



HERBERT
SMITH
FREEHILLS

The Planning Inspectorate
National Infrastructure Directorate
Temple Quay House
Temple Quay
Bristol
BS1 6PN

For the attention of Hefin Jones

Herbert Smith Freehills LLP
Exchange House
Primrose Street
London EC2A 2EG
T +44 (0)20 7374 8000
F +44 (0)20 7374 0888
D +44 (0)20 7466 2680
DX28 London Chancery Lane
E martyn.jarvis@hsf.com
www.herbertsmithfreehills.com

Our ref
18857/30985781
Your ref
EN020022
Date
11 December 2020

By email

Dear Sirs

**AQUIND Interconnector Development Consent Order – Planning Inspectorate Case
Reference No: EN020022**

Request for changes to the Order limits, including addition of land

**Section 123(4) of the Planning Act 2008 and Regulation 5 of the Infrastructure Planning
(Compulsory Acquisition) Regulations 2010**

1. BACKGROUND

- 1.1 We write to you in connection with the above application for a Development Consent Order ('**DCO**') in respect of AQUIND Interconnector ('**Application**').
- 1.2 On 14 November 2019 AQUIND Limited ('**Applicant**') submitted the Application. The Application was accepted for examination on Thursday 12 December 2019 and the Examination commenced on Wednesday 9 September 2020.
- 1.3 The Examining Authority (**ExA**) accepted changes to the Order limits requested by the Applicant pursuant to a procedural decision of 11 November 2020.
- 1.4 The Applicant has subsequently identified further changes to the Order limits that it wishes make ('**Proposed Changes**'). A document entitled '**Request for Changes to the Order Limits**' is enclosed with this letter, and explains the nature and need for these changes.
- 1.5 As the Proposed Changes include the addition of two new areas of land ('**Additional Land**') not included in the Book of Reference ('**BoR**') in respect of which the power to acquire rights is sought, the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 ('**CA Regulations**') apply. We provide the information required pursuant to Regulation 5 of the CA Regulations, as the consent of the land owners to the inclusion of the Additional Land within the Order limits has not yet been obtained.

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2. DESCRIPTION OF THE ADDITIONAL LAND

- 2.1 The Additional Land comprises: (i) 10,112 square metres of woodland (Mill Copse, east of Old Mill Lane, Lovedean); and 14,842 square metres of woodland and private access track (Stoneacre Copse, east of Old Mill Lane, Lovedean).
- 2.2 The Additional Land is identified on the plan in Appendix 1 of the Request for Changes to the Order Limits, enclosed. We have not provided an update to sheet 1 of the Land Plans at this time, but would be pleased to do so immediately if required by the ExA. Otherwise, all updates to relevant plans will be provided at such time as the ExA makes a decision to accept the Proposed Changes into the Examination.

3. STATEMENT OF REASONS WHY THE ADDITIONAL LAND IS REQUIRED

- 3.1 The Additional Land is required in order to address the impact of ash dieback and the consequential effect on the landscape and visual impacts of a part of the proposed development, the converter station. The disease has spread more rapidly than expected when the Landscape and Visual Impact Assessment (LVIA) (Chapter 15 of the ES (APP-130)) was undertaken between 2017 and 2019.
- 3.2 In response to concerns from the South Downs National Park Authority, the Applicant has recently surveyed the woodlands on which the future baseline relies for visual screening and has identified a number of mitigation measures which may be put in place to address the loss of trees as a consequence of ash dieback so that the future baseline does not change. These measures include the Applicant actively managing these two woodlands, which are not currently within the Order limits.
- 3.3 The Additional Land is required for the delivery and operation of the development to which the Application relates. There is a compelling case in the public interest for the rights proposed to be acquired over the Additional Land to be included within the Development Consent Order ('DCO') given the international and national benefits that the proposed development will generate, in light of EU and UK energy policy and carbon and climate change commitments.
- 3.4 The need for the project and its benefits are described in full in the Needs and Benefits Report (APP-115) and in the Needs and Benefits Report Addendum (Document Reference 7.7.7), submitted as part of the Application.

4. FUNDING STATEMENT

- 4.1 As detailed in the funding statement submitted as part of the Application (APP- 023), the proposed development in the UK, and more broadly the project as a whole, is to be funded through project finance secured against the operational profits (revenues) of the project. Funding for the project is expected to be subject to grant of the DCO and the settlement of regulatory status of the project.

5. SUPPLEMENT TO THE BOOK OF REFERENCE

- 5.1 A supplement to the Book of Reference submitted with the Application (REP5-014) is enclosed in respect of the Additional Land.

6. ENVIRONMENTAL INFORMATION

- 6.1 The information contained in Table 4.1, Appendix 2 and Appendix 3 of the Request for Changes to the Order document, constitutes 'environmental information' for the purposes of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("EIA



Regs”). The impact of ash dieback will in one instance give rise to an effect which is more adverse than identified in the original Environmental Statement (**‘ES’**), but only in relation to one receptor. In the short term the effectiveness of screening of the converter station will be reduced as a consequence of ash dieback progression and the resultant loss of leaves from the diseased trees. This will continue until such time as the new planting becomes established. There will be no increase in the level of significance as set out in the ES for relevant recreational and residential receptors, save for an increase in the significance of the effect experienced by recreational users of the public right of way to the south of the site (footpath DC19 / HC28) at year 10 (which would change from Minor to moderate (not significant) to Moderate (significant)). No other changes to the significance of effects due to ash dieback or the Proposed Changes has been identified.

- 6.2 There is no specific procedure to be followed where updated environmental information is submitted during the course of an examination provided for within the EIA Regs. The Applicant has however considered more generally the consultation requirements provided for by the EIA Regs to identify if any procedure contained therein should be followed in the interests of procedural fairness.
- 6.3 Taking into account the limited change in the significance of effects from those set out in the ES, and the fact that this change has been identified through an enhanced understanding of naturally occurring changes to a baseline rather than due to the changes proposed by the Applicant, the Applicant is of the view that it is not necessary to undertake any additional notification or consultation processes in the interests of procedural fairness beyond those already provided for by virtue of the Examination process.
- 6.4 All relevant persons will be notified of the submission of the Request for Changes to the Order limits document, and there is adequate time and opportunity throughout the remainder of the Examination for persons interested in the Application to comment on this submission. It is considered that this approach would be less confusing for interested parties than the undertaking of an informal consultation exercise outside of the Examination process.
- 6.5 However, should the ExA consider that additional notification or consultation is necessary in the interests of best practice, we would be content to carry out such consultation in parallel with the CA Regulations consultation process outlined in section 7.

7. **MEETING THE PROCEDURAL REQUIREMENTS OF THE CA REGULATIONS BEFORE THE END OF THE EXAMINATION**

- 7.1 The Examination is scheduled to finish on 8 March 2020. Clearly there are a number of procedural steps which it will be necessary to undertake in order to ensure that the Proposed Changes can be considered and consulted upon within this remaining period. The key steps in that process are:
 - 7.1.1 **ExA makes its procedural decision (within 28 days):** ExA to make a procedural decision whether to accept the Proposed Changes into the Examination. Since our Proposed Changes engage Regulation 5 of the CA Regulations, the ExA has a maximum of 28 days from the day after the day on which the ExA receives the Regulation 5 details (submitted today) to decide whether or not to accept the Proposed Changes;
 - 7.1.2 **Notices (min of 28 days):** There is no legal requirement for applicants to await the ExA’s procedural decision before carrying out the necessary notices and publicity under the CA Regulations. However, we understand that it is the ExAs preference for this step to be carried out only after the procedural decision has



been made. Therefore, assuming that the ExA accepts the Proposed Changes, the Applicant will be required to serve notices pursuant to Regulation 7 of the CA Regulations. 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).

- 7.1.3 **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).
- 7.1.4 **The Applicant responds to any relevant representations** (Regulation 10).
- 7.1.5 **The ExA makes an initial assessment of the issues (max 21 days from deadline set in Regulation 7 notice):** The ExA must make this initial assessment of issues within 21 days of the deadline set in the Regulation 7 notice. The ExA must set a timetable for its examination of issues arising in relation to the inclusion of the newly included Additional Land. This includes deadlines for written representations; ExA questions; comments on representations / responses to questions; the date by which any additional affected persons must notify the ExA of their wish to be heard at a compulsory acquisition hearing; and such other deadlines as the ExA considers necessary.
- 7.2 In order to ensure that all steps can be complied with during the remaining time, we suggest:
 - 7.2.1 It would be extremely helpful if the ExA were able to make a procedural decision in respect of the Proposed Changes in less than the maximum 28 days allowed by statute.
 - 7.2.2 If the ExA were, for example, able to make its decision in one week then this would enable the Applicant to commence the process of newspaper notices sometime during the week commencing Monday 21 December. The second notice could then be published during the week commencing Monday 28 December. This would enable the deadline for responses set in the notices to be set for some time during the week commencing 25 January.
 - 7.2.3 If the ExA was then able to issue its initial assessment of the issues swiftly following the deadline for receipt of representations, it would be possible for the Applicant to advertise the use of the reserved hearing date of 22 February as a date on which any affected person might be heard (such advertising being required 21 days in advance of a hearing). This assumes that the ExA considered that it was necessary to hear oral representations from such affected persons should representations be made.
 - 7.2.4 Alternatively, should a timeline of the sort above not be possible: (1) the Applicant could advertise the use of the hearing on 22 February on a precautionary basis 21 days in advance, even if the ExA has not been able to issue its initial assessment of issues and procedural decision in relation to the need for a hearing by then; or (2) there would remain further time prior to the end of the Examination on 8 March for a later hearing date to be set and advertised by the Applicant if required by the ExA. Clearly, if the ExA does not consider a hearing to be necessary and is content



to deal with the relevant issues by means of written questions, it will be easier in any event to deal with timetabling issues in the remainder of the Examination.

- 7.3 Should you have any queries relating to this request please do not hesitate to contact Martyn Jarvis of this firm on 020 7466 2680 or at martyn.jarvis@hsf.com.

Yours faithfully

Herbert Smith Freehills LLP

Herbert Smith Freehills LLP

Encl.

Supplement to the Book of Reference
Request for Change to Order Limits