



Project Team
The Planning Inspectorate

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

By email only

17 June 2020

Dear Sir/Madam,

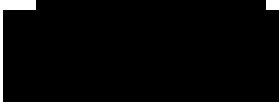
**APPLICATION BY WT/EFW HOLDINGS LTD FOR AN ORDER GRANTING
DEVELOPMENT CONSENT FOR THE WHEELABRATOR KEMSLEY (K3)
GENERATING STATION AND THE WHEELABRATOR KEMSLEY NORTH (WKN)
WASTE TO ENERGY FACILITY**

Marine Management Organisation Deadline 5 Response

This document comprises the Marine Management Organisation's ("MMO") Deadline 5 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 ExQ3

- 1.1. With regard to Q3.8.1 the MMO advise that they received an email dated 11 June 2020 from the applicant. Please find the MMO's comments to this communication in section 3 of this deadline response.
- 1.2. With regard to Q3.11.4 the MMO encourage the applicant to engage to discuss transport via water and the potential related impacts. Further comments regarding this matter can be found in point(s) 2.2, 2.14 and 3.4 of this response.
- 1.3. With regard to Q.3.11.6 the MMO would like to remind the applicant that licensable activities under the Marine and Coastal Access Act, 2009 ("the 2009 Act") may require a marine licence; or a deemed marine licence ("dML") to be included within the Development Consent Order ("DCO").
- 1.4. In response to Q3.12.2 the MMO advise that the marine aspects of the proposal should be considered against the South East Inshore Marine Plan. This should include maintenance, operation, and transport via water (if applicable). Please see point 1.5 below for further comments.
- 1.5. In response to Q3.12.3 - Please find the MMO's comments in relation to the applicant's marine plan assessment in point 2.30 of this response.
- 1.6. In response to Q.3.13.2 The MMO advise that a dML within the DCO, or variation to the existing marine licence would be required to cover the maintenance activities. The MMO also require further clarification from the applicant regarding what these maintenance activities are in order to advise further.

2. Comments on Written Representations

Natural England's Response to ExQ2

- 2.1. With regard to Q2.8.6 the MMO acknowledges Natural England's ("NE") statement that the saltmarsh is included within the supporting habitats for The Swale Special Protection Area ("SPA"), and within the Swale Ramsar site.

Kent County Council – Appendix 6 Transport Statement

- 2.2. With regard to section 3.17 the MMO encourage the applicant to consider whether maintenance activities are required at Ridham Dock to allow for an uninterrupted export of Incinerator Bottom Ash Aggregates ("IBBA"). For example, maintenance activities could include navigational dredging to maintain a safe depth for the barges, or maintenance work to the dock itself. Please see point(s) 2.3 and 3.4 for further comment on transport via water.
- 2.3. The MMO encourage the robust assessment of potential impacts for transporting the additional IBBA material by barge. This should include matters such as the number of barges required, the frequency they will be required, and the operational impacts from an increase in traffic travelling through designated sites. If these factors are currently unknown, then the assessment should be undertaken using the Rochdale Envelope approach.

Applicant's - Document 3.1 - ES Volume 2 Appendix 11.2- Habitats Regulation Assessment (HRA) Report Matrices

- 2.4. The MMO encourages the applicant to consider potential impacts of salinity changes to the designated areas, from the freshwater that will be discharged from the lagoon, using the maximum volume scenario. The MMO defer further comment to the NE and the Environment Agency (the "EA").
- 2.5. The MMO defer comment to NE on the scope of the HRA, and noise thresholds for disturbance of features, as the Statutory Nature Conservation Body (SNCB).
- 2.6. The MMO encourage the applicant to use NE's Advice on Operations (AoO) tables for the Swale SPA, and the use of standard nomenclature for features and pressures. This will result in a standardised approach in line with projects of a similar nature and will allow for more effective consultation.
- 2.7. With regard to the consideration of impacts of increased marine traffic through the designated areas, due to the transport of IBBA please see point 2.3 in the response above.

Applicant's - Document 3.1 – ES Volume 2 Appendix 11.2- Habitats Regulation Assessment Report

- 2.8. With regard to section 1.3 the MMO advise that 'p' in pSPA stands for potential Special Protection Area. The applicant should correct this typographic error.
- 2.9. With regard to section 2.3 and 2.8 the MMO welcome all Natura 2000 sites with a pathway being considered. The MMO defer further comments to NE regarding the sites to be considered, including functionally linked areas.
- 2.10. With regard to section 3.3 the MMO advise that this should also include consideration of the supporting habitats and features of sites as detailed in section 4.31.
- 2.11. With regard to section 3.6 the MMO advise that the wording should be amended to "if it cannot be concluded with confidence that significant effects are unlikely" for the Likely Significant Effect (LSE) Test.
- 2.12. Further to point 2.5 regarding the methodology used for the surveys, the MMO defers comment to NE as SNCB on whether the use of data from other projects are acceptable in this case.
- 2.13. With regard to the discharge of water, the MMO advise the impacts of this on the mussel beds is considered. The discharge of water could lead to changes in salinity and turbidity which, depending on the location of the mussel beds in relation to the discharge, could have significant effect.
- 2.14. With regard to section 5, the MMO encourage that consideration of the impacts of transport via water through protected areas still needs to be considered, including the

marine emissions. With regard to section 6.24 the MMO advise that within the operational noise, the noise emitted by extra marine traffic through protected areas should be considered. Please see earlier comments in point(s) 2.2 and 2.3.

2.15. With regard to section 5.6.8 – the Marine Licence was varied to include a second outfall. As mentioned in previous deadline responses the discharge of water is not a licensable activity under the 2009 Act and MMO has encouraged engagement with the EA. However, the MMO require further elaboration on why there will be no LSE from the discharge of water (using a worst-case scenario for the volumes that could be discharged). As noted above the introduction of freshwater into the marine environment may disturb sediment and alter the salinity of the area. This could have an adverse impact on the surrounding saltmarsh and/or mussel beds.

Applicant's - Table of Amendments to the Development Consent Order (DCO)

2.16. With regard to the amendments made to Schedule 2 Requirement 6(2) and Schedule 2 Requirement 29 (1), the MMO have been unable to locate these documents, and therefore no comments can be provided. The MMO requires the applicant to provide the amended schedules.

Applicant's - Revised Draft DCO

2.17. With regard to power to maintain authorised development 6 the applicant states, *"The undertaker may, at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise"* The MMO remind the applicant, that no licensable activities (the 2009 Act) below Mean High-Water Springs ("MHWS"), including those considered maintenance, can be undertaken without a variation to the existing marine licence or a dML within the DCO.

2.18. With regard to Work No 1E *"Construction and operation of a surface water outfall for Work No 1"*. The MMO request further clarification on the current status of these works. If these works have been completed and are consented under the existing marine licence, then they should not be included within this DCO. This is a duplication of consent. Similarly, regarding Work No 7 *"Construction and operation of a new surface water outfall for Work No 2"*. The MMO query if this should be included within the DCO as the applicant already has a marine licence consenting this activity.

2.19. The applicant also notes *"further associated development comprising such other works as..."*. The MMO would like to remind the applicant that any further works below MHWS may require a variation to the existing marine licence or the incorporation of a dML in the DCO.

2.20. With regard to the rail and water transportation strategy 6 *"The K3 Generating Station and the WKN Waste-to-Energy Facility must be operated in accordance with the approved rail and water transportation strategy for that project"* the MMO request further clarity on the rail and transport strategy. Please see point(s) 2.3 and 2.14 for

information on how the MMO advises the impacts of transport by water are considered.

2.21. With regard to Piling and penetrative foundation design 28 *“(1) No part of Work No 2 may commence until a piling risk assessment has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency”* the MMO advise that work No 7 and 1E are already authorised under the existing marine licence and should not be included here. The EA will have been consulted during the standard marine licensing process.

2.22. With regard to section 29. *“(1) No impact piling associated with Work No 2 shall take place in the months of January, February, or between April and August inclusive. (2) 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. (3) This requirement does not restrict impact piling associated with the Project WKN authorised development between the months of March and October inclusive”*. The MMO would like to remind the applicant that the 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 adds further restriction to the piling activities. Impact piling activities associated with construction of the earth berm or cofferdam are restricted to *“a gradual ramping up or slow start of piling”*. Please see point 3.6 below for further comments on this matter.

2.23. With regard to Decision Period 2, the MMO would like to highlight the process already in place for a marine licence determination, which includes the Key Performance Indicator (KPI) of 13 weeks. It is not guaranteed that the MMO will provide written approval prior to this timeframe.

Applicant's - Response to Examining Authority's Second Written Questions (ExQ2)

2.24. With regard to sections 3.1.1 and 5.2.1 the MMO acknowledge these the applicant's comments regarding this being a typographical error.

2.25. With regard to section 3.2.3 the MMO request clarification on the *“nearby K4 DCO”* and what this relates to.

2.26. With regard to section 5.3 the MMO welcome the applicant's comments. It would be useful for the applicant to explain what they envisage the maintenance activities for the outfalls to be so we can best advise them/satisfy our concerns. Please see point 3.5 for further comment.

2.27. With regard to sections 5.4 and 13.3 the MMO provided their response to these at deadline 4.

2.28. With regard to section 5.8 the MMO commented on the piling restrictions within their response to deadline 4 and in point(s) 2.22 and 3.6 of this response. The MMO defer further comment on piling activities in March to NE as SNCB.

2.29. With regard to sections 5.9, 8.6, and 13.2.1 the MMO acknowledges the comments made by the applicant and has no further comment to make at this time.

2.30. With regard to section 14.1 the MMO welcome the applicant's consideration of the South East Inshore Marine Plan. This consideration should be included within the relevant application documents by the applicant. Once incorporated into the application then the MMO will provide further comments.

Applicant's - Document 3.1 - ES Volume 2 Appendix 2.1- Draft Construction Environmental Management Plan (CEMP) for WKN

2.31. With regard to section 5.7.9 the MMO defer further comment to NE relating to the removal of habitats for breeding birds as the SNCB.

2.32. The MMO defer further comment on the CEMP to NE and the EA.

3. Response to Applicant

3.1. The MMO acknowledge the email dated 11 June 2020 from Mr David Harvey and welcome the engagement by the applicant. The MMO ask that the applicant contact the MMO more than 1 week before the deadline response so constructive discussions can take place when the case team are available.

3.2. The MMO can confirm that no email was received from the applicant on the 22 April 2020. Please can all correspondence be sent to the case team identified at the beginning of this response and the general marine consents mailbox: marine.consents@marinemanagement.org.uk

3.3. The MMO recognise the applicant's confirmation 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, as noted in our deadline 4 response.

3.4. The applicant states that transport via water for the IBBA is not currently feasible, and this is the reason for potential impacts not being considered at this stage. The MMO would encourage the applicant to reconsider their position on this matter. The MMO understand why consideration has not been undertaken, but if in the future transport via water does become a feasible option, then the impacts will not have been considered. This may risk causing future delays. Assessment of the impacts at this stage could provide the applicant with more flexibility with their operations.

3.5. The applicant notes that "*the outfalls for K3 and WKN are effectively a large concrete pipe and as such any routine maintenance to that structure is expected to be minimal and would not represent a licensable activity. Should maintenance works be required which are beyond the typical maintenance works expected and which do form a licensable activity then we note that the existing licence does not reference any maintenance activities and as such a variation to the license would need to be sought at that time*". The MMO require clarification regarding the 'routine maintenance' and activities 'beyond the typical maintenance works' referred to in this statement. As noted in our deadline 4 response 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. The MMO wish to highlight that whether the works are marine or terrestrial in nature, all local designated receptors where a pathway for disturbance exists, must be assessed and suitable mitigation secured. This is the reason why the MMO has questioned the timing restrictions for the DCO versus the existing marine licence
- 3.7. The MMO would advise that the following statement is relevant to this project and not specific to Tilbury Green Section 36 consent: 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
- 3.8. The MMO acknowledge the confirmation from the applicant that there are “*no bridges are proposed as part of the K3/WKN schemes*”.



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