

From: [Russell Dunham](#)
To: [Norfolk Vanguard](#)
Cc: [Navigation](#)
Subject: Norfolk Vanguard Offshore Wind Farm Project EN010079 - Response to Response to Examining Authority Questions ExQ1
Date: 14 January 2019 15:14:19
Attachments: [Response to Examining Authority Questions Norfolk Vanguard.pdf](#)

Dear Sir / Madam

EN: 0010079

Identification No. 20011687

Response to Examining Authority Questions ExQ1 - 19 December 2018

Please attached Trinity House's response dated 14 January 2019 in respect of the Norfolk Vanguard Offshore Wind Farm Project

A hard copy of the attached will also be sent by post.

Kind Regards

Russell



Russell Dunham ACII

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TRINITY HOUSE

14 January 2019

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

Your Ref: EN010079

Identification No. 20011687

The Norfolk Vanguard Offshore Wind Farm

Dear Sir / Madam

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

Response to Examining Authority Questions (ExQ1) – 19 December 2018

Fishing and Navigation:

URN 8.4

Trinity House acknowledge that this question is directed at the Maritime and Coastguard Agency but wishes to comment that it is content with the wording, with regard to the lighting and marking arrangements, of the "aids to navigation" condition 10 of Schedules 9 and 10, and condition 5 of Schedules 11 and 12 of the draft Development Consent Order (DCO)(APP-005). Ver. 3.1

URN 8.7

Article 38 and Schedule 14 (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 41 of the draft Norfolk Vanguard 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 38 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 14 (Arbitration Rules) of the Order. Schedule 14 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.

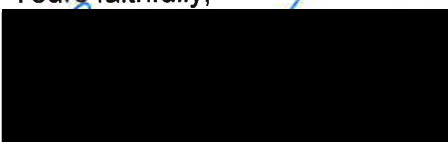
However, Trinity House is concerned that the exercise of its statutory functions to provide for safety of navigation, including the requiring of the marking and lighting of potential obstructions during the construction, operation, maintenance and possible decay of the works authorised by the proposed 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 41 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 41 of the draft DCO.

We would request that Article 38 and Schedule 14 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.

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,



Russell Dunham ACII
Legal & Risk Advisor

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