

Proposal to issue a maritime usage licence to the Electricity Supply Board at Moneypoint, Co. Clare.	
To	Dr. Karen Creed, Director of Consenting
From	Joanne Staunton, Licensing Analyst
Date	28/08/2024
Applicant name and address	Electricity Supply Board, ESB Head Office, 27 Fitzwilliam Street Lower, Dublin DO2 KT92
Licence reference number	LIC230008
Application Date	24/11/2023
Date Minded to Determine Notice issued	02/08/2024
Date supplementary material received from applicant	09/08/2024

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Section 1: Decision Sought

Approval is sought for the issuance of a maritime usage licence to the Electricity Supply Board ('the applicant'), following the consideration of supplementary material submitted by the applicant in accordance with Section 119(6)(b)(ii) of the Maritime Area Planning Act 2021 ('the Act').

Section 2: Background

The applicant submitted a maritime usage licence application to MARA on 24/11/2023 in accordance with Section 117 of the Act, to conduct site investigation activities required to inform the design and development of a dedicated hub facility at Moneypoint, Co. Clare. MARA issued a Minded to Determine Notice (**Tab 1**) and a Proposed Licence (**Tab 2**), with conditions, to the applicant on 02/08/2024. The applicant was advised that MARA was minded to grant the licence, subject to conditions. The Minded to Determine Notice provided reasons for the conditions contained in the proposed licence. In accordance with Section 119(6)(b)(ii) of the Act, the applicant was given a specified period (of 21 days to 23/08/2024) within which supplementary material could be provided in view of the reasons for the conditions, for further consideration by MARA.

The applicant submitted a response (**Tab 3**) on 09/08/2024 with supplementary information setting out their reasons for a number of requested amendments to the general and specific conditions in the proposed licence. The licensing unit forwarded the applicant's response to MARA's Senior Marine Advisor for review. On 22/08/2024 the licensing unit received a report from the Senior Marine Advisor (**Tab 4**) responding to the applicant's amendment requests on the specific conditions.

Section 3: Supplementary material and requested amendments

The applicant requested two changes to the general conditions of the proposed licence and three changes to the specific conditions. I have dealt with these in the order of which they were raised in the applicant's response. The licensing response takes into account the recommendations of MARA's Senior Marine Advisor. The Applicant's response and the advice from the Senior Marine Advisor are briefly detailed in this section, however please refer to the full responses for further expansion on the issues.

3.1 General Condition 9 – Insurance:

General condition 9 of the proposed licence relates to insurance. The applicant has requested amendments and alternative wording to the following three sub-conditions; 9.1 (i) (iii) and (v):

- 9.1(i) requires the Holder to hold Public liability insurance in "joint names" with the Grantor. The applicant has requested this to be amended to provide a specific indemnity to the Grantor instead and has requested specific alternative wording.
- 9.1(iii) relates to having a policy or policies available for inspection together with evidence of waiver of subrogation. The applicant is proposing the removal of the wording "*waiver of subrogation*" and a detailed cover letter to be provided in place of the full ESB policy. The applicant has provided alternative wording to this sub-condition.

- 9.1(v) requires the Holder to immediately notify the Grantor of any claim under any policy of insurance. The applicant has requested alternative wording and notes that given the company's size and scale it may not be achievable to immediately notify the Grantor.

Condition 9(i), (iii) and (v) as set out in proposed licence:

9. INSURANCE

9.1 Without prejudice to the Holder's liability to indemnify the Grantor, the Holder shall:

- (i) *effect and keep in force a public liability insurance policy of indemnity in the joint names of the Grantor and the Holder in an insurance office licensed to operate in the State Territory with a limit of € 6,500,000.00 (six million five hundred thousand euro) in respect of any one claim or a series of claims arising out of a single occurrence for any damage, loss or injury which may occur to any property (not being the property of the Grantor or the Holder) or to any person by or arising out of the admission of any person to the Licensed Area, and to extend such policy so that the Grantor is indemnified by the insurers in the same manner as the Holder;*
- (iii) *whenever required to do so by the Grantor, produce to the Grantor for inspection the said policy or policies together with the latest receipt of the premium paid for renewal of the said policy or policies together with evidence of waiver of subrogation rights against the Grantor by the Holder's insurers, and to comply with all conditions pertaining to any such policy or policies;*
- (v) *immediately notify the Grantor in writing of the making of any claim under any policy of insurance and to provide the Grantor with all information in relation to any such claim;*

Applicant's requested amendment:

- (i) *effect and keep in force a public liability insurance policy of indemnity in an insurance office licensed to operate in the State Territory with a limit of € 6,500,000.00 (six million five hundred thousand euro) in respect of any one claim or a series of claims arising out of a single occurrence for any damage, loss or injury which may occur to any property (not being the property of the Grantor or the Holder) or to any person by or arising out of the admission of any person to the Licensed Area, and to extend such policy so that the Grantor is indemnified by the insurers in the same manner as the Holder. This policy should include a specific indemnity to the Grantor;*
- (iii) *whenever required to do so by the Grantor, produce to the Grantor for inspection certificates of insurance in the form of insurance broker cover letters and to comply with all conditions pertaining to any such policy or policies;*
- (v) *as soon as reasonably practicable, the holder should notify the Grantor in writing if making any claim under any policy of insurance and to provide the Grantor with all information in relation to any such claim.*

Licensing response:

I do not recommend adopting the requested amendments to sub-conditions 9.1 (i) (iii) and (v) as the insurance conditions set out in the proposed licence have been approved by the State Claims Agency. There are no changes to the insurance conditions.

3.2 General Condition 13 - Exercise of Rights and Condition 1 - Definitions:

General condition 13 of the proposed licence relates to Exercise of Rights. The applicant has requested that for the removal of doubt that a definition of “occupants of the Licenced Area” be inserted into Condition 1 – Definitions, of the licence.

Condition in proposed Licence:

13. EXERCISE OF RIGHTS

13.1 Save as may be permitted under this Licence, the Holder shall exercise this Licence in such a manner as to cause no damage or injury to the Licensed Area, any occupants of the Licensed Area and any other part of the maritime area affected by the Permitted Maritime Usage and to forthwith from time to time with due diligence repair and make compensation for any such damage or injury that may be so caused.

Licensing response:

I do not recommend defining the term “occupants of the Licensed Area” in Condition 1 of the final licence. The term’s meaning is to require the Holder to carry out the site investigations without causing any damage to other persons who are in occupation of the licensed area, for example a fishing vessel. There is no change to the Exercise of Rights condition 13.1 or Condition 1.

3.3 Specific Condition 21:

Specific Condition 21 of the proposed licence relates the publication of a Marine Notice through consultation and agreements with the Department of Transport, Marine Survey Office and Commissioners of Irish Lights. The applicant is seeking further clarification on the relevant authorities with regards to issuing marine notices.

Condition in proposed licence:

21. Prior to the commencement of the Permitted Maritime Usage the Holder shall, through consultation and agreement with the Department of Transport, Marine Survey Office and Commissioners of Irish Lights, arrange for the publication of a Marine Notice through the Maritime Safety Policy Division. Navtext and radio broadcast warnings frequency to be agreed with the Irish Coast Guard.

Licensing Response:

The Senior Marine Advisor recommended that Condition 21 should be amended to include other relevant authorities with jurisdiction for navigational safety in certain parts of the maritime area. I recommend adopting this recommendation as follows:

Prior to the commencement of the Permitted Maritime Usage the Holder shall, through consultation and agreement, arrange for the publication of a Marine Notice with the Department of Transport's Marine Survey Office and/or any other relevant authority with responsibility for navigation and safety in that part of the maritime area. Associated Navtext and Radio Navigational Warnings shall be agreed with the Irish Coast Guard.

3.4 Specific Condition 22

Specific condition 22 of the proposed licence requires the Holder to submit a statement from a Chartered Engineer on completion of the Permitted Maritime Usage. The applicant has proposed alternative wording to this condition.

Condition in proposed licence:

22. On completion of the Permitted Maritime Usage, the Holder shall submit to MARA a statement from a Chartered Engineer confirming that works are completed in accordance with the documents submitted and the Maritime Area has been restored to its natural condition.

Applicant's requested amendment:

22. On completion of the Permitted Maritime Usage, the Holder shall submit to MARA a statement from a Chartered Engineer confirming that works are completed in accordance with the documents submitted and the Maritime Area has been restored to its original profile, where reasonable to do so.

Licensing Response:

The Senior Marine Advisor has noted that the condition as currently set out requires the Holder to restore the sea bed to its 'natural condition' as opposed to its 'original condition' and has provided an explanation as to what is generally required by this condition. The Senior Marine Advisor has recommended that no change be made to this condition. I recommend adopting this recommendation.

3.5 Specific Condition 33

Specific Condition 33 of the proposed licence relates the submission of details of acoustic surveys to the Department of Housing, Local Government and Heritage. The applicant has requested a template OSPAR reporting format to be included in the final licence.

Condition in proposed licence:

The Holder is required to submit details of all acoustic surveys undertaken in accordance with this licence to Marine Environment, Department of Housing, Local Government and Heritage at marine.env@housing.gov.ie. This data shall be provided in the reporting format of the OSPAR Impulsive Noise registry.

Licensing Response:

The Marine Advisor has recommended amending the condition to require the Holder to agree the reporting format with the Department of Housing, Local Government and Heritage. I recommend adopting the Senior Marine Advisor's recommendation as follows:

The Holder is required to submit details of all acoustic surveys undertaken in accordance with this licence to Marine Environment, Department of Housing, Local Government and Heritage (DHLGH) at marine.env@housing.gov.ie in a format to be agreed with the Marine Environment Section of DHLGH.

Section 4: Recommendation for Approval

I am seeking your approval to amend the above specific conditions 21 & 33 in the Licence from the Proposed Licence.

I am seeking your determination on the grant of the Licence (**Tab 5**) subject to the conditions attached.



Joanne Staunton
Licensing Analyst
Maritime Area Regulatory Authority

Annex 1 – List of Tabs to this Submission

- **Tab 01** – Minded to Determine Notice
- **Tab 02** – Proposed Licence
- **Tab 03** – Response from Applicant to Minded to Determine Notice
- **Tab 04** – Senior Marine Advisor Report
- **Tab 05** – Licence