



Kelvin Macdonald
National Infrastructure Directorate
The Planning Inspectorate
(via e-mail only)

Your ref: EN020019
Our reference: DCO/2014/00013

25 November 2015

Dear Mr Macdonald,

**PROPOSED TRITON KNOLL ELECTRICAL SYSTEM
DEVELOPMENT CONSENT ORDER: RESPONSE TO EXAMINING AUTHORITY'S
DEADLINE 3**

The Marine Management Organisation (MMO) is an interested party for the examination of Development Consent Order (DCO) applications for Nationally Significant Infrastructure Projects (NSIP) in the marine area.

The MMO response to the Examining Authority's (ExA) Deadline 3 are presented within Appendix 1 attached to this letter.

The MMO have also undertaken a thorough review of the DCO/Deemed Marine Licence (DML) that was submitted by the applicant at Deadline 2 and have the following comments to make:

1) Page 5 and 109 – Interpretation of Commence - The MMO has undergone discussions with the applicant regarding the Horizontal Directional Drilling (HDD) works and the interpretation of “commence” which specifically excludes the HDD. The MMO has asked the applicant to look at the drafting of condition 9 (Page 115) which currently states:

Horizontal directional drilling works within Work No 2, including exit for HDD shall not commence until the following has been submitted to and approved in writing by the MMO including as relevant to those works.....

Our concern relates to the exclusion of HDD works within the definition and the inclusion of “commence” within condition 9. The MMO consider that the HDD punch out is a licensable activity under Part 4 of The Marine and Coastal Access Act 2009 and should be included within the definition of commence. However, we understand that the applicant does not wish the HDD works to trigger all other “commence” notifications/monitoring requirements within the DML. The MMO have provided the following suggested amendments to the applicant to resolve this matter:

“including exit for HDD” to be removed from the definition of commence. While the MMO agrees in principle that the HDD works do not require all of the pre-construction documents to be discharged under the DML prior to commencement, as per the drafting of



condition 9, the HDD works are a licensable activity, and the MMO believes should be part of commence. Condition 7 (1) could be amended to state *“The licensed activities or any part of those activities (except for HDD works within works No 2) shall not commence....*

The MMO would note that the current drafting of condition 9 references commence, but the definition of commence excludes the works relevant to condition 9. The amendments suggested above would resolve this issue.

2) Page 111 Condition 3 (3) The MMO believes that this is a duplication of the requirement of 3 (1) and is unnecessary. In addition, we query the need for an Emergency Response Co-operation Plan (ERCoP)/MGN371 to be included within the DML. Such conditioning is usually applied to the generation assets (e.g. wind turbines) and this application is for an export cable. However the MMO is content to leave this to the applicant and the MCA to determine and if no agreement is reached then the ExA/Secretary of State may need to make the conclusive decision.

3) Page 113 – Misplaced Rock – The applicant should note that the notifications should also be communicated to Trinity House (TH), Maritime and Coastguard Agency (MCA) and the United Kingdom Hydrographic Office (UKHO). These parties, along with the MMO are all in agreement that the adoption of the Dropped Object Procedure is the correct format for these notifications to be received. We re-iterate our opinion that this would reduce the monitoring and reporting obligations of any developer and the MMO significantly. It is also important that legitimate users of the sea are notified of dropped objects to ensure that navigational safety is not undermined as a result of an object being “lost” within the marine environment.

4) Page 113 - Condition 7 (1) (b) (iii) refers to conditions 12 and 13. This should be corrected to 13 and 14 as condition 12 is currently related to equipment of vessels and not monitoring

4) Page 115 – Equipment and Operation of Vessels – The MMO are content for this section to be removed. The topics detailed here are covered within other legislation and are no longer necessary. However should the applicant wish to retain this requirement then the MMO has no objection.

5) Page 115 – Marine Contingency Plan – Should read Marine Pollution Contingency Plan

6) Page 116 – Submission of details of pre and post construction surveys – condition 7 (1) (b) (iii). The MMO have requested the insertion of timeframes for the submission of pre-construction survey methodology and monitoring timetable (i.e. plans for pre-construction monitoring to be submitted 4 months prior to the condition of the first survey). The MMO notes the current linking of this requirement to 4 months prior to construction would mean the plans would have to be reviewed, approved, surveys conducted, results reviewed and approved all in the 4 months prior to construction. This does not seem an appropriate period and would be very restrictive for the undertaker.

7) Page 116 - Post Construction Bathymetric Surveys – The current drafting reads:

a swath bathymetric survey to IHO Order 1a across the area(s) within the offshore Order limits ensure the cables have been buried and located within the Order limits and provide the data and survey report(s) to the UKHO.

The MMO have provided an alternative to the current drafting for the applicants consideration as follows:

A swath bathymetric survey to IHO Order 1a across the area(s) within the offshore Order limits ensure the cables have been buried and located within the Order limits and provide the data and survey report(s) to the UKHO. The results of the post cable lay surveys must be submitted to the MMO as part of a cable burial risk assessment which shall include detail of cable burial management including surveys and reporting of burial depths over the lifetime of the project.

This change to the wording ensures that the burial of the export cable is managed appropriately over the lifetime of the project.

The MMO have already engaged in discussions with the applicant to address the questions posed above and we remain confident that other than our disagreement over the drafting of Article 5 of the DCO (Benefit of the Order) that all other issues can be resolved and documented with a Statement of Common Ground prior to the February 2016 deadline.

Please note that the MMO reserves the right to make further comments on this application throughout the examination process and to modify its present advice or opinion in view of any additional information that may come to our attention.

Yours sincerely,

A solid black rectangular box used to redact the signature of Andrew Souter.

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Appendix 1 MMO Response to the Examining Authority's Deadline 3

AGENDA ID	TOPIC HEADING AND QUERY	MMO COMMENTS	UPDATED INFORMATION
N/A	Completion of Works – Archaeology Concern raised by Historic England (HE)	<p>Historic England (HE) were content that a condition was currently contained within the DML to ensure a reporting method for any archaeological discovery was in place, however, a timeframe for submission had been overlooked.</p> <p>It was agreed that HE and the MMO would submit a draft condition for consideration by the applicant at deadline 3 and further details are adjacent.</p>	<p>MMO and HE have submitted the following drafting to the applicant on 16 November 2015 for consideration for inclusion within the DML:</p> <p>8(2) “The undertaker must ensure that a copy of any agreed archaeological report is deposited with the National Record of the Historic Environment, by submitting a Historic England OASIS form with a digital copy of the report within 6 months of completion of construction of the authorised scheme. The undertaker must notify the MMO and, where the report relates to the intertidal area, Lincolnshire County Council, that the OASIS report has been submitted to the National Record of the Historic Environment within two weeks of the submission.”</p>
oo)	Deemed Marine Licence - Restriction of Cable Protection – ExA requested clarification that MMO	MMO confirmed that the applicant was obligated via current licence conditions that cable laying plans, construction method statements etc had to be submitted for review and approval before any construction could take place.	

	are content with the proposals in the DML	Should the MMO not be fully content with any of the documents submitted for approval or should it come to our attention that anything requested had not been fully assessed within the Environmental Statement submitted as part of this DCO application, then the MMO could withhold sign off of these documents.	
tt)	Deemed Marine Licence – ExA requested clarification that MMO are content that overlap of order limits with Triton Knoll Offshore Windfarm was acceptable	MMO confirmed that boundary overlap was to allow the applicant “wiggle room” for the electrical system applied for under this DCO application. Further explained that the two DCO’s were completely separate and that this application did not allow construction of any offshore collector stations and this application was for the export cable installation only. Explained that the overlap in boundary meant the cable could be connected to any appropriate collector station within the boundaries of the original Triton Knoll Offshore Windfarm consent, and as the final design parameters which will detail the layout of the array and collector stations had not yet been completed the MMO were content that the overlap was both reasonable and necessary to allow flexibility on any final design parameters that may be submitted as part of the Triton Knoll Offshore Wind Farm consent.	
uu)	Transfer of the Benefit of The Order – MMO were requested to detail why we remain dissatisfied with the current drafting	The MMO explained that we did not object to a full transfer of any DML only the partial transfer of such a consent. We re-iterated that our position remains unchanged and that we continue to have concerns with the current drafting as partial transfer appears to be drafted in such a way that the licence holder themselves can choose what conditions to transfer to a 3rd party (Page 9 – Article 5) (6) (iv), this is likely to result in any potential future monitoring/enforcement action impossible to police from a legislative perspective as it will be difficult to address the “partial” licence holder directly.	The MMO and the Applicant have had detailed discussions based on the drafting of the Benefit of the Order. We have requested further clarity on the intention of Article 5 (6)(iv) from the applicant on 24 November 2015. The MMO interprets that this section of the article would allow for a transfer/grant to occur and that the undertaker of the DCO/DML can determine which conditions (restrictions and liabilities) of the DML they wish to transfer/partially transfer ? That is to say, the undertaker can transfer Work No 1 to another party but determine that certain

			<p>conditions of Part 2 of the DML such as condition 13 for pre-construction monitoring do not apply.</p> <p>Both parties are agreed that we will be unable to concede our difference of opinions surrounding the issue. This will be reflected in the final Statement of Common Ground to be submitted to PINS.</p>
6	Possible New Requirements	<p>Within the MMO deadline 1 response (29/09/2015) the MMO stated:</p> <p>It should be noted that the MMO would be responsible for any bathing water plan that has a requirement to be set for approval/certification below MHWS.</p> <p>To ensure this process the requirement for post consent submission and approval should be secured by condition within the DML. The condition should recognise the MMO as the approving organisational body.</p> <p>After consultation with both the Environment Agency and the Applicant an appropriate condition was submitted to the MMO by the applicant on 12/11/2015 as follows:</p> <p>Condition</p> <p><i>Work No 2 shall not be undertaken between 15 May and 30 September in any year unless a scheme to protect the Bathing Water Quality Directive status, as determined by a review of EA baseline data prior to construction, has been submitted to and approved in writing by the MMO, following consultation with the Environment Agency. The scheme must include:</i></p> <p><i>(1) An assessment of the impact of any works in the intertidal area (with a particular focus on the potential bacte issues that may be caused by disturbed sediment) which will be undertaken during the bathing water season of 15</i></p>	

		<p><i>May to 30 September.</i></p> <p><i>(2) Identification of measures to be implemented to mitigate any identified risks to ensure the Bathing Water Directive status is not impacted.</i></p> <p>The MMO can confirm that we are content for this drafting to be included within the DML.</p>	
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