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Our ref

Your ref

Date  
3 November 2020

Dear Mr Mahon

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

**Response to request for further information in relation to Eastney and Milton Allotments**

Thank you for your letter of 27 October 2020 issued in relation to the Application of AQUIND Limited (the '**Applicant**') for an Order granting Development Consent for the UK elements of AQUIND Interconnector (the '**Application**'), requesting further information from the Applicant under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (the '**Request**').

This letter responds to the requests in that letter directed towards the Applicant.

Specifically this letter addresses the following five issues raised by the ExA:

1. Should any assessment of persons for allocation into Categories 1, 2 and 3 in the Book of Reference [REP1-027] be based on the whole of the allotment area that lies within the Order limits? If not, why not?; and
2. In relation to Plot 10-12, should each of the allotment holders be listed in Category 2 of Part 1, Part 2, Part 3 or any other part of the of the Book of Reference [REP1-027] by virtue of having a right of access across the land? If not, why not?.
3. In relation to plots 10-13 and 10-14, should each of the affected allotment holders be included in Category 1 of Part 1, Part 2, Part 3 or any other part of the Book of Reference [REP1-027]? If not, why not?
4. On the basis of your responses to the above, what action does the Applicant consider the Examining Authority should take in response to s102A requests from affected allotment holders?
5. Whether the Applicant intends to make any changes to the Book of Reference [REP1-027] as a result of the above, and if so, what consequential actions will be taken, and on what timescale.

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Each of the above requests is addressed in turn below, with the responses on behalf of the Applicant based on the Applicant's understanding at this time and the information received to date.

In advance of those responses and to provide context to them, we explain that the diligent inquiry process undertaken by the Applicant in relation to the Milton and Eastney Allotments comprised:

- Purchase and interrogation of HM Land Registry Official Copy Registers and Title Plans to identify all relevant freehold, leasehold, mortgagee, beneficiary, other charges, private rights or restrictive covenant information at Milton Piece Allotments;
- Issue of a Land Questionnaire ('LIQ') dated 10th December 2018 to request information regarding Portsmouth City Council's own interests in land, associated third party interest and the spatial extent of the property including Milton Piece Allotments;
- The erection of an 'unknown site notice' request for information at the entrance to the Milton Piece Allotments on 11th January 2019 to request information on the occupiers of the allotments. The notice included a map showing the land ownership boundary of the allotments and provided details of how to contact the Applicant's land team with any relevant information. This site notice was erected until 29th May 2019.
- The erection of a section 48 consultation site notice at the entrance of the Milton Piece Allotments on 26th February 2019. This notice was erected until 29th May 2019.
- Phone calls directly to Portsmouth City Council's dedicated allotment telephone number '023 9268 8070' on 30th April 2019, 14th May 2019 and 23rd May 2019; and
- Issue of a Confirmation Schedule request for information dated 2nd October 2019 to request that Portsmouth City Council confirm the accuracy of the information on land interests, including Milton Piece Allotments, held by the Applicant prior to the submission of the DCO.

**1. Should any assessment of persons for allocation be based on the whole of the allotment area that lies within the Order limits?**

The development which is to be authorised by the DCO applied for is the development and the associated development described in Schedule 1 to the dDCO (REP1-021) (the "authorised development"). Article 3 confirms that the authorised development must be carried out subject to the provisions of the Order and Schedule 2, which includes the Requirements.

Work No. 4 at Schedule 1 to the dDCO is the works to lay the onshore HVDC cables. This includes 4 HDD crossings.

Requirement 15 at Schedule 2 to the dDCO confirms no phase of the authorised development may be carried out otherwise than in accordance with a construction environmental management plan, which must accord with the Onshore Outline Construction Environmental Management Plan (REP1-087). The Onshore Outline Construction Environmental Management Plan at paragraph 6.2.12.1 confirms that "*The Horizontal Directional Drilling Position Statement (Ref 7.7.3) outlines the requirements on the contractor for the HDD locations, setting out the constraints and specific requirements for construction at each HDD location. HDD/Trenchless installation will be used in the locations identified in the Horizontal Directional Drilling Position Statement and provides indicative information outlining the requirements for the compounds and work methodology for the HDD works at these locations*" (our emphasis).

Requirement 6 (3) at Schedule 2 requires design approval to be obtained for Work No.4 before the works may commence. This requires written details of the layout, cable burial depths and location of the joint bays, link boxes and link pillars to be confirmed. This information is for approval by the



relevant planning authority, and as a consequence of the information required to be approved must include the HDD entry/exit locations in relation to the works at Milton and Eastney Allotments.

It would be unlawful in accordance with Article 3 to the dDCO to not comply with Requirements 15 to the dDCO by undertaking works in the locations identified for HDD by any method other than HDD. Further, no approval would be given for such works pursuant to Requirement 6(3), as they would not accord with the authorised development.

It is acknowledged that whilst this does secure the locations where HDD must be used, this is not the simplest route to identify the position, and we discuss further below potential amendments that may be made to the Application documents so as to more clearly confirm the position in the response to point 5.

Article 23 to the dDCO provides powers in respect of the compulsory acquisition of rights and the imposition of restrictive covenants and at paragraph (1) states "*the undertaker may acquire compulsorily the rights, and impose the restrictions, over so much of the Order land described in the book of reference and shown on the land plans as is required for the construction, operation or maintenance of the authorised development or to facilitate it, or as is incidental to it*". Taking this into account, rights and restrictions may only be imposed over land in so far as is required for the construction, operation or maintenance of the authorised development. Where the working method secured in a location is HDD, the acquisition of any rights over the surface would not be authorised by Article 23(1), as there is no need to acquire rights for construction over the surface in those instances.

Installation by HDD will drill beneath the surface of the relevant area in an arc between the entry/exit locations. The depth and span of the drill is dependent on various factors, including for instance the length of the HDD and the ground conditions in proximity to where the installation is undertaken. In respect of the Eastney and Milton Allotments, the anticipated minimum depth of the drill is circa 2.5m beneath the surface. For the majority of the route beneath the allotments the depth will be more significant, with approximately 85% anticipated to be at not less than 5mbgl and approximately 70% anticipated to be at not less than 10mbgl. Accordingly, it is the land at that depth which Article 23(1) would authorise the acquisition of rights and imposition of restrictions over only.

The Applicant's view is therefore that the assessment of persons for allocation into Categories 1, 2 and 3 in the Book of Reference (REP1-027) should be based on the land over which the authorised development is proposed, being the land that will be affected, and which in respect of the Eastney and Milton Allotments includes the subsoil to the allotments, but not the surface (save for rights of access on foot over the existing paths in the allotments for inspection purposes).

**2. Should each of the allotment holders be listed in Category 2 of Part 1, Part 2, Part 3 or any other part of the of the Book of Reference in respect of Plot 10-12**

Plot 10-12 comprises 212 square metres of land which forms an unnamed access road off of Locksway Road, Portsmouth. All persons who the Applicant is aware following the making of its diligent inquiry should be included in Category 2 in relation to Plot 10-12 in the Book of Reference (REP1-027) are included. The Applicant is not aware that each and every allotment holder has a relevant interest to be required to be included within Category 2 in Part 1, Part 2 or Part 3 of the Book of Reference in relation to Plot 10-12.

However, it is acknowledged that the ExA have requested further information from Portsmouth City Council regarding the rights that current allotment holders have away from their specific allotment land over the access road from Locksway Road and the common areas of the allotments, such as paths and tracks. Should Portsmouth City Council respond to the ExA request for information, with sufficient evidence, to confirm that the allotment holders do enjoy private rights of access over Plot



10-12, then the Applicant will seek to include those persons in the Book of Reference. It will be necessary for information regarding the relevant persons who enjoy any such rights to be confirmed for the Applicant to be able to do so.

**3. Should each of the affected allotment holders be included in Category 1 of Part 1, Part 2, Part 3 or any other part of the Book of Reference in relation to plots 10-13 and 10-14**

As explained above, the Applicant has included all persons in the Book of Reference who it is aware should be included in the Book of Reference further to the diligent inquiries previously made.

In relation to Plot 10-13, which comprises 1925 square metres of land forming an access track and hardstanding, the Applicant is not aware that each and every allotment holder has a relevant interest over Plot 10-13, so as to be required to be included in Category 1 of Part 1, Part 2 or Part 3 or any other part of the Book of Reference in relation to that plot.

Should it be confirmed however that the allotment holders do hold a relevant interest over Plot 10-13 so as to be required to be included in Category 1 of Part 1, Part 2 or Part 3 to the Book of Reference, the Applicant will seek to include those persons in the Book of Reference. As above, it will be necessary for information regarding the relevant persons who hold such a relevant interest over Plot 10-13 to be confirmed for the Applicant to be able to do so.

Plot 10-14 comprises 45,830 square meters of land forming part of the Eastney and Milton Allotments. As is explained above, the development to be authorised in this location is the drilling of ducts and the pulling of cables at a minimum depth of circa 2.5m beneath the surface via HDD, and for the majority of the route beneath the allotments at a more significant depth. Only the rights and restrictions necessary in connection with that activity would be authorised by the DCO in respect of Plot 10-14. As such, the Applicant is of the view that only the persons with a sufficient interest over that subsoil land, or who it is confirmed have a sufficient interest over the existing paths within Plot 10-14, should be included in Category 1 of Part 1, Part 2 or Part 3, or any other part of the Book of Reference.

At this time, the Applicant is not aware, following the making of its diligent inquiries, that the allotment holders do have an interest over the subsoil below this anticipated minimum depth or over the existing paths. However, the Applicant is aware that the ExA have requested Portsmouth City Council to confirm whether there is a vertical, depth restriction to each parcel of allotment land and the associated rights and whether persons have a relevant interest over the existing paths. Should the response to this request for further information confirm, with sufficient evidence, that the allotment holders do have an interest over the subsoil below this anticipated minimum depth and/or over the existing paths within Plot 10-14, the Applicant will seek to include those persons in the Book of Reference.

**4. What action does the Applicant consider the Examining Authority should take in response to s102A requests from affected allotment holders**

We have set out above that, so far as the Applicant is aware having undertaken its diligent inquiries, the allotment holders do not have sufficient interests over Plot 10-12, 10-13 or 10-14 to be required to be included in the Book of Reference.

Where the allotment holders do not have a sufficient interest to be within one or more of the categories set out at section 102B of the Planning Act 2008, there is no action that the ExA is required to take in relation to requests from allotment holders to become interested parties pursuant to section 102(1)(ab).

Should the responses to be provided by Portsmouth City Council confirm, with sufficient evidence, that the allotment holders are within one or more of the categories set out at section 102B, then the



ExA should notify those persons, and the Applicant, that those persons have become interested parties under section 102(1)(ab).

**5. Whether the Applicant intends to make any changes to the Book of Reference and if so any consequential actions**

As set out above, so far as the Applicant is aware having undertaken its diligent inquiries, the allotment holders do not have sufficient interests over Plot 10-12, 10-13 or 10-14 to be required to be included in the Book of Reference. Accordingly, the Applicant has no current intention to make any changes to the Book of Reference in relation to the allotment holders.

However, should the information to be provided by Portsmouth City Council confirm, with sufficient evidence, that the allotment holders are within one or more of the categories set out at section 102B, we confirm that the Applicant will seek to include those persons in the Book of Reference. Should it be necessary to do so the Applicant will action this amendment as soon as is reasonably practicable, though it will be necessary to obtain the relevant information regarding the allotment holders to include in the Book of Reference, which will need to be provided by Portsmouth City Council as the holder of that information.

Should those persons be confirmed as interested parties, it is acknowledged that it will also be necessary to consider how those persons are negotiated with so as to secure the rights of access over the surface of the Allotments for the purposes of inspection, and it will also be necessary to consider how the subsoil to the allotments needs to be treated in this respect. Again, the Applicant will consider the necessary steps as soon as is reasonably practicable.

Irrespective of the above, in light of the comments received and the confusion regarding the position in respect of the allotments despite the Applicant's best efforts to clearly communicate that works in this location will be undertaken by HDD, the Applicant is considering the amendment of the Land Plans (REP1-011a), the Book of Reference and the Works Plans (REP1-014).

In respect of the Land Plans, the Applicant intends to amend Plot 10-14 to show a further layer of shading for access rights over the existing allotment paths within that plot. Further, the Applicant is considering including an additional sub-category of access right, which provides that access over that land may only be taken on foot.

The Applicant also intends to amend the Work Plans so as to identify the areas where installation is required to be undertaken by trenchless methods. Having reviewed other applications for precedent, the Applicant has identified that the Works Plans for the Norfolk Vanguard Offshore Wind Farm Order 2020 identified trenchless crossing zones via hatching. The Applicant considers this an appropriate approach to confirm the position. This amendment may also require amendments to the description of Work No.4 at Schedule 1 to the dDCO, and this will be confirmed in due course.

Furthermore, the Applicant has recently been made aware of comments from the highway authorities regarding the acquisition of land forming part of the highway. We confirm on behalf of the Applicant that they do not, and have never, intended to acquire such land. The works to be undertaken in the highway are to be undertaken pursuant to statutory authority provided for by Article 11 to the dDCO.

So as to remove any confusion in this regard, the Applicant intends to update the Book of Reference to confirm in relation to each of the plots of land forming the highway and the subsoil beneath the highway, that all interests of the highway authority are excluded. Precedent is provided for this approach in the Book of Reference which accompanies the Norfolk Vanguard Offshore Wind Farm Order 2020. Should it be necessary to also update the Statement of Reasons (REP1-025) to confirm this position, it is confirmed this will be updated also.



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Date  
3 November 2020  
Letter to  
Mr Andrew Mahon

It is intended that all of the above updates to the application documents referred to will be made by Deadline 4.

Should any further information in relation to this letter be required to further assist the ExA, please would the Case Team contact Martyn Jarvis of this firm using the details provided at the top of this letter.

Yours faithfully,

*Herbert Smith Freehills LLP*

**Herbert Smith Freehills LLP**