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AQUIND Limited

Your Ref:

Our Ref: EN020022

Date: 15 October 2020

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Dear Sir/ Madam

**Planning Act 2008 (as amended) and The Infrastructure Planning  
(Examination Procedure) Rules 2010 - Rule 17**

**Application by AQUIND Limited for an Order granting Development Consent  
for the AQUIND Interconnector Project**

**Request for further information**

We write to request further information from the Applicant under Rule 17 of the Infrastructure Planning (Examination Procedures) Rules 2010 on four matters.

**1) A response to Deadline 1 submissions from people who have not  
registered as Interested Parties**

To ensure that any new issues raised are adequately examined and any misunderstandings consequential on matter 2 below are dealt with at an early stage in the Examination, the Examining Authority has made a Procedural Decision to exceptionally accept a large number of Deadline 1 submissions from people who have not registered as Interested Parties into the Examination. All such submissions received up to and including 12 October 2020 have been accepted and are being compiled into a single Examination Library document that will be published on the project page of the Planning Inspectorate's National Infrastructure website imminently and added to the Examination Library as soon as possible.

The Examining Authority is aware that: many of these are in a non-standard form or may lack some of the required details; many are simple copies or very lightly edited versions of *pro formas*; some may not, at least in part, address valid planning issues; and, in some cases, individual parties have submitted duplicate submissions or more than one submission.

- The Examining Authority requests that the Applicant reads this and provides a response to the relevant issues that are raised. It is not necessary to respond to each individual submission, as the Examination will focus on specific and

relevant issues rather than the number of objections or the number of times an issue is raised. Instead, the response should collate and address the themes that are raised in the submissions, where they are relevant to the Examination. A non-technical summary of each should be provided where necessary to explain any technical matters.

- Please also list any themes raised that the Applicant does not consider relevant, and briefly explain why.

## **2) Consistency of Order Limits in Plans**

- The Examining Authority requests that the Applicant undertakes a thorough review of the Land Plans [REP1-011(a)], Works Plans [REP1-014] and other plans submitted at Deadline 1 to check the Order Limits set out on each for consistency. For example, some differences between the Land Plans and Works Plans appear to exist at the allotment gardens off Locksway Road. Please supply revised plans if necessary or provide an explanation as to why no changes need to be made.
- The Applicant should also explain any differences between these documents and the corresponding low-resolution versions submitted into the Examination subsequently, especially between the principal and low-resolution versions of the Works Plans ([REP1-014] and [REP1-015]).

## **3) Proposed changes to the Order Limits and rights sought**

We note from the Applicant's letter dated 6 October 2020 (*Aquind Interconnector DCO - Applicant Deadline 1 Submission*) [REP1-003] that the accompanying Deadline 1 documentation includes proposed changes to the Order Limits (through amendments, removals and an addition) and to rights sought through any Order over certain parcels of land. The proposed changes are detailed in the Applicant's Deadline 1 document entitled '*AQUIND Interconnector: Position Statement in relation to the refinement of the Order Limits*' [REP1-133].

We are unclear as to whether the submitted documentation comprises a formal request from the Applicant for the ExA to accept a change to the application and therefore cannot progress this matter. This conclusion is based on the Applicant's submissions to date and the nature of, and deadline set for the consultation that has unilaterally commenced, on which the Applicant appears to be relying. This consultation is considered later in this letter.

The Applicant's letter says that careful consideration has been given to the materiality of the proposed change in the context of the Inspectorate's Advice Note 16 and that the Applicant believes that the change is not material.

In accordance with both the DCLG Guidance for the Examination of Applications for Development Consent<sup>1</sup> and the Planning Inspectorate's Advice Note 16<sup>2</sup>, 'How to

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<sup>1</sup> The Department for Communities and Local Government, Planning Act 2008: Guidance for the Examination of Applications for Development Consent

<sup>2</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2015/07/Advice-note-16.pdf>



*request a change which may be material'* (paragraph 2.3 etc), it is for the Examining Authority to satisfy itself as to the materiality of any proposed change and whether or not to formally accept it into the Examination. The ExA will also consider whether the proposed change engages the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 and, if so, whether the prescribed procedures are being properly followed for the consideration of the relevant 'proposed provisions'.

In considering whether or not to accept a proposed change into the Examination, the Examining Authority must act reasonably and in accordance with the relevant Regulations and the principles of natural justice, ensuring that anyone affected by the change has fair opportunity to make their views known and to have their views properly taken into account.

Should the Examining Authority agree to accept a change, then amendments may be needed to the Examination Timetable, and associated Procedural Decisions and notifications to Interested Parties need to be considered. Where the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 are engaged then specific decisions and notifications are required. The Examining Authority must satisfy itself that this can be properly accomplished in the remaining Examination time.

#### *Next Steps*

- We therefore invite your confirmation of whether or not the Applicant's letter is intended to comprise a formal change request.

The Applicant may wish to consider similar processes that have been followed in recent DCO Examinations including, for example, the applications by Highways England for Orders to grant Development Consent for the M25 junction 10/ A3 Wisley interchange (TR010030) and the A1 Birtley to Coal House Improvement Scheme (TR010031).

#### *Notification to Parties*

We also note that the submitted documentation includes a separate letter issued by Herbert Smith Freehills LLP on behalf of the Applicant which purports, together with other material, to satisfy Section 123(4) of the Planning Act 2008 and Regulation 5 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 in relation to the addition of land to the Order Limits. This letter sets out the Applicant's approach to the necessary notices and publicity (Regulations 7 and 8), a process which the Applicant appears to have attempted by sending Regulation 7 notices to owners and occupiers whose land or rights are affected by potential proposed changes to the Order Limits, local planning authorities and Statutory Consultees.

Clearly it is vital to all parties' interests that both the contents of, and terminology used in these Regulation 7 notices is correct and that the entire change request process is properly followed in line with the legislation.

The Explanatory Note to the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 sets an expectation that acceptance under Regulation 6 should come first, (*'The publicity requirements that apply once a proposed provision has been accepted are set out in regulation 8'*), and note ii to Schedule 3 of those Regulations



states that *'Regulation 7 and 8 require the applicant to have; (a) given notice of an accepted proposed provision to the required persons...'* (my emphases).

We note that the Applicant, in seeking to satisfy the requirements of Regulation 8 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010, has gone on unilaterally to set a deadline of 13 November 2020, at 23.59 for representations in relation to the proposed changes to be made to the Planning Inspectorate.

Could we additionally draw your attention to the Infrastructure Planning (Publication and Notification of Applications etc) (Coronavirus) (Amendment) Regulations 2020 and the implications of Regulation 8A for Regulation 7 notices. As you will be aware, Regulations 7(ha) and (hb) require the notice to include, *'on a website maintained by or on behalf of the Secretary of State'*:

*'(ha) the address of the website where the proposed provision, the map, the revised draft Order and any information submitted with the proposed provision may be inspected;*

*(hb) the place on the website where the proposed provision, the map, the revised draft order and any information submitted with the proposed provision may be inspected.'*

The Regulation 7 notice must also include a statement that a registration form must be used for representations (Reg 7(2)(k)) and details of how to make representations (Reg 7(2)(l)). While the submitted documentation was published on the project page of the Planning Inspectorate's National Infrastructure website as soon as possible after receipt by the case team, on 8 October 2020, given the uncertainties that we seek to resolve through this Rule 17 request, the Planning Inspectorate is not yet in a position to make a suitable form available for the proposed provision.

- In light of the above, we are seeking your views on how the process followed so far and the consultation that the Applicant has unilaterally commenced complies with the Planning Act 2008 and the Infrastructure Planning (Compulsory Acquisition) Regulations 2010, including Regulation 9.

In summary:

- Please confirm a formal change request to the Examining Authority in accordance with the guidance and Advice Note 16. The Examining Authority can then consider materiality, whether or not to formally accept the change into the Examination, whether the proposed change engages the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 and, if so, whether the prescribed procedures are being properly followed for the consideration of the relevant 'proposed provisions'. If the change is accepted, the Applicant's documentation and process must then be in compliance with the remainder of those Regulations.

#### **4) Addendum to the Environmental Statement**

The Examining Authority notes that an addendum to the Environmental Statement has been submitted into the Examination at Deadline 1 [REP1-139].



In addition to other reasons, the introduction to the document states that it has been produced to update the original 2019 Environmental Statement in the light of further assessment carried out. It is said to provide 'additional and updated information'.

- Does the Applicant believe that the submission of the addendum to the Environmental Statement and multiple associated documents, and the major changes that result (such as those to Chapter 23), introduces a need for any additional notification or consultation under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 or in the interests of best practice? If so, what measures has, or will the Applicant put in place?
- The Applicant is requested to provide a schedule which lists the documents which it considers constitute the certified Environmental Statement. This should be provided for Deadline 3, as specified below. The schedule should be updated at subsequent Examination Deadlines as necessary.

### ***Deadline for response to this request***

The Applicant is requested to provide this information to the Examining Authority by no later than **Deadline 3** in the Examination Timetable, Tuesday 3 November 2020. Should the Applicant wish to provide a response by Deadline 2, it will of course be considered by the ExA at that time. If you have any questions about any of the matters raised in this correspondence, please contact the Case Team using the details provided at the top of this letter.

Yours faithfully

*Andrew Mahon*

**Lead Member of the Panel of Examining Inspectors**

