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Planning Inspectorate Reference: EN10131
Identification Number: GABE-SP022

20 November 2023

Dear Ken Stone

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

Deadline 5 Submission: Request for Further Information under Rule 17

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 (DCO) 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 MMO’s Deadline 5 Request for Further Information response in respect to the above DCO Application, which it received on 8 November 2023. 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 sincerely



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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 DCOs 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 Request for Further Information

The MMO is grateful for the opportunity to provide further information in respect to the current Deemed Marine Licence (DML) [REP4-023] as requested by the Examining Authority on the 8 November 2023. The MMO notes the Examiner detailed that the current methodology does not appear to include potential for issues or problems arising during construction or operation e.g. the Horizontal Direct Drilling (HDD) being stuck during drilling or cabling during pulling through, such that may require intervention including seeking to directly access the bored tunnel for example to retrieve the Drill head etc potentially including digging a pit within the exclusion zones or requiring access pits if there is a failure of the cable during operation. As such, the MMO acknowledges the Examiners subsequent questions regarding such a scenario and has responded accordingly below.

2.1. Whether such a scenario has been considered and assessed including the potential likely environmental effects that may result and where this is addressed in the Environmental Statement.



The MMO acknowledges the Applicant's submission of a Marine Environment Chapter at Deadline 4 in the Applicant Responses to Further Written Questions (Examining Authorities Questions 2) document [REP-046]. Within the Chapter the MMO notes the Applicant has stated the methodology of the drilling, or other trenchless techniques, would include measures to minimise the risk of the environment, and in addition, a site-specific hydraulic fracture (frac-out) risk assessment would be developed prior to construction following further site investigation. The MMO also recognises the HDD depth is now a minimum of 5 metres (m) below the lowest surveyed point of the riverbed.

However, the MMO is unable to find any further mention to a scenario regarding possible problems arising during construction or operation. Therefore, the MMO has not been able to review and consult on the scenario detailed above. As requested in our Deadline 4 response, the MMO welcomes the inclusion of a methodology showing the worst-case scenario and would comment on this accordingly.

2.2. If it has not, the Applicant to provide a risk assessment along with any necessary assessment of environmental effects to the marine environment that may follow and identify any mitigation measures that would be necessary.

As stated above, the MMO would welcome a risk assessment on a scenario that includes the potential for issues or problems arising during construction or operation and any mitigation measures that would be necessary.

2.3. Are such interventions if required covered by the Deemed Marine Licence or would further description need to be included within the DML?

If such interventions are required, the MMO request that the DML be updated to include further description of the required activities as set out in Section 66 of the 2009 Act. The DML does not currently include the worst case scenario and this would enable the MMO to gain a better understanding of the licensable activities that are included in the DML.

2.4. The MMO has suggested the Applicant could apply for a standard Marine Licence if the previously suggested exemption was not available at the point of construction how would this affect the Applicant's development timetable in terms of time and cost in a standard HDD operation where no incidents arose. Also if such a scenario as described above in context of failure of the drilling or cabling arose to what extent would a requirement to apply for a Marine Licence add to the delay and potential costs and would this affect the viability of the scheme.

The MMO understands applying for a standard Marine Licence may incur cost and delay should Article 35 of The Marine Licensing (Exempted Activities) Order 2011



(as amended) change, however the Exemptions were designed to ease regulatory burden and provide scope for activities to be carried out in a streamlined way. Regarding marine licence application fees, applications are assessed and categorised into fee bands: Band 1 (Self-service), Band 2 and Band 3. The maximum fee for Band 2a is £1400 and for Band 2b is £2200. Band 3 applications have no maximum fee, instead applicants are provided with a fee estimate with a proposed number of MMO working hours at the MMO rate of £122 per hour. More information on the different bands and their fees can be found here, [Marine licence fees - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

The MMO aims to make a decision on most standard Marine Licence applications within 13 weeks of an application being validated, however the MMO would highlight that each application does vary, and some can take more or less time. In addition, the MMO is unable to predict whether a marine licence application will reach a positive determination.

As the MMO cannot predict whether or not Article 35 of The Marine Licensing (Exempted Activities) Order 2011 (as amended) will apply in the future, the MMO can only provide advice on the legislation as it is currently written, which the MMO consider the best available evidence to inform our advice. As in previous Deadline responses, the MMO has stated that should the legislation change between now and the time the works are required, the Applicant can apply for a standard marine licence.

Any changes to Article 35 would require consultation and approval by the Secretary of State. This would allow ample time for the Applicant to apply for a standard marine licence if any changes to the borehole exemption were to occur. The MMO understands the Applicant's concern but cannot agree with including an exempted activity within a DML. Exempt activities are just that, exempt.

The proposed drafting represents a clear departure from the MCAA 2009, which would normally require the licence holder to just notify the MMO. Instead, this inclusion within the DML would move away from the current procedure.

The wording is inconsistent with the PINS Guidance on how DMLs should operate within a DCO. Advice Note Eleven, Annex B – Marine Management Organisation | National Infrastructure Planning (planninginspectorate.gov.uk) provides that where the undertaker chooses to have a marine licence deemed by a DCO, the MMO, "*will seek to ensure wherever possible that any deemed licence is generally consistent with those issued independently by the MMO*".

Under the DCO legislative regime, it remains possible for developers to seek consent for a marine licence directly with the MMO (rather than having a DML integrated into the DCO). This flexibility underlines the fact that the DCO process simply integrates



the existing mechanism for granting a marine licence. It should not therefore be used as a vehicle to alter or distort established process and procedures, such as exempted activities.

Piecemeal changes to aspects of the marine licence regime by way of the DCO can undermine the ability to enforce the marine licence. Under the DCO, it remains the MMO who will be responsible for enforcing marine licences (both deemed or granted independently). It is therefore vital that all marine licences are clear and enforceable. Consistency is a key element in achieving this, and this is best achieved by ensuring that the MMO has full responsibility for the marine licence process.

The MMO does not agree that the exempted activity should be included within the DML and requests this activity is removed.

However, the MMO welcomes other licensable activities as set out in Section 66 of the 2009 Act being included within the DML, this will allow for any contingency the applicant may encounter in the HDD process or other works below Mean High Water Springs and reduce the cost at the time to the Applicant.

Any amendments to the DML will be reviewed by the MMO and any comments relating to the MMO will be provided.

2.5. The MMO to comment specifically on how the abovementioned failure scenario would affect its position in respect of the necessity for a DML and any conditions that would be required and whether such ancillary activities would be covered by the previously identified exemption.

As previously mentioned, the MMO require worst case scenario details within the methodology, in order that it can assess the potential problems and issues and what this may entail with regards to the necessity for a DML.

The DML should then be updated to clearly define any activities and how they relate to Section 66 of the 2009 Act.

Upon receipt of specific details, including, for example, how the drill head would be retrieved and what equipment would be used, and following any required consultation, the MMO will be able to provide further comments on the sorts of conditions that may be required.

2.6. Should the dDCO not include a Deemed Marine Licence what would the MMO's expected decision time on an application for a standard marine licence be.

As stated above, the MMO aims to make a determination on a marine licence application within 13 weeks of an application being validated. However, this timeline can vary due to the complexity of an application, whether sufficient information has



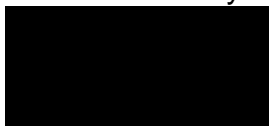
been provided by the applicant, or if any issues are raised by consultees during the consultation process.

3. Conclusion

The MMO has not distinguished a scenario within the current methodology which adequately describes the potential for issues or problems arising during construction or operation. Therefore, the MMO welcome the inclusion of a risk assessment on this scenario and if such interventions are required, the MMO request the DML is updated.

The MMO will continue to monitor the PINS website for any developments regarding the DML and will respond accordingly to any further questions set by the Examining Authority.

Yours sincerely



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