

East Hampshire District Council



Aquind Ltd

Aquind Interconnector Project
Application for a Development Consent Order

Ref: EN020022

Response to Deadline Seven

25 January 2021

East Hampshire District Council : Response for Deadline Seven

1.0 Response to ExQ2 written questions

1.1 DCO2.5.1

1.2 None of the cables route or buildings associated with the fibre optic cable are located within the East Hampshire District Council (EHDC) area and the Council has subsequently not made any issue of this element being included within the DCO process, but nevertheless is aware of concerns held by the other Local Planning Authorities.

1.3 Having regard to S115(2) of the PA 2008, any part of the scheme relating to fibre optic cables would appear questionable as associated development. The Direction Request was that elements relating to the fibre optic are associated development and the Secretary of State's Direction that 'the proposed Development, together with any development associated with it is to be treated as development for which a development consent order is required' raises some reservations as to the suggestion of accepting such elements as part of the project rather than Associated Development. The fibre optic elements do not fit with the Project insofar as it is not in the field of energy, transport, water, waste water or waste (Section 35(2) of the Act. The reasons for the decision to issue the Direction (Annex of the Direction) do not refer to fibre optic elements. It is not clear how such elements could be accepted as part of the proposed project given the 'the spare fibre optic cable capacity for the provision of commercial telecommunications services' is not in the field of energy (and so not within s35(2) of the Act), is not nationally significant in itself and is referred to in the Direction Request by the Applicant as Associated Development.

1.4 PP2.13.1

1.5 EHDC has no comments in respect of the policy documents referred to, other than that appropriate weight should be afforded them as necessary.

2.0 Comments on responses submitted for Deadlines 6 and 6a

2.1 EHDC welcomes the confirmation that tower cranes will not be used (6.1.1 of document ref: 7.9.22) and confirmation that mobile cranes would be lowered when not in use.

2.2 The amendments to the Landscape and Biodiversity Strategy in light of the ash dieback survey are noted. Part of Stoneacre Copse to the south west of the existing electricity substation is within the EHDC area and provides an important landscape screening effect of the existing substation and the proposed Converter building. This is particularly important in views from the public footpath located to the south of the substation. The ash dieback survey has identified that the disease is prevalent within all woodland areas around the substation and some hedgerows and that all ash trees will likely

be lost within a decade. Stoneacre Copse is ancient woodland and ash forms a large proportion of the mature canopy, particularly at its southern extent.

- 2.3 The effect of loss of ash trees from the area will have a significant short - medium term effect and would increase the visual impact of the development. The Applicant acknowledges the effectiveness of the screening of the woodland would reduce as a result of ash die back though the loss of leaf cover and tree removal and that this impact would continue until new planting becomes established. It is agreed with the change to significance of impacts set out in the ES on the public right of way to the south from Minor to Moderate (not significant) to Moderate (significant). The loss of density to the woodland cover would weaken the screening effect of the woodland and increase visual impact of the Converter Building.
- 2.4 Proposed mitigation planting would take several years to take meaningful effect and increases the burden of management. Given the timetable for development works, any remaining ash trees would likely provide minimal screening benefit and the development Converter building would likely have reduced screening effect for much of its 40 year life. The final planting schedule including species and sizes would be agreed with the relevant LPA and the South Downs National Park Authority.
- 2.5 EHDC received an Employment Skills Plan on deadline day for responses for Deadline 7, which the Applicant intends to submit to the examination. EHDC will review and comment on this in due course.

Comments in response to the draft Development Consent Order. Please note that as Environmental Health is a shared service between EHDC and Havant Borough Council (HBC), the following comments are on behalf of both Councils.

- 2.6 The Applicant still has not demonstrated the need for Article 9 within the proposed draft DCO. No clarification has been provided and the Applicant has simply advised that this is a common condition. Whilst EHDC/HBC accepts it may have been used elsewhere, we do not consider that this is a site-specific justification, as there are also DCOs commonly without this provision. EHDC/HBC does not consider that it is appropriate to seek exemption from primary legislation (*Environmental Protection Act 1990 – Part III – Statutory Nuisance*) without site-specific justification. It is considered Section 80 of this legislation provides adequate defences in terms of approvals under the Control of Pollution Act 1974 (COPA) (*Section 80 (9)(a)*) and in the demonstration of Best Practical Means (BPM) (*Section 80 (7)*).
- 2.7 Reference was made to the statutory nuisance statement within the EIA assessment, relating to noise and vibration, that concludes “no nuisance is likely to occur” (*PINS Reference EN020022*) and it was questioned if this document was therefore correct. It is understood that the Applicant has stated that the lack of Article 9 would prejudice their position from an

"Agent of Change" perspective. It is unclear what the Agent of Change argument is that is relevant here (*detail was not provided to this reasoning*).

- 2.8 Regarding construction, we have less concern over Article 9 if it seeks only to provide additional assurances regarding nuisance action during the development phase. EHDC/HBC accepts that these impacts are of shorter-term duration and that the proposed Construction Environmental Management Plans (CEMP) and COPA provisions provide a degree of assurance during the construction phase.
- 2.9 However, EHDC/HBC still have concerns with Article 9 referencing the operating (use) period. The inclusion of the term "cannot be reasonably be avoided" is not favoured because it is considered to water down the test of BPM that would otherwise be in place.
- 2.10 The applicant has now proposed a defence based upon following the Noise Management Plan (NMP) as referenced with "condition 20" of the draft DCO (*clarification was subsequently sought by Inspector that this should have been referenced as Requirement 20 - Control of noise during the operational period*). Although the inclusion of a NMP is welcomed, EHDC/HBC have concerns that it is unreasonable over the 40-year life of such an operation to seek an exemption from statutory nuisance solely based on a NMP before all equipment and operational realities have been established. If there is the opportunity to require the NMP to be reviewed and revised at appropriate intervals that would be welcomed – for example at a 5-year interval, or if a new operator takes over or there are material changes to the installation plant /equipment. This would make it more palatable.
- 2.11 In terms of the Agent of Change, The revised paragraph 182 of the National Planning Policy Framework (NPPF) states:

"Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed."

This is expanded within the associated Planning Guidance on noise Paragraph: 010 Reference ID: 30-010-20190722.

- 2.12 This should provide the applicant with reassurance, not concern, that any future development that could prejudice their operation would be assessed

in planning terms in accordance with the Agent of Change principle. The Planning Authority would be required to ensure that any proposals for sensitive receptors closer to the Applicant's site would not therefore prejudice agreed operational parameters. The applicant is therefore seeking planning controls via this DCO to negate a concern that the NPPF already provides adequate controls and duties upon the planning authority to prevent.

- 2.13 The Agent of Change principle is not part of a defence to proceedings in statutory nuisance under the Environmental Protection Act 1990 (or in common law nuisance) and it maybe that it is this that Applicant is referring to.