



Marine Management Organisation

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Project Team
The Planning Inspectorate

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

By email only

22 April 2020

Dear Sir/Madam,

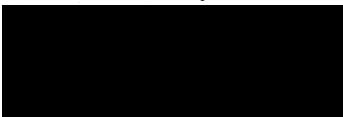
APPLICATION BY WTI/EFW HOLDINGS LTD FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE WHEELABRATOR KEMSLEY (K3) GENERATING STATION AND THE WHEELABRATOR KEMSLEY NORTH (WKN) WASTE TO ENERGY FACILITY

Marine Management Organisation Deadline 3 Response

This document comprises the Marine Management Organisation's ("MMO") Deadline 3 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,



PP Laura Calvert
Marine Licensing Case Officer

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1. Comments on responses to ExQ1

Natural England (NE), EN010083

1.1 Part of the NE response was focussed upon impacts resulting from nutrient nitrogen deposition to features within the Swale Special Protection Area (SPA). The MMO note that NE is in agreement to the approach taken by the applicant. The MMO defer further comment to NE on this matter as the statutory nature conservation body. The remainder of the NE response focusses on the sites and features considered within the Habitats Regulations Assessment (HRA). The MMO observe that NE agree the correct sites and features are set out in the HRA and that the applicant will be taking steps to analyse in-combination effects of the Swale Local Plan to their HRA. The MMO supports this in view of the applicant producing the robust and comprehensive HRA. The MMO defer further comment on this matter to NE.

2. Comments on Applicant's revised draft Development Consent Order

Environmental Statement (ES) – Chapter 11 - Ecology (EN010083)

2.1 With regard to section 11.2 - The MMO would like to raise that the South East Inshore Marine Plan is now a material consideration following consultation with the Secretary of State. The MMO expect to see a robust and comprehensive marine plan policy assessment as part of this application. Information regarding the marine plans is available at Explore Marine Plans website¹. The applicant can approach the MMO for further advice and guidance on this matter.

2.2 The MMO appreciate the relevant legislation and planning policies being outlined at the beginning of ES Chapter 11 Ecology. However, the MMO advise that the chapter would benefit from including reference to relevant HRA case law, derived from a ruling of the Court of Justice of the European Union for example - '*People over Wind*'. Paragraph 11.6.3 states that "*there would be no significant effects on ecology arising from the construction phase of the development, subject to mitigation outlined*". As per the ruling "*it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects [mitigation] of the plan or project on the site*".

2.3 Regarding section 11.7 - The MMO observe that there are references to decommissioning activities. However, no such activities are permitted within the existing marine licence. A licence variation would be required to include such activities, or the applicant would need to consider decommissioning activities with the deemed Marine Licence (dML) within the DCO.

2.4 With regard to paragraph 11.9.21 - The MMO advise the applicant to ensure that any piling restrictions, and indeed any other mitigation, included on the dML/DCO are consistent with those in place on the existing marine licence where applicable.

2.5 With regard to paragraph 11.9.73 - The MMO note that reference is also made to outfall pipes and operation. The MMO advise the applicant to consider whether any

¹ <https://explore-marine-plans.marineservices.org.uk/>

maintenance works are anticipated for the outfall pipes and incorporate the activity into the dML accordingly or request a variation to the existing marine licence (L/2017/00482/2). The current licence does not consent the operation of the outfalls, nor does the MMO consent the discharge of water under the Marine & Coastal Access Act, 2009². Operation must be more clearly defined. Does include maintenance or just the discharge of water?

2.6 To that end the MMO seek clarification as to whether the applicant intends to have all of the activities permitted within the dML or keep the existing licence and submit variation requests.

2.7 With regard to paragraph 11.9.38 - The MMO disagree with the statement that the Swale Marine Conservation Zone (MCZ) is a subtidal designated site. Upon review of the Conservation Advice Package³ the MMO found intertidal features to be present, such as, intertidal coarse sediment, intertidal mixed sediments and intertidal sand and muddy sand. The same intertidal features were included in the applicant's assessments submitted as part of the marine licence application. The MMO urge the applicant to review this statement.

HRA (EN010083)

2.8 The MMO note that Saltmarsh habitats and locations have not been identified, despite the fact they were discussed in the marine licence application. The MMO defer to Natural England for further comment, including the scope and proliferation of habitats and individual species information.

2.9 With regards to the draft HRA the MMO recommend that Natural England's Conservation Advice Packages and Advice on Operations pressure/feature nomenclature are used for clarity. MAGiC maps⁴ can be used to identify the indicative location of designated features/supporting habitat.

Applicant's Response to ExQ1:

2.10 With regard to Q1.11.5 (Response to ExQ1) the applicant notes the continued review of the position regarding alternative transport. The MMO advise early engagement from the applicant if activities in the UK marine area are required. The MMO further advice that guidance is sought from the Maritime and Coastguard Agency (MCA).

2.11 With regard to 1.12.4 (Response to EXQ1) the ES does not consider the outfall. Consent has already been granted by MMO under the existing marine licence, however the MMO urge the applicant to consider all activities related to the outfall pipe and ensure those not already licensed are addressed. The MMO is concerned regarding the lack of clarity regarding operation, maintenance, and decommissioning activities.

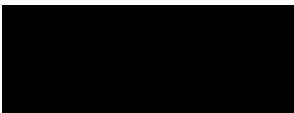
² Under Part 4 of the 2009 Act <http://www.legislation.gov.uk/ukpga/2009/23/contents>

³ Swale MCZ Conservation Advice Package

<https://designatedsites.naturalengland.org.uk/Marine/MarineSiteDetail.aspx?SiteCode=UKMCZ0041&SiteName=swale&countyCode=&responsiblePerson=&SeaArea=&IFCArea=&HasCA=1&NumMarineSeasonality=0&SiteNameDisplay=The%20Swale%20Estuary%20MCZ>

⁴ MAGiC Maps <https://magic.defra.gov.uk/MagicMap.aspx>

The MMO is of the opinion that the response above addresses all of the relevant matters. However, if you would like to discuss any specific matter further or require additional clarity, please do not hesitate to contact me directly.



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