

The Examining Authority
for the AQUIND DCO,
National Infrastructure Planning,
Planning Inspectorate

Planning Services

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Your ref: Procedural Deadline A

By email only

Date: 28 July 2020

Dear Sirs,

Re: AQUIND Development Consent Order - Procedural Deadline A, 28 July 2020

1. Portsmouth City Council ("PCC") has reviewed the Examining Authority's ("ExA") Rule 6 letter of 3 July 2020 and makes the following representations to comply with Procedural Deadline A. PCC's spokesperson for the Preliminary Meeting (Parts 1 and 2) shall be Ian Maguire, Assistant Director Planning and Economic Development with assistance from Tom Southall, Assistant Director Property & Investment, on any matters arising related to Compulsory Acquisition Hearings.
2. In brief, PCC, mindful of s.91 Planning Act 2008, is desirous of Issue Specific Hearings in relation to: Draft DCO (and s.106), Consideration of Alternative Routes, the Applicant's Funding Proposals & Scheme Viability, Fibre Optic Telecommunications Equipment, Highways, Traffic & Transport and Public Open Space & Community Benefit.
3. PCC also submits that an Open Floor Hearing is required for interested parties that are members of the public to voice their opinions, particularly in relation to Open Space, Highways, Traffic & Transport and Compulsory Acquisition. Please therefore consider this a request to hold an Open Floor Hearing in accordance with s.93 Planning Act 2008.
4. PCC is clear that Compulsory Acquisition Hearings are necessary due to the breadth of proposed land-take. Please therefore consider this a request by an affected person to hold Compulsory Acquisition Hearings further to s.92(3) Planning Act 2008.

5. PCC considers that the ExA should consider conducting additional site inspections to consider how works will impact upon Traffic & Transport and scope for mitigation of that.
6. Additionally, this representation addresses the availability of PCC officers and consultants. Specifically, Schedule 1 addresses known preliminary non-availability. Lastly, a common remark to the draft timetable was that it impinges too close to the Christmas period and should be revised accordingly.
7. The matters detailed in relation to requests for particular hearings are not intended to be exhaustive; they represent a brief summary of some of the main reasons for requesting Issue Specific Hearings, an Open Floor Hearing and Compulsory Acquisition Hearings to assist the ExA in deciding whether to programme such hearings.

Issue Specific Hearings ("ISH")

Draft DCO ("d-DCO")

8. PCC agrees with the ExA's observation that it is "normal practice" to hold an ISH in relation to the d-DCO on a without prejudice basis. For the Interested Parties and the ExA to obtain the fullest possible understanding it will be imperative that the d-DCO is the subject of oral submissions and cross-examination to ensure that the d-DCO is no more onerous than strictly necessary. This will require the testing of the draftsman's assumptions by parties that hold expert knowledge relevant to specific provisions and parties that will be expected to perform regulatory functions if the d-DCO becomes law.
9. PCC also notes that the draft timetable doesn't appear to include reference to consideration of any s.106 agreement. It would seem appropriate to either consider this at the same time as the d-DCO or to arrange a separate ISH around the same time.

Consideration of Alternative Routes

10. PCC shares Winchester City Council's view that the rationale for the selection of the Order Limits before the ExA is not clear. There should be cogent justification for making landfall on the one island on the south coast that is home to the most densely populated city outside London. An ISH is required to ensure adequate examination of this fundamental issue.

The Applicant's Funding Proposals & Scheme Viability

11. Public authorities seeking to secure compulsory acquisition powers must satisfy the Secretary of State that they have sufficient prospect of undertaking the scheme they pray in aid of. This requires a high level of financial transparency, allied with certainty of funding. Without knowledge that sufficient funding will be available from given sources, the consideration of any scheme would be a waste of time, while the grant of compulsory acquisition rights would be an intolerable interference with human rights.
12. Aquind's status as a private limited company means that no assumptions can be made as to its financial standing. The grant of draconian powers of acquisition to a new, private company (who could look to assign the benefit of any DCO to another, unknown private company) is unusual. To that end, for the ExA to be assured that maximum transparency and certainty have been achieved, an ISH should be convened to cross-examine the funding arrangements confirmed and assumed.

13. Further, this is in an inherently cross-border project. It goes without saying that any English consent is worthless without a corresponding French consent; there is no certainty without it. Aquind's funding aspirations must be challenged in cross-examination on viability in relation to the likelihood, time period and additional cost for obtaining French consent. It is noted that the latter half of the examination period will, as matters stand, come against a backdrop of the UK having ended its transition period with the European Union.

Fibre Optic Telecommunications Equipment

14. National Policy Statement EN-1 does not permit the laying of fibre-optic telecommunications cables. PCC is unaware of any precedent for the inclusion of such equipment, especially in the context of the benefit of a private company. The commercial manner in which Aquind proposes to use those cables is not ancillary to the development. Unless Aquind removes this element from the development or agrees to a d-DCO requirement that no commercial use shall be made of any fibre-optic telecommunications cables (other than use necessary for the operational maintenance of the interconnector), there should be an ISH to allow PCC to make its case that the cables should not be held as lawfully within the scheme. Unless the point is conceded by Aquind, this will require cross-examination of their claimed necessity or ancillary nature.

Highways, Traffic & Transport

15. The protracted works period will have a significant ongoing impact upon traffic in the city. PCC is concerned that the assessment and proposed mitigation of the effects of the works on traffic and transport to date is inadequate. An ISH is required for PCC to properly put its case to the ExA and to challenge Aquind's proposals in cross-examination.
16. The ExA will be aware that there are 5 Air Quality Management Areas in the city. Consequently, the prolonged and iterative street works will need to be assessed robustly at each stage by the ExA to ensure that Air Quality does not deteriorate.
17. PCC is concerned to note that Aquind proposes in the d-DCO to disapply and modify parts of the New Roads and Street Works Act 1991. The motivation appears to be to secure itself powers beyond those available to ordinary statutory undertakers and avoid oversight from PCC. This is inadequately justified. PCC requires an ISH to put its case in this respect.
18. In a similar vein, PCC is concerned that Aquind is looking to secure special privileges that would exclude it from any street works permit scheme without justification. Allowing Aquind to work outside the permitting regime could delay approval of any application to include a lane rental mechanism within the regime, as this requires a period of evidence that permitting is established and working well in an area. Given that this issue has the potential to affect the approach to traffic management in the city for years to come, PCC submits that an ISH is necessary to put its case to the ExA.
19. As the local highway and traffic authority, PCC submits that an ISH is the only way to ensure that these issues are adequately examined. Further, an ISH is likely to represent the best way for the ExA to hear from Hampshire County Council and Highways England at the same time to appreciate the cumulative and cross-boundary impacts of

the scheme on the wider transport network. These matters should be considered prior to an ISH on the d-DCO where particular drafting will be discussed.

Public Open Space & Community Benefit

20. PCC takes the view that Aquind has given inadequate consideration to the issue of impact upon sports pitches during construction. Indeed, Aquind's draft Framework Management Plan for Recreational Impacts was only produced to PCC in June 2020. This document fails to provide detail of measures to avoid and mitigate disruption to playing fields and omits important factors ranging from additional use of the pitches for midweek games to the existence of a comprehensive drainage network at Farlington Playing Fields. No alternative pitches have been offered elsewhere to replace those removed from use during construction, meaning the city is losing sporting capacity.
21. The minimal mitigation that is suggested makes no guarantees as to quality, or of deference to sports fixtures, particularly cricket where 3 of the city's 5 pitches are sited at Baffins Milton and Langstone Harbour Sports Ground and Farlington Playing Fields. The only seasonal guarantees provided arise due to the separate issue of overwintering birds at Baffins Milton and Langstone Harbour Sports Ground, although Aquind are looking to disapply overwintering restrictions at Farlington Playing Fields if possible. It is therefore necessary that PCC is able to put its case for respecting sports provision to the ExA at an ISH so that the matter can be adequately examined.
22. It follows that Aquind's approach, focused solely on the construction period, fails to engage with the impact that a whole season's disruption has on grass-roots sports organisations in the time after construction has ceased. Aquind has made no offer to rebalance any harm done to community sports in this respect. The long-term impacts of disruption to playing fields in the city at Farlington Playing Fields and Baffins Milton and Langstone Harbour Sports Ground can only now be adequately examined at an ISH. An ISH would also allow PCC to fairly put its case that long-term mitigation to safeguard levels of sporting activity must be sanctioned as part of the DCO if disruption is to be justified.
23. The impact upon Victorious festival camping at Farlington Playing Fields and the wider festival, held in the summer, add another layer to the complexities of assessing the proposed impact on public open space. PCC takes the view that oral explanation of the issues is necessary.
24. The loss of parking at Fort Cumberland is also an important issue as the open space will remain accessible while parking is displaced to nearby streets. It is crucial that access is maintained to the marina and the lifeboat station in this area.
25. Given the paucity of detail on the construction programme, leading to vague detail of impacts of the development (and any mitigation proposals) to public open space, it is submitted that this ISH should be convened before the d-DCO ISH so matters of principle (not limited to those cited briefly in this letter) can be addressed before proceeding to consider detailed drafting of the d-DCO.

Open Floor Hearing

26. As stated in para 3 above, PCC anticipates that interested parties from the public will want the opportunity to make their views known at an Open Floor Hearing. PCC therefore requests such a hearing is programmed under s.93 Planning Act 2008.

27. In particular, given the typical community involvement in local sports, an open floor hearing presents the right opportunity for members of the clubs concerned to speak about the implications of development for their clubs. Insights directly from residents to the ExA are likely to yield helpful qualitative information and points of view that cannot be done total justice on paper.
28. PCC also anticipates a great deal of public interest in the detriment to traffic flow in the city caused by the works. Air Quality is likely to feature prominently as a matter that members of the public will want to speak to the ExA about.
29. Additionally, members of the public are likely to express concern that Aquind is seeking to acquire an interest in the subsoil of their properties and will want to ask Aquind, the ExA and the highway authorities about these proposals.

Compulsory Acquisition Hearing

30. As stated in para 4 above, PCC as an affected party requests an Open Floor Hearing in accordance with s.93 Planning Act 2008.

Accompanied Site Inspection

31. PCC would like the ExA to consider an accompanied site inspection to see the traffic and transport constraints on the proposed route options and alternative routes likely to be impacted by traffic diverting away from street works.

Comments on Timetable and Availability of PCC Officers and Consultants

32. PCC refers the ExA to the Schedule to this representation in relation to non-availability of officers and consultants.
33. In common with other authorities PCC urges the ExA to maintain a degree of flexibility in any programme to reflect the challenges of remote working, particularly where a number of parties may wish to make representations on given topics from their respective positions. Any reduction in the quantity of oral submissions must not bring a corresponding reduction in quality of examination.
34. PCC takes the view that Deadline 6 falls too close to Christmas Day and associated public holidays, the intervening periods of which are commonly taken as annual leave. It will inevitably clash with perfectly reasonable leave requests as people travel to spend the period with family across the country and beyond, or to otherwise host family travelling to them. It is therefore requested that Deadline 6 is moved to Friday 18 December 2020 so that a line can be drawn under the examination at that point for the remainder of 2020.
35. Alternatively, if Deadline 6 cannot reasonably be accomplished by 18 December 2020 then it should be relocated to the week commencing 11 January 2021 to allow an orderly return to work and a refreshed approach to the matters in issue.
36. The foregoing 2 paragraphs are all the more important due to the ongoing Covid-19 pandemic that has disrupted usual leave patterns and denied families the ability to meet for extended periods of 2020. PCC's leave year runs January-December and officers must have used their allocated leave by December or else lose their entitlement. Many officers are likely to want to use pent-up leave accrued due to the pandemic during the Christmas period. Against the forecast of a severe second wave of the virus before

Christmas, it is respectfully suggested that the festive season should be completely vacated for much-needed rest.

37. Lastly, PCC, along with much of the country, is managing unique pressures on resourcing due to the ongoing Covid-19 pandemic. This is further limiting our ability to provide and support the examination process. While managing within the restrictions of public finance during this time, no PPA has yet been agreed; nor are Surveyors' fees being covered by Aquind. The ability of PCC to fund and source external consultants or additional hours from its own staff is therefore constrained. Therefore, the flexibility noted above to the timetable, especially around the Christmas period, and to respond to likely changes in circumstances is considered essential to ensure the examination process can be rigorously supported by PCC.

Yours faithfully,

Ian Maguire
Assistant Director of Planning
and Economic Development

Schedule
Preliminary Non-Availability of PCC Officers and Consultants

Name	Role	NOT available between the following dates:
Steven Flynn	PCC Principal Traffic and Development Planning Engineer	Paternity Leave min. 2 weeks approximately 19 August 2020 to 2 September 2020