

Winchester City Council Position Paper on dDCO

Deadline 8 submission

Introduction

The most recent version of the dDCO was submitted at deadline 7 revision 006. The Council has made comments on the document at various deadlines. It has considered the feedback from the applicant which was formally submitted at deadline 7c (REP7c-013) and noted the exchanges that took place at the ISH4 on Wednesday 17 February 2021. A further online meeting has also taken place with the applicant on 24 February 2021. At that meeting, both parties exercised some flexibility with the applicant offering further changes and the Council agreeing to withdraw some concerns. The meeting concluded with a clear understanding that the majority of matters had been resolved on the understanding that the parties actioned the points indicated, leaving a small number of Articles and requirements still unresolved.

The remaining format of the Examination does not allow the Council to see and comment on the final version of the dDCO, which the applicant will submit at Deadline 8. The Council has however, seen the section within the Statement of Common Ground that refers to the dDCO and has been able to gain a reasonable picture of the most recent set of changes after the 24 February meeting.

The following format is based on the Council Deadline 7 submission (REP7-093) but only identifies those matters in the dDCO where agreement has still to be reached with the applicant and are sufficiently important to the Council to still wishes to see progress. In view of the fact that the contentious issues have been reduced to a core number, the original document has been edited down to those specific aspects.

Where the applicant has proposed changes to the text in the Deadline 7c response (REP7c-013), they are taken as accepted and therefore not referred to below unless the Council still has an issue with the proposed revision and it is therefore not accepted.

Requirements 7, 8 & 9

The Council wishes to make several observations on the general process of how the above requirements have been formulated.

The Aquind Interconnector is a complicated proposal dealing with a number of sites where landscaping issues of varying degrees need to be addressed. Using the extensive knowledge of both writing and enforcing conditions, the Council has made detailed comments on the requirements over a number of deadlines. At the recent meeting, it was apparent that the applicant does not wish to remodel R7, 8 and 9. However, it was agreed that the Explanatory Memorandum would be reviewed to

add to it the clarifications that were part of the paper proposed by the applicant as REP7c-013.

Whilst the applicant has expressed a reject of the additional requirements proposed by the Council, it is hoped that they will utilise the opportunity presented by Deadline 9 to engage in the consideration of those new requirements and work to formulate them in a way that would enable those new requirements to work if the ExA decides to adopt them. Such an approach by the applicant is not consider any different to the “without prejudice” position that the Council has adopted in its work on the ddCO.

In conclusion, the applicant needs to address the absence of detail in the Explanatory Memorandum and the shortfalls in the requirements listed above in terms of the trigger dates. Both actions are necessary to ensure that the proposed requirements meet the relevant tests.

Articles

Article 9

The relative positions of the applicant and the Council relating to Article 9 are well rehearsed and fixed. The Councils position is as set out at Deadline 7 REP7-093. The Council is content to see some limitations on the construction phase but does not wish to see any allowance extended into the operational phase.

There is no agreement with the applicant on this matter.

Article 40

Felling or lopping of trees and removal of hedgerows

Article 41

Trees subject to tree preservation orders

The issue of replanting applies to both Article 40 & 41 but from a slightly different perspective. In Article 40 there is no reference to a replanting provision. In Article 41 the applicant has specifically excluded it.

It is the desire of the Council to see a reference in both Articles to replacement planting in the event that the operator returns to a section of the cable route which bisects a hedge and finds it necessary to remove a part of the hedge to gain access to the land or dig down to expose a section of the cable.

The potential for a failure that requires the removal of vegetation and excavations is remote, but it still exists. As proposed, the decision of replanting a hedge or filling in the resultant gap with a section of fencing would be left up to the landowner. That would not be an acceptable solution to fill any of the gaps formed during the installation of the cables and there is no justifiable reason why it should be accepted in the future. Of the 7 hedgerows crossed by the cable route within the district, 5 are identified as important hedgerows from an ecological perspective. The remaining two on Anmore Road and Hambledon Road are open to full public view and locations

where landscape impact considerations feature strongly. There are therefore compelling reasons why any return to undertake maintenance/repair work should not result in a reduction in the landscape features or character.

On the basis the applicant does not wish to see the replacement-planting obligation included in either Article, the Council requests that the ExA include it in the dDCO.

Requirements

R4 Converter Station option confirmation

Since the submission of its Local Impact Report (REP1-183) the Council has been clear on its preference for micro siting option B(ii) and its concerns over option B(i).

The applicant has also expressed a desire to implement B(ii) over B(i) and indicated the negotiations to achieve this outcome would be completed by the end of the Examination. At this time those negotiations are still outstanding.

The Council does not wish to see the dDCO go forward with the two options but wishes the ExA to strike out option B(i). Accordingly, requirement 4 needs revising to reflect this. The following wording is offered but the Council will accept any alternative that achieves the same outcome:

For the avoidance of any doubt, the Converter Station shall only be constructed in accordance with the perimeter area that is referred to as option B(ii) on the converter station and telecommunications building parameter plan drawing number EN020022-2.6-PARA-Sheet 3 rev02 as listed in Schedule 7 to the Order.

R6 Detailed design approval

Differences over requirement 6 are resolved with some further adjustments proposed by both parties.

The applicant will replace the reference to carrying out onshore preparatory work/ site clearance in 6(1).

The reference in the list in 6(1) will refer to foundation design and not just piling

The applicant will introduce the prohibition on additional lighting

The Council no longer promotes the use of sub headings

R7 Provision of planting

It was agreed that this requirement would remain as proposed.

The applicant will add further text to the Explanatory Memorandum to assist in the full understanding of the scope of this requirement.

R8 Implementation and maintenance of planting

The Council accepted the retention of this requirement that focused solely on R7.

Drawing on the comments made in the response document REP7c-013, the applicant agreed to address the issue of the implementation and maintenance of planting resulting from other requirements as this was absent at present.

R8 Biodiversity management plan

It was agreed that this requirement would remain as proposed.

Drawing on the comments made in the response document REP7c-013, the applicant will add further text to the Explanatory Memorandum to assist in the full understanding of the scope of this requirement.

R10 Highway Access

The applicant confirmed that the requirement would be edited to include the role reversal as discussed at the hearing. The submission will be to the relevant planning authority and the highway authority will be the consultee.

R15 Construction environmental management plan

The applicant has agreed to reverse the ordering of 15(2) and 15(3), which offers a better flow to the requirement.

R24 Decommissioning

The following is the requirement proposed by the applicant at deadline 7. (REP7-013)

Decommissioning

24—(1) Within 12 months of the date that the undertaker decides to decommission any part of the authorised development landwards of MHWS, the undertaker must submit a written scheme of decommissioning for that part approval by the relevant planning authority.

(2) No decommissioning works must be undertaken until the relevant planning authority has approved the written scheme of decommissioning submitted in sub-paragraph (1) in relation to such works.

(3) The written scheme of decommissioning submitted and approved must include details of—

- (a) the buildings to be demolished;
- (b) the means or removal of the materials resulting from the decommissioning works;
- (c) the phasing of the demolition and removal works;
- (d) any restoration works to restore the land to a condition agreed with the relevant planning authority;
- (e) the phasing of any restoration works; and
- (f) a timetable for the implementation of the scheme.

(4) Any approved written scheme of decommissioning must be implemented as approved, unless otherwise approved by the relevant planning authority.

(5) This requirement is without prejudice to any other consents or permissions which may be required to decommission any part of the authorised development landwards of MHWS.

Commentary:

It has been the Councils view that this requirement as currently drafted is flawed, because the trigger that will start the submission process is too vague and uncertain.

The Council did make a detailed submission relating to requirement 24 at deadline 7 REP7-093. The ExA is invited to consider that original proposal.

In an effort to simplify matters, The Council is now putting forward the following alternative to paragraph 24 (1) above which would now state:

Within 12 months of the date when the Converter Station ceases to import or export any electricity on a commercial basis and unless agreed otherwise with the local planning authority, the undertaker must submit a written scheme of decommissioning and restoration for that part of the scheme lying within its area.

The text shown above in red is an attempt to address a concern of the applicant that the Converter Station may go into a period of dormancy to then emerge and recommence operations.

The applicant has been in discussion with the Council on a revision to R24. There was a possibility of a new version being submitted but those discussions have not produced a more suitable alternative to date.

Additional Requirements

The Council has proposed two additional requirements are added to the dDCO. These are set out below:

Decommissioning Bond

The authorised development landwards of MHWS must not be commenced and the undertaker must not exercise the powers in Article 3 until:

(a) security of a bond to the value of not less than £60 million has been provided in respect of the potential cost of decommissioning the development within Work No2; and

(2) The security referred to in paragraph (1) may include, without limitation, any one or more of the following:

(a) the deposit of a cash sum;

(b) a payment into court;

(c) an escrow account;

(d) a bond provided by a financial institution;

(e) an insurance policy;

(f) a guarantee by a person of sufficient financial standing (other than the undertaker).

(3) The bond shall be secured in such a way that allows Winchester City Council to be able to call on that money in the circumstances such as the owner of the Development either walks away leaving the facility mothballed or goes into receivership and therefore leaving a dormant building within an open landscape and in close proximity to the South Downs National Park.

Commentary:

This is a new requirement to ensure there is the financial backup if for whatever reason the owners go into receivership/liquidation and cannot fund the decommissioning requirement. The Council has listened to the financial data relating to the applicant which if correct shows they have little resources behind them as a company. In the event the scheme is funded by money raised on the money market then presumably those financiers will expect a return which could mean the financial condition of the applicant does not improve over the life of the scheme. This would be different if the scheme was being promoted by a well-established company with a proven record or clear assets behind it.

Therefore, there are genuine questions if the applicant has the resources to undertake the decommissioning of the Converter Station. Whilst this may not be a normal requirement, this situation with a location in the open countryside and the close proximity to the National Park does justify its inclusion for the reasons outlined above. Even after 40 years it is still expected that the presence of the building will be an effect on landscape character. When the use ceases, to be left with a potentially derelict building and site in such a prominent location which at the time is no longer contributing to the wider economic benefit of the country as a whole is not acceptable.

The applicant is invited at deadline 9 to assist in setting the sum that should be secured in the form of a bond as the Council appreciates that the £60ml figure above is only a guide figure taken from construction contracts and highway bonds. In the event that the applicant does not offer any figure then the ExA is invited to refine this sum if it is felt necessary.

No start until whole scheme is approved

No phase of the development within the UK boundary above MHSW shall commence (including any onshore site preparation work) before the applicant has provided the relevant local authority for that phase, written confirmation that the whole of the scheme (including the French side) has obtained the approvals listed in section 9 of the Statement of Reason. The submitted details will list the approvals, the authorising body, the date they were obtained and any relevant reference number.

Commentary:

This would be a new Grampian style requirement. The Council has listened at both sets of hearings to the discussions on the applicant's financial situation and whether obtaining the necessary consents and approval on the European side are simple or complicated. This requirement is considered to cut through any concerns relating to both of those issues and is presented as a sensible way forward.

The Council is aware of the more recent submission entitled Post Hearing Note in respect of the non UK planning Consent & approvals required in connection with Aquind Interconnector doc ref 7.9.48 dated 23 February 2021. The Council invites the applicant to propose any more relevant referencing than the one used by the Council above.

1 March 2021

End.



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