Immingham Green Energy Terminal

9.80 Applicant's Responses to Documentation Received at Deadline 4

Infrastructure Planning (Examination Procedure) Rules 2010

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Table of contents

Chapter **Pages**

Introduction

Overview

1.1 This document has been prepared to accompany an application made to the Secretary of State for Transport (the Application") under section 37 of the Planning Act 2008 ("PA 2008") for a development consent order ("DCO") to authorise the construction and operation of the proposed Immingham Green Energy Terminal ("the Project").

1.2 The Application is submitted by Associated British Ports ("the Applicant"). The Applicant was established in 1981 following the privatisation of the British Transport Docks Board. **The Funding Statement [APP-010]** provides further information.

1.3 The Project as proposed by the Applicant falls within the definition of a Nationally Significant Infrastructure Project ("NSIP") as set out in Sections 14(1)(j), 24(2) and 24(3)(c) of the PA 2008.

The Project

1.4 The Applicant is seeking to construct, operate and maintain the Immingham Green Energy Terminal, comprising a new multi-user liquid bulk green energy terminal located on the eastern side of the Port of Immingham (the "Port").

1.5 The Project includes the construction and operation of a green hydrogen production facility, which would be delivered and operated by Air Products (BR) Limited ("Air Products"). Air Products will be the first customer of the new terminal, whereby green ammonia will be imported via the jetty and converted on-site into green hydrogen, making a positive contribution to the UK's net zero agenda by helping to decarbonise the United Kingdom's (UK) industrial activities and in particular the heavy transport sector.

1.6 A detailed description of the Project is included in **Chapter 2: The Project** of the **Environmental Statement ("ES") [REP3-022]**.

Purpose and Structure of this Document

1.7 This document contains the Applicant's responses to documentation submitted by Interested Parties at Deadline 4.

1. Applicant's Responses to Documentation Received at Deadline 4

Environment Agency
REP4-051
Response
An amendment to the definition of "commence" was included in the updated **Draft DCO** at Deadline 4 **[REP4-004]**.
IOT Operators
REP4-055
Response
The Applicant and Air Products have continued to engage with the IOT Operators on the matters raised in their Deadline 4 representation. The parties have now entered into a private agreement with the IOT Operators. As a result, it is expected that the IOT Operators will shortly confirm to the Examining Authority that they do not wish to pursue any objection to the Application and that their written submissions and responses in respect of the Application should be treated as withdrawn. On this basis, the Applicant does not consider it necessary or appropriate to respond to the IOT Operator's Deadline 4 representation.
Marine Management Organisation
REP4-052
Response

Introduction

The Applicant has made submissions on why the deemed marine licence ("DML") should in this case be transferrable either alongside the remainder of the DCO, of which the DML is part, pursuant to **Articles 46(10)**, **(12)**, **(13)** and **(14)** of the **draft DCO ("dDCO")** submitted at Deadline 5 or pursuant to Section 72 of the Marine and Coastal Access Act 2009 (the "2009 Act"). Those submissions are more particularly set out in the Applicant's comment on the Marine Management Organisation's ("MMO's") response to Q1.18.3.16 of the ExA's First Written Questions **[REP2-012]**, see **page 6**, and **Paragraph 6.1** of the Applicant's **Summary of Issue Specific Hearing 4 (ISH4) [REP3-070]**.

The MMO has responded to those submissions at Section 2 of its Deadline 4 Submission **[REP4-052]**. For the reasons set out below, there is nothing in the MMO's response which alters the analysis that the mechanism proposed is necessary, straightforward, well-precedented and has no disadvantages from the perspective of the public interest.

The MMO's response describes applications under the 2009 Act for the transfer of a marine licence as "*essentially a purely administrative act to ensure that the licence contains the name of the person with the benefit of the licence*". It notes that "*as far as the MMO is concerned it has never refused an application for a transfer*" and agrees that the Secretary of State is an "*entirely capable arbiter of who should benefit from the Deemed Marine Licence*". Provided that the MMO is informed as and when any transfer occurs (see further below), its representation does not suggest that allowing the Secretary of State to authorise transfer would give rise to any practical difficulties for the MMO in carrying out its functions under the 2009 Act, to ensure the public interest is protected. The only other concerns that it raises in its Deadline 4 submissions are based on a misunderstanding of the provisions contained in **Article 46(12)(b)**, which the Applicant addresses below.

Accordingly, there can therefore be no reasonable objection to a mechanism allowing for such uncontroversial and straightforward applications being made under the DCO with Secretary of State approval, following MMO consultation.

Record keeping for the purposes of enforcement

At Paragraphs 4, 5, 8 (d., e. and f.), and 23 to 26 of its Deadline 4 representations **[REP4-052]**, the MMO identifies concerns about the implications of allowing the Secretary of State to authorise a transfer for its record keeping and, consequently, for its ability to enforce compliance with the terms of the DML.

There are two specific aspects to this concern. First, the MMO is concerned to ensure that it maintains a record of the person who has the benefit of a marine licence at all times. Second, the MMO seeks a power to change the copies of the DML it holds in its records to reflect any transfer.

In respect of the first of those concerns, the operation of the standard form **Articles 46(17)** and **46(19)** provide for settling from time to time who has the benefit of any provision of the DCO. However, the MMO's practical point about the benefit of having a record of who is the relevant person is acknowledged and can readily be resolved by the addition of a new **Paragraph (13)** to **Article 46 (Benefit of Order)** in the form set out below, derived from past DCOs.

The MMO's second concern about needing to change the form of DML itself is based on a misconception. Section 72(7) of the 2009 Act provides that following an application to the MMO for a transfer of a marine licence the MMO must vary the licence to reflect that transfer. However, DCOs which provide for the transfer of a deemed marine licence in the same manner as the remainder of the DCO in question specifically disapply Section 72(7) as part of aligning the DCO transfer process with the 2009 Act process. The **dDCO** already does this in its **Article 46(14)**. The MMO therefore does not need to change the DML itself in such circumstances and thus does not need a power to do so. This is no different to how DCOs themselves, of which the DML is a part, are not updated each time that the benefit of any given provision is transferred or granted. Operation of **Articles 46(17)** and **46(19)** removes the need to do so. The MMO can place the notice from the undertaker and copy of the transfer or grant in the same real or virtual file as its copy of the DML in question and read the documents together. The transfer does not take effect until the notice and transfer or grant have been sent to the MMO. In the interests of comprehensiveness, the new proposed **Paragraph (13)** includes wording so that the MMO can be in no doubt that it may lawfully retain the notice and transfer or grant with its copy of the DML:

> "*Any transfer or grant under paragraph (12) does not take effect until the undertaker has given notice to the MMO stating—*
> *(a) the name and contact details of the person to whom the benefit of the provision will be transferred or granted;*
> *(b) the date on which the transfer or grant will take effect; and*
> *(c) the provision to be transferred or granted,*
> *and providing a copy of the consent given by the Secretary of State to the transfer or grant and a copy of the transfer or grant itself; and the MMO may update its records in respect of the deemed marine licence accordingly.*"

The issues raised by the MMO about enforcement derive entirely from the concerns about record keeping, and therefore fall away once that has been addressed.

Administrative burden

At Paragraphs 8 (b.) and 15 to 18 of the MMO's Deadline 4 submissions **[REP4-052]** it is suggested that allowing the Secretary of State to approve a transfer would be more complex, more administratively burdensome and will take longer. That suggestion is not well-founded.

The mechanism at **Articles 46(10)**, **(12)**, **(13)** and **(14)** cannot reasonably be described as "*administratively burdensome*". It involves a letter to the Secretary of State, consultation of the MMO, a response from the Secretary of State and a notice to the MMO. Only two of those steps are borne by a public body and both involve what the MMO has itself described as the 'purely administrative decision' as to who is benefitting from the deemed marine licence. Furthermore, when the two processes are compared, the only additional step involved in an application to the Secretary of State for a transfer is consultation with the MMO. The other two steps (the making of an application and the decision being made by the relevant decision-maker) are common to both. The MMO does not suggest that it ought not to be consulted, or that providing a response in respect of what it describes as a "*purely administrative act*" will involve a particular burden on its own resources.

Any (very limited) administrative burden involved is, in any event, preferable in the public interest to the alternative, which would require one application being made to the Secretary of State for the transfer of certain non-DML provisions of the DCO and a second application being made to the MMO for DML provisions of the DCO.

Precedent

The MMO's Deadline 4 representations **[REP4-052]** address the issue of precedent at Paragraphs 9 to 14.

Before turning to the detail of those representations, it should be noted that the thrust of the MMO's argument is to the effect that for over a decade DCO promoters, with the benefit of sophisticated legal and planning advice, have been actively including on the face of their DCOs a mechanism which is "*administratively burdensome*", and thus not in their interests or those of delivering nationally significant infrastructure. It also presupposes that despite the inquisitorial nature of examinations, involving the detailed scrutiny of the provisions in dDCOs by Examining Authorities (and subsequent scrutiny by the relevant Departments within government), Secretaries of State have included such provisions in multiple made DCOs notwithstanding those points. That is untenable.

The clear benefits of the mechanism from the perspective of the undertaker, and in terms of the public interest in the efficient delivery of nationally significant infrastructure projects, are restated in this note.

The Applicant's representations include reference to various recent precedents in which the Secretary of State has decided that it is appropriate in the public interest to include equivalent provisions in DCOs. No precedents have been identified by the MMO in which the Secretary of State has been asked to include such a provision and has decided that it would not be appropriate, and the Applicant is not aware of any. The evidence of previous decision-making on this issue is an important material consideration reflecting the public interest in consistency in decision-making (see e.g. *Fox Strategic Land & Property Ltd. v. SSCLG* [2012] EWCA Civ 1198 at Paragraphs 12 to 14). More precedents supporting the Applicant's approach could be found if older DCOs were considered but, in the interests of proportionality, the Applicant has focussed instead on more recent decisions.

The MMO acknowledges that the mechanism proposed has precedent in made DCOs but says that reasoned justification has been given "*in very few if any*" Examining Authority reports or Secretary of State decision letters. The MMO has not set out where such justifications were given and what its concerns (if any) might be with those justifications. The MMO has not set out which precedents it did or did not object to. This is important because where no such justifications were given it may well simply be because the MMO made no relevant representation on the matter. Examining Authority reports or Secretary of State decision letters are often silent on matters which applicants, consultees and other third parties have treated as uncontroversial.

The Applicant would note that the mechanism of transferring a deemed marine licence alongside the remainder of a DCO of which it is a part, with Secretary of State consent following MMO consultation, has been present in DCOs as long as the first was made with a deemed marine licence within it over a decade ago (which would appear to be The Galloper Wind Farm Order 2013, see Article 7(2)). The MMO, however, has only now started to object to this mechanism and not explained why it does so in this case when it does not appear to have done so over the past decade. There has been no relevant material change in circumstances, and the MMO has not referred to any feature of this application that makes it appropriate that it should be treated differently in this respect. There is, in any event, no need for the Applicant to carry out a forensic analysis of what justifications were or were not given for each made DCO containing a deemed marine licence, or why no justification was given in any particular case. The Applicant would suggest that this is not a complex matter of law or policy, and never has been. The justification is self-evident and goes to the heart of the principle of the Planning Act 2008 (the "2008 Act") and scope for deeming the grant of marine licences in the first place: why compel a promoter of nationally significant infrastructure to undergo two different consenting mechanisms for the transfer of differing provisions in the same statutory instrument, with the potential for two different outcomes? Especially where there is no scope of appeal to the Secretary of State for an MMO refusal to transfer and where the proposed mechanism involves no harm or prejudice to any person.

The MMO refers to The Sizewell C (Nuclear Generating Station) Order 2022 at Paragraph 10 of its Deadline 4 representations. The Sizewell C DCO's primary provisions for the transfer of benefit, at Articles 9(1) and 9(3), provide for the transfer of any "*provisions of this Order*" with Secretary of State consent, following consultation of the MMO. The terms of the deemed marine licence are clearly provisions

of that Order as much as the provisions set out in any other schedule to that Order, and thus transferrable along with the remainder of the Order under Articles 9(1) and 9(3). The MMO makes reference to Paragraph 3 of the deemed marine licence, which cross refers to the application of Section 72 of the 2009 Act. That provision in the DML must of course be read and interpreted in the context provided by the DCO as a whole, including in particular the context provided by the other related provisions (*R (O) v. SSHD* [2022] UKSC 3 at para. 29). In particular, Paragraph 3 in the DML must be read and interpreted consistently with the primary provision in Article 9 which deals explicitly with the issue of transfer and does so in clear terms. As a generality, legislative instruments like DCOs are to be read as a whole, with the assumption that they produce a consistent and coherent legislative scheme and it may be necessary to treat one provision as modifying the other where there appears to be a conflict by favouring the leading provision over the subordinate provision (see pages 660 and 661 of Bennion on Statutory Interpretation, Bailey et al.). Insofar as it is suggested by the MMO that there is an apparent inconsistency between these two elements of the Sizewell DCO the courts would interpret the DCO to avoid that. That would be done by giving primacy to the clear language of the primary provisions which deal explicitly with the issue of transfer.

Furthermore, there is no indication either on the face of the DCO, its explanatory memorandum or the Examining Authority's report that the deemed marine licence was intended by the Applicant, or indeed the MMO, to be carved out of the scope of Articles 9(1) and 9(3). As noted above, however, there are many examples of the mechanism proposed by the Applicant in made DCOs. Nothing in what the MMO has said in respect of the Sizewell decision alters the force of the Applicant's submissions, save to note that the cross-reference to which the MMO refers in the Sizewell DCO will be deleted from the IGET **dDCO** (currently in square brackets at **Article 46(16)**) if the Examining Authority agrees with the Applicant's submissions.

The MMO's misunderstanding of Article 46(12)(b)

Section E (Paragraphs 19 to 22) of the MMO's Deadline 4 Submission **[REP4-052]** raises a number of concerns and queries about **Article 46(12)(b)**. This provides for an undertaker with the benefit of any provision of the deemed marine licence, with the consent of the Secretary of State, to grant to any person for a period agreed between the undertaker and that person any or all of the benefit of the provision (i.e. the "*purely administrative act*" described by the MMO of, here temporarily, effectively changing the name of the person with the benefit of licence provisions, not granting a new one on different terms). The Secretary of State must consult the MMO before giving such consent.

Under **Articles 46(16)** and **(17)** the exercise by a person of any benefits or rights conferred in accordance with any such grant is deemed to be subject to the same restrictions, liabilities and obligations under the DCO as would apply if those benefits or rights were exercised by the grantor, and the benefit granted includes any rights that are conferred, and any obligations that are imposed by virtue of the provisions to which the benefit relates.

The grant for a limited time, like permanent transfer of the benefit of DCO provision, is in practice done by way of a short form deed between the grantor and person being given the benefit of the provisions. **Articles 46(16)** and **(17)** embed the standard provision to prevent cherry picking in that deed – the relevant restrictions, liabilities and obligations pass to the person gaining the temporary benefit of the DCO provisions, regardless of what may be said in the deed itself. As far as the Applicant is aware, the entire mechanism has appeared in all DCOs made to date in relation to all DCO provisions, including in many where there has been a deemed marine licence. This well-worn DCO mechanism is derived from the long-running predecessor Transport and Works Act Orders.

It is apparent from the MMO's Deadline 4 representations that it has mistakenly assumed that this provision enables the undertaker to "***grant*** *a DML*" (Paragraph 20, emphasis in the original), rather than to grant to a third party *the benefit of* the existing DML for a limited period. That misunderstanding then provides the basis for each of the individual concerns raised in Paragraphs 20 to 22, which simply fall away once that misunderstanding has been addressed.

The queries at Paragraph 20 of the MMO's Deadline 4 Submission **[REP4-052]** therefore fall to be addressed as follows:

a. and b. The Applicant is not seeking a power to grant a DML, and hence these questions do not arise. The power sought to confer the benefit of any DCO provision temporarily (in the deemed marine licence or otherwise) is common to all made DCOs and reflects the flexibility required to deliver nationally significant infrastructure projects efficiently and economically. This means it would be imprudent to exclude the possibility that the benefit of the deemed marine licence would need to be granted temporarily to another person in relation to certain specific activities, for example. There is no harm in this established provision in any event.

c. and d. The undertaker will not be granting a DML in the event it makes use of this provision and hence these questions do not arise. In the usual way, a decision by the undertaker that it would be desirable to grant the benefit of part of the order to another party would be a matter for its discretion related to the efficient and economic delivery of the works in question at that point in time, and would need to be explained in its application to the Secretary of State for the necessary approval (on which the MMO would be consulted).

e. The undertaker will not be granting a DML in the event it makes use of this provision and hence this question does not arise. Furthermore, the undertaker has no scope to determine which conditions pass with the temporary conferral of benefit of the deemed marine licence provision in question. As explained above, **Articles 46(16)** and **(17)**, in the usual manner, provide that all applicable restrictions, liabilities and obligations pass to the person gaining the temporary benefit of the DCO provisions. The

conditions of the deemed marine licence have been drafted so that it is clear what conditions apply to which works, so there is no scope for ambiguity.

The MMO's concern that this power to temporarily grant the benefit of a provision of the deemed marine licence to another person temporarily 'confuses and usurps' the statutory function of the MMO is entirely based on its misunderstanding as to the nature and effect of the provision in **Article 46(12)(b)**. Once that misunderstanding is corrected, the concern falls away.

There is no need to add novel drafting, as the MMO proposes at Paragraph 22 of its Deadline 4 representations, that the benefit reverts to the transferor when the period of temporary benefit to another person ends. The standard drafting in **Articles 46(16)** and **46(18)(b)** is clear that 'undertaker' includes the person with the temporary benefit "*to the extent that the person has the benefit*", i.e. only they have the benefit for the relevant temporary period and, once that period is over, they no longer have the benefit. At that point 'undertaker' no longer includes them and has the original meaning given in **Article 2 (Interpretation)** of the DCO alone.

The addition of a new **Paragraph (13)** to **Article 46** as proposed above means that changes are needed to the first row only of the table provided further to DCO 2.8 of WQ2 to assist the ExA in determining what amends to make to the provision depending on the view it takes on the matter. An updated table is provided below:

Article/Paragraph No.	Applicant's Approach	MMO's Approach
Article 46 (Benefit of the Order)	Retention of Paragraphs 12 – 15 as currently presented in square brackets in the current draft DCO submitted at Deadline 5.	Deletion of Paragraphs 12 – 15 as currently presented in square brackets in the current draft DCO submitted at Deadline 5.
	Deletion of Paragraph 16 as currently presented in square brackets in the current draft DCO submitted at Deadline 5.	Retention of Paragraph 16 as currently presented in square brackets in the current draft DCO submitted at Deadline 5.
Article 63 (Procedure regarding certain approvals, etc.)	Deletion of sub-paragraph (b) of Paragraph 5. Moving "or" to the end of sub-paragraph (a) of Paragraph 5, after its semi-colon.	Retention of sub-paragraph (b) of Paragraph 5.
Schedule 3, Part 3 (Procedure for the discharge of certain conditions)	Deletion of Paragraphs 24 – 27 as currently presented in square brackets in the current draft DCO submitted at Deadline 4.	Retention of Paragraphs 24 – 27 as currently presented in square brackets in the current draft DCO submitted at Deadline 4.

	Retention of Paragraph 28 as currently presented in square brackets in the current draft DCO submitted at Deadline 4.	Deletion of Paragraph 28 as currently presented in square brackets in the current draft DCO submitted at Deadline 4.
Schedule 17 (Procedure regarding certain approvals, etc.)	Retention of the text shown in square brackets within sub-paragraph (1) of Paragraph 3 in the current draft DCO submitted at Deadline 4.	Deletion of the text shown in square brackets in the current draft DCO within sub-paragraph (1) of Paragraph 3.
General	Deletion of all footnotes in square brackets beginning [Note to the Examining Authority…].	

National Highways

REP4-053

Response

REP4-053 sets out National Highways' latest review of the Transport documentation. It confirms that National Highways has no objection to the development proposals.

Whilst National Highways notes it does not affect the conclusions of its review, it also requests clarification on the staff numbers. The Applicant can confirm that the correct staff figures are 120 workers in total with 53 workers on a normal daytime 'nine to five' working pattern and 67 on separate 12-hour shifts. The Applicant has reviewed the documentation submitted and notes that there was an error in the **Outline Operational Travel Plan** issued at Deadline 1 **[REP1-067]**. This has been corrected and the report was reissued at Deadline 4 **[REP4-029]** and the above is now consistently applied thus:

ES Chapter 11 [APP-053] Paragraph 11.8.35
Report on traffic matters related to IGET for National Highways [REP3-075] (response to National Highways' technical queries) **Paragraph 1.19.2**
Outline Operational Travel Plan [REP4-029] Paragraph 5.1.3

Natural England

REP4-054

Response

The Applicant is pleased to report continued positive engagement with Natural England, including a meeting held on 4 June 2024. As noted by Natural England in Part I of their Deadline 4 response **[REP4-054]**, almost all issues raised within their Relevant Representation **[RR-019]** have now been resolved or are considered unlikely to make a material difference to the outcome of the decision-making process.

Only two issues remained outstanding in Natural England's Deadline 4 response **[REP4-054]** which related to the in-combination assessment in the **Shadow Habitats Regulations Assessment ("HRA") [REP4-014]** on habitat loss (NE36) and underwater noise disturbance and barrier effects to grey seal (NE38). The Applicant discussed these issues with Natural England in a meeting on 4 June 2024 and has undertaken to update the **Shadow HRA** to address Natural England's comments in **Section 4.15** of the **Shadow HRA**, specifically **Table 36** and **Table 38**.

The updated assessments were shared with Natural England prior to Issue Specific Hearing ("ISH") 8. With respect to the in-combination assessment of habitat loss (NE36), Natural England have confirmed that they "*agree with the assessment and conclusion of no adverse effect on integrity of the Humber Estuary SAC/Ramsar from habitat loss in-combination. We therefore consider that this issue can be resolved, subject to agreed updates to the shadow HRA.*"

With respect to NE38, Natural England confirmed that they were awaiting marine mammal specialist advice on the draft updated assessment in the **Shadow HRA**. This further advice has now been provided and Natural England concur that, based on the information provided, cumulative underwater noise disturbance and barrier effects to seal will not have an adverse effect on the integrity of any European site, alone or in-combination. This updated position is provided in the Statement of Common Ground ("SoCG") being submitted at Deadline 5.

The Applicant also notes that Natural England remain of the view that there is no fundamental reason of principle why the Project should not be permitted. The Applicant now considers that sufficient evidence has now been provided to Natural England to resolve all of their concerns.

The Applicant has submitted an updated **Shadow HRA [TR030008/APP/7.6 (5)]** and Statement of Common Ground **[TR030008/EXAM/9.17 (3)]** at Deadline 5 to reflect the above position.

Part III of Natural England's Deadline 4 response provides comments on the **Development Consent Order ("DCO")**, Deemed Marine Licence ("DML") and associated documents. The Applicant can confirm that the **Outline Construction Environmental Management Plan ("CEMP") [AS-043]** has been updated at each deadline to reflect ongoing discussions with Natural England on proposed mitigation and incorporates the mitigation set out in the **Shadow HRA**. The Applicant also wishes to confirm that there is no contradiction. **Paragraph 4(3)** of the DML captures that ABP is already authorised to carry out maintenance dredging within its statutory harbour authority area without the need for a marine licence, further to exemptions under the Marine and Coastal Access Act 2009 arising from the existing statutory powers of ABP**. Article 45** mirrors precedent DCOs, including Article 20 of the Harbour Model Provisions and Article 42 of the Port of Tilbury (Expansion) Order 2019, which reinforce and align with those existing statutory powers to carry out maintenance dredging within what will be the extended statutory harbour authority area once the authorised project is constructed. As stated at **Article 45(3)**, and noted at **Paragraph 4(3)** of the DML as well, the disposal of any dredged arisings (i.e. not the maintenance dredging itself) must be in accordance with a marine licence (and ABP already has existing marine licence L/2014/00429 in relation to the disposal of such dredged arisings). In Table 3, Natural England suggest that **Requirement 16** of the DML on piling and marine construction works should be amended to include the maximum hammer energy that will be used to pile. Natural England consider this a key impact parameter and should be restricted to the maximum scope assessed in the **Environmental Statement ("ES")** to ensure the impacts remain within those assessed and approved through consent. However, the **ES**, specifically **Appendix 9.B: Underwater Noise Assessment [APP-187]**, uses published sound pressure measurements (SEL, peak SPL and RMS) based on the size (i.e. diameter) of the pile to assess the effects of underwater noise from marine piling. Therefore, whilst hammer energy, as well as surface area of the pile, is taken into account, it is not a key impact parameter used in the underwater noise assessment. Both Natural England and the Marine Management Organisation ("MMO") agree with the methodology adopted for the underwater noise assessment and also agree with the proposed mitigation measures and conclusions of the **ES** and **Shadow HRA**, as noted in the respective SoCGs **[REP3-052** and **REP3-050]**. Therefore, it is not considered appropriate or necessary to include a maximum hammer energy in the requirement in the DML. It should be noted, however, that the size and number of piles that have been used as the basis for the assessment in the marine chapters of the **ES** are set out in **Section 1.7: Marine Parameters** of the **Outline CEMP [AS-043]**. Pursuant to condition 15 of the DML all licensed activities must be carried out in accordance with the construction environmental management plan approved under the DML which itself must be in accordance with the **Outline CEMP** which will be a certified document in the **draft DCO**.