



Marine Management Organisation

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Project Team
The Planning Inspectorate

Your reference: EN010083
Our reference: DCO/2018/00017

By email only

18 March 2020

Dear Sir/Madam,

APPLICATION BY WTI/EFW HOLDINGS LTD FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE WHEELABRATOR KEMSLEY (K3) GENERATING STATION AND THE WHEELABRATOR KEMSLEY NORTH (WKN) WASTE TO ENERGY FACILITY

MMO Deadline 2 Response

This document comprises the Marine Management Organisation's ("MMO") Deadline 2 response in respect of the above Development Consent Order ("DCO") Application. This is without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This is also 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.

The MMO reserves the right to modify its present advice or opinion in view of any additional matters or information that may come to our attention.

Yours faithfully,



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Contents

1. Response to ExQ1.....	3
2. Comments on any Statement of Common Ground (SOCG)	4
SOCG between the Applicant and the Environment Agency (REP1-003).....	4
SOCG between the Applicant and Natural England (REP1-004)	4
3. Comments on Written Representations	4
Kent County Council (REP1-009).....	4
4. Comments on any additional information / submissions received by deadline 1	4
Applicants response to addition submissions (REP1-006)	4

1. Response to ExQ1

- 1.1. With regard to Q1.5.2 – the MMO confirm that there is an existing marine licence (L/2017/00482/2) to allow the construction of two outfalls by the Applicant. For further information please refer to paragraph 1.3 further below.
- 1.2. Regarding Q1.5.6 the MMO wish to highlight that it is the responsibility of the licence holder to ensure that their activities are in accordance with an existing marine licence. Activities (e.g. maintenance/scour protection) outside the scope of what was originally assessed may require further marine licences/variation of the existing licence. The MMO requests that the applicant confirms their interpretation of 'operation'. This is referenced within their draft DCO wording for 'Work No 1E' and 'Work No 7'.
- 1.3. In response to Q1.8.12 – Part 4 of the Marine and Coastal Access Act, 2009¹ (the "2009 Act") provides that a marine licence is required for specific activities carried out within the UK marine area. In summary these include: construction, dredging, deposits, removals, incineration of any substance or object, scuttling of any vessel or floating container, and the use of explosives. The MMO does not licence the operation of activities such as outfalls. Should consent be required for the discharge of water from infrastructure constructed via a marine licence, for example a discharge permit, these would be required from the relevant authority (e.g. Environment Agency). Further information regarding marine licensing can be found on the MMO's website².

For the avoidance of doubt, as noted in marine licence L/2017/00482/2 'activity 1.1' provides consent for the construction of two outfalls, located within the co-ordinates included within the schedule of the licence; one to serve the Kemsley Generating Station (K3) and one to serve the proposed Wheelabrator Kemsley North facility (WKN). The licence does not consent the operation, maintenance or decommissioning of these structures.

The MMO assumes 'Work No 1E' and 'Work No 7' within Schedule 1 (authorised development) of the draft DCO refer to those activities (K3 and WKN) consented under the existing marine licence (L/2017/00482/2). If correct, this does create a potential overlap in jurisdiction, and raises questions about whether matters arising from the works in the marine area would best be dealt with by way of requirements in the draft DCO or by way of conditions on the marine licence.

The MMO has considered this and is of the view that matters which fall within the scope of the marine licensing provisions of the 2009 Act and can be regulated through conditions on a standard marine licence or through conditions in the Deemed Marine Licence (DML) which would be a schedule of the DCO. Having both the current marine licence and the a DML risks inconsistency, and duplication of conditions. Therefore, the MMO outlines the following options: Option A – the applicant applies for a variation to their existing licence to incorporate all licensable activities in the UK marine area. The DCO then contains no licensable activities.

¹ Under Part 4 of the 2009 Act <http://www.legislation.gov.uk/ukpga/2009/23/contents>

² <https://www.gov.uk/guidance/do-i-need-a-marine-licence>

Option B – the applicant incorporates a DML as a schedule in their DCO which includes all licensable activities within the UK marine area. If the Planning Inspectorate disagree in principle with this approach, the MMO would be grateful to receive notice as soon as possible.

2. Comments on any Statement of Common Ground (SOCG)

SOCG between the Applicant and the Environment Agency (REP1-003)

- 2.1. With regard to point 2.4.8 – As already noted in section 1 of this response the MMO does not consent the discharge of water. The MMO advise that this is likely to be within the remit of the Environment Agency.
- 2.2. With regard to point 2.4.13 – As highlighted in section 1 of this response, the current marine licence (L/2017/00482/2) does not permit activities for demolition/decommissioning or maintenance activities in the UK marine area.

SOCG between the Applicant and Natural England (REP1-004)

- 2.3. Natural England (“NE”) note that they have acted as consultee to the MMO and agree that, with regards to the marine licence issued for the construction of the outfalls (L/2017/00482/2), ‘the K3 and WKN Proposed Developments do not pose a risk to surface water quality and the River Swale subject to the controls set out.’ Should further variations to this licence be required (in the event of maintenance and/or decommissioning activities being required, for example), NE would be given further opportunity to consider this as consultee during the MMO’s standard marine licensing process.

3. Comments on Written Representations

Kent County Council (REP1-009)

- 3.1. Kent County Council note that the development should “...encourage sustainable travel...” in order to comply with the National Planning Policy Framework (NPPF). They do on that this “...would be achieved if rail and transportation were to be used, taking advantage of the application site’s location next to Ridham Dock and options to connect to the rail network”. The MMO wish to highlight that if activities (such as alteration or improvement of existing structures) in the marine environment would likely be licensable under the 2009 Act.

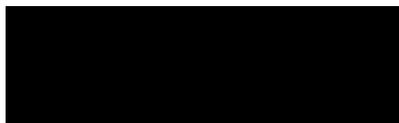
4. Comments on any additional information / submissions received by deadline 1

Applicants response to addition submissions (REP1-006)

- 4.1. With regard to point 3.4.1 the Applicant notes that, under section 56, ‘a letter was sent to the Marine Management Organisation’s Lancaster House office in Newcastle Upon Tyne on the 30th October 2019 which is recorded as having been

delivered on the 31st October 2019'. The MMO has checked mail records and have been unable to find confirmation of this delivery. The MMO can confirm that an email was received from Mr David Harvey dated 16 March 2020. The MMO encourages the applicant to engage further with the MMO to discuss the potential options detailed in paragraph 1.3 of this response.

- 4.2. With regard to point 3.4.2 – The Applicant notes that they are 'corresponding with the MMO to understand why they would consider a SoCG to be necessary in that respect and will update the ExA accordingly as the examination progresses'. As noted above the MMO received an email from Mr David Harvey on 16 March 2020. The MMO would encourage the Applicant to contact the MMO case team as soon as possible to discuss further. Please note that contact email addresses are included within this, and the MMO's Deadline 1 response (REP1-014).
- 4.3. To expand on the MMO's comment with regards to a SoCG; in the MMO's experience of the DCO examination process, a SoCG can serve as a useful tool to record discussions and agreements made. Specific to this project, in light of the MMO's previous comments with regards to potential amendments required to the existing marine licence, for example, to allow maintenance and/or decommissioning of the outfalls, the MMO considered a SoCG could be an effective way to document this.



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