



Planning Act 2008 – section 91

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

Agenda for Issue Specific Hearing 1 dealing with matters relating to the draft Development Consent Order (DCO)

In its letter dated 15 September 2020, the Examining Authority notified Interested Parties of its decision to hold an Issue Specific Hearing into the above matter on the following date:

Hearing	Date and time	Location
Issue Specific Hearing 1 The draft DCO	9 December 2020 10.00 am Arrangements conference starts at 09.30 am	Online via Microsoft Teams invitation ¹

About the Draft DCO Issue Specific Hearing

This Issue Specific Hearing is being held because the Examining Authority wishes to question the Applicant and hear from Interested Parties about the draft DCO submitted with the application documents, together with any updates.

Government restrictions relating to Coronavirus (COVID-19) are in force, requiring people to avoid non-exempt gatherings of more than six people and to work from home if possible. The Examining Authority will therefore conduct this Hearing using digital and telephone technology. Invited participants can join using a computer, laptop, tablet, mobile phone or landline telephone. It is the Applicant's intention to livestream the Hearing, and a recording will be made available on the Planning Inspectorate's National Infrastructure website.

Invitees will receive a joining link or telephone number through which you can join the Arrangements Conference in a separate email, shortly before the Hearing. This is solely for your use. Please join the Arrangements Conference at the appointed time shown above and wait until the Case Manager registers you, and then admits you to the Hearing. The Arrangements Conference allows procedures to be explained and enables the Hearing to start promptly.

The main purpose of the Hearing is to undertake an examination of the draft DCO Articles and Schedules, and in particular to:

¹ Further information is available in Advice Note 8.6, available at:

<https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/advice-note-8-6-virtual-examination-events/>

- Clarify issues around how the draft DCO is intended to work – what is to be consented, the extent of the powers and what requirements, provisions and agreements are proposed;
- Identify the changes made to the draft DCO by the Applicant in updated versions of the draft DCO submitted since the original application;
- Identify any possible issues of prevention, mitigation or compensation not yet covered by the draft DCO; and
- Establish or confirm the views of other Interested Parties as to the appropriateness, proportionality or efficacy of proposals.

The Hearing will concentrate on the specific issue of the draft DCO and any agreements needed to secure mitigation. The Hearing is likely to be of a technical nature and will be based on the specific wording of the draft Order.

The Hearing will principally be informed by the most recent version of the draft DCO submitted by the Applicant. A Schedule of Changes to the draft DCO document, which tracks the changes made through the various draft versions of the document and the reasons for these changes, is also relevant.

Discussion at this Hearing is 'without prejudice'; this means that parties may make contributions to improve the quality of the draft DCO without invalidating their own positions of support or opposition to the Proposed Development as a whole.

Irrespective of its recommendation, the Examining Authority is required to present a recommended DCO to the Secretary of State. The Examining Authority's participation in a discussion about the specifics of the draft DCO does not indicate that it has made up its mind about the application.

Participation, conduct and management of Hearing

The Agenda has a very specific focus that is likely to be of interest mainly to those organisations or bodies that have a direct involvement in drafting the Order and in its subsequent implementation should it be granted. Oral submissions on other subject matters or from persons who are not Interested Parties may only be heard at the discretion of the Examining Authority. Interested Parties who wish to make representations on other issues are encouraged to bring these to an Open Floor Hearing where there is no subject-specific agenda and any important and relevant matters may be raised.

The Examining Authority invites and would particularly like to hear from the following Interested Parties during this Hearing:

- The Applicant;
- Portsmouth City Council;
- Winchester City Council;
- South Downs National Park Authority;
- Hampshire County Council;
- Havant Borough Council;
- Eastleigh Borough Council;
- East Hampshire District Council;
- The Parish Council of Denmead;

- Highways England;
- Marine Management Organisation;
- Natural England;
- Historic England;
- Environment Agency;
- University of Portsmouth;
- Southern Gas Networks.

The named parties have been invited because they are:

- public bodies or other parties that are named in the draft provisions in the draft DCO;
- public bodies with policy and regulatory responsibilities associated with the subject matter;
- national and local authorities for the affected area; or
- persons or organisations with another related and relevant special interest.

Participation in the Hearing is subject to the Examining Authority's power to control the Hearing. Interested Parties may be invited to make oral representations at the Hearing² (subject to the Examining Authority's power to control the Hearing). Oral representations should be based principally on the full transcripts submitted to the Examining Authority at Deadline 5 (30 November 2020), which should be informed by the Relevant Representations and Written Representations made by the person by whom (or on whose behalf) the oral representations are made.

However, representations made at the Hearing should not simply repeat matters previously covered in a written submission. Rather, they should draw attention to those submissions in summary form and provide further detail, explanation and evidential corroboration to help inform the Examining Authority.

The Examining Authority may ask questions about representations or ask the Applicant or other parties to comment or respond. The Examining Authority will probe, test and assess the evidence through direct questioning of persons making oral representations. Questioning at the Hearing will therefore be led by a member of the Panel, supported by other Panel members.

This agenda is for guidance only. It is not designed to be exclusive or exhaustive. The Examining Authority may add other issues for consideration, may alter the order in which issues are considered and will seek to allocate sufficient time to each issue to allow proper consideration. In particular, it is noted that this agenda has been compiled in advance of written submissions for Deadlines 3, 4 and 5. As such, matters may have progressed in the interim and any other information or updates provided at those Deadlines has not been taken into account. The detail of the agenda may be changed once these documents have been received.

Any lack of discussion of a particular issue at a Hearing does not preclude further examination of that issue, including through the inclusion of questions in the Examining Authority's Further Written Questions (ExQ2) (if issued).

² s91 Planning Act 2008

Should the consideration of the issues take less time than anticipated, the Examining Authority may conclude the Hearing as soon as all relevant contributions have been made and all questions asked and responded to. Some of the issues identified in the agenda are by their nature overlapping. It may be the case therefore that certain questions later on in the agenda are answered by earlier questions. If this is the case the Examining Authority will acknowledge this at the time.

If there are additional matters to be dealt with or there are submissions that take a considerable amount of time, there may be a need to continue the session for longer on the day or at a subsequent sitting.

Breaks will be taken during the Hearing as directed by the Examining Authority. All parties should note that the agenda given below is to provide a framework for this Hearing and offer discussion points; it does not constrain the Examining Authority to specific topics. The Examining Authority may wish to raise other matters arising from submissions and pursue lines of inquiry in the course of the discussions which are not included in this agenda.

References in square brackets [] are to the unique document identification number in the Examination Library. This document is regularly updated and can be found on the Planning Inspectorate's National Infrastructure website at:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN020022/EN020022-000996-Exam%20Library%20%E2%80%93%20Published%20Version.pdf>

The Hearing will have regard to submissions already set out in the following documents and any subsequent revisions or updates submitted for Deadlines 2, 3, 4 and 5 (amongst others). You may find it useful to have copies available on your screen or printed beforehand:

- Site Location Plan [APP-007] and [REP1-007];
- Lands Plans [APP-008] and [REP1-011a];
- Crown Land Plans [APP-009] and [REP1-012];
- Works Plans [APP-010] and [REP1-014];
- Access and Rights of Way Plans [APP-011] and [REP1-016];
- Draft Development Consent Order [APP-020] and [REP1-021];
- Explanatory Memorandum [APP-020] and [REP1-024];
- Other Consents and Licences [APP-106] and [REP1-030];
- Onshore Outline CEMP [APP-505] and [REP1-087];
- Outline Landscape and Biodiversity Strategy [APP-506] and [REP1-034];
- Mitigation Schedule [APP-489] and [REP2-005];
- Framework Traffic Management Strategy [APP-449] and [REP1-070];
- Framework Construction Traffic Management Plan [APP-450] and [REP1-071].

May we draw your attention to Deadline 5 on the Examination Timetable (Monday 30 November 2020) and our request to receive full transcripts of all oral submissions to be given at this Hearing by that date. Note that any additional illustrative or supporting material that you wish to share must be submitted in advance with this transcript, as it will not be possible for you to show it on screen during your contribution to the Hearing.

Please contact the case team if you have any questions:
aquind@planninginspectorate.gov.uk



Agenda

Title of meeting	AQUIND Interconnector Issue Specific Hearing on the draft DCO
Date	Wednesday 9 December 2020
Time	10.00 am
Venue	Online via Microsoft Teams invitation
Attendees	Invitees

1. Examining Authority's opening remarks

2. Purpose of the Hearing and speakers' introductions

3. Draft DCO Articles

3.1 Please can the Applicant briefly explain the general structure of the draft Development Consent Order (dDCO), the purpose of each of the Parts 1 to 7 of the dDCO and the general thrust of the Articles within each?

Part 1

3.2 Is the dDCO in the form of an SI?

3.3 Does the meaning of 'land' in Article 20 include '*any interest in land or right in, to or over land*' as in Article 2?

3.4 Could Highways England please explain why it is necessary to amend the definition of 'relevant highway authority'?

Part 2

3.5 In the description of the Authorised Development, there are six locations where HDD works are to take place. How are these locations secured within the DCO such that the Examining Authority can be sure that these lengths of the route can only be installed through trenchless methodologies? Are the entry/ exit points, launch and reception compounds fixed in terms of location and dimensions? Would Article 3, its reliance on the Requirements and the related powers and rights sought in respect of the areas where HDD is proposed allow for flexibility to pursue other means of trenched construction other than HDD if HDD were to fail or prove unfeasible?

3.6 How would Article 7 work in practice when, for example, the Optical Regeneration Stations would accommodate equipment both for the monitoring and operation of the fibre-optic cables as well as for commercial telecommunications purposes?

3.7 Explain why there are no provisions, Articles or Requirements relating to Decommissioning in the DCO. Would decommissioning, if not covered here, require a separate DCO to be granted? If the commercial use of the fibre optic cable is considered to be part of the Authorised Development or 'associated development', would its buildings and equipment also fall within the scope of decommissioning?

Part 3

- 3.8 Please could the Applicant and highway authorities set out, possibly using a diagrammatic cross section, their respective positions in respect of powers in relation to the New Roads and Street Works Act 1991 (NRWSA) and their application to the Proposed Development in terms of highway land and subsoil? Is there a need, in relation to the NRWSA and its scope, to seek to acquire subsoil to a highway in order to facilitate the laying of the onshore cable?
- 3.9 How do the dDCO and Book of Reference limit the rights that can be acquired in the highway ([REP1-131] paragraph 3.2)? In this context, please could the Applicant explain why the highway is identified for the Compulsory Acquisition of New Connection Works Rights on the Land Plans, such as for Plot 4-05, where the Proposed Development would be laid '*within the vertical plane of the highway*' but '*No rights are sought in the Book of Reference [APP-024] in relation to the part of the land which is vested in the highway authority*'?
- 3.10 Could the Applicant explain why it is necessary to disapply the permit schemes of both Portsmouth City Council and Hampshire County Council to deliver the Proposed Development?
- 3.11 Please could the Applicant advise whether the dDCO applies '*the statutory process for agreeing compensation*' to the acquisition of rights in highway subsoil ([REP1-131] section 4)?
- 3.12 In relation to Articles 10, 11 and 41 (and the Applicant's answers to questions ExQ1.16.13 and ExQ1.5.34), how would street and tree works beyond the Order limits be enacted or controlled? Would this involve powers from any DCO? If so, are there any made DCOs from which precedent can be derived for the powers sought? Specifically in relation to Article 41, how would this work in practice both within and outside the Order limits in respect of replacement landscaping and/ or compensation?
- 3.13 With reference to the answers received to ExQ1.5.35, please could the Applicant explain the scope and level of rights sought, why they are necessary and why some of the powers sought (Article 10 for example) offer unsanctioned ability to affect streets outside of the Order limits? Reference should be made to precedents in recently made Orders where appropriate.
- 3.14 Could the Applicant explain the meaning and extent of 'stopping up' and whether the works would meet the definition of such in the 1991 Act? Could the Applicant clarify the approval process for any temporary closures (including where this is secured in the dDCO) and what consultation with the relevant street authority includes?

Part 4

- 3.15 Issues may be raised by the ExA in respect of Part 4 after its review of information submitted for the Deadlines leading up to the Hearing.

Part 5

- 3.16 In respect of Article 22, can the Applicant justify the unique circumstances relating to the Proposed Development that make it different from any other 'linear' infrastructure project that warrants a 7-year time limit as opposed to 5 years? Are there any recently made DCOs serving as precedent for this Article?
- 3.17 Is there intended to be a difference between installation/ construction, operation and maintenance rights under Articles 23 and possibly 20, or would the corridor rights, of approximately 6 and 23m in width, shown in ES Vol 2, Fig 3.12 [APP-157] remain in perpetuity for each category? Is the corridor rights width restricted by anything in the dDCO apart from the Order limits? Would the dDCO prevent the undertaker installing

further cables or ducts, either at the time of the initial installation or subsequently, under the description provided in the dDCO for Work No 4?

- 3.18 What is the difference between the use of the term 'carrying out' in Articles 30 and 31 and 'construction' in the Statement of Reasons (SoR) [APP-022], paragraph 6.2.1?
- 3.19 What is the difference between the temporary use of land and the temporary possession of land in terms of the dDCO?
- 3.20 Would Article 32 allow the Undertaker to take possession of any part of the Order land at any time in the future whilst the Proposed Development is operational for the purpose of its maintenance?
- 3.21 Article 32 of the dDCO [APP-019] appears to allow temporary use 'during the maintenance period' which is said to be five years. The application Explanatory Memorandum [APP-020], paragraph 9.27, advises that maintenance possession under Article 32 is allowed during the period that the Proposed Development is operational. This advice is repeated in the SoR, paragraph 6.2.3. Is the advice correct? If so, how does this accord with Article 32?
- 3.22 If the above advice in the Explanatory Memorandum and SoR is correct, why can't all future maintenance be carried out under Article 32 where the necessary rights have not been acquired? Would this reduce the extent of acquisition for maintenance purposes under Article 20?
- 3.23 Could the Applicant explain the reference to classes (h), (f) & (c) in the response to ExQ1 CA1.3.38?
- 3.24 Please can the Applicant explain, using practical examples, the rights and temporary use powers sought over each area of allotments, open space and sports pitches within the Order land? The explanation should differentiate between rights and temporary use powers sought for surface construction and maintenance and those sought for land beneath the surface. The explanation should also include reference to the response to ExQ1 CA1.3.33, which states that, during construction, *'the Special Category Land will be affected for that temporary period and in so far as areas are required for construction will not be able to be used.'* and that *'Article 30(3) is also relevant, noting that the rights which may be acquired over the Special Category Land will relate to land beneath the surface only, and therefore no acquisition of the surface of the land would be authorised by the Order and in turn the period of surface occupation for this purpose is finite.'* Furthermore, the explanation should include whether the dDCO contains powers to occupy or disturb the surface of any of the Special Category Land identified on the Land Plans and, if so, to what extent and why.
- 3.25 Can the Applicant advise the expected typical width over which restrictions would be sought where HDD or micro-tunnelling is used?
- 3.26 Please can the Applicant advise whether the powers sought in the dDCO would prevent the future erection or maintenance of buildings or structures relating to the use of the Milton Piece Allotments by allotment holders?
- 3.27 Please could Portsmouth City Council explain its 'New Connection Rights' position in respect of Milton Piece Allotments as set out in its LIR [REP1-1173]?
- 3.28 In the context of its response to ExQ1 CA1.3.19, please could the Applicant explain the relevant Hinkley detail in terms of the mechanism by, and time at which the option to progress would be chosen?
- 3.29 Can the Applicant explain potential nature of dDCO amendments required to remove an option from the dDCO?
- 3.30 Please could the Applicant provide further details of the suggested new Requirement akin to Thanet Requirement 12?
- 3.31 Please could the Applicant and Portsmouth City Council explain their current positions on 'Thanet' matters?

Part 6

- 3.32 Issues may be raised by the ExA in respect of Part 6 after its review of information submitted for the Deadlines leading up to the Hearing.

Part 7

- 3.33 Can the Applicant clarify the scope of powers authorised under Articles 41 and 42? Please explain the approach towards replacing lost trees and what sequential approach will be taken for determining the location of replacement trees if no land is available 'within 5 metres' of the onshore cable route. How is this secured in the dDCO? How does Article 41(2) account for compensation for those trees lost or damaged, in both urban and rural character areas where such trees are considered important?
- 3.34 Please could the Applicant provide an update on the position in relation to impacts on, and dealing with TPO trees outside Portsmouth City Council's administrative remit? Also, can the Applicant provide an update on the position in relation to those trees on land owned and maintained by Portsmouth City Council that could potentially be subject to TPOs, but have not been?
- 3.35 How are works to remove and replace hedgerows secured within the dDCO?
- 3.36 Could the Applicant clarify the purposes of Article 48 and if it is necessary in this instance? Are there recently made DCOs serving as precedent for the inclusion of such an Article when there is no known (evidential) need for it? Does the Applicant believe that the Secretary of State's decisions on the recently made West Burton C Power Station Order is relevant in this respect?

4. Schedule 1, the Authorised Development

- 4.1 Please could the Applicant confirm the approach to the identification and definition of 'significant effects' and demonstrate the adequacy of the Mitigation Schedule in ensuring that all necessary mitigation measures that are relied upon in the EIA will be readily auditable at the discharge of Requirements? Are any parties aware of instances where this may not be the case?
- 4.2 Are all of the necessary parameters of the Proposed Development that require a 'Rochdale envelope' for the purposes of the EIA included in, and thus assured in the draft DCO? Are any parties aware of instances where this may not be the case? Are there two height options for the Converter Station as indicated in paragraph 5.2.4.3 of the Design and Access Statement and, if so, would there be any loss/ benefit of having the lower height secured in the dDCO?
- 4.3 In light of the s35 Direction from the Secretary of State³, could Portsmouth City Council and any other local authority that considers that the commercial use of the spare capacity within the fibre optic cables and the associated infrastructure cannot be covered and authorised by the powers within the dDCO please explain why they believe this to be the case. What would prevent the surplus capacity from being considered part of the Proposed Development?
- 4.4 Is it an oversight that the remainder of the specified Works make no reference to laying of fibre-optic cables whilst each time specifying the length etc of HDVC cables?
- 4.5 With regards to Work No.3, what is the actual size of the car park sought? The Supplementary Transport Assessment infers a 150-space car park (Table 10 and paragraph 3.2.1.5) but the answer to ExQ1.16.20 states capacity for 227 parking

³ https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN020022/EN020022-000013-Section%2035%20Direction%20notice%20AQIIND%20Interconnector_30July2018.pdf

spaces. Where are the parameters set and how is the size and location controlled through the dDCO?

- 4.6 In Work No.4, are the maximum upper limits in numbers of joint bays, link boxes and link pillars sufficient given that their usage depends on contractor experience, capability and discretion?
- 4.7 Does work No.4 (f) need to be specific about the technology and means of trenchless crossing being utilised?
- 4.8 In relation to Part 2(k) of Schedule 1, what other works are anticipated to be necessary for the construction or use of the Authorised Development and why are such works considered not to have materially new or materially different environmental effects? Are any of these works likely to be related to the status the Applicant has obtained as a Code Operator under the Communications Act 2003? In any case, has the worst case in relation to visual impacts of the Converter Station development site been presented?

5. Schedule 2, Requirements

- 5.1 What is the background to, and purpose of each of the draft Requirements?
- 5.2 A number of the management plans (for example, the Outline Onshore CEMP) are said to be 'live' documents that the appointed contractor(s) will review and update regularly. How are the changes to the management plans proposed to be regulated and by what process? Would there be potential for the management plans to diverge from each other in respect of different contractors and different 'phases' and, if so, how should such conflict be resolved? How would the overall position be managed when up to six contractors are appointed at any one time?
- 5.3 Can the Applicant confirm the definition of 'commencement' and the full scope of works that would be allowed to be undertaken 'pre-commencement'? What benefit is there to the Applicant or the public by having certain works being deemed not to fall within the definition of 'commencement'?
- 5.4 In requirement 1(6), what is meant by 'ground level'?
- 5.5 In relation to Requirement 22, can the Applicant define the scope and extent of reinstatement powers within the dDCO at present and how they relate to highway-related works? Would the roads be restored in accordance with the '*Specification for Reinstatement of Openings in Highways*' document? If not, why not? If so, where is this secured in the dDCO? What views does the Applicant have in respect of Hampshire County Council's request for 'indemnity' for undertaking any works that may result in the diversion of otherwise of the cables to facilitate highway works?
- 5.6 Can Winchester City Council please set out the rationale for requiring an Employment and Skills Plan given the split of local/ non-local workers suggested in the ES?

6. Schedule 3, Procedure for approvals, consents and appeals

- 6.1. What are the various documents that will require approval and the means/ method/ timescales involved in obtaining them? What is the rationale behind the time period allowed of 20 days for authorities to respond to requirement discharge requests?
- 6.2. What are the roles of the MMO, Natural England, Environment Agency and local planning authorities in the seeking the discharge of Requirements?

7. Schedule 9, Modification of compensation and compulsory purchase enactments for the creation of new rights and restrictive covenants

- 7.1 Any matters parties wish to raise.

8. Schedule 13, Protective provisions

- 8.1 Please could the Applicant provide an update on progress of negotiations on protective provision wording and the likelihood of resolution?

9. Schedule 14, Certified documents

- 9.1 With regards to the amount of refreshed, new, modified and additional information to the Environmental Statement, please could the Applicant explain what now constitutes the certified Environmental Statement for the purposes of the dDCO, and how this will be managed going forwards?

10. Schedule 15, Deemed Marine Licence under the 2009 Act

- 10.1 Could the Applicant advise on the construct and content of the draft Deemed Marine Licence (DML) and how it relates to the dDCO?
- 10.2 What is the status of negotiations between the Applicant and the Marine Management Organisation in relation to the DML?
- 10.3 Please could the Applicant clarify the position regarding the Outline Marine Archaeological WSI not being in the list of certified documents but appearing in Schedule 15 relating to the DML?
- 10.4 With reference to Historic England's Written Representation, could the Applicant comment on the suggested additions and recommendations for content within Part 2 of the DML, and whether amendments are to be made in any respect?

11. Planning Obligations and any other agreements

- 11.1 Taking account of all Written Submissions at Deadline 1 and any subsequent negotiations, could the Applicant provide an update on the progress of any obligations with regards to S106 of the Town and County Planning Act or S278 of the Highways Act?
- 11.2 With reference to the Hampshire County Council Local Impact Report, could the Applicant explain whether progress is intended towards an agreement under S278 of the Highways Act?
- 11.3 Please could the Applicant explain the progression, if any, on Planning Performance Agreements (PPAs)? Could the Applicant set out the content of any PPAs and with which authorities they are intended. How are these secured through the dDCO or its Requirements?

12. Any other issues relating to the draft DCO

- 12.1 The ExA will articulate any remaining queries arising from the Hearing or from comments received at Deadlines leading into the Hearing.
- 12.2 Any final comments from any parties relating to the dDCO?

13. Close of Hearing