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(By email only)

24 June 2021

Planning Inspectorate Reference: EN010012
Our Identification Number: 20025459

Dear Sir or Madam,

Planning Act 2008 – Application by NNB Generation Company (SZC) Limited for an Order Granting Development Consent for The Sizewell C Project

Deadline 3 Submission

On 24 June 2020, the Marine Management Organisation (the “MMO”) received notice under section 55 of the Planning Act 2008 (the “PA 2008”) that the Planning Inspectorate (“PINS”) had accepted an application made by NNB Generation Company (SZC) Limited (the “Applicant”), for determination of a Development Consent Order for the construction, maintenance and operation of the proposed Sizewell C Nuclear Power Station (the “DCO Application”).

Since then, the Applicant submitted a request to make fifteen changes to the original DCO Application, and these changes were accepted by the Examining Authority (“ExA”) on 21 April 2021. The MMO note that a further request for additional changes was submitted by the Applicant at Deadline 2 which we are currently being consulted on.

The Applicant seeks authorisation for the construction, operation, and maintenance (“O&M”) of the DCO Application, comprising of two nuclear reactor units, together with associated onshore and offshore infrastructure and associated development (the “Project”). The marine elements of the Project include a cooling water system comprised of intake and outfall tunnels, a combined drainage outfall in the North Sea, a fish return system, two beach landing facilities, and sections of the sea defences that are, or will become, marine over the life of the project. These marine elements fall within a Deemed Marine Licence (“DMLs”) with is under Schedule 20 of the DCO.


This document comprises the MMO's comments submitted in response to Deadline 3. Although the MMO have endeavoured to review the information in line with the Deadline 3 date, we note that there are some areas that we have been unable to thoroughly review in this time, and as such we will be commenting on these at a later deadline. We have highlighted where this is the case within this submission.

The MMO submits/ comments on the following:

- 1. Comments on Written Representations**
- 2. Comments on Statement of Common Ground**
- 3. Comments on responses to ExA's Written Questions (ExQ1)**
- 4. Comments on Applicant's revised draft DCO (Revision 4)**

This written response is submitted without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This representation is also submitted without prejudice to any decision the MMO may make on any associated application for consent, permission, approval or any other type of authorisation submitted to the MMO either for the works in the marine area or for any other authorisation relevant to the proposed development.

Yours faithfully,



Ellen Mackenzie
Marine Licensing Case Officer

■ 
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1. MMO's Comments on Written Representations

The MMO has reviewed a number of Written Representations submitted at Deadline 2, and any comments on these have been set out below.

1.1 Historic England Written Representation - [REP2-138]

- 1.1.1 The MMO defers all issues related to heritage assets and archaeology to Historic England.
- 1.1.2 The MMO notes Historic England have commented on Volume 2, Chapter 23 – Marine Historic Environment [APP-334] which was submitted to PINS prior to the DCO changes which were accepted in April 2021. This document only discusses the impacts on the marine environment from one Beach Landing Facility ("BLF"), which is of reduced scale to that currently proposed. The MMO notes Historic England's comments in section 4.1 and 4.2 of their Written Representation that "a Beach Landing Facility" will be constructed and "overall the scale of the marine operation as set out in this application are reduced from that originally proposed". The MMO recommends that this Environmental Statement Chapter is updated so that it encapsulates the full project now proposed, and that Historic England is sent the updated version so that they are able to consider the impacts of the revised project. The temporary BLF which is now proposed will be constructed over a much larger area than the original permanent BLF, and so Historic England's advice on heritage assets and archaeology in this new area should be considered.
- 1.1.3 The MMO supports Historic England's comments in section 4.16 and 4.17 regarding Appendix 23A [APP-335] containing potentially out of date data, as the document was last updated in 2014. The MMO supports Historic England's request that this document should be updated prior to any works commencing to ensure that the offshore Written Scheme of Investigation that is produced is up to date.

1.2 Natural England Written Representation – [REP2-153]

- 1.2.1 The MMO defers all matters relating to the Habitats Regulations Assessment ("HRA") and Sites of Special Scientific Interest ("SSSI") to Natural England.
- 1.2.2 The MMO notes Natural England's advice regarding the impacts of noise, light and visual disturbance on marine birds and mammals. Specifically, the MMO notes Natural England's advice that the disturbance and displacement of red-throated divers due to vessel traffic has not been properly assessed, and that mitigation to reduce this impact may be required. The MMO supports that this further information should be provided, and the MMO will liaise with the Applicant and Natural England to secure any appropriate mitigation within the DML.
- 1.2.3 The MMO also notes that Natural England are satisfied that noise impacts on marine mammals can be successfully mitigated by the 500m mitigation zone,

which was outlined in the draft Marine Mammal Mitigation Protocol [APP-331]. However, Natural England advises that they are not able to reach any conclusion on adverse impacts to the Southern North Sea Special Area of Conservation (“SAC”) until a Southern North Sea SAC Site Integrity Plan (“SIP”) is provided. The MMO agrees that an “In-principle SIP” should be submitted to the examination which outlines the mitigation measures that will be implemented by the Applicant to prevent adverse effects on the Southern North Sea SAC from impact piling. A final SIP which adheres to the “in-principle” version should then be submitted to the MMO for agreement post consent if granted. This enables the consideration of advances in mitigation methods and technology between consent and when the review of the SIP is undertaken.

- 1.2.4 The MMO also notes Natural England’s comments that further information is required to assess the impacts on seabirds due to water quality and chemical discharges. The MMO supports that this information should be provided.

1.3 Environment Agency Written Representation - [REP2-135]

- 1.3.1 The MMO notes the Environment Agency’s concerns relating to the impingement estimates for fish and other marine biota stated in the Applicant’s DCO application, which are summarised in paragraphs 8.7-8.10 of the Environment Agency’s Written Representation. The MMO notes that we have consulted our own scientific advisors on this issue and that whilst overall we have advised that we do not consider that these issues materially affect the conclusions of the assessment in the application, we agree with the Environment Agency that there are remaining uncertainties relating to the fish impact assessment, and in some areas, a more conservative approach could have been adopted.
- 1.3.2 The MMO agrees that further justification is needed on the efficacy of the Low Velocity Side Entry (“LVSE”) intakes and to justify the absence of an Acoustic Fish Deterrent (“AFD”) system.

1.4 East Suffolk Council Deadline 1 Submission - [REP1-045]

- 1.4.1 The MMO notes East Suffolk Council’s comments in section 11.17 that the project must comply with the East Marine Plans. The MMO supports this comment and the MMO asks that the Applicant produces a document which demonstrates that a complete assessment of all Marine Plan Policies applicable in the area of the works has been undertaken. The relevant marine plan policies can be identified using the Explore Marine Plans tool and policy information on the following website: <https://www.gov.uk/guidance/explore-marine-plans>.

2. MMO’s Comments on Statement of Common Ground

The MMO has reviewed a number of the Statements of Common Ground that were submitted at Deadline 2 and have set out any comments we have on these below.

2.1 Natural England Statement of Common Ground – [REP2-071]

- 2.1.1 The MMO notes Natural England’s advice that some of the built elements of the proposals present a collision risk to mobile species such as birds and marine mammals, with specific elements such as marine vessel activity, capital dredging and piling presenting particular risks. These activities could also cause displacement to mobile species. There are risks from collision and displacement throughout the construction, operation, and decommissioning of the project. Natural England have advised that this still needs to be assessed in detail within the HRA to properly assess such risks and inform any necessary mitigation measures, and that collision avoidance measures during construction and operation may be required. The MMO supports this and advises that the appropriate mitigation measures to minimise collision risk from the above activities in the marine licensing area should be agreed with Natural England and secured in the DML via conditions. The MMO will liaise with the Applicant and Natural England to secure this.
- 2.1.2 The MMO also notes Natural England’s advice regarding the impacts of noise, light and visual disturbance on marine birds and mammals. In particular, that the noise modelling presented by the Applicant has been limited, and further information regarding construction dredging, shipping, piling and SCDF nourishment works should be provided to evidence and assess the impacts on all sensitive features.
- 2.1.3 Furthermore, MMO notes that the disturbance and displacement of red-throated divers due to vessel traffic has not been properly assessed. The MMO supports that further information should be provided to thoroughly assess this and if any mitigation is required within the DML then the MMO will liaise with the Applicant and Natural England to secure this.

2.2 Environment Agency Statement of Common Ground – [REP2-068]

- 2.2.1 The MMO notes in the Environment Agency’s Statement of Common Ground that ongoing engagement between the Applicant and the Environment Agency is required to agree that the appropriate mechanisms are secured in the DCO and DML to control impacts on groundwater and surface water, coastal geomorphology and hydrodynamics, marine water quality, and marine ecology. The MMO supports this and asks to be involved in discussions with the Applicant and the Environment Agency to seek agreement that the appropriate mechanisms to control these impacts are secured within the DML conditions where appropriate.
- 2.2.2 In particular, the Environment Agency consider amendments are required to DML Condition 50 in relation to the “fish monitoring”. The Environment Agency seeks further information from the Applicant on their ability to achieve this monitoring, and to outline what would be done if the monitoring did show “adverse effects”. The MMO supports this request for further information and

advises that the wording of DML Condition 50 should be agreed with the Environment Agency and MMO.

- 2.2.3 The MMO also notes that at the time of the Deadline 2 submission, the Environment Agency could not agree the appropriate mitigation measures relating to the Hard Coastal Defence Feature (“HCDF”) and SCDF and the impacts of the BLFs and coastal defence features on coastal geomorphology. The Environment Agency stated that this cannot be done until they have received the sea defence modelling and assessment work. The MMO supports this and notes that the appropriate monitoring and mitigation for impacts on coastal geomorphology must be secured via the DCO/DML and the Coastal Processes Monitoring and Mitigation Plan (“CPMMP”). There are ongoing discussions required to agree the appropriate monitoring and mitigation for impacts to coastal geomorphology and to secure this in the DCO/DML.

3. Comments on responses to ExA’s Written Questions (ExQ1)

The MMO notes that we had to defer a number of the questions directed to the MMO within the ExA’s Written Questions (ExQ1), the MMO continues to investigate these and will provide responses at a later deadline.

The MMO has reviewed the responses to the ExA’s Written Questions (ExQ1) provided by Trinity House and the Maritime and Coastguard Agency (“MCA”), and any comments we have on these have been set out below. The MMO advises that we are still reviewing the responses provided by other stakeholders and will provide any comments we have at a future deadline where appropriate.

3.1 Trinity House response to ExQ1 - [REP2-169]

- 3.1.1 The MMO note that Trinity House (TH) is generally content with Part 6 of the draft DCO, but have highlighted errors in the drafting of Article 52.
- 3.1.2 The MMO observe that TH raise concerns regarding clarity of the powers conferred upon the Applicant by Part 6. The MMO supports this request for clarity, and for the inclusion of revised wording.
- 3.1.3 With regards to Article 61, the MMO note TH’s concerns that pre-commencement works could take place prior to a scheme to secure safety of navigation being in place. The MMO welcome TH’s comments on this point and support the establishment of such a scheme prior to works commencing. The MMO support the suggestion made by TH that pre-commencement works which may interfere with navigation are covered under Article 61. Should any further conditions be required within the DML, the MMO can liaise with the Applicant and TH to develop these.
- 3.1.4 The MMO welcome the suggested wording within Article 82 to clarify that the DML is not subject to arbitration.

3.2 Maritime and Coastguard Agency (“MCA”) response to ExQ1 - [REP2-145]

- 3.2.1 The MMO note that the MCA have no objections or concerns regarding the establishment of a Statutory Harbour Authority (SHA) or the application of the Harbours, Docks and Piers Clauses Act 1847 within the DCO.
- 3.2.2 The MMO note the MCA have requested two points of clarification within their response to Written Questions. The MMO support this request.

4. Comments on Applicant’s revised draft Development Consent Order (“DCO”), Revision 4 - [REP2-013]

The MMO recognises that a number of updates have been made to the draft DCO and DML to address the previous comments that we have made [RR-0744 and REP2-140]. The MMO thanks the Applicant for these changes as several of our previous comments have now been resolved. We will note below where changes have been made to resolve some of our more significant comments. There are still some remaining issues for the MMO which we will list below and which we will continue to discuss with the Applicant as part of our Statement of Common Ground. These comments are submitted without prejudice to any future representation the MMO may make on the DCO in future. We note that we may have further comments on this version following a longer period of time to review and will submit these where appropriate at future deadlines.

4.1 Development Consent Order (“DCO”) - [REP2-013]

Arbitration

- 4.1.1 The MMO’s concerns about the arbitration process outlined in Part 7, Article 82 have been resolved as the DCO now outlines that this process will no longer apply to the MMO.

Appeals

- 4.1.2 The MMO has major concerns about the “Procedure for approvals, consents and appeals” contained within Schedule 20A. This proposes a new enhanced Appeals procedure for the Applicant should the MMO refuse an application for approval under a condition, or fail to determine the application for approval by certain “determination dates” which have been inserted into the DML in Schedule 20. This is not available for other marine licence holders. The MMO strongly requests that the appeals procedure for the MMO, and the “determination dates”, are removed from both the DCO and DML.
- 4.1.3 Appeals are already available to the Applicant in the form of an escalated internal procedure and judicial review (“JR”), and therefore, including any additional appeal mechanism for the MMO within the DCO and DML is unnecessary. The Marine Licensing (Licence Application Appeals) Regulations 2011 apply a statutory appeal process to the decisions that the MMO makes

regarding whether to grant or refuse a licence or conditions which are to be applied to the licence. However, they do not include an appeal process to any decisions the MMO is required to give in response to an application to discharge any conditions of a marine licence issued directly by us. Therefore, if the DCO were to be granted with the proposed appeal process included, this would not be consistent with the existing statutory processes. This amendment would be introducing and making available to this specific Applicant, a new and enhanced appeal process which is not available to other marine licence holders, creating an unlevel playing field across the regulated community. The MMO has explained within our Relevant Representation [RR-0744] that these proposals go against the statutory functions laid out by parliament. The MMO's previous comments within RR-0744 on the appeals route remain.

4.1.4 In addition to this, the MMO emphasises that we are an open and transparent organisation that actively engages, and maintains excellent working relationships with, industry and those it regulates. The MMO discharges its statutory responsibilities in a manner which is both timely and robust in order to fulfil the public functions vested in it by Parliament. The scale and complexity of Nationally Significant Infrastructure Projects creates no exception in this regard and indeed it follows that where decisions are required to be made, or approvals given, in relation to these developments of significant public interest only those bodies appointed by Parliament should carry the weight of that responsibility. Since its inception the MMO has undertaken licensing functions on over 130 DCOs, comprising some of the largest and most complex operations globally. The MMO is not aware of an occasion whereby any dispute which has arisen in relation to the discharge of a condition under a DML has failed to be resolved satisfactorily between the MMO and the applicant, without any recourse to an "appeal" mechanism.

4.1.5 The MMO further draws attention to the position on Norfolk Vanguard Offshore Wind Farm DCO. The ExA recommendation on Schedules 9 to 12, Part 5 – procedure for appeals concluding in paragraph 9.4.42 is outlined as follows:

"There is no substantive evidence of any potential delays to support an adaptation to existing procedures to address such perceived deficiencies. To do so would place this particular Applicant in a different position to other licence holders."

4.1.6 Similarly, the Hornsea Three Offshore Wind Farm ExA Recommendation report states under the 'Alternative dispute resolution methods in relation to decisions of the MMO under conditions of the DMLs' section, in paragraphs 20.5.27 – 20.5.29:

"We agree with the MMO on this point. The process set out in the Marine Licensing (Licence Application Appeals) Regulations 2011 does not cover appeals against decisions relating to conditions. Whilst it would be possible to amend those regulations under PA2008, the result would be to create a DML which would be different to other marine licences granted by the MMO. We recommend that the Applicant's alternative drafting in Articles 38(4) and

38(5) is not included in the DCO. (...) We have commented above that the scale and complexity of the matters to be approved under the DMLs is a strong indicator that those matters should be determined by the appropriate statutory body (the MMO). In our view an approach whereby matters of this magnitude would be deemed to be approved as a result of a time period being exceeded would be wholly inappropriate. Notwithstanding the exclusion of European sites, this approach would pose unacceptable risks to the marine environment and navigational safety. We recommend that the Applicant's alternative drafting is not included in the DCO."

- 4.1.7 There is no compelling evidence as to why the Applicant in the case of Sizewell C should be an exception to the well-established rules and treated differently to any other Marine Licence holder.

Unexploded Ordnances ("UXO")

- 4.1.8 The MMO's concerns about the inclusion of UXO clearance works within the DCO and DML have been resolved. The UXO works have now been removed from the DCO and DML and will be consented via a separate Marine Licence should they be required.

Interpretations

- 4.1.9 In relation to the "Interpretations" in Part 1, Article 2, the MMO advises that the Applicant provide a definition for both "onshore" and "offshore" if these terms are going to be used in the DCO and DML. Clarification is required on whether offshore means "beyond 12 nautical miles " or just "not on land". Alternatively, instead of using the term "offshore", the term "marine works" could be used instead. This may be more appropriate as the interpretation of "terrestrial works" in the DCO is "all works located above MHWS described in Schedule 1. Works below MHWS are marine works." The MMO advise that the DCO incorporates all the definitions within its "Interpretation" section (and that the DML includes all those relevant to the DML within it's own "Interpretation" section). We advise that both "interpretation" sections should mirror each other by having the same definitions.

Vertical Deviation

- 4.1.10 In relation to Part 2 Article 4 (1)(a), the MMO notes that "the undertaker may deviate vertically to any extent found necessary or convenient". This allows marine structures to deviate vertically to any extent found necessary or convenient. The MMO outline that there should be maximum limits on horizontal and vertical deviations in line with what has been assessed in the Environmental Statement ("ES").

Authorised Development

- 4.1.11 In relation to Schedule 1 “Authorised Development”, the final DCO/DML authorised development should be cross referenceable with the project description and final Environmental Impact Assessment (“EIA”). The DCO/DML authorised development should be clearly linked to the “Worst Case Scenario” as outlined within the EIA and it should be clear that the works will be built within the scope of the ES. The “Worst Case Scenario” dimensions for all project elements are not always stated on the DCO/DML.
- 4.1.12 The MMO welcomes that rock protection (anti-scour protection) has now been included in Schedule 1, Part 2 (f), however, advises that it would be beneficial to state where the rock protection will be placed, as it is currently not clear this will even be in the marine area. The MMO advises that it is stated around which structures the rock protection will be placed. For further comments please see section 4.3.16 below.
- 4.1.13 The MMO advises that there are further activities that will take place as part of the authorised development that are not clearly listed here, or not included in at all. For example Schedule 1, Part 2 (g) does state dredging, however further detail should be included to clarify that the development will involve “the removal of material from the seabed due to dredging for the construction and maintenance of Works no...”. The volume of material to be removed annually should also be listed. Additionally, the disposal of this dredged material in the marine area, and the disposal of drill arisings is not listed at all here and should be, including the volumes that will be disposed.

Explanatory Note

- 4.1.14 The MMO advises that the Explanatory Note should refer to where maps of the project can be accessed, both in hard copy and in electronic form.

4.2 Harbour Powers within DCO- [REP2-013]

- 4.2.1 The MMO defers our comments on this section of the DCO to a later deadline to allow for sufficient time to thoroughly review and advise robustly.

4.3 Deemed Marine Licence (“DML”) - [REP2-013]

Timeframes for submitting documents

- 4.3.1 The MMO welcomes that in revision 4 of the DML [REP2-013] the timeframes for the submission of documents as detailed in the DML conditions have been updated to a 6-month lead period prior to the commencement of activities. The MMO previously advised that the timeframes were too short to allow MMO sufficient time to properly scrutinise those documents, which could have caused delays to the project timeline, so this change is supported by the MMO.
- 4.3.2 There is only one condition remaining for which the MMO advise that the timeframe for submission to MMO is updated. Condition 20(3) states that the Fisheries Liaison and Coexistence Plan will be submitted to MMO 3 months

prior to commencement. The MMO advises that this is updated to at least 4 months prior to commencement to allow sufficient time for approval. This plan is not likely to take as long as the other plans which is why MMO suggests 4 months here instead of 6. Once this change is made, the MMO will have no further issues with the length of timeframes inserted for the submission of documents.

- 4.3.3 However, in relation to the timescales in the DML conditions, the MMO still strongly disagrees with the inclusion of “determination dates”, after which the Applicant proposes that they may submit an appeal for non-determination. See comments 4.1.2 - 4.1.7 above for details as to why the MMO does not agree with this procedure. To summarise, if the MMO delay unduly there are already existing routes to challenge this via the MMO’s internal complaints system or via judicial review, and MMO do not set determination timescales in condition sign offs within standalone Marine Licences and DMLs should be as consistent as possible with standalone licences.

Coastal Defence Features

- 4.3.4 The MMO supports that the HCDF has been removed from the DML, as it will be located above Mean High Water Springs (“MHWS”) which is outside of the MMO’s jurisdiction. However, the MMO notes that a portion of the footprint of the SCDF is likely to be below MHWS. There are ongoing discussions with East Suffolk Council, the MMO and the Applicant to determine how the SCDF should be placed in the DCO and DML. We are also in discussions regarding the best approach for the CPMMP which contains monitoring and mitigation relevant to both MMO and East Suffolk Council’s jurisdictions. See MMO’s comments on this below in paragraph 4.3.38 and 4.3.39.

Maximum Parameters

- 4.3.5 The MMO welcomes that the maximum parameters of the BLFs and grillage have been included in revision 4 of the DML. However, the maximum design parameters for all other marine structures should also be stated in the DML, in line with what was assessed within the ES. Furthermore, the maximum parameters for scour protection, and the maximum dredging and disposal volumes (per year) must be set out in the DML rather than applied for at a later date.
- 4.3.6 The MMO welcomes that the term “approximately” has been removed from Part 2, Article 4 (2)(a) and (b), and a maximum pile diameter has been included instead. However, the MMO notes that the term “approximately” is still used in other cases in Part 2, Article (4)(2)(d), (e), (f), (g), (h), (i), (j), (k), and (l). As previously requested, the MMO advises that the term “approximately” is not accurate enough to be enforceable, and instead maximum values should be stated on the DML. Although the detailed design can be approved post consent, the maximum, worst case scenario parameters assessed within the ES must be secured within the DML.

Licensed Activities

- 4.3.7 The MMO notes that the description of “licenced activities” in Part 2, 4(1) is very wide. These activities should at least be limited to the extent of the authorised development as was assessed in the ES/ HRA, and it should be clearly stated within this description.
- 4.3.8 The MMO notes that Part 2, 5 has been updated to clarify that licensable marine activities in relation to Part 2, 5(a)-(f) can be undertaken “to the extent assessed in the environmental information”. MMO advises that the wording of this condition could be improved and we will discuss this further with the Applicant.
- 4.3.9 The MMO notes that normally the DCO in Schedule 1 would describe the works packages in detail and then the DML would repeat what those descriptions are in Part 2, 4(2) for the marine licensable works. However, the descriptions in Schedule 1 are quite vague. The MMO need to be confident that the descriptions in the DML, in this expanded format, do not go beyond what is to be authorised under the main consent order. The MMO requests that the Applicant sets this out clearly so that we can be clear that the descriptions within the DML are in line with the works packages authorised by the main order.
- 4.3.10 In relation to Part 2, 4(2)(b)(v) which details the licensable activities involved in the construction of the temporary BLF, the MMO welcomes that the inclusion of “additional supporting works” has been removed.
- 4.3.11 The MMO welcomes that sampling for the analysis of the dredged material to be disposed of has been included within the “licenced activities” section (Part 2). The MMO advises that if any further sampling is required for environmental monitoring purposes (samples of more than 1 cubic meters) then a separate licence may be required if this is not included in the DML.
- 4.3.12 Part 3, 47 (2) mentions the disposal of tunnel boring equipment. The MMO notes that an update in the wording of this condition has been included, however the MMO still requests clarity from the Applicant on what equipment is being referred to here, and why it should be disposed of in the marine area and not on land at a proper disposal facility. All disposal activity must be assessed against the Waste Hierarchy, and disposal at sea is only suitable in limited circumstances. Further, this condition states that details will be submitted to the MMO, however no time frame for submission of these details prior to commencement has been included. MMO advises that this should be submitted to MMO at least 6 months prior to commencement and this should be stated in the condition as elsewhere throughout the DML.

Interpretations

- 4.3.13 The MMO requests that the Applicant clarifies whether the definition of “commence” in Part 1, Article 1 (1), “Interpretation” will exclude any marine works from this definition or not. The MMO seeks clarity on this for the DML

works as the definition of “commence” in the DCO states that the following will be excluded:

- (a) *site preparation and clearance works;*
- (b) *pre-construction archaeological works;*
- (c) *environmental surveys and monitoring;*

4.3.14 The MMO does not agree with the definition of “maintain” on the basis that any maintenance should be limited by what was assessed in the ES/HRA. The definition should state that maintenance can only be undertaken to the extent identified and assessed in the ES.

4.3.15 The MMO notes that a definition of “marine works” has been included in the DML “Interpretations”. The MMO supports this, however we question why only three of the works included on the DML have been explicitly listed: “Work Nos. 1A(m) 1A(bb), 1A(n)”. The wording of this definition could be improved and the MMO will discuss this with the Applicant.

Scour Protection

4.3.16 The MMO notes that “anti-scour” protection will be placed around the Cooling Water Infrastructure, Combined Drainage Outfall, and Fish Return and Recovery System. Details of the need, type, sources, quantity, distribution and installation methods for any rock/scour protection should be provided to the MMO and conditioned on the DML. These details could be provided in a scour protection plan post consent, however, the worst-case maximum scenario volume of scour protection to be used should be stated on the DML.

Noise

4.3.17 The MMO notes that impact piling may be required for the construction of the BLFs. The MMO notes that the Code of Construction Practice [REP2-056] states that no piling for the construction of the two BLFs will occur between 01 May and 31 August in any year to reduce impacts on breeding birds. The MMO advises that this should be included as a condition on the DML.

4.3.18 The MMO welcomes that Condition 40(2)(b) has been updated to state that a Marine Mammal Mitigation Protocol (“MMMP”) will be submitted to the MMO for approval. However, the condition does not state that the plan “will follow current best practice as advised by the relevant statutory nature conservation bodies”. This should be stated in the DML condition. Furthermore, the condition should state that the MMMP will be in line with the draft MMMP. The draft MMMP should be agreed in examination with the relevant statutory nature conservation bodies.

4.3.19 Furthermore, as the application proposes impact piling within the Southern North Sea SAC, a SIP will need to be submitted to, and approved by the MMO before the commencement of any construction activities that could affect the integrity of the Southern North Sea SAC. The MMO welcomes that Condition 40(2)(c) has

been updated to include that a SIP should be submitted to the MMO for approval. However, there is currently not enough detail about what the SIP is for or even what designated site this plan relates to. The MMO advises that the Applicant reviews Condition 26 in the DML for the East Anglia Two Offshore Wind Farm project for drafting advice. The DML can be found in REP8-0004 in the East Anglia Two Offshore Windfarm Examination Library:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN010078/EN010078-001676-East%20Anglia%20Two%20Examination%20Library.pdf>.

- 4.3.20 Additionally, Condition 40 does not state enough detail about the Marine Noise Registry requirements for the Applicant. The MMO has advised the Applicant that further wording should be included in the DML condition here to ensure that all requirements are secured.

Condition Wording

- 4.3.21 The MMO notes that further discussions with stakeholders are required to agree that the level of detail provided in the DML conditions is adequate. The MMO will be contacting the relevant stakeholders to discuss the wording of conditions. The MMO will provide any relevant updates on this in our future responses.
- 4.3.22 The MMO notes there is some inconsistency with the wording of the conditions. For example some conditions begin “No licensed activity, or phase of activity, will be commenced until...”, whereas others are worded, for example, “The undertaker must notify the MMO in writing of any vessel being used to carry on any licensed activity listed in this licence on behalf of the undertaker. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity”. MMO advises that consistent wording is used throughout the DML conditions. MMO welcomes the amendments that have been made to replace the references to “licence holder” with “undertaker” instead.
- 4.3.23 The MMO advises that the DML conditions are separated under the sub-headings: “Pre-construction”; “Construction”; and “Post-construction”. This makes reading the DML conditions easier to follow and would make it more clear to the Applicant and the MMO at what stage conditions should be adhered to. For example, the MMO welcomes that Condition 12(2) has been added back in to the DML, however, this is a post-construction requirement for the Applicant, and it is currently listed under the “Pre-construction” heading.
- 4.3.24 The MMO notes the wording in many conditions that documents will be submitted to the MMO after consultation with certain stakeholders. For example, Part 3, Condition 45 (1) states:

“45.—(1) Work No 2B shall not commence until a Sabellaria monitoring plan has, following consultation with NE, been approved by the MMO.”

It would be hard for the MMO to enforce that Natural England, or other stakeholders, must be consulted by the Applicant prior to submission. The MMO would usually control consultation on a document with any stakeholders that we saw fit, so the DML conditions should be worded differently. The MMO would prefer the following wording:

“Work No 2B shall not commence until a Sabellaria monitoring plan has been submitted to and approved in writing by the MMO, in consultation with the relevant statutory nature conservation body”

However, the MMO notes that there is no barrier to the applicant seeking advice from a stakeholder prior to submission to help negate the risk of issues arising during the MMO consultation. This comment applies throughout the DML conditions.

- 4.3.25 The MMO welcomes that the statement that was contained within Part 3, 8 [AS-144] has been removed, as MMO previously advised that the provisions set out in the Marine and Coastal Access Act 2009 (“MACAA”) do not need to be repeated in the DML.
- 4.3.26 In relation to Part 3, 10, the MMO notes that all approvals from the MMO should be in writing. The conditions should read that "...is submitted to and approved in writing by the MMO". This applies throughout the licence conditions where approvals are required.
- 4.3.27 The MMO welcomes that Part 3, 47(1)(d) has been updated to require that the location and design of the Fish Recovery and Return system will be "in accordance with the Environment Agency reports...".

Navigational Safety

- 4.3.28 The MMO welcomes that Condition 38 “Aids to Navigation” has been included in the DML, as all navigational safety mitigation for the marine area should be secured via conditions on the DML. However, the MMO also requires that an “Aids to Navigation” management plan is submitted to the MMO at least 6 months prior to commencement of the licenced activities, to be agreed in writing by the MMO, following consultation with Trinity House. This plan should include details of how the Applicant will comply with the provisions of condition 38 for the lifetime of the authorised scheme. MMO also requires further discussions with Trinity House and the Maritime and Coastguard Agency (“MCA”) to confirm that the appropriate navigational safety requirements are all secured on the DML.
- 4.3.29 Part 2, 4(2)(g)(vi) states that permanent navigational marker buoys will be installed in relation to the Cooling Water Infrastructure. The MMO emphasises that there should be engagement with Trinity House to agree on the appropriate Aids to Navigation that should be installed here.

- 4.3.30 The MMO requests that Part 3, Condition 33 is removed because in the situation that any rock or sediment is “misplaced or lost” the standard dropped object procedure, which is detailed in Part 3, Condition 32 of the DML, should be followed.

Dredging

- 4.3.31 The MMO notes that further discussions with the Applicant are required regarding the dredging conditions in the DML (Part 3, Conditions 35-37). As stated earlier, explicit maximum volumes and depths of dredging must be stated on the DML, in line with those assessed within the ES, and the type of dredging (capital or maintenance) and disposal site should also be stated.
- 4.3.32 Additionally, pre and post dredge bathymetrical surveys are required before and after every dredging event, throughout the lifetime of the project, and this should be stated within the DML. The pre-dredging bathymetric survey should be carried out within a three-month period prior to the proposed dredging. The post-dredge survey should be carried out as soon as practical after the completion of the dredging, usually immediately or within a few hours (account will be taken of delays caused by issues such as adverse weather conditions or lack of access to the berth). These surveys should then be submitted to the MMO. The MMO will review bathymetric surveys to confirm that the dredging has been carried out in line with the licensed dredge depth, area and within acceptable volume limits. The MMO require that the bathymetric survey is provided on a chart (provided digitally) showing the licensed dredge area and dredge depth. This will allow the MMO to efficiently confirm that the licence requirements have been met. The MMO also advise that longer term monitoring of the dredged areas is undertaken via the CPMMP to monitor any impacts on coastal geomorphology.

Sabellaria Monitoring Plan

- 4.3.33 In relation to Part 3, Condition 45, the MMO welcomes that the Applicant has included “(4) demonstration of how the project design reduces the loss of reef, and surrounding area available for reef to develop into, as far as practicable” as part of the details that must be provided within the Sabellaria Monitoring Plan.
- 4.3.34 The MMO advises that the scope and frequency of the Sabellaria monitoring, and any actions that will be required based on the results, should be agreed with Natural England. The MMO will engage with Natural England and the Applicant to discuss this.
- 4.3.35 This monitoring and mitigation, and all known mitigation related to the licensable activities on the DML, must then be secured by conditions on the DML. MMO notes that there is mitigation stated in the Mitigation Route Map [REP2-058] that is not yet secured on the DML. For example, the Sabellaria Monitoring section [REP2-058] notes that two pre construction geophysical surveys will be undertaken, a post construction survey will be undertaken, and ongoing surveys every 3-5 years during the operational phase will be undertaken until satisfactory evidence has been gathered of no adverse effects on *Sabellaria spinulosa*.

Although the MMO notes that DML condition 45 states a Sabellaria monitoring plan will be submitted to the MMO, MMO advises that the frequency of monitoring surveys should be stated on the DML as well. This applies throughout the marine works where monitoring surveys will be required. Alternatively, the Applicant could produce an “in principle monitoring plan” to be agreed during examination, which outlines all of the pre-construction, construction, and post construction monitoring that will take place in relation to the licensable activities on the DML. The DML conditions could then state that any monitoring will be undertaken in accordance with the “in principle monitoring plan”. This is to ensure that the appropriate monitoring is secured in the DML. There can be a caveat in any condition that states “unless otherwise agreed in writing by the MMO in consultation with the relevant statutory nature conservation body”, to allow for appropriate changes to the monitoring frequency post consent.

Maintenance Activities Plan

- 4.3.36 The MMO advises that an “In-principle Maintenance Activities Plan” should be submitted and agreed in examination, which outlines the maintenance works that are planned to take place under the DML. The Maintenance Activities Plan (“MAP”) which is submitted to the MMO post consent will then contain the finer details of the maintenance works and should be in line with the in-principle plan. It should be written into the DML condition (Part 3, Condition 35) that the MAP will be in accordance with the in-principle plan. This applies to all monitoring and mitigation plans that are required.

Comprehensive Impingement Monitoring Programme (“CIMP”)

- 4.3.37 The MMO advises that preparation and agreement of a detailed CIMP should be a DML condition. The MMO notes the Applicant proposes this in the Marine Ecology ES Chapter [APP-317]. In addition to the monitoring stated in paragraph 22.12.29 of APP-317, the CIMP should also include monitoring of survival of fish through the Fish Return and Recovery (“FRR”) system and enable monitoring of long-term changes in impingement as a result of climate change. The MMO notes that Condition 50 does state that a monitoring plan assessing the efficacy of the intake head and the fish recovery and return system will be submitted to the MMO, however we advise that further discussions are required to ensure that this condition contains the appropriate detail. Please note our comments in 2.2.2 above.

Coastal Processes Monitoring and Mitigation Plan (“CPMMP”)

- 4.3.38 There are ongoing discussions taking place with East Suffolk Council, MMO and the Applicant to determine how the SCDF and the CPMMP should be secured in the DCO and DML.
- 4.3.39 However, the MMO would like to emphasise that we do not agree with the current wording used in Condition 17(5) which states that the DML licence

condition which requires a CPMMP to be submitted and approved by the MMO prior to the commencement of the licenced activities, will be “deemed discharged” once East Suffolk Council have approved the plan. The MMO would not defer our decision to sign off this plan as it will contain monitoring and mitigation requirements for the Offshore cooling water infrastructure; Nearshore outfalls; and Beach Landing Facilities which are within the MMO’s remit, and we would wish to analyse the proposals and approve on our own terms. The MMO and East Suffolk Council propose that the Applicant either submits the full CPMMP to be approved by both organisations prior to works commencing, or the Applicant splits the plan in relation to our individual remits and submits these separate plans for separate approval.