



Marine
Management
Organisation

Marine Licensing T +44 (0)300 123 1032
Lancaster House F +44 (0)191 376 2681
Hampshire Court www.gov.uk/mmo
Newcastle upon Tyne
NE4 7YH

Immingham Green Energy Terminal Case Team
Planning Inspectorate
imminghamget@planninginspectorate.gov.uk

(By email only)

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

2 August 2024

Dear Mr Hunter

Planning Act 2008, Immingham Green Energy Terminal – Deadline 6 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 6.

The MMO submits the following:

- 1. Comments on the Examining Authority’s proposed schedule of changes to the draft Development Consent Order**
- 2. Comments on responses to the Examining Authority’s Second Written Questions (WQ3)**
- 3. Comments on any other information and submissions received at Deadline 5**

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
D +44 (0) [redacted]
E [redacted] [@marinemanagement.org.uk](mailto:[redacted]@marinemanagement.org.uk)

Contents

- 1. Comments on the Examining Authority’s proposed schedule of changes to the draft Development Consent Order..... 3
- 2. Comments on responses to the Examining Authority’s Second Written Questions (WQ3)..... 5
- 3. Comments on any other information and submissions received at Deadline 5..... 5



1. Comments on the Examining Authority's proposed schedule of changes to the draft Development Consent Order

The Applicant has made submissions responding to the documentation received at Deadline 4. It is the MMO's position that nothing in those submissions persuades it that to depart from the current statutory process under s.72 Marine and Coastal Access Act (2009 Act) improves the speed, efficiency or certainty of the already established process.

Advice Note 15 [Nationally Significant Infrastructure Projects - Advice Note Fifteen: drafting Development Consent Orders - GOV.UK \(www.gov.uk\)](#) considers at 6.3 28. Transfer provisions

"28.3 Sub-section 72(7) of the MCAA2009 provides that, on application by the licensee, the licensing authority which granted (or is deemed to have granted) a Deemed Marine Licence may transfer it from the licensee to another person. Whilst this provision does not expressly allow only part of a Deemed Marine Licence to be transferred, sub-section 120(5) (a) of the PA2008 provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in a DCO, which would include this provision. It is therefore considered that there is no legal reason to prevent a DCO from allowing part of a Deemed Marine Licence to be transferred, although there may be operational difficulties with such an approach including monitoring compliance and taking enforcement action." Emphasis added.

It is accepted by the MMO that the Planning Act 2008 does provide that a DCO may apply, modify or exclude statutory provision. It is not however the case that such action should or must be taken, and as the advice note sets out there may be operational difficulties with such an approach.

Requirement to consult the MMO Paragraph 46(12)

The proposed provision only requires the Secretary to consult the MMO before consenting to any transfer or grant of the deemed marine licence. Without prejudice to the MMO's position that the existing statutory process should prevail, as the authority which will regulate any deemed marine licence once granted, it would be not only appropriate for the MMO to be consulted, but entirely appropriate that the Secretary of State must "have regard to any response received from the MMO before giving consent.

"but the Secretary of State must consult the MMO and have due regard to any response received before giving such consent to the transfer or grant to another person..."

Notification Paragraph 46(13)

The MMO notes the addition of new Paragraph 46(13), which goes some way to assist in overcoming the issues which departing from the statutory process under the 2009 Act creates. However, it fails to provide any specified period for notification, and it is therefore not the case that the concerns of the MMO fall away as the Applicant has suggested as a result of the proposed paragraph.

Under the current proposal the MMO is to be notified of the "date on which the grant or the transfer is to take place;" Paragraph 46(13)(b), but in practical terms there is nothing to prevent this notification being given, for example, with as little as 24 hours' notice. The fact that the MMO is consulted by the Secretary of State under Paragraph 46(12) provides no additional comfort, as any consultation will not necessarily be indicative of the date upon which a transfer or grant will likely take place.

Without prejudice to the MMO's position on this issue as detailed at Deadline 4, should the Examining Authority be minded to recommend the proposals of the Applicant at Paragraph 46(13) there should be a requirement that the undertaker should provide a minimum of 28 days' notice to the MMO prior to the date on which the transfer or grant or grant will take effect.



Administrative burden

Administratively, the process for the holder of a marine licence under the 2009 Act would be for the licence holder to submit a variation to the MMO and for that variation request to be considered and granted.

Under the proposed system; the undertaker would be required to apply to the Secretary of State, the Secretary of State would consider the application and then in turn consult with the MMO. The MMO would respond to the consultation which would be considered by the Secretary of State. The Secretary of State would then make its decision of which the undertaker would be informed, and the undertaker would in turn notify the MMO, who would then carry out the necessary administrative tasks to effect the transfer.

Precedent

It is quite possible with the passage of time and increased understanding and practical experience in the regulation of both marine licences and deemed marine licences that issues come to the fore which has not previously attracted specific focus or scrutiny. It is not therefore *untenable* as the Applicant suggests that points emerge which require further or closer scrutiny than that which they had previously attracted. The MMO suggests that this is such an instance.

Deemed Marine Licence Schedule 3

The MMO makes the following comments on the DML which will need to be worded appropriately for the purposes of the submissions to the ExA if they are to be adopted.

Part 2

Provision	Comment
Condition 8(1)	The MMO considers that <i>"in writing"</i> should be added after <i>"unless otherwise approved by the MMO"</i> .
Condition 12(1)(a)	There is no specification as to how far in advance 'prior to commencement' the undertaker must provide the information to the Marine Noise Registry. The MMO considers that this should be updated to say <i>"The undertaker must notify the MMO of the successful submission of Forward Look and Close-out requirements within 7 days of the submission"</i> .
Condition 16(6)	The MMO considers it unclear what this condition is saying and considers a better construction to be: <i>"Subject to sub-paragraph (7) below, the undertaker must ensure that no construction activity for the approach jetty or decommissioning of topsides located within 200 meters of mean low water springs takes place between 1 October and 31 March in any year."</i>



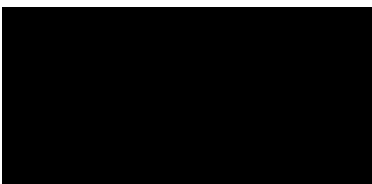
2. Comments on responses to the Examining Authority's Second Written Questions (WQ3)

WQ3	Question	MMO Response
HRA 3.1	Sediment Sampling In your Relevant Representation [RR-016, Paragraph 3.3.2] you noted that you had comments surrounding Condition 9, Sediment Sampling, and Condition 20(1), Disposal at Sea, and that you were reviewing these in line with other developments and would provide further comments at a later stage. If these further comments have been provided, signpost the ExA to the submission document, alternatively provide these at Deadline 6	The MMO confirms that we have no further concerns regarding the drafting of the listed conditions.
DCO 3.2	Schedule 3 – Deemed Marine Licence Throughout the Examination the Applicant has made a number of changes to Schedule 3 (Deemed Marine Licence). Excluding the issues that ExA are aware of in relation to paragraphs 24 - 27 of the DML, confirm whether these changes have addressed the matters raised in your Relevant Representations. If not, please explain what changes you are seeking to Schedule 3 and explain and justify these.	The MMO has provided further comments regarding the DCO in Section 1 above. Aside from these concerns, we confirm that the remainder of the DCO, including the DML, is satisfactory.

3. Comments on any other information and submissions received at Deadline 5

3.1. The MMO has reviewed information submitted by other Interested Parties and the Applicant, and we confirm that we have no comments on these submissions.

Yours sincerely,



Phillipa Koomson
Marine Licensing Case Officer

D +44 [REDACTED]

E: [REDACTED]@marinemanagement.org.uk

