

Application by Aquind Limited for an Order granting Development Consent for the Aquind Interconnector

Response to Deadline 3 submitted on behalf of Network Rail Infrastructure Limited

Planning Inspectorate Reference Number: EN020022 Reference Number: 20025158

- 1.1 We have seen the applicant's response to the written representations of Network Rail Infrastructure Limited submitted at Deadline 2. This document responds to comments made by the applicant in Table 3.2 of that document.
- 1.2 As stated in its written representation, Network Rail is concerned that Article 7(7)(e) enables the benefit of the provisions of the Order to be transferred or leased to any person without the approval of the Secretary of State where the timeframe for compensation claims has passed and all claims have been settled. After that point the benefit of the powers could be transferred without any scrutiny of the standing of the transferee by Secretary of State. In response the applicant suggest that this "*overlooks that there are provisions in the DCO and Network Rail's protective provisions (including paragraph 12 (maintenance of the authorised development), 13 (illuminated signs etc) and 15 (indemnity) for which there is an on-going liability.*"
- 1.3 The applicant correctly notes that the provisions for the protection of Network Rail would remain in place where any such transfer occurs. The applicant also suggests that in the unlikely event that the protective provisions cannot be complied with Network Rail would be able to recover any liabilities which are outstanding under the terms of the protective provisions.
- 1.4 However, that overlooks Network Rail's key concern which is that the powers of the Order could be transferred to an entity which does not have either the competency to comply with the obligations or sufficient financial standing to indemnify Network Rail in the event of a breach of the provisions. In addition there is nothing to stop the transfer of the benefit of the powers to an overseas entity. The strength of the protective provisions relies on Network Rail being able to enforce the provisions and also the party against whom they are enforceable being able to meet any claim brought against them. Article 7(7)(e) removes the ability for the Secretary of State to have oversight of the identity of the transferee of the benefit of those powers in certain circumstances. In a worst case scenario the powers would be transferred to an overseas shell entity with no capital. That risks a dilution of the strength of the protective provisions which are critical to ensuring the safe and efficient continued operation of the railway network. It could also lead to difficulties in effectively enforcing any claim against an entity who is outside the jurisdiction. It is for this reason that Network Rail request that Article 7(7)(e) is deleted.
- 1.5 Network Rail and the applicant are continuing discussions in relation to protective provisions.