

From: [Walker, Daniel](#)
To: [Aquind Interconnector](#)
Cc: [Ford, Jennifer](#); [Szewczyk, Eva](#)
Subject: EN020022 ExA ISH4 MMO Oral Transcripts
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Attachments: [image001.png](#)
[20210223 EN020022-ExA-ISH4 MMO oral transcripts.pdf](#)

Dear Sir or Madam,

Please find attached the Marine Management Organisation's (MMO) Oral Transcripts for Issue Specific Hearing 4 (ISH4).

Kind regards,

Dan Walker

Daniel Walker | Marine Licensing Case Officer | Coastal Development | Her Majesty's Government – Marine Management Organisation.

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Our MMO Values: Together we are **Accountable**, **Innovative**, **Engaging** and **Inclusive**

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During the current health emergency, the Marine Management Organisation is continuing to provide vital services and support to our customers and stakeholders. We are in the main working remotely, in line with the latest advice from Government, and continue to be contactable by email, phone and on-line. Please keep in touch with us and let us know how we can help you <https://www.gov.uk/mmo>

Want to tell us what you think of the South, North East, North West, South East and/or South West Marine Plans? Then we'd appreciate your views through our voluntary [South](#), [North East](#), [North West](#), [South East](#) and [South West](#) surveys.

From 1 January 2021 the rules for trading with the EU will change. Find out how you can prepare your business on [GOV.UK/Transition](#)

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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]

23 February 2021

Dear Mr Mahon,

The Planning Act 2008, AQUIND Limited, proposed AQUIND Interconnector Project Issue Specific Hearing 4 dealing with matters relating to the draft Development Consent Order (DCO) (ISH4)

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 a Summary of the MMO’s Oral Cases made during Issue Specific Hearing 4 on 17 February dealing with matters relating to the draft Development Consent Order (DCO) (ISH4). Please see Annex 1 of this document.

This written representation is 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

3.23. Part 7 Miscellaneous and general 3.23 The Examining Authority's schedule of changes to the draft Development Consent Order in relation to Articles 43, 45, 46 and 47(2).

45 - With regards to Article 45, the MMO notes the proposed wording explicitly excluding the MMO for arbitration provisions and welcomes this change. The MMO has made it clear throughout the Examination period that we strongly object to being subject to arbitration, and the MMO are in agreement with the ExA's changes

46 - The MMO has concerns over Article 46. It is not clear whether the MMO is included in Schedule 3. The ExA's proposed wording of "Provisions" rather than "requirements" widens the use of the procedure in Art 46 beyond those approvals set out in Schedule 2 and applies it arguably to any approval required under any provision of the order, including approvals under the Deemed Marine Licence. The current drafting arguably makes our approval subject to two different appeal processes, the procedure in Schedule 3 and the appeals process applied by Schedule 16 which are discussed later in the agenda.

The MMO request that Article 46(2) is amended to expressly exclude *consents, agreements or approvals contemplated by the provisions of Schedule 15*. The MMO have proposed wording in the Post Hearing note.

18. Schedule 15, Deemed Marine Licence under the 2009 Act

18.1 - The MMO have requested some clarification on the cumulative impacts with regards to aggregate dredging areas. The CCF Cable Crossing is significantly closer to aggregate dredge areas (e.g. Area 461 and Area 478) compared to the Atlantic Cable crossing. The MMO have received this clarification which we are reviewing and will respond on in DL8.

18.2 - Other matters

MMO maintains its position that sampling at the HDD location should take place if dredging has not commenced 5 years after the original sampling, (which is end of 2022). This type of condition is appropriate with any dredging and disposal works to ensure data on which risk-based decisions are made is timely enough. What the MMO is requesting is in line with OSPAR guidance. The MMO have been proportionate and not requested a sample plan for the whole cable corridor, but due to the location and physical nature of the sediment at the HDD site the MMO cannot deem the risk low enough to not have a sample plan if dredging does not occur within 5 years of samples.

In addition, in the MMO's section 56 response it stated concern that only 7PCBs had been tested for rather than the full suite of 25. This is also a contributing factor which lowers the confidence the MMO can have, that the works are sufficiently low-risk not to warrant further repeat analysis.



The MMO must consider impacts on the environment, human health and other users of the sea and consider that the risk of not-sampling would exceed the acceptable levels. It is appreciated that the Applicant may not be content with this requirement, however the MMO do not believe this is a good enough reason to risk the environment or human health due to the risks of contamination. However, MMO reiterate that it is only asking for a sample plan request to be made, further sampling may not be required, but this is to allow the MMO to assess the risk at the time. The applicant provided a draft licence condition on 16th February 2021 which the MMO is reviewing. The MMO strongly objects to the timings that the MMO is held to in this condition, however this will be addressed at point 19.

19. Schedule 16, Deemed Marine Licence procedure for appeals:

The MMO are most alarmed in relation to the proposed appeals process contained in Schedule 16 and we have major concerns in this matter. If the DCO were to be granted with this process included, this would not be an appeal procedure broadly consistent with the existing statutory processes as outlined in detail in our Deadline 6 representation.

An appeals process already exists in respect of Marine Licences granted under Part 4 of the Marine and Coastal Access Act 2009 (MCAA). 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 Deemed Marine Licence, DML). Under Regulation 4 of the 2011 Regulations, it 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 existing appeals process does not apply to any decisions (or timescales for determination) by the MMO in relation to applications to discharge any conditions of a marine licence issued directly by the MMO.

The dDCO 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 for licences issued under MCAA or Deemed Marine Licences. No evidence has been provided as to why this applicant should be treated differently. 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.

The MMO also consider that this new appeals process 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*".



This will lead to clear disparity between those licence holders who obtained their marine licence directly from the MMO/other DMLs and Aquind Applicant. This would lead to an inconsistent playing field across the regulated community.

Had Parliament intended the appeal process to extend to post-consent decisions on discharge of conditions and such determination timescales, then the wording of the 2011 Regulations would have been drafted differently.

This proposed modified appeals process is also completely inconsistent with the recent DCO decisions made on Norfolk Vanguard and Hornsea Three Offshore Wind Farms as outlined in detail in our Deadline 6 response.

Since its inception the MMO has undertaken licensing functions on over 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. Consequently, the Aquind Applicant engineered a solution to a problem that does not exist and provided no evidence/compelling justification for this major departure.

The MMO appreciates the Applicant's desire for certainty. However, it is entirely inappropriate to put a timeframe on determinations on discharging conditions. The MMO does not deliberately prolong such decisions: the time taken to make such determinations depends, among other factors, on the quality of the submission made, the complexity of the issues and the amount of consultation the MMO is required to undertake with other organisations. It is unhelpful and inappropriate to apply a strict timeframe in the dDCO in which the MMO must make its determinations. As previously outlined, putting a timescale on our decision making would lead to a disparity between this dDCO and other DMLs and licences issued directly by the MMO. This would create an unlevel playing field across the regulated community and is unhelpful and contrary to what Parliament intended.

The current mechanism the applicant has available, in addition to the complaints process available to all the MMO's customers, would be to write to the MMO explaining their position on the relevant determination timescale and require the MMO to make a determination by a specific date and should the MMO fail to make the decision then the applicant would be able to judicially review that failure to make a decision. If the MMO were to make the determination, but decided to refuse to approve the documents, then again, the applicant would be able to challenge that refusal via judicial review.

The MMO request the removal of the appeals process (in Schedule 16 and anywhere else within the DCO) altogether in relation to any condition discharge by the MMO as the MMO considers it is wholly inappropriate for the dDCO to replace the existing mechanisms with a modified version of the appeals route.

The Applicant's assertion expressed at Issue Specific Hearing 4 that the mere fact that the MMO has a complaints process available to its customers somehow indicates that the MMO does not discharge its obligations in an efficient and robust manner only serves to highlight that the Applicant has no justification for the suggested customised appeals



process. Our complaint process is evidence that the MMO is an open and honest organisation that is committed to providing excellent customer service.

