

[REDACTED]

From: [REDACTED] [REDACTED]@hsf.com>
Sent: 27 January 2021 17:57
To: [REDACTED]
Cc: [REDACTED]; Aquind Interconnector
Subject: AQUIND Interconnector DCO: Letter F.A.O of Examining Authority
Attachments: Letter to [REDACTED] (Portsmouth City Council) - 27 January 2021.pdf

Follow Up Flag: Follow up
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Categories: ExA has used discretion to accept, Late submission, AO, Deadline submission, With ExA for consideration

Hi [REDACTED],
I hope you are well.
Please see attached a letter sent on behalf of the Applicant in response to the letter received from Portsmouth City Council dated 22 January 2021, which it is understood the ExA have been provided a copy, for the attention of the ExA.
Please do not hesitate to let me know should you have any queries in relation to the letter.

Best regards,

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Our ref
18857/30985781
Your ref
20210122
Date
27 January 2021

By email

Dear ██████████

AQUIND Interconnector DCO: Framework Recreational Management Strategy

We write to you on behalf of our client AQUIND Limited (the '**Applicant**') in relation to the application for the AQUIND Interconnector Order (the '**Application**') which seeks development consent for the UK elements of AQUIND Interconnector (the '**Proposed Development**'), and in response to your letter of 22 January 2021 concerning the Framework Management Plan for Recreational Impacts ('**FMP**') and the confirmatory surveys that have now been undertaken to provide an evidence base for updates to be made to this document, as necessary.

As you will be aware, the FMP was provided to Portsmouth City Council (the '**Council**') for review on 16th June 2020. Unfortunately, despite repeated requests from the Applicant team for comments on the FMP, no comments have been forthcoming on this from the Council to date. Further revised drafts of the FMP, produced following further work undertaken by the Applicant where engagement from the Council has not been forthcoming, were submitted to the Examination at Deadline 1 (6th October) and Deadline 4 (17th November). Topic specific meetings held on 8th October and 16th December have provided little further comment on the mitigation options proposed.

As you have set out in your letter, confirmatory surveys in relation to the condition of the playing fields to further support the mitigation proposals put forward to the Council in the drafts of the FMP was undertaken on 20-21 January 2021. The purpose of the surveys is to provide reasonable certainty of the likely timescale for reinstatement for sports use of playing fields in Portsmouth following the construction of the Proposed Development. The report detailing the findings of the surveys will be issued to the Applicant's team on 5th February 2021, and the updated FMP will be issued to the Council and the Examining Authority ('**ExA**') on w/c 8 February 2021. As you will be aware, this is the week in advance of the hearings scheduled to take place in February and a month in advance of the end of the examination. This will therefore ensure there is sufficient time for formal, public comments to be made by the Council on the updated FMP before the end of the Examination of the Application, should the Council wish to do so.

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Within your letter you seek to advance that the FMP is crucial to assessing the overall environmental impact of the scheme, as well as the local impact of the scheme. The Applicant's EIA has assessed the construction of the Proposed Development without taking into account the proposed avoidance mitigation measures to be secured through the FMP. Further, the assessment of effects on the open spaces has been undertaken on a qualitative basis, taking into account the changes to recreation and open space facilities based on the impacts of land take during the anticipated duration of the works, which for Farlington Playing Fields, identified a Major to moderate significant adverse effect on the basis of temporary, direct, medium term period impacts on a high sensitivity receptor. The reinstatement of recreational and open spaces has been taken into account for the purpose of determining the residual likely significant effects in relation to the playing fields (which for Farlington Playing Fields is a Moderate significant adverse impact), however under the methodology used for this assessment, any short term extension to the assumed reinstatement period will not in any way affect the validity of the conclusions made in respect of the residual likely significant effects reported within the Environmental Statement.

Therefore, the worst case impacts on the environment (including specifically the socio-economic impacts on residents of Portsmouth) have been fully and robustly assessed. Whilst the findings of the surveys and the mitigation proposed to be secured through the FMP will provide further certainty on the duration of the reinstatement period, this will not result in any worsening of the residual likely significant effects already reported and consulted on.

Further, your letter also seeks to advance that the FMP is crucial for understanding the implications for protected habitats such that those can be accurately reported within the HRA. In this regard it is identified that the survey's undertaken are for the purpose of confirming the timescales required for reinstatement for 'sports use'. As the Council will be aware, the Applicant specifically addressed the matter of reinstatement of Farlington Playing fields and any implications for the HRA in its submissions made at ISH3. In this regard, paragraph 7.8 of the Applicant's Transcript of Oral Submissions - ISH3 on Environmental Matters (REP5-069) stated as follows:

The playing fields are recognised as a Solent Waders and Brent Goose Strategy site, which are sites known to be used by wintering birds from the nearby Chichester and Langstone Harbour Special Protection Area (SPA). Therefore, periods of construction at Farlington Fields are timed for the summer periods (April to September), so that restoration for Brent Geese is undertaken as soon as possible for the wintering period, although allowing for some delay at Farlington Fields (also see ES Addendum (REP1-139), paragraphs 10.2.4.9-10.2.4.12). It is also acknowledged that restoration for use for foraging by Brent Geese is not equivocal to restoration for use as playing pitches. The approach was agreed with Natural England.

The Council will be aware that further to the above, it was also confirmed orally at ISH3 on behalf of the Applicant that reinstatement for sports use is different to reinstatement for Brent Geese, the proposals for which have been agreed with Natural England. Those proposals, being the Winter Working Principles detailed at paragraph 6.2.1 of the Onshore Outline Construction Environmental Management Plan (REP6-036), set out the required working practices to be adhered to so as to avoid any impacts on the relevant protected species during the wintering period. Adherence to these working principles is the basis on which the HRA and Appropriate Assessment contained therein has been undertaken. It is not considered there is any potential for the confirmatory surveys being undertaken to have any bearing on the ability to adhere to those secured working principles, given the surveys are addressed at the discrete issue of confirming the condition of the playing fields and informing timescales for sports use reinstatement only.



It is further set out in your letter that the confirmatory surveys will inform the acceptability of the proposals upon special category land. Whilst it is noted that the land is special category land, the surveys undertaken are for the purpose of confirming the timescales for sports use reinstatement. It is not the case that they are being undertaken to determine whether reinstatement is feasible, as the Applicant's evidence has demonstrated that it is. As such, the confirmatory surveys undertaken and the updates that will be incorporated into the FMP as a result will not have any meaningful bearing on the question of whether the impacts on special category land are acceptable, and particularly will not be a determinant of whether the legal tests contained in Section 132 of the Planning Act 2008 are satisfied in relation to the rights sought over the special category land. For further information in relation to those tests and the basis on which they are satisfied in relation to the Proposed Development, the Council may wish to review the Applicant's response to agenda item 6.1 within the Applicant's Transcript of Oral Submission for Compulsory Acquisition Hearing 1 (REP5-034).

The evidence base therefore clearly demonstrates that the confirmatory surveys, and any updates to be made to the FMP in light of this, do not in any way call into question the lawfulness of the EIA and HRA undertaken for the Application. Taking the above explained matters into account, it is also evident that no issues in respect of procedural fairness arise in relation to the FMP. There will be no worsening of impacts reported within the EIA and HRA as a consequence of the confirmatory surveys undertaken and therefore no person would be deprived from the ability to comment on the likely significant worst case impacts of the Proposed Development. It is also completely usual for mitigation measures to be developed through engagement between relevant parties during the course of an examination, where engagement is forthcoming, and no legal risk arises from this.

Furthermore, as set out above the updated FMP, the initial version of which has been with PCC since June 2020 and forming part of the publicly available application documents since 6th October 2020, will be submitted with sufficient time remaining for any persons who wish to comment on it before the end of the examination, noting that comments may be provided on this up to 8 March 2021, and that the updated FMP will be submitted well in advance of Deadline 8 (1 March 2021) such that persons may make representations on the updates made to the FMP at that time, should they wish to do so.

We trust this letter is sufficient to satisfy your request for confirmation of when the updated FMP will be submitted to the Council and the ExA, ensuring these matters will be considered in good time by all parties. For completeness, a copy of this letter is sent for the attention of the ExA for the Application.

Yours sincerely

Herbert Smith Freehills LLP

Herbert Smith Freehills LLP

cc: Examining Authority for the AQUIND Interconnector DCO
[REDACTED], Solicitor – Planning & Highways – Portsmouth City Council