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All Interested Parties, Statutory Parties
and Other Persons

Your Ref:

Our Ref: EN020022

Date: 18 December 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 second formal change request dated 11 December 2020 and formally received by the Examining Authority on Monday 14 December 2020 [AS-052].

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

Background

Changes 1 and 2 proposed by the Applicant comprise the addition to the Order limits of 10,122m² of woodland known as Mill Copse and 14,842m² of woodland known as Stoneacre Copse including a private access track (assigned plot numbers 1-32a and 1-02a respectively in the Supplement to the Book of Reference [AS-053]). The Applicant seeks new landscaping rights over these two plots, as detailed in the Supplement to the Book of Reference.

Changes 3 and 4 proposed by the Applicant comprise the removal from the Order limits of the western extent of plots 1-60 and 1-71 (to the west of plot 1-57), plots 1-50, 1-66, 1-67, 1-68, 1-74, 1-76, 1-77, 1-80 and the majority of plots 1-63 and 1-75 in the area known as Broadway Farm Cottages at Lovedean.

The Applicant's letter of 11 December 2020 [AS-052] is accompanied by a statement entitled '*Request for Changes to the Order Limits*' [AS-054]. This sets out the Applicant's reasons for, and description of the proposed changes, lists the required consequential revisions to Examination documents, and explains the Applicant's position in relation to materiality and consultation requirements. A Supplement to the Book of Reference was also received [AS-053].

In Chapter 4 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, from a few receptors, the predicted visual effects of the proposed Converter Station will be reduced against a new future baseline that has been set by the Applicant due to the accelerated progress of ash die-back disease in the area.

The statement also explains that the Applicant has engaged with the two owners of the proposed additional woodland plots, that voluntary agreements to secure the rights required are sought but can provide no confirmation that this will be possible.

The Applicant is of the view that these proposed changes are not material, and that a further informal 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 are predicted to result in a slight reduction in the scale of adverse visual effects compared to the future baseline that might exist following the progression of ash die-back disease. We concur with this approach and 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 two areas of land at Mill Copse and Stoneacre Copse and thus an extension to the Order limits. 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 Additional Affected Persons in advance of the change request. We also note that one of the owners listed as an Affected Person in the Supplement to the Book of Reference has not previously been involved in the Compulsory Acquisition process for this Proposed Development or its Examination. 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 of the proposed changes is of a satisfactory standard for examination. We have very carefully considered the remaining time in the Examination, and whether the proposed changes could 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. We believe this to be marginal, and accelerated action will be required by both the Applicant and the Examining Authority within the wider statutory timescales required for the process if it is to be satisfactorily concluded before the close of the Examination.

The Examining Authority has nevertheless 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.

Acceptance is made on the basis that all the process can be completed in the required time prior to the close of the Examination and in accordance with the revised Examination Timetable that we will publish in due course. If this is not achieved, then we will not be in a position to take the change request into account in our recommendation report to the Secretary of State as it will not have complied with the relevant statutory procedures.

We note that section 7.2 of the Applicant's letter of 11 December 2020 includes a proposal to advertise the use of the reserved Hearing day on 22 February 2021 in the Examination Timetable as the date on which any Additional Affected Person might be heard. We have not yet reached a conclusion on when any such Hearing associated with this change request should take place, but we will issue a revised Examination Timetable that will incorporate any necessary amendments to deal with this second change request in due course.

Next steps

It is now the Applicant's responsibility to publicise the proposed changes that incorporate additional land in accordance with the CA Regulations. We would stress that it is critical 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/>