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MMO Reference: DCO/2023/00007
Planning Inspectorate Reference: EN010128

28 April 2025

Dear Sir or Madam,

Planning Act 2008, Cory Environmental Holdings Limited (CEHL), Proposed Cory Decarbonisation Project Order

Deadline 6 Submission

On 18 April 2024 the Marine Management Organisation (the "MMO") received notice under section 56 of the Planning Act 2008 (the "PA 2008") that the Planning Inspectorate ("PINS") had accepted an application made by Cory Environmental Holdings Limited (the "Applicant") for determination of a development consent order for the construction, maintenance and operation of the proposed Cory Decarbonisation Project (the "DCO Application") (MMO ref: DCO/2023/00007; PINS ref: EN010128).

The Applicant seeks authorisation for the construction, operation, maintenance and decommissioning of a carbon capture facility, including supporting plant and ancillary infrastructure.

This written representation 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

[Redacted Signature]

[Redacted Name]

Marine Licensing Case Officer

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Contents

| | |
|--|---|
| 1. MMO Comments on Applicant's Draft Development Consent Order ("dDCO"): 3.1 (Rev H) [REP5-005] | 3 |
| 2. MMO Comments on Applicant's Response to Interested Parties' Deadline 4 Submissions: 9.27 [REP5-032] | 4 |
| 3. Statement of Common Ground Marine Management Organisation: 8.1.7 (Rev D) [REP5-024] | 5 |
| 4. MMO Response to Examining Authority's (ExA) Rule 17 Letter | 5 |



1. MMO Comments on Applicant's Draft Development Consent Order ("dDCO"): 3.1 (Rev H) [REP5-005]

- 1.1. The MMO has outstanding comments on the dDCO and draft deemed marine licence ("dDML"), as detailed in the MMO's Deadline 5 Submission [REP5-044]. The following comments detail matters that the MMO considers are still under discussion and not agreed. These are identified as subject to further / on-going discussion in the Applicant's Examination Progress Tracker: 9.10 [REP5-025] under the topic DCO Drafting.

- 1.2. Consent to transfer the benefit of the Order (Article 10)

The MMO maintains our objection to the provisions relating to the process of transferring and/or granting the DML set out in the dDCO at Article 10(2)-(11). The MMO do not consider that the Planning Act 2008 allows the DCO to make a provision to transfer the benefit of the DML in the way that is proposed.

Section 120 of the Planning Act 2008 sets out what may be included in a DCO. S120(1) says a DCO can contain requirements connected with the development for which the DCO is granted. What is the development is set out in s31. Development is development which is or forms part of a nationally significant infrastructure project ("NSIP") project. What constitutes the NSIP is defined in s14.

S120(3) says that the Order may make provision relating to, or to matters ancillary to, the development for which consent is granted. The MMO considers this allows the Order to provide for things which are not part of the development itself. However, s120(3) is not a standalone provision. It must be read alongside s120(4). S120(4) says that the provisions that can be made under 120(3) include in particular provisions for or relating to any of the matters listed in Part 1 of Schedule 5. Where 'in particular' is used in connection with a list set out in legislation, it means the list is exhaustive. However, if it is not on the list, it could be included if it is of the same kind, class or nature as something on the list.

The list in Schedule 5 includes at 30A and 30B the ability for a DCO to contain provisions relating to the DML; 30A allows an Order to contain a provision which deems to grant a DML whilst 30B allows an Order to contain a provision which allows the Order to deem the conditions to be attached to the Order. However, the MMO do not consider it is sufficiently broad so as to include an ability in the DCO to provide a transfer provision for the DML in the way that is being proposed.

Additionally, there are practical considerations. When the MMO transfer a licence under s72(7) of the Marine and Coastal Access Act 2009, the MMO must vary it. If the transfer was affected under the Order the MMO are likely to need to vary the licence as a result, under s153 and the schedule 6 of the Planning Act 2008 only the MMO can do that. The MMO could end up with the transfer being effected under the Order, but then having to vary separately using our own powers. If the transferring of the unvaried licence impacted on the MMO's ability to enforce during this time, this could lead to the MMO having to suspend the licence whilst the variation was carried out.



1.3. Deemed marine licence (Article 42)

The MMO notes the Applicant's reasons for the inclusion of Article 42 of the Order as provided in the Applicant's Response to Interested Parties' Deadline 3 Submissions: 9.23 [REP4-033] (Table 2-5). However, the MMO maintains our objection to the inclusion of this Article because if this is included, it would apply the statutory appeals process that ordinarily applies only to MMO decisions to refuse to grant a licence, or to decisions to attach conditions to a licence we grant, to the approval of the method statement and the sediment sampling plan under conditions 10 and 11 of the DML.

This is not required because there is already a way to challenge our decision to refuse to approve it and that is via a Judicial Review. Therefore, the MMO maintains our request that Article 42 be removed.

1.4. Schedule 11 DML Part 1 General

In line with our comments regarding Article 10 of the Order, the MMO maintains our recommendation that the definition of "*the licence holder*" is updated to remove the latter part: "*the licence holder*" means *Cory Environmental Holdings Limited [...]* ~~and any transferee pursuant to article 10 (consent to transfer benefit of the Order) of the Order~~

As such, the MMO maintains our request that a provision be included within Article 10 of the Order along these lines:

"(12) Where an agreement has been made in accordance with paragraph [] or [*] references in this Order to the undertaker, except in paragraphs [*],[*],[*] and the first reference in paragraph [*] include references to the transferee or lessee."*

2. MMO Comments on Applicant's Response to Interested Parties' Deadline 4 Submissions: 9.27 [REP5-032]

2.1. The MMO has addressed each of the Applicant's responses below. Please note that the same number referencing for each comment as presented in Table 2-1 of the Applicant's Response to Interested Parties' Deadline 4 Submissions document has been referenced for consistency.

2.2. Table reference 2.1.1 Validity of Environmental Statement ("ES") Conclusions

A meeting was held on 03 April 2025 to discuss the MMO's comments on the Applicant's Sediment Sampling Technical Note: 9.26 [REP5-031]. The Applicant confirmed that all dredged sediment is to be disposed of to a land-based facility, and no dredged sediment will be disposed of to sea. The MMO welcomes this and, on this basis, are satisfied with the assessment of contaminants and have no further concerns regarding the validity of the ES conclusions.

2.3. Table reference 2.1.2 Maintenance Dredging Impacts



The MMO has reviewed the Applicant's Sediment Sampling Technical Note [REP5-031]. This concludes that re-assessment of the impacts of capital and maintenance dredging is not required. The MMO agrees with the conclusions reached and has no further concerns regarding the impacts of changes in water quality and the release of contaminants resulting from the proposed maintenance dredging.

2.4. Table reference 2.1.3 Change Request and Consultation Report [AS-048]

The MMO thanks the Applicant for the clarifications provided regarding the changes in capital and maintenance dredge volumes. The MMO is satisfied that this comment has been addressed and has no further concerns regarding the dredge volumes.

3. Statement of Common Ground Marine Management Organisation: 8.1.7 (Rev D) [REP5-024]

- 3.1. The MMO has reviewed the Statement of Common Ground Marine Management Organisation: 8.1.7 (Rev D) document. Table 3-2 contains two matters under discussion between the MMO and the Applicant, with all other matters having been resolved and detailed in Table 3-1 Matters Agreed.
- 3.2. A meeting was held on 03 April 2025 to discuss the MMO's comments on the Applicant's Sediment Sampling Technical Note [REP5-031]. The Applicant confirmed that all dredged sediment is to be disposed of to a land-based facility, and no dredged sediment will be disposed of to sea. The MMO welcomes this and, on this basis, are satisfied with the assessment of contaminants and have no further concerns. Therefore, this matter is now considered to be agreed.
- 3.3. The MMO has reviewed the Applicant's response to the dredge volumes queries within the Applicant Response to Interested Parties' Deadline 4 Submissions [REP5-032] document. The MMO is satisfied that the queries have been sufficiently addressed and has no further concerns regarding the dredge volumes, and therefore this matter is now considered to be agreed.

4. MMO Response to Examining Authority's (ExA) Rule 17 Letter

- 4.1. On the 08 April 2025, the ExA submitted a Rule 17 letter which requested further information from the MMO to be submitted into examination for Deadline 6.
- 4.2. The MMO notes that the ExA has requested clarifications regarding the Water Framework Directive ("WFD") Assessment, in respect of the potential implications of an as-yet unpublished River Basin Management Plan ("RBMP") for the 2028-34 cycle (R17Q2.4).
- 4.3. The MMO notes the Environment Agency's comment relating to the WFD compliance and the maintenance dredge activity which advises that the Applicant re-assess for any additional WFD risk at least once in every subsequent RBMP cycle to ensure that the activity has not fallen out of step with the prevailing regulation.



- 4.4. However, for marine licences granted by the MMO, the MMO are not currently requiring the submission of new assessments for any additional WFD risk. Such a condition does not pass our five tests which are set out in Paragraph 5 of the National Policy Framework (<https://www.gov.uk/guidance/use-of-planning-conditions>). Most specifically, 'The condition must be Reasonable'. It is not considered to be reasonable or proportionate and, as there are no firm dates for when the RBMP will be published, it is not enforceable as a licence condition. The MMO are required to be using the best available information at the time of assessments, which is the current RBMPs, as published. The MMO cannot condition works to be affected for any possible future changes.
- 4.5. As such, for the DCO Application the MMO does not require any provisions to be added to the DML to address this.

