



AQUIND Limited

AQUIND INTERCONNECTOR

Applicant's Post Hearing Notes

The Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010, Rule 8(c)

Document Ref: 7.9.44

PINS Ref.: EN020022

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AQUIND INTERCONNECTOR DCO

POST HEARING NOTES

DEADLINE 8 – 1 MARCH 2021

1. **INTRODUCTION**

- 1.1 On 14 November 2019 AQUIND Limited (the '**Applicant**') submitted an application for the AQUIND Interconnector Order (the '**Order**') pursuant to section 37 of the Planning Act 2008 (as amended) (the '**Act**') to the Secretary of State ('**SoS**') (the '**Application**').
- 1.2 The Application was accepted by the Planning Inspectorate ('**PINS**') on 12 December 2019, with the examination of the Application commencing on 8 September 2020.
- 1.3 The second round of hearings in relation to the Application were held between 17th – 19th February 2021.
- 1.4 This document which is submitted at Deadline 8 contains the Applicant's post-hearing notes requested by the Examining Authority ('**ExA**') at the following hearings:
- 1.4.1 Issue Specific Hearing 4 (draft Development Consent Order) – Wednesday 17th February 2021
 - 1.4.2 Issue Specific Hearing 5 (Environmental Matters) – Thursday 18th February 2021
 - 1.4.3 Open Floor Hearing 3 – Friday 19th February 2021
 - 1.4.4 Compulsory Acquisition Hearing 3 – Friday 19th February 2021

2. **ISSUE SPECIFIC HEARING 4 ('ISH4') – THE DRAFT DCO**

2.1 **Question 3.12 – costs estimates in relation to the temporary use of land**

2.1.1 In response to the questions raised by Mr Zwart, the Applicant confirms the estimate of land acquisition costs includes an estimate of the costs of Temporary Use of land across the Proposed Development, with that amount being included in the estimate of the costs for disturbance compensation within the table provided beneath paragraph 5.6 of the Funding Statement (REP6-021).

2.2 **Question 3.16 – correspondence with allotment holders**

2.2.1 The Applicant has collated copies of the notices erected in the vicinity of the allotments and the correspondence that has been sent to the holders of allotment tenancies, in so far as those documents are available to the Applicant. These are included at Appendix 1 to this document.

2.2.2 The documents provided in Appendix 1 include:

- (A) unknown occupier site notice request for information erected at the entrance to the Eastney and Milton Allotments on 11 January 2019. This site notice was in place until 29 May 2019.
- (B) Section 48 consultation site notice erected at the entrance of the Eastney and Milton Allotments on 26 February 2019. This notice remained in place until 29 May 2019.
- (C) Section 56 site notice to notify all allotment holders of the acceptance of the DCO application for Examination. This notice was erected at the entrance of the Eastney and Milton Allotments on 03 January 2020 and was taken down on 20 February 2020.
- (D) Land Interest Questionnaire ('LIQ') sent to all allotment holders on 27th November 2020.
- (E) Draft Portsmouth City Council covering letter to LIQ dated 27th November 2020. The Applicant was only provided with a draft of this letter and did not comment on it.

2.2.3 The Applicant also refers to the presentation that was given to allotment holders on 22 November 2019 and the Briefing Note that was distributed to attendees. The presentation and Briefing Note were sent to the secretary of the Allotment Association Committee on 25 November 2019 along with contact details in case of further queries and an offer to hold a follow up meeting at a later stage should it be of benefit. A copy of the presentation and Briefing Note is contained in AS-047.

2.2.4 The Applicant also draws the ExA's attention to the information contained in the Applicant's response to the request for further information in relation to the Eastney and Milton Allotments (REP3-020), which further explains the diligent inquiry process undertaken in relation to the allotment land, including the actions taken to seek to obtain information from the freeholder, Portsmouth City Council.

2.2.5 The Applicant notes the queries by the Examining Authority during the hearing in relation to the community hub at the allotments. The Applicant would like to emphasise that at the time statutory consultation was carried out the Applicant did not have rights to enter the community hub, and therefore it was not physically possible for the Applicant to erect notices within the hub. Notices were however erected at the allotment gates.

2.2.6 It is also relevant to highlight that Portsmouth City Council did not make any reference to the community hub within the allotments in their responses to either the informal or formal consultations on the Statement of Community Consultation.

2.3 Questions 3.18 – 3.20 – Crown Land consents

- 2.3.1 Please refer to the Applicant's written summary of oral submissions at ISH4 (AS-065) for the Applicant's response to those items on the agenda for ISH4.
- 2.3.2 Following submission of the above document, the Ministry of Defence has provided consent under section 135(2) of the Planning Act 2008 in respect of Plots 6-08, 6-09, 6-13, 6-14, 6-16, 6-17, 7-11, 10-25, 10-26, 10-28, 10-31, 10-33, 10-34, 10-35 and 10-36. A copy of their letter dated 23 February 2021 is attached at Appendix 2.
- 2.3.3 The Applicant has also received a letter from Burges Salmon dated 26 February 2021 in respect of the property deemed subject to escheat at Plot 3-21. The letter (attached at Appendix 3) confirms the position the Crown Estate in relation to this land, being that they do not consider the escheat land forms part of the Crown Estate and therefore do not consider that they can grant a consent in relation to it pursuant to Section 135 of Planning Act 2008, but also that the Crown Estate are unlikely to interfere with the acquisition of land or the carrying out of any works carried out by an appropriate body pursuant to the DCO.

2.4 Question 3.23 – Article 46 (procedure in relation to appeals)

- 2.4.1 Please refer to the Applicant's written summary of oral submissions at ISH4 (AS-065) for the Applicant's response to those items on the agenda for ISH4.
- 2.4.2 The Applicant has also further addressed the changes requested by the ExA in relation to Article 46 and to Schedule 3 of the dDCO in the Schedule of responses to changes requested to the draft Development Consent Order (document reference 3.1) submitted at Deadline 8.

2.5 Question 4.1 – Substation parameters

- 2.5.1 Information regarding the substation connection works is included within the Description of the Proposed Development (APP-118) and in Appendix 3.5 to the Environmental Statement – Additional Supporting Information for Onshore Works (APP-359). Further information which confirms the inclusion of the substation connection works is included within Appendix 1 to the Statement of Common Ground with National Grid Electricity Transmission Plc (REP6-01).
- 2.5.2 Paragraph 3.6.2 of the Description of the Proposed Development (APP-118) provides an overview of the substation connection works. Section 1.1.2 of Appendix 3.5 (APP-359) confirms at paragraph 1.1.2.4 that "*outdoor electrical infrastructure required in Lovedean Substation will be similar to the outdoor equipment which forms part of the proposed Converter Station and is also found within typical electrical substations*". In relation to the proposed western extension of the Lovedean AIS paragraph 1.1.2.8 provides that "*There is expected to be an extension of Lovedean AIS substation to the West, including ground levelling works to bring the ground level in line with the existing substation*". No such ground levelling works are mentioned in relation to the eastern extension, with the ground in that location already being in line with the existing substation at 86m AOD.
- 2.5.3 The parameter height set by the Parameter Plans (REP7-009) in respect of the buildings and equipment excluding the area where the Converter Halls are to be located within the Converter Station Area is 15m, with that height being the limit set for Parameters Zone 3. The same height was used for the purposes of undertaking the assessment of the substation connection works, noting that the buildings and equipment which form the substation connection works would be similar to those which form part of the proposed Converter Station.
- 2.5.4 Taking those matters into account, and to address any concerns that the DCO might not secure compliance with the parameters upon which the assessment of those works has been undertaken, the Applicant has inserted a new Requirement

5(1) into the draft DCO which states “*Any building or equipment comprised in Work No. 1 must not exceed a height of 15 metres above existing ground level and for the purposes of this sub-paragraph (1) of this requirement ‘existing ground level’ means 86 metres above ordnance datum*”.

2.6 Question 16.2 – Protective Provisions Update

2.6.1 Please refer to the Applicant’s written summary of oral submissions at ISH4 (AS-065) which provides the Applicant’s response with regard to this agenda item.

2.7 Question 16.4 – Examples of recently made orders with similar protective provisions

2.7.1 Please refer to the Applicant’s written summary of oral submissions at ISH4 (AS-065) which provides examples of recently made Orders which include protective provisions which align with those included in the draft DCO.

2.8 Question 16.6 – Position in relation to utilities within the Order Limits, including Leep Utilities

2.8.1 The position regarding utilities within the Order Limits is correctly reflected in the Book of Reference.

2.8.2 The Applicant confirms that Leep Networks (Water) Limited apparatus falls outside of the boundary of the Order limits, but that Leep Networks retains rights in land within the Order limits in relation to rights granted for vertical and lateral support over land contained within HM Land Registry title HP567131.

2.9 Question 21.1 – Section 106 development consent obligations

2.9.1 Please see the Development Consent Obligations – Explanatory Note submitted by the Applicant at Deadline 8 (Document Reference: 7.5.28) which explains the approach taken to securing development consent obligations in relation to the DCO. In essence development consent obligations will be entered into once the Applicant has been deemed to have an interest in the Order land in accordance with Article 8(4)(a) of the Order, so as to ensure it holds the necessary interest to comply with the formalities of section 106(1) of the Town and Country Planning Act 1990 when those agreements are entered into.

2.9.2 By virtue of the development consent obligations being entered into at that time they will be planning obligations which may be enforced against the Undertaker and the successors by the relevant local planning authority pursuant to and in accordance with section 106 of the Town and County Planning Act 1990.

2.9.3 In accordance with Article 50 to the draft DCO submitted at Deadline 8, the authorised development must not begin for the purposes of section 155(1) of the 2008 Act unless and until the undertaker completes the development consent obligations pursuant to section 106 of the 1990 Act.

2.10 Question 21.2 – ACER process and exemption mechanism

2.10.1 Please refer to the Applicant’s separate post hearing note in respect of the non-UK Planning Consents and Approvals required submitted on 23 February 2021 (AS-069).

2.11 Question 22.2 - Selection of the Lovedean substation and reasons for the rejection of alternatives

2.11.1 Please see the technical note at Appendix 6 which provides further explanation of the Applicant’s understanding of the reasons why the remaining 7 sub-stations from the long list of 10 identified for the consideration of a connection location for the Proposed Development were not taken forward for further consideration by NGESO.

2.12 **AOB - National Grid ESO Network Options Assessment (January 2021)**

- 2.12.1 The Examining Authority requested that the Applicant submit a copy of the 'NOA for Interconnectors' referred to in the Applicant's comments on responses to the Examining Authority's further written question PP2.13.1 into the Examination (REP7c-010).
- 2.12.2 The Applicant can confirm that this was submitted as Appendix 1 to the Applicant's oral summary of written submissions for ISH4 (REP7c-033).
- 2.12.3 This report which was published by National Grid in January 2021 provides further supportive evidence for interconnectors and assesses how much interconnection would provide the most benefit to Great Britain consumers and other interested parties. The baseline matches the four 2020 FES scenarios (as explained in section 2.8 of the Needs and Benefits Addendum (REP1- 136) - three of which would deliver net zero). For those three scenarios the baseline for interconnection with France is set at 8.8GW (i.e. including Fab Lind, Gridlink and AQUIND). The report states that National Grid tried to model scenarios with lower baseline level of interconnectors but was unsuccessful. *"Our attempts at modelling NOA IC 2020/21 with a baseline level of interconnection lower than that set within FES 2020 were unsuccessful. This highlights how important the levels of interconnection set within FES 2020 are to achieve a supply and demand match for every hour for each year from 2028 to 2040."*
- 2.12.4 The report also explicitly highlights the importance of interconnectors in delivering net zero: *"Additional interconnection is essential to achieving net zero. As levels of intermittent renewable generation increase in the scenarios, interconnectors play an increasingly important role providing flexibility in the net zero scenarios."*

2.13 **AOB – Applicant's comments on HCC's Deadline 7c comments in relation to Article 16**

Please see the Applicant's response within the schedule of responses to changes requested to the draft Development Consent Order (document reference 3.1) submitted at Deadline 8.

2.14 **AOB – Applicant to confirm the extent of its agreement with the Examining Authority's proposed changes to Schedule 3 of the dDCO**

- 2.14.1 Please see the Applicant's response within the schedule of responses to changes requested to the draft Development Consent Order (document reference 3.1) submitted at Deadline 8.

3. **ISSUE SPECIFIC HEARING 5 ('ISH5') – ENVIRONMENTAL MATTERS**

3.1 **Question 3.1 – Consultation in relation to ES Addendum 2**

3.1.1 Please refer to the Applicant's written summary of oral submissions at ISH5 (AS-067).

3.2 **Question 3.2 – SDNP's concerns in relation to additional viewpoint photography**

3.2.1 Please refer to the Applicant's written summary of oral submissions at ISH5 (AS-067) for text covering additional viewpoints and references to the assessment of visual impacts and associated effects relating to the Access Road entranceway and Gated Link Road.

3.2.2 In terms of SDNPA's requests for references to specific woodlands (PW), please refer to Section 1.7 of the Outline Landscape and Biodiversity Strategy (REP7-023) and associated management prescriptions referred to within this section.

3.2.3 The exact locations of specific woodland and associated management prescriptions are presented in Appendix 2, Figure 1 and 2 Outline Landscape and Biodiversity Strategy Management Plans for Option Bi) and Option Bii) of the OLBS (REP7-023).

3.3 **Question 4.1 – Footnote reference requested by SDNPA**

3.3.1 SDNPA requested clarification of a footnote associated with paragraph 1.4.1.2 in the OLBS (REP7-023). The Applicant has reviewed the statement in the paragraph which states:

"To allow for flexibility to identify the most appropriate Onshore Cable Route, including the joint bay locations, and to facilitate and accommodate construction works, it has been assumed at this stage that all arboricultural features within the Order limits⁽¹⁾ would be at risk of removal"

3.3.2 The associated footnote states *"With the exception of hedges and hedgerow trees along the boundaries of the Order limits, which are assumed to be retained unless specifically noted"*.

3.3.3 This paragraph and accompanying footnote covered arboricultural features and the Applicant has updated this paragraph to refer to Tree Survey Schedule and Constraints Plans (REP7-037) and omit the footnote.

3.3.4 The revised paragraph states:

"Arboricultural features identified as potentially at risk of requiring removal, and including those which may require protection during construction, are referred to in Figure 3 Tree & Hedgerow Retention Plans of the Tree Survey Schedule and Constraints Plans (REP7-037)."

3.4 **Question 7.5 – Joint Bay Design principle**

3.4.1 Section 6.4.1 of the Design and Access Statement has been updated at Deadline 8 to include design principles for Cable and Joint Bay locations, as suggested by HCC at the hearings.

3.4.2 The design principle will ensure the design of the cable and joint bay locations does not negatively impact on any highway drainage infrastructure. If changes are required to the cable and joint bay locations as part of the detailed design process, such changes will need to be agreed with the highway authority and the Applicant will need to demonstrate that the changes do not place any additional maintenance liability on the highway authority. The costs of any changes are to be covered by the Applicant and it is anticipated this would be secured by way of an agreement made pursuant to Article 15 (Agreements with street authorities) of the DCO.

- 3.4.3 The design principle also ensures the design of the cable and joint bay locations does not impact negatively on any infrastructure on the highway such as street lights, ITS equipment, bollards, fencing, vehicle restraint systems and the like without the written consent of the highway authority through approval of the detailed design.
- 3.4.4 In addition, the design principle ensures the cables and joint bays are located in a manner which limits the requirements for traffic management for any future maintenance.
- 3.5 **Question 7.6 – Enforcement of traffic regulation orders**
 - 3.5.1 The highway authorities have questioned who will be responsible for parking management and enforcement in relation to the laybys. The authorities have expressed a concern that this could impose an additional administrative burden for the relevant local authority and that their preference would be for Applicant to assume those liabilities.
 - 3.5.2 The Applicant has agreed to include the payment of any parking management and enforcement fees within the planning performance agreement to be entered into with Havant Borough Council to ensure those costs are borne by the Applicant.
- 3.6 **Questions 7.6 – 7.7 – Updates to Technical Notes**
 - 3.6.1 At ISH5 the Applicant undertook to update the Day Lane Technical Note and prepare a separate technical note in relation to the Broadway Farm access as set out below.
 - 3.6.2 **Day Lane Technical Note**
 - 3.6.3 This Technical Note provides details of the strategy proposed to manage HGV movements to and from the Converter Station Area during construction, which includes the provision of passing bays on Day Lane, use of traffic marshals, use of an arrival check in system and timed departures.
 - 3.6.4 Further to ongoing discussions with the highways authority and at ISH5, this Technical Note has been updated and submitted at Deadline 8 to include details of ecological, arboricultural, landscape and visual amenity considerations that will be taken into account during detailed design of the passing bays on Day Lane.
 - 3.6.5 **Farm Access Technical Note**
 - 3.6.6 This Technical Note has been prepared following the hearings to provide further details of the proposed use of Broadway Farm access prior to construction of the permanent Converter Station access junction and gated haul road. It includes an overview of existing use of this access by agricultural vehicles and an assessment of the appropriateness of its use by construction traffic and the proposed traffic management to be implemented during this time.
 - 3.6.7 This Technical Note has also been included as Appendix 10 of the updated FCTMP submitted at Deadline 8.
- 3.7 **Question 8.8 – Town centre air quality impacts**
 - 3.7.1 Please refer to the separate Air Quality Clean Air Zone Sensitivity Testing Technical Note which is attached at Appendix 4 to these post hearing notes. This Technical Note is listed in the Schedule Of Documents forming the Environmental Statement.

4. **COMPULSORY ACQUISITION HEARING 3 ('CAH3')**

4.1 **Question 4.1 – Regulatory approvals and French consents**

- 4.1.1 Please refer to the Applicant's separate post hearing note in respect of the non UK Planning Consents and Approvals required that was submitted on 23 February 2021 (AS-069).

4.2 **AOB – Termination of fibre optic cables**

- 4.2.1 At CAH3 the ExA requested further information in relation to the termination details for the fibre optic cables at the Converter Station/Telecommunications Buildings.
- 4.2.2 The Applicant can advise that as detailed in Section 5.4.1.2 of the Design and Access Statement (REP7-021), the physical separation between the two Telecommunications Building maintains independence of each FOC, installed alongside each of the HVDC Circuits. The separation provides greater resilience in event of equipment failure, fire, adverse weather conditions, vandalism, or accident.
- 4.2.3 The fibre optic cables for inter-station communication will be terminated at the Converter Station building to connect the fibre optic cables to the relevant control, protection and monitoring systems within the Control Building of the Converter Station. The commercial fibres shall be routed to and terminated at the Telecommunications buildings.
- 4.2.4 In relation to the practicalities of splitting the fibre optic cable, there are two solutions being considered in relation to termination of the fibre optic cables proposed to be used for commercial purposes.
- 4.2.5 One solution is terminating at the Converter Station building to connect the fibre optic cables to the relevant control, protection and monitoring systems within the Control Building of the Converter Station, after this point the commercial fibres will be routed to and terminated at the Telecommunications Buildings.
- 4.2.6 The second option is to split the commercial fibres from the main fibre optic cable when it is at the closest point to the Telecommunications Buildings and route these directly for termination at the Telecommunications Buildings. The fibres relevant to control, protection and monitoring of the Interconnector would continue to be run alongside the HVDC cable to be terminated within the Control Building of the Converter Station. The selected solution will be confirmed at the detailed design stage of the project.
- 4.2.7 In order to utilise the area most efficiently the car parking has been located within the safety separation area between the two proposed Telecommunications Buildings. The need for the car park is to provide for car parking for operatives associated with the Telecommunications Buildings during operation for maintenance and inspection purposes. As this sits within the safety separation area its presence does not increase the size of the Telecommunications Building compound.

4.3 **AOB - Thorpe Marsh DCO and Swansea Bay DCO**

- 4.3.1 The Deadline 7c submission on behalf of Mr G Carpenter and Mr P seeks to rely on the decisions in relation to the Swansea Bay and Thorpe Marsh DCO's in supporting their contentions (see Section A paragraphs 3, 4, 22, Section F paragraph 45, Section I paragraphs 118 and 131 of the Deadline 7c Statement on Scope of Statutory Purposes & The Development ("the **Statement**") (REP7c-029).
- 4.3.2 The reference in the Statement (Section paragraph 3) to the "*same consideration of the jurisdictional boundary of the PA 2008 was considered and addressed*" in

the Swansea Bay DCO is not accurate. There was no section 35 Direction in that case (the land being in Wales) and as at the date of the consideration of that DCO, section 115(4) of the Planning Act 2008 provided that the only description of development which could be treated as associated development in Wales had to be with underground gas storage. Associated development was therefore not capable of being authorised for that project (see the ExA's report dated 10 March 2015 paragraphs 3.3.10 and 3.3.11 p.24).

- 4.3.3 As to the Thorpe Marsh DCO, it is not clear how the Affected Party considers that decision assists their argument. There was no section 35 Direction in that case and the definition of the Authorised Development was simply descriptive of what had been applied for. It cannot be inferred from either the ExA's report or the Secretary of State's decision, neither of which had to consider jurisdictional issues of the kind raised by the Affected Party, that they lend any support to their argument.

4.4 **AOB – Updates to Book of Reference**

- 4.4.1 The Applicant has checked the Book of Reference against the Land Interest Questionnaire responses received from the allotment holders and can confirm the following in relation to queries raised at CAH3:

- (A) Ms Claire Camden was included within the Book of Reference within Plots 10-13, 10-14, 10-14a and 10-14b, however she was missed from Plot 10-12. The Book of Reference submitted at Deadline 8 has been updated to include Ms Camden's interest as holding rights within Plot 10-12;
- (B) Mr Sydney Dooley has not been included within Plot 10-14 of the Book of Reference as his allotment plot is located outside of the Order Limits. As such, Mr Dooley has been included within Plots 10-12, 10-13, 10-14a and 10-14b as holding rights listed as a Category 2 party within Part 1, Category 3 party within Part 2 and listed in Part 3 of the Book of Reference;
- (C) Mr Patrick O'Hara has not been included within Plot 10-14 of the Book of Reference as his allotment plot is located outside of the Order Limits. As such, Mr O'Hara has been included within Plots 10-12, 10-13, 10-14a and 10-14b as holding rights listed as a Category 2 party within Part 1, Category 3 party within Part 2 and listed in Part 3 of the Book of Reference;
- (D) No Land Interest Questionnaire response was received from Ms Kirsten McFarlane and therefore the Applicant has not been made aware of the specific location of Ms McFarlane's allotment plot. Ms McFarlane has been included within the Book of Reference since Deadline 5 (REP5-014) as holding rights within Plots 10-12, 10-13, 10-14a and 10-14b listed as a Category 2 party within Part 1, Category 3 party within Part 2 and listed in Part 3. Ms McFarlane was included in the Book of Reference following the publication of the Rule 8(3) Letter (PD-023).
- (E) Ms Rachel Lejean who was represented at CAH3 by Ms Paula Savage has not been included within the Book of Reference as the Applicant did not receive a response to the Land Interest Questionnaire circulated to all allotment holders on 27th November 2020 and was therefore not aware of the interest in land.

- 4.4.2 Further to comments raised by PCC at the hearing, the Applicant can confirm that New Connection Works Rights Class (h) will not be sought over Plots 10-14, 10-14a and 10-14b and the Book of Reference has been updated at Deadline 8 to reflect this. New Connection Works Rights Class (i) was added to the Book of Reference at Deadline 6 to confirm the position in relation to work in the subsoil

at Eastney and Milton Allotments and therefore it is confirmed that New Connection Works Rights Class (h) is not required and should have been removed.

4.4.3 In addition, the following changes have been made to the Book of Reference as a result of the recent HM Land Registry refresh exercise undertaken prior to Deadline 8:

- (A) Multiple changes to ad medium filum interests, notably Plots 3-20, 4-06, 4-42, 5-04, 6-04, 6-18, 6-19, 7-01, 9-11 and 10-24;
- (B) Greene King Brewing and Retailing taking over ownership of the Thatched House Public House within Plots 10-09 and 10-11; and
- (C) Hampshire & Isle of Wight Wildlife Trust have registered a Lease over Milton Locks Nature Reserve north of the Eastney and Milton Allotments.

4.5 **AOB - Procedural requirements in relation to Change Request 1 and Change Request 2**

Consultation

- 4.5.1 Christian Zwart, acting on behalf of Mr P and G Carpenter, raised concerns about the absence of consultation before Change Requests 1 and 2 were submitted to the ExA.
- 4.5.2 The Applicant carefully considered Advice Note 16 in relation to the potential need to consult on the changes proposed in Change Request 1 and Change Request 2. Advice Note 16 is clear in recommending consultation where a request is to be made for a 'material' change.
- 4.5.3 The Applicant's view, based on legal advice, was that the proposed changes could not properly be considered 'material'. The Applicant did, however, carefully consider whether it would nevertheless be appropriate to conduct a consultation exercise before submitting the Proposed Changes to the Examination.
- 4.5.4 Paragraph 2.5 of Advice Note 16 states: "*Note that even if a requested change is not considered to be material there may still be a need, in the interests of fairness, to carry out consultation. An applicant will still need to consider (and ultimately the ExA to decide) whether, without re-consultation on the requested change(s), any of those entitled to be consulted or who were consulted on the original application (including persons who are not an Interested Party in the Examination) would be deprived of the opportunity to make any representations on the changed application*". A footnote to this statement in the Advice Note suggests reference to the judgement of John Howell QC in the case of R. (on the application of Holborn Studios Ltd) v Hackney LBC in assessing whether consultation is required in the interests of fairness.
- 4.5.5 Paragraph 79 of that judgement set out that in considering whether it would be unfair not to re-consult "*it is necessary to consider whether not doing so deprives those who were entitled to be consulted on the application of the opportunity to make any representations that, given the nature and extent of the changes proposed, they may have wanted to make on the application as amended*".
- 4.5.6 The proposed changes in the Change Requests were not considered by the Applicant to give rise to new opinions from the public or stakeholders which they would not already have had an opportunity to make through the pre-application and section 56 (relevant representation) process. In the Applicant's view, all such persons who would have wanted the opportunity to make any representations on the Application have been afforded the opportunity to do so. Therefore, the absence of a further public consultation process did not unfairly deprive any person of the opportunity to make a representation on the Application as amended. Furthermore, such consultation in parallel to the DCO examination

would in the Applicant's view have risked confusing many of those interested in the project who were engaging through the examination.

- 4.5.7 In any event, the examination timetable has allowed sufficient time for representations to be made in relation to the proposed changes and for representations to be made by those who have already been consulted on the proposals and who may wish to make representations in relation to them.

Satisfaction of regulatory requirements in relation to Change Requests 1 and 2

- 4.5.8 Christian Zwart, acting on behalf of Mr P and G Carpenter, also raised concerns about the satisfaction of all necessary procedural requirements in relation to Change Requests 1 and 2, in particular querying compliance with the required timescales.

- 4.5.9 The key dates relating to Change Requests 1 and 2 are shown in the table below, illustrating that all procedural steps required by the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 have been complied with. Copies of the newspaper notices are included at Appendix 5.

Procedural requirement	Change Request 1	Change Request 2
Change Request submitted to the ExA	3 November 2020 The ExA's checklist (PD-022) evidences compliance with the Infrastructure Planning (Compulsory Acquisition) Regulations 2010.	11 December 2020 The ExA's checklist (PD-028) evidences compliance with the Infrastructure Planning (Compulsory Acquisition) Regulations 2010.
ExA makes its procedural decision (within 28 days): ExA to make a procedural decision whether to accept the Proposed Changes into the Examination. Since Change Request 1 and 2 engage Regulation 5 of the CA Regulations, the ExA had a maximum of 28 days from the day after the day on which the ExA received the Regulation 5 details to decide whether or not to accept the Proposed Changes.	11 November 2020 (PD-019 and PD-020)	18 December 2020 (PD-026 and PD-027)
The ExA makes an initial assessment of the issues (max 21 days from deadline set in Regulation 7 notice) (Reg 11(1)): The ExA must make this initial assessment of issues within 21 days of the deadline set in the Regulation 7 notice. After this, the ExA <u>may</u> hold a meeting to discuss how the proposed changes are to be examined (Regulation 11(2)).	Initial assessment of issues: See Annex C of the ExA's letter to all Interested Parties dated 11 January 2021 (which dealt with both Change Request 1 and Change Request 2) (PD-032) . The ExA's letter of 11 January (Annex C) confirms that they did not consider it necessary to hold a specific hearing on the inclusion of the additional land. We assume that the ExA considered that, since the examination had commenced, the affected land parties would have adequate opportunity to make	

<p>If the ExA holds such a meeting, the ExA must thereafter set a timetable for the examination of issues arising in relation to the inclusion of the newly included additional land.</p>	<p>representations during the remainder of the examination.</p> <p>The ExA did nevertheless set out in Annex A of their letter of 11 January 2021 revisions to the examination timetable which were impacted by the changes, including dates of issue specific, open floor and compulsory acquisition hearings.</p>	
<p>Reg 7 Notices (min of 28 days): It is the Planning Inspectorate's preference for this step to be carried out only after the procedural decision has been made. Therefore, the Applicant served notices pursuant to Regulation 7 of the CA Regulations following the ExA's Procedural Decisions. Those served with such notices must be given at least 28 days to make representations, beginning with the day after the day on which they receive the notice (Regulation 7).</p>	<p>Notices served on: 19 November 2020</p> <p>Deadline for representations: 24 December 2020 (Deadline 6a)</p>	<p>Notices served on: 21 December 2020</p> <p>Deadline for representations: 28 January 2021 (Deadline 7a)</p>
<p>Reg 8 Newspaper notices (publication on 2 successive weeks, plus 28 days): In parallel with service of notices under Regulation 7, the Applicant must publish newspaper notices for two successive weeks in one or more local newspapers (as well as once in a national newspaper and the London Gazette), and must in those notices set a deadline for representations which is at least 28 days beginning with the day after the day on which the notice is last published (Regulation 8).</p>	<p>Change Request 1 was published in local newspapers, a national newspaper and the London Gazette</p> <p>Last newspaper notice published on: 26 November 2020</p> <p>Deadline for representations: 24 December 2020 at 11:59 (Deadline 6a)</p>	<p>Change Request 2 was published in local newspapers, a national newspaper and the London Gazette</p> <p>Last newspaper notice published on: 31 December 2020</p> <p>Deadline for representations: 28 January 2021 at 11:59 (Deadline 7a)</p>
<p>Certificate of compliance (Reg 9a) – must be provided to the ExA within ten working days following the deadline set in the Regulation 7 notice</p>	<p>29 December 2020 (OD-008)</p>	<p>28 January 2021 (OD-009)</p>

5. **OPEN FLOOR HEARING 3 ('OFH3')**

- 5.1 There were no post hearing notes requested by the Examining Authority in relation to OFH3 however please refer to the Applicant's written summary of oral submissions and responses in respect of OFH3 and CAH3 submitted at Deadline 8.

