



# Marine Management Organisation

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Project Team  
The Planning Inspectorate

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

**By email only**

19 May 2020

Dear Sir/Madam,

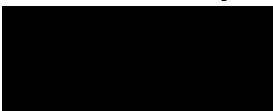
## **APPLICATION BY WT/EFW HOLDINGS LTD FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE WHEELABRATOR KEMSLEY (K3) GENERATING STATION AND THE WHEELABRATOR KEMSLEY NORTH (WKN) WASTE TO ENERGY FACILITY**

### **Marine Management Organisation Deadline 4 Response**

This document comprises the Marine Management Organisation's ("MMO") Deadline 4 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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## 1. Response to ExQ2A

1.1. In response to Q2A.1 – Participation in the examination, the MMO has selected the below options:

- 1.1.1. Q2A.1.1. - Option iii – By means of written submissions and limited oral submissions at Hearings.
- 1.1.2. Q2A.1.2 – Option iv – I am likely to make further written submissions.
- 1.1.3. Q2A.1.3 – Options iii and iv - Other environmental matters and draft DCO. Other environmental matters include but are not limited to: Habitats Regulation Assessments (HRA); activities that would affect a UK or European protected species; activities that may impact a Marine Conservation Zone (MCZ).
- 1.1.4. Q2A.1.4 – Option v – None of the above.
- 1.1.5. Q2A.1.5 – Not applicable

1.2. In response to Q2A.2 – Your Facilities, the MMO has selected the below options:

- 1.2.1. Q2A.2.1 – Option i – A computer running Microsoft Windows 10
- 1.2.2. Q2A.2.2 – Not applicable
- 1.2.3. Q2A.2.3 – Option ii Confident
- 1.2.4. Q2A.2.4 – Option i – Land line telephone
- 1.2.5. Q2A.2.5 – Option ii – Confident

1.3. In response to Q2A.3 – How the Planning Inspectorate can help you, The MMO has submitted the below responses:

- 1.3.1. Q2A.3.1. – Option vi – Not Applicable: I am confident in being able to participate
- 1.3.2. Q2A.3.2. – Not applicable
- 1.3.3. Q2A.3.3. – Not applicable
- 1.3.4. Q2A.3.4. – Not applicable

## 2. Responses to ExQ2

2.1. With regard to Q2.3.1 and Q2.5.2 which consider the inconsistency in information provided for the Swale MCZ. The MMO advise that the applicant make use of Natural England's ("NE") Conservation Advice Package and Advice on Operations. This provides useful information on pressures and standard nomenclature that should be used.

2.2. With regard to Q.2.5.3 the MMO welcome engagement from the applicant with regard to whether a marine licence variation is required to cover maintenance activities following the matters discussed in previous MMO responses.

2.3. In response to Q2.5.4, the discharge of water through outfalls is not within the MMO's remit under the Marine and Coastal Access Act, 2009 ("the 2009 Act")<sup>1</sup>. The MMO advises that an environment permit may be required from the Environment Agency ("EA"). The MMO defer further comment to the EA.

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

- 2.4. With regard to Q2.5.9 the MMO believe that the construction activities for the second outfall are yet to be completed. The MMO would like to highlight that the activities in the DCO must be consistent with, and not contrary to, the existing marine licence (L/2017/00482/2).
- 2.5. With regard to Q2.8.1 the MMO agree that an in-combination effects (ICE) assessment of the project is required.
- 2.6. With regard to Q.2.13.2 the MMO welcome engagement from the applicant with regard to whether a marine licence variation or deemed marine licence (“dML”) is required to cover decommissioning activities.
- 2.7. In response to Q2.13.3 the MMO note that the draft DCO (“dDCO”) only specifies impact piling within the piling and penetrative foundation design, however the existing marine licence specifies that “*Continuous Flight Auger piling must be used where possible*”, and that soft start piling must be used if impact piling is required. Neither of these conditions are included within the dDCO.
- 2.8. In response to Q2.13.3 The MMO would also like to highlight that the marine licence (L/2017/00482/2) states within the programme of works that “*Works may only take place between 1 April and 31 September in any given year.*” This timing was based on the method statement submitted by the Applicant and attached to the licence as a schedule (licence schedule 3). The dDCO specifies that “*No impact piling associated with Work No 2 shall take place in the months of January, February, or between April and August inclusive*”. The combination of both restrictions will only allow impact piling and associated activities within the month of September inclusive. The dDCO also states that “*No more than ten days of impact piling associated with the Project WKN authorised development, whether consecutive or otherwise, shall take place in the months of November and December*”, which contradicts the timing restriction within the marine licence, as no works are to take place outside of 1 April – 31 September in any given year.
- 2.9. With regard to Q2.14.1 the MMO look forward to the consideration of the South East Inshore Marine Plan. Please refer to point 2.1 of the MMO’s deadline 3 response for further guidance.

### 3. Comments on Written Representations

#### Applicant’s Response to (ExQ1A) Appendix 1.13b – Tilbury Green Section 36 Consent – 26th March 2020

- 3.1. The Applicant notes that “*Commencement of Phase 2 of the Development shall not take place until an investigation has been carried out into the potential opportunities for the utilisation of river transport for the transportation...*”, the MMO wish to highlight that if activities (such as alteration or improvement of existing structures) are required in the marine environment, this would likely be licensable

under the 2009 Act. The MMO encourage early engagement from the applicant on this matter.

- 3.2. The Applicant noted in sections 48 – Protection and Mitigation for Birds that “*Breeding birds are protected under the Wildlife and Countryside Act 1981 (as amended)*”. The MMO wish to highlight that breeding birds are also protected under. The Wild Birds Directive (1979); The Conservation of Habitats and Species Regulations (2017) and The Offshore Marine Conservation (Natural Habitats &c) Regulations (2007). The MMO refer to our deadline 3 response for further comment on the mitigation measures.
- 3.3. With regard to section 76 – ‘Bridge over Botney Channel’, the Applicant notes that “*...the commencement of Phase 2 of the Development shall not take place until there has been submitted to, approved in writing by, and deposited with the Relevant Planning Authority, in consultation with the Environment Agency, a scheme for the construction of the bridge over the Botney Channel.*” The MMO remind the Applicant that if this construction is to take place over Mean High-Water Springs (“MHWS”), then a marine licence or dML may be required. The MMO request the applicant confirm the location of the channel, and whether the works would take place within/over MHWS. Guidance regarding the jurisdiction of the MMO is available on our website<sup>2</sup>.

#### Applicant’s Response to (ExQ1A)

- 3.4. In regard to Q1A.11.6 the MMO encourage the applicant to review the potential environmental impacts of using water transport. This must include an assessment of the potential impacts of the project, including vessel movement, on adjacent design sites. This has not been considered within the HRA completed for the marine licence and should be considered within the HRA for the DCO. As stated above, if any licensable activities are required under the 2009 Act, then the MMO encourage engagement from the Applicant.

#### Deadline 3 Submission - Applicant’s Responses to Deadline 2 Submissions

- 3.5. In response to 2.4.1 the MMO has not yet received any further engagement from the applicant regarding previous submissions made by the MMO. The MMO looks forward to hearing from the applicant.
- 3.6. With regard to section 2.4.2 the MMO have comment to make on the following points:
- 3.6.1. The Applicant states “*The licensable activity for the purpose of the Marine and Coastal Access Act 2009 is the construction of the outfalls. Under that Act, construction includes maintenance*”. The MMO as regulator for the 2009 Act agrees that ‘Construction’ means to build or make something and could include ‘maintenance’, ‘alteration’ and ‘improvement’ activities. However, the existing marine licence only permits the construction of the two outfalls, and the

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<sup>2</sup> <https://www.gov.uk/guidance/marine-licensing-definitions>

methodology on the licence does not detail any maintenance activities. Furthermore, no maintenance activities were included in the assessments completed during the application process. The MMO request that the applicant fully details what maintenance activities will include. If these activities are outside of what was assessed, then the MMO advise that a variation to the existing marine licence may be required. The applicant should engage directly with the MMO to discuss this matter further.

- 3.6.2. *“The existing marine licence (L/2017/00482/2), which has been varied to allow for the K3 and WKN outfalls has already been issued separately to the DCO. It is not necessary to included deemed marine licences in the DCO”*; Further to the above – the MMO note that decommissioning activities are not covered by the existing marine licence and acknowledge that the applicant will approach the MMO at a later date for a marine licence for decommissioning activities. However, as stated above a variation to the current marine licence may be required to include proposed maintenance activities
- 3.6.3. *“Licence conditions and other environmental regulatory regimes do not need to be replicated in the DCO as requirements or otherwise”*; Further to points 2.5 and 2.6 of this response, the MMO wish to highlight that the conditions on any DCO should not contradict the conditions on the existing marine licence as this would make compliance by the applicant impossible.
- 3.6.4. *“The operation of the outfalls is not a licensable activity under the MCAA 2009”*; The MMO takes this to mean that operation means the discharge of water and does not include maintenance activities. If so the MMO concur with this statement as outlined in earlier deadline responses and point 2.3 of this response. The MMO do not licence the discharge of water – the MMO recommend engagement with the EA on this matter.
- 3.6.5. *“The original K3 planning permission included provision for the first outfall, which has now been constructed. Both that outfall and the second outfall to serve WKN are contained in the DCO as part of works 1E and 7 and will be regulated as required by the relevant requirements such as design details and construction methodology”*; As noted above, the existing marine licence does not consent maintenance activities. Further to point 3.6 of this response the MMO require clarification on what the maintenance would include.
- 3.6.6. *“The quality of water the water being discharged will be such that it does not require either an operational requirement under the DCO or environmental permitting... the licence amendment application (L/2017/00482/2) was accompanied by a Marine Conservation Zone assessment ...which concluded no likely significant effects on water quality”* As stated above, the MMO defer to the EA for comment on the environmental permits required for the discharge of water. The MMO would like to highlight that maintenance activities for the outfalls are not considered within the MCZ assessment completed for the marine licence.
- 3.6.7. *“The decommissioning of the outfall will be licensed separately under the MCAA 2009 as required and under the planning regime.”* The MMO are happy to engage with the applicant when a marine licence application is required for decommissioning activities.

3.7. With regard to point 2.4.3 the MMO may disagree that “*no changes are needed to either the DCO or to the Marine Licence*” as already discussed, maintenance activities are not be covered by the current marine licence, and a variation may be required.



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