

**From:** [Russell Dunham](#)  
**To:** [Aquind Interconnector](#)  
**Cc:** [Navigation](#)  
**Subject:** Written Submission to Examining Authority for Deadline 2 - Aquind Interconnector  
**Date:** 13 October 2020 21:09:28  
**Attachments:** [Letter Aquind.pdf](#)

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Dear Sir / Madam

**EN020022**

**Registration identification number 20023138.**

We refer to the above application for development consent.

Accordingly, please find attached Trinity House's written representation to the Examining Authority for Deadline 2.

Kind Regards

Russell

Russell Dunham  
Legal Advisor  
Corporation of Trinity House  
Trinity House  
Tower Hill  
London EC3N 4DH

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## TRINITY HOUSE

13 October 2020

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

Your Ref: EN020022

Identification No. 20023138

### **The Aquind Interconnector Written Submission to Examining Authority (ExA) for Deadline 2**

Dear Sir / Madam

We refer to the above application for development consent and note that the applicant submitted an updated draft Development Consent Order (dDCO) (including draft Deemed Marine Licence - DML) at Deadline 1.

Accordingly, Trinity House respectfully requests to submit representations to the ExA for Deadline 2 as follows:-

#### **Draft Development Consent Order (dDCO): Document Ref. 3.1. Revision 002 6 October 2020**

#### **Articles (Numbered 1 to 48)**

Trinity House notes that the draft DCO proposed by the applicant and published at Deadline 1 (Document Ref. 3.1 Revision 002 - 6 October 2020) does not currently appear to include a standard 'Saving Provision' for Trinity House.

As such, Trinity House would highlight to the ExA that 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.

The standard wording included in this regard is:-

#### **'Saving provision for Trinity House'**

*Article XX. 'Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House'.*

Trinity House would, therefore, suggest that the relevant Article is included on the face of the dDCO immediately prior to the Article relating to 'Crown Rights'. If accepted, the numbering of the other Articles in the draft DCO would, of course, need to be adjusted accordingly.

### **Article 45 - Arbitration**

Trinity House notes that Article 45 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.

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 typically included in Orders of this nature (*and as proposed above by Trinity House*) is clearly intended to preserve Trinity House's ability to exercise its statutory functions. Nothing in the DCO should, in our view, fetter the statutory powers of Trinity House in respect of DCOs and 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 should not be subject to the Arbitration provision of the DCO.

We consider therefore that it is imperative that there is clarity that the proposed saving for Trinity House in the DCO, if adopted, should also not be 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 this should similarly remain subject to the "saving" provision under the proposed new Article of the draft DCO.

Trinity House would therefore respectfully submit that Article 45 (Arbitration) of the draft DCO should be amended as follows to include the following additional provisions:-

*(3) This article is without prejudice to article XX (saving provision for Trinity House).*

*(4) The powers of the arbitrator appointed under this article do not extend to considering the appropriateness of a decision or determination made by a body exercising regulatory functions on behalf of the Secretary of State under or pursuant to an enactment.*

### **Draft Deemed Marine Licence (dDML)**

#### **Schedule 15: Part 2**

#### **Condition 7 - Aids to Navigation**

We would propose that the wording of condition 7(1) of Schedule 15 Part 2 is broadened slightly to refer to the standard marking schedule for **offshore installations** (the suggested additional text to this condition is highlighted red below for ease of identification).

*Thus this condition would read as follows:-*

**(7) (1)** Any vessels utilised during the licensed activities, when jacked up, must exhibit signals in accordance with the standard marking schedule for **offshore installations**’;

Trinity House further notes that condition 7(4) of Schedule 15 Part 2 refers to *condition 2(12)*. With the re-numbering of the conditions in this section of the updated draft DML, Trinity House believes that this should instead refer to *condition 2(13)* of Schedule 15 Part 2.

We trust that these submissions are helpful and would ask that all correspondence regarding this matter is addressed to myself at [russell.dunham@trinityhouse.co.uk](mailto:russell.dunham@trinityhouse.co.uk) and to Mr Steve Vanstone at [navigation@trinityhouse.co.uk](mailto:navigation@trinityhouse.co.uk)

Yours faithfully,

***Russell Dunham***

Russell Dunham ACII  
Legal Advisor

Email: [Russell.dunham@trinityhouse.co.uk](mailto:Russell.dunham@trinityhouse.co.uk)