



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

Your reference: EN020022

Our reference:  
DCO/2018/00016

[aquind@planninginspectorate.gov.uk](mailto:aquind@planninginspectorate.gov.uk)

[by Email only]

15 February 2021

Dear Mr Mahon,

## The Planning Act 2008, AQUIND Limited, proposed AQUIND Interconnector Project Deadline 7c Response

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).

This document comprises the MMO comments in respect of the responses submitted for Deadlines 7 and 7a. Please see MMO’s comments below:

### 1. Herring Mitigation

1.1 Further to the latest Statement of Common Ground, the MMO have agreed the herring mitigation condition wording below with the applicant via email on the 11<sup>th</sup> February:

*Unless otherwise agreed in writing with the MMO, the licensed activities or any part of those activities are not to be undertaken between Kilometre Points 90 to 109 during the period of 15th December to 15th January inclusive.*



## 2. Appeals

2.1 Further to the updated DCO submitted by the Applicant at Deadline 6, the MMO would like to reiterate that it strongly objects to being held to timeframes and the Appeals process of Schedule 16, which is the current case in conditions 3(3), 3(4), 5(3), 5(4), 12(12), 13(1) and 13(2). The MMO has set out its reasoning for this in its response at Deadline 6 and will be doing so in full again in response to the ExA's proposed schedule of changes to the dDCO at Deadline 8.

2.2 The MMO would like to reiterate that it is wholly inappropriate for the dDCO to replace the existing mechanisms of challenge via judicial review. 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 set out in the Marine Licensing (Licence Application Appeals) Regulations 2011 (the 2011 Regulations). This would lead to disparity between licences issued as DMLs and those issued directly by the MMO under the Marine and Coastal Access Act 2009 and create an unlevel playing field across the regulated community. Had parliament intended the appeal process to extend to discharge of any conditions within specific timescales, whether in relation to Nationally Significant Infrastructure Projects or the marine licence granted directly by the MMO, then the wording of the Appeal Regulations would have been drafted differently.

2.3 The MMO also notes position on Norfolk Vanguard Offshore Wind Farm DCO with [ExA recommendation](#) on Schedules 9 to 12, Part 5 – procedure for appeals concluding in para 9.4.42:

*'There is no **substantive evidence** of any potential delays to support an adaptation to existing procedures to address such perceived deficiencies. To do so would **place this particular Applicant in a different position to other licence holders.***

The MMO fails to see any "substantive evidence" presented by the Applicant in this case to justify such major departure from the existing mechanisms.

Similarly, Hornsea Three Offshore Wind Farm [ExA Recommendation](#) report states in 'Alternative dispute resolution methods in relation to decisions of the MMO under conditions of the DMLs' section in paras 20.5.27 – 20.5.29:

*'We agree with the MMO on this point. The process set out in the Marine Licensing (Licence Application Appeals) Regulations 2011 **does not cover appeals against decisions relating to conditions.** Whilst it would be possible to amend those regulations under PA2008, the result would be to create a DML which would be **different to other marine licences granted by the MMO.** We recommend that the Applicant's alternative drafting in Articles 38(4) and 38(5) is not included in the DCO. (...)*

*We have commented above that the scale and complexity of the matters to be approved under the DMLs is a strong indicator that those matters should be determined by the appropriate statutory body (the MMO). In our view an approach whereby matters of this magnitude would be deemed to be approved as a result of a time period being exceeded would be wholly inappropriate. Notwithstanding the exclusion of European sites, this*

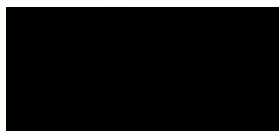


*approach would pose unacceptable risks to the marine environment and navigational safety. We recommend that the Applicant's alternative drafting is not included in the DCO.'*

2.4 Whilst the MMO strongly objects to condition 3(4), it would like to notify the Applicant that the cross referencing is incorrect in this condition, as it refers to the timing restrictions under sub-paragraph (2), when the timing restrictions are in sub-paragraph (3). It also references "Part 3" of the licence, which is now Schedule 16.

This written representation is submitted without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This submission is made 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,



Daniel Walker  
Marine Licensing Case Officer

D 0208 225 8573

E [daniel.walker@marinemanagement.org.uk](mailto:daniel.walker@marinemanagement.org.uk)

