



TRINITY HOUSE

22nd November 2022

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

Your Ref: EN010112

Identification No. 20031611

**Awel y Môr Offshore Wind Farm Project
Written Submission to the Examining Authority
for Deadline 3 on Draft Development Consent Order**

Dear Sir / Madam

We refer to the above application for development consent.

Accordingly, Trinity House requests to submit a written submission to the Examining Authority (ExA) for Deadline 3 in respect of the Draft Development Consent Order as follows:-

**REP2-014 / REP2-015 Draft Development Consent Order (draft DCO) Document Refs:
2.14, 2.15 Revision G: 9 November 2022**

Article 44 Arbitration

Trinity House notes the applicant's revised draft DCO published at Deadline 2: *REP2-014 / REP2-015* and the applicant's response to Written Submissions also published at Deadline 2: *REP2-002*.

The applicant refers to the Written Representations made to the ExA by Trinity House at Deadline 1 (*REP1-095*) regarding the draft DCO and the provisions under that draft DCO relating to Arbitration.

In its written response the applicant refers to Article 36 of the draft DCO relating to the saving provision for Trinity House. Whilst Trinity House welcomes the applicant's acknowledgement of Article 36, which is intended to preserve Trinity House's ability to exercise its statutory functions, Trinity House does not agree with the applicant's position that Trinity House should remain subject to Arbitration (Article 44) in the Order.

The applicant suggests that to the extent that Trinity House's statutory rights, duties and privileges are not interfered with (as provided for in Article 36) that Trinity House would nonetheless be subject to Article 44 of the Order.

As previously contended, Trinity House considers that this would not be a desirable approach with regard to the drafting of Article 44 and would reiterate that it is necessary for Article 44 to exclude Trinity House from the scope of arbitration, notwithstanding the saving provision included in the draft DCO at Article 36, by making Article 44 *subject to* Article 36 (saving provision for Trinity House).

It being important in our view that nothing in the DCO should fetter the statutory powers of Trinity House in respect of DCOs and Marine Licences, to give direction in terms of aids to navigation requirements and for the prevention of danger to navigation.

Trinity House would respectfully refer the ExA to a number of previously made Development Consent Orders where this principle has been incorporated and reflected in the drafting of those made Orders, following representations by Trinity House and consideration of the matter by the respective Examining Authorities for those processes.

In particular, in case it is of assistance to the ExA and to the applicant Trinity House would respectfully highlight in this regard those Orders relating to Norfolk Boreas (2021), East Anglia One North, East Anglia Two (2022) and the Norfolk Vanguard (2022) Offshore Wind Farm Developments.

In addition, this principle is also reflected (albeit with slightly different drafting but to the same effect) in the Sizewell C (Nuclear Generating Station) Order 2022 and the Morlais Demonstration Zone Order 2021 (the latter process, incidentally, being under the Transport and Works Act 1992).

This principle has also be reflected in the published finalised draft DCO in respect of the Hornsea Four Offshore Wind Farm proposed development which it is understood is pending submission of the applicable Examining Authority's report to the Secretary of State in respect of that process.

Accordingly, Trinity House would therefore again submit to the ExA that Article 44(1) (Arbitration) of the draft DCO in should be amended as follows:-

44.—(1) ~~Any Subject to article 36 (saving provisions for Trinity House), any~~ difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled in arbitration in accordance with the rules at Schedule 12 (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) For the avoidance of doubt, any matter for which the consent or approval of the Secretary of State is required under any provision of this Order is not subject to arbitration.

For clarity, in noting the applicant's commentary at REP2-002, in relation to Arbitration, and in which the applicant briefly additionally refers to Article 43 (Requirements, Appeals etc.), Trinity House does not propose any amendment to the drafting of that Article.

We trust that this submission is of assistance and would ask that all correspondence regarding this matter is addressed to myself at [REDACTED] and to Mr Steve Vanstone at navigation@trinityhouse.co.uk

Yours faithfully,

[REDACTED]
Russell Dunham ACII
Legal Advisor