



AQUIND Limited

AQUIND INTERCONNECTOR

Procedural Deadline A Cover Letter

The Planning Act 2008

Document Ref: 7.1.1

PINS Ref.: EN020022

AQUIND Limited

AQUIND INTERCONNECTOR

Procedural Deadline A Cover Letter

PINS REF.: EN020022

DOCUMENT: 7.1.1

DATE: JULY 2020

WSP

WSP House

70 Chancery Lane

London

WC2A 1AF

+44 20 7314 5000

www.wsp.com

DOCUMENT

Document	Document Name: Procedural Deadline A Cover Letter
Revision	001
Document Owner	WSP UK Limited
Prepared By	K.Haddrell
Date	27 July 2020
Approved By	M.Wood
Date	27 July 2020



The Planning Inspectorate
National Infrastructure Directorate
Temple Quay House
Temple Quay
BRISTOL
BS1 6PN

Our Ref: EN020022

27 July 2020

Dear Sirs,

**Section 88 of the Planning Act 2008 (as amended) and The Infrastructure Planning
(Examination Procedure) Rules 2010 – Rule 6
AQUIND Interconnector**

Further to your Rule 6 letter of 3 July 2020, please accept this as the response by AQUIND Limited (the Applicant) to the request to inform the Planning Inspectorate of the Applicant's wish to speak at the Preliminary Meeting.

The Applicant will be represented at the Preliminary Meeting by Simon Bird QC of Counsel and Martyn Jarvis of Herbert Smith Freehills LLP. Kath Haddrell of WSP will attend the Arrangements Conference, but not the Preliminary Meeting. It is intended that the rest of the Applicant team will observe the Preliminary Meeting via the proposed live streaming.

The Applicant does not have any comments regarding the draft Examination Timetable and does not currently wish to speak on any item listed in the agenda for the Preliminary Meeting, but will be prepared to respond to any procedural issues raised during the Preliminary Meeting.

In respect of any other procedural matters and in relation to item 3 on the agenda for the Preliminary Meeting, being the Initial Assessment of Principal Issues, the Applicant requests confirmation from the ExA of the applicability or otherwise of National Policy Statement EN-5 to the Proposed Development. A statement by the Applicant's legal advisors, Herbert Smith Freehills LLP, setting out information relevant to this matter and the clarifications sought is included with this letter.

The Applicant confirms that low resolution copies of the documents requested by the ExA in Annex D of the Rule 6 letter will be submitted by Deadline 1 and that the other documents requested from the Applicant for Deadline 1 will also be submitted by Deadline 1.

Yours faithfully

Kings Orchard
1 Queen Street
Bristol
BS2 0HQ
Tel: +44 117 930 6200
wsp.com



Kath Haddrell

Kath Haddrell
Associate, Planning Consultancy

Encl.

- Statement in relation to AQUIND Interconnector and the applicability of National Policy Statement EN-5 (Document reference 7.9.1)



AQUIND Limited

AQUIND INTERCONNECTOR

Statement in relation to AQUIND
Interconnector and the applicability of National
Policy Statement EN-5

The Planning Act 2008

Document Ref: 7.9.1

PINS Ref.: EN020022

AQUIND Limited

AQUIND INTERCONNECTOR

Statement in relation to AQUIND
Interconnector and the applicability of National
Policy Statement EN-5

PINS REF.: EN020022

DOCUMENT: 7.9.1

DATE: JULY 2020

AQUIND Limited

AQUIND INTERCONNECTOR

Statement in relation to AQUIND
Interconnector and the applicability of National
Policy Statement EN-5

WSP

WSP House

70 Chancery Lane

London

WC2A 1AF

+44 20 7314 5000

www.wsp.com

DOCUMENT

Document	Document Name: Statement in relation to AQUIND Interconnector and the applicability of National Policy Statement EN-5
Revision	001
Document Owner	Herbert Smith Freehills LLP
Prepared By	Herbert Smith Freehills LLP
Date	27 July 2020
Approved By	Herbert Smith Freehills LLP
Date	27 July 2020



HERBERT
SMITH
FREEHILLS

**Statement in relation to AQUIND
Interconnector and the applicability of
National Policy Statement EN-5**

Herbert Smith Freehills LLP



1. INTRODUCTION

- 1.1 This statement is made by Herbert Smith Freehills LLP on behalf of AQUIND Limited (the '**Applicant**') in relation to the application for development consent to authorise the elements of AQUIND Interconnector within England and the waters adjacent to England up to seaward limits of the territorial sea (the '**Proposed Development**')
- 1.2 The application for development consent in relation to the Proposed Development was made on 14 November 2019 (the '**Application**'). The Application was accepted for examination by the Planning Inspectorate ('**PINS**') on behalf of the Secretary of State on 12 December 2019.
- 1.3 The Examining Authority ('**ExA**') issued a letter in accordance with section 88 of the Planning Act 2008 (the '**Act**') and Rule 6 of the infrastructure Planning (Examination Procedure) Rules 2010 on the 3 July 2020 (the '**Rule 6 Letter**'), confirming the preliminary meeting in respect of the Application is due to commence on 18 August 2020, with a second date of 8 September reserved for the resumption of the preliminary meeting following its adjournment on 18 August 2020.
- 1.4 The initial assessment of the principal issues arising from the ExAs reading of the application documents and relevant representations is contained at Annex B to the Rule 6 Letter, and the initial assessment of the principal issues is item 3 on the draft agenda for the preliminary meeting, contained at Annex A of the Rule 6 Letter. The procedural deadline for written submissions from the Applicant relating to procedural matters in advance of the preliminary meeting is set as 28 July 2020.
- 1.5 Within the initial assessment of principal issues identified and in relation to planning policy, the ExA has highlighted the need to consider whether the Proposed Development complies with National Policy Statement for Electricity Networks Infrastructure (EN-5) ('**NPS EN-5**').
- 1.6 This statement constitutes a written submission from the Applicant seeking clarity from the ExA as to the extent to which NPS EN-5 is applicable to the Proposed Development, and how they therefore intend to treat the policies in NPS EN-5 as being applicable to the Proposed Development for the purpose of their recommendation to the Secretary of State, and how it is expected the Secretary of State will take NPS EN-5 into account in accordance with section 104 of the Act.
- 1.7 This written submission is made to seek clarity from the ExA, on the basis that uncertainty regarding the planning policy framework applicable to the Application during the examination of it is not desirable, nor is any uncertainty with regard to how NPS EN-5 will be required to be considered in the decision on the Application following the examination.
- 1.8 To assist with the ExA in considering this procedural question, we provide below our considerations of the applicability of NPS EN-5 to the Proposed Development and the determination of the Application.

2. RELEVANT NATIONAL POLICY STATEMENTS

- 2.1 Section 5 of the Act provides that the Secretary of State may designate a statement as a national policy statement for the purposes of the Act if the Statement (1) is issued by the Secretary of State; and (2) sets out national policy in relation to one or more specific descriptions of development¹.
- 2.2 Accordingly, national policy statements are specific to certain descriptions of development and are required to confirm the specific descriptions of development which they relate to.
- 2.3 Section 104 of the Act provides the framework for how decisions are to be made by the Secretary of State "*in relation to an application for an order granting development consent*

¹ Section 5(1) of the Planning Act 2008



where a national policy statement has effect in relation to development of the description to which the application relates”².

- 2.4 In particular, section 104 of the Act confirms those matters that the Secretary of State must have regard to, which includes “any national policy statement which has effect in relation to development of the description to which the application relates (a “relevant national policy statement”)”³.
- 2.5 In addition, it is noted that the Secretary of State must also have regard to “any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State’s decision”⁴.
- 2.6 Furthermore, section 104 of the Act requires the Secretary of State to decide an application in accordance with any relevant national policy statement, except to the extent that one or more of sub-sections (4) to (8) to section 104 applies.
- 2.7 The question of whether a national policy statement constitutes a ‘relevant national policy statement’ for the purpose of an application can be concluded from reviewing the respective national policy statements. Each national policy statement contains statements confirming the specific descriptions of development which they relate to.
- 2.8 Where a national policy statement is not a ‘relevant national policy statement’ in relation to an application, it is acknowledged that it may still be a matter which the Secretary of State thinks is both important and relevant to his decision.

3. **APPLICABILITY OF NATIONAL POLICY STATEMENTS TO THE PROPOSED DEVELOPMENT**

- 3.1 As the ExA will be aware, a direction was issued pursuant to section 35 of the Act by the Secretary of State dated 30 July 2018 (the ‘**Direction**’) confirming that the Proposed Development, together with any development associated with it, is to be treated as development for which development consent is required.
- 3.2 In addition to that direction, the Secretary of State also directed that “*the Overarching National Policy Statement for Energy (EN-1) has effect in relation to an application for development consent under this Direction in a manner equivalent to its application to development consent for the construction and extension of a generating station within section 14(a) of the Act of a similar capacity as the proposed project so far as the impacts described in EN-1 are relevant to the proposed Development.*”
- 3.3 It is as a consequence of the Direction that National Policy Statement EN-1 is applicable as a ‘relevant national policy statement’ to the Proposed Development. No such similar direction was made, or has since been made, by the Secretary of State in relation to the applicability of NPS EN-5 in relation to the Proposed Development.
- 3.4 Accordingly, whether NPS EN-5 is a ‘relevant national policy statement’ in relation to the Proposed Development is to be understood from the explanation contained in NPS EN-5 regarding the specific descriptions of development which it relates to.
- 3.5 Paragraph 1.2 of NPS EN-5 provides that “*This National Policy Statement (NPS), taken together with the Overarching National Policy Statement for Energy (EN-1), provides the primary basis for decision taken by the [Secretary of State] on applications it receives for electricity networks infrastructure (see Section 1.8 of this NPS)*”.
- 3.6 Section 1.8 of NPS EN-5, which paragraph 1.2 directs to is entitled “*Infrastructure covered by this NPS*”, and is therefore taken to confirm the specific descriptions of development to which NPS EN-5 relates, and the types of the development which it will be a ‘relevant national policy statement’ in relation to.
- 3.7 Paragraph 1.8.1 of NPS EN-5 provides an explanation of the two elements electricity networks can generally be divided into, being (1) transmission systems and distribution

² Section 104(1) of the Planning Act 2008

³ Section 104 (2)(a) of the Planning Act 2008

⁴ Section 104(2)(d) of the Planning Act 2008



systems which can either be carried on towers/poles or undergrounded; and (2) associated infrastructure, e.g. substations and converter stations to convert DC power to AC power and vice versa.

- 3.8 Paragraph 1.8.2 of NPS EN-5 then states “*This NPS covers above ground electricity lines whose nominal voltage is expected to be 132kV or above. Any other kind of electricity infrastructure (including lower voltage overhead lines, underground or sub-sea cables at any voltage, and associated infrastructure referred to above) will only be subject to the Planning Act 2008 – and so be covered by this NPS – if it is in England, and it constitutes development for which consent is sought along with an NSIP such as a generating station or relevant overhead line*”.
- 3.9 The principal elements of the Proposed Development are sub-sea DC power cables, underground DC power cables, a converter station and underground AC power cables. No part of the Proposed Development is an above ground electricity line.
- 3.10 The assumption in the remainder of paragraph 1.8.2 of NPS EN-5 is that any other kind of electricity infrastructure which the NPS could be applicable to would be associated development in connection with other NSIP development, being a generating station or an overhead line. Whilst development of the type mentioned is comprised in the Proposed Development, the Proposed Development is not of itself associated development, rather it is development for which development consent is required by virtue of the Direction.
- 3.11 The circumstance where a Direction is issued which provides for other types of electricity network infrastructure to require development consent is not considered by the NPS.
- 3.12 On that basis, it is this firm’s view that NPS EN-5 is not a ‘relevant national policy statement’ in relation to the determination of the Proposed Development. In this regard it is noted that infrastructure of the type which forms the Proposed Development (e.g. underground or sub-sea cables) is mentioned in the context of associated development, but as set out above, those elements of the Proposed Development are not associated development as envisaged by NPS EN-5.
- 3.13 Notwithstanding the above, it is acknowledged that in the context of the infrastructure of which the Proposed Development is comprised, policies within NPS EN-5 may be considered by the Secretary of State to be both important and relevant to their decision.

4. **SPECIFIC PROCEDURAL CLARIFICATIONS SOUGHT**

- 4.1 Noting the above, the Applicant would be grateful for the ExA to confirm the following procedural matters in relation to NPS EN-5 at the preliminary meeting:
- 4.1.1 Whether the ExA intends to treat NPS EN-5 as a ‘relevant national policy statement’ for the purpose of the consideration and determination of the Application, and if so on what basis;
- 4.1.2 In the event the ExA does not intend to treat NPS EN-5 as a ‘relevant national policy statement’, a statement confirming this position. If, notwithstanding this position, the ExA consider compliance or otherwise with relevant policies contained in NPS EN-5 is a matter which may be both important and relevant to the Secretary of State’s decision on the Application, confirmation of the reasons why; or
- 4.1.3 Where the ExA consider the relevant policies contained within NPS EN-5 to not be important and/or relevant to the Secretary of State’s decision on the Application, an explanation as to why the ExA consider compliance or otherwise with NPS EN-5 is required to be considered as a principal issue during the examination of the Application.

Herbert Smith Freehills LLP on behalf of the Applicant

27 July 2020

18857/5567/30985781