



For the attention of John Wheadon  
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Our ref: JB13/62084.1/BOSWA

Your ref: EN010109

1 December 2023

When telephoning please ask for: Julian Boswall

Dear Madam

### **Development Consent Order (DCO) Application for Sheringham Shoal Offshore Windfarm Extension Project (SEP) and Dudgeon Offshore Wind Farm Extension Project (DEP) (EN010109)**

We act for Equinor New Energy Limited (the Applicant). We refer to your consultation letter dated 22 November 2023.

We have noted Question 3 regarding shipping and navigation and have also noted and understand that the questions raised in your letter should not be interpreted to imply anything about the decision to be made.

The Applicant will be providing a full response to the consultation letter by the deadline specified but feels it necessary to respond in advance on this particular issue.

#### **Navigation – critical error of fact**

The Applicant considers it important that the Secretary of State understands the implications of a critical error of fact made by the MCA, as it goes to the heart of the question of whether the MCA's proposed 'no obstacle area' can be justified. We are writing to you at this stage to urge that you look further into this question and into the relevant information submitted during the Examination, which is highlighted below.

#### **The controlling depth**

It is important to clearly define the difference between a controlling depth and a vessel's minimum required under-keel clearance. The Applicant believes that these values have been used interchangeably in the MCA's responses to date and therefore do not present a clear picture. The incorrect interpretation of both terms (including the meaning and value) is critical to the question of how the impact of DEP North is evaluated. As these values have been applied incorrectly and interchanged with each other the entire analysis is undermined.

The controlling depth of an area is a value promulgated to mariners to indicate the water depth by which a mariner should decide whether they can transit that area, at various tidal states and conditions. It is not typically a value quoted outside of port areas (it is not quoted within the area of interest) but it is often used and defined by Trinity House to establish where navigational buoys should be placed to identify clearly to vessels where safe water lies.

The Applicant considers the 10m contour to be the controlling depth, as advised by Anatec, a leading navigation expert advisor in the UK, and one which has advised many offshore wind schemes to date.

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Classification: Confidential

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Trinity House agrees the 10m contour is the controlling depth (Figure 4 of Deadline 5 Submission [REP5-096]). Trinity House is the General Lighthouse Authority for England, Wales, the Channel Islands and Gibraltar, with powers principally derived from the Merchant Shipping Act 1995 (as amended). The role of Trinity House as a General Lighthouse Authority under the Act includes the superintendence and management of all lighthouses, buoys and beacons within its area of jurisdiction. Providing advice on the controlling depth of a navigable channel is squarely within the remit of Trinity House and its advice should, in the Applicant's view, be regarded as definitive on a matter such as this.

The Chamber of Shipping also agrees that 10m is the controlling depth [REP8-121]. The Chamber of Shipping represents a range of members including commercial vessels which use the channel in question.

The outlier on this matter is the MCA, contrary to the evidence (including its own evidence) and the positions of the other parties, summarised above. At the close of Examination, the MCA disputed the controlling depth in the Outer Dowsing Channel, maintaining that this is 15.3m. If 15.3m were the controlling depth, then it would mean the existing navigable area was considerably narrower in the Outer Dowsing Channel than measured by the MCA in Figure 1 below.

### **The MCA's position**

In the MCA's Deadline 8 submission [REP8-093] submitted on the final day of the Examination, the basis for the MCA's position is that vessels transit to the east of the 15.3m wreck (which it references as the controlling depth) and that vessels will passage plan to avoid areas of shallower water.

The MCA's position is based on two premises:

- 1) The controlling depth in the Outer Dowsing Channel is 15.3m.
- 2) Existing searoom in the Outer Dowsing Channel is 3.1nm wide.

These two premises are factually inconsistent as the distance between the 15m contour on either side of the Outer Dowsing Channel is less than 1.5nm (Figure 2).

This contradiction is evident in the MCA's own information previously submitted to the Examination. At Deadline 5, the MCA's submission [REP5-081] included the chart reproduced below (Figure 1). Within the area described by the MCA as the current searoom available, there are ten locations where the depths are charted at less than 15.3m, including a depth of 14.5m on the red dashed line which the MCA determines as illustrating the width of searoom available (3.1nm). Figure 2 also shows that the searoom between the main 15m contour lines is narrower (<1.5nm) than the searoom between the western extent of DEP North and the 15.3m wreck (>2 nm). As shown in Figure 2, these are not isolated spot depths and if 15.3m were the controlling depth then the searoom currently available in the Outer Dowsing Channel immediately to the north would be less than the navigable area passing DEP North.

Figure 3 shows the extent of vessels of all draughts transiting within the Outer Dowsing Channel recorded in the navigational risk assessment (NRA) marine traffic survey. Many tracks pass over areas with depths shallower than 15m. This clearly demonstrates that 15.3m is not the controlling depth within the Outer Dowsing Channel and reaffirms the Applicant's position (supported by Trinity House and the Chamber of Shipping) that the available searoom post development is 3nm, as measured from the western extent of DEP North to the 10m contour.

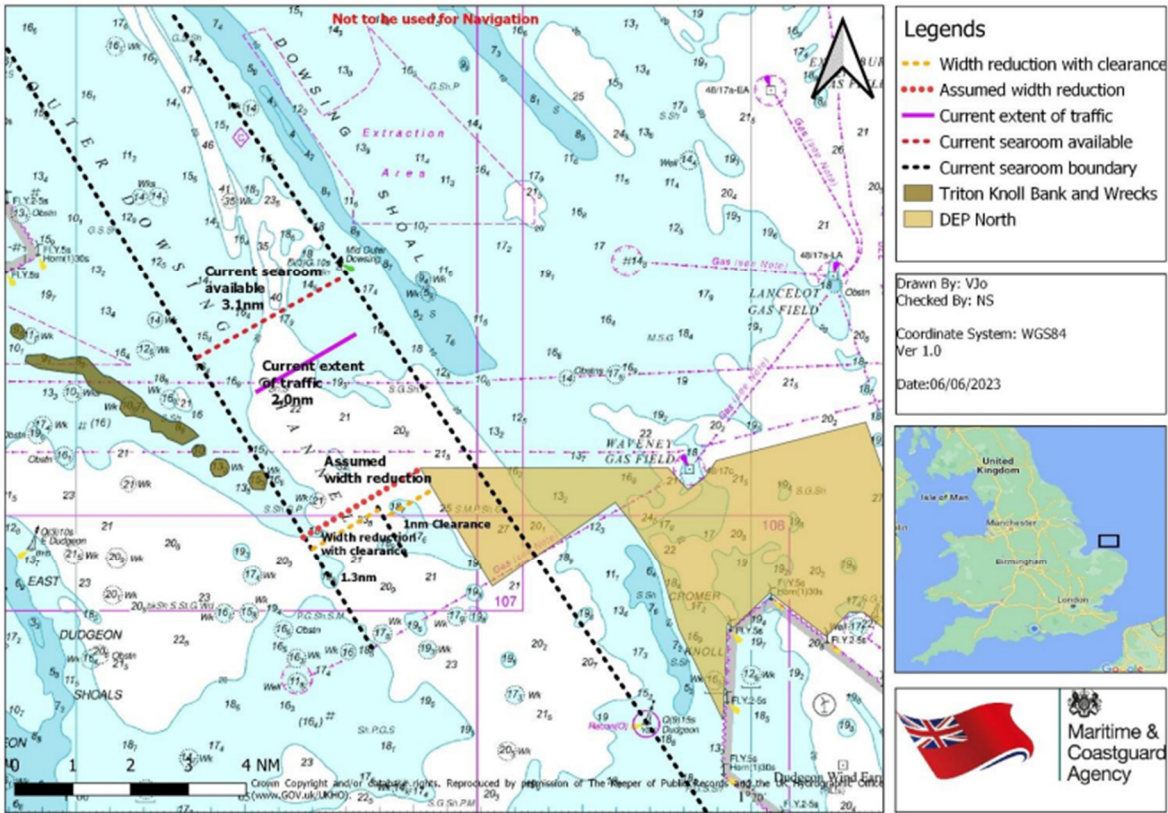
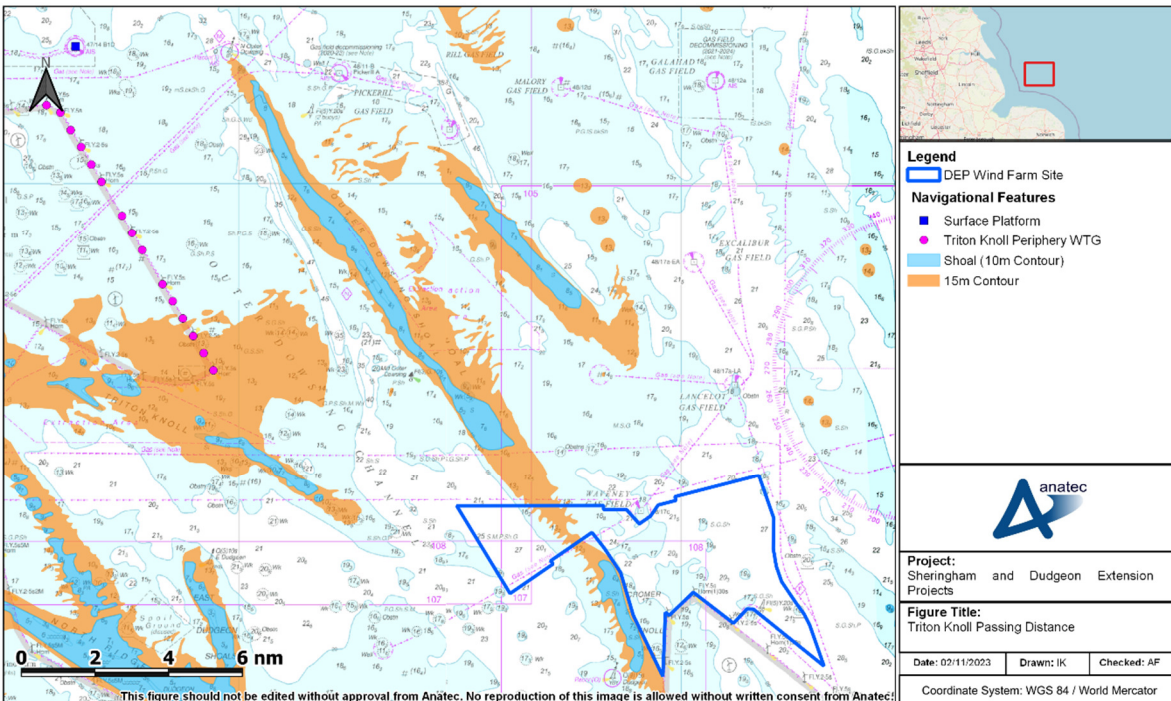


Figure 1: Safe sea room assessment

Figure Submitted by MCA at Deadline 5



10m and 15m Contours

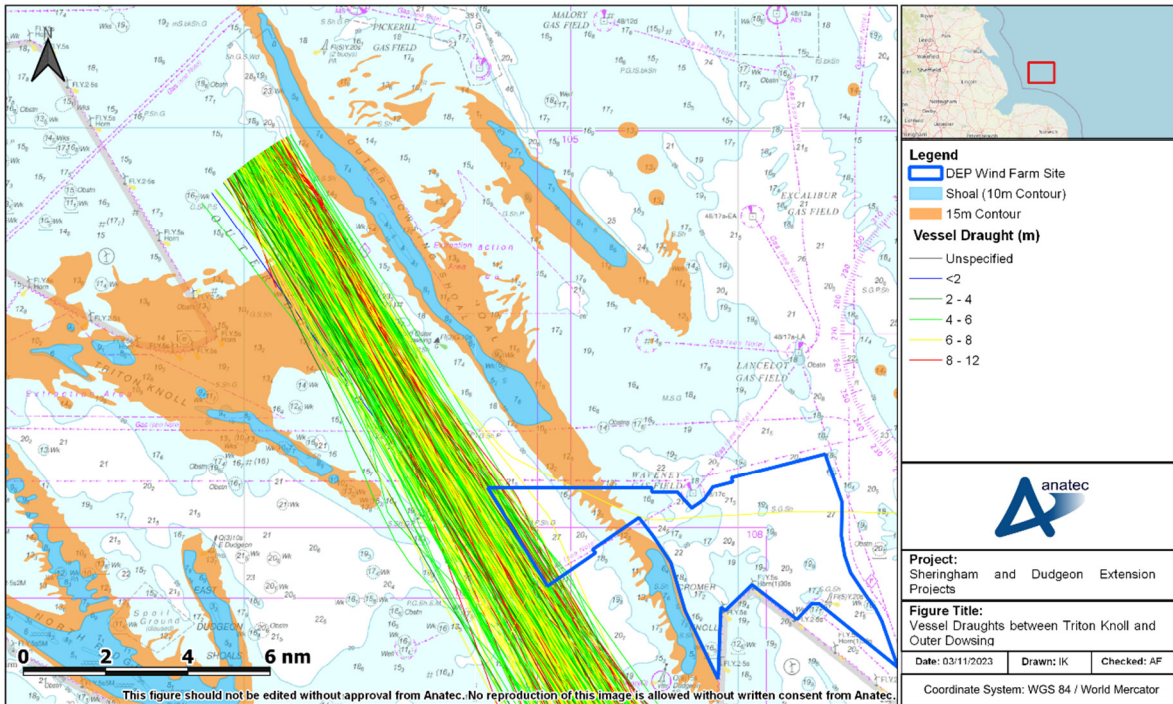


Figure 3 28 Days of Vessel Tracks Colour-Coded by Draught

The Applicant maintains that the MCA’s position regarding controlling depth represents a fundamental error of fact which completely undermines its case for a no structures area demarcated (approximately) by a line between the Mid-Outer Dowsing buoy and Dudgeon buoy.

The Applicant has been deeply concerned by the MCA’s approach to the SEP and DEP application in relation to its evaluation of the impact of DEP North, which it also considers has industry-wide implications for future projects. The Applicant wrote to the Chief Executive of the MCA on 17th July 2023 to highlight its concerns and request a meeting to discuss the issue further. A copy of the letter was provided within the Applicant’s Closing Statement [REP8-062] submitted at Deadline 8; a copy is attached for your convenience. To date, Equinor has not been able to secure the requested meeting.

**Secretary of State’s decision**

We consider that any decision by the Secretary of State to impose a ‘no obstacles area’ by applying the PIANC guidance to a controlling depth of 15.3m would be demonstrably flawed due to its being based on a fundamental error of fact.

We urge that the Secretary of State does not base a decision on an incorrect controlling depth and looks further into this issue at this stage. The Applicant considers that the ‘no obstacles area’ sought by the MCA cannot be justified for the reasons explained in detail in the Examination including its Closing Statement [REP8-062], Deadline 3 Submission: Navigational Technical Note [REP3-031] and Deadline 7 Submission: The Applicant’s Comments on Maritime and Coastguard Agency Deadline 6 Submission [REP7-072].

Yours faithfully



Julian Boswall  
Partner



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Our reference: C282-BS-Z-GA-00037  
17 July 2023

Dear Madam

**Maritime Coastguard Agency (MCA) objection to the Sheringham Shoal Extension Project (SEP) and Dudgeon Extension Project (DEP)**

Equinor New Energy Limited (Equinor) submitted an application for a Development Consent Order (DCO) on behalf of Scira Extension Limited (SEL) and Dudgeon Extension Limited (DEL) for the construction, operation and maintenance of two offshore windfarm extension projects off the North Norfolk coast known as Sheringham Shoal Extension Project (SEP) and Dudgeon Extension Project (DEP) (Planning Inspectorate reference EN010109) in September 2022.

Equinor is writing to the Chief Executive to raise its concerns regarding the maintained objection from the MCA in relation to the DCO application for SEP and DEP. Equinor has sought to resolve this objection throughout the 6 month Examination process which ends today (17 July 2023). It is submitting this letter into the Examination so that the Examining Authority, in preparing its recommendation report, and the Secretary of State for Energy Security and Net Zero (the Secretary of State), who will decide the application, are aware that Equinor is raising this issue with you directly.

**Headline Matters of Concern**

Equinor has two headline concerns. First, the way in which the objection has been raised and sustained by the MCA on SEP and DEP. Offshore Wind Farms are consented through the process set out in the Planning Act 2008, as nationally significant infrastructure projects. Through the National Policy Statements for Energy, that process imposes a duty on a developer to consult with the MCA prior to submitting an application and places considerable weight on the fact that they have done so. The MCA has a responsibility to engage as fully as possible with the developer at that stage, and should raise at that time any concerns that they have. A failure to do so, which then results in an objection at a later stage, will frustrate the intention of the Planning Act process.

Second, the implications of the MCA's approach for the credibility of Marine Guidance Note (MGN) 654 and the Navigation Risk Assessment (NRA) process for offshore wind in the UK going forward. This is of concern for Equinor's other projects in development in the UK and on a wider industry basis for the large programme of offshore wind projects through the Extensions, Round 4, ScotWind, INTOG and Celtic Sea leasing areas.

## SEP and DEP Application

Agreements for Lease (Afls) from The Crown Estate were entered for SEP and DEP in 2019. The DCO application was submitted on 5 September 2022, accepted for examination by the Planning Inspectorate on 3 October 2022, and an Examination was commenced on behalf of the Secretary of State on 17 January 2023. The boundary for the relevant part of DEP has not changed since the Afls were publicly announced by The Crown Estate in 2019.

Throughout the pre-application process (2019 – 2022) Equinor undertook significant consultation with a range of stakeholders, including the MCA and other shipping and navigation interests. Equinor has absolute confidence that it engaged in thorough and meaningful consultation, providing an opportunity for all parties to engage in good faith. In undertaking the pre-application consultation, Equinor not only met the statutory requirements of the Planning Act 2008, but also followed well established industry best practice processes with regards to the NRA which critically included a Hazard Workshop with participation from the MCA.

The MCA submitted a Relevant Representation on 19 October 2022 which raised no substantive matters but simply confirmed the MCA's request to be involved in the Examination as an Interested Party. Equinor continued to engage with the MCA with a view to progressing a Statement of Common Ground.

The MCA submitted an objection to part of the red line boundary (the western boundary of the area known as DEP North or DEP-N) at the Written Representations deadline (20 February 2023), over 5 months after the application had been submitted. This was the first indication that this objection would be made, despite 3 years of engagement prior to submission with the same boundary. The objection seeks a large 'no structures area' (preventing the construction of wind turbines or substation platforms) in part of the DEP-N area, which would have significant implications for the delivery of DEP.

The full technical material relating to the MCA's objection and Equinor's response is available at the project page for SEP and DEP on the Planning Inspectorate website<sup>1</sup>. It is not appropriate to set out the full detail in this letter, but in essence Equinor highlights that:

- No clear explanation has been provided by the MCA for not raising its objection before February 2023. The MCA has sought to suggest there was insufficient vessel traffic survey information provided during the NRA process, which has been rebutted by Equinor. The vessel traffic survey information at the PEIR stage was more comprehensive than that normally submitted and required for assessment at that stage. The vessel traffic survey information at the time of the Hazard Workshop and the final circulated draft of the NRA (provided to the MCA in July 2022 in advance of the DCO application submission) was the full information required under MGN 654;
- A full technical explanation was provided to questions asked by the MCA about the NRA 'worst case' collision risk assessment in its Written Representation, this explanation provided evidenced responses to address the MCA concerns;
- The MCA's arguments have appeared inconsistent with values changing and unevidenced in technical terms. In response to this Equinor has provided technical response to all of the questions raised by the MCA;
- The MCA's objection has been raised and maintained despite other stakeholders including regular operators who are familiar with the area having no outstanding / unmitigated concerns.

<sup>1</sup> <https://infrastructure.planninginspectorate.gov.uk/projects/eastern/sheringham-and-dudgeon-extension-projects/?ipcsection=docs>

- The MCA's position is not fully supported by Trinity House including a key point regarding the controlling water depth of the relevant sea route which then relates to the calculation of available sea room;
- The MCA has fallen back on the assertion of professional judgment in defending its proposed 'no structures area', which is at odds with its own methodology and the intent of MGN 654. Whilst we recognise the remit of the MCA, in Equinor's opinion this undermines the entire MGN 654 process by seeking to override the consensus achieved in the NRA conclusions with a single judgement; and
- The 'no structures area' the MCA proposes has been demonstrated in Equinor's technical work to not make a material improvement to the navigational safety position (all scenarios are deemed ALARP by the NRA) and thereby compromises the delivery of DEP to no purpose.

### Implications for UK Offshore Wind delivery

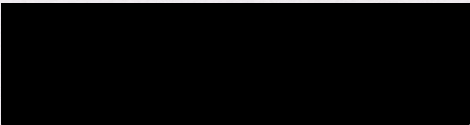
MGN 654 including the methodology contained in Annex 1 sets out a well-established process which has been followed successfully for all consented offshore wind farms, including those promoted by Equinor and its partners. One of the key objectives of that process is to reach a consensus on the red line boundary and that objective is reflected as key advice in MGN 654. If the MCA is prepared to participate in the NRA process and remain silent on a concern about the red line boundary and only raise it after the application has been submitted, that undermines the credibility of the entire process, which has implications for the successful delivery of future offshore wind projects in the UK.

It is essential that if the MCA has an important objection to a project that it is raised before the application is made. If it does then raise an objection it is essential that it can substantiate its objection with sustainable technical arguments and evidence rather than asserting its expertise regarding safety matters despite all of its technical arguments having been addressed.

### Next steps

Equinor would like to meet you to discuss these concerns, both in relation to SEP and DEP and the implications of the MCA's approach in this case for the wider future UK offshore wind industry.

Yours sincerely,



Halvdan Brustad  
Vice President  
Head of UK Renewables  
Equinor New Energy Limited