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(By Email only)

21st December 2023

Dear Kenneth Stone

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

Deadline 6 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 (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 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 6 response in respect to the above 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 sincerely,

A handwritten signature in black ink, appearing to read 'Amina Mokhtar'.

Amina Mokhtar

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1. General Comments

The MMO has reviewed the DCO and Deemed Marine Licence (DML) (REP5-017) on a without prejudice basis and along with reaffirming our position on the inclusion of a DML has provide comments on the wording within the DCO and DML where this would fall within the MMO's remit as the regulator under the Marine and Coastal Access Act 2009 (2009 Act). The MMO still has major concerns in relation to the inclusion of a DML.

2. Exempt Activities

2.1 Article 4 of the Marine Licensing (Exempted Activities) Order 2011 (2011 order) states that a marine licence is not needed for an activity that is an exempt activity.

2.2 Article 35(1) of the 2011 Order states *“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.”*

2.3 The Applicant is proposing, under Work No.4 to carry out trenching for cabling by way of a bored tunnel. It has been asserted by the Applicant that in carrying out Work No. 4 that the activities will not have a significant effect on the UK marine area.

2.4 On the basis of the information provided to the MMO by the Applicant, the MMO does not consider that a deemed marine licence is able to be granted under a Development Consent Order for the purposes of the proposed Work No. 4 because no marine licence is required.

2.5 It would appear to the MMO that the Applicant is seeking to obtain a deemed marine licence for drilling activities or other forms of tunnelling which of themselves will not be considered to be a bored tunnel to which the exemption in the 2011 Order applies and is seeking to have these activities authorised by way of a deemed marine licence. The MMO notes however that the Applicant has provided no detail as to what these activities would entail, and they have not assessed the environmental implications of these activities.

2.6 The Planning Act 2008 has the effect of altering the mechanism, for the purposes of a development consent order, by which a marine licence can be granted. It does not however alter the process by which an application for a marine licence is determined under section 69 of the 2009 Act.

2.7 In the absence of the detailed information from the Applicant, the MMO is unclear how the Secretary of State can determine whether or not the deemed marine licence should be granted, as the MMO itself would be unable to make this determination. The MMO has significant concerns that in the current circumstances any decision of the Secretary of State to grant a deemed marine licence could be open to successful challenge.

2.8 Please see Section 5 of this document for further comments.

3. DCO – Part 6, Article 35 - Consent to transfer the benefit of the Order

3.1 Article 35 DCO

It is the MMO's stated position that the Deemed Marine Licence (DML) granted under a Development Consent Order should be regulated by the provisions of the Marine and Coastal Access Act 2009 (MCAA 2009), and in respect of this issue, specifically by all provisions of section 72 MCAA 2009.

PINS Guidance

As set out in Advice Note Eleven, Annex B – Marine Management Organisation | National Infrastructure Planning (planninginspectorate.gov.uk) where a developer chooses to have a marine licence deemed by a DCO, we, the MMO, “will seek to ensure wherever possible that any deemed licence is generally consistent with those issued independently by the MMO.”

As you are aware developers can seek consent for a marine licence directly with the MMO, reinforcing that in respect of marine licences the DCO process nothing more than a mechanism for granting a marine licence – it is not a vehicle to amend established process and procedures, such as those for the transfer of a marine licence.

As the guidance further sets out, we, the MMO are responsible for enforcing marine licences regardless of whether these are ‘deemed’ by a DCO or consented independently, and it is therefore fundamental that all marine licences are clear and enforceable, and consistency is a key element in achieving this.

Section 72(7)(a) MCAA 2009 permits a licence holder to make an application for a marine licence to be transferred, and where such an application is approved for the MMO to then vary the licence accordingly (s. 72(7)(b)).

Decision to transfer or application to transfer

In considering the proposed provisions of Article 35 DCO, Articles 35(1)(a) and 35(1)(b) no longer requires the licence holder (undertaker) to make an application for a licence to be transferred it is simply their decision to make the transfer – this is a clear departure from MCAA 2009. Further the newly introduced process involves the Secretary of State providing consent to the transfer, rather than the MMO as the regulatory authority for marine licences considering the merits of any application for a transfer.

Further if it is the intention of the applicant for DMLs to be transferred by them as the Undertaker under the terms of the DCO and outside of the established procedures under MCAA 2009 (which the MMO opposes) why is it considered necessary or appropriate for the Secretary of State to ‘approve’ the transfer of the DML, even with their obligation to consult the MMO? We remain strongly of the view that it should be the MMO.

Although the process proposed has not been tested, it may be the case that the applicant/undertaker faces unnecessary delay as it is not clear that there will be a process in place to deal with requests of this nature and it is not clear what any consultation period would be.

Duty to consult MMO

It is noted that the Secretary of State “must consult” the MMO (Article 35(4)) – however the obligation goes no further than this, the Secretary of State is not obligated to take into account the views of the MMO in providing its consent and there is no obligation for the MMO to be informed of the decision of the Secretary of State. In the regulatory sphere it strikes us as highly unusual that a decision to transfer a licence is not the decision of the regulatory authority in that area.

Power to vary the licence following a transfer

Despite the proposed changes to the process of transferring a marine licence it remains that neither the licence holder nor the Secretary of State has any power to actually vary any terms of a marine licence and it will still therefore be necessary for the MMO to take steps to vary a marine licence to reflect that it has been transferred to another entity. To our mind

the proposed mechanism for transfer of a marine licence does not actually work and in fact does little more than complicate the process.

There are also very real practical concerns as to how the proposed process would work in practice. The transfer of the licence would happen first, and then the licence would need to be varied. After the transfer of the licence, the new licensee would have a marine licence which would still be in the name of the licensee who had transferred the licence. The new licensee would have no authorisation to carry out any acts until the variation had taken place and until the variation had been affected the old licence holder would remain liable for any actions undertaken. The procedure under s. 72 MCAA avoids this issue.

Transfer and lease of a marine licence

Article 35(1)(b) specifies the transfer of the whole of a deemed marine licence and Article 35(1)(b) specifies a grant to a lessee for an agreed period. There is however no mechanism either in the DCO or indeed in MCAA 2009 for a marine licence to be 'leased', specifically there is no provision for the licence 'reverting' to the licence holder after the agreed lease period – in practical terms it would be necessary to vary the licence to change the details of the licence holder at the beginning of the agreed period and then again at the end of the agreed period.

Article 35(1)(b) use of the term 'grant'

We should be grateful for clarification on the use of the term 'grant' in Article 35(1)(b) and 35(2) in respect of granting the benefit of the licence to a lessee. Articles 35(1)(a) and 35(2) refer to the transfer of the licence - as is the language of Art 72 MCAA 2009. As the granting of licences fall under s.69 MCAA and not s. 72, can the applicant provide further explanation of it's intention in this regard and its use of the term?

Enforcement

It is essential as the regulatory authority in the marine environment that we are always fully aware who has the benefit of marine licences in order that we can carry out our regulatory function and where necessary take enforcement action. The mechanism you and your client are currently proposing for the transfer of a marine licence departs from this clear process without clear justification as to why such a departure is necessary or appropriate in the circumstances.

Conclusion

It is therefore the MMOs position that the DML should be regulated in accordance with the provisions of MCAA, in this context specifically all provisions of s.72 MCAA 2009.

4. DCO – Part 6, Article 42 - Arbitration

4.1 It is not clear from the current provisions of either the DCO or the DML that the arbitration (article 42 and Schedule 14) is not the applicable dispute resolution mechanism in respect of the deemed marine licence.

Appeals are already available to the Applicant in the form of an escalated internal procedure and judicial review ("JR"), and therefore, including any additional appeal mechanism within the DCO and DML is unnecessary.

The Marine Licensing (Licence Application Appeals) Regulations 2011 apply a statutory appeal process to the decisions that the MMO makes regarding whether to grant or refuse a licence or conditions which are to be applied to the licence. However, they do not include an appeal process to any decisions the MMO is required to give in response to an application to discharge any conditions of a marine licence issued directly by us.

Therefore, if the DCO were to be granted with the proposed appeal process included, this would not be consistent with the existing statutory processes. This amendment would be introducing and making available to this specific Applicant, a new and enhanced appeal process which is not available to other marine licence holders, creating an unlevel playing field across the regulated community. These proposals go against the statutory functions laid out by parliament. The private nature of the arbitration process does not align with the public functions and duties of the MMO. The removal of the MMO decision-making function, and its placement into the hands of a private arbitration process, is inconsistent with the MMO legal function, powers and responsibilities, which was never intended by Parliament in enacting the Planning Act 2008 or MCAA 2009. The MMO also consider that arbitration would not be consistent with p.4 of Annex B of the PINS Guidance Note 11, which states that "the MMO will seek to ensure wherever possible that any deemed licence is generally consistent with those issued independently by the MMO". Inclusion of a different mechanism for determination of disputes in respect of DMLs would not be consistent with Marine Licences issued independently by the MMO.

In addition to this, the MMO emphasises that we are an open and transparent organisation that actively engages, 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 scale and complexity of Nationally Significant Infrastructure Projects 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.

5. –Licensable Activities and Procedure

5.1 It is essential that all activities are properly detailed and full particularised in the development consent order for the purposes of a deemed marine licence. The MMO note that in the Applicant's response to Further Written Questions (ExQ2) [REP4-046) the Applicant has detailed why they do not require an Environmental Statement. The MMO will address this further at the next response deadline (D7) of 4th January 2024

5.2 It appears to the MMO that the Applicant is primarily proposing to carry out an activity which falls within an exemption. However, the applicant is also seeking a deemed marine licence to address the hypothetical situation whereby they are unable to carry out the works as anticipated and it would become necessary to undertake different works to achieve the same end, but that those works may not fall within an exemption under the 2011 Order.

5.3 It is the MMO's position that the Applicant has two options;

a. Have no deemed marine licence, and at such a time as it becomes necessary, if ever, for the Applicant to make an application for a marine licence to the MMO; or

b. Provide the necessary information and detail now to the MMO, which can be fully assessed and upon which the MMO can make a reasoned determination in accordance with s. 69 2009 Act, and which would withstand any challenge.

5.4 As set out above in Section 2, the Nationally Significant Infrastructure Projects (NSIPs) process only alters the mechanism by which a marine licence is granted, the process remains the same. If the Applicant was making an application for a marine licence, the MMO would require the Applicant to provide the information as set out below, without which the MMO would be unable to determine the application.

5.6 In order to progress any deemed marine licence, the Applicant will need to provide the following information: -

- Full details of any licensable activity in line with s.66 of the 2009 Act and at what stage these would take place - construction, operation (maintenance) and decommissioning;
- Worst case scenario area and volume size of impacts for each activity; and
- Full assessment of the worst-case scenario as part of the Environmental Impact Assessment so a holistic assessment can be made on the whole project.
- Details which the applicant would need to provide to the ExA which have not yet been provided, include but are not limited to, a clearly defined programme of works which includes marine licensable activities which are not covered by an exemption. A programme of works should detail all methodology and include the maximum dimensions and equipment to be used. This should specifically relate to the named activity. There should also be an Environmental Impact Assessment (EIA), a Habitats Regulations Assessment (HRA), Marine Plan Policy Assessment (MPPA) and a Water Framework Directive (WFD) compliance assessment.

6. Deemed Marine Licence

6.1 As set out above MMO requests the DML is removed from the DCO. The Applicant has requested the MMO provide without prejudice comments.

6.2 It has been difficult to assess whether or not the conditions the Applicant has included on the DML, which are under the headings of notifications, pollution prevention, post-construction, maintenance and decommissioning, are sufficient due to the lack of detail on the specific activities.

6.3 Conditions in a marine licence regulate the activities that are to be undertaken, and set out the methods by which those activities are carried out, exerting the necessary controls in order to protect the environment, human health and to prevent interference with legitimate uses of the sea, along with any other matters as the MMO thinks relevant.

6.4 In the absence of sufficient detail, or the appropriate assessments from the Applicant, the MMO is unable to determine whether the conditions proposed by the Applicant in the deemed marine licence are appropriate in the circumstances.

6.5 However, should the Secretary of State be minded to include the DML, which we strongly advise against, without prejudice comments on the draft DML have been provided in Table 1 below, noting that if further information is provided this would require review and update.

6.6 The MMO also notes that some conditions relation to the environmental statement and other documents of which the information on the activities is not clear.

6.7 The MMO utilises Paragraph 55 of the National Planning Policy Framework which makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

- necessary;
- relevant to planning;
- relevant to the development to be permitted;
- enforceable;
- precise; and

Table 1: MMO without Prejudice comments on draft DML

DML Section	Current wording	Without Prejudice Comments
Part 1 Licensed Marine Activities		
(1) Interpretation	Add provision	“condition” means a condition in Part 2 of this licence;
(1) Interpretation	Add provision	“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of Part 4 (marine licensing) of the 2009 Act;
(1) Interpretation	“licence holder” means the undertaker and any agent, contractor or sub-contractor acting on its behalf;	The MMO request that this is deleted.
(1) Interpretation	“MMO” means the Marine Management Agency, the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence;	“Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence or any successor in function;
(2) Addresses for notices	(1)(a) Marine Management Organisation Marine Licensing Lancaster house Newcastle Business Park Newcastle upon Tyne NE4 7YH Tel: 0300 123 1032; and	Marine Management Organisation Marine Licensing Team Lancaster House Hampshire Court Newcastle Business Park Newcastle upon Tyne NE4 7YH Tel: 0300 123 1032

(2) Addresses for notices	(1)(b) Marine Management Organisation Beverley Office First Floor Crosshill House Beverley HU17 9JB Email: beverley@marinemanagement.org.uk Phone: 0208 026 0519	
(3) Details of licensed marine activities	3.(1) Subject to the licence conditions, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act which— (a) form part of, or are related to, the authorised development; and (b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 of the 2009 Act.	As set out above in Section 5 this should set out clearly the activities as defined in S.66 of the 2009 Act.
(3) Details of licensed marine activities	Add provision	MMO request it is made clear in this section how long the licence will last.

<p>(3) Details of licensed marine activities</p>	<p>5. The provisions of section 72 (variation, suspension, revocation and transfer) of the 2009 Act apply to this licence except that the provisions of section 72(7) relating to the transfer of the licence only apply to a transfer not falling within article 35 (consent to transfer the benefit of the Order).</p>	<p>This provision needs to be removed, along with the other sections of Article 5 of the DCO - See Section 5.</p>
<p>(3) Details of licensed marine activities</p>	<p>6. With respect to any condition which requires the licensed activities to be carried out in accordance with the plans, protocols or statements approved under this Schedule, the approved details, plan or project are taken to include any amendments that may subsequently be approved in writing by the MMO.</p>	<p>MMO requests that the following is added: <i>“subsequent to the first approval of those plans, protocols or statements provided it has been demonstrated to the satisfaction of the MMO that the subject matter of the relevant amendments do not give rise to any materially new or materially different environmental effects to those assessed in the environmental information.”</i></p>
<p>(3) Details of licensed marine activities</p>	<p>7. Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the relevant planning authority or that other person that the subject matter of the agreement sought is unlikely to give risk to any materially new or materially different environmental effects from those assessed in the environmental statement.</p>	<p>MMO requests that this is updated to state: <i>“...satisfaction of the MMO that the subject matter of the relevant amendments do not give rise to any materially new or materially different environmental effects to those assessed in the environmental information.”</i></p>

Part 2 Conditions		
Design parameters	Add provision	This should provide the worst-case scenario details of the licensable activities.
Title	Notifications regarding licensed activities	Notifications and inspections
Notifications and inspections	8. The licence holder must inform the MMO in writing of the commencement of the first licensed activity at least 24 hours prior to such commencement.	8. The undertaker must inform the MMO at both addresses of Paragraph 2, in writing of the commencement of the first licensed activity at least five days prior to such commencement.
Notifications and inspections	9.—(1) The licence holder must inform the MMO of the name and function of any agent or contractor appointed to engage in any licensed activity not less than 24 hours before the commencement of the licensed activity in question. (2) Any changes to details supplied under sub-paragraph (1) must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activity in question. (3) Only those persons notified to the MMO in accordance with this condition are permitted to carry out a licensed activity.	The following suggestions are for changes to improve clarity but note also change to 24 hours' notice before carrying out activity, rather than a week after appointment 9. (1) The undertaker must provide the name, address and function of any agent, contractor or subcontractor that will carry out any licensed activity listed in this license on behalf of the undertaker to the MMO in writing no less than 24 hours before the agent, contractor or subcontractor carries out any licensed activity; and (2) Any changes to the name and function of the specified agent, contractor or subcontractor that will carry out the specified licensed activities must be notified to the MMO in writing prior to the agent, contractor or subcontractor carrying out the licensed activity. (3) Only those persons notified to the MMO in accordance with paragraph (1) or (2) are permitted to carry out the licensed activities.

Notifications and inspections	10. The licence holder must ensure that a copy of this Schedule 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 notified to the MMO under condition 9.	10. (1) The undertaker must ensure that— (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to all agents and contractors notified to the MMO in accordance with condition 9; (b) within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above must confirm receipt of this licence in writing to the MMO.
Notifications and inspections	11. Copies of this Schedule must be made available for inspection at the following locations— (a) the licence holder’s registered office; and (b) during the construction of the authorised development only, at any site office which has been provided for the purposes of the construction or maintenance or decommissioning of the authorised development.	11. Copies of this licence must also be available for inspection at the following locations— (a) the undertaker’s registered address; and (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits.
Notifications and inspections	Add provision	12. The documents referred to in sub-paragraph (11)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (11)(b) above.
Notifications and inspections	Add provision	13. The undertaker must provide access, and if necessary appropriate transportation, to the construction site or any other associated works to facilitate any inspection that the MMO considers necessary to inspect the works during construction, operation and decommissioning of the authorised scheme.

Pollution prevention	12. The licence holder must— (a) not discharge waste concrete slurry or wash water from concrete, or cement into the marine environment, and where practicable, site concrete and cement mixing and washing areas at least 10 metres away from the marine environment and any surface water drain to minimise the risk of run off entering the marine environment;	12. The undertaker must - (a) ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment. Concrete and cement mixing and washing areas should be contained and at least 10 metres away from the marine environment and any surface water drain to prevent run off entering the water through the freeing ports.
Pollution prevention	(b) store, handle, transport and use fuels, lubricants, chemicals and other substances so as to prevent releases into the marine environment, including bunding or storage of 110% of the total volume of all reservoirs and containers;	No updates required
Pollution prevention	(c) report any spill of oil, fuel or chemicals into the marine area to the MMO Marine Pollution Response Team (by telephone, within office hours on 0300 200 2024, or outside office hours on 07770 977 825, and at all times, if no response to calls to those numbers, on 0345 051 8486 or via email using dispersants@marinemanagement.org.uk within 12 hours of the spill occurring;	No updates required
Pollution prevention	(d) store all waste in designated areas that are isolated from surface water drains and open water and are bunded;	No updates required

Pollution prevention	(e) use suitable protective sheeting to prevent dust, debris (including paints and solvents) and rebounded or windblown concrete from entering the water environment, and rebounded material must be cleared away before the sheeting is removed;	No updates required
Pollution prevention	(f) ensure that any coatings and any treatments are suitable for use in the marine environment and are used in accordance with either guidelines approved by the Health and Safety Executive of the Environment Agency;	(f) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive and the Environment Agency Pollution Prevention Control Guidelines;
Pollution prevention	(g) not use priority substances and polluting chemicals listed under the Environmental Quality Standards Directive during works.	No updates required
Pre-construction plans and documentation	Add provision	(1) 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—
Pre-construction plans and documentation	Add provision	(a) A design plan - the detail required is dependent on the activities required.
Pre-construction plans and documentation	Add provision	(b) A construction programme to include details of— (i) the proposed construction start date; (ii) proposed timings for mobilisation of plant delivery of materials and installation works;

		(iii) an indicative written construction programme for activities including maintenance and decommissioning
Post-construction	13. The licence holder must remove all temporary structures, waste and debris associated with the licensed activities within 6 weeks following completion of the final construction activity.	13. The undertaker must remove all temporary structures, waste and debris associated with the licensed activities within 6 weeks following completion of the final construction activity.
Post-construction	Add provision	1) The undertaker must submit a close out report to the MMO s of the date of completion of construction. The close out report must confirm the date of completion of construction. (2) Following completion of construction, no further construction activities can be undertaken under this licence.
Maintenance	14.—(1) Unless otherwise agreed by the MMO, the maintenance activities may not commence until a maintenance plan has been approved in writing by the MMO. (2) The maintenance plan must be submitted at least 6 weeks prior to the commencement of any maintenance activity, and must include details of the maintenance activities required including location, duration, timings, methodology and materials to be used. (3) Maintenance activities must be	The MMO requests this is updated to the following condition - these activities must be clearly stated within Part 1, Paragraph 3. 14.—(1) Unless otherwise agreed by the MMO, the maintenance activities may not commence until a maintenance plan has been approved in writing by the MMO. (2) The maintenance plan must be submitted at least 13 weeks prior to the commencement of any maintenance activity, and must include details of the maintenance activities required including location, duration, timings, methodology and materials to be used.

	<p>undertaken in accordance with the agreed plan.</p>	<p>(3) Maintenance activities must be undertaken in accordance with the agreed plan.</p>
Decommissioning	<p>15.—(1) Unless otherwise agreed by the MMO, the decommissioning activities may not commence until a decommissioning plan has been approved in writing by the MMO. (2) The decommissioning plan must be submitted at least 6 weeks prior to the commencement of any decommissioning activity, and must include details of the decommissioning activities required including location, duration, timings, methodology and materials to be used. (3) Decommissioning activities must be undertaken in accordance with the agreed plan.</p>	<p>15.—(1) Unless otherwise agreed by the MMO, the decommissioning activities may not commence until a decommissioning plan has been approved in writing by the MMO. (2) The decommissioning plan must be submitted at least 13 weeks prior to the commencement of any decommissioning activity, and must include details of the decommissioning activities required including location, duration, timings, methodology and materials to be used. (3) Decommissioning activities must be undertaken in accordance with the agreed plan.</p>

7. MMO Response to Applicant's Deadline 5 Response

REP5-046 Deadline 5 Submission - 8.27 Applicant Response to Deadline 4 Submissions

7.1 Section 2.6 – Please refer to comments above on our final position that no DML should be included in the DCO.

REP5-047 Deadline 5 Submission - 8.28 Applicant Responses to Examining Authority's Third Written Questions (ExQ3)

7.2 Please see Paragraph 5.6 in relation to methodology.

7.3 Please see comments in Section 2 of this document in relation to exemption. The MMO notes the wording in relation to exemptions in Part 1 of the DCO.

3.—(1) Subject to the licence conditions, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act which—

(a) form part of, or are related to, the authorised development; and

(b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 of the 2009 Act.

The MMO is content on the use of the wording in paragraph (b) however has major concerns in relation to paragraph (a) and the licensable activities. Please see Section 5 above.

7.4 The MMO would highlight that offshore wind farms assess all marine activities under the Rochdale envelope and therefore it is appropriate for a Marine Licence to be Deemed as the MMO have been able to fully assess the activities and provide detailed comments on any licensable activities as set out within section 66 of the 2009 Act including any required conditions.

7.5 The MMO would also highlight that Cleve Hill included a description of more activities in relation to Flood Defence noting the Secretary of States comments:

“The Marine Management Organisation had discussions with the Applicant about its decision to include powers for maintaining the flood defences in its draft Order. The Marine Management Organisation suggested that a deemed Marine Licence would be the most appropriate way to deal with those parts of the proposed Development – the flood defences – that extended below the Mean High Water Mark rather than pursuing an option transferring existing Marine Licence exemptions held by the Environment Agency to the Applicant.”

The MMO reviews each case on a case by case basis and although the MMO agrees with the Applicant that a DML should be included so all consents are in one place for NSIPs, we do not agree that in the current DML without a full assessment can be used for a catch all scenario 'if' something should go wrong with the development.

7.6 The MMO would highlight that even offshore wind farms have to undertake new Marine Licence Applications for scenarios where a full assessment was not undertaken as part of the NSIP process.

7.7 The MMO is undertaking a review of conditions since Cleve Hill Solar Park Order 2020 was consented and has provided updated comments on these in Section 6.

7.8 Due to the timeline of the project decommissioning activities are required to be clearly assessed at this time or should be removed and a new Marine Licence applied for at the time of decommissioning.

REP5-049 Deadline 5 Submission - 8.30 Response to Rule 17 Letter - Request Re HDD and Cabling under the River Trent (Clean)

7.9 Within this, the applicant addresses questions relating to potential issues arising during construction or operation, a risk assessment of environmental effects to the marine environment, how the applicant would address such an incident and whether such interventions if required are covered by the Deemed Marine Licence.

The applicant's response does not provide any clarity for the MMO with regards to specific marine licensable activities which are not exempt and therefore does not in any way change the MMO position on this project.

The MMO will address this further at the next response deadline (D7) of 4th January 2024.

8. Conclusion

8.1 Despite repeated requests for clarity and further information, the MMO remain unable to see either a scenario in the current methodology describing any marine licensable activities which are not exempt, or any specific details of any potential for issues or problems arising during construction or operation. The MMO has previously requested the inclusion of a risk assessment on a scenario of issues or problems arising during construction or operation and has stated previously that if such interventions are required, the MMO requests the DML is updated. However, the updated DML did not include any such details.

8.2 The complete lack of assessment on any other activities would make the inclusion of a DML hugely problematic. Therefore, MMO request that the Examiner makes a recommendation to ask for more detailed information. Should the Secretary of State conclude that a DML should be granted, this will effectively permit activities to be included which have not been assessed and this does not align with our usual process per the Marine and Coastal Access Act 2009 (the '2009 Act').

Yours sincerely,



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