



AQUIND Limited

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## AQUIND INTERCONNECTOR

Applicant's Post Hearing Notes - Appendix 4 -  
Section 135 Letter from Burges Salmon on  
behalf of the Crown Estate

The Planning Act 2008

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

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Section 135 Letter from Burges Salmon on  
behalf of the Crown Estate

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DATE: 1 MARCH 2021

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Our ref: TW03/RO01/31932.7322/WILLI

Your ref:

26 February 2021

When telephoning please ask for: Tristan Williams  
Dear Mr Glukhovskoy

**Property: Land adjoining 42 Windsor Road, Waterlooville, Hampshire, PO7 6BA**  
**Company: E. & L. Berg Homes Limited (Dissolved)**  
**Application for a Development Consent Order (“DCO”)**  
**Planning Inspectorate Reference: EN020022**

As discussed in correspondence with Alan O’Sullivan of Avison Young, we have been advised that Aquind Ltd has applied for a DCO under the Planning Act 2008 (the “Act”) for the AQUIND Interconnector (the “**Scheme**”). We understand that the land required for the Scheme is shown on the plan provided at **Appendix 1**.

The situation with the Property is not straightforward but the following should explain the current position.

## **BACKGROUND**

Following the disclaimer of the Property by the Treasury Solicitor, the Property may be deemed subject to escheat to the Crown at common law. By longstanding convention, properties that are subject to escheat fall to be dealt with by The Crown Estate, for whom this firm acts. However, as will be apparent from this letter, The Crown Estate should not be regarded as the current owner of the Property, at least in any conventionally understood sense.

## **POLICY**

In accordance with legal advice given on previous occasions, The Crown Estate does not propose to take any action which might be construed as an act of management, possession or ownership in relation to the Property, since to do so may incur upon it liabilities with which the Property is, or may become, encumbered. Neither this letter nor any other correspondence passing between us should be construed as such an act.

The reasoning behind this approach is that The Crown Estate does not accept that it should be, in effect, the guarantor of last resort for companies and individuals who have failed financially, leaving onerous property in their wake. To do so would not be an appropriate application of The Crown Estate’s revenues, nor is it a function envisaged for The Crown Estate by Parliament. Properties which may be subject to escheat are not infrequently onerous in nature and many have little or no monetary value. The total cost of all potential past, present and future liabilities connected to such properties, of which there are many, would be enormous. As The Crown Estate accounts to the Treasury for its operating surplus, such cost would end up as a burden on the public purse.

In practical terms, this means that The Crown Estate cannot grant easements at the Property as that might be construed as an act of management, possession or ownership. However, we would also point out that it is highly

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unlikely that The Crown Estate would seek to interfere with any works carried out by an appropriate body. Please note that any such works would be carried out entirely at the risk and expense of those executing them.

## **POSSIBLE SOLUTION**

The Crown Estate has a limited remit in relation to the Property, which is now effectively ownerless and the only action that it may take is to transfer a new freehold interest in the Property to an appropriate person or body.

In relation to disposals of the Crown's interest, please note:

- (a) The Crown Estate can only sell the whole of the land subject to escheat in one transaction, as to sell part may constitute an act of management in respect of the remainder;
- (b) The Crown Estate would require all potentially interested or affected parties to be consulted prior to any sale, although unanimity of agreement of all consulted parties is not always a prerequisite for a sale;
- (c) Any sale would be subject to any mortgages, legal charges or other encumbrances which might exist against the former freehold interest. We note that the council have a land charge against the Property so please let us have the full details of this as soon as possible; and
- (d) The Crown Estate is required by statute to achieve the best consideration, having regard to all the circumstances, for any disposal of such land.

If such a disposal never happens, then it is likely that the Property will remain subject to escheat, effectively ownerless, indefinitely.

## **CONCLUSION**

We fully understand that Section 135(1) and (2) of the Act require that, where an undertaker wishes to include a provision in a DCO which authorises the compulsory acquisition of an interest which is for the time being held otherwise than by or on behalf of the Crown, or where that interest is the Crown's, consent must be given by an appropriate Crown authority. However, until any act of management is undertaken by The Crown Estate in relation to any property which is subject to escheat, the property in question does not form part of the Crown Estate.

Please note that, whilst we cannot grant consent to the compulsory acquisition of the interests which Aquind Ltd seeks to acquire for the Scheme due to the reasons in this letter, it is unlikely that The Crown Estate would seek to interfere with the acquisition of land or the carrying out of any works carried out by an appropriate body pursuant to a DCO.

We appreciate that this may appear to be an unsatisfactory state of affairs, but trust that you will understand that the events leading up to the current situation are not of The Crown Estate's making and its role in relation to the Property is limited. This is a complex and arcane area of our property and constitutional law but we hope that our letter is helpful to explain the constraints upon The Crown Estate in dealing with the properties that may be subject to escheat.

We trust this letter is sufficient for your purposes and you may wish to produce a copy of the letter to the Planning Inspectorate.

Yours faithfully



BURGESS SALMON LLP

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### Appendix 1 – Extract from the Crown Land Plans

Plot 3-21 (land adjoining 42 Windsor Road, Waterlooville, Hampshire, PO7 6BA)



