



HERBERT
SMITH
FREEHILLS

Denise Libretto
Head of Networks and Planning
Energy Infrastructure Planning
Level 3, Orchard 2
1 Victoria Street
London
SW1H 0ET

Herbert Smith Freehills LLP
Exchange House
Primrose Street
London EC2A 2EG
T +44 (0)20 7374 8000
F +44 (0)20 7374 0888
D +44 (0)20 7466 2858
DX28 London Chancery Lane
E catherine.howard@hsf.com
www.herbertsmithfreehills.com

Our ref
18857/5567/30985781
Your ref

Date
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By email and by post

Dear Ms Libretto

AQUIND Interconnector – Application for a direction pursuant to Section 35 of the Planning Act 2008

Thank you for your letter dated 28 June 2018 requesting clarification of the justification for the matters contained at paragraphs 7.4 to 7.7 of the Statement submitted with the request for the direction.

Paragraphs 7.4 to 7.6 of the Statement request the Secretary of State to confirm that the environmental scoping opinions issued by the relevant local planning authorities and the Marine Management Organisation ("**MMO**") may be used as the basis on which the environmental statement for the proposed development is prepared, in accordance with Regulation 14(3)(a) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the "**IP (EIA) Regs**").

The statutory basis on which such a confirmation may be included in any direction to be given is provided by Section 35(5)(b) of the Planning Act 2008, which states "*a direction under subsection (3) may provide for specified provisions of or made under this or any other Act ... to be treated as having been complied with in relation to the application or proposed application*". As such, the Secretary of State may confirm in any direction that Regulation 10 of the IP (EIA) Regs has been complied with by virtue of the previous scoping exercise.

Our client has carried out a robust scoping exercise with all relevant authorities to inform the basis of the environmental statement to support any application for the proposed development, as is detailed at paragraphs 5.16 to 5.20 of the Statement. This exercise has been carried out at the cost of our client and has involved a considerable amount of work, by both the AQUIND project team and all authorities involved. It does not seem necessary or fair to any party, particularly the individual authorities, for that same process to be repeated at further cost and effort where, as explained above, it is open to the Secretary of State to confirm that the scoping exercise carried out may be treated as having complied with the relevant requirements of the IP (EIA) Regs.

We also draw your attention to our comments at paragraph 7.6 which make clear that there is nothing to prevent the Secretary of State at a later date from requiring additional information to be

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included within any environmental statement in connection with an application for development consent. Taking this approach is, in our view, the correct and proportionate manner in which to address any concerns the Secretary of State may have with the scoping undertaken

Paragraph 7.7 of the Statement requests that where the Secretary of State is minded to grant a direction he treats the request as notification pursuant to Regulation 8(2)(b) of the IP (EIA) Regs that AQUIND proposes to provide an environmental statement in relation to the proposed development.

The Statement confirms that it is the intention for an environmental statement to be submitted, therefore the Secretary of State has been made aware of the same. Accordingly, we see no reason why the Secretary of State is unable to treat notification as having been provided in any direction confirming that development consent is required for the proposed development, noting that as set out above the Secretary of State may treat the provisions of any Act as having been complied with (s.35(5)(b) of the Act). In the event this is not confirmed in any direction to be issued this firm will provide separate notification that our client proposes to provide an environmental statement with the application for development consent, though for the reasons set out above this is considered unnecessary.

In addition to the above matters, we inform you that further to paragraph 5.19 of the Statement Portsmouth City Council have confirmed the draft joint scoping opinion issued by them and the Marine Management Organisation (a copy of which was provided at Appendix 10 to the Statement) is to be treated as the final version. A further version is not being provided by them. Further, the MMO provided their scoping opinion for the proposed development on 25 June 2018 and a copy of that scoping opinion is enclosed with this letter.

Whilst noting timescales provided at Section 35A(4) of the Act for the Secretary of State to decide whether to issue a direction, we would be very grateful for a decision to be taken by the Secretary of State at the earliest possible opportunity.

Should you require any further clarification in relation to the request for the direction please do not hesitate to contact myself or Martyn Jarvis of this firm.

Yours sincerely,



Catherine Howard
Partner
Herbert Smith Freehills LLP

Enc.

cc Kirill Glukhovskoy – Managing Director, AQUIND Limited (e-mail only)