



Project Team
The Planning Inspectorate

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

By email only

12 August 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 8 Response

This document comprises the Marine Management Organisation's ("MMO") Deadline 8 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. Comments on Deadline 7 Submissions

Applicant - Response to Submissions at Deadline 6

- 1.1. With regard to point 2.3.3. – It is the opinion of the MMO that the marine plan assessment should be incorporated into the applicant's formal application documents as it is the equivalent of the terrestrial planning policies considered within the Planning Application Supporting Statement, section 5. The MMO refer to their deadline 6 response, point 1.5.
- 1.2. With regard to point 2.2.5 – the MMO acknowledge the updated Statement of Common Ground and confirm that the points raised at deadline 6 have been addressed.

2.1 Draft Development Consent Order (DCO) – Clean (and Tracked)

- 1.3. With regard to section 10 – Authority to survey and investigate land – the MMO refer to their Deadline 7 response for a further interpretation of 'land' and the addition of an interpretation of Mean High Water Springs. Please see point 3.2. of our Deadline 7 response for further information.
- 1.4. With regard to the 'piling and penetrative foundation design' (28) – the MMO refer to their Deadline 7 response and wish to highlight that if impact piling methods are required then soft-start procedures must be implemented. Please see point 3.4 of our Deadline 7 response for further information.
- 1.5. With regard to the Construction Environmental Management Plan (22.) – the MMO refer to their Deadline 7 response and recommend the European Protected Species requirements are highlighted if not already done so. The current document states "include measures for the protection of any protected species found to be present on the Order land during construction;". The MMO request this is amended to include marine protected species.
- 1.6. With regard to section 17 – Arbitration - The MMO considers that Article 17 would shift the MMO's decision making responsibility from the hands of the regulator with primary responsibility for administering the marine licensing regime to an independent arbitrator. This would be contrary to the intention of Parliament set out in the Marine and Coastal Access Act 2009 and would potentially usurp the MMO's role as a regulator. The MMO therefore requests that the MMO is explicitly not subjected to these provisions. This is in line with the recently consented Norfolk Vanguard project where it is explicitly stated in the DML that the MMO shall not be subject to arbitration. Outlined below is the relevant section of that DCO. MMO request that a similar approach must be taken in this application:

1.6.1. Arbitration:

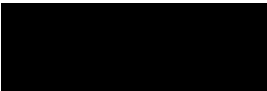
38.—(1) Subject to article 41 (saving provisions for Trinity House), any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled in arbitration in accordance with the rules at Schedule 14 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the

time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order shall not be subject to arbitration.

Natural England - Comments on the ExA's RIES

1.7. In response to this submission – the MMO confirm agreement with Natural England’s conclusion.



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