



TRINITY HOUSE

14 January 2019

The Planning Inspectorate
Temple Quay House
Temple Quay
Bristol
BS1 6PN

Your Ref: RE: EN010084
Identification No. 20012441

The Thanet Extension Offshore Wind Farm

Dear Sir / Madam

Further to the application relating to the Thanet Extension Offshore Wind Farm, we wish to provide our further responses as follows in relation to Deadline 1-

Comments to the draft Development Consent Order (Ver. 3.1) (DCO):

General Comment

As a general comment, in the context of the draft DCO, we understand that the application to the Planning Inspectorate dated 27 June 2018 regarding the Offshore Wind Farm extension project and the draft DCO refers to a gross electrical output capacity of up to **340 MW**. However, our understanding is that the Crown Estate are offering land rights in relation to the above, up to a maximum project capacity of **300 MW**. This latter aspect being referenced on the Crown Estate's website under <https://www.thecrownestate.co.uk/en-gb/media-and-insights/seabed-notice/offshore-wind/>

Given the apparent difference between the potential gross electrical output capacities referred to above we would highlight this aspect for clarification.

Article 16(2): Public Rights of Navigation

We note that Article 16 (2) states:-

"(1) Subject to paragraph (2), the rights of navigation over the places in the sea where any

of the permanent structures (wind turbine generators, meteorological mast or offshore substations, including their foundations) are located within territorial waters will be extinguished.

(2) The extinguishment of the rights of navigation over the places identified in paragraph (1) will take effect 14 days after the undertaker has submitted a plan to the Secretary of State, Trinity House, the MCA and the MMO showing the precise locations of the foundations of each of any relevant wind turbine generators, meteorological mast, and offshore substations to be constructed as part of the authorised project within territorial waters”.

Accordingly, Trinity House wishes to state its concern as to the inclusion and the wording of Article 16(2) in the draft DCO. In particular, we would highlight that the Article does not appear to define as to what stage of the development process the undertaker is required / able to submit such a plan. In addition, the Article does not provide for any stipulation or restriction in this regard. Furthermore, as this Article would materially impact on the rights of navigation (and extinguish such rights) it is of concern that the provision does not appear to provide for any approval or rejection provision for the Secretary of State, Trinity House and the MMO following submission of the plan by the undertaker. Therefore, if this were to be the case, upon expiry of the period referenced in the Article (e.g. to take effect 14 days after the undertaker has submitted a plan), the rights to navigation would be automatically extinguished. We consider, therefore, that the scope and wording of this Article requires further clarification and we would respectively suggest that it should not be accepted on the basis of the current drafting. The UK position is to allow free public rights of navigation through operational wind farms.

Article 36 and Schedule 9 (Arbitration Rules)

Trinity House notes that Statutory Orders conferring powers on undertakers for specific projects or developments, for example Orders under the Transport and Works Act 1992, the Harbours Act 1964 and the Planning Act 2008, typically also include a provision “saving” or protecting the statutory rights and duties of Trinity House in the context of the relevant Order. We note that Article 39 of the draft Thanet Extension Offshore Wind Farm Order is an example of such a provision and provides that “*Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.*” We confirm that we agree with the inclusion of such a saving in the draft DCO.

We further note, however, that Article 36 of the draft DCO makes provision in respect of Arbitration. It provides that any difference under any provision of the DCO, unless otherwise provided for, must be referred to and settled in arbitration in accordance with the rules at Schedule 9 (Arbitration Rules) of the Order. Schedule 9 provides for a detailed procedure, including the adherence to stipulated time periods, whereby statements of claim describing the nature of the difference between the Claimant and the Respondent, including the legal and factual issues can be identified and determined in order for the appointed Arbitrator to make an award.

However, Trinity House is concerned that the exercise of its statutory functions to provide for safety of navigation, including the requiring of the marking and lighting of potential obstructions during the construction, operation, maintenance and possible decay of the works authorised by the proposed DCO, might be regarded as being subject to the Arbitration provisions in the DCO. The “saving” provision is clearly intended to preserve Trinity House’s ability to exercise its statutory functions and nothing in the DCO should fetter the statutory powers of Trinity House in respect of DCOs and Deemed Marine Licences (DMLs), to give direction in terms of aids to navigation requirements and for the prevention of danger to navigation. In addition, any advisory and consultation function

undertaken by Trinity House on safety of navigation matters with the MMO pursuant to the Marine and Coastal Access Act 2009, and which may form part of the DCOs and DMLs, should not be subject to the Arbitration provision of the DCO.

We consider therefore that it is imperative that there is clarity that the saving for Trinity House in Article 39 of the DCO, if adopted, **is not** subject to any other provision in the draft DCO. As the DML issued under the DCO will likely have a legal existence independent of the DCO, we contend that these should similarly remain subject to the "saving" provision under Article 36 of the draft DCO.

We would request that Article 36 and Schedule 9 of the draft DCO is therefore amended to make clear that Trinity House **is not subject to the Arbitration provision**, if this is to be otherwise included.

Schedule 11 (Generation Assets)

Article 12: Pre-Construction Plans and Documentation

Under Article 12(1)(i) of Schedule 11 we believe that the reference to 'Condition 8' in this provision should reference 'Condition 7' ('Aids to Navigation').

Article 17: Post Construction Monitoring

Trinity House noted the requirement in the **draft DCO Hornsea Project Three Offshore Wind Farm**, under Schedule 12 (Generation Assets) Article 20 **Post Construction Monitoring**, for the undertaking to provide "*details of vessel traffic monitoring by automatic identification system, for a period of 28 individual days taking account seasonal variations in traffic patterns over the course of one year to be submitted to the MMO and the MCA no later than one year following completion of the construction phase of the authorised development;*"

In this case, having regard to Trinity House's powers and duties as a GLA, we requested that the requirement for the undertaker to provide details of vessel traffic monitoring to the MMO and MCA should be amended to provide for such details of vessel traffic monitoring to also be provided to Trinity House.

In the **Thanet Extension Project draft DCO** we note, however, that there appears to be no such requirement on the undertaker to provide vessel traffic monitoring. We would request, therefore, that consideration be given to the inclusion of such a requirement in the Thanet Extension DCO and that, if this is accepted, that this requirement should extend to include that such vessel traffic monitoring details are also provided to Trinity House.

Please address all correspondence regarding this matter to myself at russell.dunham@thls.org and to Mr Steve Vanstone at navigation.directorate@thls.org

Yours faithfully,



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