



National Infrastructure Planning,
Temple Quay House,
2 The Square Bristol,
BS1 6PN

Your reference: EN020022

Our reference:
DCO/2018/00016

aquind@planninginspectorate.gov.uk

[by Email only]

26 November 2020

Dear Mr Mahon,

**The Planning Act 2008, AQUIND Limited, proposed AQUIND Interconnector Project
Oral transcript in response to the Examining Authority's (ExA) Issue Specific
Hearing 1 (ISH 1) Agenda and Issue Specific Hearing 3 (ISH 3) Agenda**

On 6 January 2020, the Marine Management Organisation (the "MMO") received notice under section 56 of the Planning Act 2008 (the "2008 Act") that the Planning Inspectorate ("PINS") had accepted an application made by AQUIND Limited (the "Applicant") for a development consent order (the "DCO Application") (MMO ref: DCO/2018/00016; PINS ref: EN020022).

The DCO Application seeks authorisation to construct and operate an electricity interconnector with a net transmission capacity of 2000 megawatts between France and the UK (the "Project").

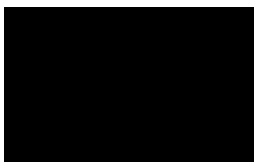
The MMO is an interested party for the examination of the DCO Applications for Nationally Significant Infrastructure Projects (NSIPs) in the marine area. Should consent be granted for the Project, the MMO will be responsible for monitoring, compliance and enforcement of Deemed Marine Licence (DML).

The MMO received the Issue Specific Hearing (ISH) 1 Agenda on 6 November 2020 and the ISH 3 Agenda on 9 November 2020 containing the Examining Authority's (ExA's) questions for the proposed DCO. Please find the transcripts of our oral submissions which are based upon our responses to these questions in Annexes below. Annex 1 includes our transcripts for our oral representation at ISH 1 and Annex 2 includes our transcripts for our oral representation at ISH 3. In order to ensure clarity, details of respondents and questions have been included. The MMO has also included the SoCG. Please note that MMO's comments resulting from the Applicant's feedback on 9th November have not been reviewed by the Applicant and this SoCG reflects only the MMO's current understanding of status of matters.



These transcripts are submitted without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. These transcripts are also submitted without prejudice to any decision the MMO may make on any associated application for consent, permission, approval or any other type of authorisation submitted to the MMO either for the works in the marine area or for any other authorisation relevant to the proposed development.

Yours sincerely,



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Annex 1

Issue Specific Hearing 1 (ISH 1)

6.1. What are the various documents that will require approval and the means/method/ timescales involved in obtaining them? What is the rationale behind the time period allowed of 20 days for authorities to respond to requirement discharge requests?

The following conditions are currently on the draft Deemed Marine Licence (DML) and would require approval. The MMO has included in italics the work required to gain approval:

- Condition 2 (1) - Copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions must be provided to all agents and contractors and the masters and transport managers responsible for the vessels notified to the MMO within 20 working days.

MMO approval actions: internal review of documentation.

- Condition 2 (6) - The undertaker must inform the MMO Local Office in writing at least five working days prior to the commencement of the licensed activities or any part of them.

MMO approval actions: internal review of documentation.

- Condition 2 (7) - The undertaker must inform the Kingfisher Information Service of Seafish by e-mail to kingfisher@seafish.co.uk of details regarding the vessel routes, timings and locations relating to the construction of the authorised development or relevant part – at least ten working days prior to the commencement of marine activities .

MMO approval actions: internal review of documentation.

- Condition 2 (8) - Notice to mariners – Copies of all notices must be provided to the MMO and the UK Hydrographic Office within 5 working days.

MMO approval actions: internal review of documentation.

- Condition 2 (10) - The undertaker must notify the UK Hydrographic Office both of the commencement (within ten working days), progress and completion of construction (within ten working days) of the licensed activities in order that all necessary amendments to the nautical charts are made and the undertaker must send a copy of such notifications to the MMO within five working days.

MMO approval actions: internal review of documentation.



- Condition 2 (11) - The undertaker must notify HM Coastguard at least ten working days prior to commencement of the licence activities or any part of them advising of the start date of Works No. 6 and Works No. 7 by e-mail to nmcontroller@hmcg.gov.uk and a copy of that notice must be provided to the MMO within five working days.

MMO approval actions: internal review of documentation.

- Condition 2 (13) - In case of damage to, or destruction or decay of, the authorised development or any part thereof the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify the MMO, the MCA, Trinity House, the Kingfisher Information Service of Seafish and the UK Hydrographic Office.

MMO approval actions: internal review of documentation.

- Condition 2 (14) - In case of exposure of the marine HVDC cables on or above the seabed, the undertaker must within three working days following identification of any exposure of the marine HVDC cables, issue a notice to mariners and by informing Kingfisher Information Service of Seafish of the location and extent of the exposure. Copies of all notices must be provided to the MMO, the MCA, Trinity House and the UK Hydrographic Office within five working days.

MMO approval actions: internal review of documentation.

Pre-construction surveys

- Condition 3 (1) - Surveys in relation to the pre-construction phase of the authorised development will include –
 - (a) a swath-bathymetry survey within the Order limits seaward of MHWS to:
 - (i) inform future navigation risk assessments as part of the cable specification and installation plan; and
 - (ii) determine the location, extent and composition of any biogenic and geogenic reef habitat within the Order limits seaward of MHWS identified in the environmental statement.

The MMO must determine an application for approval made under sub-paragraph (2) within a period of 8 weeks commencing on the date the application is received by the MMO.

MMO approval actions: internal review of documentation and consultation with MCA, Cefas and SNCB's.



Pre-construction plans and documentation

- Condition 4 (1) - The licensed activities or any part of those activities must not commence until the following (as relevant to that part) have been submitted to and approved in writing by the MMO –
 - a) A design plan
 - b) A construction programme
 - c) A cable burial and installation plan
 - d) An environmental management plan
- Condition 4 (2) - The licensed activities or any part of the activities must not commence unless a written scheme of archaeological investigation has been submitted to and approved by the MMO
- Condition 4 (3) - No part of the licensed activities may commence until a statement confirming how the undertaker has taken into account the MCA safety guidance in so far as is applicable to that part of the licensed activities and a marine emergency action card has been submitted to and approved by the MMO, in consultation with the MCA.
- Condition 5 (1) - Each programme, statement, plan, protocol or scheme required to be approved under condition 4 must be submitted for approval at least four months prior to the intended commencement of the licensed activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.

MMO approval actions: internal review of documentation and consultation with Historic England, Environment Agency, MCA, Cefas and SNCB's.

Post-construction surveys

- Condition 10 (1) - Within 6 months of the completion of the construction of the authorised development the undertaker is to submit to the MMO for approval a swath-bathymetry survey within the Order limits seaward of MHWS in order to:
 - inform of any dropped objects or residual navigational risk; and
 - to determine any change in the location, extent and composition of any biogenic or geogenic reef feature identified in the pre-construction survey in the parts of the Order limits seaward of MHWS in which construction works were carried out.
- Condition 10 (2) - Where requested by the MMO following the completion of construction of the authorised development the undertaker will produce an electromagnetic deviation survey to confirm that there must be no more than a 3



degree electromagnetic variation for 95% of the marine HVDC cables and no more than a 5 degree electromagnetic variation for the remaining 5% of the marine HVDC cables in water depths of 5m and deeper as a result of the operation of the authorised development.

- Condition 10 (3) - Within 3 months of completion of construction of the authorised development the undertaker must submit International Hydrographic Office (IHO Order 1A) approved sonar or Multi Beam Echo Sounder survey data and report to the MMO, Trinity House and UK Hydrographic Office, confirming the final clearance depths over the marine HVDC cables and the associated cable protection and if the MMO, Trinity House or the UKHO identify any area as a possible danger to navigation to exhibit such lights, marks, sounds, signals and other aids to navigation as are reasonably.

MMO approval actions: internal review of documentation and consultation with MCA, Cefas and SNCB's.

Cable burial management plan

- Condition 11 (1) - Following the completion of construction of the authorised development the undertaker will submit a cable burial management plan including results of the post installation surveys to the MMO for its approval (in consultation with the statutory nature conservation body).

MMO approval actions: internal review of documentation and consultation with MCA, Cefas and SNCB's.

Post-construction approvals

- Condition 12 (1) - The MMO must determine any application for approval made under condition 10 or 11 within a period of four months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

MMO approval actions: internal review of documentation.

Maintenance of the authorised development

- Condition 13 (6) - The undertaker must inform the MMO Local Office in writing at least 5 working days prior to the commencement of the laying of any new cable protection following the completion of construction

MMO approval actions: internal review of documentation.



- Condition 13 (7) - The undertaker must issue a notice to mariners at least 5 working days prior to the laying of any new cable protection following the completion of construction and that notice must be forwarded to the MMO within 5 working days of issue

MMO approval actions: internal review of documentation.

- Condition 13 (9) - The undertaker must notify the MMO Local Office of the completion of the laying of any new cable protection following the completion of construction no later than 10 working days after the completion of the laying of the new cable protection.

MMO approval actions: internal review of documentation.

- Condition 13 (10) - Within 4 weeks of completion of the completion of laying of any new cable protection following the completion of construction unless otherwise agreed with the MMO, the undertaker must submit International Hydrographic Office (IHO1A) approved sonar or Multi Beam Echo Sounder survey data to the MMO and UKHO, confirming the final clearance depths over the protected cables where the new cable protection has been laid.

MMO approval actions: internal review of documentation.

- Condition 13 (11) - The MMO must determine any application for approval made under this condition 13 within a period of 8 weeks commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

The DCO, as drafted, states that where the MMO “fails to determine the application for approval” within the stipulated timescales for a number of conditions, Part 3 Appeals may be triggered.

An appeals process already exists in respect of Marine Licences granted under Part 4 of the Marine and Coastal Access Act 2009. The appeals process is set out in the Marine Licensing (Licence Application Appeals) Regulations 2011 (the 2011 Regulations). However, the appeals process does not apply to any non-determination within a particular timeframe or refusal to approve conditions under a Marine Licence (or DML) and, under Regulation 4 of the 2011 Regulations, is limited to appeals concerning:

- *the grant of a marine licence subject to conditions;*
- *refusal to grant a marine licence;*
- *the time period for which activities are authorised; and/or*
- *the applicability of the licence conditions to transferees.*

Consequently, the MMO maintains that it is not content with the appeal route in Part 3. The 2011 regulations apply a statutory appeal process to the decisions the MMO takes regarding whether to grant or refuse a licence or conditions which are to be applied to the



licence. However, they do not include an appeal process to any decisions (or timescales) the MMO is required to give in response to an application to discharge any conditions of a marine licence issued directly by us. Therefore, if the DCO were to be granted with the proposed appeal process included, this would not be an appeal procedure broadly consistent with the existing statutory processes. This amendment would be introducing and making available to this specific Applicant a new and enhanced appeal process which is not available to other marine licence holders. This is problematic because it would lead to a clear disparity between those licence holders who obtained their marine licence directly from the MMO and those who obtained their marine licence via the DCO process. This would lead to an inconsistent playing field across the regulated community. Had parliament intended the appeal process to extend to these decisions, whether in relation to NSIPs or the marine licence granted directly by the MMO, then the wording of the Appeal Regulations would have been drafted differently. This is a fundamental departure from what Parliament intended, and the MMO can see no justification for such a major change particularly where the purpose of the deemed licence regime under the Planning Act 2008 is essentially to remove the need for a separate application for a licence alongside or following the making of the Order and not to fundamentally change the regulatory regime that applies.

6.2. What are the roles of the MMO, Natural England, Environment Agency and local planning authorities in the seeking the discharge of Requirements?

The MMO is responsible for monitoring, varying, suspending, and revoking of the Deemed Marine Licence (DML). The DML will have conditions, some of which will require the applicant to produce documents which the MMO will review and consult upon. The MMO is not responsible for discharging the Requirements of the DCO.

10.2 What is the status of negotiations between the Applicant and the Marine Management Organisation in relation to the DML?

The MMO returned updated comments to the applicant on the Statement of Common Ground on the 26th November. As stated within the SoCG, there are the following outstanding issues. Further detail can be seen within the SoCG which is included with this letter. Please note that MMO's comments resulting from the Applicant's feedback on 9th November have not been reviewed by the Applicant and reflects MMO's current understanding of status of matters.

- *Contaminated sediments sampling* (4.1.1 of SoCG) – We all agree the purpose of this condition, the applicant is finalising the wording which we will review.
- *Herring mitigation* (4.1.4 of SoCG) – The MMO request that temporal and spatial mitigation is included, the applicant is not currently in agreement with this mitigation.
- *Underwater noise* (4.1.5 of SoCG) – MMO provided the applicant with rationale for requesting an updated criteria, as the cumulative exposure should also be assessed and the most appropriate criteria for assessing this is NOAA (2018). Awaiting Applicant response.



- *Appeals and Arbitration* (4.1.6, 4.1.7, 4.1.8 of SoCG). The MMO must not be subject to an appeals process. The MMO's position is that any matter in relation to the DMLs should not be subject to arbitration or appeal. The Applicant should rely on judicial review as a means to challenge any decision of the MMO.

The MMO requests that Article 45 states that any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order shall not be subject to arbitration. The MMO requests amendments to the drafting that make it explicit that the MMO is not subject to the provision.

In summary, the MMO's concerns relate to the private nature of the arbitration process which does not align with the public functions and duties of the MMO. The MMO consider that the removal of the MMO's decision-making function and its placement into the hands of a private arbitration process is inconsistent with the MMO's legal function, powers and responsibilities, which was never intended by Parliament in enacting the Planning Act 2008 or the Marine and Coastal Access Act 2009. The MMO also consider that arbitration would not be consistent with p.4 of Annex B of the PINS Guidance Note 11, which states that "the MMO will seek to ensure wherever possible that any deemed licence is generally consistent with those issued independently by the MMO". Including a mechanism for determination of disputes in respect of DMLs would not be consistent with Marine Licences issued independently by the MMO.

The inclusion of arbitration/appeals provision as drafted will create inconsistency with decisions made under DMLs and those made in relation to those marine licences issued directly by the MMO. This will create a 2-tier licensing approach. The MMO reiterates in the strongest possible terms that DMLs granted as part of a DCO should not be treated differently to a marine licence granted directly by the MMO under the Marine and Coastal Access Act 2009, as this will lead to disparity between licence holders, and an uneven playing field across a regulatory regime. There is no indication, under either the Planning Act 2008 or the Model Clauses provisions that this is what was intended by Parliament or the Secretary of State: namely, that licences or consents deemed granted by reference to a specific provisions of another enactment, and which required further approvals by a named body, should be subject to a different regime in the event of the applicant being dissatisfied by the outcome of that further approvals than would be the case for a licence expressly granted under the same provisions of the same enactment. The MMO maintains that it is not content with the appeal route in Part 3. It is inconsistent with other marine licences the MMO grant outside of DCOs to have an appeal route for approvals with plans. There is already an appeal mechanism via the established process of JR. Please see further information in 4.1.8. The MMO does not believe the reasons for the extension of the appeals process to its decisions and determinations have been properly justified. Since its inception the MMO has undertaken licensing functions on ~130 DCOs comprising some of the largest and most complex operations globally. The MMO is not aware of an occasion whereby any dispute which has arisen in relation to the discharge of a condition under a DML has failed to be resolved satisfactorily between the MMO and the applicant, without any recourse to an 'appeal' mechanism.



The MMO is an open and transparent organisation that actively engages with and maintains excellent working relationships with industry and those it regulates. The MMO discharges its statutory responsibilities in a manner which is both timely and robust in order to fulfil the public functions vested in it by Parliament. The scale and complexity of an NSIP creates no exception in this regard and indeed it follows that where decisions are required to be made, or approvals given, in relation to these developments of significant public interest only those bodies appointed by Parliament should carry the weight of that responsibility. There is no compelling evidence as to why the applicant in the case of AQUIND should be an exception to the rule and treated differently to any other marine licence holder.

- *The definition of cable protection in dDCO [APP-019] Schedule 15, the Deemed Marine Licence.* The MMO and the applicant will work to come to an agreement on this definition.

- *Part 1, 10 of the DML.* In the DML in the dDCO [APP-019], at Part 1, 10 'Details of Licensed Marine Activities' the use of the word "likely". The MMO is working with the applicant to understand the purpose of Part 1, 10.

- *Part 1, 4(5) of the DML.* The MMO is unclear about the purpose of the DML Part 1, 4(5) permitting any "other works as may be necessary or expedient" and there is some concern that it could introduce scope for additional cable protection to be added without the necessary marine licence being sought. In the meeting on the 19th November, the applicant confirmed that the "other works" would be minor ancillary works. The MMO have requested that the applicant review this condition to clearly state that these are minor works.



Annex 2

Issue Specific Hearing 3 (ISH 3)

9. Marine matters

i) The Deemed Marine Licence

• Can the Marine Management Organisation (MMO) and Natural England confirm if the methods of non-burial protection for the cable are acceptable and adequately secured in the DCO and Deemed Marine Licence? Following the Applicant's response at Deadline 2, do you still consider that further detail needs to be added to the design parameters to confirm maximum amount of cable protection required?

Providing grout bags are a temporary measure as detailed in the Applicant's response to the MMO, the MMO is content with the methods of non-burial protection for the cable. However the MMO would like the applicant to confirm how this is secured in the DML. With regards to the design parameters, the MMO is content that the Applicant has acknowledged our request to define the length and area of protection required at the Atlantic Cable Crossing and is content that the applicant proposes to include this in Part 1, Paragraph 4(1). The MMO notes that Applicant is content to amend Part 2, Condition 11 to include provision for details of scour/erosion around the Atlantic Cable Crossing, and the justification for any additional protection which may be required. The MMO awaits for proposed wording from the Applicant.

In addition, the MMO are concerned that the request for data no older than 5 years to be presented before post construction cable protection is approved is not currently secured in the DML. The MMO is working with the Applicant on this matter.

• MMO previously noted that it was unclear and had concerns about the purpose of proposed Deemed Marine Licence Part 1, 4(5) that permits 'any other works as any be necessary or expedient.' Is there any progress to report on achieving common ground on this matter? If not, what is the basis of outstanding differences?

MMO's concern is that it's not an exhaustive list. In a meeting with the Applicant on the 19th November, the applicant confirmed that the "other works" would be minor ancillary works. The Applicant has agreed to review this condition.

• Are all the necessary Deemed Marine Licence conditions in place to satisfy the MMO that all of the mitigation required for the Proposed Development can be secured?

The only outstanding areas of discussion in regard to conditions of the Deemed Marine Licence between the MMO and the Applicant are those matters identified in the SoCG in Table 4.1. The key outstanding issue regarding mitigation is the Herring mitigation. The MMO recommend that temporal and spatial mitigation is included. The MMO have taken a



pragmatic approach based on the best available data and recommend either of the following conditions:

A) Joint to Joint: No works to be undertaken between the two cable joints (shown on the map) located within ICES sub-rectangles 29E97 and 29F02, during the period of 15th December to 15th January inclusive.

B) KM to KM Distance: No works to be undertaken between the 90 – 100km and 100-110km distances shown on the map, located within ICES sub-rectangles 29E97 and 29F02, during the period of 15th December to 15th January inclusive.

• Further to the Deadline 2 submissions from the parties, have the Applicant and MMO progressed discussions over the outstanding differences between them in relation to the assessment of the AQUIND Interconnector/ Atlantic Crossing interaction and protection? If not, what are the implications if agreement cannot be reached?

The maximum parameters within Schedule 15, Part 2 Condition 1 already include provision of cable protection for the Atlantic Cable Crossing. MMO previously agreed with (in the SoCG) that presenting this parameter as 'area' (rather than volume) is appropriate. The Applicant has however acknowledged the request for defining the length and area of the Atlantic Cable Crossing and advised they can accommodate this request.

The Applicant has proposed that rather than include this item in Part 2, paragraph 1 which would mean that the current parameters listed would need to be amended so that there is no double counting (and the details of which currently match the parameters as reported in all of the assessments and mitigation documentation), that additional text is added to Part 1, Paragraph 4(1) as follows;

(1) cable protection, including the Atlantic Cable Crossing cable protection (pre-lay berm, 100 m x 30 m and post-lay berms of approximately 600 m x 30 m) covering a maximum footprint of 37,800 m².

Further, the Applicant is content to amend Part 2, Condition 11 to include provision for details of scour/erosion around the Atlantic Cable Crossing, and the justification for any additional protection which may be required.

The MMO awaits for proposed wording for the condition from the Applicant.

j) Marine habitats and assessments

• Whilst it is stated that a precautionary approach was taken to determine the study areas for the baseline, could the Applicant provide reassurance that Figure 8.1 does not need updating to reflect the regional boundaries used in the ES? Are the MMO and Natural England content with the extent of the study area?

The MMO is content with the study area.

• With reference to the Applicant's answer to question ME1.10.6, could Natural England and the Marine Management Organisation confirm they are satisfied that



the most appropriate and up-to-date environmental information has been used to inform and influence the definition of the Zone of Influence relating to benthic receptors?

The MMO has consulted with its Benthic advisers at Cefas thoroughly for this application and this has not been raised as a concern, therefore the MMO is content that the most appropriate and up-to-date environmental information has been used.

