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Your reference: EN020022  
Our reference:  
DCO/2018/00016

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[by Email only]

1 March 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) – Post Hearing Note (Thames Tideway Tunnel)**

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).

During Agenda point 19 of ISH4 the Applicant justified the proposed modified Appeals process through reference to the DCO for Thames Tideway Tunnel (TTT). The Examining Authority (ExA) asked the MMO to comment on this in a Post Hearing note. This document comprises the MMO’s ISH4 Post Hearing Note in relation to the DCO for TTT.

TTT is a project to build a 25km long sewer under the Thames which was consented back in 2014. The TTT DCO does contain a Schedule on ‘Procedure for Discharge of Requirements etc. and Appeals’ covering applications “to a discharging authority for any consent, agreement or approval required by a requirement” along with timeframes. Schedule 17 contains the Appeals route for the whole Order, rather than specifically for the DML. Therefore, the TTT Appeals mechanism is fundamentally of a different nature to that of Schedule 16 in the Draft DCO for AQUIND.



It is also pertinent to highlight that the MMO as an organisation was created back in 2009 and continued to evolve ever since. Had TTT gone through the examination at present, a different set of arguments may have been raised. In addition, the MMO can confirm that the Appeals process contained within the TTT DCO has not been used in relation to any approval by the MMO, which serves as evidence that this is effectively an existing, but redundant provision in relation to the DML.

Nonetheless, irrespective of this historic decision, the MMO's stance has been clear on numerous projects since the TTT examination and the inappropriateness of any appeals and timeframes in relation to post-consent discharges by the MMO has been successfully argued on all the cases since. Throughout this time, a number of DCOs have been granted in which the Examiners agreed with the MMO's views – most recently on Norfolk Vanguard Offshore Windfarm and Hornsea Three Offshore Windfarm, as referenced in the MMO's Deadline 6 response. The MMO has also issued vast amounts of marine licences under Marine and Coastal Access Act 2009 which do not provide any such mechanisms to the licence holders. Annex B of the PINS Guidance Note 11, dated 2017, states clearly that "*the MMO will seek to ensure wherever possible that any deemed licence is generally consistent with those issued independently by the MMO*". Granting a DCO with the new and enhanced appeal process, which is inconsistent with the existing statutory processes, as proposed by the Applicant would lead to a clear disparity between the Applicant and those licence holders who obtained their marine licence directly from the MMO.

The MMO has made its position clear throughout this Examination that it should not be held to timeframes or subject to Appeals. The applicant failed to provide any convincing evidence as to why they should have access to an enhanced appeals process and created a solution for a problem which does not exist. The MMO fails to see the relevance of the TTT DCO, other than to highlight that there is simply no need for Appeals provision.

As stated in previous representations and at Issue Specific Hearing 4, it is the MMO's view that it is wholly inappropriate for the MMO to be subject to timeframes and appeals. Consequently, the MMO requests removal of the proposed timeframes within the Deemed Marine Licence and 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. 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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