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MMO Reference: DCO/2022/00009  
Planning Inspectorate Reference: EN010133

30 January 2024

Dear Rory,

**Application by Cottam Solar Project Limited for an Order Granting Development Consent for the Cottam Solar Project**

**Deadline 4 Submission**

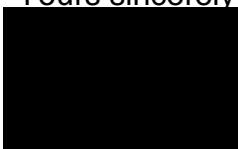
On 9 February 2023, notice was given that the Secretary of State has accepted an application by Cottam Solar Project Limited (company number 12711231) of Unit 25.7 Coda Studios 189 Munster Road, London, England, SW6 6AW (“the Applicant”) for a Development Consent Order (“DCO”) under the Planning Act 2008.

The 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 4 response in respect to the above Application.

This is without prejudice to any future representation the MMO may make about the 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 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,



Amina Moktar  
Marine Licensing Case Manager

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## Contents

<b>1. General Comments</b>	<b>3</b>
<b>2. Exempt Activities</b>	<b>3</b>
<b>3. DCO – Part 6, Article 35 - Consent to transfer the benefit of the Order</b>	<b>3</b>
<b>4. DCO – Part 6, Article 42 - Arbitration</b>	<b>6</b>
<b>5. Draft Marine License - Activities and Procedure</b>	<b>7</b>
<b>6. Deemed Marine Licence</b>	<b>8</b>
<b>7. MMO Response to The Examining Authority’s written questions and requests for information (ExQ1) – Deadline 4</b>	<b>19</b>

## 1. General Comments

The MMO has reviewed the DCO and Deemed Marine Licence (“DML”) (REP1-006) on a without prejudice basis.

The MMO reaffirms major concerns in relation to the inclusion of a DML in the DCO.

However, has provided without prejudice comments on the wording within the DCO and DML, where this falls within the MMO’s remit as the regulator under the Marine and Coastal Access Act 2009 (“2009 Act”).

References to Articles below are to articles in the DCO unless otherwise stated.

## 2. Exempt Activities

2.1 Article 4(1) 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 seabed in connection with the construction or operation of a bored tunnel.”*

2.3 The Applicant is proposing, under Work No.4 (as set out in Schedule 1 “Authorised Development”) 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 can be granted under the DCO for the purposes of the proposed Work No. 4. This is because no marine licence is required for these works.

2.5 In addition, it would appear to the MMO that the Applicant is seeking to obtain a deemed marine licence for generalised activities relating to the Works No. 6B which may form drilling (or other forms of tunnelling) but which are not a ‘bored tunnel’ to which the exemption in the 2011 Order applies. The MMO notes that the Applicant has provided no detail as to what these activities would entail, nor any assessment of the environmental implications of these activities. A deemed marine licence cannot be granted on this basis.

2.6 The Planning Act 2008 has the effect of altering the mechanism, for the purposes of a DCO, 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 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 on the inadequate information provided by the Applicant. As such, the MMO has significant concerns that any decision of the Secretary of State to grant a deemed marine licence in these circumstances 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 It is the MMO’s stated position that any deemed marine licence granted under a DCO should be regulated by the provisions of the 2009 Act, and in respect of this issue, specifically by all provisions of section 72.

- 3.2 Section 72(7)(a) of the 2009 Act 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 (section 72(7)(b)).

#### PINS Guidance

- 3.3 As set out in PINS Advice Note Eleven, Annex B<sup>1</sup>, where a developer 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.*”
- 3.4 As you are aware, developers can seek consent for a marine licence directly with the MMO. This underlines the fact that, in respect of marine licences, the DCO process is simply 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.
- 3.5 As the guidance further sets out, the MMO is responsible for enforcing marine licences regardless of whether these are ‘deemed’ by a DCO or consented independently. It is therefore crucial that all marine licences are clear and enforceable. Consistency is a key element in achieving this.

#### ‘Decision’ to transfer or ‘application’ to transfer

- 3.6 It is noted that 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. Rather the process is simply described as the Applicant’s decision to make such a transfer. This is a clear departure from 2009 Act.
- 3.7 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.
- 3.8 It is also unclear who this novel process is intended to operate. If it is the Applicant’s intention that a deemed marine licence to be transferred by them as the undertaker under the terms of the DCO (and outside of the established procedures under 2009 Act, which the MMO opposes) it is unclear to the MMO why it is considered necessary or appropriate for the Secretary of State to ‘approve’ the transfer of the DML (even with their obligation to consult the MMO, considered in more detail in 3.10 below). The proposed process operates as an unsatisfactory hybrid of the existing regime, and one which offers no rationale as to why the MMO should be removed as decision maker. It is the MMO’s position that there is no basis to change the regime in this respect.
- 3.9 It is also unclear what benefits this change would bring the Applicant. The proposed process has not been tested, however in the absence of any clear consultation period or process in place for the Secretary of State to deal with such requests, it is uncertain how the process would be more efficient or the timeframes expedited compared to transfers under section 72 of the 2009 Act. .

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<sup>1</sup> [Advice Note Eleven, Annex B – Marine Management Organisation | National Infrastructure Planning \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk/advice-note-eleven-annex-b-marine-management-organisation-national-infrastructure-planning/)

### Duty to consult MMO

- 3.10 Another flaw in the procedure proposed in Article 35 lies in the proposal 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.
- 3.11 Not only therefore are the consulting obligations a weak safeguard, but it is highly unusual from a regulatory perspective for a decision to transfer a deemed marine licence to be made by a body other than the regulatory authority in that area. This is further indicative of the flaws in proposing a hybrid/alternative transfer regime to the one already established in the 2009 Act.

### Power to vary the licence following a transfer

- 3.12 It is important to note that, even with the proposed changes to the process of transferring a DML, neither the licence holder (undertaker) nor the Secretary of State would have any power to actually vary any terms of a DML.
- 3.13 Even in the event that these terms were to be included within the DML, in the event that the undertaker sought a transfer it would remain necessary for the MMO to take steps to vary the DML to reflect that it has been transferred to another entity. As such, the proposed mechanism for transfer of a deemed marine licence does not work, and in fact simply operates to complicate the process.
- 3.14 There are additional practical concerns. Following the transfer, the marine licence transferred would still be in the name of the original licensee. The new licence holder/licensee would have no authorisation to carry out any acts until the variation had taken place. Furthermore, until the variation had been affected, the old licence holder would remain liable for any actions undertaken. The statutory procedure under section 72 of the 2009 Act avoids this issue.

### Transfer and lease of a marine licence

- 3.15 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 the 2009 Act for a marine licence to be ‘leased’. Specifically, there is no provision for a marine licence ‘reverting’ to the licence holder after the agreed lease period. In practice it would be necessary to vary the marine licence to change the details of the licence holder at the beginning of the agreed lease period and then again at the end of the agreed lease period.

### Article 35(1)(b) use of the term ‘grant’

- 3.16 The MMO seeks 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 (mirroring the language of section 72 of the 2009 Act). However, *granting* of licences falls under s.69 of the 2009 Act. The Applicant is therefore requested to provide further explanation of its intention in this regard and its use of the term.

## Enforcement

- 3.17 It is essential as the regulatory authority in the marine environment that the MMO is fully aware of who has the benefit of marine licences. This ensures that the MMO can carry out its regulatory function and, where necessary, take enforcement action. The mechanism currently proposed by the Applicant for the transfer of a deemed marine licence departs from this established process without clear justification as to why such a departure is necessary or appropriate, given the potential consequences for clear enforcement.

## Conclusion

- 3.18 It is therefore the MMO's position that the DML should be regulated in accordance with the provisions of the 2009 Act, in this context specifically all provisions of section 72 of the 2009 Act, and that there is no reasonable justification to seek to vary or supersede these. Therefore Article 35 should be updated to remove the DML from being transferred.

## **4. DCO – Part 6, Article 42 - Arbitration**

- 4.1 As currently drafted, it is unclear whether the arbitration provisions set out in article 42 (DCO) are intended to form the applicable dispute resolution mechanism in respect of any deemed marine licence.
- 4.2 It is the MMO's position that no arbitration provisions should apply to the DML. Appeals are already available to the Applicant in the form of an escalated internal procedure and judicial review. Including any additional appeal mechanism within the DCO is therefore unnecessary.
- 4.3 The Marine Licensing (Licence Application Appeals) Regulations 2011 ("the 2011 Regulations") apply a statutory appeals process to the MMO's decisions whether to grant or refuse a licence (or conditions applied to a marine licence). However, there is no appeal process within the 2011 Regulations against any decisions made by the MMO in relation to applications to discharge conditions of a marine licence issued by the MMO.
- 4.4 The arbitration provisions as drafted in the DCO effectively operate as an additional appeal process to that provided within the 2011 Regulations. Including the DML in the arbitration provisions are not, therefore consistent with the existing statutory processes and would operate to make a new and enhanced appeal process available to the Applicant above that available to other marine licence holders. This would operate to create an unlevel playing field across the regulated community.
- 4.5 The private nature of the arbitration process also operates to undermine the MMO's statutory functions as set out by Parliament. Private arbitration does not align with the public functions and duties of the MMO. Transferring the MMO's decision-making function to a private arbitration process is inconsistent with the MMO's legal function, powers and responsibilities. This was never intended by Parliament in enacting the Planning Act 2008 or the 2009 Act.
- 4.6 The MMO also considers that arbitration would be inconsistent with PINS Advice Note Eleven, Annex B (p.4), 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 deemed marine licences would mean these were not consistent with marine licences issued independently by the MMO.

- 4.7 In addition, the MMO emphasises that it is an open and transparent organisation that actively engages, and maintains excellent working relationships with, industry and those it regulates. The MMO discharges its statutory functions and 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 (NSIPs) 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. An alternative arbitration procedure is therefore additionally unwarranted.
- 4.8 The MMO requested that it is made clear within Article 42 that the DML is not subject to Arbitration. This is a position taken on a number of NSIPs from 2018 onwards.

## **5. Licensable Activities and Procedure**

- 5.1 It is essential that all activities are properly detailed and full particularised in the DCO for the purposes of a deemed marine licence.
- 5.2 As described in section 2, above, it is the MMO's understanding that the Applicant is primarily proposing to carry out an activity which falls within an exemption. However, the Applicant is seeking the DML as a mechanism to cover the hypothetical situation whereby the Applicant is 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. Deemed marine licences cannot be obtained on this basis.
- 5.3 It is the MMO's position that the Applicant has two options:
- 1) Progress the DCO without a deemed marine licence. Then, should such works become necessary which would require a marine licence, and application can be made directly to the MMO at that time; or;
  - 2) Provide the necessary information and detail within the DML so that the activities can be fully assessed, allowing the MMO to determine in accordance with section 69 of the 2009 Act in a manner robust to challenge.
- 5.4 As set out above in Section 2, the NSIPs process only alters the mechanism by which a marine licence is granted, not the substantive process. Were the Applicant to make an application for a marine licence, the MMO would require the information as set out below in order to determine the application.
- Full details of any licensable activity in line with s.66 of the 2009 Act and at what stage construction, operation (maintenance) and decommissioning would take place;
  - 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.
- 5.5 In relation to this DCO and the DML, details which the Applicant would need to provide , include but are not limited to:
- a clearly defined programme of works including all licensable marine activities not covered by an exemption. This should relate to the named activity, detail all methodologies, and include the maximum dimensions and equipment to be used.
  - An Environmental Impact Assessment,
  - A Habitats Regulations Assessment,
  - A Marine Plan Policy Assessment and,
  - A Water Framework Directive compliance assessment.

## 6. Deemed Marine Licence (conditions)

- 6.1 For the reasons set out above, the MMO request the full DML is removed from the DCO.
- 6.2 Given the inadequacies in the existing DML and the lack of detail on the proposed activity, it has not been possible to adequately assess the attached conditions within the DML.
- 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 DML are appropriate in the circumstances.
- 6.5 However, should the Secretary of State be minded to include the DML despite the MMO's strong advice against, without prejudice comments on the draft DML have been provided in Table 1 below. It is important to note that these comments are likely to require revision in the event that the necessary further information is provided.
- 6.6 Furthermore, the MMO notes the lack of clarity between the conditions, the activities proposed and documents in the wider DCO such as the environmental statement.
- 6.7 In drafting the proposed conditioned attached at Table 1, the MMO complies with 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; and
- precise.

6.8 The DML should be removed or as set out above further information provided on the activities with the required updates to the DML set out below.

Table 1: MMO without Prejudice comments on draft DCO and DML		
DCO Section	Current wording	Without Prejudice Comments
Article 35(4)	The Secretary of State must consult the MMO before giving consent to the transfer or grant to another person the whole or part of the benefit of the provisions of the deemed marine licence.	This paragraph should be removed in its entirety since the MMO should not be bound by Article 35 (see below)
Article 35	Add provision	Article 35 of the DCO should include wording to make it explicit that this article does not apply to the DML or the MMO.
Article 42	Add provision	Article 42 of the DCO should include wording to make it explicit that this article does not apply to the DML or the MMO
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	“Marine Management Organisation” or “MMO” means the body created under the 2009 Act which

	monitoring and enforcement of this licence;	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 info@marinemanagement.org.uk Tel: 0300 123 1032;	Marine Management Organisation Marine Licensing Team Lancaster House Hampshire Court Newcastle Business Park Newcastle upon Tyne NE4 7YH info@marinemanagement.org.uk Tel: 0300 123 1032
(2) Addresses for notices	(1)(b) Marine Management Organisation Beverley Office Room 13, Ground Floor Crosskill House Mill Lane Beverley HU17 9JB Email: beverley@marinemanagement.org.uk Phone: 0208 026 0519	(1)(b) Marine Management Organisation Beverley Office First Floor Crosskill House Mill Lane Beverley HU17 9JB Email: beverley@marinemanagement.org.uk Phone: 0208 026 0519

<p>(3) Details of licensed marine activities</p>	<p>3.(1) Subject to the licence conditions, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out any 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.</p>	<p>As set out above in Section 5 ‘any licensable marine activities’ is unacceptable wording. This section should clearly set out which activities (which fall under section 66 of the 2009 Act) for which a licence is sought. This should include any maintenance activity (as conditioned in article 14, below).</p>
<p>(3) Details of licensed marine activities</p>	<p>Add provision</p>	<p>This section should make clear how long the licence will last. A licence cannot be open ended.</p>
<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 in its entirety.</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</p>	<p>The following addition should be added:  “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</p>

	amendments that may subsequently be approved in writing by the MMO.	different environmental effects to those assessed in the environmental information.”
(3) Details of licensed marine activities	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 rise to any materially new or materially different environmental effects from those assessed in the environmental statement.	This should be updated to: “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 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.”
<b>Part 2 Conditions</b>		
Design parameters	Add provisions	Measurements and values provided in relation to the licensable activities should be worst case scenario. Details should be of maximum value. Approximations must be avoided.
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.	This should be amended to: 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.

<p>Notifications and inspections</p>	<p>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.</p>	<p>This should be amended to:</p> <p>9. (1) The undertaker must provide the name, address and function of any agent, contractor or subcontractor that will carry out any licenced 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 licenced 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.</p>
<p>Notifications and inspections</p>	<p>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.</p>	<p>This should be amended to:</p> <p>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.</p>
<p>Notifications and inspections</p>	<p>11. Copies of this Schedule must be made available for inspection at the following locations—</p>	<p>This should be amended to:</p> <p>11. Copies of this licence must also be available for inspection at the following locations—</p>

	<p>(a) the licence holder's registered office; and</p> <p>(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.</p>	<p>(a) the undertaker's registered address; and</p> <p>(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.</p>
Notifications and inspections	Add provision	<p>This should be updated to include:</p> <p>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.</p>
Notifications and inspections	Add provision	<p>This should be updated to include:</p> <p>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.</p>
Pollution prevention	<p>12. The licence holder must—</p> <p>(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;</p>	<p>'Where practicable' is unacceptable wording here. This should be amended to:</p> <p>12. The undertaker must -</p> <p>(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</p>

		to prevent run off entering the water through the freeing ports.
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;	This should be amended to:  (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;
Pre-construction plans and documentation	Add provision (including new Article)	(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—  (a) A design plan - the detail required is dependent on the activities required. (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.	This should be amended to:  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	<p>1) The undertaker must submit a close out report to the MMO of the date of completion of construction. The close out report must confirm the date of completion of construction.</p> <p>(2) Following completion of construction, no further construction activities can be undertaken under this licence.</p>
Maintenance	<p>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.</p> <p>(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.</p> <p>(3) Maintenance activities must be undertaken in accordance with the agreed plan.</p>	<p>This should be amended as follows:</p> <p>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.</p> <p>(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> <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.</p> <p>(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,</p>	<p>The wording should be amended as follows:</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.</p> <p>(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</p>

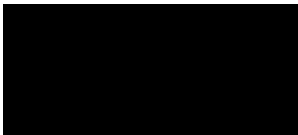
	methodology and materials to be used. (3) Decommissioning activities must be undertaken in accordance with the agreed plan.	including location, duration, timings, methodology and materials to be used. (3) Decommissioning activities must be undertaken in accordance with the agreed plan.
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## 7. MMO Response to The Examining Authority's written questions and requests for information (ExQ2) – Deadline 4

In response to REP3-038 (2.1.15), the MMO makes the following comments:

- 7.1 The Applicant has been asked to:
- a) **Provide an update on their discussion on this matter with the MMO on this matter.**
- 7.2 Despite repeated requests for clarity and further information, the MMO has yet to be provided with any information in the current methodology which describes any marine licensable activities which are not exempt from the need for a licence.
- 7.3 The MMO has also received no specific details of any potential issues or problems arising during construction or operation. The MMO requests the inclusion of a risk assessment on a scenario of issues or problems arising during construction or operation and states that if such interventions are required, the MMO requests the DML is updated.
- b) **The ExA for this project has asked why, given the risk of the exemption falling away, the provisions should not be included in the Order.**
- 7.4 As set out above, the total absence of assessment of any other activities makes such an inclusion in the DML hugely problematic. Therefore, MMO requests 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 statutory processes under the 2009 Act.

Yours sincerely,



**Amina Moktar**  
**Marine Licensing Case Manager**

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