



TRINITY HOUSE

11 January 2021

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

Your Ref: EN010078

Identification No. 20023139

East Anglia Two Offshore Wind Farm Written Representations to Examining Authority (ExA) for Deadline 4

Dear Sir / Madam

We refer to the above application for development consent.

Accordingly, Trinity House (TH) requests to submit representations to the ExA for Deadline 4 as follows:-

Revised Draft Development Consent Order 3.1 Revision 03: 15 December 2020

Article 37 - Arbitration

TH notes that Article 37 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.

TH 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 for TH typically included in Development Consent Orders of this nature (*and which is included at Article 40 in respect of the draft DCO under consideration as part of this Examination process*) is intended to preserve TH's ability to exercise its statutory functions.

Nothing in the DCO should, in our view, fetter the statutory powers of TH in respect of DCOs and 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 TH on safety of navigation matters with the MMO pursuant to the Marine and Coastal Access Act 2009 should not be subject to the Arbitration provision of the DCO.

Accordingly, we would confirm that TH therefore welcomes the Applicant's proposed amendment to **Article 37 (2)** of the draft DCO.

This provides for:-

(2) Any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order shall not be subject to arbitration.

However, although the above referenced amendment addresses TH's concerns in part, TH considers that a further revision to the wording of Article 37 is necessary in order to make the position clear with regard to the primacy of the TH saving provision at Article 40.

TH would, therefore, respectfully submit that Article 37(1) of the draft DCO should be amended to include the following additional provision:-

Article 37: '(1) Subject to article 40 (saving provision for Trinity House).....'

TH is otherwise content with the wording of Article 37.

• **Draft Deemed Marine Licence (DML) – (DCO 3.1) 03: 15 December 2020**

Schedule 14: Part 2: Section 13

TH requests that Schedule 14 Part 2 Section 13(1) (d) (dd) is amended to omit the words 'Trinity House Class 2'. The alternative proposed text would be as follows:-

'where necessary a relocation plan for Waverider Buoy and associated buoy (WMO ID:62294) located at 52° 12' 28.8"N 001° 41' 04.8"E during cable installation, after consultation by the undertaker with CEFAS and Trinity House'

TH would respectfully highlight in this regard that it would not be correct to refer to a *Trinity House Class 2* buoy specifically in this context.

We trust that these submissions are helpful and would ask that all correspondence regarding this matter is addressed to myself at russell.dunham@trinityhouse.co.uk and to Mr Steve Vanstone at navigation@trinityhouse.co.uk

Please note where this submission also relates to the **East Anglia One North** Examination this has been submitted under separate cover by TH to the ExA for that Examination process.

Yours faithfully,

Russell Dunham

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