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MMO Reference: DCO/2022/00008  
Planning Inspectorate Reference: EN010132

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30<sup>h</sup> April 2024

Dear Andrea

## Planning Act 2008 - Application by West Burton Solar Limited for an Order Granting Development Consent for the West Burton Solar Project

### Deadline 6 Submission

On 21 March 2023, notice was given that the Secretary of State has accepted an application by West Burton Solar Limited (company number 13049324) of Unit 25.7 Coda Studios 189 Munster Road, London, England, SW6 6AW (“the Applicant”) for a Development Consent Order (“DCO”) under the Planning Act 2008. The Application (Reference No. EN010132) was submitted by the Applicant to the Secretary of State c/o the Planning Inspectorate on 21 March 2023 and was accepted for examination on 18 April 2023.

The Applicant seeks authorisation for the construction, operation, 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. In particular, this is its response to the Examining Authority’s (ExA) second written questions issued on 19<sup>th</sup> March 2024. Please accept our apologies for our late comments on these and as advised when we submitted our Deadline 5 response on April 11<sup>th</sup>, 2024, we have deferred to this submission date and request that the ExA accept them as a late submission.

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



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marine area or for any other authorisation relevant to the Project. 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,



Amy Trakos

Marine Licensing Senior Case Manager

■ [redacted]  
■ [redacted] uk



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## 1. MMO Response to the Examining Authority's written questions and requests for information (ExQ2) – Deadline 5

MMO has received two questions which were issued on 19<sup>th</sup> March 2024 for Deadline 5 and our without prejudice comments on the following are set out below.

1.1 2.4.10: The MMO's attention is drawn to the Applicant's update on the Deemed Marine Licence (DML) at ISH2 (see [REP4-067]) where it was explained that the inclusion of the DML was to safeguard against the risk of an existing exemption falling away.

*The Applicant has also sought to address the issues raised by the MMO in their letter of 9 January 2024 [REP3-047] by providing a Technical Note on Horizontal Directional Drilling and Cabling under the River Trent [REP4-074]. This sets out where the construction activities associated with Horizontal Directional Drilling (HDD) and cabling under the River Trent have been assessed within the ES and the proposed mitigation measures as they relate to the except and potentially licensable activities.*

*Noting the MMO's position that a DML may not be required, the MMO is asked to provide comments on the following in a without prejudice basis:*

- a. The updated DML (including any comments on conditions) as set out in the dDCO Revision E [REP4-024].*
- b. Whether the information contained in [REP4-074] provides, as the Applicant suggests, a suitably comprehensive and proportionate assessment of the licensable activities associated with the Scheme.*

With regard to point a):

1.2 Part 1 (3): Details of licensed marine activities: The marine licence in its current format is contradictory. Part 1 (3)(1)(b) states that the licence permits the Applicant to carry out licensable marine activities providing that they are "are not exempt from requiring a marine licence by virtue of any provision made under section 74 of the 2009 Act". However, Part 1 (3)(2) notes that the authorised activities (Works 5A and 5B) are permitted under this deemed marine licence, all of which are exempt activities. The MMO understands that the purpose of this DML is in case of a hypothetical situation to cover the HDD works should they be removed from the MMO's list of exempted activities. However, if the SoS was to grant consent to the inclusion on the DML within the DCO then the DML would surely be invalid in its current format.

1.3 Part 1 (3)(2): Details of licensed marine activities. The activities listed here do not appear to fall below Mean High Water Springs (MHWS). The MMO is responsible for the regulation of marine activities falling *below* MWHS. activities listed under section (3)(2)(a)-(e) appear to be located above MHWS and therefore not within the MMO's remit. As such, the MMO request that these activities are all removed from the Deemed Marine Licence.



1.4 Part 1 (4): The applicant has stated that the coordinates listed in this section are defined in accordance with reference system WGS84 – World Geodetic System 1984. However, they appear to be in British National Grid (BNG) format. The MMO would like to remind the Applicant that it is their responsibility to ensure that the coordinates listed in this section are accurate.

1.5 Part 1 – Details of licensed activities. The MMO request that if a DML is included within the Development Consent Order (DCO), that the following provision is included:

*This marine licence remains in force until the authorised project has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 (approval of decommissioning programmes) of the 2004 Act, including any modification to the programme under section 108, and the completion of such programme has been confirmed by the Secretary of State in writing.*

1.6 Part 1– Details of licensed activities. The MMO request that if a DML is included within the DCO, that the following provision is included:

*Should the undertaker become aware that any of the information on which the granting of this marine licence was based was materially false or misleading, the undertaker must notify the MMO of this fact in writing as soon as is reasonably practicable. The undertaker must explain in writing what information was materially false or misleading and must provide to the MMO the correct information.*

1.7 Part 1. The MMO maintains its position regarding the Applicant’s proposed provision to deviate from section 72 of MCAA. As the MMO have stated in previous advice, the provision in Article 35(4) would not enable us to ensure compliance with the Marine and Coastal Access Act (2009) for the following reasons;

1. The Secretary of State does not have the power to vary a deemed marine licence, and as such any variation would be the MMO’s responsibility. It is the MMO’s opinion that the proposed mechanism for transfer of a marine licence does not actually work and in fact does little more than complicate the process and will require the duplication of effort.
2. The MMO do not consider that the proposed process would work. The transfer of the licence would happen first, and then the marine licence would need to be varied. After the transfer of the licence, the new license holder/undertaker would have a marine licence which would still be in the name of the license holder/undertaker who had transferred the licence. The new license holder/undertaker would have no authorisation to carry out any acts until the variation had taken place and until the variation had been affected the original licence holder/ original undertaker would remain liable for any actions undertaken. The procedure under section 72 MCAA avoids this issue entirely and will avoid unnecessary delays caused by duplication.
3. Article 35(4) is simply a duty to consult, nothing more, the Secretary of State has no obligation to take into account or act upon the MMO’s recommendation. The safeguards and consistency in decision making which the MMO has developed as the



regulator in this area in accordance with the legislative framework cannot and will not apply in the system proposed by the applicant.

4. Piecemeal changes to aspects of the marine licence regime by way of the DCO can undermine the ability to enforce the marine licence in question. 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 it is the MMO's view that consistency is best achieved by ensuring that the MMO has full responsibility for the marine licence process.
5. The MMO still considers that the mechanism the applicant is currently proposing for the transfer of a marine licence departs from this established process without clear justification as to why such a departure is necessary or appropriate in the circumstances. We defer to our Deadline 3 response (REP3-047) for our full response on our justification as to why we do not agree with Article 35(4).

1.8 Part 2 – Conditions. The MMO note that there do not appear to be any design parameters included, which was requested in the MMO's Deadline 3 response (REP3-047). This reflects the lack of marine licensable activities. It is a necessity of DMLs to include maximum design parameters, in order to ensure that the project is carried out in strict accordance with the Environmental Statement. Without this information, the MMO is unable to effectively carry out its role as a regulator.

1.9 Part 2 (8) – Notifications and Inspections. Notification should be sent to the MMO local office in writing and notification is also required at any part of the activity, should this take place across different times. Notification is also required within five days of the completion of the licensed activity.

1.10 Part 2 (13)(e)&(f) – Pollution Prevention. There is reference in this section to coatings, treatments and concrete. However, the MMO is not aware of the project involving any activities near to or below MHWS which require the use of coatings, treatments and concrete. The MMO request that the Applicant provide clarification on this.

1.11 Part 2 (14) - Pre-construction plans and documentation. A timeframe for submission to the MMO of a construction programme has not been provided. The MMO recommend three months before the intended commencement of licensed activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.

With regard to point b):

1.12 The MMO welcome the information provided in the Technical Note on Horizontal Directional Drilling, and proposed mitigation measures. The addition of design parameters is useful and should be included within any consented DML.



1.13 The MMO does not feel that the information contained in REP4-074 provides, as the Applicant suggests, a suitably comprehensive and proportionate assessment of the licensable activities associated with the scheme. The licensable activities which are not covered by an exemption remain unclear to the MMO.

## 2. Conclusion

1.14 Following a review of the updated DML, the MMO maintain its position that the DML should be removed from the DCO. 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'). Without licensable activities for the MMO to regulate, the DML is effectively redundant. In addition, this may cause significant confusion and create an unwanted precedent amongst other proposed Development Consent Order projects, who are undertaking or seeking to carry out Horizontal Directional Drilling, and who have (as advised by the MMO) not included it within their Deemed Marine Licence.

1.15 Furthermore, the MMO consider the Applicant's justification to include a non-licensable activity as the sole inclusion and reason for a DML to be irrational. The MMO has a well-established mechanism for granting licences, should legislation change which removes HDD from the list of exempted activities. The majority of marine licence applications are determined within 13 weeks. In the instance a marine DCO with DML is granted, should details of the proposed HDD change a marine licence would be far easier to vary rather than a DML, as this would bypass the need to apply for a change to the DCO/DML via the Secretary of State.

