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All Interested Parties, Statutory Parties
and Other Persons

Your Ref:

Our Ref: EN020022

Date: 11 November 2020

Dear Sir/ Madam

**The Planning Act 2008 (as amended), Section 89
The Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 9**

**Planning Act 2008 (as amended) – Section 123 and the Infrastructure
Planning (Compulsory Acquisition) Regulations 2010 – Regulation 6**

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

Notification of a Procedural Decision

I am writing to advise you of a Procedural Decision taken by the Examining Authority following the Applicant's confirmation of a formal change request dated 3 November 2020 [REP3-019].

This follows the Applicant's initial letter in respect of changes to the proposed Order limits dated 6 October 2010 [REP1-002] and the Examining Authority's Rule 17 request for clarification and further information that was issued on 15 October 2020 in response [PD-013].

The background to, and the Examining Authority's reasoning for the Procedural Decision are set out below.

Background

The changes proposed by the Applicant comprise a reduction of land within the Order limits at a number of locations along the route of the interconnector, and an extension of the Order limits at one location, the Baffins sports ground, including the Baffins Milton Rovers Football Club football pitch (the Kendall Stadium).

The Applicant's letter of 3 November 2020 [REP3-019] is accompanied by a statement entitled '*Proposed Non-material Changes to the Order Limits and Rights.*' This sets out

the Applicant's description of the proposed changes, lists the revised documents that have been submitted as a consequence of the proposed changes, and explains the Applicant's position in relation to materiality and consultation requirements.

The Applicant proposes twelve changes to the Order limits and describes these in detail in Chapter 2 of its statement. In brief, these are:

- removal of land south-west of Lovedean substation;
- refinement of Order limits affecting the area immediately north of Anmore Road;
- removal of land east of Ladybridge roundabout;
- removal of approximately 200m of Portsdown Hill Road;
- reduction of the extent of plots along Eastern Road;
- Durkins Yard construction compound removed;
- removal of an area of trees around the car park at Farlington playing fields;
- removal of land at Baffins sports ground, including a row of trees, part of the cricket pitch, part of the Tudor Sailing Club boat yard and part of Eastern Road;
- addition of land at the Baffins sports ground;
- removal of substation land in the south west corner of Milton Common;
- removal of Furze Lane;
- removal of part of a car park and access to a slipway to Langstone Harbour;
- reduction of areas shown to be within the Order limits at Eastney and Milton Allotments.

In addition, the Applicant proposes changes to some of the rights being sought within the proposed Order limits. These are described in detail in Chapter 3 of the Applicant's statement. In brief, these are:

- new connection works at Soake Farm. Rights are sought over a reduced part of two plots, and new access rights are required over the remainder;
- change from connection works rights over part of a plot at Farlington Playing Fields car park to temporary use;
- temporary use only of part of the land previously included for cable routing at Tudor Sailing Club boat yard.

In Chapter 5 of its statement, the Applicant summarises the implications of the proposed changes for the outcome of the environmental impact assessment of the Proposed Development, as presented in the Environmental Statement ([APP-116] to [APP-145]) and the Environmental Statement Addendum [REP1-139]. In brief, in the Applicant's view, the proposed changes to the Order limits do not worsen the outcome of the assessment and in a few cases the outcome is slightly improved. In addition, the Applicant's view is that the proposed changes to rights sought do not introduce new or different likely significant effects, nor do they change the outcome of the assessments.

The statement also explains that the Applicant believes that the proposed changes are not material, and that further consultation is therefore unnecessary.

The Examining Authority's reasoning and decision

We have reviewed the information provided, and assessed the Applicant's request in line with paragraphs 109 to 115 of DCLG Guidance *Planning Act 2008: Examination of Applications for Development Consent* and the Planning Inspectorate's *Advice Note 16: How to request a change which may be material*.

The Examining Authority recognises that in considering whether or not to accept the proposed changes for examination it needs to act reasonably and in accordance with the principles of natural justice. The Examining Authority must be satisfied that anybody affected by the proposed changes would have a fair opportunity to make their views on them known and to have their views properly taken into account.

We note that the Applicant believes that the proposed changes are not material, and that further consultation is therefore unnecessary. However, we are clear that even non-material elements need to be made available to all relevant parties during the Examination in a clear and accessible way.

The Applicant's submission in relation to the environmental impact assessment concludes that the proposed changes do not generate new or different likely significant effects, though, in a few instances, they do result in a slight reduction in the scale of predicted effects compared to the situation prior to making the proposed changes. We concur with this view and are content that the environmental impact assessment's conclusions around significance of effects would remain the same. We have also considered the Applicant's Habitats Regulations Assessment report and conclude that the proposed changes would make no difference to the outcome of a Habitats Regulations Assessment.

We agree with the Applicant that the proposed changes do not materially alter the original application and that the development now being proposed remains in substance that which was originally applied for. We are therefore satisfied that the proposed changes would not amount to a different project being proposed.

However, the proposed changes include the addition of an area of land at the Baffins sports ground and thus an extension to the Order Land. This engages the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (as amended) (the 'CA Regulations'), and we note that agreement has not been reached with the relevant Affected Persons in advance of the change request. We therefore disagree with the Applicant that this does not amount to a material change to the application.

Overall, we are content that the supporting information provided with the notification and confirmation of the proposed changes is of a satisfactory standard for examination. We are also satisfied that sufficient time remains in the Examination for the proposed changes to be properly and fairly examined, including the opportunity for any affected parties to provide written submissions and oral representations to Hearings, and to comply with the procedural requirements of the CA Regulations.

The Examining Authority has therefore decided to accept these proposed changes to the application for examination, and we have written separately to the Applicant to advise this, and to provide a reminder of the Applicant's consequential duties under Regulations 7, 8 and 9 of the CA Regulations.

Next steps

It is now the Applicant's responsibility to publicise the proposed change that incorporates additional land in accordance with the CA Regulations. We would stress that it is important for this to start as soon as possible to allow the Examination to be completed within the statutory six-month time frame.

The Applicant must consider any additional provisions that may be necessary in dealing with the necessary publicity for any parties who may be affected by the current Government public health restrictions associated with the COVID-19 pandemic.

The Applicant must advise the Case Team of its proposed schedule as soon as possible, so that an appropriate form can be made available on the project page of the Planning Inspectorate's National Infrastructure website¹ for representations to be made on the proposed changes only.

At that time, we will also issue a revised Examination Timetable, which will include the deadline for representations to be submitted on the proposed change.

Please contact the Case Team if you have any questions about this letter.

Yours faithfully

Andrew Mahon

Lead Member of the Panel of Examining Inspectors

¹ <https://infrastructure.planninginspectorate.gov.uk/projects/south-east/aquind-interconnector/>