DCO application if the applicant, following further scoping of the works determines a marine licence is required. The MMO would welcome the applicant engaging early before submitting any marine licence applications.

3. Conclusion

The MMO consider a dML cannot be granted based on insufficient information. The MMO requests further clarification regarding the proposed works and updates to the Environmental Statement, to include a marine environment chapter. If the applicant can provide this during the examination period, the MMO will consider all new information and consider revising the current position if necessary. The MMO would require at least four weeks to review the new information before the MMO could make comment at a further deadline.

