



## TRINITY HOUSE

28 January 2019

The Planning Inspectorate  
Temple Quay House  
Temple Quay  
Bristol  
BS1 6PN

Your Ref: EN010007  
Registration number 20011512

### **Written Response to Examining Authority ExQ1 Wylfa Newydd Nuclear Power Station**

Dear Sir / Madam

We wish to submit our written response to the Examining Authority (Exa), in respect of the ExA's questions raised in ExQ1 in connection with the Wylfa Newydd Nuclear Power Station.

We would advise that Trinity House did not, unfortunately, respond at Deadline 4 to which we would like to convey our apologies to the ExA. We would therefore respectfully request the ExA's consideration please to accepting a Late Submission in this regard, noting the potential publication by the ExA of further written questions on 30 January 2019.

#### **Response to Examining Authority Questions (ExQ1) – 6 November 2018**

**Q4.0.44** – *Is Trinity House content with the drafting and purpose of Articles 56, 57, 58, 59 and 71?*

#### **Article 56 - Lights on Marine Works etc. during construction**

Trinity House confirms that it is content with the drafting and purpose of Article 56.

#### **Article 57 - Provision against danger to navigation**

Trinity House confirms that it is content with the drafting and purpose of Article 57.

#### **Article 58 - Permanent lights on Marine Works**

Trinity House confirms that it is content with the drafting and purpose of Article 58.

## **Article 59 - Safety of Navigation**

Trinity House considers that Article 59(1) should be redrafted as follows:-

*"59(1) No Marine Works are to be commenced until a scheme to secure safety of navigation has been submitted to and approved in writing by Welsh Ministers following appropriate consultation with Trinity House and the Maritime and Coastguard Agency".*

## **Article 71 - Saving for Trinity House**

Trinity House confirms that it is content with the drafting and purpose of Article 71.

However Trinity House would like to make a related submission to the ExA in this regard in relation to Article 78 (Arbitration Rule) as follows:-

## **Article 78 (Arbitration Rules)**

Trinity House notes that Statutory Orders conferring powers on undertakers for specific projects or developments, for example Orders under the Transport and Works Act 1992, the Harbours Act 1964 and the Planning Act 2008, typically also include a provision "saving" or protecting the statutory rights and duties of Trinity House in the context of the relevant Order. We note that Article 71 of the draft DCO is an example of such a provision and provides that *"Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House."* We confirm that we agree with the inclusion of such a saving in the draft DCO.

We further note, however, that Article 78 of the draft DCO makes provision in respect of Arbitration. It provides that any difference under any provision of the DCO, unless otherwise provided for, must be referred to and settled in arbitration in accordance with the Arbitration Rules of the Order. The Order details the procedure, including the adherence to stipulated time periods, whereby statements of claim describing the nature of the difference between the Claimant and the Respondent, including the legal and factual issues can be identified and determined in order for the appointed Arbitrator to make an award.

However, Trinity House is concerned that the exercise of its statutory functions to provide for safety of navigation, including the requiring of the marking and lighting of potential obstructions during the construction, operation, maintenance and possible decay of the works authorised by the proposed DCO, might be regarded as being subject to the Arbitration provisions in the DCO. The "saving" provision is clearly intended to preserve Trinity House's ability to exercise its statutory functions and nothing in the DCO should fetter the statutory powers of Trinity House in respect of DCOs and Deemed Marine Licences (DMLs), to give direction in terms of aids to navigation requirements and for the prevention of danger to navigation. In addition, any advisory and consultation function undertaken by Trinity House on safety of navigation matters with the MCA, and which may form part of this DCOs, should not be subject to the Arbitration provision of the DCO.

We consider therefore that it is imperative that there is clarity that the saving for Trinity House in Article 78 of the DCO, if adopted, is not subject to any other provision in the draft DCO. As any DML issued under the DCO will likely have a legal existence independent of the DCO, we contend that these should similarly remain subject to the "saving" provision under Article 71 of the draft DCO. We note in this regard that under 78(2) of Article 78 it states that the article *'must not apply to the provisions of the 1847 Act incorporated by this article 58'*. Article 58 relates to Permanent lights on Marine Works. However, this apparent disapplication of the arbitration provision would not be sufficient in terms of removing the

scope of the arbitration clause from the full scope of Trinity House's safety of navigation remit, in relation to the DCO, as highlighted above.

We would request therefore that Article 78 of the draft DCO is therefore amended to make clear that Trinity House **is not subject to the Arbitration provision**, if this is to be otherwise included.

**Q18.0.2** - *Is the Marine Works Permanent Aids to Navigation Plan APP-017 the plan that has been approved by Trinity House? If not, what is the status of the plan and what plan has been approved by Trinity House?*

Trinity House confirms that the Marine Works Permanent Aids to Navigation Plan APP-017 plan has been approved by it.

**Q18.0.25** *Section 4.3 of the Marine Works Sub CoCP [APP-416] deals with site lighting – are there any potential navigation issues that could arise for vessels from site lighting during construction of the MOLF. If there are how could these be mitigated?*

Trinity House does not envisage that potential navigation issues for vessels would arise in relation to site lighting during construction of the MOLF having regard to the mitigation measures detailed under Section 4.3 of the Marine Works Sub CoCP [APP-416] in this regard.

Please could you update your records to address all further correspondence regarding this matter to myself at [russell.dunham@thls.org](mailto:russell.dunham@thls.org) and to Mr Steve Vanstone at [navigation.directorate@thls.org](mailto:navigation.directorate@thls.org)

Yours faithfully,



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Legal & Risk Advisor

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