

---

**From:** Russell Dunham [mailto:Russell.Dunham@thls.org]

**Sent:** 28 January 2019 09:46

**To:** Hornsea Project Three

**Cc:** Navigation

**Subject:** EN010080 - Written Representation to Examining Authority's for ISH 6 – 30 January 2019 - Hornsea Three Offshore Wind Farm

Dear Sir / Madam

**EN010080**

**Registration number 20010148**

**Written Representation to Examining Authority's for ISH 6 – 30 January**

Please attached Trinity House's written submission dated 28 January 2019 to the ExA for ISH 6 in respect of the Hornsea Three Offshore Wind Farm.

A hard copy of the attached will also be sent by post.

Kind Regards

Russell

This communication, together with any files or attachments transmitted with it contains information that is confidential and may be subject to legal privilege and is intended solely for the use by the named recipient. If you are not the intended recipient you must not copy, distribute, publish or take any action in reliance on it. If you have received this communication in error, please notify the sender and securely delete it from your computer systems. Trinity House reserves the right to monitor all communications for lawful purposes. The contents of this email are protected under international copyright law. This email originated from the Corporation of Trinity House of Deptford Strond which is incorporated by Royal Charter in England and Wales. The Royal Charter number is RC 000622. The Registered office is Trinity House, Tower Hill, London, EC3N 4DH.

The Corporation of Trinity House, collect and process Personal Data for the Lawful Purpose of fulfilling our responsibilities as the appointed General Lighthouse Authority for our area of responsibility under Section 193 of the Merchant Shipping Act 1995 (as amended).

We understand that our employees, customers and other third parties are entitled to know that their personal data is processed lawfully, within their rights, not used for any purpose unintended by them, and will not accidentally fall into the hands of a third party.

Our policy covering our approach to Data Protection complies with UK law accordingly implemented, including that required by the EU General Data Protection Regulation (GDPR 2016), and can be accessed via our Privacy Notice and Legal Notice listed on our website ([www.trinityhouse.co.uk](http://www.trinityhouse.co.uk))

<https://www.trinityhouse.co.uk/legal-notices>

---

This email has been scanned by the Symantec Email Security.cloud service.  
For more information please visit <http://www.symanteccloud.com>

---



## TRINITY HOUSE

28 January 2019

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

Your Ref: EN010080  
Registration number 20010148

### **Written Representation to Examining Authority for Issue Specific Hearing 6 Draft Development Consent Order - Hornsea Three Offshore Wind Farm**

Dear Sir / Madam

We wish to submit Written Representations to the Examining Authority (Exa), on the draft Development Consent Order, in respect of the Hornsea Three Offshore Wind Farm and for consideration at the Issue Specific Hearing (ISH) 6 on 30 January 2019. We would incidentally, respectfully wish to make the ExA aware that Trinity House is unable to attend ISH6 in person.

#### **Schedule 11 (Generation Assets)**

##### **1. Article 8: Aids to Navigation**

1.1. As detailed in Trinity House (TH's) letter dated 14 December 2018 we note that in Schedule 11 **Article 8 (6)** the reference to back-up power supplies etc. for wind turbine generators appears to have been retained. Trinity House remains of the opinion that the purpose and scope of this provision appears to be unclear and would not appear to define the actual requirement - e.g. how long is 'sufficient back up power' and who will determine what is 'sufficient'? In addition, it does not appear clear as to what '*to aid navigation*' means in the context of this Article.

##### **2. Article 13: Pre-construction plans and documentation**

2.1 We note the ExA's question to the Applicant Q2.13.17 '*Should Trinity House and the Maritime and Coastguard Agency be added as consultees for Condition 13(1)?*'

We further note the Applicants response in this regard to the ExA:

*'The Applicant understands that the MMO would consult with these bodies as required anyway and so specifying them as consultees is not necessary'*

In the interests of clarity and as detailed in TH's letter dated 14 December 2018 Trinity House remains of the view, however, that it should be included, along with the MCA, in the DCO as a consultee under this Article 13. Trinity House would highlight the inclusion of a similar provision in other draft DCOs including, for example, those relating to the Hornsea One Offshore Wind Farm Schedule 8 (Article 13) and the Hornsea Two Offshore Wind Farm in Schedule 8 Generation Assets (Article 8).

We would therefore request that the wording in Schedule 11 **Article 13(1)**, is amended as follows:-

*'The licenced activities or any phases of those activities must not commence until the following (insofar as relevant to that activity or phase of activity) has been submitted to and approved in writing by the MMO following appropriate consultation with Trinity House and the MCA.'*

### **Schedule 12 (Transmission Assets)**

#### **3. Article 14: Pre-construction plans and documentation**

3.1 As detailed in TH's letter dated 14 December 2018, and as highlighted above, we would request that the wording in Schedule 12, **Article 14(1)**, is amended as follows:-

*'The licenced activities or any phases of those activities must not commence until the following (as relevant to that phase) have been submitted to and approved in writing by the MMO following appropriate consultation with Trinity House and the MCA.'*

#### **4. Article 37 and Schedule 13 (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 40 of the draft Hornsea Project Three Offshore Wind Farm Order 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 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 in accordance with the rules at Schedule 13 (Arbitration Rules) of the Order. Schedule 13 provides for a detailed 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 MMO pursuant to the Marine and Coastal Access Act 2009, and which may form part of the DCOs and DMLs, 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 40 of the DCO, if adopted, is not subject to any other provision in the draft DCO. As the 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 40 of the draft DCO.

We would request that Article 37 and Schedule 13 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.

Please address all 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,



Russell Dunham ACII  
Legal & Risk Advisor

Email: [Russell.dunham@thls.org](mailto:Russell.dunham@thls.org)