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(By email only)

MMO Reference: DCO/2022/00012
Planning Inspectorate Reference: TR030008

4 June 2024

Dear Mr Hunter

Planning Act 2008, Immingham Green Energy Terminal – Deadline 4 Submission

On 25 October 2023, the Marine Management Organisation (the “MMO”) received notice under section 55 of the Planning Act 2008 (the “PA 2008”) that the Planning Inspectorate (“PINS”) had accepted an application made by Associated British Ports (the “Applicant”) for determination of a development consent order for the construction, maintenance and operation of the proposed Immingham Green Energy Terminal (the “DCO Application”) (MMO ref: DCO/2022/00012; PINS ref: TR030008).

The DCO application seeks authorisation for the construction, operation, and maintenance of a multi-user liquid bulk terminal which would be located on the eastern side of the Port of Immingham (“the Port”), as well as associated development (collectively termed “the Project”). The associated development would comprise the construction and operation of a green hydrogen facility and landside works for the production of green hydrogen from imported green ammonia on site.

This document comprises the MMO comments in respect of the DCO Application submitted in response to Deadline 4.

The MMO submits the following:

- 1. Responses to the Examining Authority’s Second Written Questions (WQ2)**
- 2. Comments on any other information and submissions received at deadline 3**
- 3. Confirmation of wish to attend and speak at the Hearings w/c 1 July 2024 including details of topics of discussion**

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





Phillipa Koomson
Marine Licensing Case Officer

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Contents

- 1. Responses to the Examining Authority’s Second Written Questions (WQ2) 3
- 2. Comments on any other information and submissions received at deadline 3 4
- 3. Confirmation of wish to attend and speak at the Hearings w/c 1 July 2024 including details of topics of discussion..... 9



1. Responses to the Examining Authority's Second Written Questions (WQ2)

The MMO notes the following questions have been addressed to us, please see the responses for these detailed in the question below.

WQ2	Question	MMO Response
BIO 2.1	<p>Piling Restrictions</p> <p>The piling times submitted [REP3-064, Action Points 2 and 3] provide some clarity. However further clarifications are required, or explanations as to why these are not possible to provide.</p> <ul style="list-style-type: none">• MMO: Confirm that you agree with the piling restrictions noted in response to Action Points 2 and 3.	The MMO confirms that we welcome and agree with the piling restrictions as outlined by the Applicant in REP3-064.
DCO 2.6	<p>Article 46 – Benefit of Order</p> <p>The ExA note the MMO's submissions at DL3 [REP3-108] and welcome the confirmation that the MMO will provide their response at DL4. As part of these submissions, to aid the ExA and the SoS, should you disagree with the wording proposed by the Applicant, please justify why and provide the revised wording, including any deletions, that you wish to see.</p>	Please refer to the MMO's full comments on this in Section 2 below.

2. Comments on any other information and submissions received at deadline 3

REP3-004 Deadline 3 Submission – 2.1 Draft Development Consent Order (Clean)

2.1. Please see below the MMO's response relating to Article 46 of the draft DCO, powers to transfer or grant deemed marine licences:

1. The MMO objects to the provisions relating to the process of transferring and/or granting the deemed marine licences set out in the draft DCO at Article 46.
2. If the application for the DCO is granted, the MMO will be the regulatory authority responsible for the enforcement of the provisions of the DMLs. As a result, it has to retain a record of the DML and who holds the benefit of that licence in order to be able to fulfil its statutory responsibilities as it does in respect of any other marine licence.
3. The Marine and Coastal Access Act ("the 2009 Act") addresses the procedure for transfer of a Marine Licence as follows:

"(7) On an application made by a licensee, the licensing authority which granted the licence—

(a) may transfer the licence from the licensee to another person, and

(b) if it does so, must vary the licence accordingly.

(8) A licence may not be transferred except in accordance with subsection (7)."

4. The purpose of these provisions is to ensure that there is at all times a record of the person who has the benefit of the licence. That is because pursuant to the 2009 Act section 65(1), no person may carry on a licensable marine activity, or cause or permit any other person to carry on such an activity, except in accordance with a marine licence granted by the appropriate licensing authority. A person who contravenes section 65(1), or fails to comply with any condition of a marine licence, commits an offence (see section 85(1) of the 2009 Act).
5. Thus, it is a key part of the enforcement provisions of the 2009 Act, that the MMO maintains a record of the person who has the benefit of a marine licence at all times.
6. In practice, the process of obtaining a transfer is relatively quick. Whilst the MMO officially indicates that this can take up to 13 weeks, it is an administrative task and in practice often much



quicker and around 6 weeks. The MMO is not required to consult with any other body. As far as it is aware, the MMO has never refused a request to transfer a marine licence.

A. The current draft DCO Article 46 Procedure

7. As presently drafted, dDCO Article 46(12) creates a power whereby the

“undertaker with the benefit of any provision of the deemed marine licence may pursuant to this sub-paragraph, with the consent of the Secretary of State—

(a) transfer to any person any or all of the benefit of the provision and such related statutory rights as may be agreed between the undertaker and that person;

(b) grant to any person for a period agreed between the undertaker and that person any or all of the benefit of the provision and such related statutory rights as may be so agreed between the undertaker and that person,

but the Secretary of State must consult the MMO before giving such consent to the transfer or grant to another person of the benefit of the provision and such related statutory rights.”

B. The Basis for Objection

8. The MMO raises objection to Article 46 in relation to:

- a. The procedure seeking to duplicate the existing statutory regime set out in s72 of the 2009 Act
- b. The proposed procedure being cumbersome, more administratively burdensome, slower and less reliable than the existing statutory regime set out in s72 of the 2009 Act;
- c. The power to grant a DML for a period of time;
- d. The absence of any power provided to the MMO to change the DML held in its records to reflect any transfer;
- e. Lack of requirement to notify the MMO of the consent of the Secretary of State to transfer or grant for a period of time the DML;
- f. The overall effect on the ability of the MMO to enforce the marine licensing regime in respect of any transferred or granted DML.



C. Previous DCOs

9. It is acknowledged that DCO's previously granted have removed the effect of s72 of the 2009 Act and made provision for the transfer of DMLs, a number of which the Applicant has cited in Applicant's Comments on D1 Submissions from Marine Management Organisation.
10. The Applicant has specifically referenced The Sizewell C (Nuclear Generating Station) Order 2022 as an example – having considered this Order, we do not consider it to be an example as the Applicant indicates. Articles 8 and 9 of the Order relate to the Order itself and makes no specific reference to the Deemed Marine Licence. The Deemed Marine Licence at paragraph 3 makes specific reference to the application of Article 72 of the 2009 Act in its entirety. It is therefore the case that the Deemed Marine Licence and any transfer is governed as is the preference of the MMO, by s. 72 of the 2009 Act.
11. However, it is to be noted that in very few if any do the relevant Examining Authorities ("ExAs") explain the rationale for the approach adopted. The same is true of the relevant decision letters.
12. To date the Applicant has not identified any reasoned justification in any previous decision which explains why the transfer process which it proposes is justified and to be preferred over the existing statutory mechanism.
13. The MMO, of course, accepts that there is a need for consistency in decision making. However, a decision maker is not bound by previous decisions and can depart from them where there is good reason to do so.
14. If the Secretary of State in the present case determined that on balance, the existing statutory mechanisms relating to transfer of marine licences is to be preferred to the mechanism proposed in the dDCO, then it is open to him to so determine provided he gives reasons for so doing. The absence of any reasoned decision which determines the point previously and which provides a rationale for departing the existing statutory mechanism is a reason to look at this issue again.

D. Materially Inferior Procedure

15. As explained above, the statutory system for transfer requires an application to the MMO. There is no further consultation, and the transfer is given effect by amendment to the licence holder section of the marine licence. The MMO does not have any relevant statutory or non-statutory



policy relating to the transfer of a licence – it is essentially a purely administrative act to ensure that the licence contains the name of the person with the benefit of the licence. As explained, as far as the MMO is concerned it has never refused an application for a transfer.

16. In contrast, the dDCO Article 46 procedure requires:

- a. An application to the Secretary of State;
- b. Consultation with the MMO;
- c. A decision by the Secretary of State;

17. Given the contrast between the two procedures, the MMO does not consider that the dDCO procedure has any material procedural or administrative advantages over the existing statutory process. Indeed, the dDCO procedure is decidedly more complex, is more administratively burdensome for all parties, and will take longer to give effect to a transfer.

18. The MMO are in no way suggesting that the Secretary of State is not an entirely capable arbiter of who should benefit from the Deemed Marine Licence. It is the case that the MMO believes that as a result the dDCO should be amended to remove the mechanisms to enable transfer of the DMLs and to remove the exclusion of the existing s72 process; the statutory regime which already exists is a much better option for all and should remain applicable.

E. The Grant of a DML for a time limited period

19. dDCO Article 46(12)(b) seeks to make provision for the undertaker to “*grant to any person for a period agreed any or all of the benefit of the provision and such related statutory rights as may be so agreed as may be so agreed...*”.

20. The Applicant has not justified or explained:

- a. Why it is necessary for it to have the power to **grant** for an agreed period a DML;
- b. Why it is necessary for it to have the power to **grant** a DML when it would have a power to transfer a DML;
- c. The basis on which such a power to grant will be exercised;
- d. The basis on which it will determine whether or not grant a DML
- e. The basis on which it will determine the conditions to be imposed on the grant of a DML;



21. The MMO considers that the power sought for the undertaker to grant a DML would confuse and usurp its statutory function. It would allow licences to be granted on terms wholly different from those accepted as part of the DCO process. The power to grant a DML should therefore be removed from the dDCO.
22. In the event that its primary position that the existing statutory mechanism should remain applicable is rejected, the MMO considers that, at most, the power to transfer the benefit of an existing DML to another person is all that is required. If the intention is to enable the transfer of the benefit of a DML to a third party for a defined period of time, with the benefit of that DML then reverting to the undertaker at the end of that period, a provision should be drafted to give effect to this.

F. Power to Amend DMLs to Reflect a Transfer

23. The MMO is a statutory body. As a result, it can only act where it has statutory power to do so. The dDCO provides for the transfer of a DML, however it does not require the undertaker to provide notification to the MMO of any decision of the Secretary of State to consent to the transfer or grant for a specified period of the deemed marine licence. Further, the dDCO does not currently give the MMO the power to amend the DML it holds in its records upon any such notification that a transfer is to occur. This has the potential to cause real difficulties going forward since, in the absence of such a notification or power, the MMO records will not be changed. This is likely to cause significant administrative difficulties and could result in obstacles to enforcement.
24. Such a confusion is but one symptom of the complications which result from the dDCO's proposed transfer mechanism. This reinforces the MMO's primary position that the existing statutory mechanism is to be preferred and to remain applicable.

G. Overall Effect on Ability to Enforce

25. As drafted, the ability to transfer licences, grant licences for a limited time and without providing a power for the MMO to amend its records, will give rise to significant enforcement difficulties for the MMO and has the potential to prejudice the operation of the system of marine regulatory control in relation to the proposed development. Further, the dDCO procedure is administratively burdensome and time consuming.

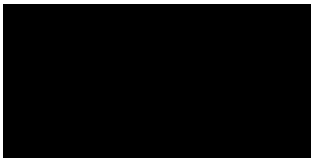


26. All of these difficulties can be avoided by retaining the existing statutory regime which is simple to operate and relatively speedy. The best way forward for all concerned is to retain the statutory procedure for transfer as set out in s72 of the 2009 Act.

3. Confirmation of wish to attend and speak at the Hearings w/c 1 July 2024 including details of topics of discussion

3.1. Following publication of the hearing notification, the MMO notes there is a planned Issue Specific Hearing on Tuesday 2 July 2024, related to the Draft Development Consent Order and Environmental Matters. The MMO does not have anything that we would like to discuss at this hearing and additionally due to resource availability and the productive nature of discussions between the MMO and the Applicant thus far, the MMO will not be attending these meetings.

Yours sincerely,



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