

Lower Thames Crossing

5.4.1.5 Final Agreed Statement of Common Ground between (1) National Highways and (2) the Marine Management Organisation (Clean version)

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1.0	31 October 2022	DCO Application
2.0	17 November 2023	Deadline 7
3.0	15 December 2023	Deadline 9A

Status of the Statement of Common Ground

This is the Final Agreed Statement of Common Ground between (1) National Highways (the Applicant) and (2) (2) Marine Management Organisation.

Both parties have reached agreement on the position of the status of all 44 matters. Of the 44 matters contained within, 37 matters are agreed, one is agreed in principle and six are not agreed.

On behalf of the Applicant

Name	[REDACTED]
Position	[REDACTED]
Organisation	National Highways
Signature	[REDACTED]

On behalf of the Marine Management Organisation

Name	[REDACTED]
Position	[REDACTED]
Organisation	Marine Management Organisation
Signature	[REDACTED]

Lower Thames Crossing

5.4.1.5 Final Agreed Statement of Common Ground between (1) National Highways and (2) the Marine Management Organisation (Clean version)

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1 Introduction

1.1 Purpose of the Statement of Common Ground

- 1.1.1 This Statement of Common Ground (SoCG) has been prepared in respect of the Development Consent Order (DCO) application for the proposed A122 Lower Thames Crossing (the Project) made by National Highways Limited (the Applicant) to the Secretary of State for Transport (Secretary of State) under section 37 of the Planning Act 2008 on 31 October 2022.
- 1.1.2 The SoCG has been produced to confirm to the Examining Authority where agreement has been reached between the Applicant and the Marine Management Organisation (MMO), and where agreement has not been reached.
- 1.1.3 This final version of the SoCG has been submitted at Examination Deadline 9A.

1.2 Principal Areas of Disagreement

- 1.2.1 On the 19 December 2022 the Examining Authority made some early procedural decisions to assist the Applicant, potential Interested Parties and themselves to prepare for the Examination of the DCO application.
- 1.2.2 One of these procedural decisions was to use a tracker recording Principal Areas of Disagreement in Summary (PADS).
- 1.2.3 The PADS Tracker would provide a record of those principal matters of disagreement emerging from the SoCG and should be updated alongside the SoCG as appropriate throughout the Examination with the expectation that a revised PADS Tracker should be submitted at every Examination deadline.
- 1.2.4 The Marine Management Organisation elected not to produce a PADS Tracker at pre-examination stage, indicating to the Applicant that they were content that the number of outstanding matters within the SoCG was insufficient to warrant the exercise.

1.3 Terminology

- 1.3.1 In the “Final position on matters” table in Section 2 of this SoCG, “Matter Agreed” indicates where the issue has now been resolved and “Matter Agreed*” indicates where further discussion may need to take place during the detailed design or construction stages of the Project to finalise detail.

2 Matters

2.1 Final position on matters

- 2.1.1 Following submission of the previous version of this Statement of Common Ground (SoCG) between the Applicant and the Marine Management Organisation, further discussions on the outstanding matters have taken place. These discussions are summarised in Table A.1 in Appendix A. The outcome of these discussions is presented in Table 2.1.
- 2.1.2 It is acknowledged there are some matters where further discussion may take place during the detailed design stage of the Project to finalise detail, but the matter is agreed in principle. Matters to which this applies have an asterisk (*) next to them.
- 2.1.3 Table 2.1 details and presents the matters which have been agreed or not agreed between (1) the Applicant and (2) the Marine Management Organisation.
- 2.1.4 In Table 2.1, relevant issues relating to the dDCO articles and Requirements in Schedule 2 to the dDCO have been identified under the heading 'DCO and Consents'.
- 2.1.5 In the column 'Item No' in Table 2.1, 'RRN' indicates a matter entered into the SoCG as a result of content in the Relevant Representation, 'RRE' indicates an existing SoCG matter that was also raised in the Relevant Representation and 'DLX' indicates a new matter added during examination at/around that deadline.
- 2.1.6 The following matters (listed in the order in which they appear in Table 2.1) moved from 'Matter Under Discussion' to 'Matter Not Agreed' or 'Matter Agreed':
- a. Item 2.1.4 – Changes to the Deemed Marine Licence Para 24 (3)
 - b. Item 2.1.26 – DCO Article 8 (Consent to transfer benefit of the Order) – transfers
 - c. Item 2.1.27 – DCO Article 8 (Consent to transfer benefit of the Order) – leasing
 - d. Item 2.1.28 – Marine and Coastal Access Act Section 72
 - e. Item 2.1.24 – Coalhouse Point water inlet with self-regulating valve
- 2.1.7 At Examination Deadline 9A there are 44 matters in total of which 37 are agreed, one agreed in principle and six are not agreed.
- 2.1.8 This is the final Statement of Common Ground between the Applicant and the Marine Management Organisation .

Table 2.1 Final position on matters

Topic	Item No.	Marine Management Organisation Comment	The Applicant's Response	Application Document Reference	Status
DCO and Consents					
Deemed Marine Licence (DML)					
Further information regarding return and deemed consent – Para 20 (2)	2.1.1 RRE	<p>The MMO does not consider that the lack of a request for further information by the MMO after six weeks indicates it can be 'deemed' that the MMO have sufficient information.</p> <p>Restricting and/or preventing the flow of information after six weeks would slow the process and/or prevent the MMO from making a determination. Due to lack of information, the return would be rejected.</p> <p>The MMO stated in their Relevant Representations their recommendation that Para 20(2) be removed. In addition, the MMO does not agree with article 22(1) and (2) of the DML.</p> <p>This does not provide sufficient time for the MMO to fulfil its post consent obligations. The MMO requests that this is amended to 13 weeks.</p> <p>MMO Updated Response (August)</p> <p>The MMO is firmly of the position that it is inappropriate to put timeframes on complex technical</p>	<p>The Applicant notes that the MMO does not agree with deemed consent provisions. The Applicant has included such provisions to minimise risk of delay to the construction programme.</p> <p>The Applicant wishes to retain deemed consent. The MMO have 30 business days to request further information. This is the standard position across other Deemed Marine Licences (DMLs), for example as with The Great Yarmouth Third River Crossing DCO 2020.</p> <p>The Applicant considers the amount of time in the DML available to the MMO to make a decision to be suitable.</p> <p>The Applicant remains keen to discuss any outstanding concerns with the MMO in order to work towards resolving this point.</p>	Draft DCO [Document Reference 3.1 (11)], Schedule 15 (DML)	Matter Not Agreed

Topic	Item No.	Marine Management Organisation Comment	The Applicant's Response	Application Document Reference	Status
		<p>decisions of this nature. The time taken to make such determinations depends on the quality of the application made, the complexity of the issues, and the amount of consultation required between the MMO and other organisations to seek resolutions. The MMO's position remains that it is inappropriate to apply a strict timeframe to the approvals the MMO is required to give under the conditions of the DML given that this would create disparity between licences issued under the DCO process and those issued directly by the MMO, as marine licences issued by the MMO are not subject to set determination periods.</p> <p>Further to this, the MMO would highlight the Sizewell C and Hornsea Four decisions, which did not include determination dates but did specify that method statements must be submitted to the MMO at least six months in advance unless otherwise agreed with the MMO.</p> <p>Whilst the MMO acknowledges that the Applicant may wish to create some certainty around when it can expect the MMO to determine any applications for an approval required</p>			

Topic	Item No.	Marine Management Organisation Comment	The Applicant's Response	Application Document Reference	Status
		<p>under the conditions of a licence, and whilst the MMO acknowledges that delays can be problematic for developers and that they can have financial implications, the MMO stresses that it does not delay determining whether to grant or refuse such approvals unnecessarily. The MMO makes these determinations in as timely a manner as it is able to do so. The MMO's view is that it is for the developer to ensure that it applies for any such approval in sufficient time as to allow the MMO to properly determine whether to grant or refuse the approval application.</p> <p>MMO Updated Response (November)</p> <p>The MMO maintains this position but will discuss its concerns at the next available meeting.</p>			
Time limit for approval and notice of determination – Para 22	2.1.2 RRE	MMO require 13 weeks to approve the DML and the marine pollution contingency plan, allowing time to fully consult with the Project and review works prior to works commencing, and undertake consultation. with Environment Agency, Natural England and Historic England.	The Applicant would advise against 13 weeks (which is equivalent to 65 business days) due to impact on its programme and given that the Project's works are not as invasive as other schemes that the MMO is regulating. The Applicant has asked the MMO to consider 30 business days as a timeframe, as per The Silvertown	Draft DCO [Document Reference 3.1 (11)], Schedule 15 (DML)	Matter Not Agreed

Topic	Item No.	Marine Management Organisation Comment	The Applicant's Response	Application Document Reference	Status
		<p>The MMO raised this matter in its Relevant Representations, stating it does not agree with the proposed timescales for returns as currently set out in Articles 10(1) and 11(1) of the draft DML.</p> <p>The MMO again requested that the timeframes at 10(1) and 11(1) of the DML are amended to 13 weeks, adding that the MMO will endeavour to approve documents as soon as possible.</p> <p>MMO Updated response (August)</p> <p>The MMO maintains the position that 30 business days is insufficient time to allow the MMO to review, consult and issue a determination on the submitted documents. Furthermore, the MMO cautions against direct comparison to orders that have already been granted. Good drafting practice constantly evolves and the drafting of any new DML should be consistent with current MMO practice as outlined in Advice Note Fifteen: Drafting Development Consent Orders National Infrastructure Planning (planninginspectorate.gov.uk)</p> <p>MMO Update (November)</p>	<p>Tunnel Order 2018 DML. The Applicant requests that responses received from stakeholders need to be processed quicker than usual given the scale and complexity of this Nationally Significant Infrastructure Project. The Applicant would be open to considering other timeframes shorter than 13 weeks were the MMO prepared to enter into such discussions.</p> <p>While the Applicant notes the MMO's concerns, the Applicant considers the current timescales appropriate for the reasons outlined above, subject to the outcome of any further discussions with the MMO.</p> <p>The Applicant remains keen to discuss any outstanding concerns with the MMO in order to work towards resolving this point.</p>		

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		The MMO maintains this position but will discuss its concerns at the next available meeting.			
Arbitration – Para 23	2.1.3 RRE	<p>Preference is to remove arbitration completely. The MMO should be considered to be the overall decision-maker in disputes regarding licensable activities in the Marine area. Please note that if an arbitration clause is included within the DCO, the MMO request the following paragraph is added: <i>“Paragraph (1) [the arbitration clause] does not apply to any decision, difference, determination, approval or permission required by or under any provision of the deemed marine licence in Schedule.”</i></p> <p>The MMO stated in its Relevant Representations that is unclear how Article 64 of the DCO interacts with paragraph 23 of the DML.</p> <p>The MMO strongly disputes the requirement for an arbitrator, as any matter in relation to the DML should not be subject to arbitration.</p> <p>MMO Updated response (August) DML para 23, in conjunction with DCO Article 64, has the effect that the DML is not subject to arbitration.</p>	<p>The Applicant has agreed to remove the arbitration clauses and these are reflected in the latest version of the draft DML.</p> <p>Regarding the comments the MMO made in its Relevant Representations, Paragraph 23 of the draft DML clearly states that the arbitration provisions set out in Article 64 of the DCO do not apply.</p> <p>The Applicant does not consider any further amendment necessary in relation to arbitration.</p> <p>The Applicant welcomes the comments the MMO made during their review in August 2023. The Applicant considers this matter agreed.</p>	Draft DCO [Document Reference 3.1 (11)], Schedule 15 (DML)	Matter Agreed

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		The MMO is content that the drafting achieves this.			
Changes to the Deemed Marine Licence Para 24 (3)	2.1.4 RRE	<p>MMO suggest removing Para 24 (3) as it restricts MMO's ability to make updates to the DML, and also makes an assumption that any variation will be granted.</p> <p>MMO update (August)</p> <p>Paragraph 24(3) operates alongside DCO Article 8: Consent to transfer benefit of the Order. Together, they are of significant concern.</p> <p>It is the MMO's position that all provisions of section 72 MCAA 2009 should apply to the DML; therefore it does not accept or agree para 24(3) DML.</p> <p><u>MMO updated response (November)</u></p> <p>The MMO has reviewed the technical note and submitted comments relating to Paragraph 24 (3) as part of its deadline 6 response. This is the final position of the MMO and will remain as a matter 'not agreed' unless the DML is amended accordingly.</p> <p>The MMO confirmed at a technical meeting on 1 December 2023 that it</p>	<p>The Applicant's view is that Para 24(3) should be retained as:</p> <ul style="list-style-type: none"> It does not assume that a variation will be granted since it states that "<i>the MMO must give notice to the undertaker of the determination</i>" (this is not approval). The wording is in line with other DMLs and is similar to the process in which the MMO approve licensable activities. <p>Following a meeting on 26 September 2023, the Applicant issued a Technical Note to the MMO (see Appendix C of this SoCG).</p> <p>The Applicant has responded to the MMO's comments submitted at Deadline 6 on the dDCO (including this provision) and has set out its response in the Applicant's response to comments on the dDCO.</p> <p>The Applicant confirmed at a technical meeting on 1 December 2023 that it continues to maintain its position detailed above and in its response to the MMO's submissions to the Examining Authority at Deadline 6.</p>	<p>Draft DCO [Document Reference 3.1 (11)], Schedule 15 (DML)</p> <p>Applicant's responses to Interested Parties' comments on the dDCO at Deadline 6 [REP7-190]</p>	Matter Not Agreed

Topic	Item No.	Marine Management Organisation Comment	The Applicant's Response	Application Document Reference	Status
		continues to maintain its final position detailed above. Following this meeting, both parties agree that, as of Deadline 9, the status of this matter is not agreed.	Following this meeting, both parties agree that, as of Deadline 9, the status of this matter is not agreed.		
Comments from MMO's Relevant Representations on the Development Consent Order					
DCO Article 8 (Consent to transfer benefit of the Order) – transfers	2.1.26 (DL2) RRN	The MMO is unclear how Article 8 of the DCO interacts with the interpretation of "undertaker" at paragraph 1(1) of the DML. The MMO's position is that the DML should be regulated using powers in the 2009 Act including transfer of the order (section 72 of the 2009 Act). In considering the proposed provisions of Article 8 DCO, these provisions no longer require 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 the Marine and Coastal Access Act (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. MMO Update (August) It is the MMOs position that the DML should be regulated under the	The Applicant notes the comment on the need to allow the MMO to consider the merits of any application for a transfer. The Applicant has made the following amendment to article 8 (see the new sub-para (8)), in line with other DCOs, to ensure the MMO is consulted on any transfer of the DML: <i>"The Secretary of State must consult the MMO before giving consent under paragraph (1) to the transfer or grant to another person of the benefit of the provisions of the deemed marine licence."</i> Following a meeting on 26 September 2023, the Applicant issued a Technical Note to the MMO. The Applicant has responded to the MMO's comments submitted at Deadline 6 on the dDCO (including this provision) and has set out its response in the Applicant's response to comments on the dDCO. The Applicant confirmed at a technical meeting on 1 December 2023 that it continues to maintain its position	Draft DCO [Document Reference 3.1 (11)], Schedule 15 (DML) Applicant's responses to Interested Parties' comments on the dDCO at Deadline 6 [REP7-190]	Matter Not Agreed

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		<p>provision of MCAA 2009. The provisions at article 8 DCO, as they apply to the DML, should be removed.</p> <p>The MMO does not agree the definition of Undertaker at DML para 1(1). The definition should simply read “<i>undertaker</i>” means National Highways Limited (Company No. 09346363) who registered office is at Bridge House, 1 Walnut Close, Guildford, Surrey, GU1 4LZ.”.</p> <p><u>MMO updated response (November)</u></p> <p>The MMO has reviewed the technical note and submitted comments relating to DCO Article 8 as part of its deadline 6 response. This is the final position of the MMO and will remain as a matter ‘not agreed’ unless the DML is amended accordingly.</p> <p>The MMO confirmed at a technical meeting on 1 December 2023 that it continues to maintain its final position detailed above.</p> <p>Following this meeting, both parties agree that, as of Deadline 9, the status of this matter is not agreed.</p>	<p>detailed above and in its response to the MMO’s submissions to the Examining Authority at Deadline 6.</p> <p>Following this meeting, both parties agree that, as of Deadline 9, the status of this matter is not agreed.</p>		
DCO Article 8 (Consent to transfer benefit of the	2.1.27 (DL2) RRN	Article 8(1)(a) specifies the transfer of the whole of a DML and Article	The Applicant has amended Article 8 to include a requirement for the Secretary of State to consult the MMO on any	Draft DCO [Document Reference 3.1 (11)], Schedule 15 (DML)	Matter Not Agreed

Topic	Item No.	Marine Management Organisation Comment	The Applicant's Response	Application Document Reference	Status
Order) – leasing		<p>8(1)(b) specifies a grant to a lessee for an agreed period.</p> <p>There is no mechanism in the DCO or MCAA 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. It would be necessary to vary the licence to change the licence holder details at the beginning of the agreed period and then again at the end of the agreed period.</p> <p>MMO Update (August) <u>Transfer of the DML</u></p> <p>In terms of any transfer of a DML, this is a clear departure from the MCAA 2009, which would normally require the licence holder (here 'the undertaker') to make an application to the MMO for a licence to be transferred.</p> <p>Instead, this provision operates to make the decision that of the undertaker, with the Secretary of State (SoS) 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.</p>	<p>transfer (as set out above and at article 8(8)).</p> <p>The MMO could then make such representations to the Secretary of State if the Applicant sought a transfer incompatible with the Marine and Coastal Access Act (MCAA) 2009.</p> <p>Following a meeting on 26 September 2023, the Applicant issued a Technical Note to the MMO (see Appendix C of this SoCG). The Applicant has responded to the MMO's comments submitted at Deadline 6 on the dDCO (including this provision) and has set out its response in the Applicant's response to comments on the dDCO.</p> <p>The Applicant confirmed at a technical meeting on 1 December 2023 that it continues to maintain its position detailed above and in its response to the MMO's submissions to the Examining Authority at Deadline 6.</p> <p>Following this meeting, both parties agree that, as of Deadline 9, the status of this matter is not agreed.</p>	<p>Applicant's responses to Interested Parties' comments on the dDCO at Deadline 6 [REP7-190]</p>	

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		<p>Not only is this unnecessary (given that Parliament has already created a statutory regime for such a process) but it is also unclear what purpose the written consent of the SoS actually serves here. For example:</p> <ul style="list-style-type: none"> • If the intention is for the undertaker to be able to transfer the benefits under the terms of the DCO outside the established procedures under 2009 Act (which the MMO opposes), why is it considered necessary or appropriate for the SoS to 'approve' the transfer of the DML (even going so far as to include an obligation to consult the MMO)?; • It is also unclear what criteria the SoS would be taking in determining whether to approve any transfer, and how this would differ from a consent granted by the MMO under the existing 2009 Act regime? <p>The procedure is unclear and an unnecessary departure from the current legislative procedure under MCAA 2009.</p>			

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		<p><u>Power to vary the licence following a transfer</u></p> <p>Despite the proposed changes to the process of transferring a marine licence it remains the case that neither the undertaker (licence holder) nor the SoS has any power to actually vary any terms of a marine licence. 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. There is, therefore, an unnecessary duplication in the processes here, since the proposed mechanism for transfer of a marine licence does not actually work and simply operates to complicate the process.</p> <p>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. Until the</p>			

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		<p>variation had been implemented, the old licence holder would remain liable for any actions undertaken. The procedure under section 72 of the MCAA avoids this issue, which is an additional reason why it is preferred.</p> <p><u>Consultation</u></p> <p>Article 8(8) requires the SoS to consult the MMO prior to giving consent to either the transfer or lease, which is a concern as there is no obligation for the SoS to consider the MMO's views when providing its consent. Furthermore, there is no obligation for the MMO to be informed of the decision of the SoS, notwithstanding its impact on the MMO as the licensing authority.</p> <p><u>Lease of a DML</u></p> <p>Article 8(1)(b), as noted above, allows for a temporary 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'. This is because there are no provisions 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</p>			

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		<p>holder at the beginning of the agreed period and then again at the end of the agreed period. Once again this creates addition confusion and administrative layers in lieu of relying on the existing legislative provisions.</p> <p><u>Where no consent of the Secretary of State is required</u></p> <p>Article 8(5) further provides that the consent of the SoS is not required for either the transfer or grant of any or all of the benefits of the provisions of the DCO, which includes the DML where the transfer or grant is made to those detailed at Article 8(5)(a)-(x). The issues with this provision are two-fold; first, the provision is caveated in that the transfer or grant to those bodies listed can only be in respect of works relating to their undertaking – it is unclear which of those persons listed are relevant for the purposes of the DML. Secondly, a potential transfer to any of the persons listed would be without the consent of the SoS, therefore Article 8(8) is not invoked and the MMO would not be consulted. Therefore in the event the transfer took place, how would the MMO know? As set out above, despite these provisions inserted by the Applicant, the MMO</p>			

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		<p>will still need to vary the DML to reflect any transfer of the DML, All of the above creates unnecessary confusion, and in some cases duplication, and it is therefore the position of the MMO that the DML should not be subject to these provisions. Instead, the existing regime under section 72 of the MCAA should remain with the decision-maker remaining the MMO and there should be no ability to lease the DML.</p> <p><u>MMO updated response (November)</u></p> <p>The MMO has reviewed the technical note and submitted comments relating to Paragraph 24 (3) as part of its deadline 6 response. This is the final position of the MMO and will remain as a matter 'not agreed' unless the DML is amended accordingly.</p> <p>The MMO confirmed at a technical meeting on 1 December 2023 that it continues to maintain its final position detailed above.</p> <p>Following this meeting, both parties agree that, as of Deadline 9, the status of this matter is not agreed.</p>			

Topic	Item No.	Marine Management Organisation Comment	The Applicant's Response	Application Document Reference	Status
Marine and Coastal Access Act Section 72	2.1.28 (DL2) RRN	<p>Clarification is required of the Applicant's position regarding the application of Section 72 of the MCAA generally to Schedule 15, the DML and specifically in relation to sections 72(8) and (9) of the MCAA.</p> <p>MMO Update (August)</p> <p>It is the MMOs position that the DML should be governed by the powers in MCAA 2009, and that sections 72(8) and 72(8) should apply.</p> <p><u>MMO updated response (November)</u></p> <p>The MMO has reviewed the technical note and submitted comments relating to Paragraph 24 (3) as part of its deadline 6 response. This is the final position of the MMO and will remain as a matter 'not agreed' unless the DML is amended accordingly.</p> <p>The MMO confirmed at a technical meeting on 1 December 2023 that it continues to maintain its final position detailed above.</p> <p>Following this meeting, both parties agree that, as of Deadline 9, the status of this matter is not agreed.</p>	<p>The Applicant agrees that these two provisions should not conflict. The Applicant has made the following amendment to the DML (see para 24(3) of the draft DML), in line with other DMLs, to clarify this:</p> <p><i>"The provisions of sections 72 (variation, suspension, revocation and transfer) of the 2009 Act apply to this licence except that the provisions of section 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 8."</i></p> <p>Following a meeting on 26 September 2023, the Applicant issued a Technical Note to the MMO. The Applicant has responded to the MMO's comments submitted at Deadline 6 on the dDCO (including this provision) and has set out its response in the Applicant's response to comments on the dDCO.</p> <p>The Applicant confirmed at a technical meeting on 1 December 2023 that it continues to maintain its position detailed above and in its response to the MMO's submissions to the Examining Authority at Deadline 6.</p> <p>Following this meeting, both parties agree that, as of Deadline 9, the status of this matter is not agreed.</p>	<p>Draft DCO [Document Reference 3.1 (11)], Schedule 15 (DML)</p> <p>Applicant's responses to Interested Parties' comments on the dDCO at Deadline 6 [REP7-190]</p>	Matter Not Agreed

Topic	Item No.	Marine Management Organisation Comment	The Applicant's Response	Application Document Reference	Status
Comments from MMO's Relevant Representations on Deemed Marine Licence Schedule 15 Part 1 – Introductory					
Buried pipeline	2.1.29 (DL2) RRN	<p>It is appropriate to state the maximum length of the buried pipeline, rather than use the word "approximate".</p> <p>Furthermore, it is essential that this maximum length has been considered within the ES. In addition, for consistency, units of measurement should be the same where possible and appropriate. In this case the sentence should state "400m" and "1m" rather than 1000mm.</p> <p>MMO Update (August)</p> <p>For clarity and certainty, the MMO would always recommend exact measurements be used.</p> <p>The MMO request that "Approximate" is not used within the DML, and that a maximum figure be given instead. This is in line with standard MMO drafting principles and ensures that measurements or distances have an upper limit to enable the activity to be adequately assessed.</p>	<p>The Applicant has updated the drafting in Schedule 15: Part 2, Para 5(1)(a)(i) to read: "<i>a buried pipe [...] with a length of 400m and a maximum diameter of 1m</i>".</p> <p>The Applicant has removed references to "approximate".</p> <p>Following confirmation from the MMO at a meeting on 26 September 2023 that these updates address their comments, the Applicant now considers this matter agreed.</p>	<p>Draft DCO [Document Reference 3.1 (11)], Schedule 15 (DML)</p> <p>ES Chapter 9: Marine Biodiversity [APP-147]</p>	Matter Agreed
Intertidal zone	2.1.30 (DL2) RRN	<p>References to "intertidal zone" should be amended to state that this is the area between the normal tidal limit and 1 nautical mile.</p>	<p>The Applicant proposes amending to the following, in accordance with MMO definitions:</p>	<p>Draft DCO [Document Reference 3.1 (11)], Schedule 15 (DML)</p>	Matter Agreed

Topic	Item No.	Marine Management Organisation Comment	The Applicant's Response	Application Document Reference	Status
		<p>MMO Update (August) The MMO is satisfied with the Applicant's response and considers the matter agreed.</p>	<p><i>"Intertidal area" means the area between the level of mean high water springs and the level of mean low water springs.'</i></p> <p>The Applicant welcomes the comments the MMO made during their review in August 2023. The Applicant considers this matter agreed.</p>		
Marine Noise Registry	2.1.31 (DL2) RRN	<p>References to "Marine Noise Register" should be amended to "Marine Noise Registry".</p> <p>MMO Update (August) The MMO is satisfied with the Applicant's response and considers the matter agreed.</p>	<p>The Applicant notes this and has updated the drafting accordingly.</p> <p>The Applicant welcomes the comments the MMO made during their review in August 2023. The Applicant considers this matter agreed.</p>	Draft DCO [Document Reference 3.1 (11)], Schedule 15 (DML)	Matter Agreed
Undertaker	2.1.32 (DL2) RRN	<p>The MMO's position is that the DML should be regulated using the powers in the MCAA including transfer of the order (section 72 of the MCAA 2009).</p> <p>MMO Update (August) As stated above, section 72 should apply in full to DMLs, including section 72(8) and section 72(9). There should not be a 'two-tier' system.</p>	<p>The Applicant has incorporated the section 72 wording suggested to make clear that section 72 continues to apply to all transfers other than those authorised by Article 8.</p> <p>The Applicant welcomes the comments the MMO made during their review in August 2023. The Applicant considers this matter agreed.</p>	Draft DCO [Document Reference 3.1 (11)], Schedule 15 (DML)	Matter Agreed
Comments from MMO's Relevant Representations on Deemed Marine Licence Schedule 15 Part 2 – Licensable Marine Activities					
North Portal work area	2.1.33 (DL2) RRN	<p>The MMO requests clarification as to where the "northern portal work area" is.</p> <p>MMO Update (August)</p>	<p>The Applicant proposes amending this for clarity. This location is shown in Figure 2.5 of the ES (see page 5 of 11). There are numerous land parcels</p>	ES Figure 2.5: Construction Information [Document	Matter Agreed

Topic	Item No.	Marine Management Organisation Comment	The Applicant's Response	Application Document Reference	Status
		The MMO is satisfied with the Applicant's response and considers the matter agreed.	associated with this compound's area, which can be found in the Land Plans Volume B (see sheets 16, 17 and 20). The Applicant welcomes the comments the MMO made during their review in August 2023. The Applicant considers this matter agreed.	Reference 6.2 ES Figure 2.5 (3)] Land Plans – Volume B – (Sheets 1 to 20) [Document Reference 2.2 (8)]	
Paragraph 5(1)(a)(i)	2.1.34 (DL2) RRN	The measurements given at paragraph 5(1)(a)(i) should be the maximum measurements, as considered within the ES, not an approximate. Furthermore, specific reference should be given to length and width. MMO Update (August) For clarity and certainty the MMO would always recommend exact measurements be used. The MMO request that "Approximate" is not used within the DML, and that a maximum figure be given instead. This is in line with standard MMO drafting principles and ensures that measurements or distances have an upper limit to enable the activity to be adequately assessed.	The Applicant has updated the maximum pipeline dimensions as outlined above, updating the units to 400m in length and 1m in diameter. The Applicant has removed references to "approximate". Following confirmation from the MMO at a meeting on 26 September 2023 that these updates address their comments, the Applicant now considers this matter agreed.	Draft DCO [Document Reference 3.1 (11)], Schedule 15 (DML)	Matter Agreed
Site definitions	2.1.35 (DL2) RRN	The MMO requests that "Tunnel operation" and "northern tunnel portal site", as referred to within paragraph 5(1)(b)(ii), should be	The Applicant will discuss the potential definition of "tunnel operation" further with the MMO as it was intended to have its ordinary meaning (in the	ES Figure 2.5: Construction Information [Document	Matter Agreed

Topic	Item No.	Marine Management Organisation Comment	The Applicant's Response	Application Document Reference	Status
		defined, alongside "Coal House Point" as referred to within paragraph 5(1)(c).	<p>context it is used). A definition is not currently proposed but the Applicant welcomes further input from the MMO on this.</p> <p>The Applicant proposes to amend this for clarity. This location is shown in Figure 2.5 of the ES (see page 5 of 11). There are numerous land parcels associated with this compound's area, which can be found in the Land Plans Volume B (see sheets 16, 17 and 20).</p> <p>Coalhouse Point is the Habitats Regulations Assessment mitigation area which requires a water supply from the Thames. The two land plots that are associated with this mitigation area are: 19.09 and 19.37. This information can be found in the Land Plans Volume B (see sheets 16, 17 and 20). An updated definition will be provided for the MMO's consideration.</p>	<p>Reference 6.2 ES Figure 2.5 (3)] Land Plans – Volume B – (Sheets 1 to 20) [Document Reference 2.2 (8)] Draft DCO [Document Reference 3.1 (11)], Schedule 15 (DML)</p>	
Working area coordinates	2.1.36 (DL2) RRN	The MMO requests each of the sets of coordinates for each of the work areas at 5(2)(a)-(c) to be referenced at the relevant provisions at 5(1)(a)-(c).	<p>The Applicant has updated the drafting of 5(2)(a)-(c) to set out the working area coordinates for each of the areas referenced at 5(1)(a)-(c).</p> <p>Following confirmation from the MMO at a meeting on 26 September 2023 that these updates address their comments, the Applicant now considers this matter agreed.</p>	Draft DCO [Document Reference 3.1 (11)] , Schedule 15 (DML)	Matter Agreed

Topic	Item No.	Marine Management Organisation Comment	The Applicant's Response	Application Document Reference	Status
Parameters	2.1.37 (DL2) RRN	<p>The MMO requests for the word “approximately” as used within paragraph 5(2)(a) to be removed or for the parameters of the word “approximately” to be defined.</p> <p>MMO Update (August)</p> <p>For clarity and certainty the MMO would always recommend exact measurements be used.</p> <p>The MMO request that “Approximate” is not used within the DML, and that a maximum figure be given instead. This is in line with standard MMO drafting principles and ensures that measurements or distances have an upper limit to enable the activity to be adequately assessed.</p>	<p>The Applicant has removed references to “<i>approximate</i>”.</p> <p>Following confirmation from the MMO at a meeting on 26 September 2023 that these updates address their comments, the Applicant now considers this matter agreed.</p>	Draft DCO [Document Reference 3.1 (11)], Schedule 15 (DML)	Matter Agreed
Drainage outfall	2.1.38 (DL2) RRN	<p>Paragraph 5(2)(a) refers to “drainage pipeline and outfall.” The MMO requests clarification as to whether this is the subtidal outfall structure at 5(1)(a). The language used regarding this should be consistent to ensure clarity.</p> <p>MMO Update (August)</p> <p>The MMO is satisfied with the Applicant's response and considers the matter agreed.</p>	<p>The Applicant confirms that these are one and the same. The Applicant suggests using “drainage pipeline and outfall” to be consistent. The draft DML will be updated accordingly.</p> <p>The Applicant welcomes the comments the MMO made during their review in August 2023. The Applicant considers this matter agreed.</p>	Draft DCO [Document Reference 3.1 (11)], Schedule 15 (DML)	Matter Agreed

Topic	Item No.	Marine Management Organisation Comment	The Applicant's Response	Application Document Reference	Status
Work area provisions	2.1.39 (DL2) RRN	The MMO requests clarification as to how the terms used under "Work area" at 5(2) relate to the provisions. MMO Update (August) The MMO is satisfied with the Applicant's response and considers the matter agreed.	The Applicant confirms that this refers to the operational discharge, as per 5(1)(b)(i). The Applicant welcomes the comments the MMO made during their review in August 2023. The Applicant considers this matter agreed.	Draft DCO [Document Reference 3.1 (11)], Schedule 15 (DML)	Matter Agreed
Comments from MMO's Relevant Representations on Deemed Marine Licence Schedule 15 Part 4 – Conditions					
Paragraph 9(3)(b)	2.1.40 (DL2) RRN	The MMO suggests the use of "working days" at paragraph 9(3)(b) be changed to "business days" to ensure consistency. MMO Update (August) PINS guidance on drafting says "business day" means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971. The MMO notes the definition of "business day" has been removed from the latest draft DCO and requests this be included again. Should this be inserted, the MMO considers the matter agreed.	The Applicant notes this comment. The draft DML will be updated accordingly.	Draft DCO [Document Reference 3.1 (11)], Schedule 15 (DML)	Matter Agreed
Paragraph 13	2.1.41 (DL2) RRN	The condition at paragraph 13 should end at "marine environment" to bring this in line with conditions	The Applicant is content with this proposed change. The draft DML will be updated accordingly.	Draft DCO [Document Reference 3.1 (11)], Schedule 15 (DML)	Matter Agreed

Topic	Item No.	Marine Management Organisation Comment	The Applicant's Response	Application Document Reference	Status
		included in licences issued under the MCAA. MMO Update (August) The MMO is satisfied with the Applicant's response and considers the matter agreed.	The Applicant welcomes the comments the MMO made during their review in August 2023. The Applicant considers this matter agreed.		
Paragraph 15	2.1.42 (DL2) RRN	Paragraph 15 refers to a "water management pipeline". The MMO requests clarification as to the works of the authorised development at paragraph 5 that this relates to. MMO Update (August) The MMO notes the update to the wording in Paragraph 15 and considers the matter agreed.	The Applicant can confirm that this relates to the construction drainage pipeline and outfall in paragraph 5(2)(a). The Applicant has updated wording in the DML with consistent terminology after discussing terminology with the MMO. The Applicant welcomes the comments the MMO made during their review in August 2023. The Applicant considers this matter agreed.	Draft DCO [Document Reference 3.1 (11)], Schedule 15 (DML)	Matter Agreed
Paragraph 18	2.1.43 (DL2) RRN	The MMO requests minor wording amendments at paragraph 18 to ensure consistency with marine licences issued under the MCAA. As such, this sentence should read: <i>"The undertaker must inform the MMO in writing of the completion of the last marine activity no more than 10 business days following the completion of the said activity."</i> MMO Update (August) The MMO has reviewed Paragraph 18 of the latest dDCO and considers the matter agreed.	This drafting is now agreed. The draft DML will be updated accordingly. The Applicant welcomes the comments the MMO made during their review in August 2023. The Applicant considers this matter agreed.	Draft DCO [Document Reference 3.1 (11)], Schedule 15 (DML)	Matter Agreed

Topic	Item No.	Marine Management Organisation Comment	The Applicant's Response	Application Document Reference	Status
Flood defence monitoring	2.1.44 (DL2) RRN	<p>For coastal process impact prevention, the DML should contain provisions guaranteeing flood defence monitoring (ES Chapter 14, paragraph 14.15.10g) and a construction drainage plan (ES Chapter 14, paragraph 14.5.10f.) to be in place.</p> <p>The MMO believes the latter to be covered under paragraphs 8(1) and 8(2) (surface and foul water drainage) but is uncertain as to the provisions regarding the flood defences under Part 9 of the draft DML. The MMO notes, however, this within the remit of the Environment Agency and defers to their comments in this respect.</p> <p>MMO Update (August)</p> <p>The MMO has reviewed Paragraph 117 and considers the matter agreed.</p>	<p>The Applicant notes this comment. Flood defences are covered in the Environment Agency Protective Provisions.</p> <p>Paragraph 117 of the Environment Agency Protective Provisions is in an agreed form.</p> <p>The Applicant welcomes the comments the MMO made during their review in August 2023. The Applicant considers this matter agreed.</p>	Draft DCO [Document Reference 3.1 (11)], Schedule 15 (DML)	Matter Agreed
Marine biodiversity					
Methodology and baseline data					
Biodiversity – Designated Sites	2.1.5	The Applicant has correctly identified designated sites with marine components that have the potential to be affected by the Project.	No further action required.	ES Chapter 9: Marine Biodiversity [APP-147]	Matter Agreed

Topic	Item No.	Marine Management Organisation Comment	The Applicant's Response	Application Document Reference	Status
Biodiversity – Fish Ecology	2.1.6 RRE	Data sources are to be investigated further and supplemented by additional data sources, including “The Fish Atlas” by Heesen <i>et al.</i> (2015)	Noted. The most relevant data sources have been used to develop the ES baseline.	ES Chapter 9: Marine Biodiversity [APP-147]	Matter Agreed
Biodiversity – Survey Methodology	2.1.7 RRE	MMO requires details of survey methodology to be presented in the ES.	The Applicant utilised existing baseline noise data sources and completed bespoke underwater noise modelling to inform the marine biodiversity assessment.	ES Chapter 9: Marine Biodiversity [APP-147]	Matter Agreed
Coastal Processes	2.1.8 RRE	MMO supports the Project's monitoring and modelling proposals.	The extent of the monitoring programme has been agreed with MMO. Subsequent to monitoring programme agreement, the Project conducted in-river benthic surveys which have informed the ES baseline.	ES Chapter 9: Marine Biodiversity [APP-147]	Matter Agreed
Assessment of potential effects					
Designated Sites	2.1.9	The status of the two recommended Marine Conservation Zones (MCZs) should be reviewed before the ES is finalised to ensure the presented information and associated assessment is up to date. MMO defer to Natural England's advice regarding potential impacts on designated sites.	Agreement reached that MCZ assessment was required (3 October 2019). Candidate MCZ in Upper Thames no longer being considered as was withdrawn from Tranche 3 review. Status of Swanscombe MCZ is included in the ES.	ES Chapter 9: Marine Biodiversity [APP-147]	Matter Agreed
Fish Ecology	2.1.10 RRE	Direct/indirect effects to fisheries and shellfisheries as a result of all	Noted. Direct and indirect effects on fisheries and shellfisheries, and the	ES Chapter 9: Marine Biodiversity [APP-147]	Matter Agreed

Topic	Item No.	Marine Management Organisation Comment	The Applicant's Response	Application Document Reference	Status
		phases of the Project must be considered throughout the EIA process and presented in the ES. The passage of the European eel (<i>Anguilla Anguilla</i>) and other migratory species must be considered and assessed.	passage of eel and other migratory species have been considered and included in the ES.		
Underwater Noise	2.1.11 RRE	A thorough assessment of the cumulative impacts and in-combination underwater noise and vibration effects on fish must be completed, which includes the effects of the multiple proposed and current developments along the Thames.	The Applicant has undertaken underwater noise and vibration modelling. Cumulative effects have been considered in the ES.	ES Chapter 9: Marine Biodiversity [APP-147]	Matter Agreed
Benthic Ecology	2.1.12 RRE	Consideration should be given to allocating sampling stations according to visual changes in sediment types or obvious habitat differences, as opposed to following a strategic grid of stations. Information on the design of any benthic ecology sampling should be presented in the ES.	Scope and extent of marine survey agreed with MMO.	ES Chapter 9: Marine Biodiversity [APP-147]	Matter Agreed
	2.1.13 RRE	MMO consider all construction removal, dredging and maintenance activities associated with the proposed scheme that are in or above the jurisdiction of the MMO are to be licensable.	The Applicant proposes to deal with alternation, operation and decommissioning of jetty and water management pipeline and outfall structures via a DML, and tunnel operation via the bored tunnels exemption detailed at Article 35 of	ES Chapter 9: Marine Biodiversity [APP-147]	Matter Agreed

Topic	Item No.	Marine Management Organisation Comment	The Applicant's Response	Application Document Reference	Status
			Marine Licensing (Exempted Activities) Order 2011.		
	2.1.14 RRE	The ES must specify how indirect impacts on intertidal benthic ecology with respect to bird feeding via alterations in benthic feeding assemblages will be addressed.	The ES assesses the potential indirect impacts on bird feeding. This topic is also covered in the Habitats Regulations Assessment (HRA).	ES Chapter 9: Marine Biodiversity [APP-147] HRA [APP-487]	Matter Agreed
Coastal Processes	2.1.15 RRE	Potential impacts to physical and coastal processes associated with the works have been identified and the scope of the ES will allow the potential scour protection works to be adequately assessed.	Scour protection to the tunnel has been removed from the Project design. The extent and approach with regard to any requirement for hydrodynamic and sediment modelling has subsequently been agreed with MMO.	ES Chapter 9: Marine Biodiversity [APP-147]	Matter Agreed
	2.1.16 RRE	MMO welcomes any ongoing consultation and the use of trigger levels as a monitoring and implementation strategy with regards to scour protection.	Vertical tunnel alignment avoids the need for scour protection to the tunnel.	N/A	Matter Agreed
Monitoring	2.1.17 RRE	To satisfy condition 2 of Article 35 of the Marine Licensing (Exempted Activities) Order 2011, the underwater noise modelling for the Tunnel Boring Machine (TBM) and operational traffic modelling will be required as part of the DCO application. The MMO has advised that the Article 35 exemption is applicable if condition 2 can be satisfied.	MMO and the Applicant have discussed and agreed that the construction and operation of the tunnel is covered by the Exemption, hence these phases will not be included in the DML. It has also been agreed that the Exemption would be supported by the ES assessments, which addresses the underwater noise impacts associated with the TBM and road traffic.	ES Chapter 9: Marine Biodiversity [APP-147]	Matter Agreed

Topic	Item No.	Marine Management Organisation Comment	The Applicant's Response	Application Document Reference	Status
	2.1.18	Table 10.7 in the Preliminary Environmental Information Report (PEIR) states an underwater noise survey will be undertaken. The MMO require details of the survey methodology to be presented in the ES.	It has been agreed that no survey would be undertaken, but that modelling would use available documented baseline levels.	ES Chapter 9: Marine Biodiversity [APP-147] ES Appendix 9.1: Assessment of Ground-Borne Noise and Vibration, and Underwater Noise from the Tunnel Boring Machine at Marine Receptors [APP-420]	Matter Agreed
Dredging and scour	2.1.19	Potential impacts on marine receptors of dredging and other sediment re-mobilisation mechanisms should be assessed and presented in the Environmental Statement.	No dredging is proposed. Other mechanisms of sediment mobilisation are assessed in the ES.	ES Chapter 9: Marine Biodiversity [APP-147]	Matter Agreed
	2.1.20 RRE	MMO consider all construction, removal, dredging and maintenance activities associated with the proposed scheme that are in or above the jurisdiction of the MMO are to be licensable.	The DML covers relevant works to be undertaken in the River Thames except for tunnel works, which will be covered by an exemption. The East Tilbury jetty has been removed from the design.	ES Chapter 9: Marine Biodiversity [APP-147]	Matter Agreed
	2.1.21 RRE	MMO require precise details of the proposed jetty and any scour protection works to confirm whether the approach fully identifies and assesses the potential impacts.	The East Tilbury jetty has been removed from the design. Details of the construction and decommissioning of the construction phase discharge is provided in DML and assessed in the ES.	ES Chapter 9: Marine Biodiversity [APP-147]	Matter Agreed
Monitoring and	2.1.22	MMO acknowledge that the scope of the monitoring/modelling programme	Monitoring and modelling proposal now agreed.	ES Chapter 9: Marine Biodiversity [APP-147]	Matter Agreed

Topic	Item No.	Marine Management Organisation Comment	The Applicant's Response	Application Document Reference	Status
modelling programme		is in the process of being revised following the submission of comments on 22 Nov 2018. MMO support the proposals in the reviewed document subject to the changes identified.			
Marine Strategy Framework Directive	2.1.23	The Applicant has discussed Marine Strategy Framework Directive (MSFD) considerations with the MMO and stated their opinion that potential impacts do not need to be assessed as the boundary of the nearest MSFD region is over 30km from the Order Limits. The MMO agreed in principle with their opinion, however would require advice from the Environment Agency (EA). The MMO advised that MSFD assessments should be discussed with the EA.	It has been agreed with MMO and the EA that the MSFD does not apply, and a Water Framework Directive (WFD) compliance assessment will be completed.	ES Chapter 9: Marine Biodiversity [APP-147] ES Appendix 14.7: Water Framework Directive [APP-478] Environment Agency SoCG [Document Reference 5.4.1.1 (5)]	Matter Agreed
Coalhouse Point water inlet with self-regulating valve	2.1.24 RRE	MMO requested details of the proposed water inlet with self-regulating valve, to confirm whether the Project's approach fully identifies and assesses the potential impacts. The MMO confirmed on 9 June 2023 that it has no further comments to add at this time. Further discussions on this matter are expected as the design develops further.	The Applicant provided a technical presentation to MMO on 27 July 2022, to explain how the DML has been updated to reflect the inclusion of a self-regulating tidal gate water inlet with self-regulating valve (or equivalent) to allow water to flow from the Thames, ensuring a water supply for functionally linked land mitigation, adjacent to Coalhouse Fort.		Matter Agreed*

Topic	Item No.	Marine Management Organisation Comment	The Applicant's Response	Application Document Reference	Status
		<p>The MMO confirmed at a technical meeting on 1 December 2023 that this matter can be agreed if the Applicant adds a condition into the DML to set out how this matter will be managed by process of a post-consent return.</p> <p>On 05 December 2023, the MMO shared suggested condition wording with Applicant:</p> <p><i>The licensed activities at Coalhouse Fort Water Inlet must not commence until a detailed design plan has been submitted to, and approved in writing by, the MMO. The detailed design plan must, as a minimum, include:</i></p> <p><i>(a) the specifications and dimensions of the water inlet</i></p> <p><i>(b) the proposed location, including grid co-ordinates</i></p> <p><i>(c) a construction programme including details of:</i></p> <p><i>(i) the proposed construction commencement date</i></p> <p><i>(ii) proposed timings for mobilisation of plant, delivery of materials and construction</i></p> <p><i>(d) a construction method statement in accordance with the construction methods assessed in the Environmental Statement</i></p>	<p>The Applicant has now agreed new drafting from the MMO for a new DML condition regarding post-consent returns. The Applicant expects this condition to be included in the DML when the final draft DCO is submitted at Deadline 9.</p> <p>The Applicant will continue to engage with the MMO as the design develops.</p>		

Topic	Item No.	Marine Management Organisation Comment	The Applicant's Response	Application Document Reference	Status
		The Applicant confirmed in writing to the MMO on 6 December 2023 that the suggested condition has been accepted and will be included as a condition 19 in the draft DML.			
Mitigation					
Biodiversity – Underwater Noise	2.1.25 RRE	<p>MMO agree that soft start and vibro-piling will reduce impact.</p> <p>MMO comment 8 December 2023</p> <p>The MMO and Applicant met on 1 December 2023 to discuss a revision to the REAC and DML. It was noted that DML condition 15(2)(a) previously stated:</p> <p><i>“Works to construct the water management pipeline and outfall, including any piling, must not be undertaken when the work area is either fully submerged or partially covered by water”</i>,</p> <p>but had been reworded to:</p> <p><i>“where reasonably practicable, works to construct the drainage pipeline and outfall referred to at paragraph 5(1)(a), including any piling, must be undertaken in the dry (and where such works are required in submerged or partially covered by water”</i></p>	<p>Where piling activities take place, best practice relating to soft start and vibro-piling will be applied to minimise underwater noise (commitment included in the Register of Environmental Actions and Commitments (REAC) ref: MB002).</p> <p>Following discussions at a technical meeting on 1 December 2023, the Applicant has revised the wording accordingly and understands this matter to be agreed.</p>	<p>ES Chapter 9: Marine Biodiversity [APP-147]</p> <p>Register of Environmental Actions and Commitments (REAC), appended to ES Appendix 2.2: Code of Construction Practice</p> <p>[Document Reference 6.3 ES Appendix 2.2 (9)]</p>	Matter Agreed

Topic	Item No.	Marine Management Organisation Comment	The Applicant's Response	Application Document Reference	Status
		<p>The MMO explained that the revised wording of 15(2)(a) is not enforceable. The term 'reasonably practicable' is vague and open to interpretation.</p> <p>On 6 December 2023, the MMO received confirmation from the Applicant that condition 15 had been revised to remove the term 'reasonably practicable' and that where works cannot be done in the dry, conditions 15(2)(b)(c) and (d) must be adhered to.</p>			

Appendix A Engagement activity

Table A.1 Engagement activities between the Applicant and the Marine Management Organisation since the DCO application was submitted on 31 October 2022

Date	Overview of Engagement Activities
16 November 2022	DCO walkthrough presentation to provide stakeholders a summary of where to find relevant DCO application documents.
25 November 2022	Marine Management Organisation attended the Project's Biodiversity and Ecology Briefing.
17 May 2023	Stakeholder briefing on the public consultation material.
26 September 2023	Technical meeting between the Applicant and Marine Management Organisation to discuss the Statement of Common Ground.
1 December 2023	Technical meeting between the Applicant and Marine Management Organisation to discuss the Statement of Common Ground.

Table A.2 Summary of engagement activities between the Applicant and the Marine Management Organisation which took place prior to DCO application submission on 31 October 2022

Date	Form of contact/ correspondence	Key topics discussed and key outcomes
May 2017–July 2022	Teleconference	Regular technical meetings to discuss the programme, SoCG topics, the DML and compensatory enhancements. Held as required, typically quarterly to monthly.
Oct 2018–Sept 2021	Public consultations	The Marine Management Organisation has been consulted on all of the Applicant's public consultations.
Oct 2017–ongoing	Workshops	Technical workshops with EA and Port of London Authority to discuss marine surveys, ground investigations, environmental considerations, consenting and timelines.

Table A.3 Detailed record of engagement activities between the Applicant and the Marine Management Organisation which took place prior to DCO application submission on 31 October 2022

Date	Form of contact/ correspondence	Key topics discussed and key outcomes
8 May 2017	Teleconference	Walkthrough of the Applicant's preferred route.
9 October 2017	Teleconference	Joint meeting with MMO, Environment Agency (EA) and the Port of London Authority to discuss marine ground investigations including geophysical and bathymetric surveys, in-river

Date	Form of contact/ correspondence	Key topics discussed and key outcomes
		ground investigations, key constraints and access, environmental considerations and required consents and timelines.
October 2017	Environmental Impact Assessment (EIA) Scoping Report	Response to EIA Scoping Report received from MMO.
18 October 2018	Teleconference	Discussed the propose marine monitoring and modelling programme, and exemption of marine licensing for the tunnel.
October – December 2018	Statutory Consultation	Statutory public consultation on the Project's design in the Preferred Route Announcement. Consultation response received from MMO.
3 October 2019	Teleconference	Briefed on Project's updated Order Limits for dewatering discharge options.
29 January 2020	Teleconference	Discussed proposed construction methodology on drainage and impact, EIA progress and Deemed Marine Licence (DML) submission.
January – March 2020	Supplementary Consultation	Non-statutory public consultation on Project changes and development of the Project. Consultation response received from MMO.
2 April 2020	Teleconference	Briefed on further development on the Project's Order Limits and dewatering discharge proposals.
28 April 2020	Teleconference	Discussion on retaining the existing East Tilbury jetty and sought advice from MMO on approach to DML requirements and securing requirements in DCO.
27 May 2020	Email	The Applicant issued draft DML to MMO noting that much of the design detail is still to be provided, although the marine elements of the Project are included and align with calls and discussions to date. The Applicant expressed that it was keen to instigate discussions on the draft DML.
29 June 2020	Email	The Applicant issued the draft DCO for information and to assist MMO to understand the likely content/provisions. Major or substantive comments were welcomed.
3 July 2020	Teleconference	Call to provide an update and to listen to MMO's comments on the draft DML. MMO agreed to issue a revised draft with further comments following the call.
July – August 2020	Design Refinement Consultation	Non-statutory public consultation on design refinements of the Project. Consultation response received from MMO.

Date	Form of contact/ correspondence	Key topics discussed and key outcomes
30 July 2020	Teleconference	Call to provide an update on operational discharge from the construction compound at the Northern Portal.
20 August 2020	Document Issue – Draft CoCP and REAC	The Applicant issued draft Code of Construction Practice a Register of Environmental Actions and Commitments. Major or substantive comments were welcomed.
2 December 2020	Email	The Applicant shared its DCO application documents with MMO.
24 November 2020	Teleconference	The Applicant provided an update on its DCO application post withdrawal.
3 February 2021	Teleconference	Call to provide an update and discuss MMO's comments regarding the draft DML. Timescales, jetty licensing and arbitration were the key concerns discussed.
19 February 2021	Email	The Applicant shared new DCO documents with MMO. Major or substantive comments were welcomed.
3 November 2021	Teleconference	MMO's comments on the Applicant's updated draft DML.
22 February 2022	Teleconference	MMO's comments on the Applicant's updated draft DML and agree the proposed amendments for inclusion in the DCO.
06 April 2022	Email	Updated DML sent to the MMO.
27 July 2022	Teleconference	The Applicant provided an update on the proposed structure and mitigation measures at Coalhouse Point, and presented the new SoCG table structure.
28 July 2022	Email	Updated DML sent to the MMO.

Appendix B Glossary

Term	Abbreviation	Explanation
Development Consent Order	DCO	Means of obtaining permission for developments categorised as Nationally Significant Infrastructure Projects (NSIP) under the Planning Act 2008.
Deemed Marine Licence	DML	The licence required under the Marine and Coastal Access Act 2009 to undertake marine licensable activities, e.g. construction, dredging and deposit, removal or incineration of substances and objects.
Environment Agency	EA	A non-departmental public body of Defra, established under the Environment Act 1995. It is the leading public body for protecting and improving the environment in England and Wales. The organisation is responsible for wide-ranging matters, including the management of all forms of flood risk, water resources, water quality, waste regulation, pollution control, inland fisheries, recreation, conservation and navigation of inland waterways.
Environmental Statement	ES	A document produced to support an application for development consent that is subject to Environmental Impact Assessment (EIA), which sets out the likely impacts on the environment arising from the proposed development.
Habitat Regulations Assessment	HRA	A tool developed by the European Commission to help competent authorities (as defined in the Habitats Regulations) to carry out assessment to ensure that a project, plan or policy will not have an adverse effect on the integrity of any Natura 2000 or European sites (Special Areas of Conservation, Special Protection Areas and Ramsar sites), either in isolation or in combination with other plans and projects, and to begin to identify appropriate mitigation strategies where such effects were identified.
Marine and Coastal Access Act 2009	MCAA	Legislation which makes provision for marine functions and activities, migratory and freshwater fish, coastal walking routes and rights of access to land near the coast for recreational purposes.
Marine Conservation Zone	MCZ	A type of marine protected area that can be designated in English, Welsh and Northern Irish territorial and offshore waters. MCZs protect a range of nationally important habitats and species.
Marine Management Organisation	MMO	An executive non-departmental public body in the UK established under the Marine and Coastal Access Act 2009. The MMO exists to make a significant contribution to sustainable development in the marine area, and to promote the UK Government's vision for clean, healthy, safe, productive and biologically diverse oceans and seas.

Term	Abbreviation	Explanation
Marine Strategy Framework Directive	MSFD	European maritime policy designed to create a framework for the sustainable use of marine waters.
Nationally Significant Infrastructure Project	NSIP	Major infrastructure developments in England and Wales, such as proposals for power plants, large renewable energy projects, new airports and airport extensions, major road projects, etc. that require a development consent under the Planning Act 2008.
Preliminary Environmental Information Report	PEIR	An early output of the EIA process, and part of the DCO application process.
Register of Environmental Actions and Commitments	REAC	The REAC identifies the environmental commitments that would be implemented during the construction and operational phases of the Project if the Development Consent Order is granted, and forms part of the Code of Construction Practice (Application Document 6.3, ES Appendix 2.2).
Tunnel boring machine	TBM	Machine used to excavate tunnels with a circular cross-section.
Water Framework Directive	WFD	Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy. The Directive establishes a framework for the protection of inland surface waters, estuaries, coastal waters and groundwater. The framework for delivering the WFD is through river basin management planning. The UK has been split into several river basin districts. Each river basin district has been characterised into smaller management units known as water bodies. The surface water bodies may be rivers, lakes, estuary or coastal.

Appendix C Technical Note issued to the Marine Management Organisation on Transfer Provisions in the Deemed Marine Licence

NATIONAL HIGHWAYS

LOWER THAMES CROSSING DCO

NOTE ON DEEMED MARINE LICENCE TRANSFER PROVISIONS

1 Introduction

- 1.1 Following a meeting with the Marine Management Organisation (MMO) and representatives of National Highways' (NH) Lower Thames Crossing project (LTC) the LTC team agreed to draft a note to assist the MMO in interpreting the transfer provisions of the LTC Development Consent Order (DCO) alongside the provisions of s.72 of the Marine and Coastal Access Act 2009 (MCAA).

2 Section 72 MCAA

- 2.1 Section 72 (7) and (8) of the MCAA states:

(7) On an application made by a licensee, the licensing authority which granted the licence—

(a) may transfer the licence from the licensee to another person, and

(b) if it does so, must vary the licence accordingly.

(8) A licence may not be transferred except in accordance with subsection (7).

- 2.2 In accordance with s72, a marine licence may only be transferred with approval from the MMO.

3 Article 8 (Consent to transfer benefit of Order)

- 3.1 Article 8 of the LTC DCO states:

8.—(1) Subject to paragraph (4) and (5), the undertaker may—

(a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

...

(8) The Secretary of State must consult the MMO before giving consent under paragraph (1) to the transfer or grant to another person of the benefit of the provisions of the deemed marine licence.

- 3.2 Article 8 applies to transfers relating to the DML, as well as other transfers of DCO provisions not connected to the DML/MMO.
- 3.3 Sub-paragraph (8) mirrors para 9 (3) to the Sizewell C (Nuclear Generating Station) Order 2022 Deemed Marine Licence, and

4 Part 6 (Changes to the Deemed Marine Licence) of the Deemed Marine Licence

- 4.1 Part 6 of the DML states:

24.—(1) In the event that the undertaker wishes to undertake the licensable marine activity contrary to the conditions of this licence, it must inform the MMO at the earliest opportunity and request a variation to the conditions of this licence.

(2) The undertaker must not carry out any licensable marine activity contrary to the conditions of this licence until a variation to the licence has been approved by the MMO pursuant to its powers under section 72(3) of the 2009 Act.

(3) The provisions of sections 72 (variation, suspension, revocation and transfer) of the 2009 Act apply to this licence except that the provisions of section 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 8 (Consent to transfer benefit of Order).

(4) The MMO must give notice to the undertaker of the determination of the variation request within 13 weeks from the day immediately following that on which the variation was requested, or as soon as reasonably practicable after that date, subject to the undertaker providing updated details of the licensable marine activity pursuant to paragraph 10 and adequately justifying the requested variation to the reasonable satisfaction of the MMO.

- 4.2 Para 24(3) mirrors para 6 of the Hornsea Four Offshore Wind Farm Order Deemed Marine Licence (see Schedule 11)

5 Relationship between the above provisions

- 5.1 The provisions of article 8, Part 6 of the DML, and section 72 MCAA are intended to be read together.
- 5.2 In accordance with para 24(3) of the DML, section 72 continues to apply to the DML. However, all transfers of the DCO are not captured by the MCAA. Where article 8 applies (i.e. NH seek to transfer the DCO or part of it), the provisions of s72(7) and (8) do not apply, but the Secretary of State still needs to consult the MMO in accordance with article 8(8). If, during that consultation, the Secretary of State is not satisfied that the MMO had received the information they require to transfer the licence, then it is likely that such consent would be refused.

- 5.3 In our view, the above provisions should resolve the MMO's outstanding concerns, particularly because they have already appeared in other DCOs/DMLs. NH are however prepared to consider alternative drafting from the MMO if it considers that matters could be clarified further.
- 5.4 The MMO previously explained that the provisions in the Silvertown Tunnel Order 2018 were their preferred form. We have reviewed these provisions and note that whilst there is no reference to the MCAA in the DML, the transfer provisions for the DCO say the following, which NH are open to adopting in principle, subject to further discussions and agreement being reached on the DML:

(8) TfL must within 10 business days after entering into an agreement under paragraph (1) in relation to which any functions of TfL in respect of the deemed marine licence granted by article 62 are transferred to another party, notify the MMO in writing, and the notice must include particulars of the other party to the agreement under paragraph (1) and details of the extent, nature and scope of the functions transferred or otherwise dealt with which relate to the deemed marine licence granted under article 62.

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