



# The Sizewell C Project

## 9.11 Responses to the ExA's First Written Questions (ExQ1) Volume 3 - Appendices Part 6 of 7

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## APPENDIX 26A RESPONSE PAPER - SA.1 QUESTIONS: APPROACH TO CONTRACTUAL COMMITMENTS TO MITIGATION

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## EXPLANATION OF THE APPLICANT'S EVOLVING APPROACH TO CONTRACTUAL COMMITMENTS TO MITIGATION

### REFERRED TO IN RESPONSE TO SA.1 (SECTION 106)

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#### 1. INTRODUCTION

- 1.1 The Applicant explained its proposed approach to completion of a planning agreement in relation to the Sizewell C project in the Section 106 Explanatory Memorandum [[REP1-011](#)], provided at Deadline 1.
- 1.2 The term 'planning agreement' is used in this note to refer to an agreement relating to proposed development, but whose obligations may or may not meet all of the legal tests for 'planning obligations' in s106(1) TCPA, and may or may not meet all of the policy tests in paragraph 4.1.8 of NPS EN-1.
- 1.3 On 6 May 2021 the ExA issued a set of questions in relation to the Applicant's draft planning agreement and the related s111 agreement ("SA.1 Questions") [[PD-025](#)], which the ExA refers to as the 'Sizewell Special Arrangements'. A number of those questions relate to how the Sizewell Special Arrangements would work, and in particular the extent to which the legal tests for planning obligations set out in s106(1) and the policy tests in NPS EN-1 would be met, the binding of land to the agreement as opposed to the 'undertaking', and related enforcement issues.
- 1.4 This paper explains the Applicant's approach to contractual commitments to mitigation for the project, as it has evolved following consideration of the ExA's SA.1 Questions. The Applicant's revised approach is referred to in this paper as the 'Evolving Approach'.

#### 2. SUMMARY OF THE APPLICANT'S PROPOSED APPROACH AS SET OUT AT DEADLINE 1 ('SIZEWELL SPECIAL ARRANGEMENTS')

- 2.1 This paper does not seek to replicate the Applicant's summary of its Deadline 1 proposed approach to entry into a planning agreement, which was set out in the Section 106 Explanatory Memorandum. However, in outline, the Sizewell Special Arrangements were as follows:
  - 2.1.1 As the Applicant currently owns only a very small area of land within the main development site (along Lovers Lane) a version of the approach adopted by Thames Tideway Tunnel and Aquind was put forward at Deadline 1. The developers of both of those projects had to deal with this same issue, of owning little or no land within the Order limits at the time of the Examinations;
  - 2.1.2 Under the proposed approach, the Applicant and local authorities would enter into an ordinary contract (a s111 LGA agreement from the perspective of the authorities) which would commit all parties to signing and completing a planning agreement under s106 TCPA/s111 LGA immediately following the making of the DCO;
  - 2.1.3 The form of the planning agreement was to be agreed and certified under the DCO, and appended to the s111 agreement;



- 2.1.4 An article would be inserted into the DCO which would provide that the Applicant was deemed to have an interest in all land within the Order limits (such that it had vires under s106(1) to commit to planning obligations). This provision would obviously only be effective once the DCO was granted;
- 2.1.5 As soon as the DCO was granted, all parties would enter into the planning agreement pursuant to s106 TCPA (the Applicant at that stage being deemed by the DCO to have the necessary land interest to be able to sign a s106 agreement);
- 2.1.6 In common with the approach taken in most other planning agreements, the agreement would also be made pursuant to s111 LGA, to ensure that even those commitments which might be argued not to meet the legal tests for planning obligations in s106(1) (a) to (d) nevertheless were contractually binding.
- 2.2 The above approach is referred to by the ExA as the 'Sizewell Special Arrangements' in the ExA's SA.1 Questions.
3. **SUMMARY OF THE EXA'S QUERIES AND CONCERNS**
- 3.1 The ExA's main queries and concerns in respect of the Sizewell Special Arrangements, as set out in the SA.1 Questions, can be summarised as follows:
- 3.1.1 Only contractual commitments meeting the tests in s106(1)(a) to (d) TCPA can be said to be 'planning obligations', and it is only these which will 'run with the land' (i.e. are enforceable against signatories and those deriving title from them). Section 106(1) states that planning obligations may only: (a) restrict the development or use of the land in any specified way; (b) require specified operations or activities to be carried out in, on, under or over the land; (c) require the land to be used in any specified way; or (d) require a sum or sums to be paid to the authority.
- 3.1.2 It may be that a contract calling itself a 'planning agreement' or 's106 agreement' contains other commitments not meeting the s106(1)(a) to (d) tests, but these will not constitute 'planning obligations' and will not run with the land. They would only be enforceable under contract law.
- 3.1.3 The term 'development consent obligation' means no more than a 'planning obligation' (meeting the tests in s106(1)(a) to (d)) which happens to be entered into in connection with a DCO rather than a planning permission. The ExA's preference is that all parties therefore use the term 'planning obligation' rather than 'development consent obligation'.
- 3.2 The Applicant acknowledges and agrees with all of the above observations.
- 3.3 The ExA is also concerned by the differences in enforcement, as between an ordinary contractual commitment and a planning obligation, and whether the means of enforcement under s106 TCPA will all apply. The Applicant acknowledges that in addition to providing that planning obligations run with the land, section 106 TCPA includes the following provisions with respect to their enforcement:
- (A) Planning authorities have the power to enter the land and carry out the operations;
- (B) Planning authorities have the right to recover from the person or persons against whom the obligation is enforceable any expenses reasonably incurred by them entering the land to carry out operations;





- (C) It is a criminal offence to obstruct the local planning authority in entering the land for these purposes; and
  - (D) Planning obligations must be registered as local land charges, and that sums due under them, or expenses in relation to the local authority accessing land to carry out works under them, may be enforced as charges against the land.
- 3.4 The ExA in addition wishes to understand how the transfer of the benefit of the DCO under article 9 would relate to the enforceability of planning obligations against the transferee or transferees, noting that the benefit of the DCO may be transferred to more than one party.
- 3.5 The ExA also wishes to understand not only (i) whether all of the obligations in the agreement meet the tests under s106(1)(a) to (d) necessary for them to be planning obligations by law but (ii) whether they all meet the policy tests that must be passed before such obligations are taken into account in NPS EN-1, being "relevant to planning, necessary to make the proposed development acceptable in planning terms, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development, and reasonable in all other respects."
- 3.6 The ExA asks in relation to the Sizewell C Community Fund whether the Applicant's intention is that it be taken into account as an 'important and relevant' matter by the Secretary of State in making his decision under s105 PA. If so, the ExA requests the Applicant to consider the implications of *Wright v Forest of Dean* and *Resilient Energy* and subsequent case law.
- 3.7 The ExA seeks clarity on whether the Applicant's proposal is that land owners are bound, or that the agreement simply 'runs with the undertaking'.
- 3.8 The ExA questions whether there might be a more conventional means of dealing with the binding of the land than *Sizewell Special Arrangements*.
- 4. **DEED OF ADHERENCE APPROACH**
- 4.1 As a preliminary point, we recognise that where a DCO applicant (or applicant for TCPA planning permission) owns little land within the Order limits, it is fairly common for it to enter into a s106 agreement binding the land currently owned, and to couple this with a planning condition, DCO requirement or s106 obligation to enter into deeds of adherence binding the rest of the land as and when it is acquired.
- 4.2 The Applicant currently owns only a very small area of land along Lovers Lane within the main development site. While technically this would enable the Applicant to enter into a s106 agreement binding that parcel of land during the Examination, and thereafter enter into deeds of adherence as land is acquired, this is not in the Applicant's view the appropriate approach given (i) that there are simpler and equally robust means of securing the obligations as outlined in this note; and (ii) it would seem perverse to require the Applicant to take on the administrative burden of binding land on this iterative basis, when we do not consider it appropriate for future land owners to be bound purely by virtue of being a land owner, but rather only the main undertaker, and we would expect to carve out land owner liability if a s106 agreement were entered into.
- 5. **EVOLVING APPROACH**
- 5.1 We are grateful to the ExA for its helpful comments in SA.1, and its recognition that the Applicant's approach as set out at Deadline 1 was evolving. The scrutiny applied by the ExA in its questions and the further time for consideration since Deadline 1 has enabled



the Applicant to develop its thinking further so as to address the points raised. We are keen to identify and adopt an approach that meets the concerns that the ExA has raised.

- 5.2 For the reasons explained in this note, we consider that it would be more appropriate to move fully away from seeking to enter into a planning agreement under s106 TCPA in Sizewell's case, but instead to ensure that in all respects the contract entered into (which we will refer to in this paper as a 'Deed of Obligation') binds the relevant undertaker at all times, and is enforceable by the local planning authorities through all appropriate means including (to the extent useful) any means through which planning obligations can be enforced under s106 TCPA.
- 5.3 The Applicant's 'Evolving Approach' is therefore to enter into a contract with the relevant planning authorities, which would have all of the obligations which the Applicant and local authorities consider are necessary to mitigate the impacts of the project and to maximise its benefits – largely those set out in the current Deed of Obligation, subject to further negotiations. However, it would not be entered into pursuant to s106 TCPA. From the local authorities' perspective the Deed of Obligation would be entered into pursuant to s111 LGA.
- 5.4 It would be coupled with a provision in art 9 of the DCO stating that: "(b) save to the extent agreed by the Secretary of State, the Deed of Obligation completed pursuant to this Order, and any variations to it at the date of transfer or grant, shall be enforceable against the transferee or lessee as they would against the transferor". This drafting has been provided for in Rev 4.0 dDCO (Doc Ref.3.1(C)) . This will ensure that the obligations in the Deed of Obligation 'run with the undertaking'. As a variation of this approach, if preferable to the ExA or local authorities, art 9 could potentially provide that a deed of adherence must be entered into by the transferee.
- 5.5 In Rev 4.0 of the dDCO, we have revised the Benefit of the Order article (article 8) to give three other parties the benefit of the DCO powers (Network Rail, National Grid and EDF Energy Nuclear Generation Limited). Our view is, however, that only the project's primary undertaker (NNB Generation Company (SZC) Limited) should be bound by the terms of the Deed of Obligation. Our basis for this view is that: (i) the party with a financial interest in delivery of the NSIP (the power station) is NNB Generation Company (SZC) Limited alone; (ii) Network Rail, National Grid and EDF Energy Nuclear Generation Limited are involved only in relation to delivery of infrastructure necessary to support and mitigate the impacts of the power station's delivery and operation; (iii) these three parties cannot therefore be expected to accept joint and several liability under the Deed of Obligation for the huge financial commitments which will form the main obligations under the contract, and these parties would not be willing to sign the Deed of Obligation even if provided with an indemnity by the Applicant; (iv) it would not be appropriate for these three parties to play a role in the governance groups and arrangements set out in the Deed of Obligation to monitor and manage impacts of the project; and (v) to the extent that the Applicant needs the assistance of any of these three parties to discharge obligations under the Deed of Obligation, this will be factored into the contractual arrangements to be put in place between the Applicant and these parties outside the DCO process, as with other contractors.
- 5.6 We would also draw the ExA's attention to the fact that London Power Networks was not obliged to be a party to the Riverside Energy Park s106 agreement (the equivalent of our proposed Deed of Obligation), despite being expressed to have the benefit of the Order for an element of the authorised works alongside the main undertaker of that project (Cory Environmental Holdings Limited).



- 5.7 Separately, article 9 deals with circumstances where the Applicant seeks in future to transfer or grant to some other party the benefit of the DCO powers. Currently, no such transfer or grant is specifically envisaged, however in the event that the Applicant wished to exercise this right, art 9(4)(b) requires that the transferee or lessee will be bound by the Deed of Obligation executed by the Applicant (and any variations thereto) 'save to the extent agreed by the Secretary of State'. This provision therefore ensures that if and when the right to transfer or grant the powers in the DCO is exercised, the Secretary of State can weigh up at that time whether it is appropriate for that new person to be required to comply with the Deed of Obligation and if so to what extent. If the whole interest in the development of the power station (what might be referred to as the 'primary' undertaking) were to be transferred by the Applicant to another nuclear operator, that would clearly merit that new operator having to comply with the Deed of Obligation. However, if delivery of some other small element of infrastructure were to be delivered by a third party and it were felt necessary for that entity to benefit from the DCO powers in its own right, it may not necessarily be appropriate for that party to be bound directly by the Deed of Obligation. This could be weighed up by the Secretary of State on a case by case basis.
- 5.8 The drafting in the Deed of Obligation itself will provide that NNB Generation Company (SZC) Limited will remain bound by the Deed of Obligation until such time as it has transferred the whole of its undertaking pursuant to art 9 (e.g. to another nuclear operator, see clause 5)
6. **ENFORCEMENT**
- 6.1 It is important to consider what sort of enforcement is appropriate, and against whom, in relation to any planning agreement relating to the Sizewell project. Clearly s106 TCPA provides specific enforcement powers, but using the DCO it is open to the Secretary of State to replicate those powers of enforcement in relation to the Deed of Obligation if and to the extent considered appropriate.
- 6.2 **Enforcement against land owners:** As the ExA will be aware, planning obligations can be enforced against the signatories to the s106 agreement and any other party deriving title from them. Planning permissions granted under the TCPA 1990 are generally not personal to the applicant. It can therefore be particularly important in some circumstances for all, or the most significant, land owners to sign the agreement because they otherwise might implement a part of the permission benefitting their land, without having to meet the s106 obligations necessary to mitigate impacts. However, even in the case of planning permissions, it is quite common for local planning authorities not to require all existing land owners to sign the s106 agreement where the applicant can show that it would be impossible for those land owners to implement a part of the project on the land they have an interest in (due to physical impossibility, or the fact that they will need to be removed from the land to facilitate the redevelopment). It is equally common for local planning authorities to include carve outs of liability for future residential tenants, in recognition that flats would be unsaleable if those 'deriving title' from the developer as signatory to the s106 agreement were jointly and severally liable for the s106 obligations. In addition, it is usual for similar reasons to carve out liability for mortgagees unless they enter into possession. Banks would be unlikely to lend if they were expected to be jointly and severally liable for s106 obligations in default of payment by the developer.
- 6.3 Therefore, for good reason, it always has been incumbent on local planning authorities to take a reasoned view as to who it is necessary and appropriate should sign a s106 agreement, and who should be carved out of future liability.
- 6.4 We therefore seek to apply the same thinking to Sizewell: who is it appropriate to bind to the contractual commitments to mitigate impacts and maximise benefits of the project?



- 6.5 As stated previously, unlike a planning permission, a DCO is personal to the named undertaker or undertakers. Therefore, only those named undertakers can lawfully implement works under the DCO. There is, therefore, no danger that an existing land owner of one of the Sizewell 'associated development sites' (the Northern Park and Ride site for example) could decide to build out those DCO works for that site free from the s106 obligations. It would be unlawful for them to do so. In this sense, there is not the same driver for land owners to sign or be bound by s106 agreements relating to DCOs as there is for planning permissions.
- 6.6 For this reason, going through binding each parcel of land to a s106 agreement in order that those deriving title will be bound, is inappropriate and unnecessary in the Applicant's view.
- 6.7 The Evolving Approach ensures that only the developer of the power station (NNB Generation Company (SZC) Limited, and its successors, are bound, which we consider to be the most appropriate position.

**What about the means of enforcement available under s106 TCPA?**

- 6.8 Questions naturally arise as to whether there are any disadvantages or dangers from the local authorities' perspective in only having the main project developer (NNB Generation Company (SZC) Limited) bound by the contractual obligations. Would the local authority have greater enforcement powers in relation to a s106 agreement as opposed to an ordinary contract (our proposed Deed of Obligation)? If so, can we use the DCO to rectify this?
- 6.9 As stated earlier, s106 TCPA gives the local authority the power to enter the land to carry out works which have been committed to by a developer via planning obligations where they have not been carried out, and to recover the expenses from the land owner. Such expenses, as well as sums payable as planning obligations, may also be registered as land charges, enabling them to be recovered upon sale of the relevant land. It is also a criminal offence for anyone to obstruct a local authority in entering land to carry out planning obligations. Furthermore, s106(5) TCPA provides that planning obligations are enforceable by injunction.
- 6.10 We have therefore considered whether these remedies and enforcement provisions would be useful in relation to contractual commitments to mitigation for Sizewell C. For example, in circumstances where NNB Generation Company (SZC) Limited becomes insolvent.
- 6.11 In reality, we doubt the utility of these remedies in situations where the Applicant becomes insolvent. The scale of the likely contributions under any planning agreement put in place is likely to be many multiples of the land value. It also seems unlikely that the local planning authority would seek to enter land to carry out works in the event that the Applicant is insolvent and therefore presumably no longer pursuing the project. In any event, it would be unlawful for the local planning authority to execute works authorised by the DCO, as they will not be an 'undertaker' as defined by the DCO (unless we expressly provide for this, which DCOs to date have not).
- 6.12 A large number of the obligations in the draft planning agreement are in any event governance arrangements, rather than duties to carry out works or pay sums of money, and such obligations will not be capable of being enforced or made to work without the active participation of the Applicant on an ongoing basis.
- 6.13 It may therefore be sufficient for the Applicant to agree contractually in the Deed of Obligation to allow the local planning authorities onto the land controlled by the Applicant to carry out works in the event that the Applicant fails to carry them out. Alternatively, the Applicant could provide for powers of entry onto land in the DCO.



- 6.14 Equally, it would seem sufficient for the local planning authorities to enforce any failure to pay contributions under the Deed of Obligation as a breach of contract, for which the contribution could be enforced as a debt. However, the Applicant is willing to consider authorising the local planning authorities (via a DCO provision) to enforce such debts as a charge against land within the Order limits owned by the Applicant if considered preferable.
- 6.15 The Applicant is also willing to consider authorising the local planning authorities (via a DCO provision) to enforce the obligations in the planning agreement through an injunction.
- 6.16 The Applicant will be engaging with the local authorities in relation to the enforcement aspects of the Evolving Approach and is confident that it will be able to provide sufficient comfort that enforcement should not be an impediment to the proposed approach.

## 7. **ADVANTAGES OF THE EVOLVING APPROACH**

- 7.1 The main advantages of the Evolving Approach are:
- 7.1.1 It avoids the need for a two stage approach of the Sizewell Special Arrangements put forward at Deadline 1, whereby the Applicant and local authorities enter into a s111 agreement during the Examination which commits all parties to complete a s106 agreement in an agreed form once the DCO is granted. Instead, the Applicant and local planning authorities will complete the Deed of Obligation during the Examination;
- 7.1.2 It removes the need to determine whether each of the commitments made in the contract meet the legal tests in s106(1) (a) to (d), and therefore whether they are capable of running with the land as 'planning obligations'. The Evolving Approach ensures that all obligations in the agreement will bind the Applicant, and its successors, except where the Secretary of State says otherwise;
- 7.1.3 For reasons discussed in section 8 below, we consider that a number of the obligations necessary to properly mitigate the impacts of the project could be said not to fall within s106(1)(a) to (d);
- 7.1.4 It avoids the difficulties of carving out land owners and mortgagees from liability, which the ExA appears uncomfortable with accepting as lawful under s106 TCPA;
- 7.1.5 The Evolving Approach also allows third parties who are the recipients of contributions for mitigation to be party to the agreement, if it becomes useful to do so as negotiations progress; and
- 7.1.6 To the extent that the ExA or local authorities would like to apply the enforcement provisions applicable to s106 agreements, the Applicant would be happy to consider applying these to the Deed of Undertaking via provisions in the DCO.

## 8. **THE NATURE OF THE PROPOSED OBLIGATIONS AND THEIR RELATIONSHIP TO S106(1)(A) TO (D) TESTS**

- 8.1 As the ExA has pointed out, only 'planning obligations' can run with the land via operation of s106 TCPA, and a planning obligation is an obligation doing one of the following:



- (a) restricting the development or use of the land in any specified way;
- (b) requiring specified operations or activities to be carried out in, on, under or over the land;
- (c) requiring the land to be used in any specified way; or
- (d) requiring a sum or sums to be paid to the authority [...] on a specified date or dates or periodically

- 8.2 Sub-section (a) to (c) all relate to what physically may be done or not done on land. Sub-section (d) relates to payments of financial contributions. For the great majority of developments, the obligations necessary to mitigate impacts may well all be capable of falling into one of these categories. However, in practice, local planning authorities tend to cover off the risk that some fall outside these categories by entering into such agreements pursuant to general contractual powers (under s111 LGA) as well as s106 TCPA. In the case of the Sizewell project, however, the ExA has indicated that it is uncomfortable with accepting this approach because of the limitation that only true planning obligations can run with the land.
- 8.3 The Sizewell project will be one of the most complex and long-running construction projects in the UK, with a build period of 9-12 years, involving management of the movement and accommodation of construction workers and their families, and the transportation of large volumes of freight. It is for this reason that a key part of the Applicant's approach is to manage impacts, and maximise economic and educational opportunities benefits, via the governance arrangements drafted into the Deed of Obligation. Only for projects of this scale will such governance arrangements form the core of the approach to mitigation, as they have at Hinkley Point C.
- 8.4 Despite the best efforts of the Applicant and their consultant team to predict the realities on the ground over the build period, circumstances may change: for example, construction workers might choose to live in slightly different locations to those assumed, or other unanticipated/expedited/delayed developments taking place in the locality during this period could have a knock-on impact on patterns of transport. Equally, decisions on how best to spend funds from the Natural Environment Fund may depend on the ability of the relevant stakeholders to pool monies from other opportunities which come about in future. Some other contributions have an element of contingency (for example some of the emergency services and transport contributions) to allow for circumstances not foreseen now. The Applicant and the local authorities wish to be able to react in a dynamic and timely way in addressing such changing circumstances, to ensure that impacts are always appropriately mitigated. The Governance groups set up under the Deed of Obligation are designed precisely to enable the Applicant, the local planning authorities and other key stakeholders to come together regularly to monitor and mitigate on a dynamic basis over the construction period and beyond. Such an approach has worked well for the Hinkley Point C project, and for this reason has formed the core of the approach for Sizewell C.
- 8.5 We recognise that it may be difficult to argue that the duty to set up and run the various governance groups envisaged by the Deed of Obligations falls within any of the categories in s106(1)(a)-(d). The various commitments could, perhaps, be worded along the lines of: "The authorised development may not be carried out on land at any time when the [x] governance group is not in operation", in order to try to bring such commitments within s106(1)(a). However, the Applicant would prefer a more straightforward alternative to such a complex and somewhat artificial drafting approach.
- 8.6 Equally, for example, the positive duties with regard to maximising the benefits of the project via the employment and skills commitments may not all easily fall within s106(1)(a) to (d), being not directly related to operations on particular land, but the project as a whole. Yet these are clearly important aspects of ensuring the Sizewell project delivers the benefits it should deliver to the region.





8.7 If the ExA is concerned that securing such obligations contractually under s111 LGA is insufficient in the event that they do not constitute 'planning obligations' under s106(1)(a)-(d), then the Evolved Approach appears to the Applicant to be a way of ensuring these important commitments nevertheless are always delivered by the relevant undertaker over time.

9. **COULD SOME OF THE OBLIGATIONS INSTEAD BE REQUIREMENTS?**

9.1 We have also considered whether any of the obligations could in fact be turned into DCO requirements, as in theory this would offer a way of ensuring that mitigation not meeting the s106(1)(a) to (d) tests is nevertheless committed to. We are aware of the Planning Policy Guidance para 011 that states:

*" It may be possible to overcome a planning objection to a development proposal equally well by imposing a condition on the planning permission or by entering into a planning obligation under section 106 of the Town and Country Planning Act 1990. In such cases the local planning authority should use a condition rather than seeking to deal with the matter by means of a planning obligation."*

9.2 However, as explained earlier, the management of impacts via monitoring and governance group arrangements on a dynamic basis is a central part of the Applicant's approach to mitigating impacts and in most cases it would be extremely difficult to achieve the same outcome using requirements. The Applicant would see benefit in changing the current approach in this respect.

10. **THE SECRETARY OF STATE'S DECISION – WHAT CAN BE TAKEN INTO ACCOUNT**

10.1 It is also important to consider what the Secretary of State may and may not take into account when making a decision on the Sizewell DCO, having regard to law and guidance.

10.2 The law distinguishes between considerations which are relevant, and which therefore the decision maker is empowered to take into account, and those which the decision-maker is required to take into account.

10.3 A legally relevant consideration is only something that is not irrelevant or immaterial, and therefore something which the decision-maker is empowered or entitled to take into account.

10.4 The decision-maker is expressly or impliedly required by legislation (or by a policy which has to be applied) to take certain considerations into account. In addition, on the facts of a particular case there may be some considerations which are so "obviously material" that it would be irrational not to take them into account (see e.g. *R (ClientEarth) v. SSBEIS* [2020] 1303 (Admin) at para. 99) [[PDB-013](#)].

10.5 When applying principles derived from caselaw relating to the TCPA regime, it is necessary therefore to be mindful of the differences in the statutory provisions which govern decision-making in each case and require the decision-maker to take certain matters into account.

10.6 In principle, any consideration which relates to the use and development of land is capable of being a material consideration. Whether a particular consideration falling within that broad class is material will depend on the circumstances (*Stringer v. Minister of Housing* [1970] 1 WLR 1281 at 1294H).



- 10.7 The approach to considering whether or not a particular planning obligation may be taken into account by the decision-maker as a material consideration is set out in *R (Wright) v. Forest of Dean DC* [2019] 1 WLR 6562. A threefold test was applied, equating the ambit of “material considerations” with the ambit of the power to impose planning conditions (derived from *Newbury DC v. SSE* [1981] AC 578), namely whether this:
- a. was for a planning purpose;
  - b. was fairly and reasonably related to the development; and
  - c. was not so unreasonable that no reasonable planning authority could have imposed it.



- 10.8 These criteria are known as the “*Newbury* criteria”, and a consequence of their application is that planning permission cannot be bought or sold. Planning obligations satisfying these criteria may be treated as material planning considerations (see *Tesco Stores Ltd. v. SSE* [1995] 1 WLR 759 at pp. 782-783 per Lord Hoffman).
- 10.9 As the Supreme Court explained in *Wright*, an obligation to pay money to a fund to provide for general community benefits unrelated to the proposed change in the character of the use of the development land does not have a sufficient connection with the proposed development as to qualify as a “material consideration” in relation to it (para. 38). In that case the community benefits promised by the developer were held not to satisfy the *Newbury* criteria and hence did not qualify as a material consideration because: “*The benefits were not proposed as a means of pursuing any proper planning purpose, but for the ulterior purpose of providing general benefits to the community. Moreover, they did not fairly and reasonably relate to the development for which permission was sought*” (para. 44)<sup>1</sup>.
- 10.10 The decision-maker must therefore consider whether the obligations satisfy the *Newbury* criteria. If they do, they may lawfully be taken into account as material considerations. The weight that is attached to any material consideration is a separate matter, and a matter of planning judgment for the decision-maker, subject to *Wednesbury* principles (see *Tesco*).
- 10.11 Section 105 of the Planning Act<sup>2</sup>, which will apply to the Secretary of State's determination of the DCO application, identifies certain considerations that the decision-maker must take into account. It states that:
- “(2) *In deciding the application the Secretary of State must have regard to—*
- (a) *any local impact report (within the meaning given by section 60(3) ) submitted to the Secretary of State before the deadline specified in a notice under section 60(2),*
- (b) *any matters prescribed in relation to development of the description to which the application relates, and*
- (c) *any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision.*”
- 10.12 The text underlined (s105(2)(c)), obliges the Secretary of State to take into account any planning obligations committed to if they are considered by the Secretary of State not only to be relevant (i.e. to be a material consideration), but also to be important. The judgment as to importance is anticipated to reflect the weight that the decision-maker chooses to ascribe to the matter in question.
- 10.13 As a matter of policy, NPS EN-1, para 4.1.8<sup>3</sup> states:
- “*The [Secretary of State] may take into account any development consent obligations that an applicant agrees with local authorities. These must be relevant to planning, necessary to make the proposed development acceptable in planning terms, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development, and reasonable in all other respects*”.<sup>4</sup>
- 10.14 This is a statement of policy, and not law. Policy cannot make a matter which is otherwise a material consideration an irrelevant consideration (*Gransden & Co. Ltd. v. SoS* (1987) 54 P&CR 86 at p. 94). Its legal effect is different, therefore, from that of Regulation 122 of the Community Infrastructure Regulations 2010<sup>5</sup>, which do not apply to decision-making under the PA 2008. The NPS policy is not only relevant, but also important in this case. It must therefore be taken into account by the decision-maker when determining the weight to be attached to any obligation and would apply equally to a development consent obligation or some other contractual obligation offered by the Applicant.



- 10.15 If the Secretary of State takes into account an obligation that is a material consideration (i.e. it satisfies the *Newbury* criteria) but which does not satisfy an element of the policy test in para. 4.1.8 that goes beyond those criteria (e.g. the requirement that the obligation is necessary to make the development acceptable in planning terms), it would be a departure from policy. The fact that the decision-maker has to have regard to the policy does not mean that it needs necessarily to follow the policy. However, if the decision-maker is going to depart from policy it must give clear reasons for doing so in order that the recipient of the decision will know why the decision is being made as an exception to the policy and the grounds upon which the decision was taken (*Gransden* at p. 94).
- 10.16 The scope for departing from the policy set out in EN-1 will be limited by the fact that some elements of the policy effectively reproduce the *Newbury* criteria.
- 10.17 The Secretary of State will therefore need to consider:
- a. whether the obligations satisfy the *Newbury* criteria so that they may be regarded as relevant;
  - b. if relevant, whether the obligations meet the tests set by policy in the NPS (where these tests go beyond the *Newbury* criteria); and
  - c. if not, whether there are reasons for nevertheless taking the obligation into account as a departure from policy.
- 10.18 If the Secretary of State concludes that an obligation is relevant and that it should be taken into account, the weight that is attached to it (and accordingly whether it is not only relevant, but also important) will be a matter for his or her planning judgment.
- 10.19 In this case the Applicant does not propose to make any of the obligations conditional upon a positive decision being reached by the Secretary of State as to their relevance, accordance with policy, weight or importance. Thus the obligations will be offered, secured and honoured whatever conclusion is reached by the Secretary of State as to the role (if any) which a particular obligation should play in the decision.

### **Herbert Smith Freehills LLP**

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<sup>1</sup> The Applicant has had regard to that case law in explaining the nature, purpose and scale of the proposed Community Fund. See section 10.5 of the Planning Statement.

<sup>2</sup> Appended to this paper at Annex 5

<sup>3</sup> Appended to this paper at Annex 3

<sup>4</sup> This NPS policy mirrors the equivalent legal requirement under Reg. 122 CIL Regulations 2010, which applies to determination of planning applications under TCPA: " a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—(a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development." This does not apply to determination of DCOs, since they fall outside the definition of a 'planning permission' under the Regs.

<sup>5</sup> Appended to this paper at Annex 2



HERBERT  
SMITH  
FREEHILLS

**ANNEX 1**

**SECTION 106 TOWN AND COUNTRY PLANNING ACT 1990**



**106.— Planning obligations.**

(1) Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation (referred to in this section and sections 106A to 106C as “a planning obligation” ), enforceable to the extent mentioned in subsection (3)—

- (a) restricting the development or use of the land in any specified way;
- (b) requiring specified operations or activities to be carried out in, on, under or over the land;
- (c) requiring the land to be used in any specified way; or
- (d) requiring a sum or sums to be paid to the authority (or, in a case where section 2E applies, to the Greater London Authority) on a specified date or dates or periodically.

(1A) In the case of a development consent obligation, the reference to development in subsection (1)(a) includes anything that constitutes development for the purposes of the Planning Act 2008.

(2) A planning obligation may—

- (a) be unconditional or subject to conditions;
- (b) impose any restriction or requirement mentioned in subsection (1)(a) to (c) either indefinitely or for such period or periods as may be specified; and
- (c) if it requires a sum or sums to be paid, require the payment of a specified amount or an amount determined in accordance with the instrument by which the obligation is entered into and, if it requires the payment of periodical sums, require them to be paid indefinitely or for a specified period.

(3) Subject to subsection (4) a planning obligation is enforceable by the authority identified in accordance with subsection (9)(d)—

- (a) against the person entering into the obligation; and
- (b) against any person deriving title from that person.

(4) The instrument by which a planning obligation is entered into may provide that a person shall not be bound by the obligation in respect of any period during which he no longer has an interest in the land.

(5) A restriction or requirement imposed under a planning obligation is enforceable by injunction.

(6) Without prejudice to subsection (5), if there is a breach of a requirement in a planning obligation to carry out any operations in, on, under or over the land to which the obligation relates, the authority by whom the obligation is enforceable may—

- (a) enter the land and carry out the operations; and
- (b) recover from the person or persons against whom the obligation is enforceable any expenses reasonably incurred by them in doing so.

(7) Before an authority exercise their power under subsection (6)(a) they shall give not less than twenty-one days' notice of their intention to do so to any person against whom the planning obligation is enforceable.

(8) Any person who wilfully obstructs a person acting in the exercise of a power under subsection (6)(a) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) A planning obligation may not be entered into except by an instrument executed as a deed which—

- (a) states that the obligation is a planning obligation for the purposes of this section;
- (aa) if the obligation is a development consent obligation, contains a statement to that effect;
- (b) identifies the land in which the person entering into the obligation is interested;
- (c) identifies the person entering into the obligation and states what his interest in the land is; and
- (d) identifies the local planning authority by whom the obligation is enforceable and, in a case where section 2E applies, identifies the Mayor of London as an authority by whom the obligation is also enforceable.





(10) A copy of any such instrument shall be given to the local planning authority so identified and, in a case where section 2E applies, to the Mayor of London.

(11) A planning obligation shall be a local land charge and for the purposes of the Local Land Charges Act 1975 the authority by whom the obligation is enforceable shall be treated as the originating authority as respects such a charge.

(12) Regulations may provide for the charging on the land of—

- (a) any sum or sums required to be paid under a planning obligation; and
- (b) any expenses recoverable by a local planning authority or the Mayor of London under subsection (6)(b),

and this section and sections 106A to 106BC shall have effect subject to any such regulations.

(13) In this section “specified” means specified in the instrument by which the planning obligation is entered into and in this section and section 106A “land” has the same meaning as in the Local Land Charges Act 1975.

(14) In this section and section 106A “development consent obligation” means a planning obligation entered into in connection with an application (or a proposed application) for an order granting development consent.



## ANNEX 2

### S122 COMMUNITY INFRASTRUCTURE LEVY REGULATIONS 2010

**Note: This applies only to Town and Country Planning Act 1990 applications, not to DCO applications, because a DCO is not within the definition of a 'planning permission'.**

#### **122.— Limitation on use of planning obligations**

(1) This regulation applies where a relevant determination is made which results in planning permission being granted for development.

(2) Subject to paragraph (2A), a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

(2A) Paragraph (2) does not apply in relation to a planning obligation which requires a sum to be paid to a local planning authority in respect of the cost of monitoring (including reporting under these Regulations) in relation to the delivery of planning obligations in the authority's area, provided—

- (a) the sum to be paid fairly and reasonably relates in scale and kind to the development; and
- (b) the sum to be paid to the authority does not exceed the authority's estimate of its cost of monitoring the development over the lifetime of the planning obligations which relate to that development.

(3) In this regulation—

“planning obligation” means a planning obligation under section 106 of TCPA 1990 and includes a proposed planning obligation; and

“relevant determination” means a determination made on or after 6th April 2010—

- (a) under section 70, 73, 76A or 77 of TCPA 1990 of an application for planning permission; or
- (b) under section 79 of TCPA 1990 of an appeal.



### ANNEX 3

#### EN-1 – OVERARCHING NATIONAL POLICY STATEMENT ON ENERGY

**4.1.7** The [Secretary of State] should only impose requirements in relation to a development consent that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects. The IPC should take into account the guidance in Circular 11/95, as revised, on “The Use of Conditions in Planning Permissions” or any successor to it.

**4.1.8** The [Secretary of State] may take into account any development consent obligations that an applicant agrees with local authorities. These must be relevant to planning, necessary to make the proposed development acceptable in planning terms, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development, and reasonable in all other respects



## ANNEX 4

### NATIONAL PLANNING POLICY FRAMEWORK

#### Planning conditions and obligations

54. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

55. Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision-making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.

56. Planning obligations must only be sought where they meet all of the following tests:

- a) necessary to make the development acceptable in planning terms;
- b) directly related to the development; and
- c) fairly and reasonably related in scale and kind to the development.

#### Annex 2 - Glossary

**Planning condition:** A condition imposed on a grant of planning permission (in accordance with the Town and Country Planning Act 1990) or a condition included in a Local Development Order or Neighbourhood Development Order.

**Planning obligation:** A legal agreement entered into under section 106 of the Town and Country Planning Act 1990 to mitigate the impacts of a development proposal.

### PLANNING POLICY GUIDANCE

#### What approach should be taken where the same objective can be met using either a condition or a planning obligation?

It may be possible to overcome a planning objection to a development proposal equally well by imposing a condition on the planning permission or by entering into a planning obligation under section 106 of the Town and Country Planning Act 1990. In such cases the local planning authority should use a condition rather than seeking to deal with the matter by means of a planning obligation.

Paragraph: 011 Reference ID: 21a-011-20140306

Revision date: 06 03 2014



#### **What are planning obligations?**

Planning obligations are legal obligations entered into to mitigate the impacts of a development proposal.

This can be via a planning agreement entered into under section 106 of the Town and Country Planning Act 1990 by a person with an interest in the land and the local planning authority; or via a unilateral undertaking entered into by a person with an interest in the land without the local planning authority.

Planning obligations run with the land, are legally binding and enforceable. A unilateral undertaking cannot bind the local planning authority because they are not party to it.

Planning obligations are also commonly referred to as 'section 106', 's106', as well as 'developer contributions' when considered alongside highways contributions and the Community Infrastructure Levy.

See related policy: National Planning Policy Framework paragraph 56

Paragraph: 001 Reference ID: 23b-001-20190315

Revision date: 15 03 2019

#### **When can planning obligations be sought by the local planning authority?**

Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms. They must be:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.
- 

These tests are set out as statutory tests in regulation 122 (as amended by the 2011 and 2019 Regulations) and as policy tests in the National Planning Policy Framework. These tests apply whether or not there is a levy charging schedule for the area.

See related policy: National Planning Policy Framework paragraph 56

Paragraph: 002 Reference ID: 23b-002-20190901

Revision date: 01 09 2019 See previous version



**ANNEX 5**

**SECTION 105 PLANNING ACT 2008**

**105 Decisions in cases where no national policy statement has effect**

(1) This section applies in relation to an application for an order granting development consent [if section 104 does not apply in relation to the application]

(2) In deciding the application the Secretary of State must have regard to—

- (a) any local impact report (within the meaning given by section 60(3) ) submitted to the Secretary of State before the deadline specified in a notice under section 60(2),
- (b) any matters prescribed in relation to development of the description to which the application relates, and
- (c) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision.





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WRITTEN QUESTIONS ISSUED ON 21<sup>ST</sup> APRIL 2021

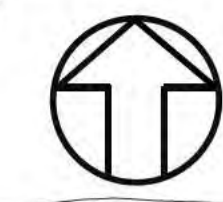
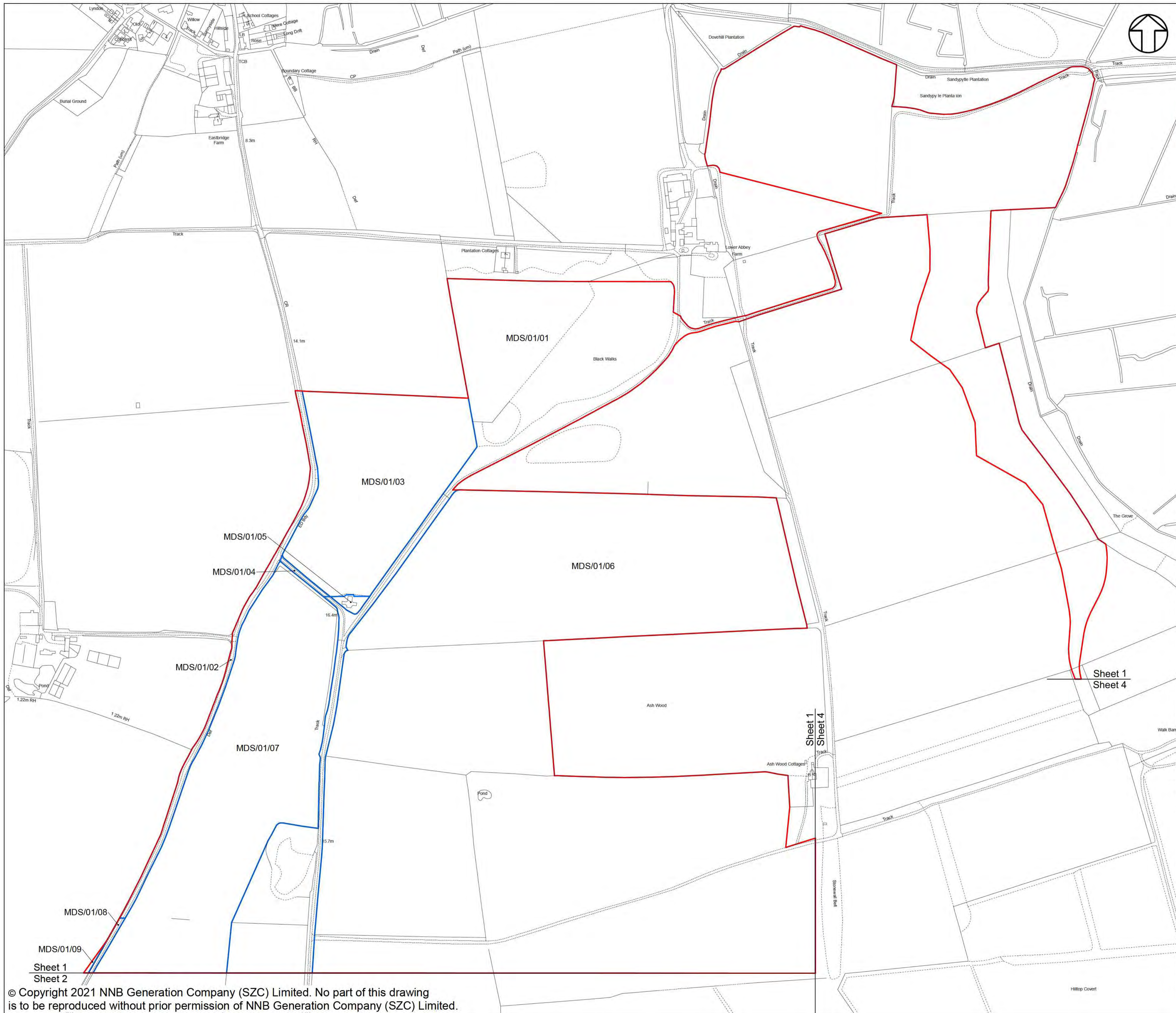
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## APPENDIX 26B NNB GENERATION COMPANY (SZC) LIMITED - OWNERSHIP PLAN

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01	MAY 2021	IM	KC	DDO APPLICATION - DEADLINE 2 SUBMISSION (DATED 2 JUNE 2021)	SZC Co

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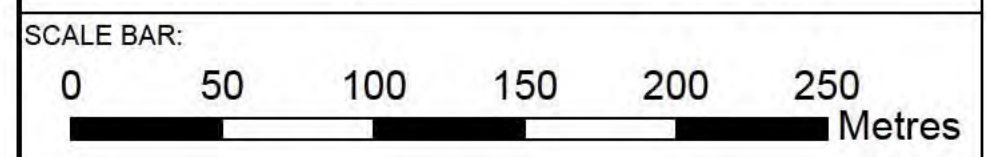
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**DRAWING NO:** SZC/LOU/1 **REVISION:** 01

**DATE:** MAY 2021 **DRAWN:** I.M. **SCALE:** 1:2,500 @A1






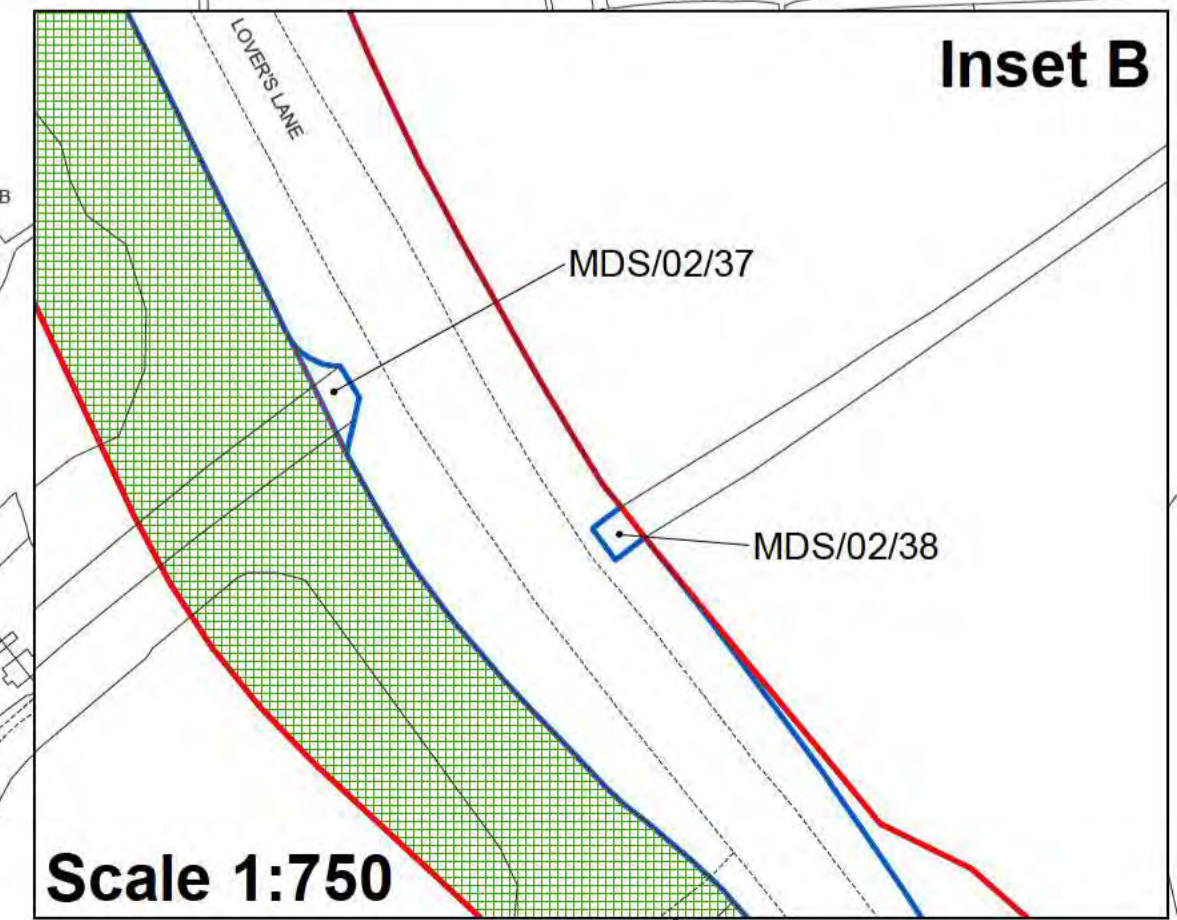
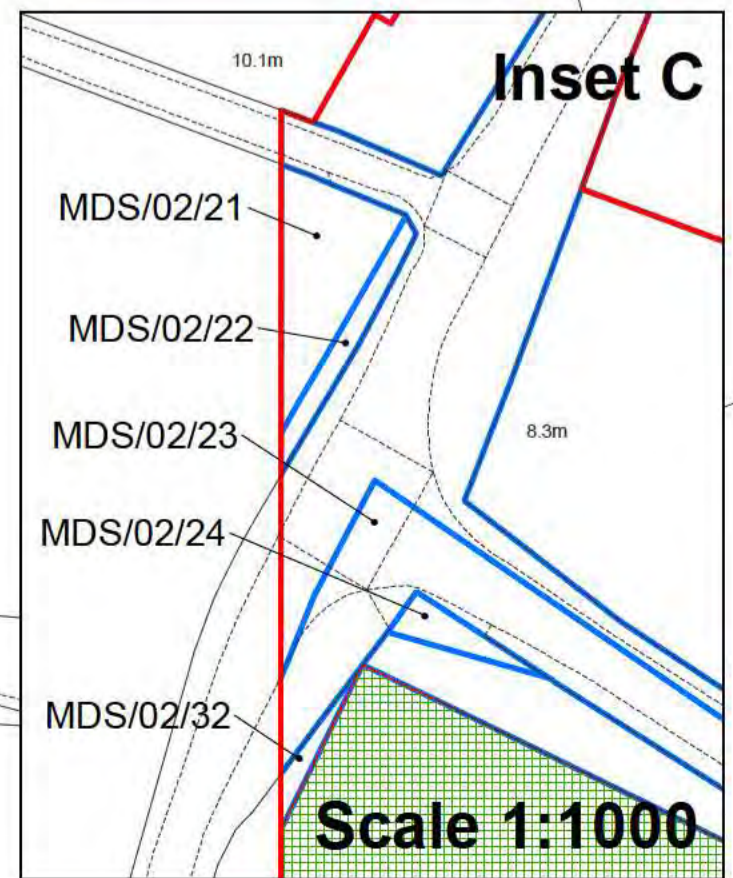
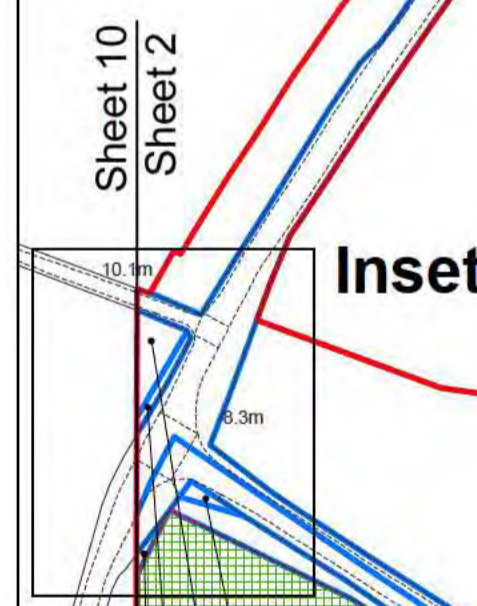
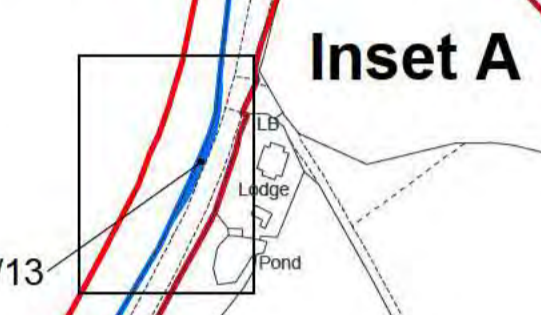
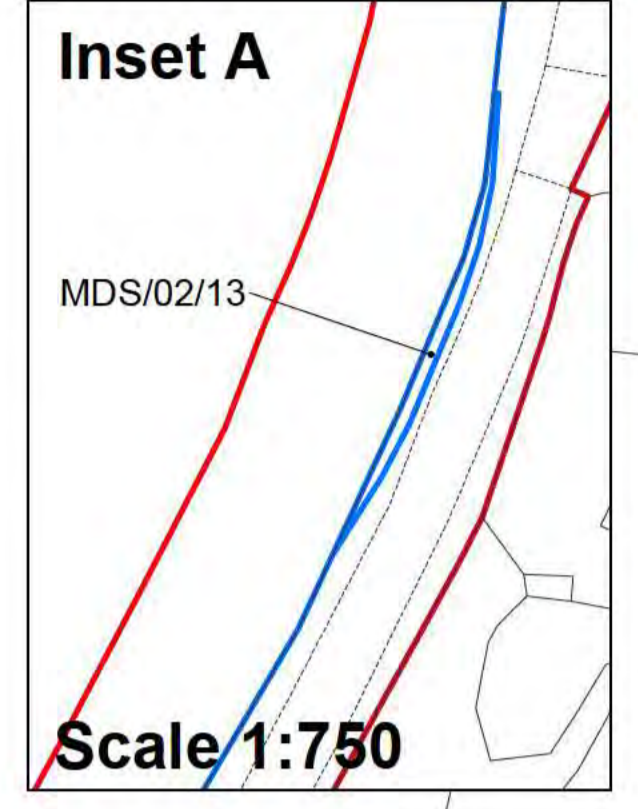
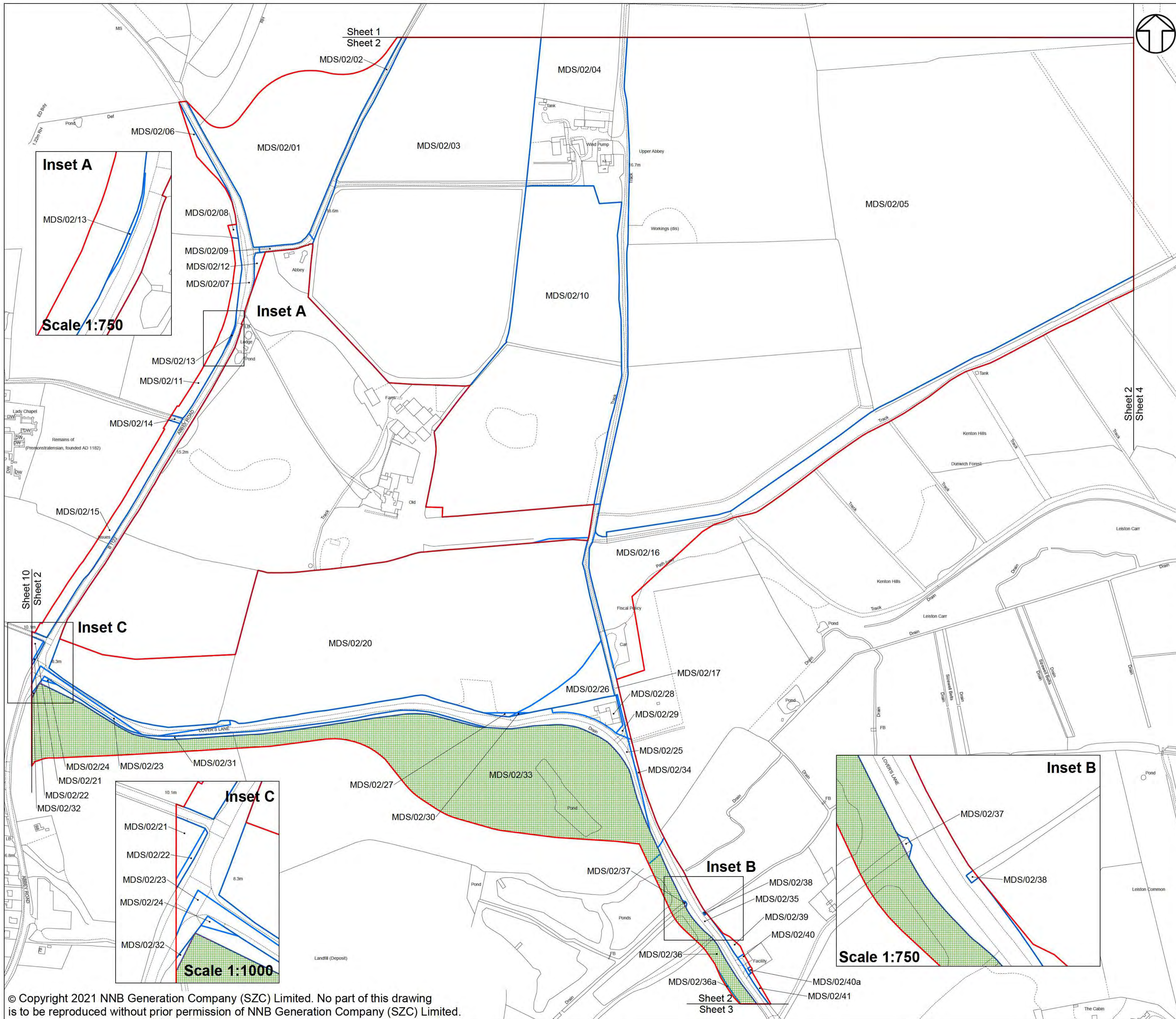




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-  PLOT BOUNDARIES
-  FREEHOLD OWNED BY SZC CO.



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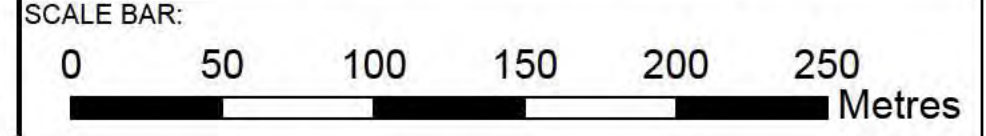


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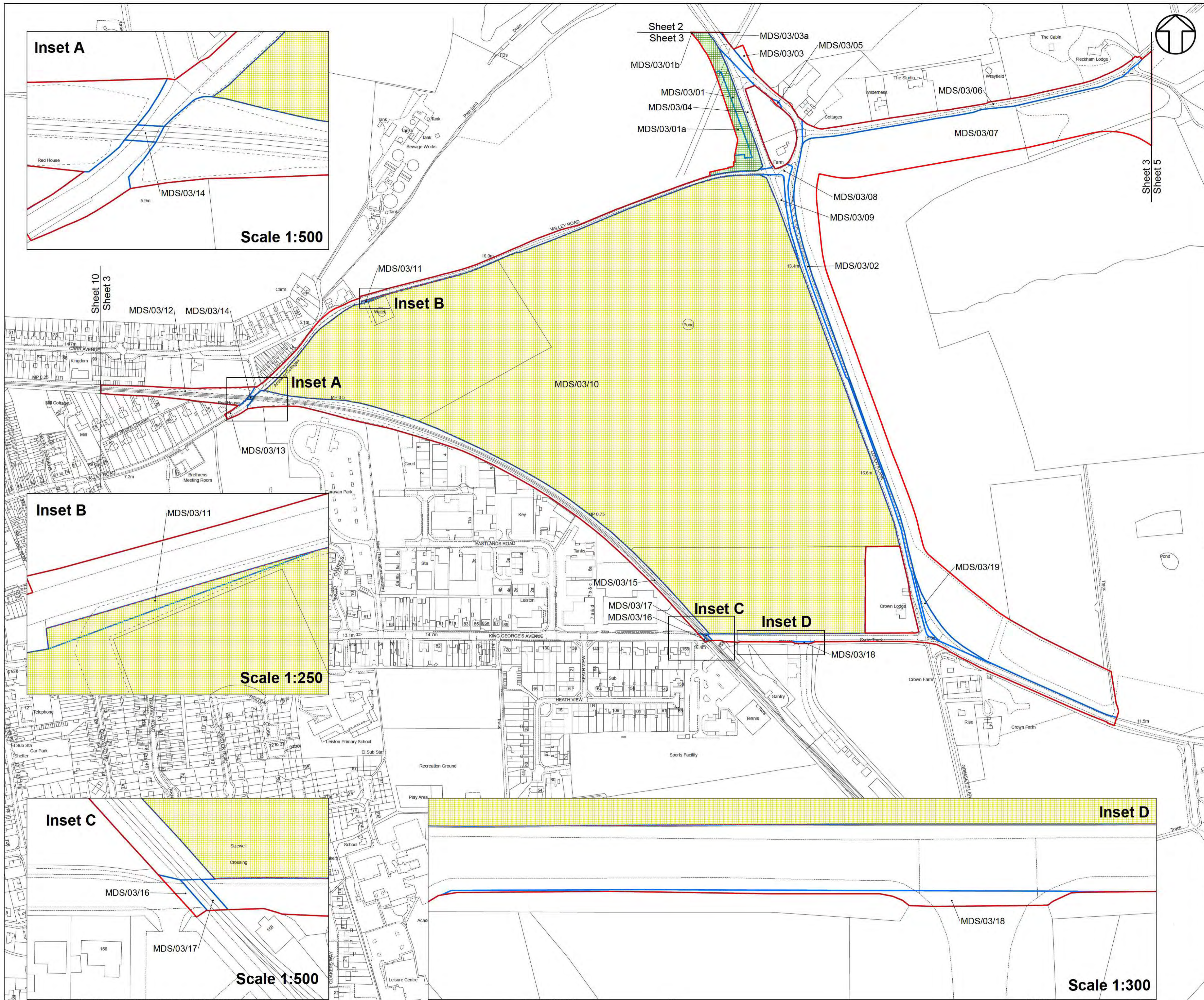
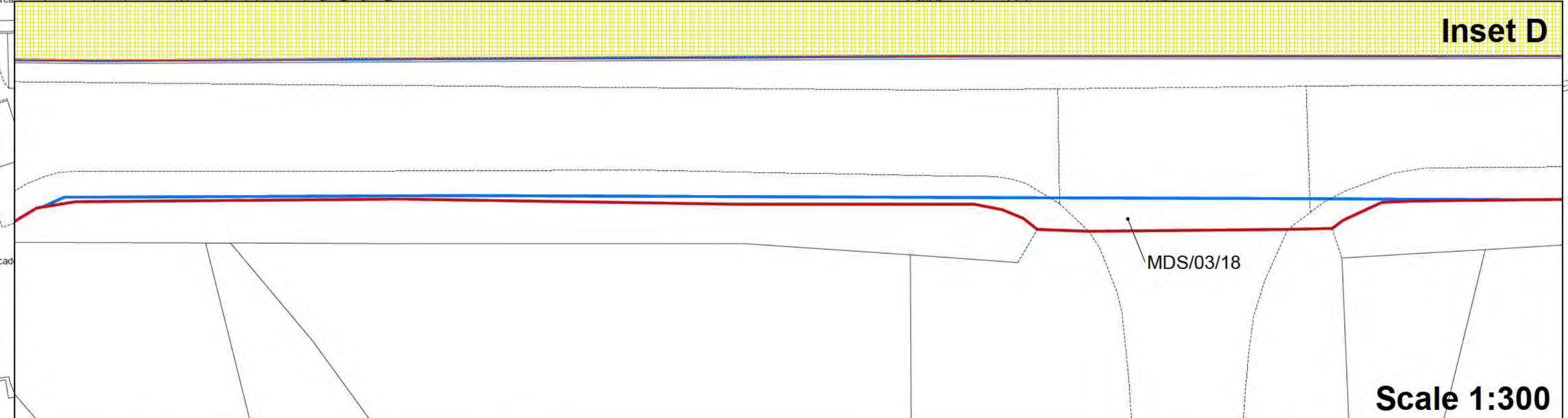
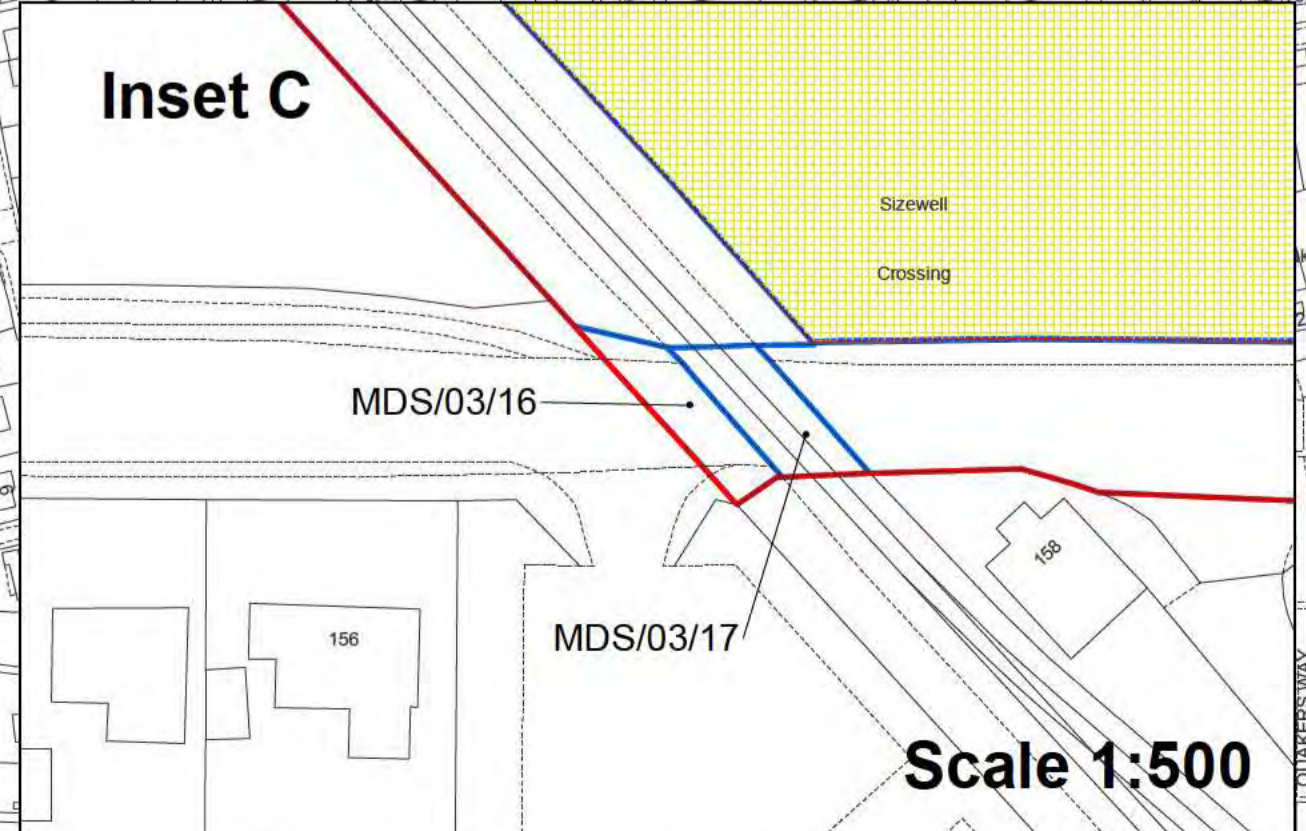
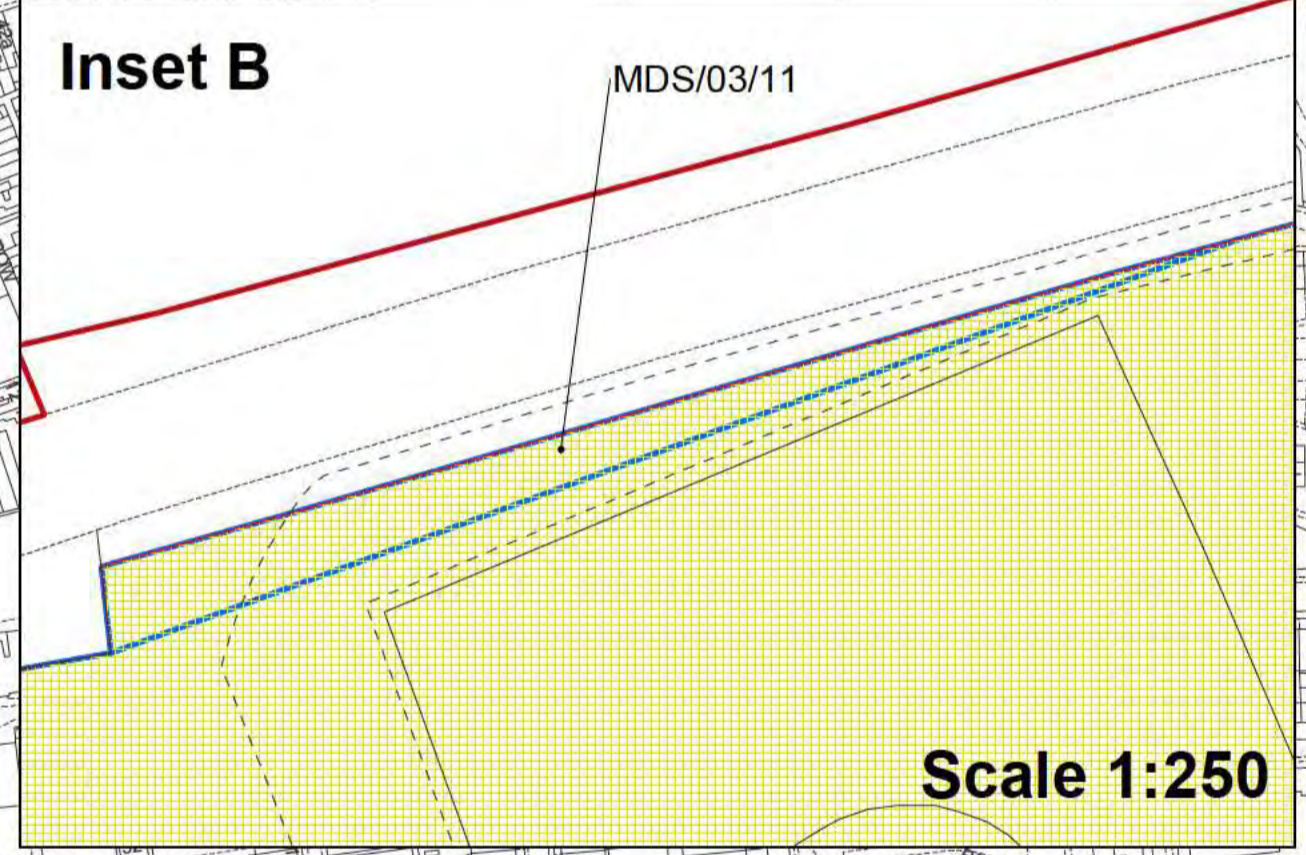
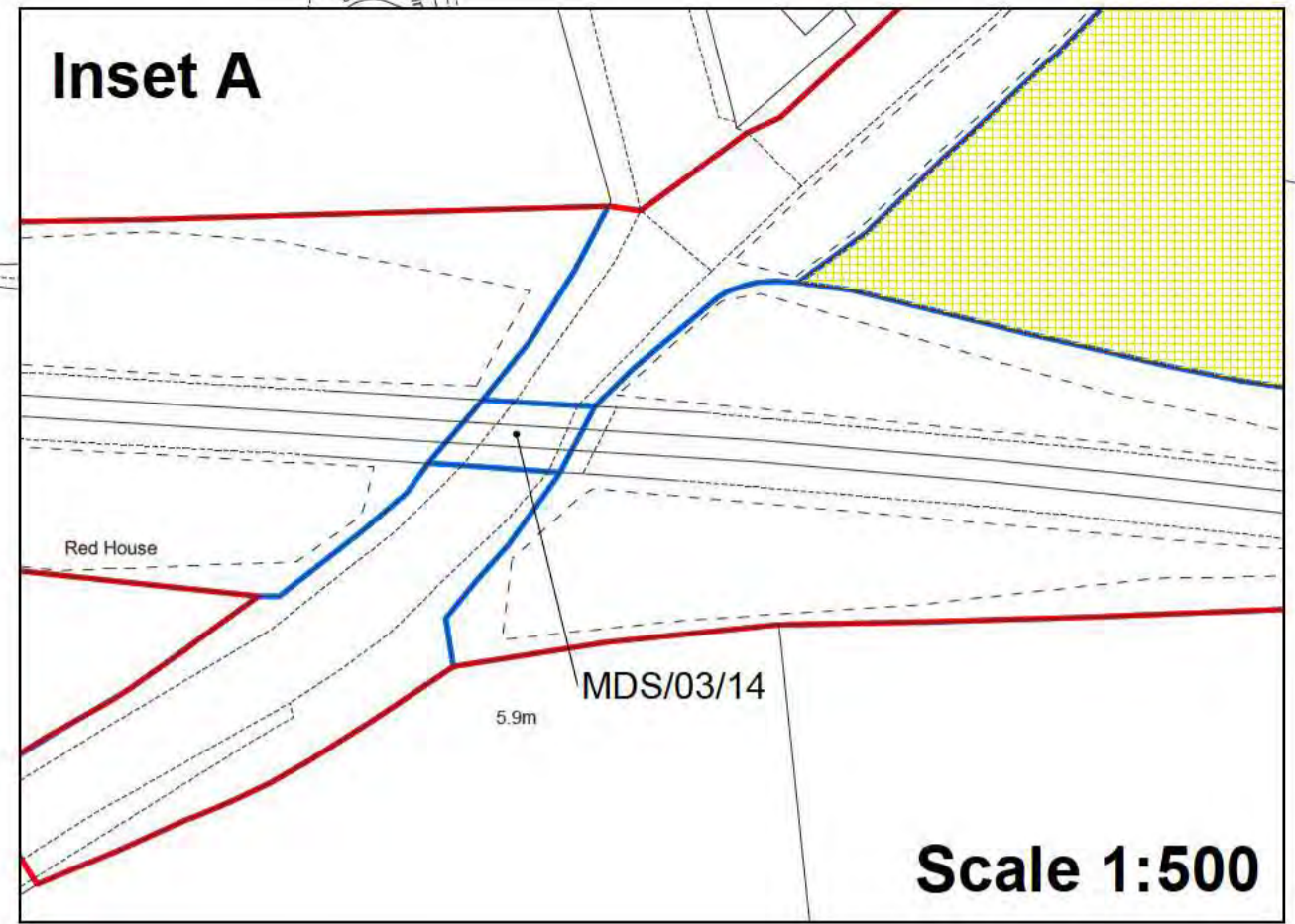
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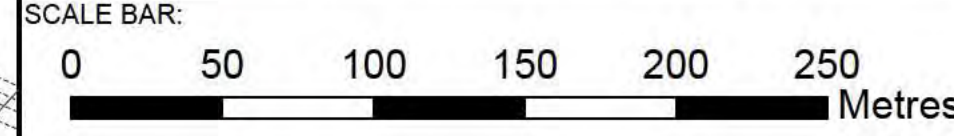


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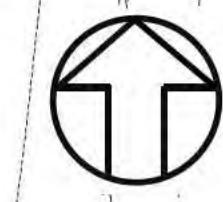
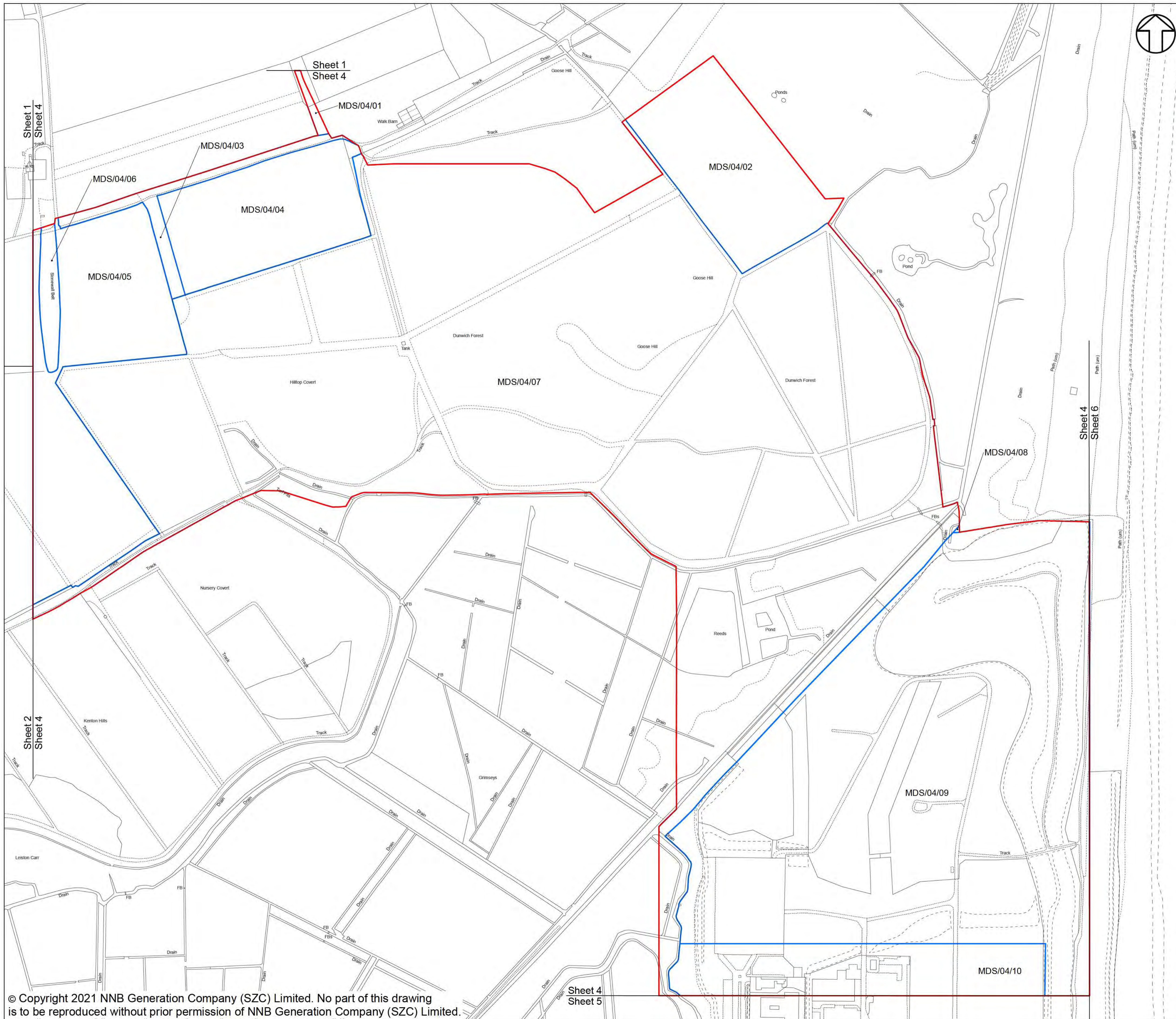
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 [Blue Line] PLOT BOUNDARIES

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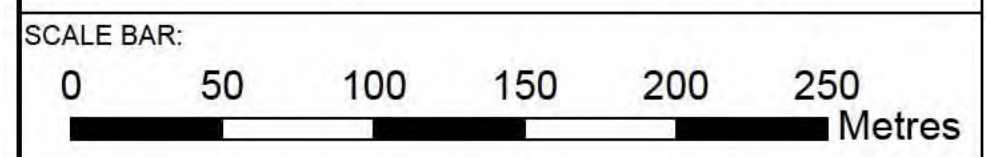
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 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION SHEET 4 OF 28

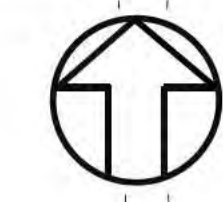
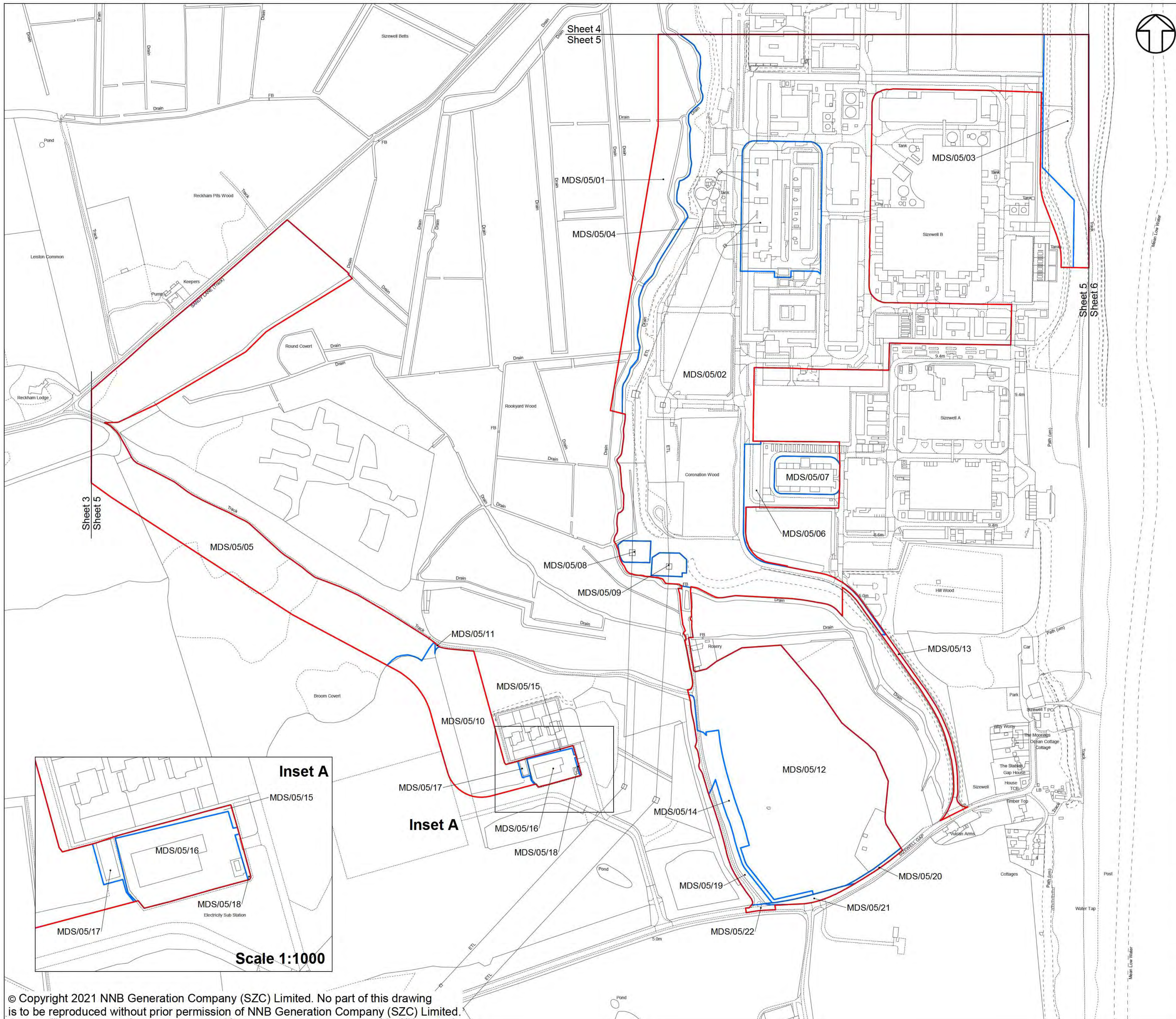
**DRAWING NO:** SZC/LOU/4 **REVISION:** 01

**DATE:** MAY 2021 **DRAWN:** I.M. **SCALE:** 1:2,500 @A1



Sheet 4  
 Sheet 5





**NOTES:**  
 PLOT BOUNDARIES (AS OTHERWISE SHOWN OUTLINED IN BLUE) ARE SHOWN BY A RED LINE WHERE THEY COINCIDE WITH THE BOUNDARY OF THE LAND OVER WHICH THERE IS POTENTIAL OVER-RIDING OR EXTINGUISHMENT OF RIGHTS.

**KEY:**  
 [Red Line] ORDER LIMITS  
 [Blue Line] PLOT BOUNDARIES

REV	DATE	DRAWN	CHECKED	REASONS FOR REVISION / COMMENTS	APPROVED
01	MAY 2021	I.M.	KC	DDO APPLICATION - DEADLINE 2 SUBMISSION DATED 2 JUNE 2021	SZC Co

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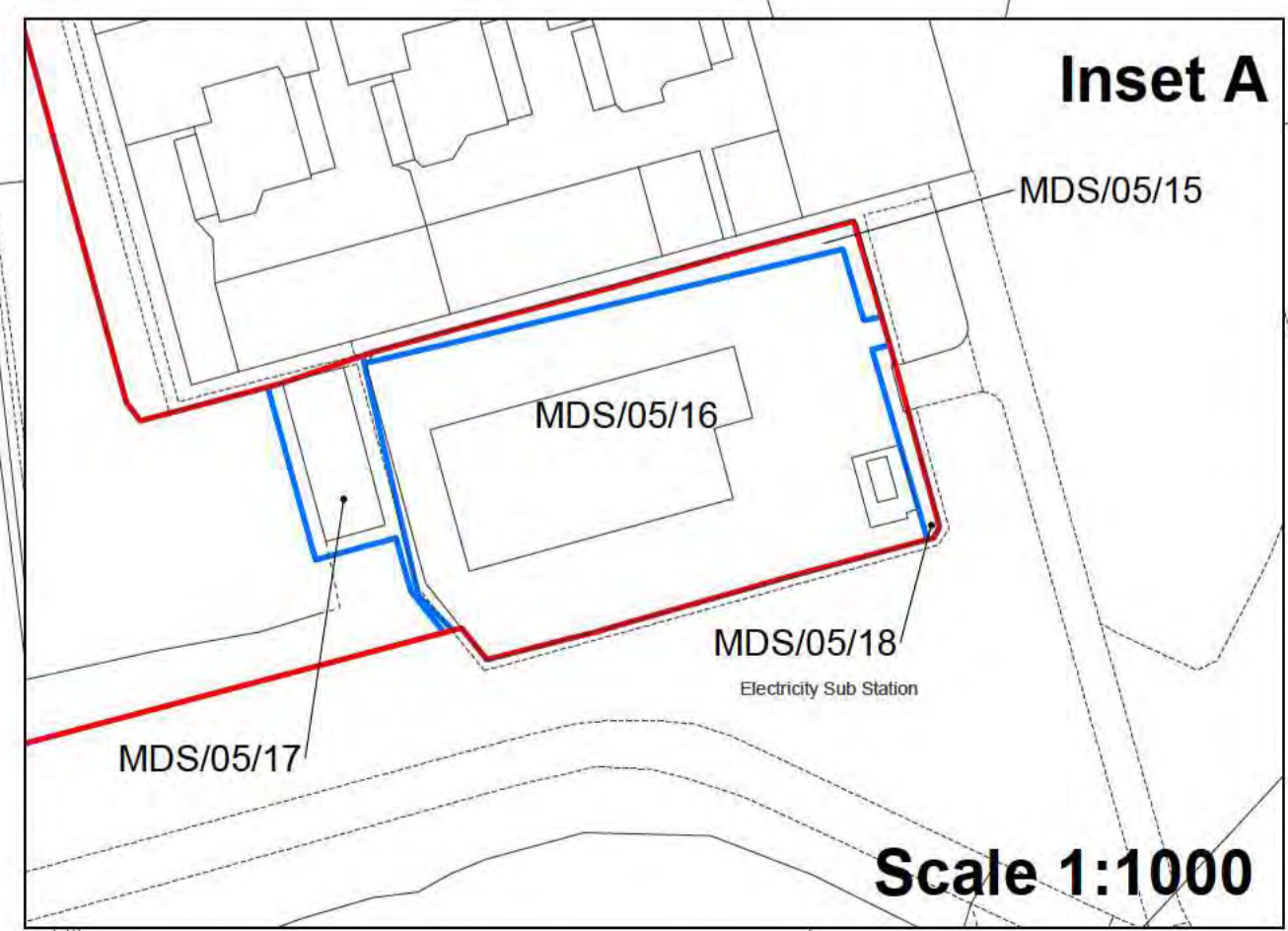
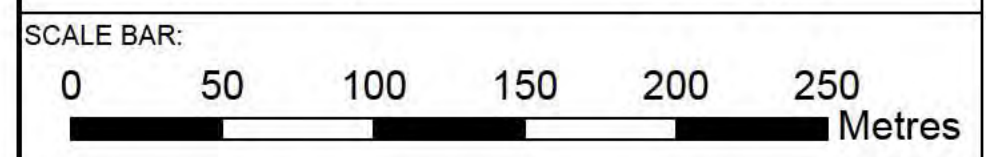
**PROJECT:**  
 SIZEWELL C

**DOCUMENT:**  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION

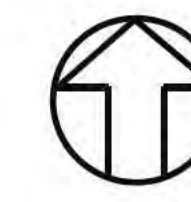
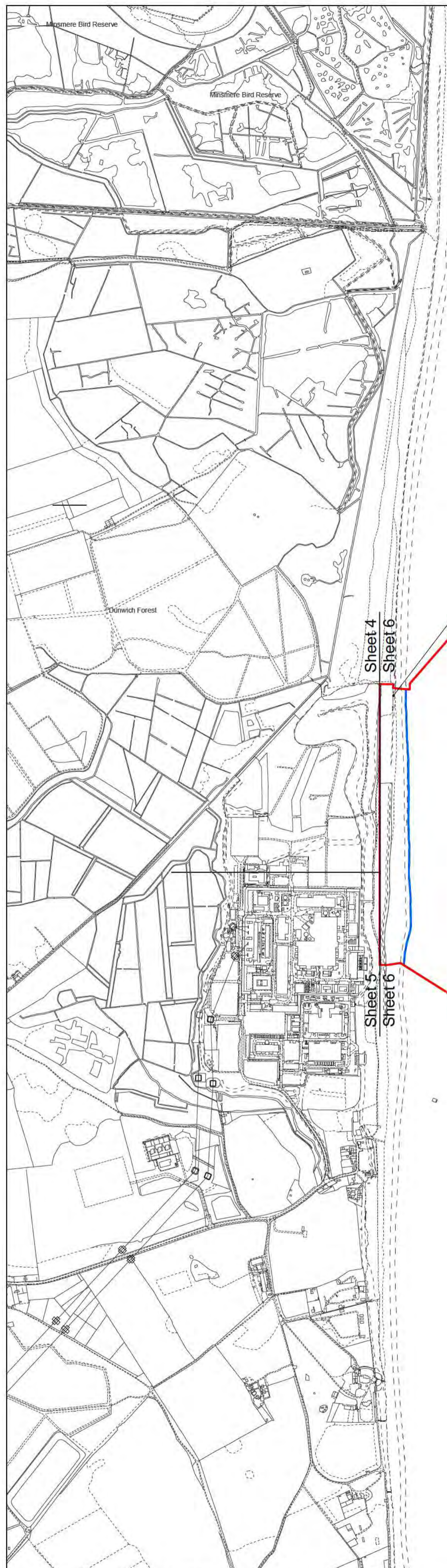
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 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION SHEET 5 OF 28

**DRAWING NO:** SZC/LOUO/5 **REVISION:** 01

**DATE:** MAY 2021 **DRAWN:** I.M. **SCALE:** 1:2,500 @A1







**NOTES:**  
 PLOT BOUNDARIES (AS OTHERWISE SHOWN OUTLINED IN BLUE) ARE SHOWN BY A RED LINE WHERE THEY COINCIDE WITH THE BOUNDARY OF THE LAND OVER WHICH THERE IS POTENTIAL OVER-RIDING OR EXTINGUISHMENT OF RIGHTS.

**KEY:**

- ORDER LIMITS
- PLOT BOUNDARIES

REVISION	DATE	DRAWN	CHECKED	REASONS FOR REVISION / COMMENTS	APPROVED
01	MAY 2021	IM	KC	DDO APPLICATION - DEADLINE 2 SUBMISSION (DATED 2 JUNE 2021)	SZC Co

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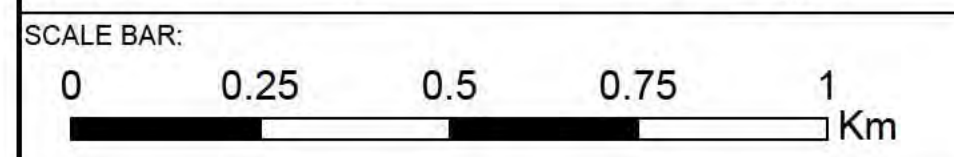
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 SIZEWELL C

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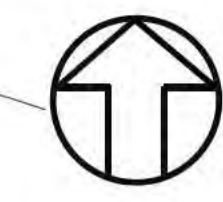
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 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION SHEET 6 OF 28

**DRAWING NO:** SZC/LOUO/6 **REVISION:** 01

**DATE:** MAY 2021 **DRAWN:** I.M. **SCALE:** 1:10,000 @A1







**NOTES:**  
 PLOT BOUNDARIES (AS OTHERWISE SHOWN OUTLINED IN BLUE) ARE SHOWN BY A RED LINE WHERE THEY COINCIDE WITH THE BOUNDARY OF THE LAND OVER WHICH THERE IS POTENTIAL OVER-RIDING OR EXTINGUISHMENT OF RIGHTS.

**KEY:**  
 [Red Line] ORDER LIMITS  
 [Blue Line] PLOT BOUNDARIES

DT	MAY 2021	IM	KC	DDO APPLICATION - DEADLINE: 2 SUBMISSION (DATED 2 JUNE 2021)	SZC Co
REVISION	DATE	DRAWN	CHECKED	REASONS FOR REVISION / COMMENTS	APPROVED

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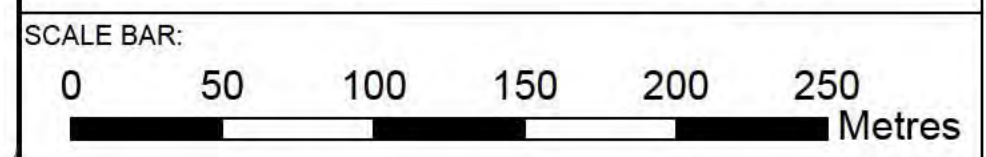
**PROJECT:**  
 SIZEWELL C

**DOCUMENT:**  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION

**DRAWING TITLE:**  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION SHEET 7 OF 28

**DRAWING NO:** SZC/LOU/7 **REVISION:** 01

**DATE:** MAY 2021 **DRAWN:** I.M. **SCALE:** 1:2,500 @A1



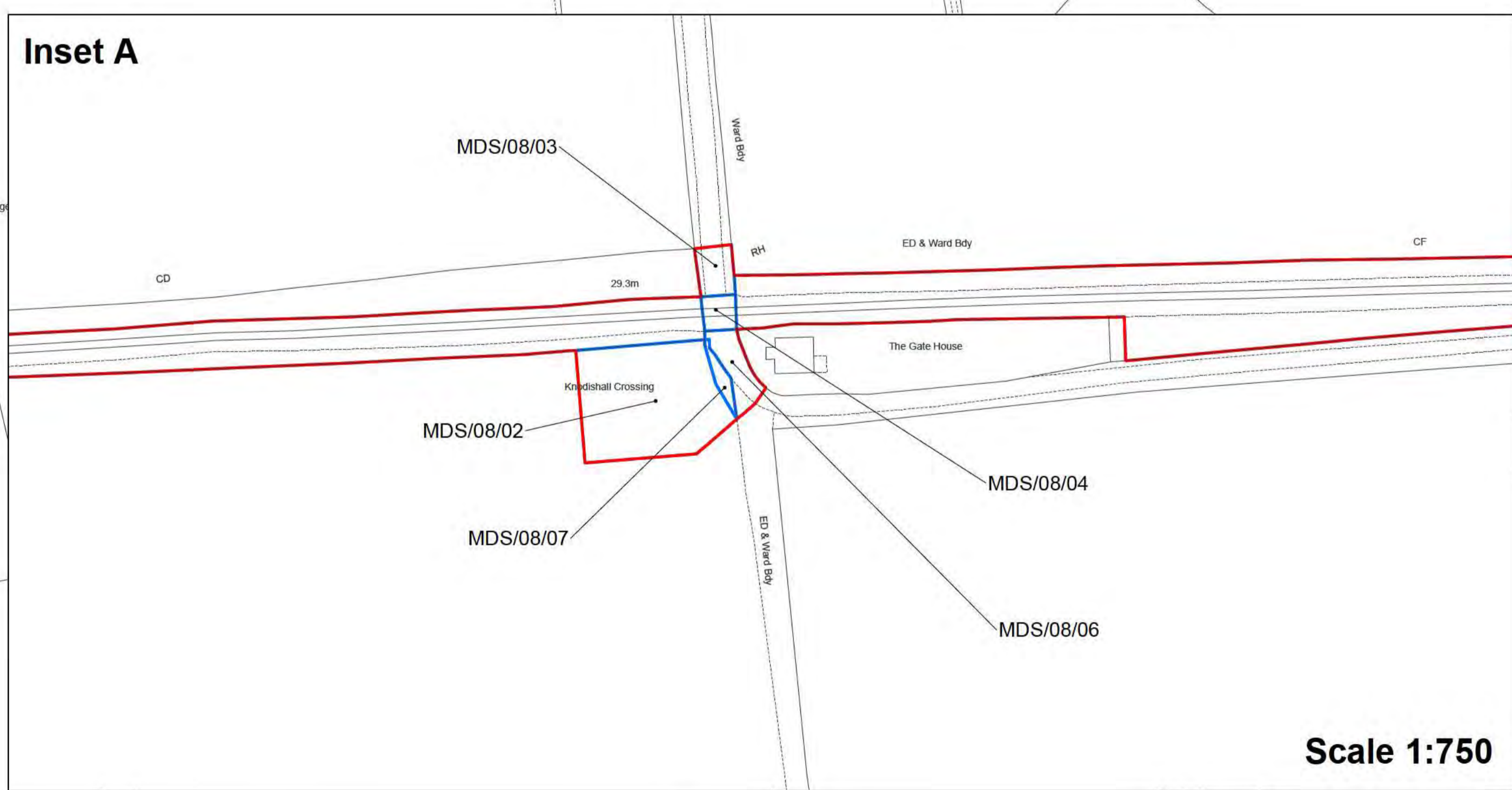
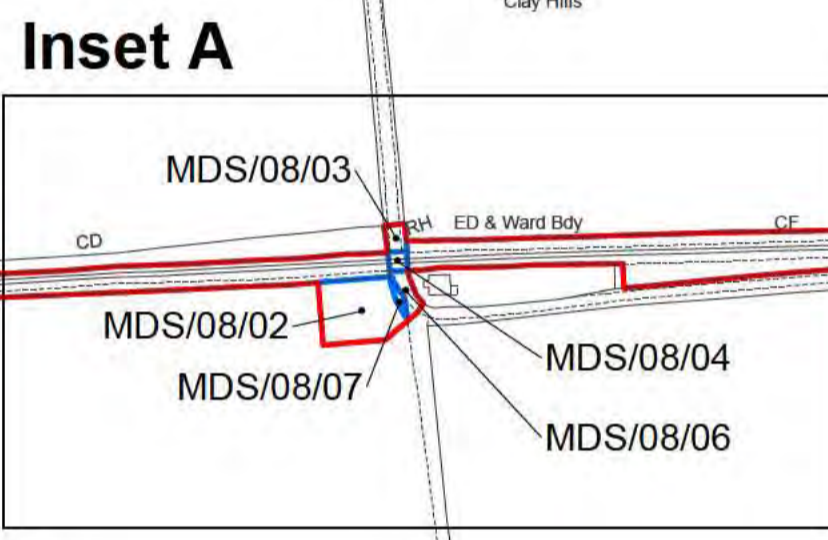
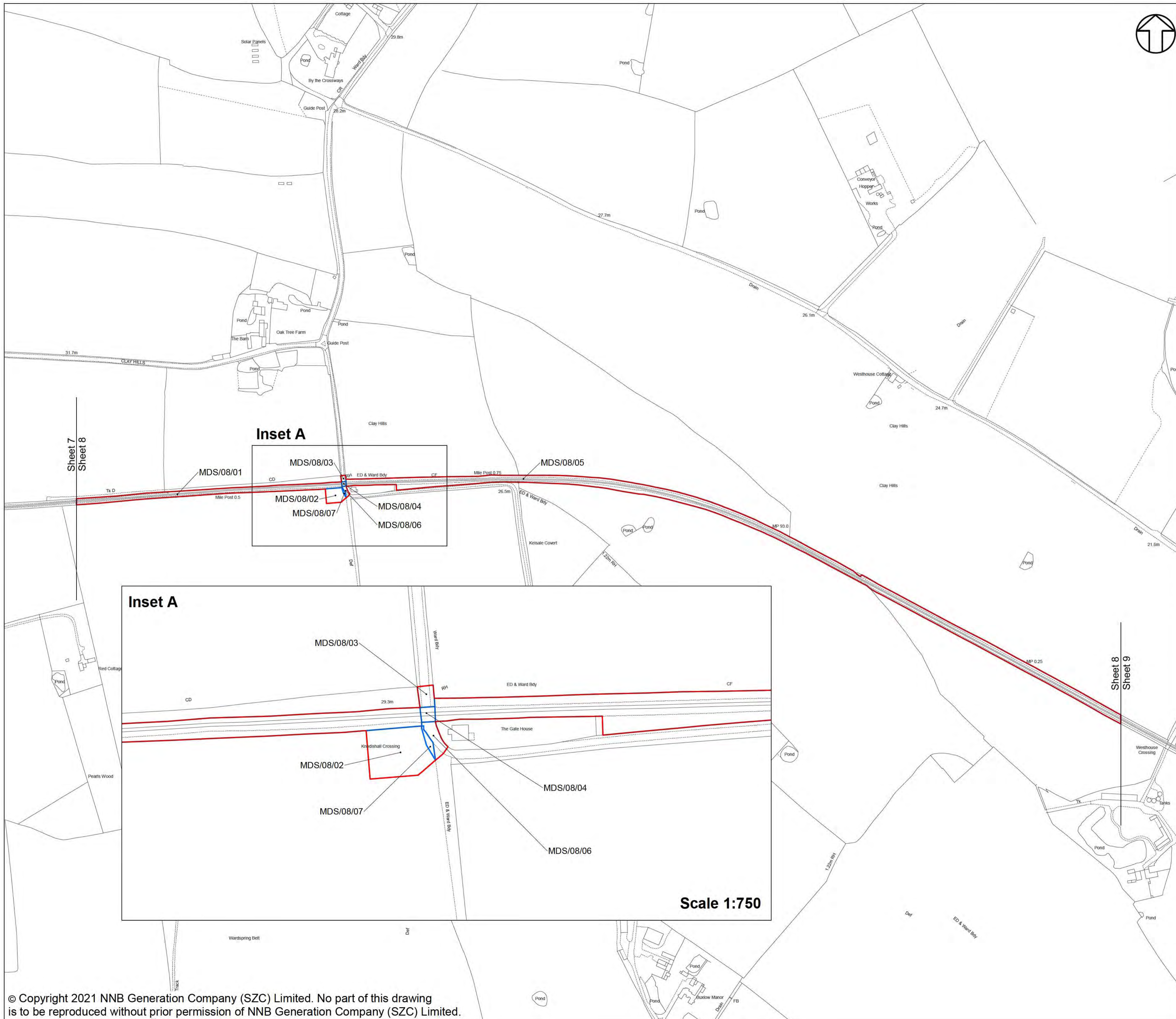




**NOTES:**  
 PLOT BOUNDARIES (AS OTHERWISE SHOWN OUTLINED IN BLUE)  
 ARE SHOWN BY A RED LINE WHERE THEY COINCIDE WITH THE  
 BOUNDARY OF THE LAND OVER WHICH THERE IS POTENTIAL  
 OVER-RIDING OR EXTINGUISHMENT OF RIGHTS.

**KEY:**

- ORDER LIMITS
- PLOT BOUNDARIES



**Scale 1:750**

DN	DATE	IM	KC	DCO APPLICATION - DEADLINE 2 SUBMISSION (DATED 2 JUNE 2021)	SZC Co
REVISION	DATE	DRAWN	CHECKED	REASONS FOR REVISION / COMMENTS	APPROVED

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**PROJECT:**  
 SIZEWELL C

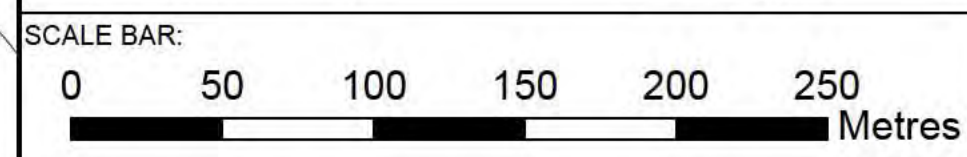
**DOCUMENT:**  
 LAND WITHIN THE ORDER LIMITS  
 OWNED OR UNDER OPTION

**DRAWING TITLE:**  
 LAND WITHIN THE ORDER LIMITS  
 OWNED OR UNDER OPTION  
 SHEET 8 OF 28

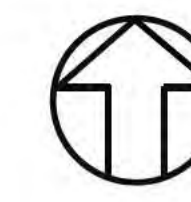
**DRAWING NO:**  
 SZC/LOUO/8

**REVISION:**  
 01

**DATE:** MAY 2021  
**DRAWN:** I.M.  
**SCALE:** 1:2,500 @A1



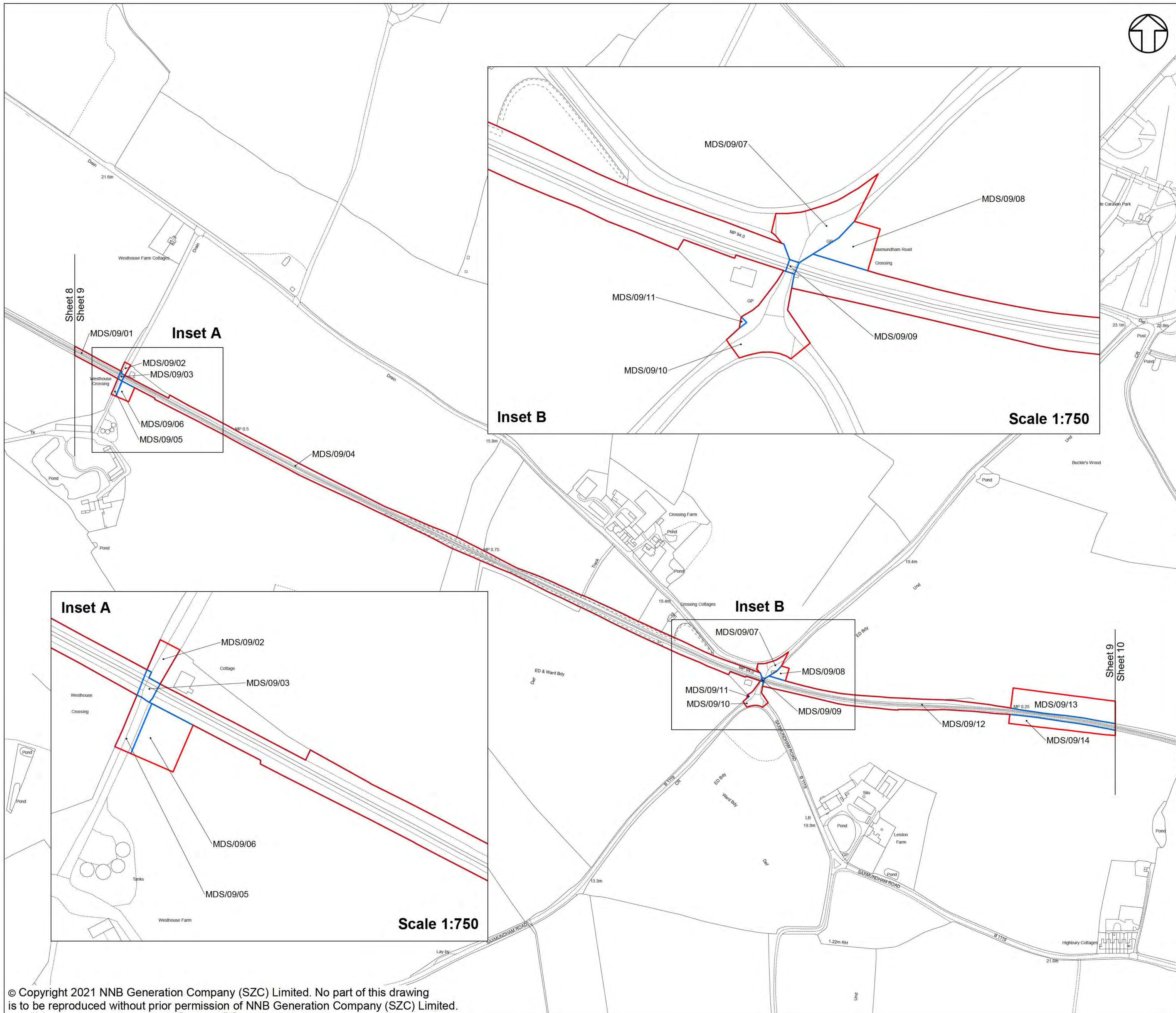




**NOTES:**  
 PLOT BOUNDARIES (AS OTHERWISE SHOWN OUTLINED IN BLUE) ARE SHOWN BY A RED LINE WHERE THEY COINCIDE WITH THE BOUNDARY OF THE LAND OVER WHICH THERE IS POTENTIAL OVER-RIDING OR EXTINGUISHMENT OF RIGHTS.

**KEY:**

- ORDER LIMITS
- PLOT BOUNDARIES



REV	DATE	DRAWN	CHECKED	REASONS FOR REVISION / COMMENTS	APPROVED
01	MAY 2021	I.M.	K.C.	DDO APPLICATION - DEADLINE 2 SUBMISSION DATED 2 JUNE 2021	SZC Co

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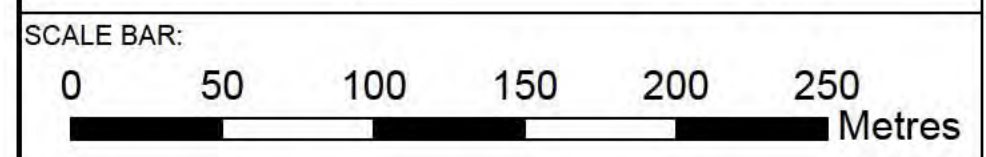
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**DOCUMENT:**  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION

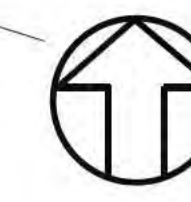
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 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION SHEET 9 OF 28

**DRAWING NO:** SZC/LOU/9 **REVISION:** 01

**DATE:** MAY 2021 **DRAWN:** I.M. **SCALE:** 1:2,500 @A1



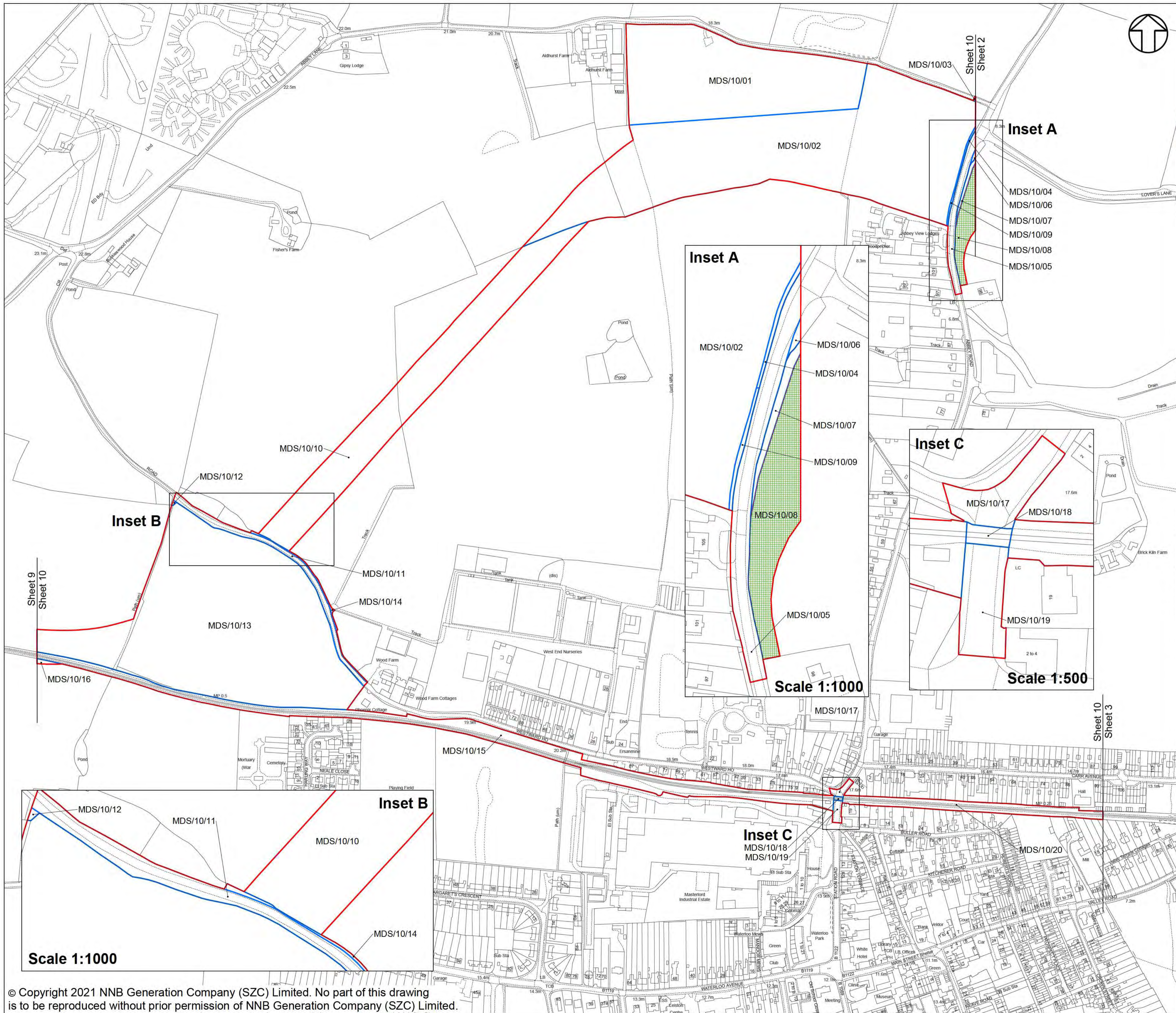




**NOTES:**  
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**KEY:**

- ORDER LIMITS
- PLOT BOUNDARIES
- FREEHOLD OWNED BY SZC CO.



**Inset A**

MDS/10/04  
 MDS/10/06  
 MDS/10/07  
 MDS/10/08  
 MDS/10/05

**Inset A**

MDS/10/02  
 MDS/10/06  
 MDS/10/04  
 MDS/10/07  
 MDS/10/09  
 MDS/10/08  
 MDS/10/05

**Scale 1:1000**

**Inset C**

MDS/10/17  
 MDS/10/18  
 MDS/10/19

**Scale 1:500**

**Inset B**

MDS/10/10  
 MDS/10/12  
 MDS/10/11  
 MDS/10/14

**Scale 1:1000**

**Inset B**

MDS/10/12  
 MDS/10/11  
 MDS/10/10  
 MDS/10/14

**Inset C**

MDS/10/18  
 MDS/10/19

REV	DATE	DRAWN	CHECKED	REVISIONS FOR REVISION / COMMENTS	APPROVED
01	MAY 2021	I.M.	KC	DDO APPLICATION - DEADLINE: 2 SUBMISSION DATED 2 JUNE 2021	SZC Co

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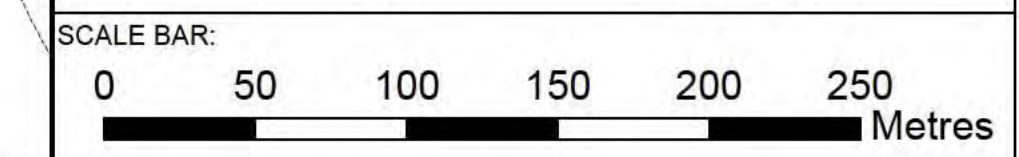
**PROJECT:**  
 SIZEWELL C

**DOCUMENT:**  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION

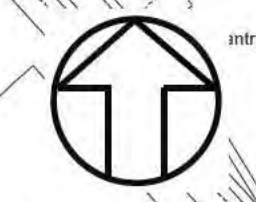
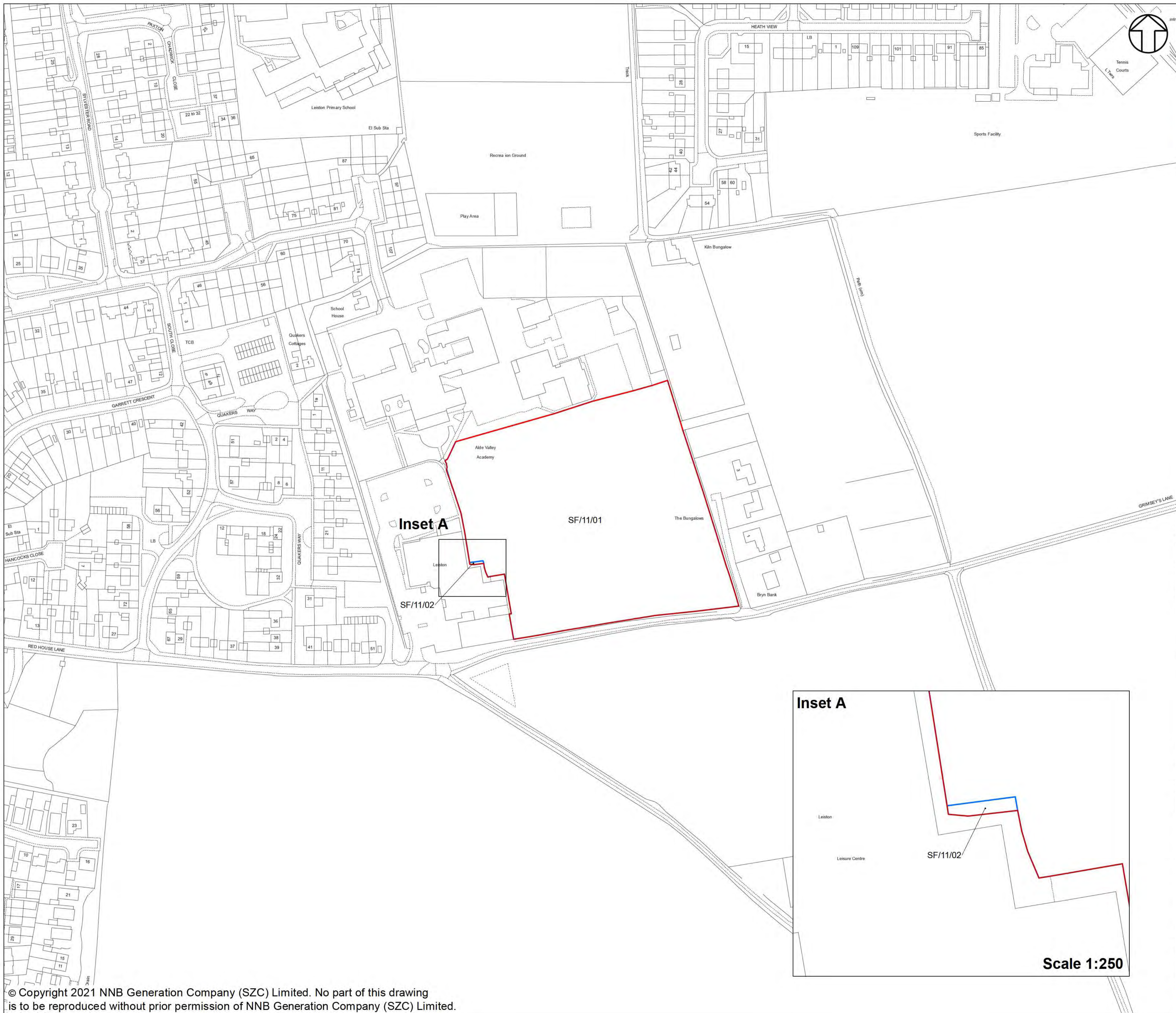
**DRAWING TITLE:**  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION SHEET 10 OF 28

**DRAWING NO:** SZC/LOU/10 **REVISION:** 01

**DATE:** MAY 2021 **DRAWN:** I.M. **SCALE:** 1:2,500 @A1







**NOTES:**  
 PLOT BOUNDARIES (AS OTHERWISE SHOWN OUTLINED IN BLUE) ARE SHOWN BY A RED LINE WHERE THEY COINCIDE WITH THE BOUNDARY OF THE LAND OVER WHICH THERE IS POTENTIAL OVER-RIDING OR EXTINGUISHMENT OF RIGHTS.

**KEY:**  
 [Red Line] ORDER LIMITS  
 [Blue Line] PLOT BOUNDARIES

REVISION	DATE	DRAWN	CHECKED	REASONS FOR REVISION/ COMMENTS	APPROVED
01	MAY 2021	IM	KC	DDO APPLICATION - DEADLINE 2 SUBMISSION (DATED 2 JUNE 2021)	SZC Co

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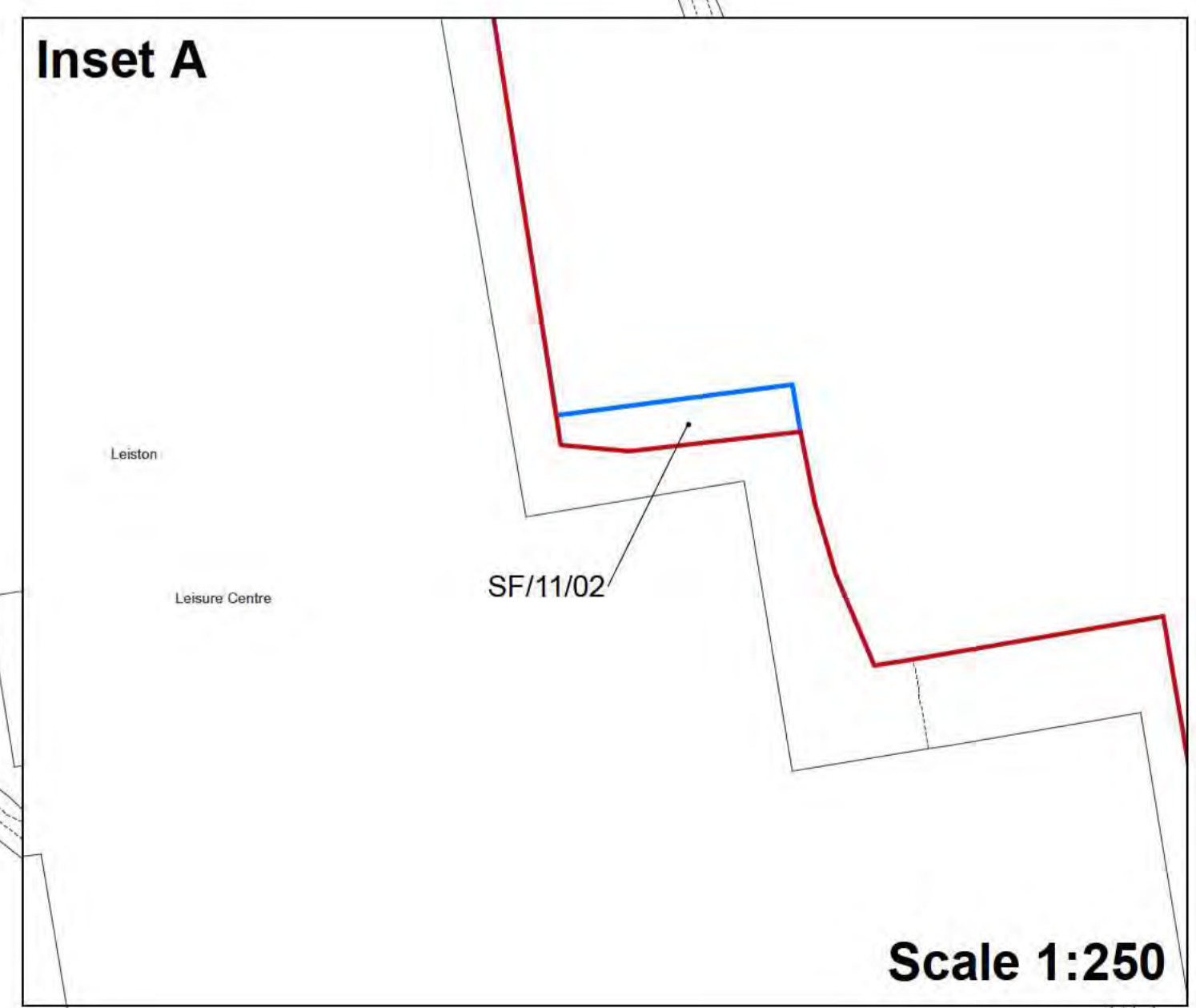
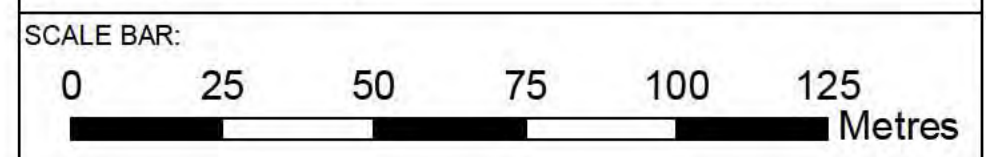
**PROJECT:**  
 SIZEWELL C

**DOCUMENT:**  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION

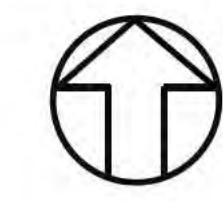
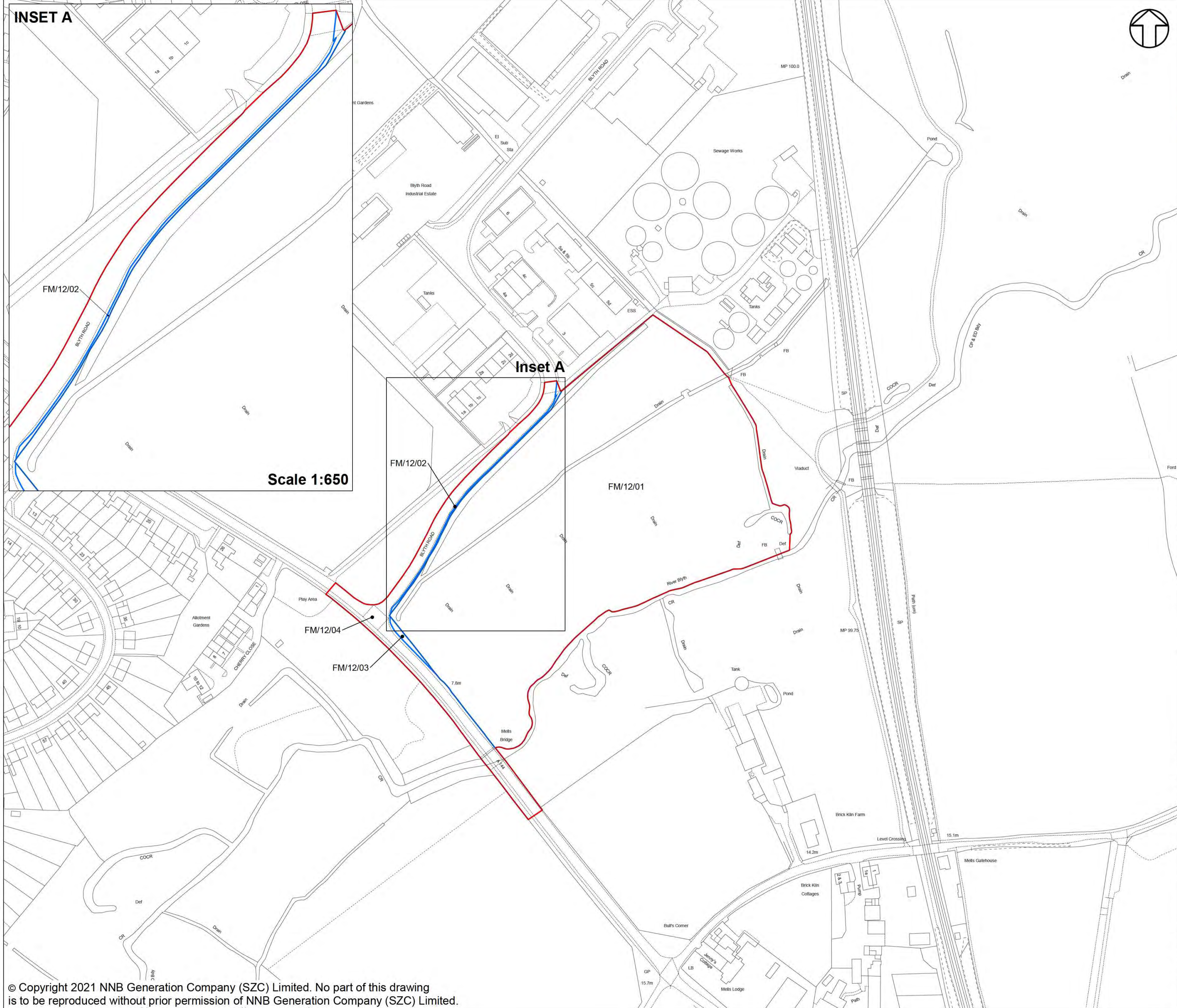
**DRAWING TITLE:**  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION SHEET 11 OF 28

**DRAWING NO:** SZC/LOUO/11 **REVISION:** 01

**DATE:** MAY 2021 **DRAWN:** I.M. **SCALE:** 1:1,250 @A1







**NOTES:**  
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**KEY:**  
 [Red Line] ORDER LIMITS  
 [Blue Line] PLOT BOUNDARIES

REVISION	DATE	DRAWN	CHECKED	REASONS FOR REVISION / COMMENTS	APPROVED
01	MAY 2021	I.M.	K.C.	DDO APPLICATION - DEADLINE: 2 JUNE 2021	SZC Co

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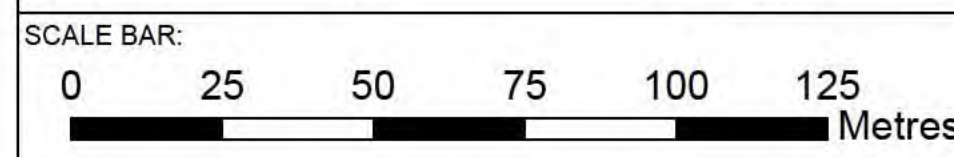
**PROJECT:**  
 SIZEWELL C

**DOCUMENT:**  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION

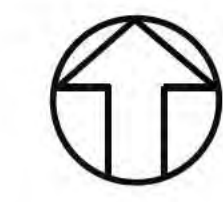
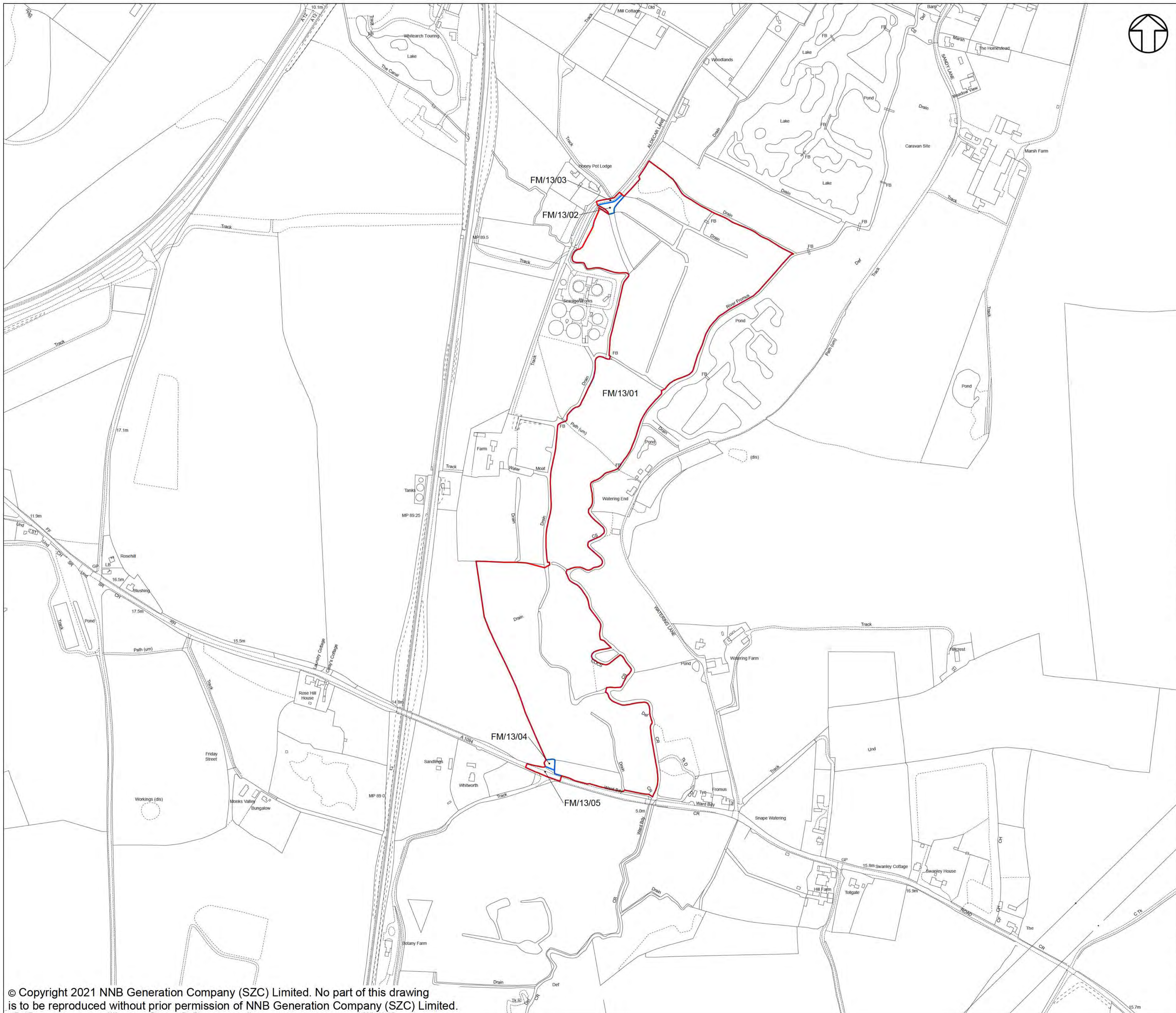
**DRAWING TITLE:**  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION SHEET 12 OF 28

**DRAWING NO:** SZC/LOUO/12 **REVISION:** 01

**DATE:** MAY 2021 **DRAWN:** I.M. **SCALE:** 1:1,250 @A1







**NOTES:**  
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**KEY:**  
 [Red outline] ORDER LIMITS  
 [Blue outline] PLOT BOUNDARIES

REVISION	DATE	DRAWN	CHECKED	REASONS FOR REVISION / COMMENTS	APPROVED
01	MAY 2021	IM	KC	DDO APPLICATION - DEADLINE: 2 JUNE 2021	SZC Co

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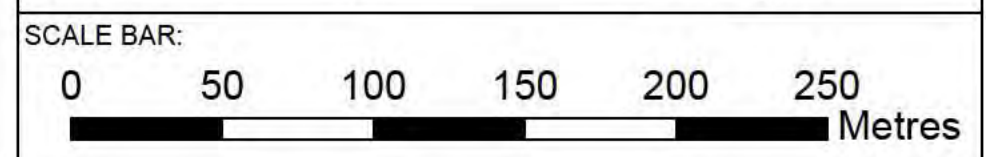
**PROJECT:**  
 SIZEWELL C

**DOCUMENT:**  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION

**DRAWING TITLE:**  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION SHEET 13 OF 28

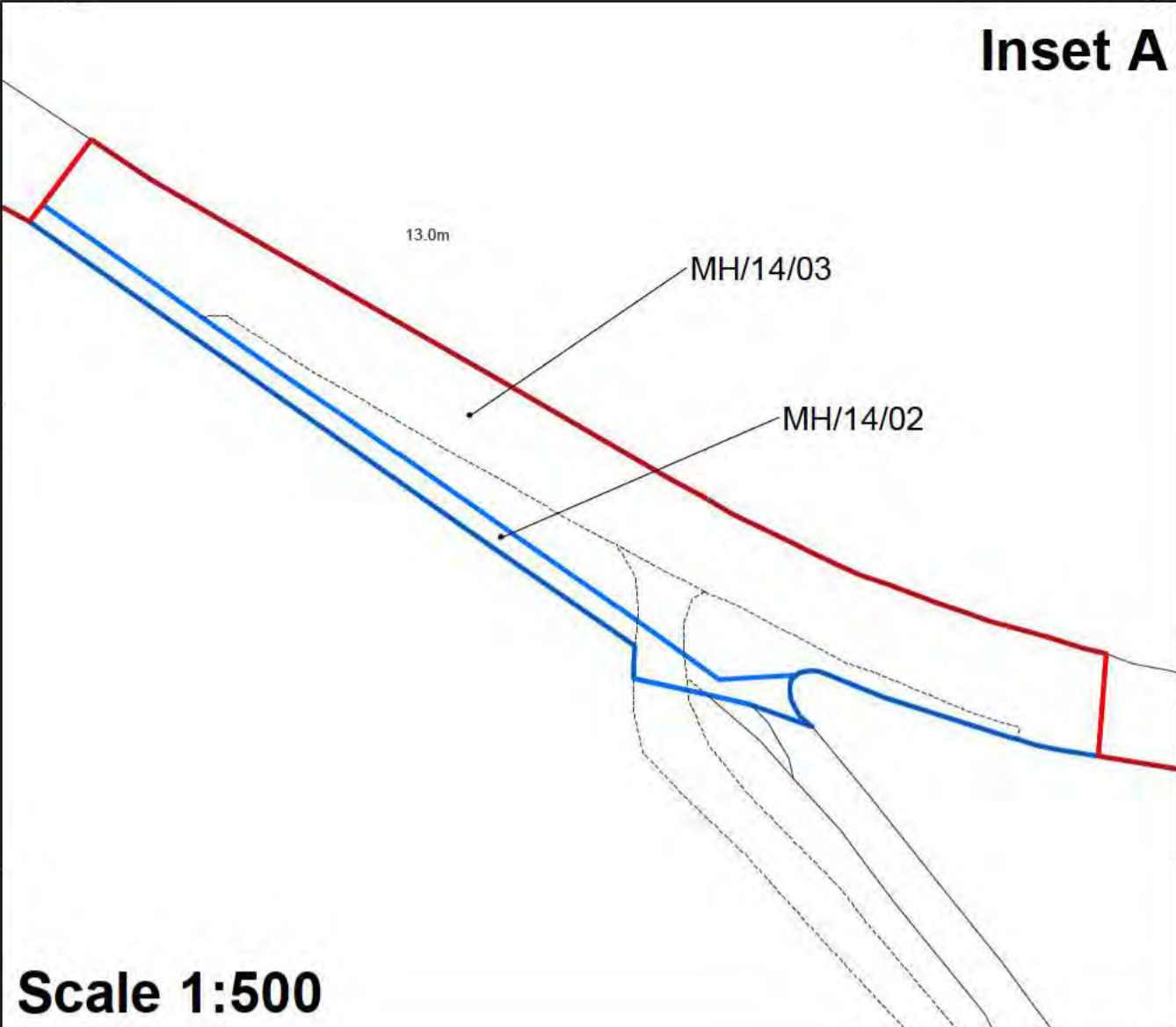
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**DATE:** MAY 2021 **DRAWN:** I.M. **SCALE:** 1:2,500 @A1

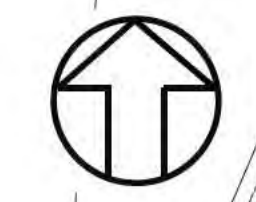




**Inset A**



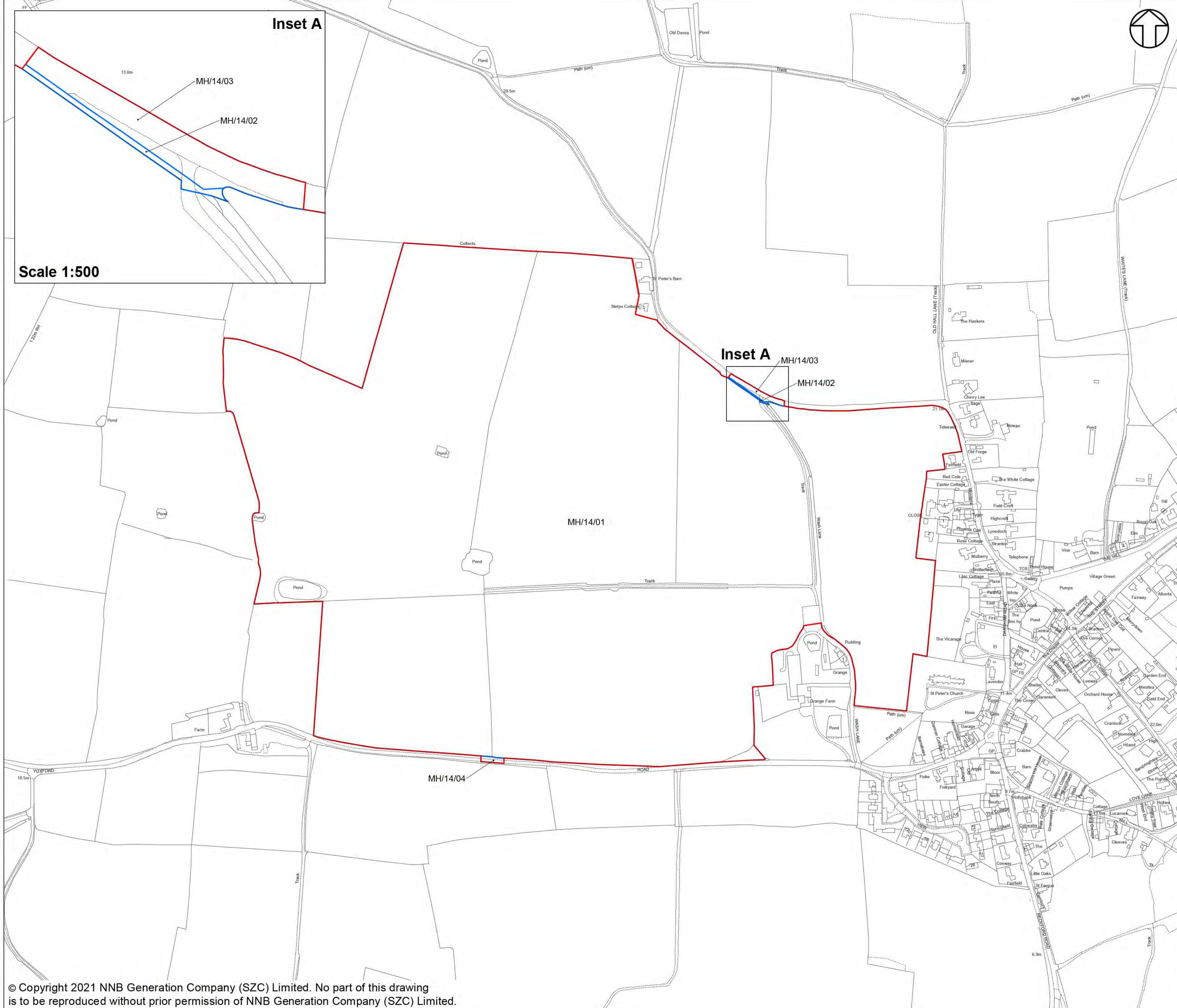
**Scale 1:500**



**NOTES:**  
 PLOT BOUNDARIES (AS OTHERWISE SHOWN OUTLINED IN BLUE) ARE SHOWN BY A RED LINE WHERE THEY COINCIDE WITH THE BOUNDARY OF THE LAND OVER WHICH THERE IS POTENTIAL OVER-RIDING OR EXTINGUISHMENT OF RIGHTS.

**KEY:**

- ORDER LIMITS
- PLOT BOUNDARIES



REV	DATE	DRAWN	CHECKED	REASONS FOR REVISION/ COMMENTS	APPROVED
01	MAY 2021	IM	KC	DDO APPLICATION - DEADLINE 2 SUBMISSION (DATED 2 JUNE 2021)	SZC Co

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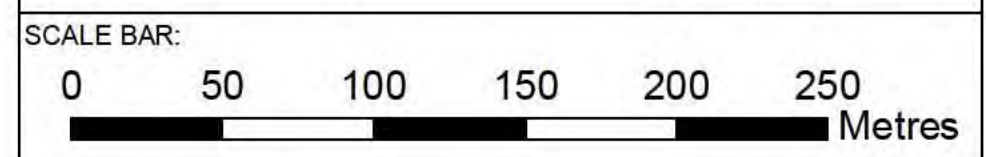
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 SIZEWELL C

**DOCUMENT:**  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION

**DRAWING TITLE:**  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION SHEET 14 OF 28

**DRAWING NO:** SZC/LOUO/14 **REVISION:** 01

**DATE:** MAY 2021 **DRAWN:** I.M. **SCALE:** 1:2,500 @A1



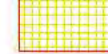


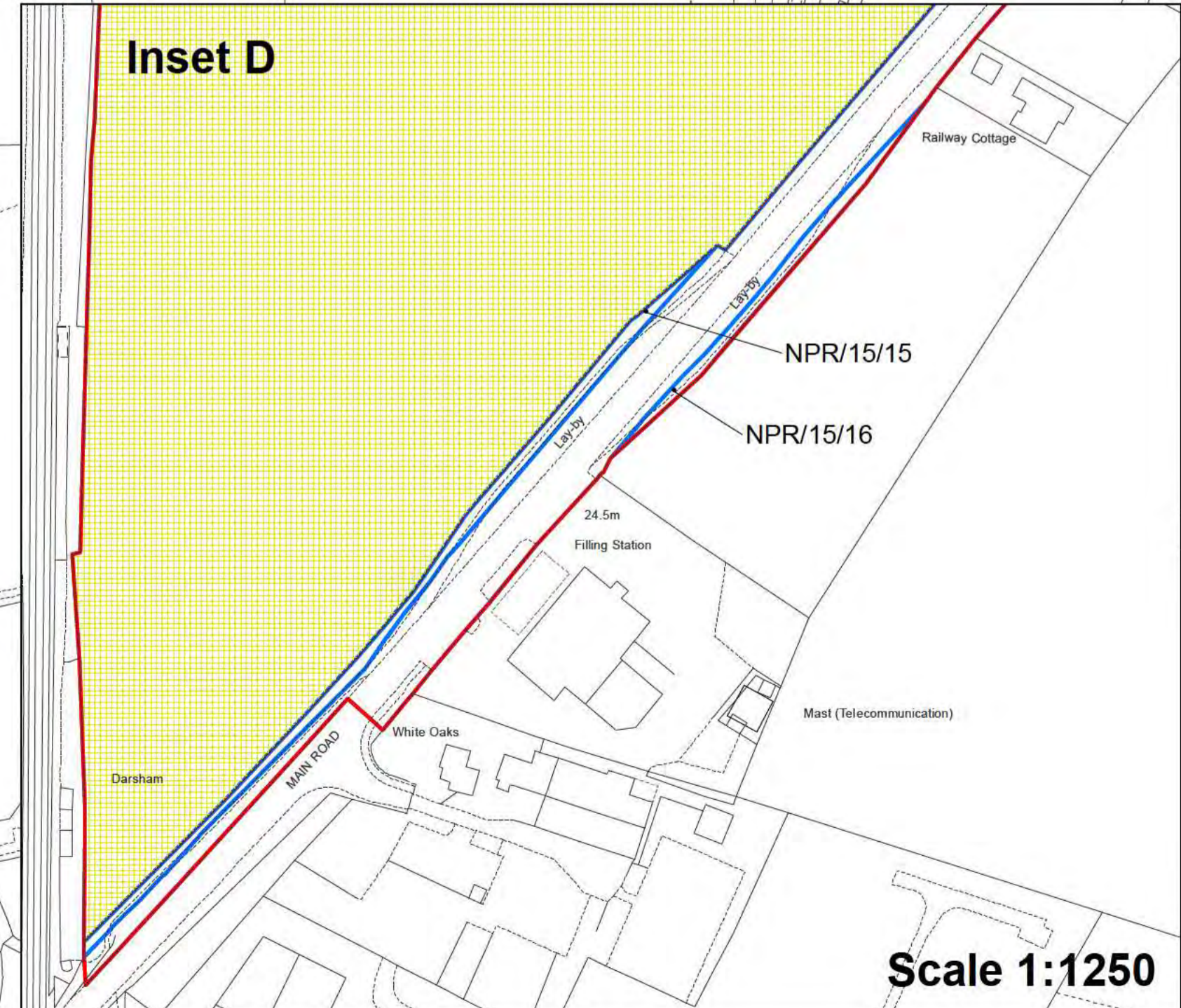
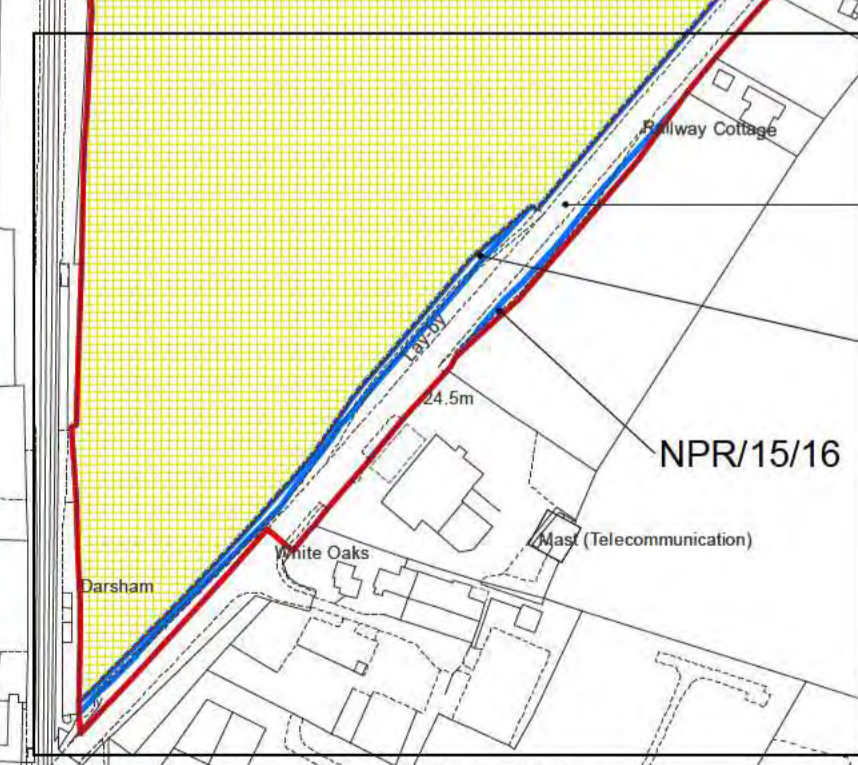
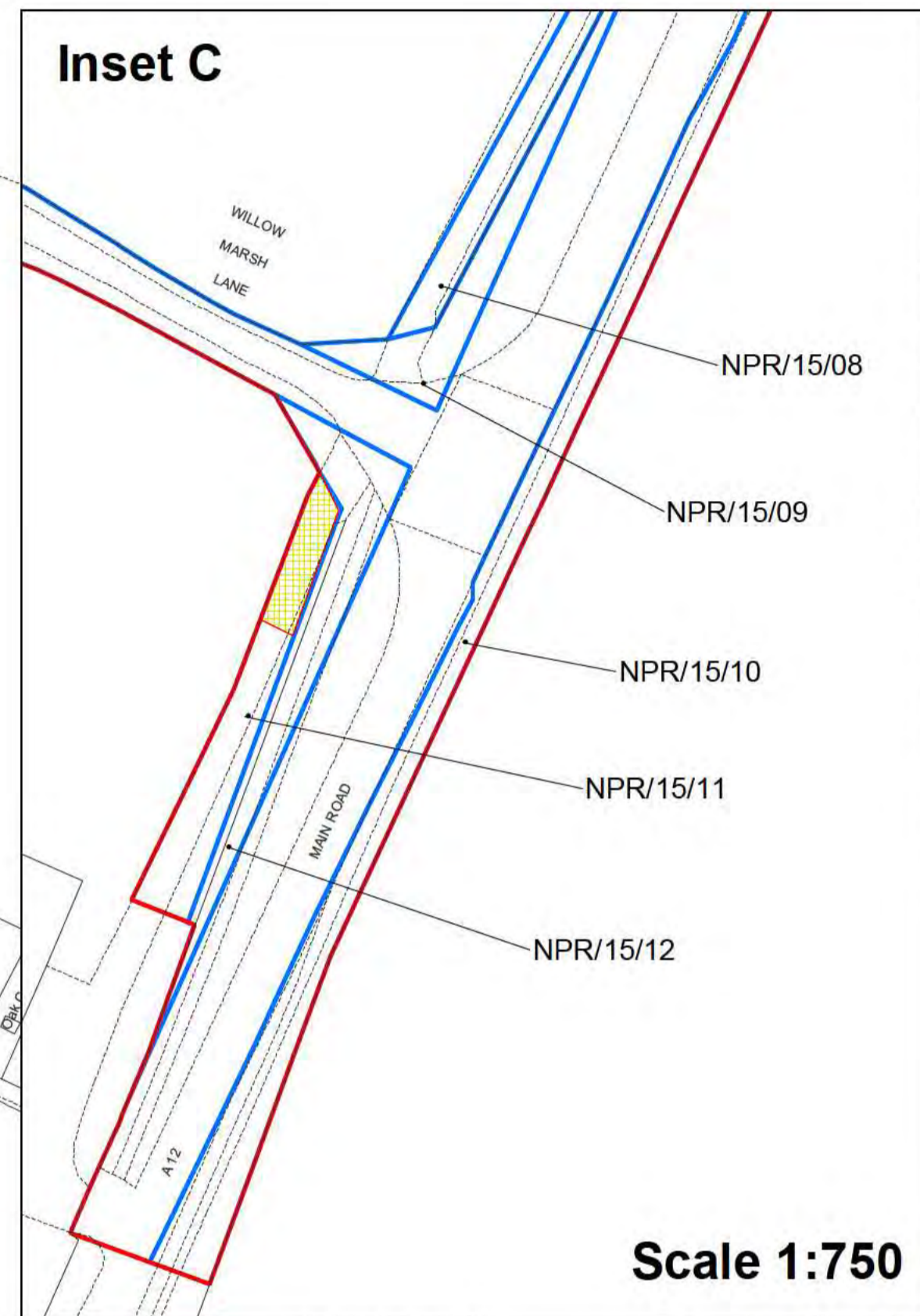
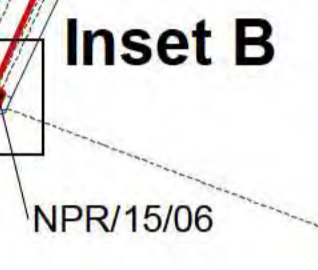
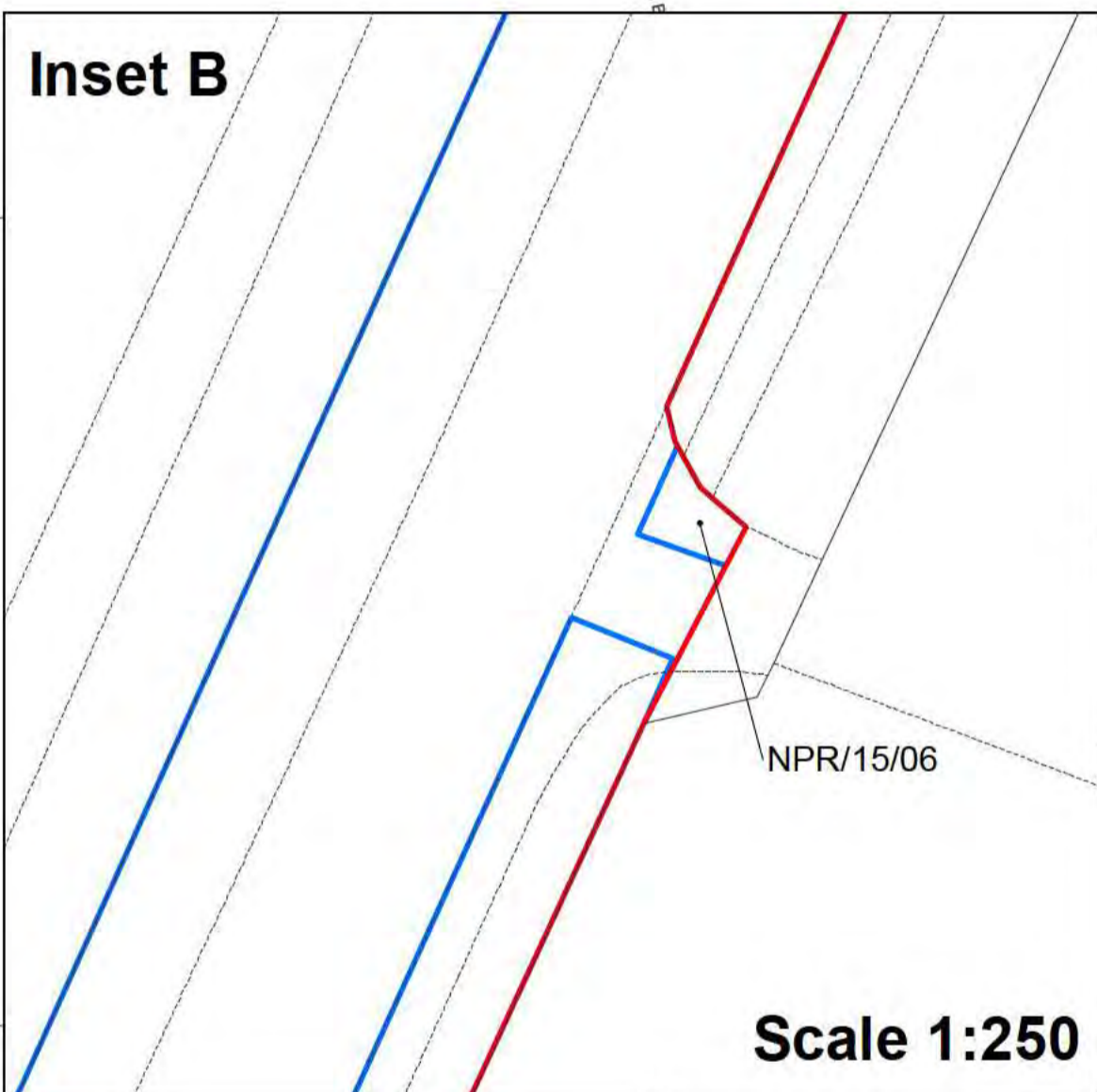
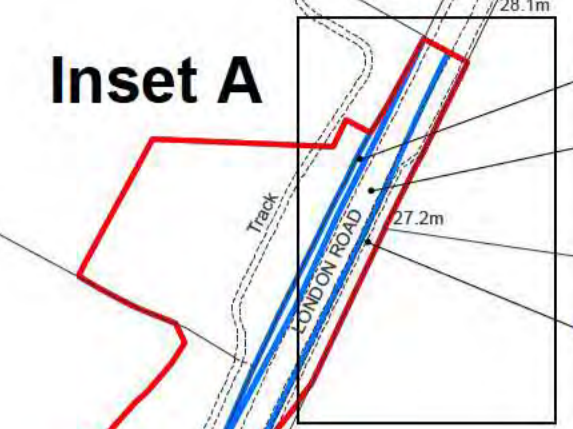
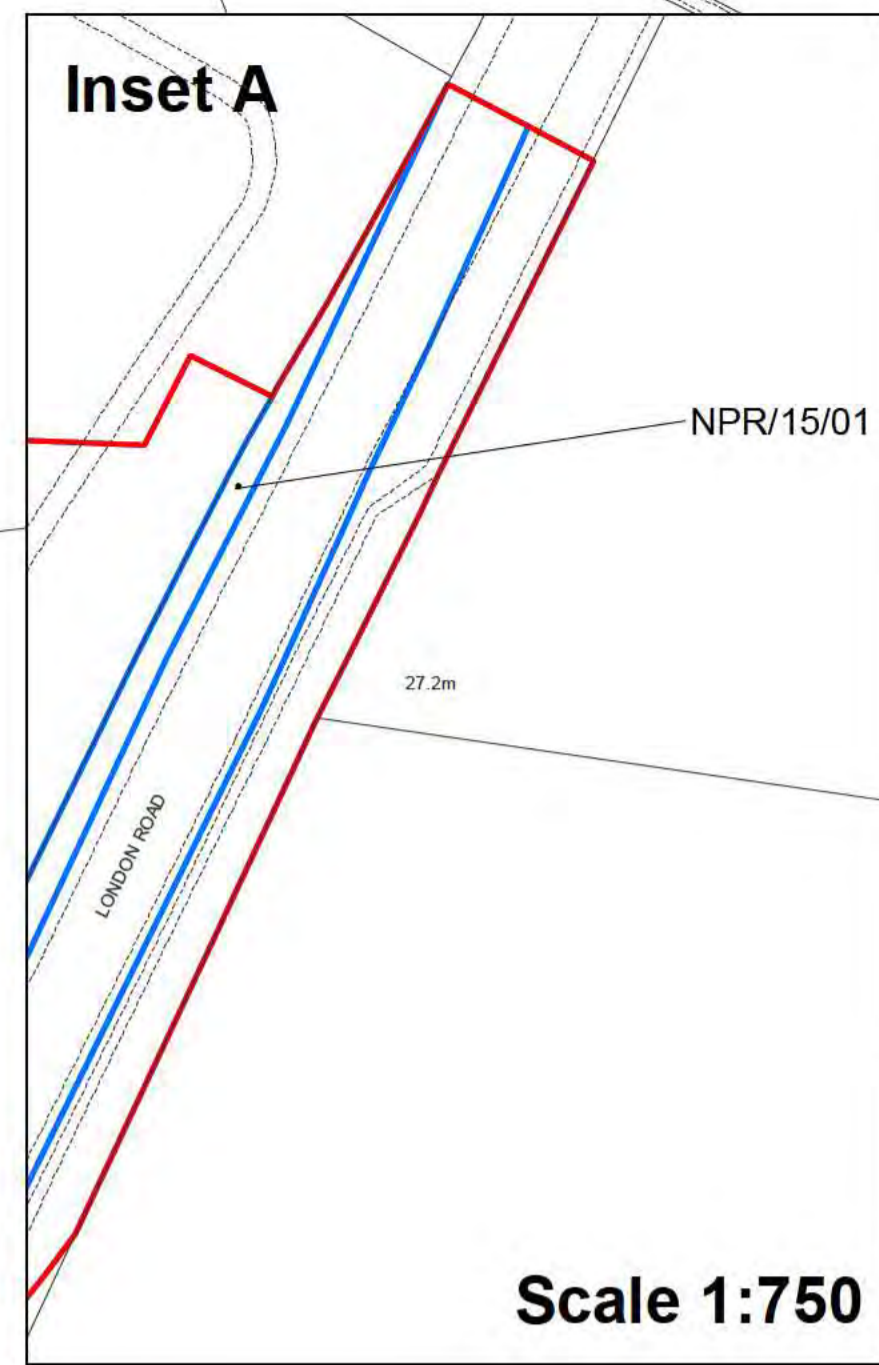




**NOTES:**  
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**KEY:**

-  ORDER LIMITS
-  PLOT BOUNDARIES
-  OPTION FOR LEASE BY SZC CO.



REVISION	DATE	DRAWN	CHECKED	REASONS FOR REVISION/ COMMENTS	APPROVED
01	MAY 2021	IM	KC	DDO APPLICATION - DEADLINE 2 SUBMISSION (DATED 2 JUNE 2021)	SZC Co

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PROJECT:  
 SIZEWELL C

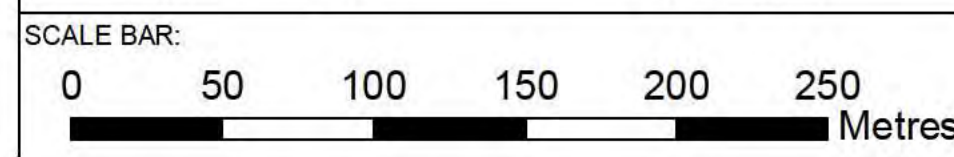
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 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION

DRAWING TITLE:  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION SHEET 15 OF 28

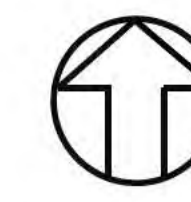
DRAWING NO:  
 SZC/LOU/15

REVISION:  
 01

DATE: MAY 2021  
 DRAWN: I.M.  
 SCALE: 1:2,500 @A1



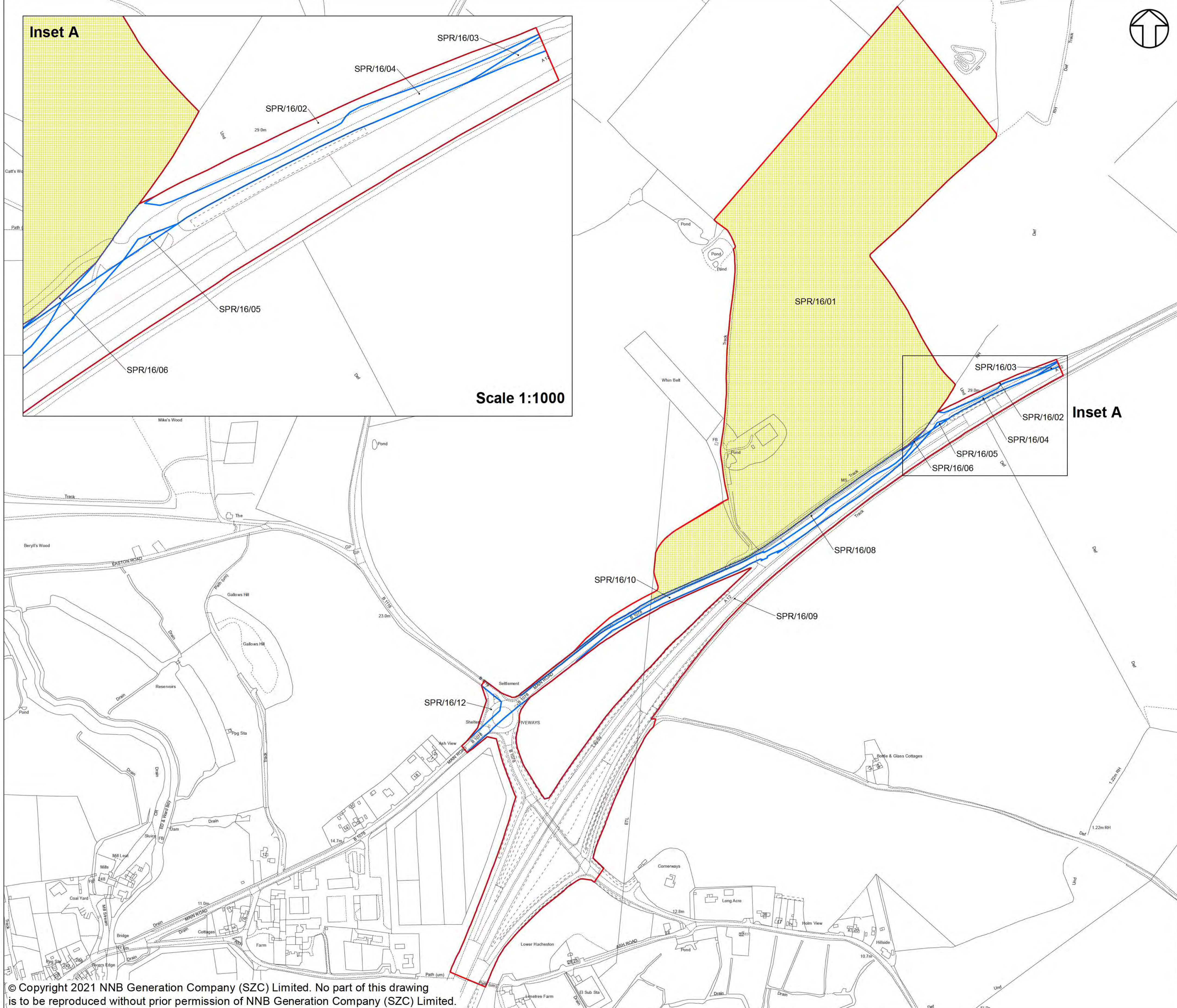
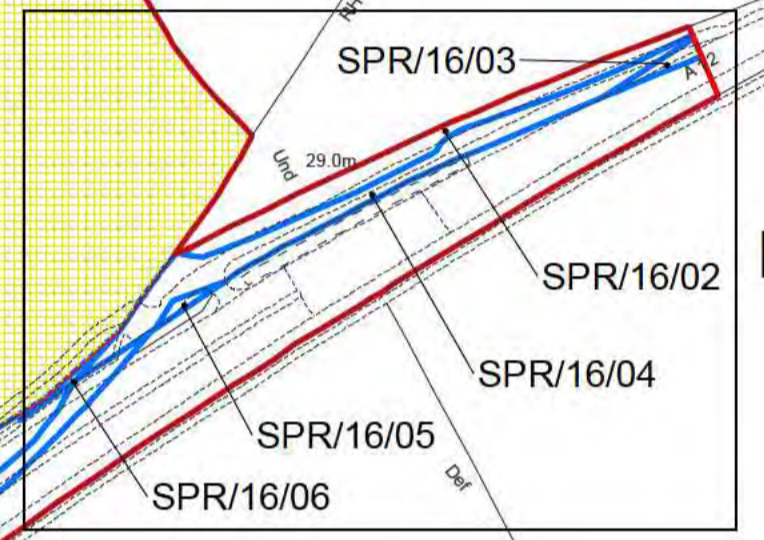




**NOTES:**  
 PLOT BOUNDARIES (AS OTHERWISE SHOWN OUTLINED IN BLUE) ARE SHOWN BY A RED LINE WHERE THEY COINCIDE WITH THE BOUNDARY OF THE LAND OVER WHICH THERE IS POTENTIAL OVER-RIDING OR EXTINGUISHMENT OF RIGHTS.

**KEY:**

- ORDER LIMITS
- PLOT BOUNDARIES
- OPTION FOR LEASE BY SZC CO.



REV	DATE	DRAWN	CHECKED	REVISIONS/COMMENTS	APPROVED
01	MAY 2021	IM	KC	DDO APPLICATION - DEADLINE 2 SUBMISSION (DATED 2 JUNE 2021)	SZC Co

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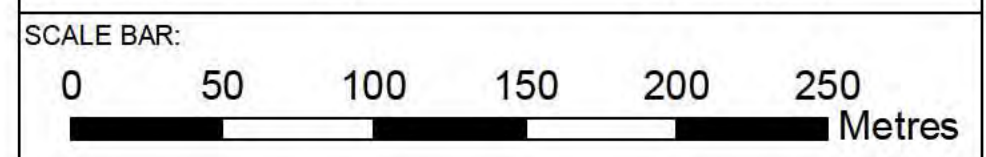
**PROJECT:**  
 SIZEWELL C

**DOCUMENT:**  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION

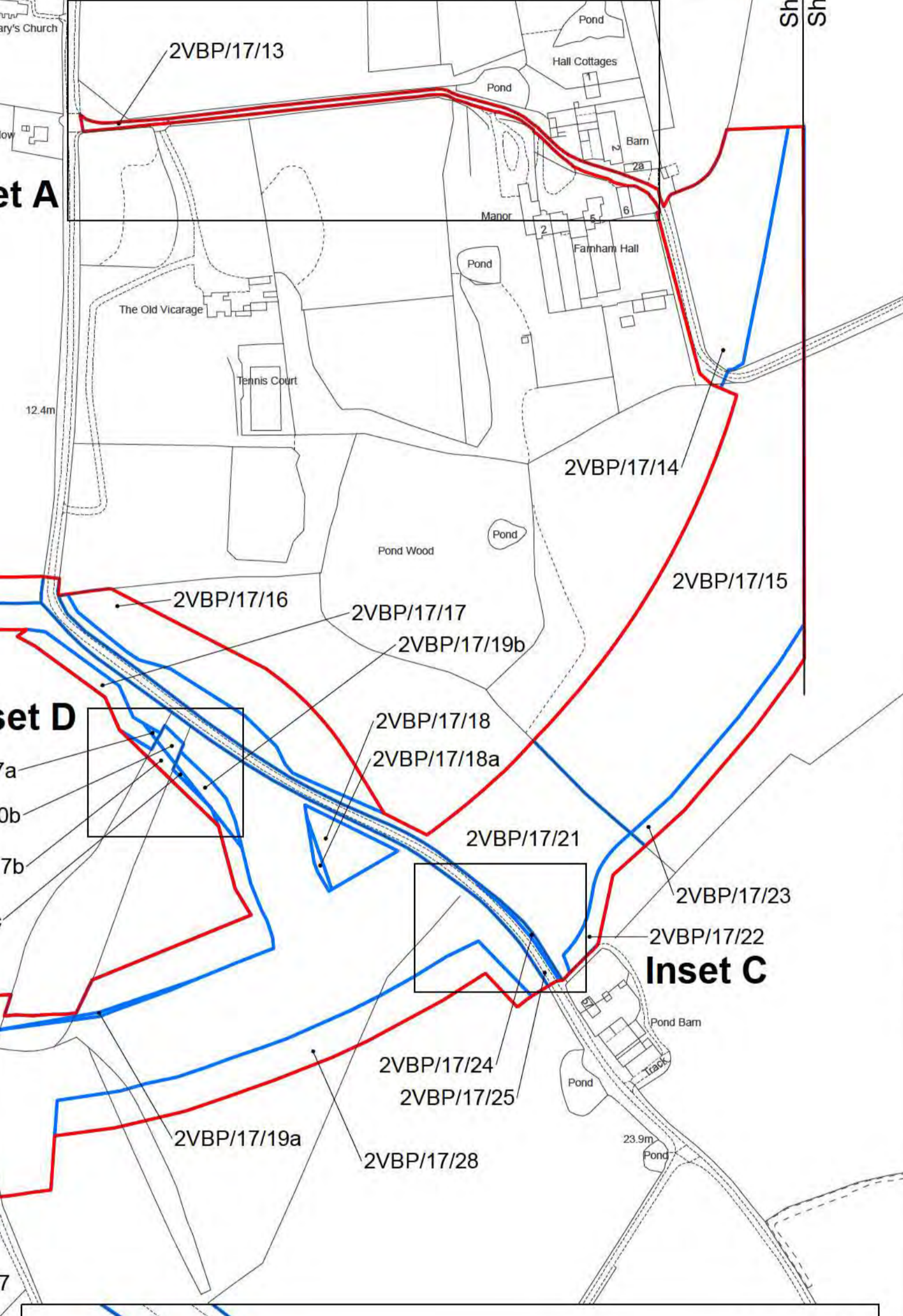
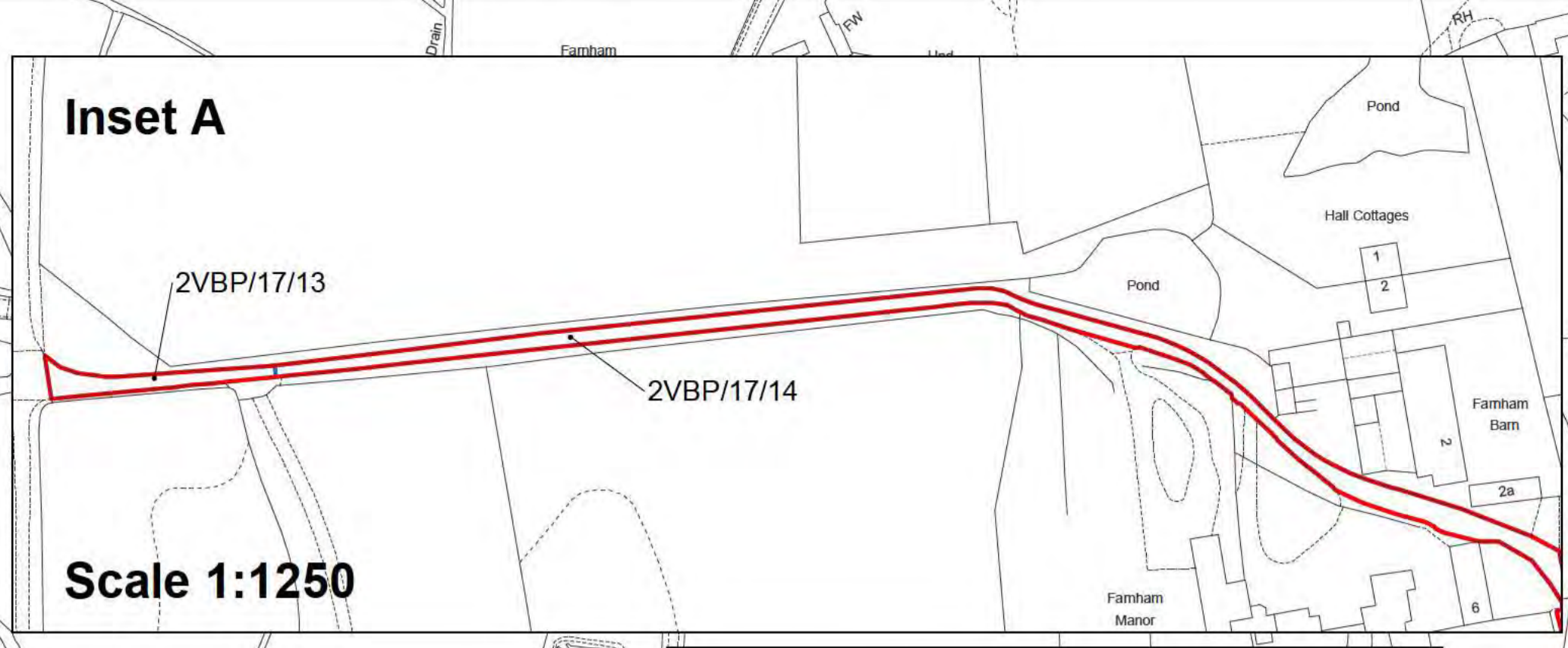
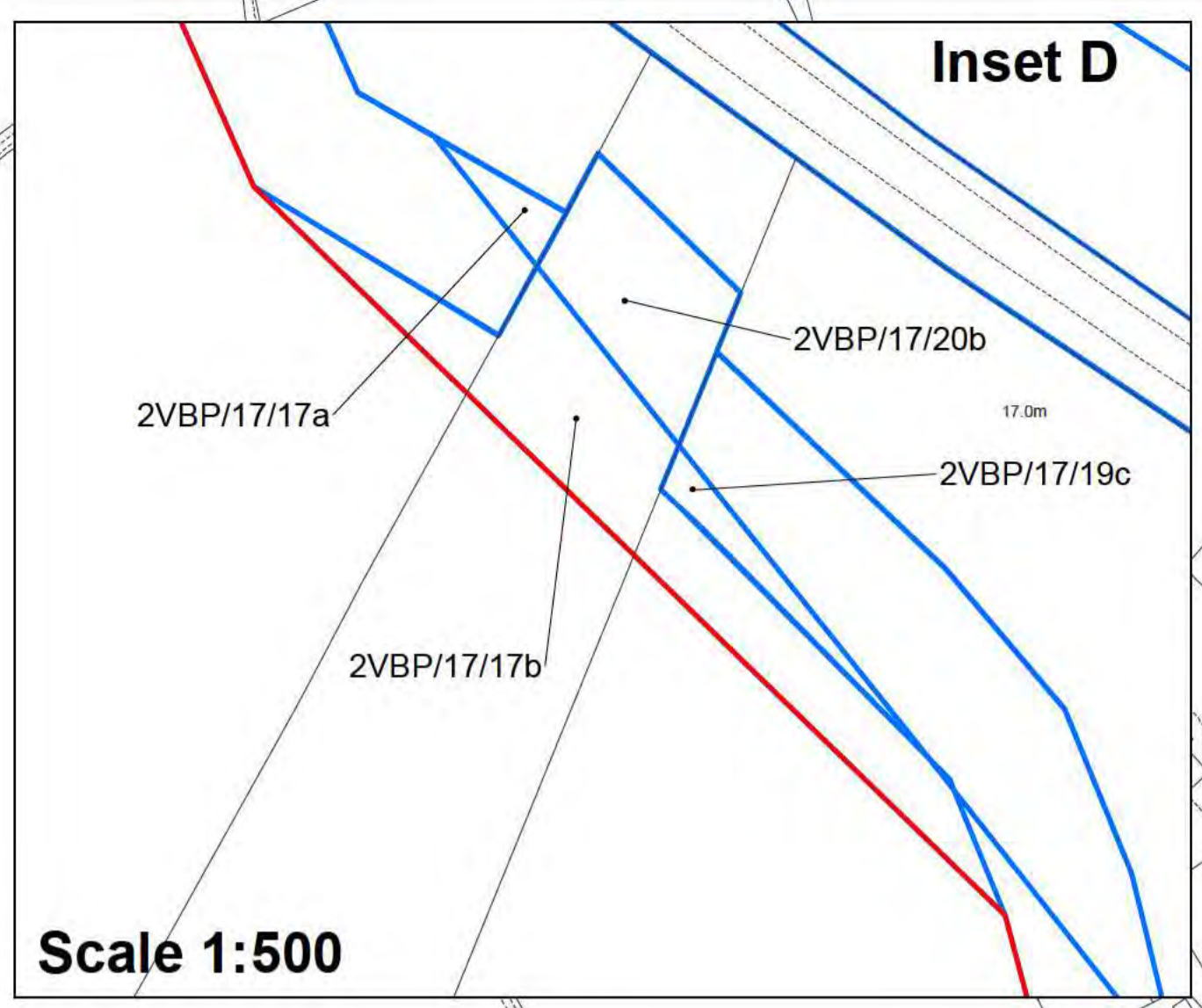
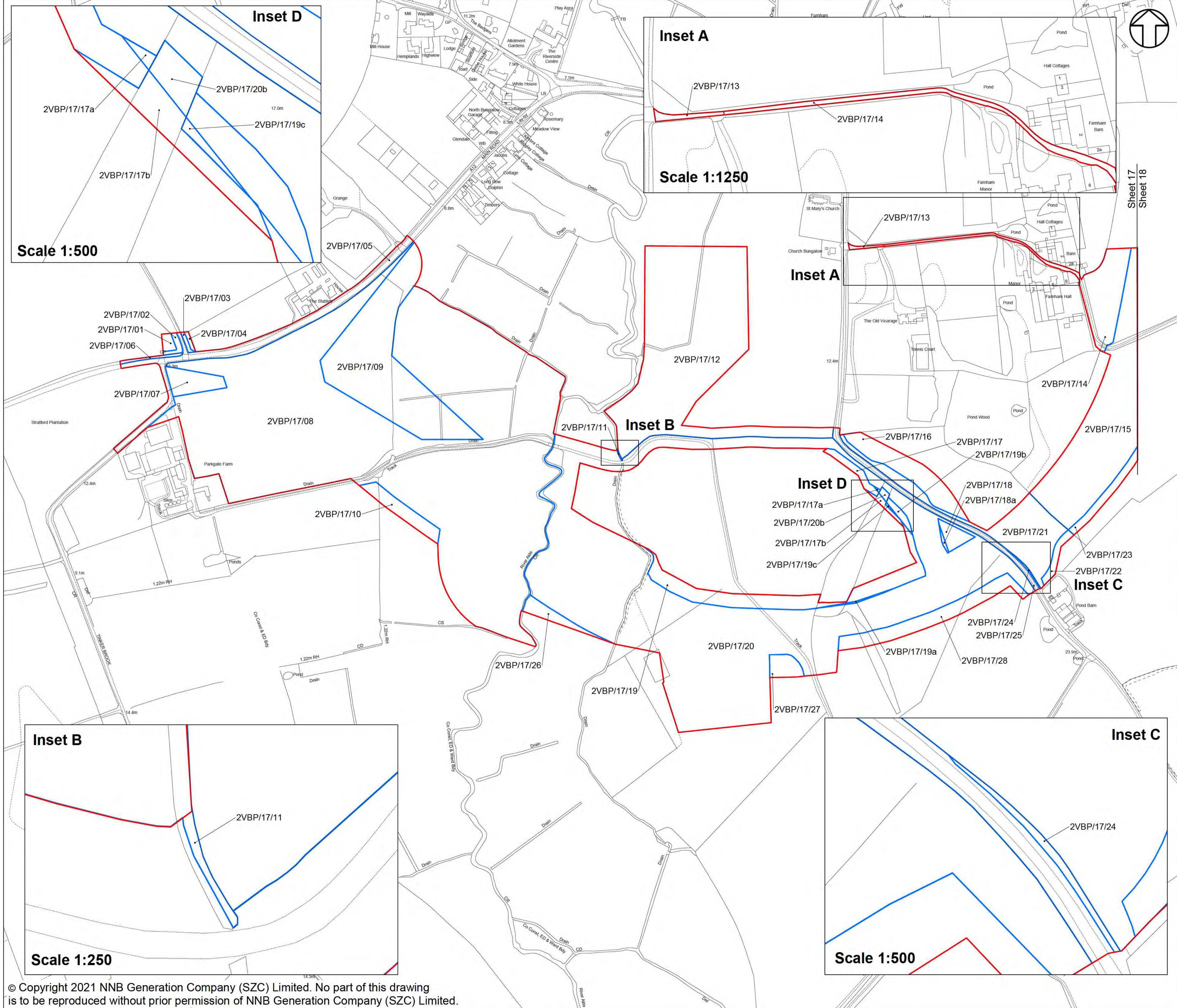
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 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION SHEET 16 OF 28

**DRAWING NO:** SZC/LOU/16 **REVISION:** 01

**DATE:** MAY 2021 **DRAWN:** I.M. **SCALE:** 1:2,500 @A1







**NOTES:**  
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**KEY:**  
 [Red Line] ORDER LIMITS  
 [Blue Line] PLOT BOUNDARIES

REVISION	DATE	DRAWN	CHECKED	REASONS FOR REVISION / COMMENTS	APPROVED
01	MAY 2021	IM	KC	DDO APPLICATION - DEADLINE: 2 SUBMISSION DATED 2 JUNE 2021	SZC CO

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PROJECT:  
 SIZEWELL C

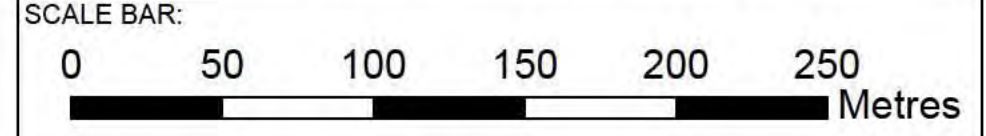
DOCUMENT:  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION

DRAWING TITLE:  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION SHEET 17 OF 28

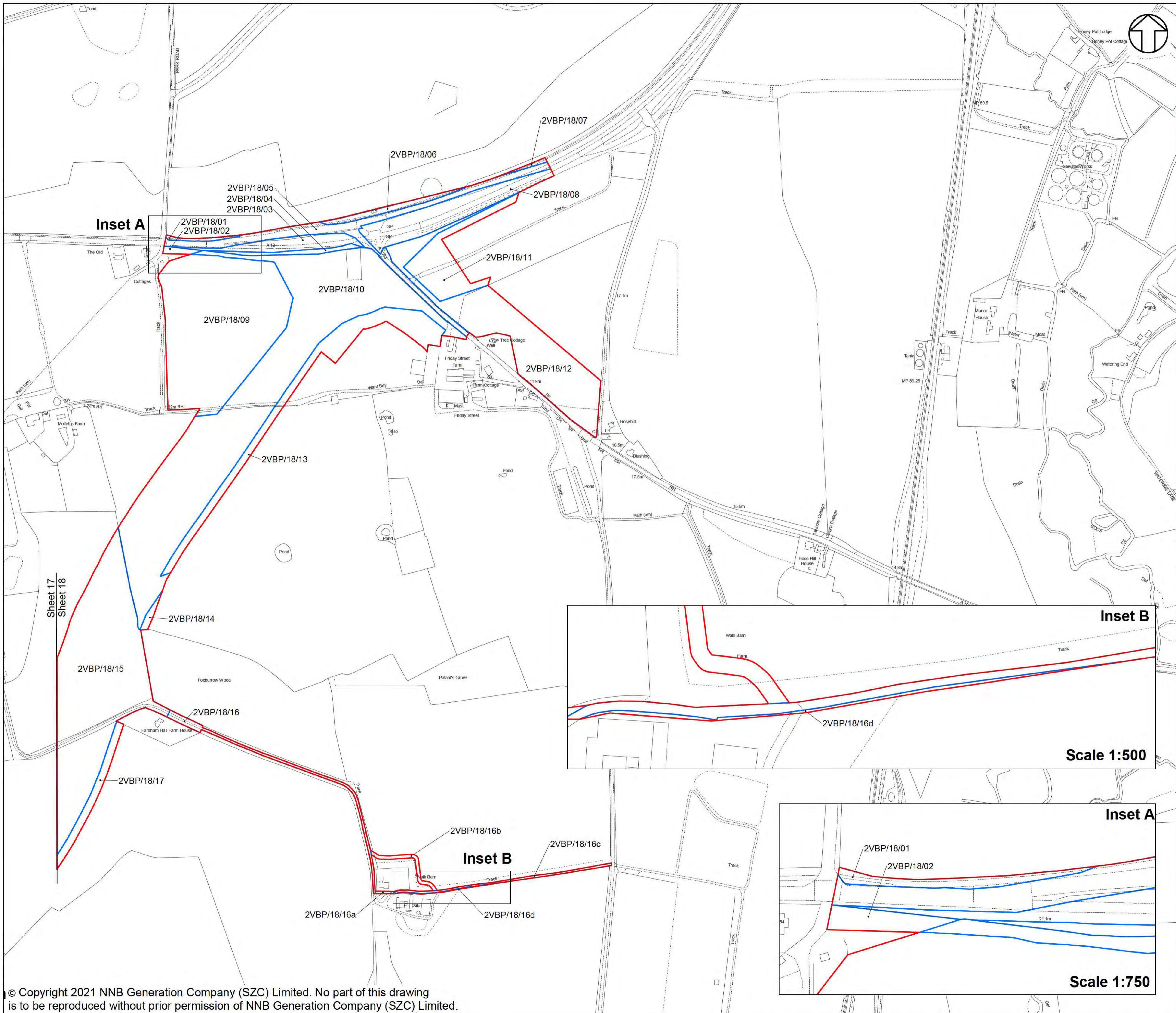
DRAWING NO:  
 SZC/LOUO/17

REVISION:  
 01

DATE: MAY 2021    DRAWN: I.M.    SCALE: 1:2,500 @A1







**NOTES:**  
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**KEY:**  
 [Red Line] ORDER LIMITS  
 [Blue Line] PLOT BOUNDARIES

REV	DATE	DRAWN	CHECKED	REASONS FOR REVISION / COMMENTS	APPROVED
01	MAY 2021	I.M.	K.C.	DDO APPLICATION - DEADLINE 2 SUBMISSION DATED 2 JUNE 2021	SZC CO

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PROJECT:  
 SIZEWELL C

DOCUMENT:  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION

DRAWING TITLE:  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION SHEET 18 OF 28

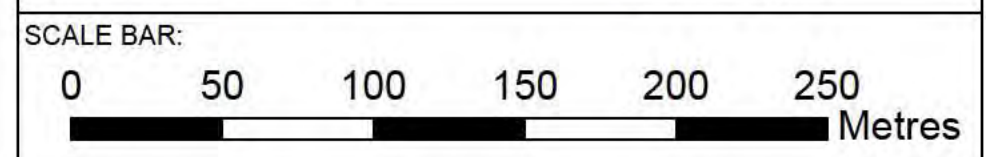
DRAWING NO:  
 SZC/LOUO/18

REVISION:  
 01

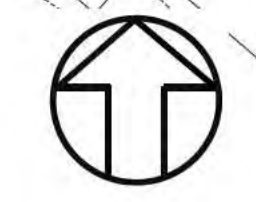
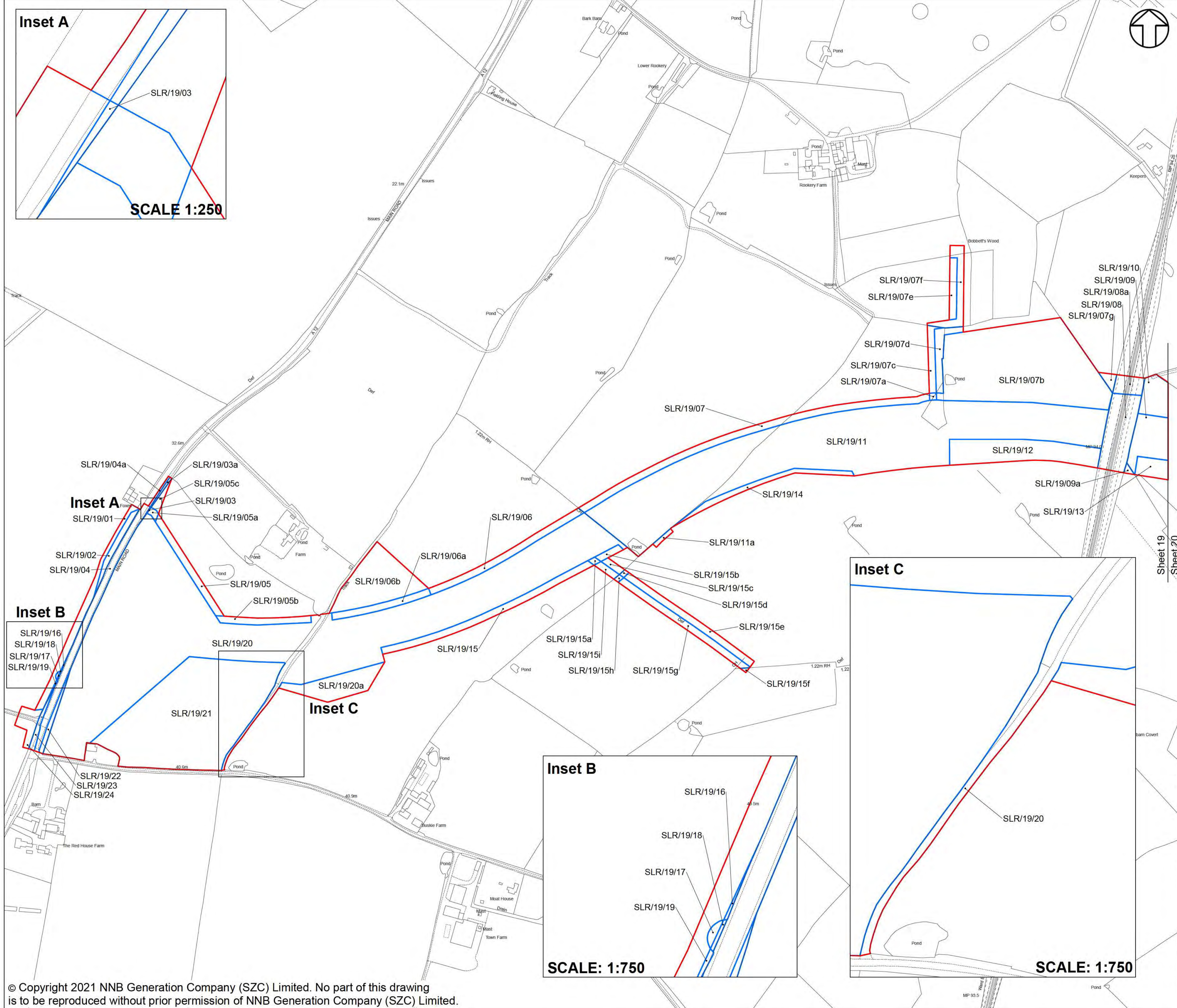
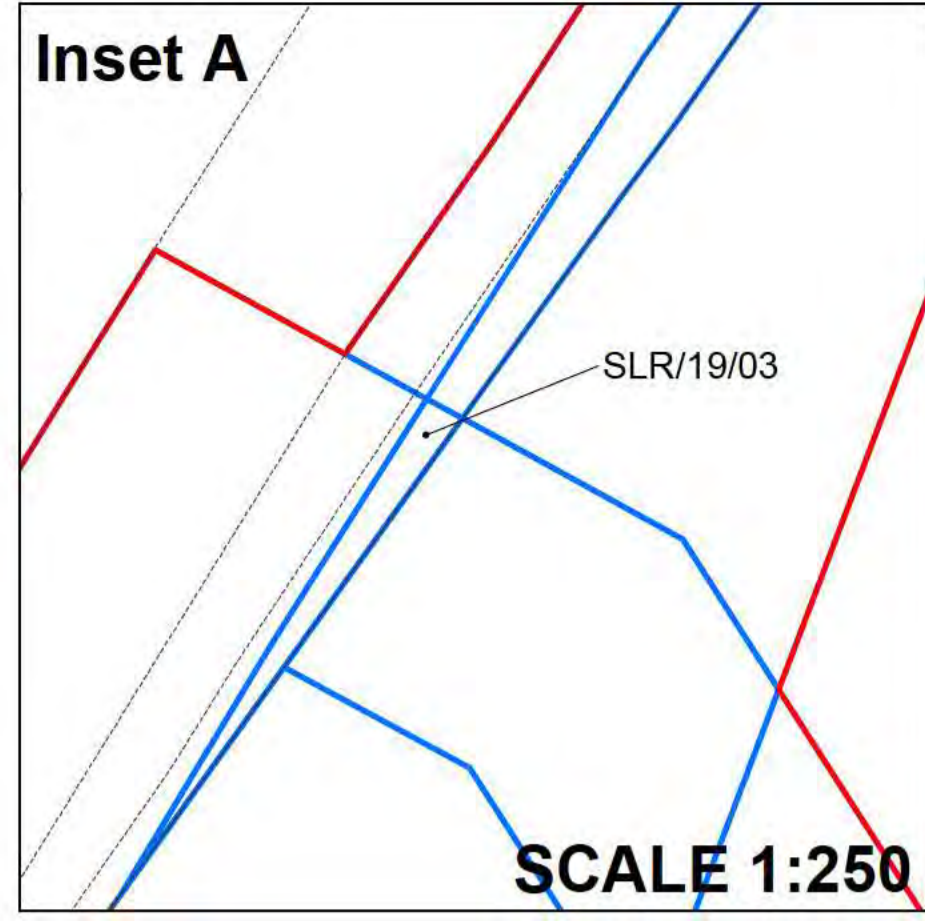
DATE:  
 MAY 2021

DRAWN:  
 I.M.

SCALE:  
 1:2,500 @A1

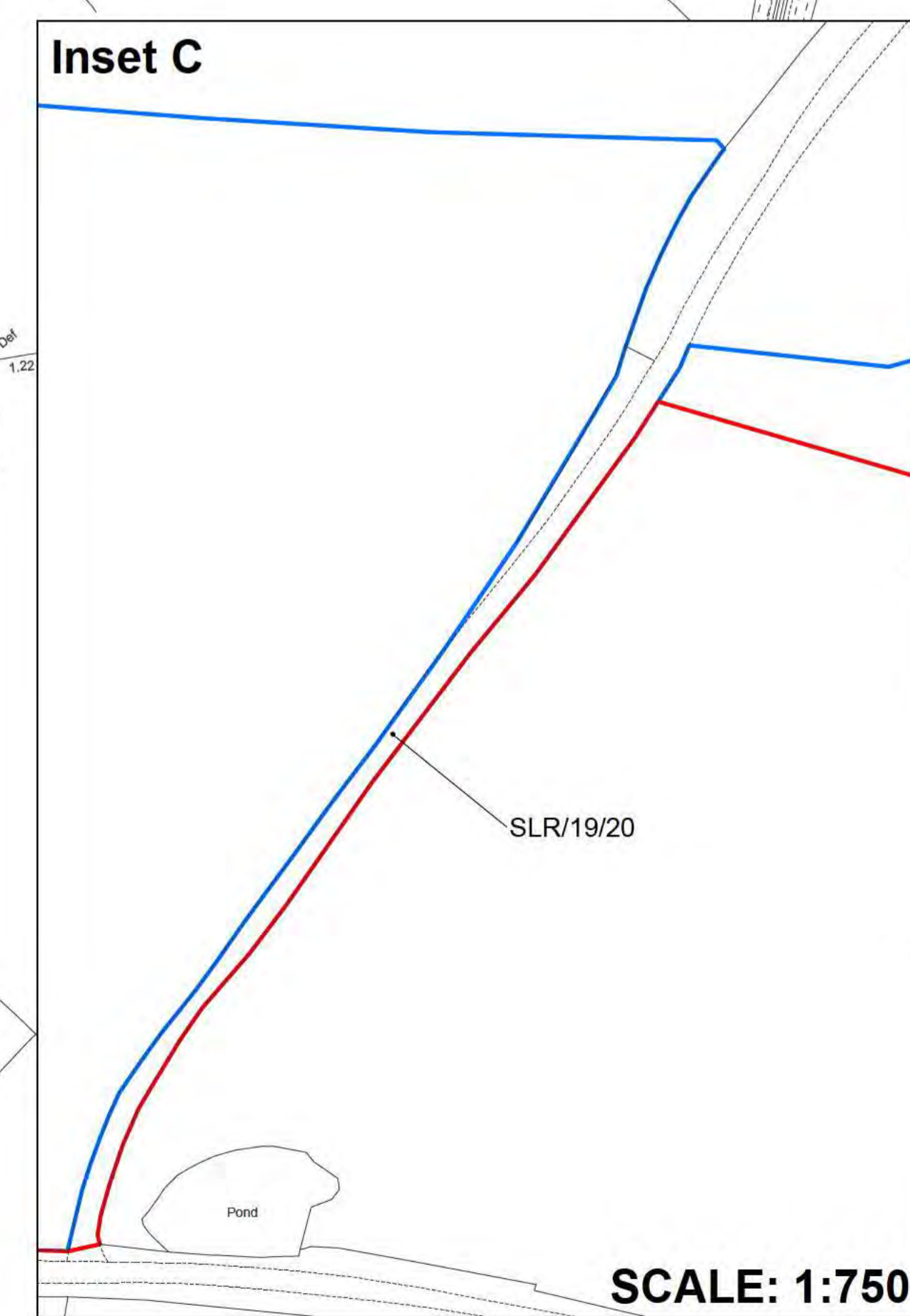
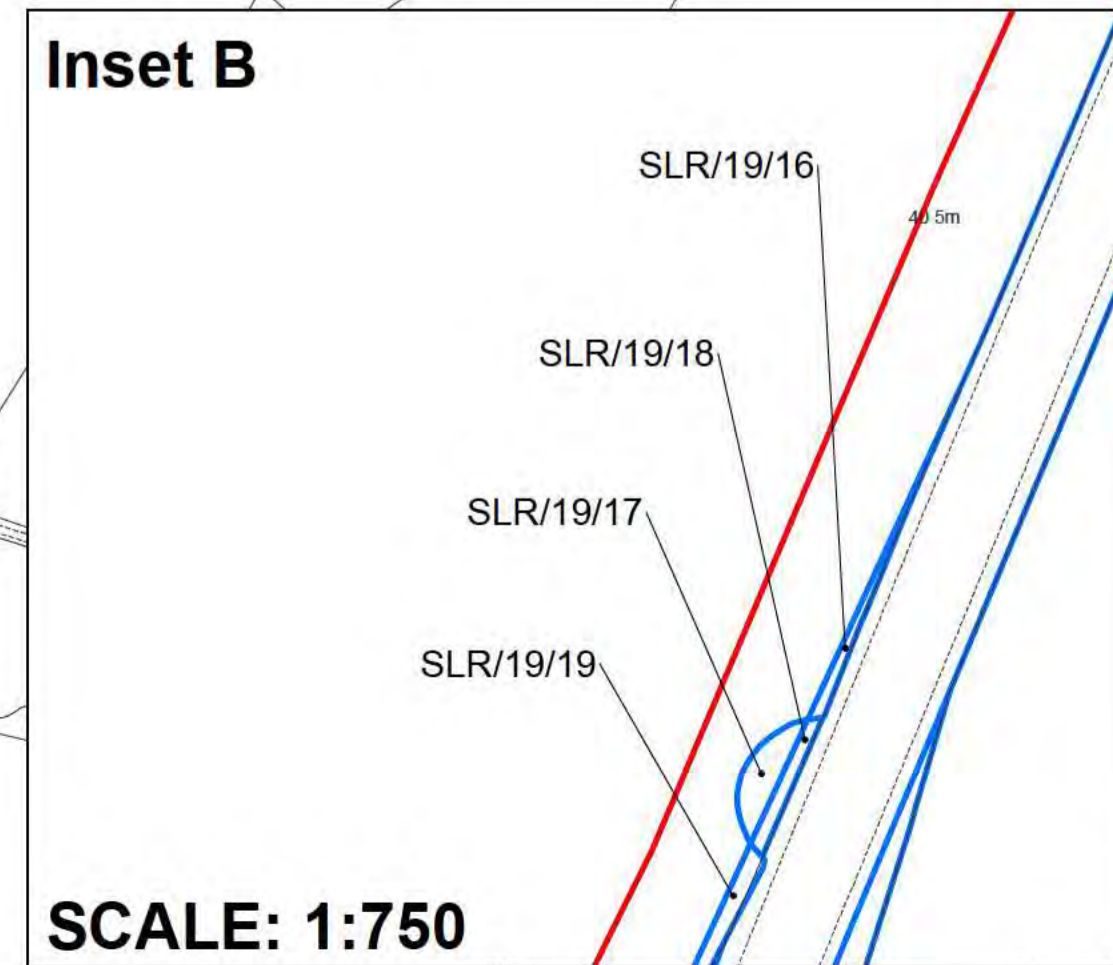
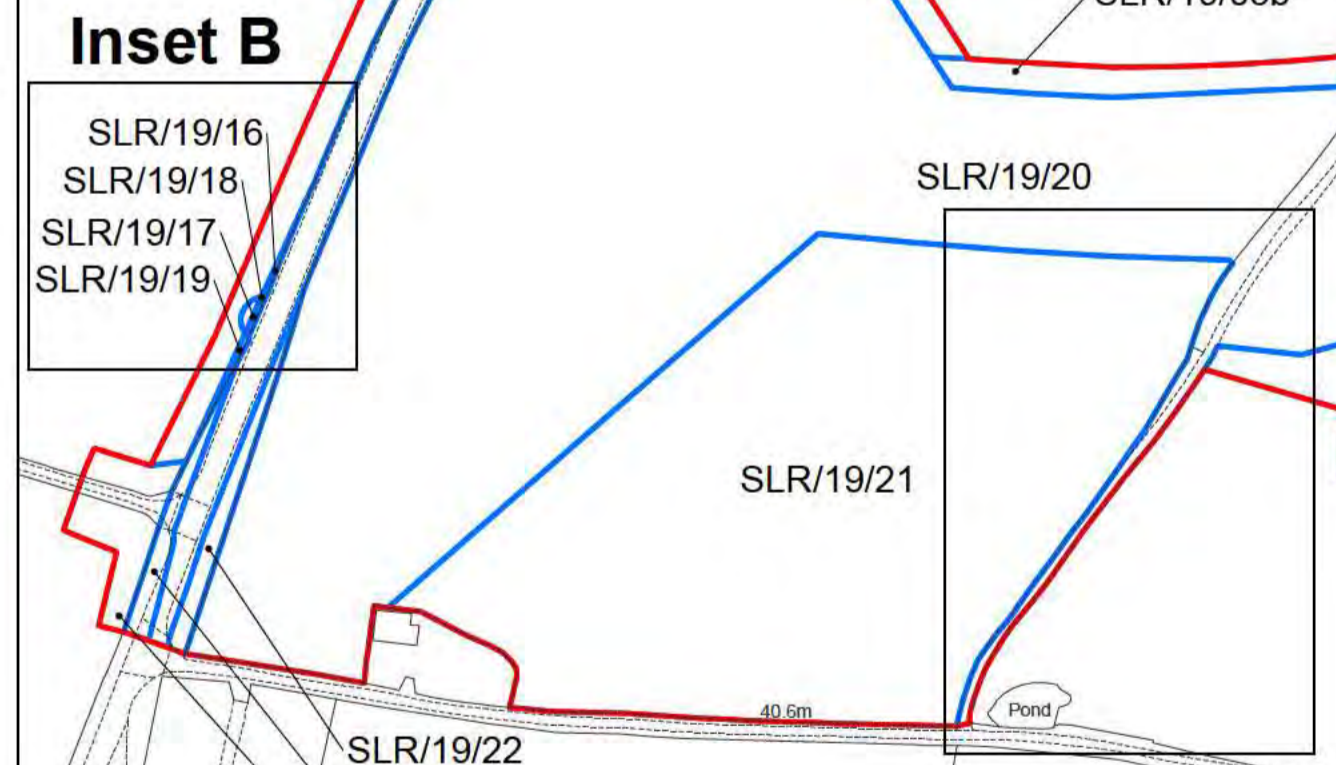
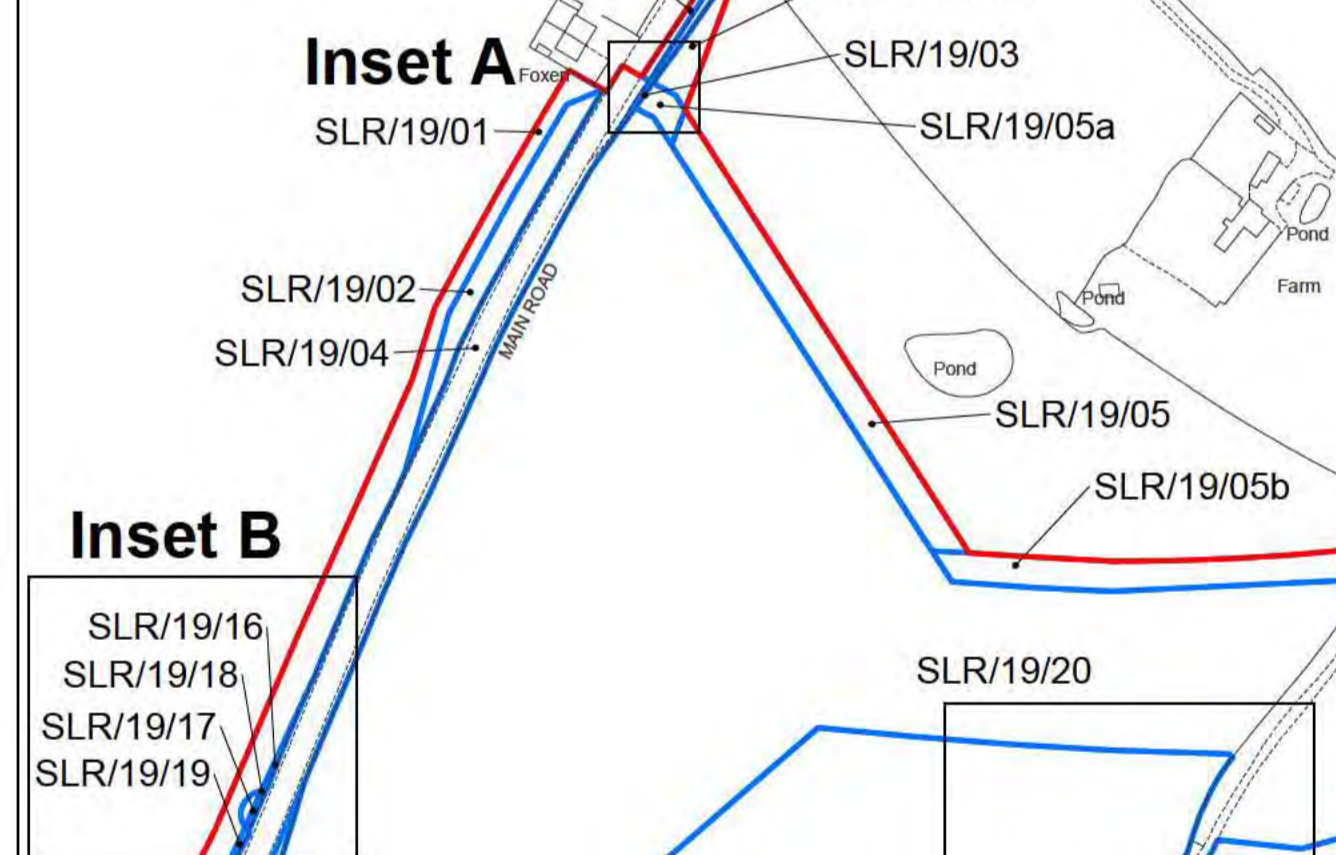






**NOTES:**  
PLOT BOUNDARIES (AS OTHERWISE SHOWN OUTLINED IN BLUE) ARE SHOWN BY A RED LINE WHERE THEY COINCIDE WITH THE BOUNDARY OF THE LAND OVER WHICH THERE IS POTENTIAL OVER-RIDING OR EXTINGUISHMENT OF RIGHTS.

**KEY:**  
▭ ORDER LIMITS  
▭ PLOT BOUNDARIES



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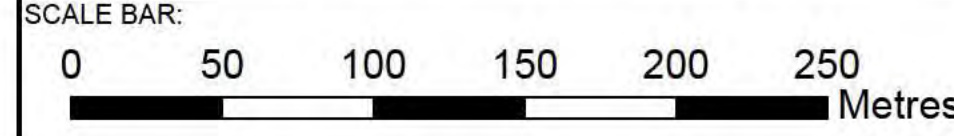
**PROJECT:**  
SIZEWELL C

**DOCUMENT:**  
LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION

**DRAWING TITLE:**  
LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION  
SHEET 19 OF 28

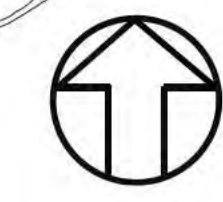
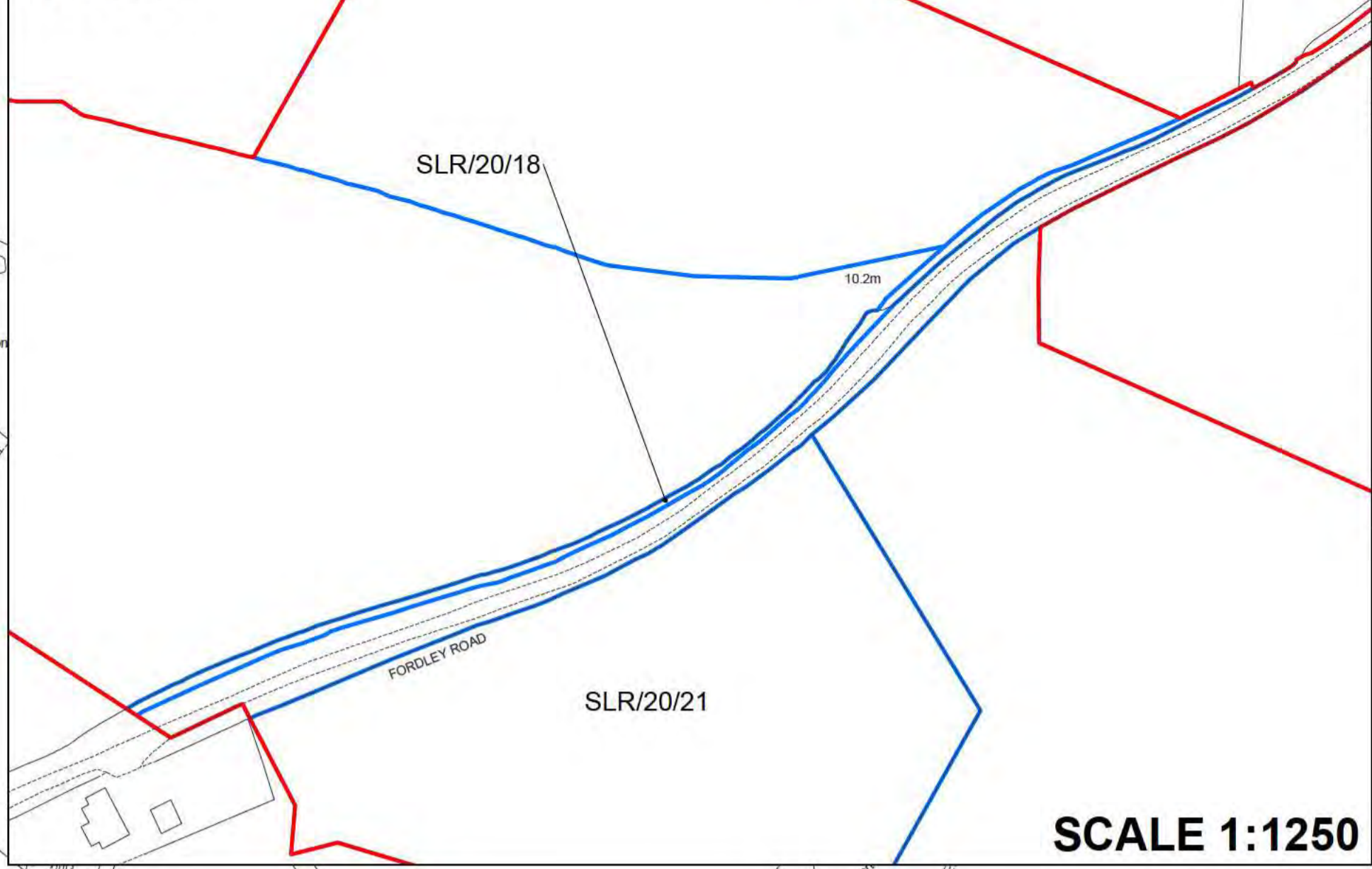
**DRAWING NO:** SZC/LOU/19      **REVISION:** 01

**DATE:** MAY 2021      **DRAWN:** I.M.      **SCALE:** 1:2,500 @A1





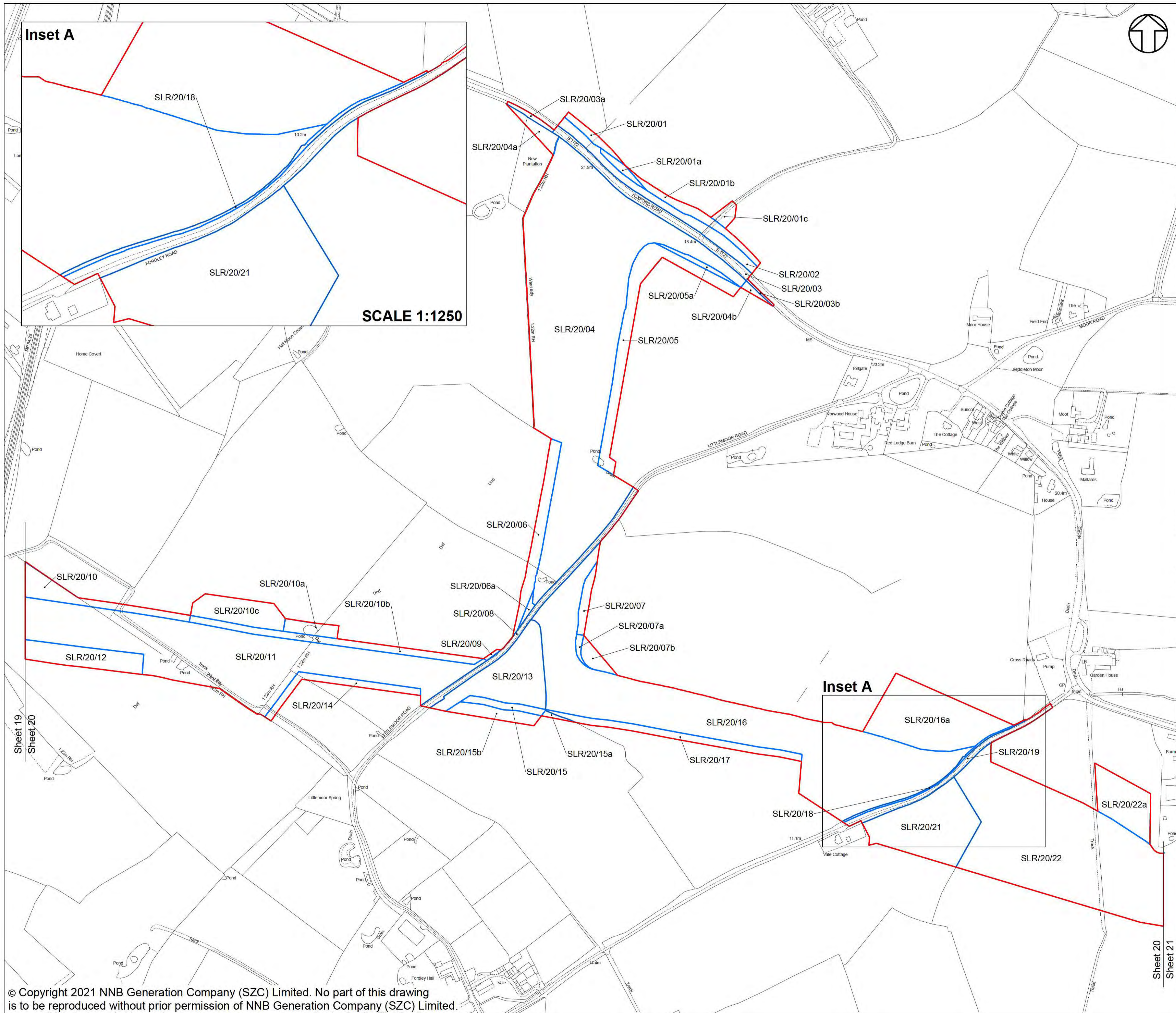
**Inset A**



**NOTES:**  
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**KEY:**

- ORDER LIMITS
- PLOT BOUNDARIES



REV	DATE	DRAWN	CHECKED	REASONS FOR REVISION / COMMENTS	APPROVED
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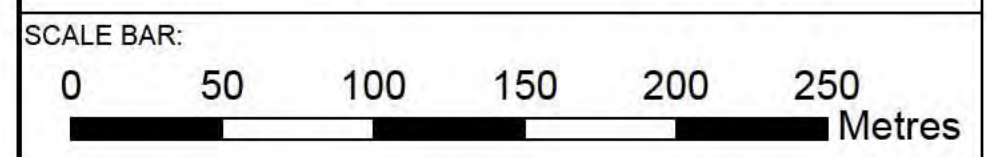
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 SIZEWELL C

**DOCUMENT:**  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION

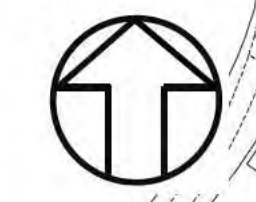
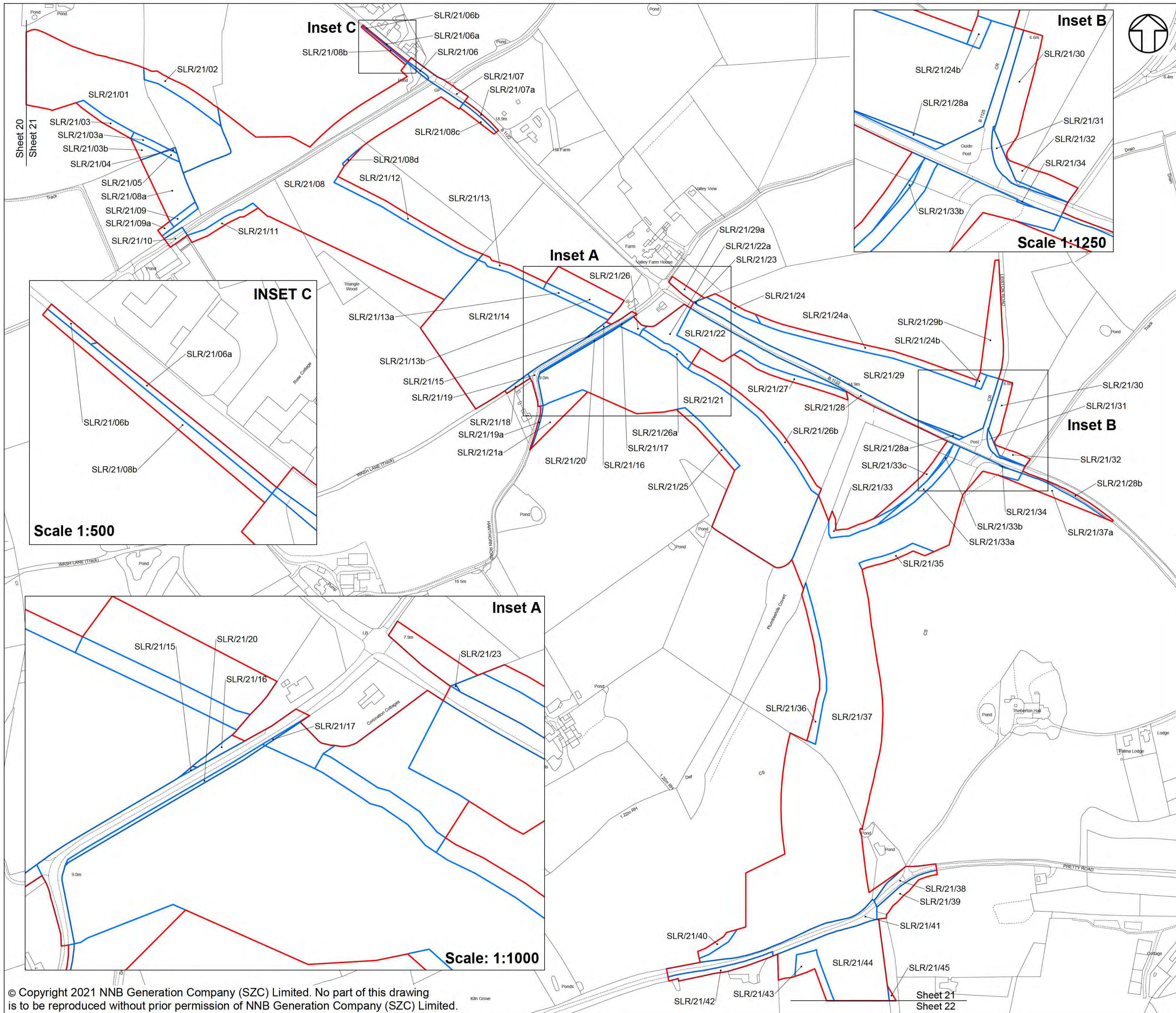
**DRAWING TITLE:**  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION SHEET 20 OF 28

**DRAWING NO:** SZC/LOUO/20 **REVISION:** 01

**DATE:** MAY 2021 **DRAWN:** I.M. **SCALE:** 1:2,500 @A1







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**KEY:**  
 [Red Line] ORDER LIMITS  
 [Blue Line] PLOT BOUNDARIES

Scale 1:500

Scale 1:1250

Scale: 1:1000

REV	DATE	DRAWN	CHECKED	REASONS FOR REVISION / COMMENTS	APPROVED
01	MAY 2021	I.M.	K.C.	DDO APPLICATION - DEADLINE 2 SUBMISSION DATED 2 JUNE 2021	SZC Co

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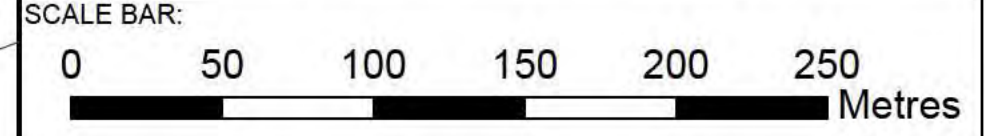


**PROJECT:**  
 SIZEWELL C

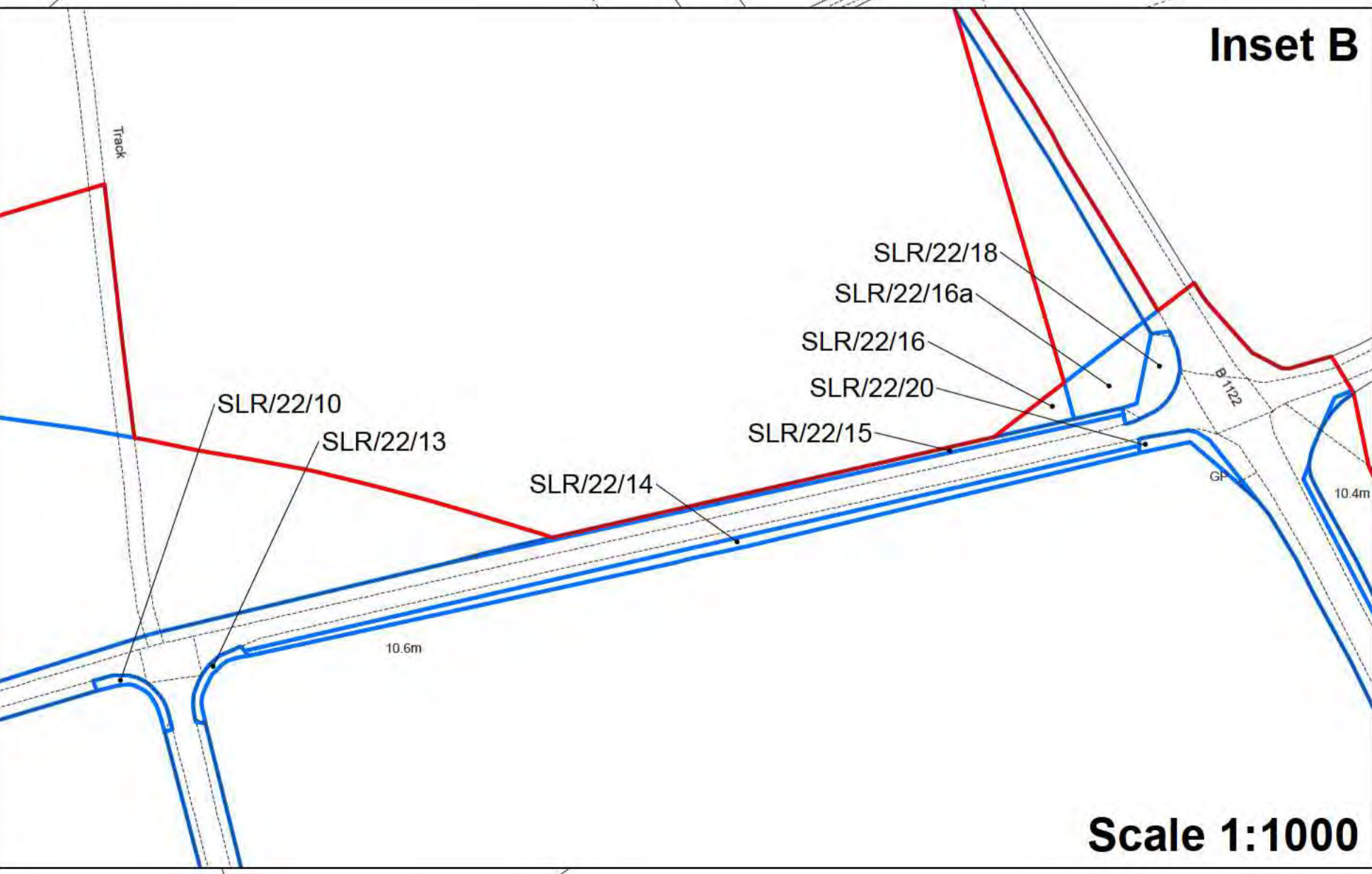
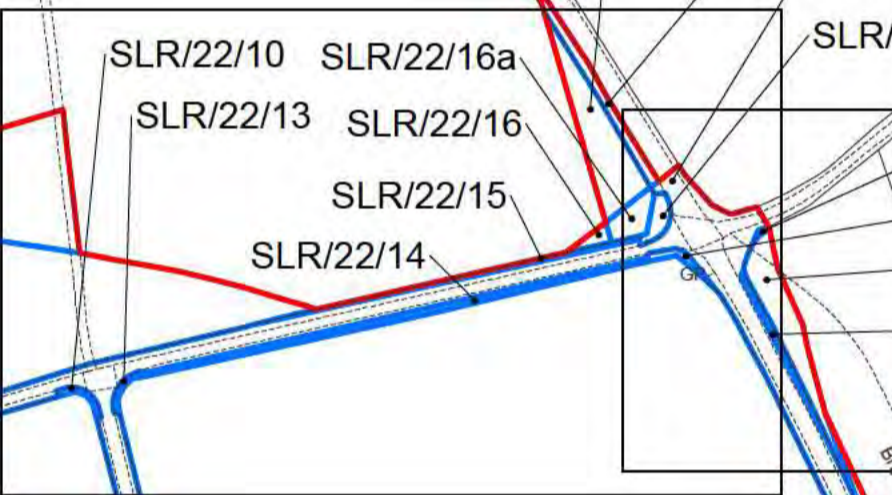
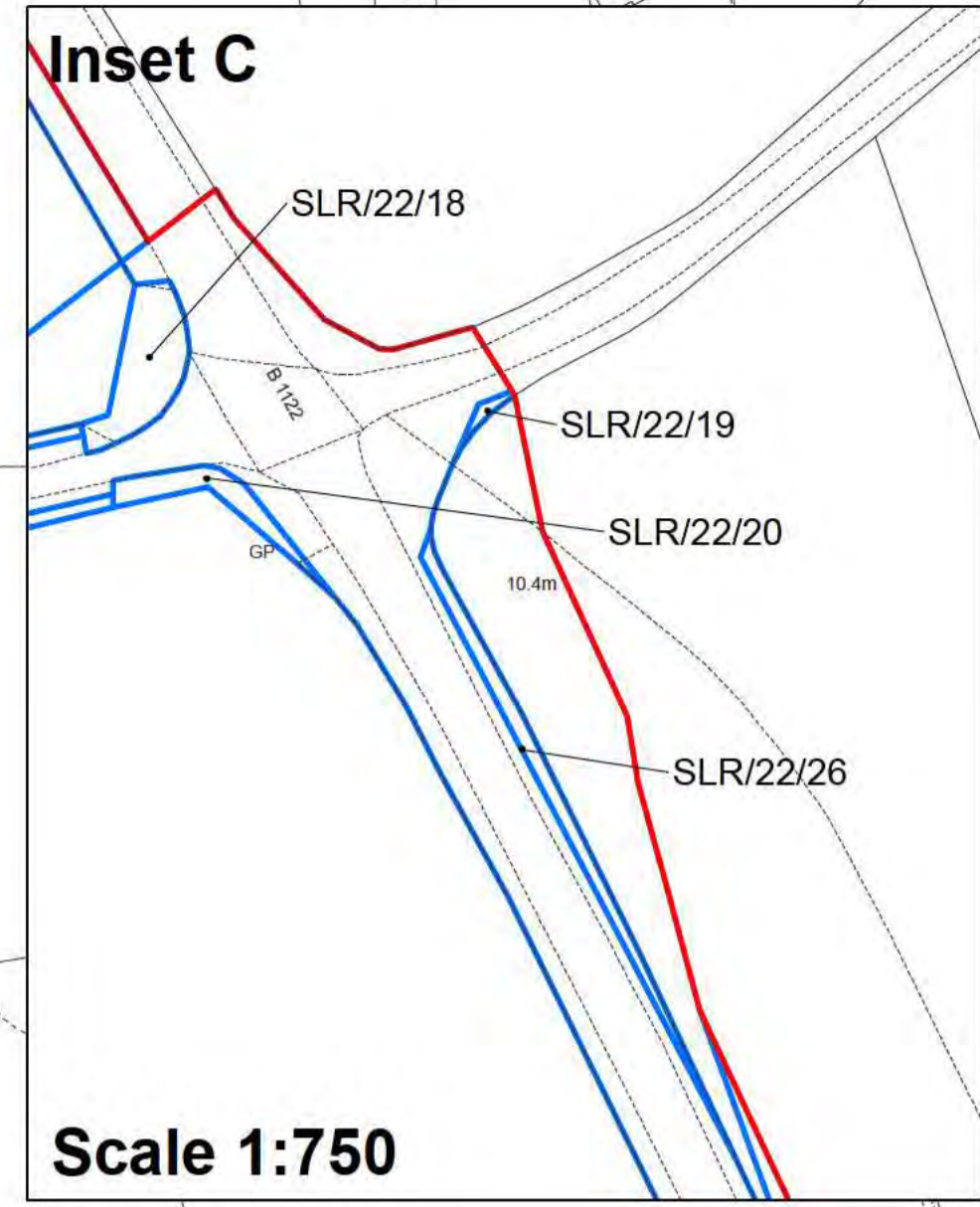
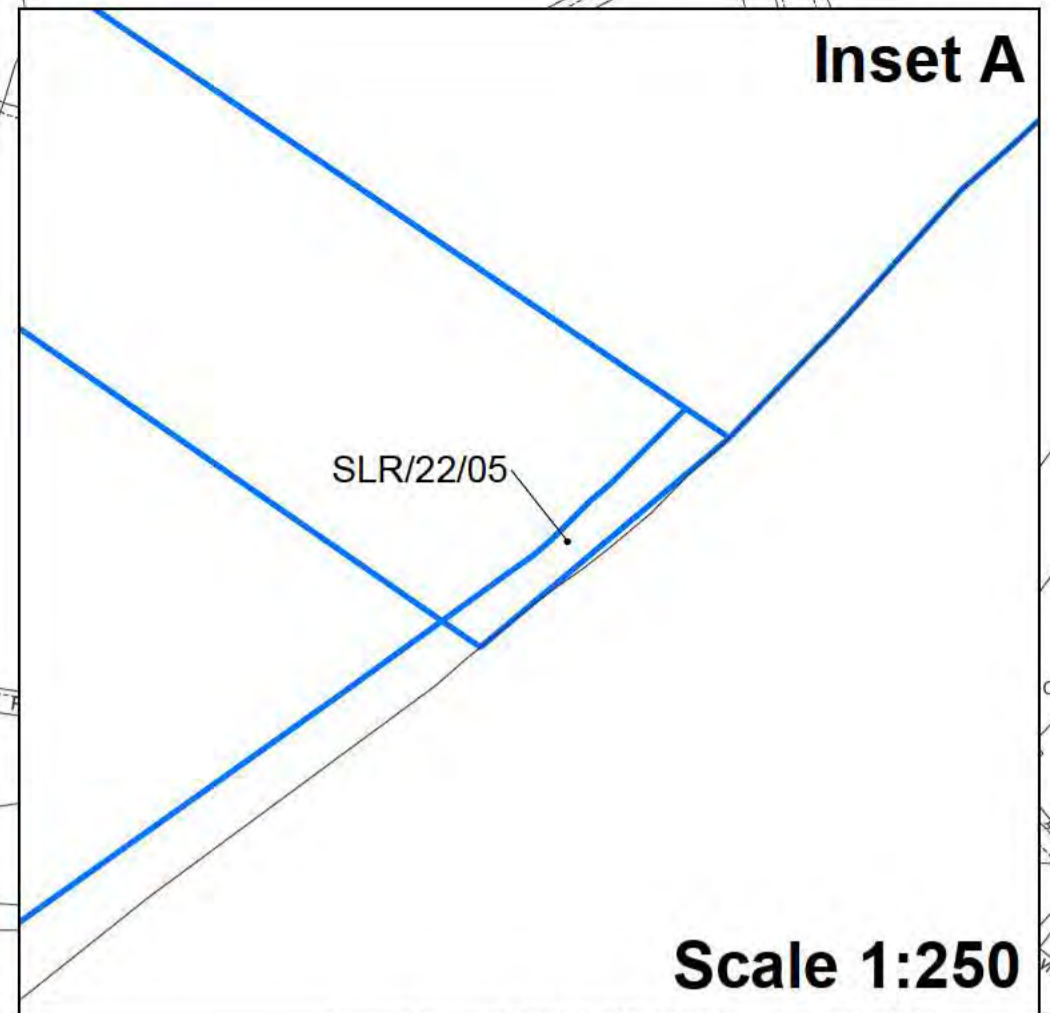
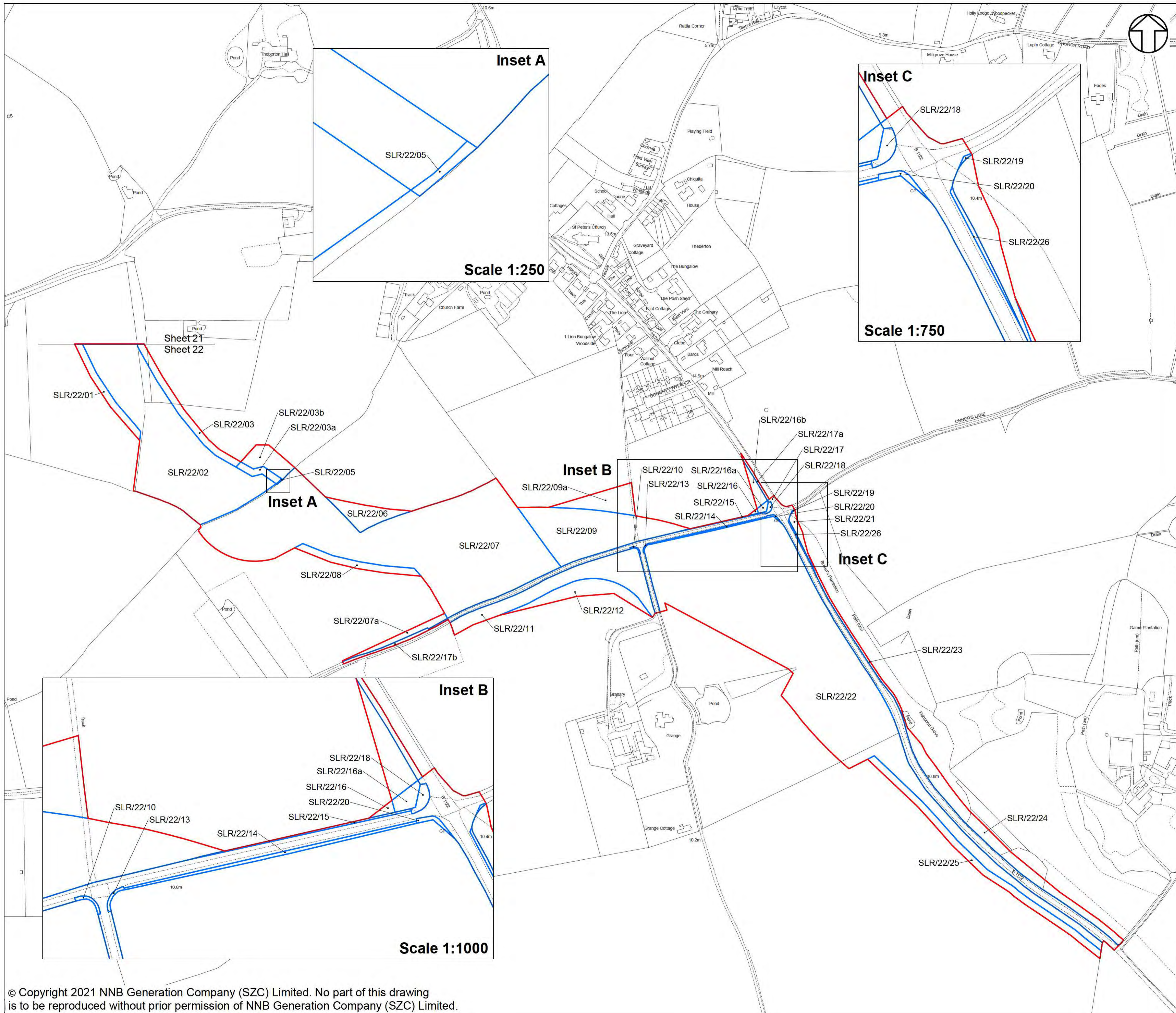
**DOCUMENT:**  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION

**DRAWING TITLE:**  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION SHEET 21 OF 28



**DRAWING NO:** SZC/LOU/21  
**REVISION:** 01  
**DATE:** MAY 2021  
**DRAWN:** I.M.  
**SCALE:** 1:2,500 @A1







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**KEY:**  
 ORDER LIMITS  
 PLOT BOUNDARIES

REV	DATE	DRAWN	CHECKED	REVISIONS	REASONS FOR REVISION / COMMENTS	APPROVED
01	MAY 2021	I.M.	KC	DDO APPLICATION - DEADLINE 2 SUBMISSION (DATED 2 JUNE 2021)		SZC Co

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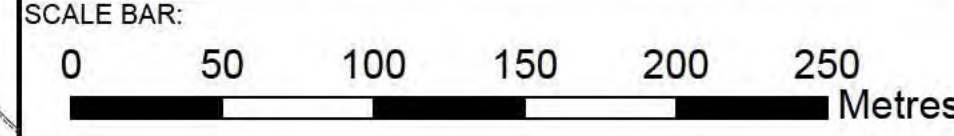
**PROJECT:**  
SIZEWELL C

**DOCUMENT:**  
LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION

**DRAWING TITLE:**  
LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION SHEET 22 OF 28

**DRAWING NO:** SZC/LOUO/22  
**REVISION:** 01

**DATE:** MAY 2021  
**DRAWN:** I.M.  
**SCALE:** 1:2,500 @A1



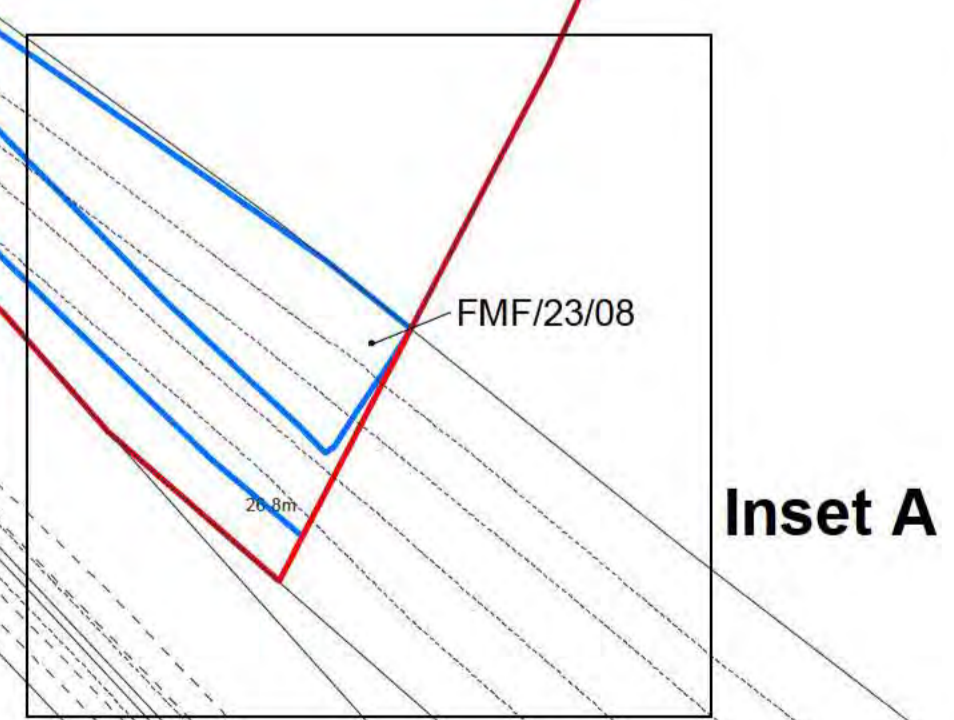
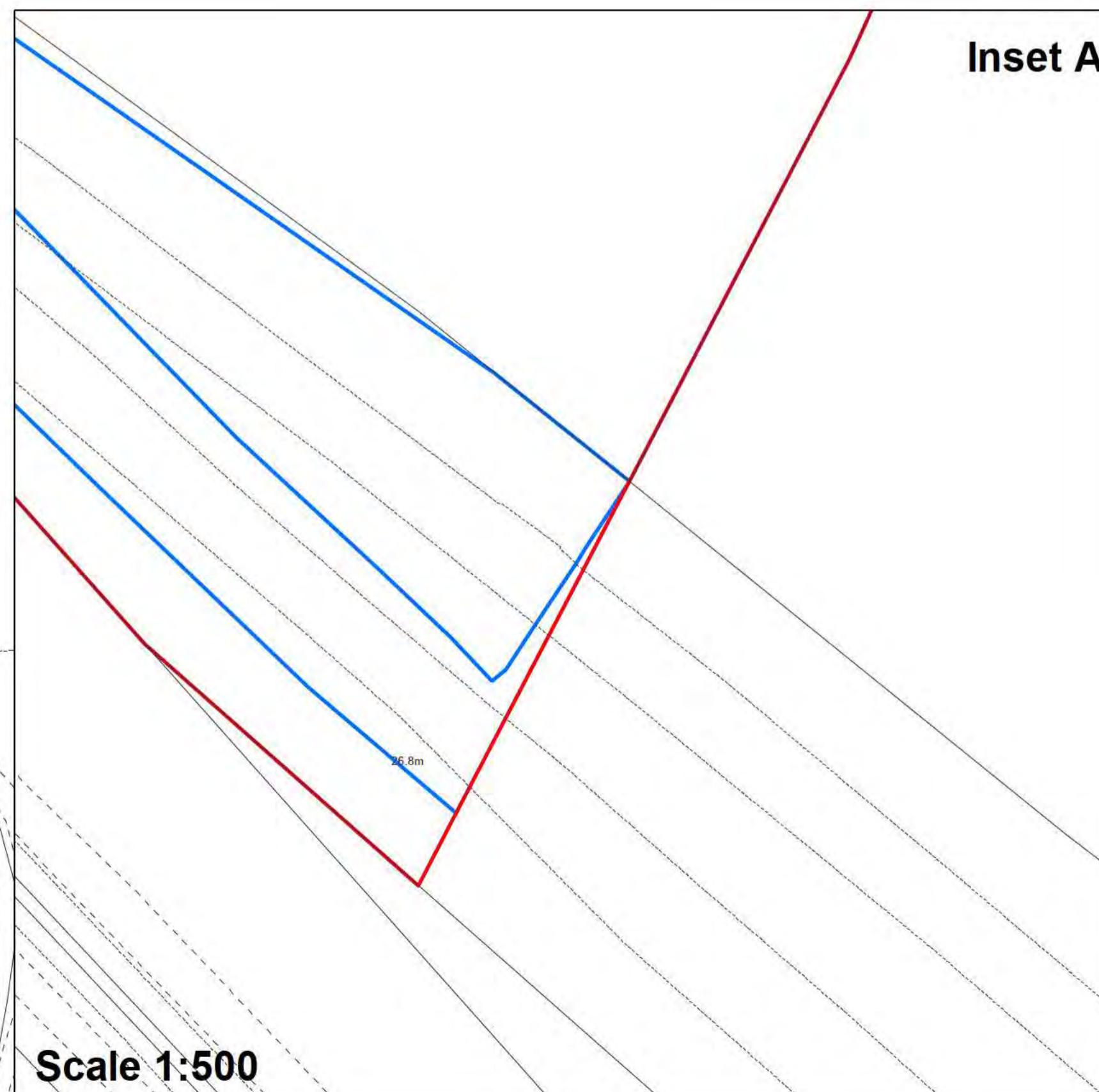
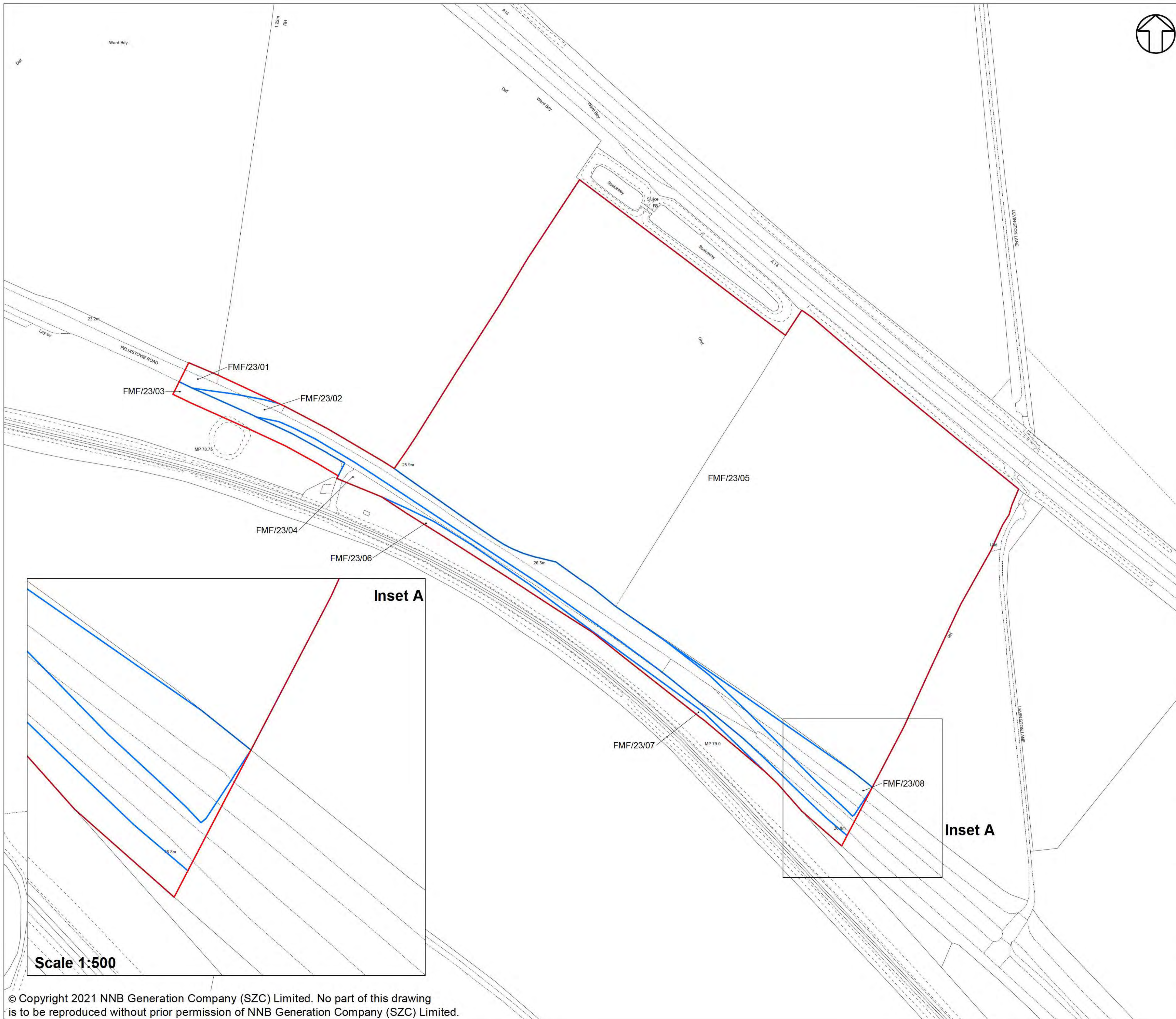




**NOTES:**  
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**KEY:**

- ORDER LIMITS
- PLOT BOUNDARIES



Scale 1:500

REV	DATE	DRAWN	CHECKED	REASONS FOR REVISION/ COMMENTS	APPROVED
01	MAY 2021	IM	KC	DDO APPLICATION - DEADLINE 2 SUBMISSION (DATED 2 JUNE 2021)	SZC Cb

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PROJECT:  
 SIZEWELL C

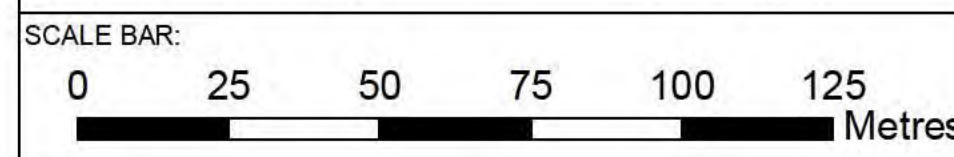
DOCUMENT:  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION

DRAWING TITLE:  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION SHEET 23 OF 28

DRAWING NO:  
 SZC/LOUO/23

REVISION:  
 01

DATE: MAY 2021  
 DRAWN: I.M.  
 SCALE: 1:1,250 @A1



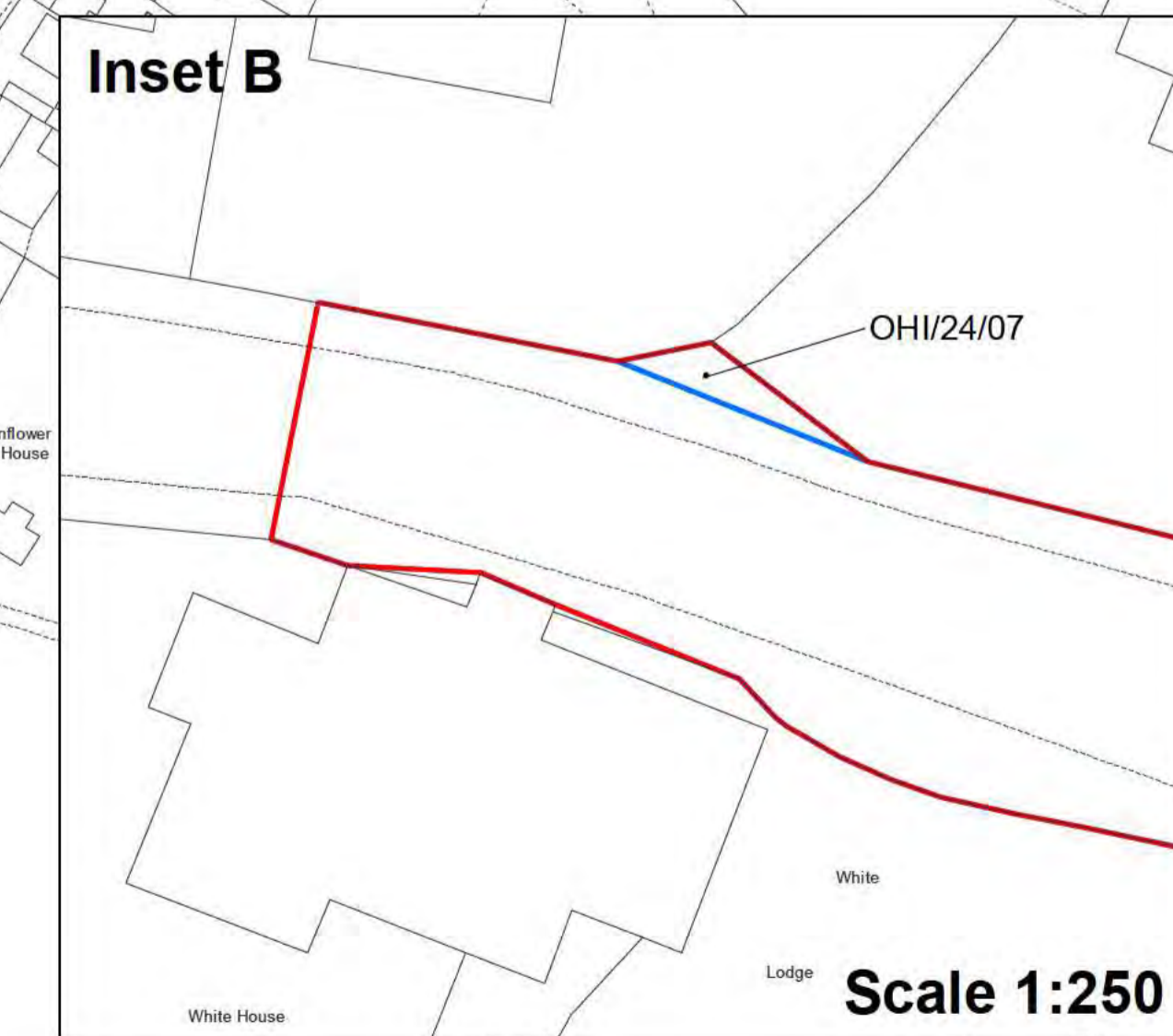
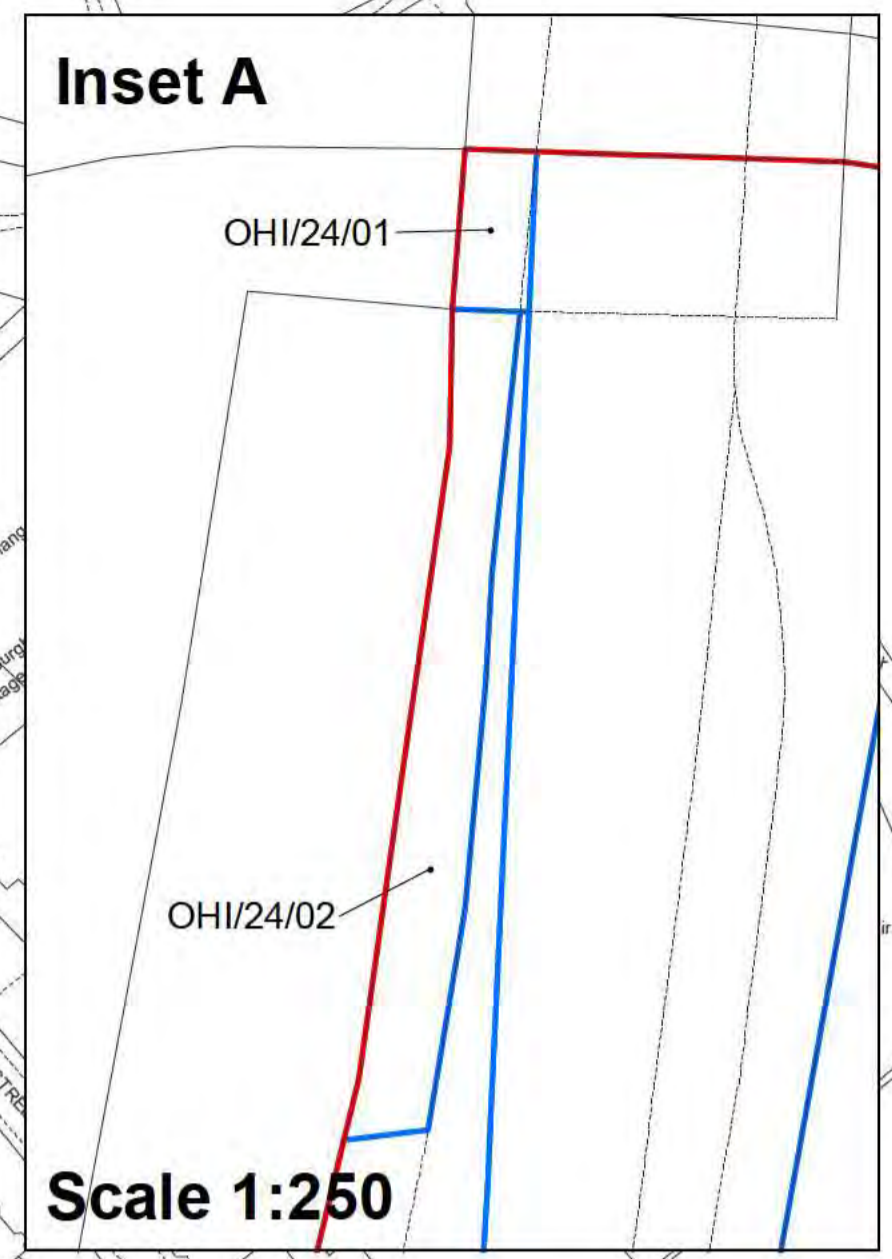




**NOTES:**  
 PLOT BOUNDARIES (AS OTHERWISE SHOWN OUTLINED IN BLUE) ARE SHOWN BY A RED LINE WHERE THEY COINCIDE WITH THE BOUNDARY OF THE LAND OVER WHICH THERE IS POTENTIAL OVER-RIDING OR EXTINGUISHMENT OF RIGHTS.

**KEY:**

- ORDER LIMITS
- PLOT BOUNDARIES



REVISION	DATE	DRAWN	CHECKED	REASONS FOR REVISION/ COMMENTS	APPROVED
01	MAY 2021	IM	KC	DDO APPLICATION - DEADLINE 2 SUBMISSION (DATED 2 JUNE 2021)	SZC Co

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**PROJECT:**

**SIZEWELL C**

**DOCUMENT:**

**LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION**

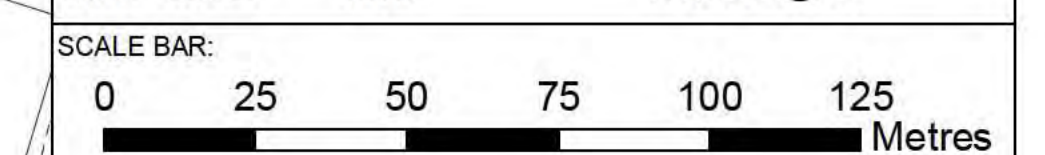
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**LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION SHEET 24 OF 28**

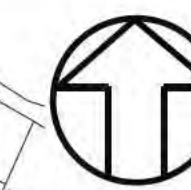
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 SZC/LOUO/24

**REVISION:**  
 01

**DATE:** MAY 2021  
**DRAWN:** I.M.  
**SCALE:** 1:1,250 @A1



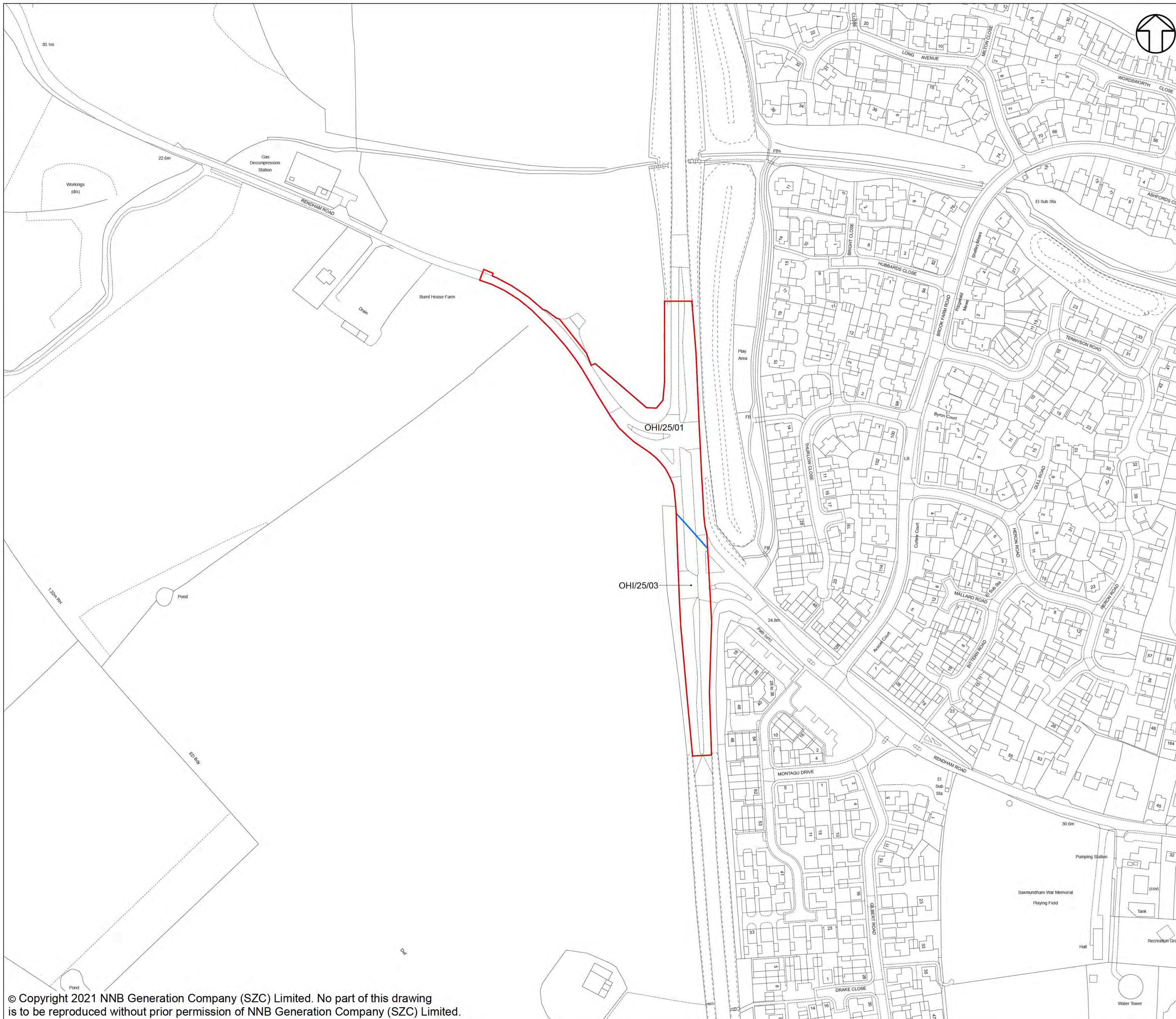




**NOTES:**  
 PLOT BOUNDARIES (AS OTHERWISE SHOWN OUTLINED IN BLUE) ARE SHOWN BY A RED LINE WHERE THEY COINCIDE WITH THE BOUNDARY OF THE LAND OVER WHICH THERE IS POTENTIAL OVER-RIDING OR EXTINGUISHMENT OF RIGHTS.

**KEY:**

- ORDER LIMITS
- PLOT BOUNDARIES



REVISION	DATE	DRAWN	CHECKED	REASONS FOR REVISION / COMMENTS	APPROVED
01	MAY 2021	IM	KC	DDO APPLICATION - DEADLINE: 2 JUNE 2021	SZC Co

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**PROJECT:**

**SIZEWELL C**

**DOCUMENT:**

**LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION**

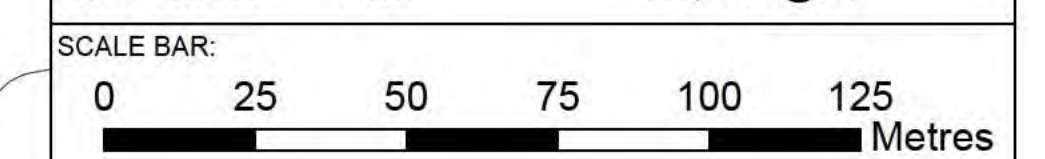
**DRAWING TITLE:**

**LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION SHEET 25 OF 28**

**DRAWING NO:**  
**SZC/LOU/25**

**REVISION:**  
**01**

**DATE:** MAY 2021    **DRAWN:** I.M.    **SCALE:** 1:1,250 @A1







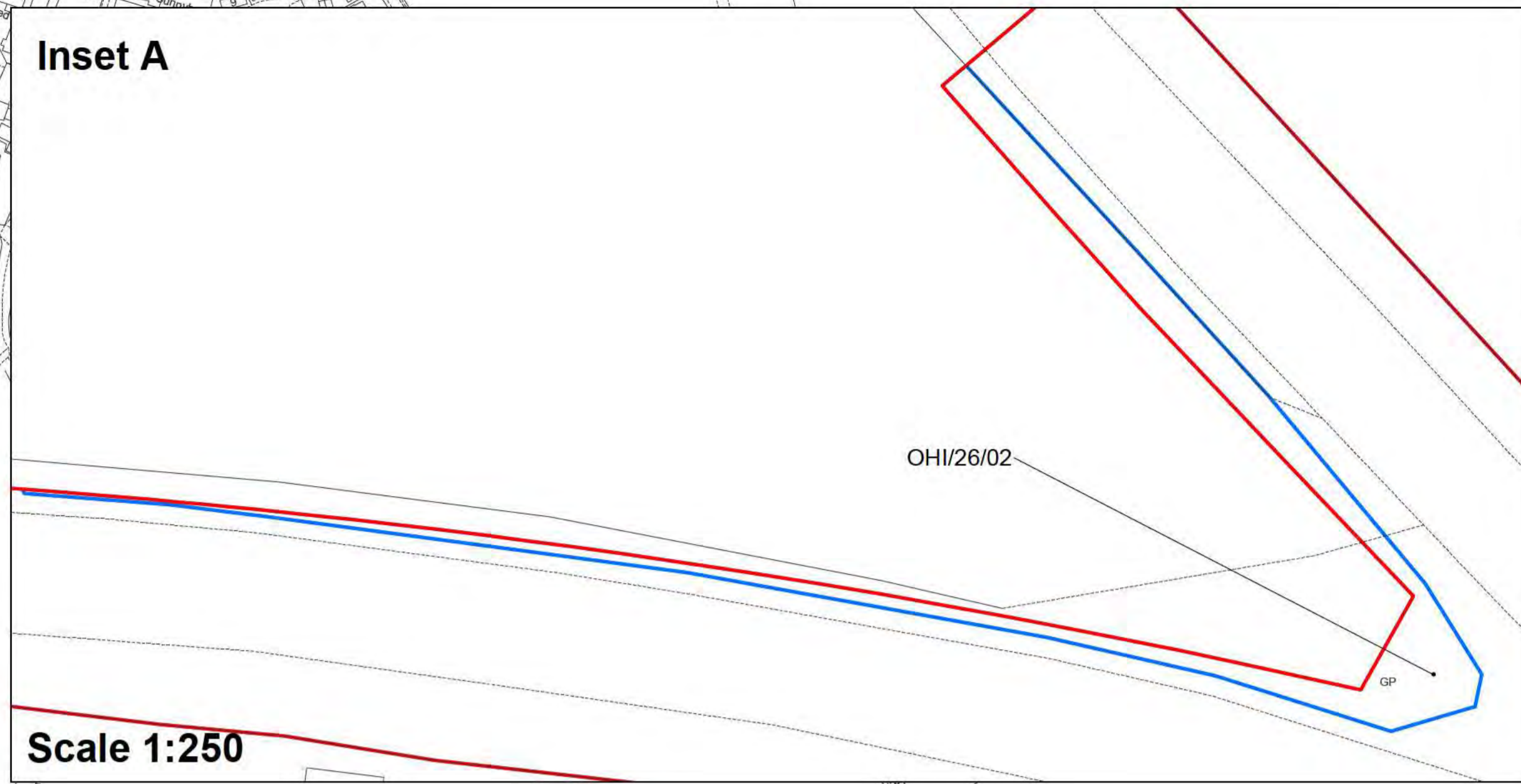
**NOTES:**  
 PLOT BOUNDARIES (AS OTHERWISE SHOWN OUTLINED IN BLUE) ARE SHOWN BY A RED LINE WHERE THEY COINCIDE WITH THE BOUNDARY OF THE LAND OVER WHICH THERE IS POTENTIAL OVER-RIDING OR EXTINGUISHMENT OF RIGHTS.

**KEY:**

- ORDER LIMITS
- PLOT BOUNDARIES

**Inset A**

Scale 1:250



**Inset A**

**Inset B**

**Inset B**

Scale 1:200

REVISION	DATE	DRAWN	CHECKED	REASONS FOR REVISION / COMMENTS	APPROVED
01	MAY 2021	IM	KC	DDO APPLICATION - DEADLINE 2 SUBMISSION (DATED 2 JUNE 2021)	SZC Co

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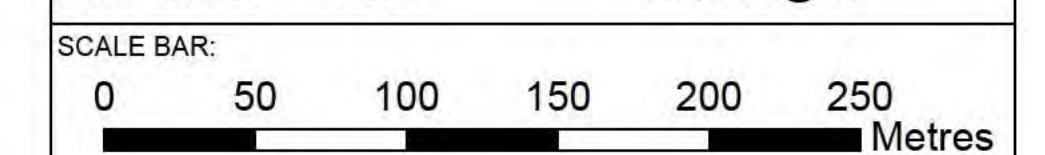
**PROJECT:**  
 SIZEWELL C

**DOCUMENT:**  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION

**DRAWING TITLE:**  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION SHEET 26 OF 28

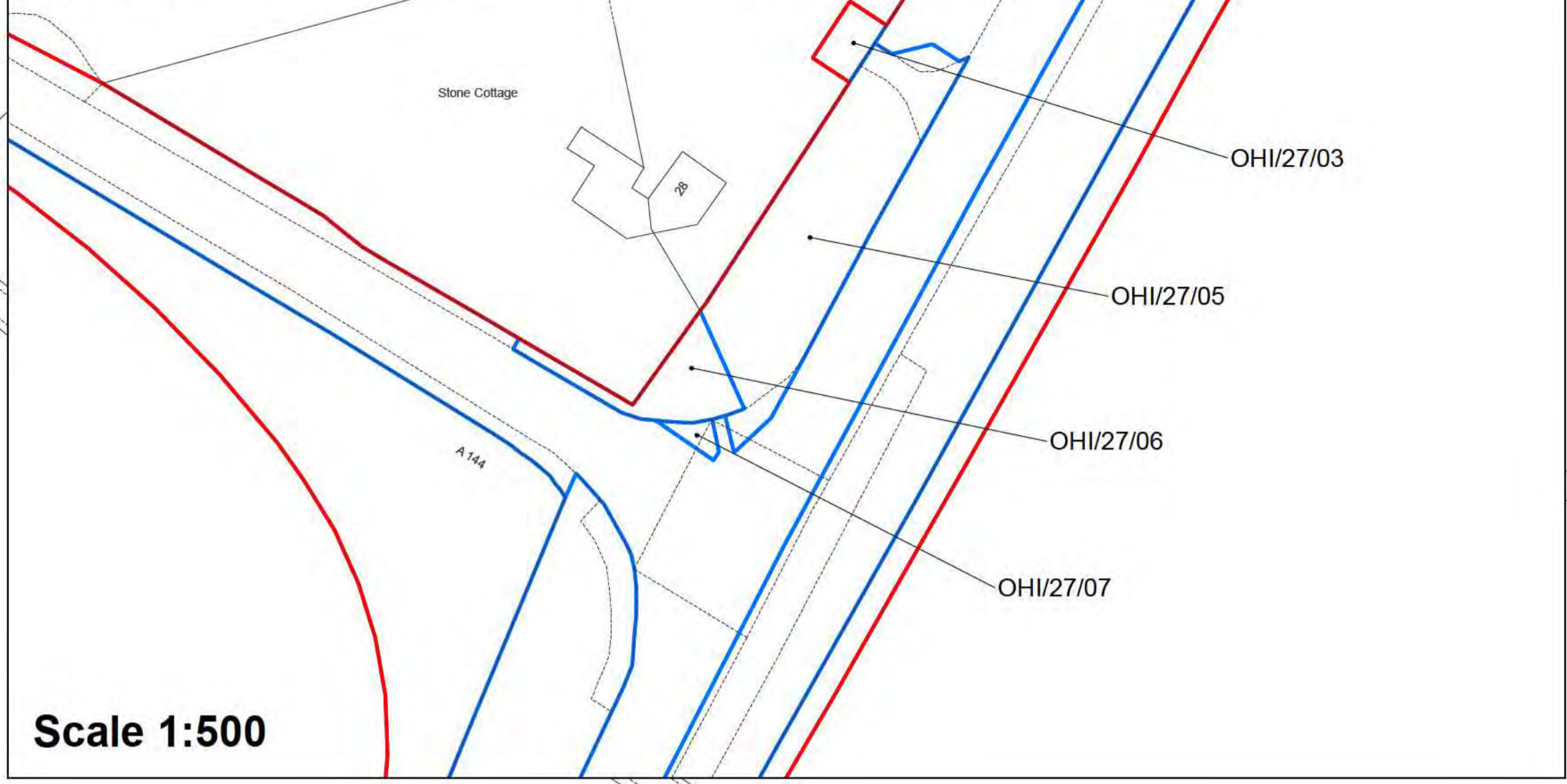
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**DATE:** MAY 2021 **DRAWN:** I.M. **SCALE:** 1:2,500 @A1

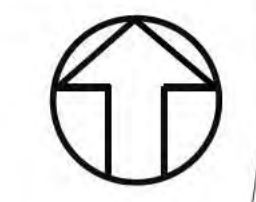
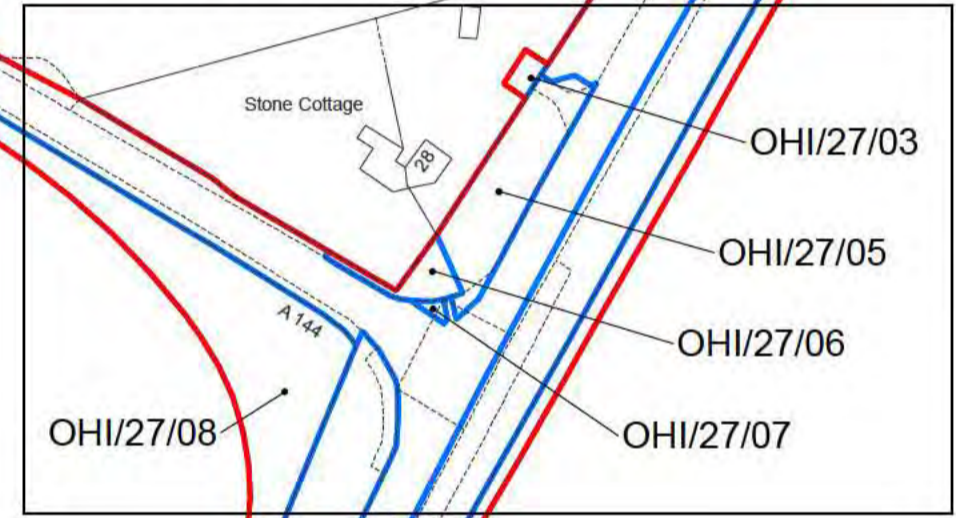




**Inset A**



**Inset A**



**NOTES:**  
 PLOT BOUNDARIES (AS OTHERWISE SHOWN OUTLINED IN BLUE) ARE SHOWN BY A RED LINE WHERE THEY COINCIDE WITH THE BOUNDARY OF THE LAND OVER WHICH THERE IS POTENTIAL OVER-RIDING OR EXTINGUISHMENT OF RIGHTS.

**KEY:**

- ORDER LIMITS
- PLOT BOUNDARIES

REVISION	DATE	DRAWN	CHECKED	REASONS FOR REVISION / COMMENTS	APPROVED
01	MAY 2021	IM	KC	DDO APPLICATION - DEADLINE 2 SUBMISSION (DATED 2 JUNE 2021)	SZC Co

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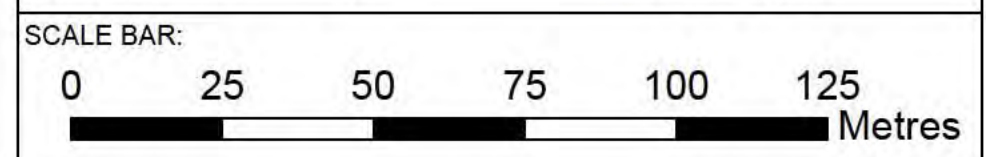
**PROJECT:**  
 SIZEWELL C

**DOCUMENT:**  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION

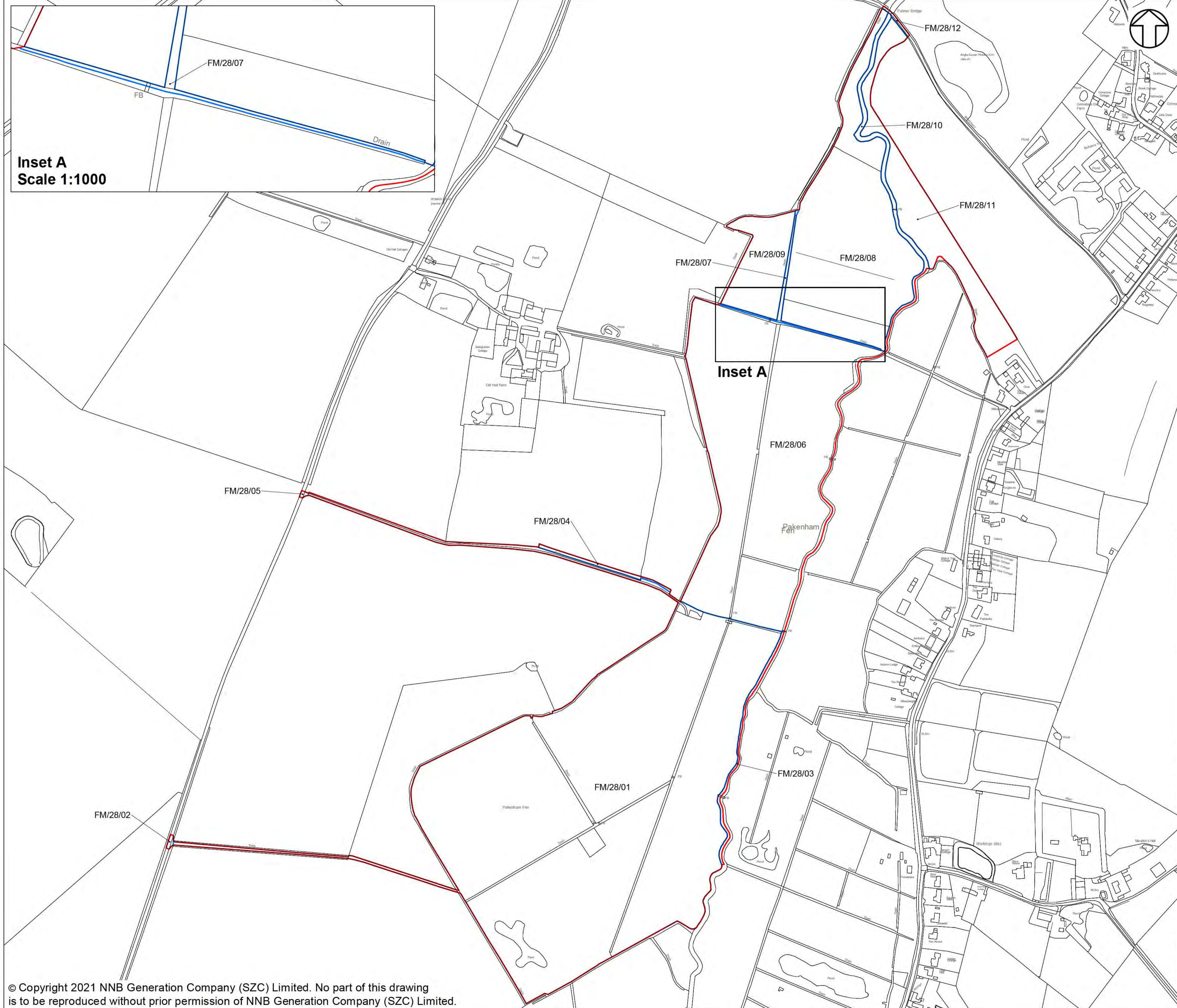
**DRAWING TITLE:**  
 LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION SHEET 27 OF 28

**DRAWING NO:** SZC/LOUO/27 **REVISION:** 01

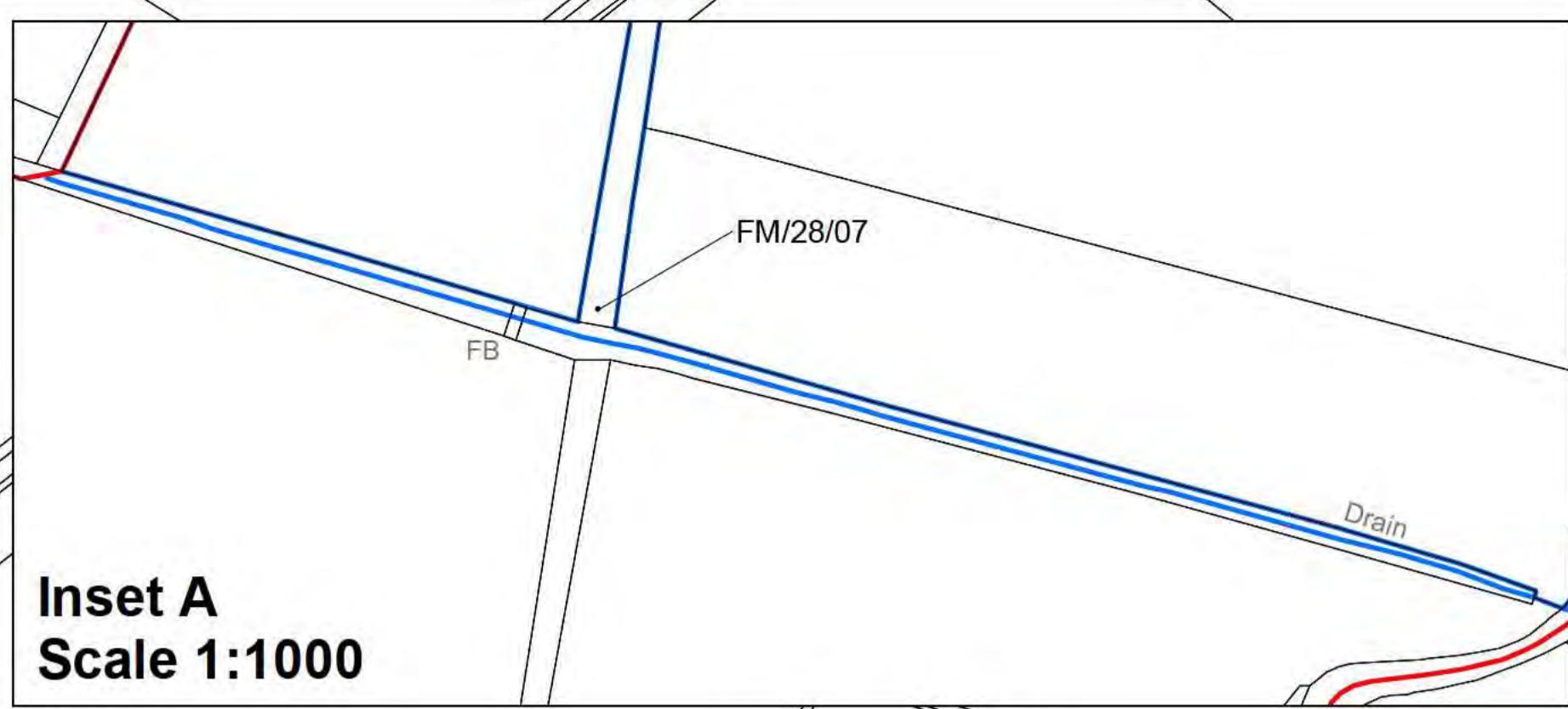
**DATE:** MAY 2021 **DRAWN:** I.M. **SCALE:** 1:1,250 @A1









**Inset A**  
Scale 1:1000



**NOTES:**  
PLOT BOUNDARIES (AS OTHERWISE SHOWN OUTLINED IN BLUE) ARE SHOWN BY A RED LINE WHERE THEY COINCIDE WITH THE BOUNDARY OF THE LAND OVER WHICH THERE IS POTENTIAL OVER-RIDING OR EXTINGUISHMENT OF RIGHTS.

**KEY:**  
 ORDER LIMITS  
 PLOT BOUNDARIES

REV	DATE	DRAWN	CHECKED	REASONS FOR REVISION/ COMMENTS	APPROVED
01	MAY 2021	IM	KC	DDO APPLICATION - DEADLINE 2 SUBMISSION (DATED 2 JUNE 2021)	SZC Co

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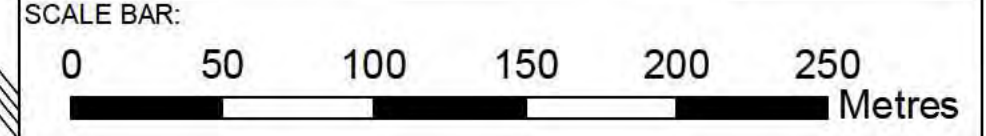


**PROJECT:**  
SIZEWELL C

**DOCUMENT:**  
LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION

**DRAWING TITLE:**  
LAND WITHIN THE ORDER LIMITS OWNED OR UNDER OPTION SHEET 28 OF 28

**DRAWING NO:** SZC/LOUO/28  
**REVISION:** 01  
**DATE:** MAY 2021  
**DRAWN:** I.M.  
**SCALE:** 1:2,500 @A1







SIZEWELL C PROJECT -  
RESPONSES TO EXAMINING AUTHORITY'S  
WRITTEN QUESTIONS ISSUED ON 21<sup>ST</sup> APRIL 2021

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APPENDIX 26C AQUIND INTERCONNECTOR -  
DRAFT DEVELOPMENT CONSENT ORDER

**NOT PROTECTIVELY MARKED**





**AQUIND Limited**

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# **AQUIND INTERCONNECTOR**

Updated Draft DCO – Clean

The Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009  
Regulation 5(2)(h)

Document Ref: 3.1

PINS Ref.: EN020022



**AQUIND Limited**

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# **AQUIND INTERCONNECTOR**

Updated Draft DCO – Clean

**PINS REF.: EN020022**

**DOCUMENT: 3.1**

**DATE: 05 MARCH 2021**

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## DOCUMENT

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<b>Date</b>	05 March 2021



**202X No. 0000**

**INFRASTRUCTURE PLANNING**

**The AQUIND Interconnector Order 202[ ]**

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008 (the “2008 Act” (a)) and in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an Order under sections 114, 115 and 120 of the 2008 Act.

The application was examined by a panel of three members (“the Panel”) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules(c).

The Panel, having considered the application together with the documents that accompanied it and the representations made, in accordance with section 74 of the 2008 Act, has submitted a report to the Secretary of State setting out its findings, conclusions and recommendations in respect of the application.

The Secretary of State, having considered the report and recommendations of the Panel, has decided to make an Order granting development consent for the development described in the application [with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals comprised within the application].

The Secretary of State is also satisfied that the parcels of common, open space or fuel or field allotment land comprised within the Order limits (as identified in the Book of Reference), when burdened with rights and restrictive covenants imposed by this Order, will be no less advantageous than they were before to persons in whom they are vested, other persons, if any, entitled to rights of common or other rights and the public, and that accordingly, section 132(3) of the 2008 Act applies.

The Secretary of State in exercise of the powers conferred by section 114, 115 and 120 of the 2008 Act, makes the following Order:

## PART 1

### General provisions

#### Preliminary

#### **Citation and commencement**

1. This Order may be cited as the AQUIND Interconnector Order 202[ ] and comes into force on [ ] 202[ ].

#### **Interpretation**

2.—(1) In this Order, unless the context requires otherwise—

“the 1961 Act” means the Land Compensation Act 1961(d);

“the 1965 Act” means the Compulsory Purchase Act 1965(e);

---

(a) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20)

(b) S.I. 2009/2264, to which there are amendments not relevant to this Order.

(c) S.I. 2010/103, amended by S.I. 2012/635.

(d) 1961 c. 33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c. 65). There are other amendments to the 1961 Act which are not relevant to this Order.

(e) 1965 c. 56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential



“the 1980 Act” means the Highways Act 1980(a);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(b);

“the 1984 Act” means the Road Traffic Regulations Act 1984(c);

“the 1989 Act” means the Electricity Act 1989(d);

“the 1990 Act” means the Town and Country Planning Act 1990(e);

“the 1991 Act” means the New Roads and Street Works Act 1991(f);

“the 2008 Act” means the Planning Act 2008(g);

“the 2009 Act” means the Marine and Coastal Access Act 2009(h);

“access and rights of way plans” means the plans certified by the Secretary of State as the access and rights of way plans under article 43 (Certification of plans and documents, etc.) for the purposes of this Order and identified in Schedule 6;

“address” includes any number or address used for the purposes of electronic transmission;

“apparatus” unless otherwise provided for, has the same meaning as in Part 3 of the 1991 Act;

“area of seaward construction activity” means the area of the sea within the Order limits seaward of MHWS shown on the works plans;

“authorised development” means the development and associated development described in Schedule 1 (Authorised Development) and any other development authorised by this Order which is development within the meaning of section 32 of the 2008 Act;

“book of reference” means the document certified by the Secretary of State as the book of reference under article 43 (Certification of plans and documents, etc.) for the purposes of this Order;

---

Provisions) Act 1985 (c. 71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c. 34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c. 39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

- (a) 1980 c. 66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c. 22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c. 51); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c. 71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), by section 64(1), (2) and (3) of the Transport and Works Act (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (b) 1981 c.66
- (c) 1984 c.27
- (d) 1989 c.29
- (e) 1990 c. 8. Section 56(4) was amended by section 32 of, and paragraph 10(2) of Schedule 7 to, the Planning and Compensation Act 1991 (c. 34). Section 106 was substituted, and section 106A inserted, by section 12(1) of the Planning and Compensation Act 1991. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the 2008 Act. Sections 272 to 274 and section 279 were amended by section 406(1) of, and paragraph 103 of Schedule 17 to, the Communications Act (c. 21), and section 280 was amended by section 406(1) of, and paragraph 104 of Schedule 17 to, that Act. Sections 272 to 274 were also amended by S.I. 2011/741 and S.I. 2012/2590. Section 282 was amended by S.I. 2009/1307. There are other amendments to the 1990 Act which are not relevant to this Order.
- (f) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Part 3 of the 1991 Act was amended by Part 4 of the Traffic Management Act 2004 (c. 18). Section 74 was amended, and sections 74A and 74B inserted, by sections 255 and 256 of the Transport Act 2000 (c. 38). There are other amendments to the 1991 Act but they are not relevant to this Order.
- (g) 2008 c.29
- (h) 2009 c.23



“building” includes any structure or erection or any part of a building, structure or erection;

“cable circuit” means a number of electrical conductors necessary to transmit electricity between two points within the authorised development; this comprises in the case of a HVAC cable circuit, three conductors and in the case of a HVDC cable circuit, two conductors;

“cable protection” means physical measures for the protection of cables including grout bags, concrete or frond mattresses, and/or rock placement and any other physical measures for the protection of cables which are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement;

“carriageway” has the meaning given in section 329 of the 1980 Act (interpretation);

“commence” means (a) in relation to any works seaward of MHWS, the first carrying out of any licensed marine activity authorised by the deemed marine licence save for pre-construction surveys approved by the deemed marine licence and (b) in respect of any other works comprised in the authorised development beginning to carry out any material operation, as defined in section 155 of the 2008 Act (when development begins), forming part, or carried out for the purposes, of the authorised development other than operations consisting of onshore site preparation works and the words “commencement” and “commenced” are to be construed accordingly;

“construction compound” means a site used temporarily in connection with construction of the authorised development which may include central offices, welfare facilities and storage;

“converter station” means the HVDC converter station containing apparatus and equipment required for the operation and maintenance of an electric power HVDC interconnector including (but not limited to) equipment required to transmit, switch, transform and convert electricity, including backups, spares and apparatus with external landscaping and means of access and more particularly described in Schedule 1;

“deemed marine licence” means the marine licence set out at Schedule 15 and any variation properly made to that from time to time;

“design and access statement” or “DAS” means the document certified by the Secretary of State as the design and access statement under article 43 (Certification of plans and documents, etc.) for the purposes of this Order;

“discharging authority” means the body responsible for giving any agreement or approval required by a requirement;

“disposal” means the deposit of dredged material at disposal sites with reference WI048 and WI049 within the extent of the Order limits seaward of MHWS and “dispose” and cognate expressions are to be construed accordingly;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“environmental statement” means the document submitted by the undertaker to support its application for development consent and detailed in the schedule of documents forming the environmental statement;

“framework traffic management strategy” means the document certified by the Secretary of State as the framework traffic management strategy under article 43 (Certification of plans and documents, etc.) for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“hedgerow and tree preservation order plans” means the plans certified by the Secretary of State as the hedgerow and tree preservation order plans under article 43 (Certification of plans and documents, etc.) for the purposes of this Order

“highway” and “highway authority” have the same meaning as is provided for in the 1980 Act;

“horizontal directional drilling” and “HDD” means a trenchless technique for installing an underground duct between two points without the need to excavate vertical shafts;



“horizontal directional drilling compound” and “HDD compound” means a construction compound to be provided in connection with the undertaking of horizontal directional drilling;

“HVAC” means high voltage alternating current;

“HVDC” means high voltage direct current;

“Hampshire County Council development consent obligation” means the document certified by the Secretary of State as the Hampshire County Council development consent obligation under article 43 (Certification of plans and documents, etc.) for the purposes of this Order;

“intrusive activities” means activities including but not limited to anchoring of vessels, jacking up of vessels, seabed clearance and disposal;

“joint bay” means the underground transition location between sections of cable containing the cable joint and ancillary equipment and parts required to make the joint;

“land” includes land covered by water, any interest in land or right in, to or over land;

“land plans” means the plans certified by the Secretary of State as the land plans under article 43 (Certification of plans and documents, etc.) for the purposes of this Order and identified in Schedule 4;

“link box” means an underground metal box placed within a plastic or concrete pit where cable sections are connected and earthed;

“link pillar” means an above ground building where cable sections are connected and earthed;

“local planning authority” has the same meaning as in the 1990 Act;

“maintain” includes inspect, upkeep, repair, adjust, alter, improve, preserve and further includes remove, reconstruct and replace any part of the authorised development, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement and for the avoidance of doubt must not include the renewal, re-laying, reconstruction or replacement of the entirety of Work No.1, Work No.2, Work No.4, Work No.5, Work No.6 or Work No.7 and “maintenance” must be construed accordingly;

“marine HVDC cables” means two 320 kilovolt HVDC cable circuits for the transmission of electricity which may be bundled as two pairs of cables or take the form of single cables, together with: (i) fibre optic data transmission cables accompanying each HVDC cable circuit, for the purpose of control, monitoring, and protection of the HVDC cable circuits and converter station, and for commercial telecommunications; and (ii) one or more cable crossing;

“marine works” means Works No’s 6 and 7 described in Schedule 1 and any other works seaward of MHWS in connection with those Works authorised by this Order or, as the case may require, any part of those works and “marine work” refers to any one of the marine works;

“Maritime and Coastguard Agency” means the executive agency of the Department for Transport;

“master” in relation to a vessel means any person for the time being having or taking the command, charge or management of the vessel;

“mean high water springs” or “MHWS” means the average throughout the year of two successive high waters during a 24-hour period in each month when the range of the tide is at its greatest;

“mean low water springs” or “MLWS” means the average throughout the year, of two successive low waters, during a 24-hour period in each month when the range of the tide is at its greatest;

“National Grid” means National Grid Electricity Transmission plc. (Company No. 02366977) and their successors in title, assigns and any other person exercising their powers or performing the same functions;

“onshore HVAC cables” means two 400 kilovolt HVAC cable circuits for the transmission of electricity, together with: (i) fibre optic data transmission cable for the purpose of control,



monitoring and protection and an earth continuity conductor with each cable circuit; and (ii) one or more cable crossing;

“onshore HVDC cables” means two 320 kilovolt HVDC cable circuits for the transmission of electricity together with: (i) fibre optic data transmission cables accompanying each HVDC cable circuit for the purpose of control, monitoring and protection of the HVDC cable circuits and the converter station, and for commercial telecommunications; and (ii) one or more cable crossing;

“onshore site preparation works” means:

- (a) pre-construction archaeological investigations;
- (b) environmental surveys and monitoring;
- (c) site clearance;
- (d) removal of hedgerows, trees and shrubs;
- (e) investigations for the purpose of assessing ground conditions;
- (f) remedial work in respect of any contamination or adverse ground conditions;
- (g) receipt and erection of construction plant and equipment;
- (h) the temporary display of site notices and site advertisements;
- (i) erection of temporary buildings, structures or enclosures; and
- (j) Work No. 2 (bb) (access junction and associated gated highway link);

“onshore works” means Works No’s 1 to 5 (inclusive) described in Schedule 1 and any other works landwards of MLWS in connection with those Works authorised by this Order or, as the case may require, any part of those works and “onshore work” refers to any one of the onshore works;

“Order land” means the land which is within the limits of the land to be acquired shown on and identified by plot numbers on the land plans and described in the book of reference;

“Order limits” means the limits shown on the works plans within which the authorised development may be carried out, whose grid co-ordinates seaward of MHWS are set out in paragraph 2 of Schedule 1 of this Order;

“operational period” means the period of time that the relevant part of the authorised development is in operation after construction and commissioning is complete pursuant to the relevant construction contract or contracts and “operation” and “operational” should be construed accordingly;

“optical regeneration station” means signal amplification and control equipment associated with fibre optic data transmission cables required to ensure an adequate signal strength housed within a building;

“owner”, in relation to land, has the same meaning as in section 7 of the 1981 Act (interpretation);

“parameter plans” means the plans certified by the Secretary of State as the parameter plans under article 43 (Certification of plans and documents, etc.) for the purposes of this Order and identified in Schedule 7;

“permanent limits” means the limits of land for the purpose of article 20 (Compulsory acquisition of land) as shown shaded pink, blue, purple and green on the land plans;

“the permit schemes” means the following schemes made under part 3 of the Traffic Management Act 2004(a) as in force at the date on which this Order is made –

- (a) The Traffic Management (Hampshire County Council) Permit Scheme Order 2019; and
- (b) The Portsmouth City Council Permit Scheme Order 2020.

---

(a) 2004 c.18



“plot 10-14” means plot 10-14 as shown on the land plans and described in the book of reference;

“Portsmouth City Council development consent obligation” means the document certified by the Secretary of State as the Portsmouth City Council development consent obligation under article 43 (Certification of plans and documents, etc.) for the purposes of this Order;

“provisional advance authorisation” has the same meaning as in regulation 2 of the Traffic Management Permit Scheme Regulations 2007(a);

“relevant highway authority” means, in any given provision of this Order, the highway authority for the highway that the provision relates to i.e. Hampshire County Council or Portsmouth City Council, as the case may be;

“relevant street authority” means, in any given provision of this Order, the street authority for the street that the provision relates to i.e. Hampshire County Council or Portsmouth City Council, as the case may be;

“relevant planning authority” means, in any given provision of this Order, the local planning authority for any area of land that the provision relates to, i.e. Winchester City Council, Havant Borough Council, Portsmouth City Council or East Hampshire District Council, as the case may be, or in respect of the marine works the Marine Management Organisation;

“requirement” means a requirement set out in Schedule 2, and a reference to a numbered requirement is a reference to the requirement set out in the paragraph of the same number in that Schedule;

“SSE” means SSE Electricity Limited (Company No. 04094263) and their successors in title, assigns and any other person exercising their powers or performing the same functions;

“schedule of documents forming the environmental statement” means the document certified by the Secretary of State as the schedule of document forming the environmental statement under article 43 (Certification of plans and documents, etc.) for the purposes of this Order;

“South Downs National Park Authority development consent obligation” means the document certified by the Secretary of State as the South Downs National Park Authority development consent obligation under article 43 (Certification of plans and documents, etc.) for the purposes of this Order;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act (statutory undertakers’ land) and includes a public communications provider as defined in section 151(1) of the Communications Act 2003(b);

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the meaning given in Part 3 of the 1991 Act (the street authority and other relevant authorities);

“subsoil” means any part of the substrata which is below the surface of the ground;

“telecommunications building” means telecommunications apparatus and ancillary equipment related to the termination of and for the commercial use of the fibre optic data transmission cables housed within a building;

“traffic authority” has the same meaning as in the 1984 Act;

“traffic management strategy” means a strategy containing details of the traffic management measures to be implemented in connection with the carrying out of works on any street to be approved pursuant to requirement 25;

“traffic signs” has the meaning given in section 64(1) of the 1984 Act (General provisions as to traffic signs);

---

(a) S.I. 2007/3372

(b) 2003 c.21



“transitional joint bay” means the underground concrete bays forming part of Work No. 5, where the marine HVDC cable in Works No. 6 and 7 is jointed to the onshore HVDC cable in Works No. 4

“tree preservation order” has the meaning given in section 198 of the 1990 Act (power to make tree preservation orders);

“trenchless installation techniques” means techniques for installing an underground duct between two points, without excavating and back-filling a trench;

“trenchless installation technique compound” means a construction compound to be provided in connection with the undertaking of trenchless installation techniques;

“tribunal” means the Upper Tribunal (Lands Chamber);

“undertaker” means AQUIND Limited (company number 06681477) or the person who has the benefit of this Order in accordance with article 6 (Benefit of Order) and 7 (Consent to transfer benefit of Order);

“undertaking” mean the transmission of electricity, ensuring security of supply, the provision of ancillary services to facilitate and support the continuous flow of electricity and the provision of telecommunications services by the undertaker as authorised from time to time;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“Work” means a work identified as part of the authorised development in Schedule 1 (Authorised Development);

“works plans” means the plans certified by the Secretary of State as Works Plans under article 43 (Certification of plans and documents, etc.) for the purposes of this Order and identified in Schedule 5; and

“working day” means Monday to Friday excluding bank holidays and other public holidays.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictions are references to restrictive covenants over land which interfere with the interests or rights of another and are for the benefit of land which is acquired, or rights over which are acquired, under this Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a Work comprised in the authorised development and shown on the works plans or access and rights of way plans are to be taken to be measured along that Work.

(4) All areas described in square metres in the book of reference are approximate.

(5) References to any statutory body includes that body’s successor bodies from time to time that have jurisdiction over the authorised development.

(6) References in the Schedules to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the access and rights of way plans or land plans.

(7) Grid references in the Schedules are references to points on the Ordnance Survey National Grid.

(8) In this Order, the expression “includes” or “include” is to be construed without limitation.



## PART 2

### Principal powers

#### **Development consent etc. granted by Order**

3.—(1) Subject to the provisions of this Order including the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Subject to the requirements Works Nos. 1 to 5 must be constructed within the Order limits landward of MHWS and Work Nos. 6 to 7 must be constructed within the Order limits seaward of MHWS.

#### **Authorisation of use**

4.—(1) The undertaker is authorised to operate and use the authorised development for which development consent is granted by this Order.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain any permit, licence or other obligation under any other legislation that may be required from time to time to authorise the operation of any part of the authorised development.

#### **Power to construct and maintain authorised development**

5.—(1) The undertaker may at any time construct and maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) The power to maintain conferred under paragraph (1) does not relieve the undertaker of any requirement to obtain any further licence under Part 4 of the 2009 Act (marine licensing) for marine works not covered by the deemed marine licence.

#### **Benefit of the Order**

6.—(1) Subject to article 7 (Consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the undertaker.

#### **Consent to transfer the benefit of Order**

7.—(1) Subject to paragraph (3) the undertaker may with the written consent of the Secretary of State –

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including the deemed marine licence, in whole or in part) and such related statutory rights as may be agreed between the undertaker and the transferee; and
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of the Order (including the deemed marine licence, in whole or in part) and such related statutory rights as may be so agreed,

except where paragraph (5) applies in which case no consent of the Secretary of State is required.

(2) Where a transfer or grant has been made in accordance with paragraphs (1) references in this Order to the undertaker, except in paragraphs (4) and (6) include references to the transferee or the lessee.

(3) The Secretary of State must consult the MMO before giving consent to transfer or grant to another person the whole or part of the benefit of the provisions of the deemed marine licence.

(4) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit, under paragraph (1) –



- (a) the benefit transferred or granted (“the transferred benefit”) includes any rights that are conferred and any obligations that are imposed, by virtue of the provisions to which the benefit relates; and
  - (b) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.
- (5) This paragraph applies to any provisions of this Order and its related statutory rights where –
- (a) the transferee or lessee is the holder of a licence under section 6(1)(e) of the 1989 Act;
  - (b) in respect of the benefit of the Order in so far as it relates to Work No. 1 the transferee is National Grid;
  - (c) in respect of the benefit of the Order in so far as it relates to the commercial telecommunications use of the fibre optic data transmission cables any person who Ofcom have directed the electronic communications code is to have effect in relation to pursuant to section 106 of the Telecommunications Act 2003;
  - (d) in respect of the benefit of the Order in so far as it relates to Work No. 2 (w) the transferee is SSE; or
  - (e) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and –
    - (i) no such claims have been made;
    - (ii) any such claim has been made and has been compromised or withdrawn;
    - (iii) compensation has been paid in final settlement of any such claim;
    - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or
    - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is repayable.
- (6) Prior to any transfer or grant under this article taking effect the undertaker must give notice in writing to the Secretary of State and if such transfer or grant relates to the exercise of powers in their area to the MMO and the relevant planning authority.
- (7) The notices required under paragraph (6) must –
- (a) state –
    - (i) the name and contact details of the person to whom the benefit of the provisions will be transferred or granted;
    - (ii) subject to paragraph (8) the date on which the transfer will take effect;
    - (iii) the provisions to be transferred or granted; and
    - (iv) the restrictions, liabilities and obligations that in accordance with paragraphs (4) will apply to the person exercising the powers transferred or granted; and
    - (v) where paragraph (5) does not apply confirmation of the availability and adequacy of funds for compensation associated with the compulsory acquisition of the Order land.
  - (b) be accompanied by –
    - (i) where relevant a plan showing the works or areas to which the transfer or grant relates; and
    - (ii) a copy of the document effecting the transfer or grant signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted.
- (8) The date specified under paragraph (7)(a)(ii) must not be earlier than the expiry of five working days from the date of receipt of the notice.
- (9) The notice given under paragraph (6) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.



(10) Section 72(7) and (8) of the 2009 Act do not apply to a transfer or grant of the whole or part of the benefit of the provisions of the deemed marine licence to another person by the undertaker pursuant to an agreement under paragraph (1).

### **Application, exclusion and modification of legislative provisions**

**8.**—(1) Regulation 6 of the Hedgerows Regulations 1997 is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following –

(a) “or (k) for the carrying out of development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.”.

(2) The provisions of the Neighbourhood Planning Act 2017 insofar as they relate to temporary possession of land under articles 30 (temporary use of land for the construction of the authorised development) and 32 (temporary use of land for maintaining the authorised development) of this Order do not apply in relation to the works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised development.

(3) The Town and Country Planning (Border Facilities and Infrastructure) (EU Exit) (England) Special Development Order 2020 does not apply in relation to any land that is within the Order limits.

(4) For the purposes only of Section 106 (1) of the 1990 Act –

(a) the undertaker shall be deemed to be a person interested in the Order land or any part of it and for the avoidance of doubt Section 106(3)(a) shall include any transferee under Article 7 of this Order; and

(b) the South Downs National Park Authority shall be deemed to be a local planning authority in respect of the Order land for the purposes of the South Downs National Park Authority development consent obligation only.

### **Defence to proceedings in respect of statutory nuisance**

**9.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) (noise emitted from premises so as to be prejudicial to health or a nuisance) and (ga) (noise that is prejudicial to health or a nuisance and is emitted or caused by a vehicle, machinery or equipment on a street) of section 79(1) of that Act no order may be made and no fine may be imposed under section 82(2) of that Act if the defendant shows that the nuisance–

(a) relates to premises, vehicles, machinery or equipment used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site) or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974(b); or

(b) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with the controls and measures relating to noise as described in a construction environmental management plan approved pursuant to requirement 15;

(c) relates to premises used by the undertaker for the purposes of or in connection with the operation of authorised development and that the nuisance is attributable to the operation of the authorised development in accordance with the noise levels set out in a noise management plan approved pursuant to requirement 20; or

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(a) 1990 c. 43. There are amendments to this Act which are not relevant to this Order.

(b) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to the Order.



(d) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided.

(2) For the purpose of paragraph (1) above, compliance with the controls and measures relating to noise described in an approved construction environmental management plan will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably be avoided.

(3) Where a relevant planning authority is acting in accordance with section 60(4) and section 61(4) of the Control of Pollution Act 1974 in relation to the construction of the authorised development then the local authority must also have regard to the controls and measures relating to noise referred to in a relevant construction environment management plan approved pursuant to requirement 15.

(4) Section 61(9) (consent for work on construction sites to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of the premises by the undertaker for purposes of or in connection with the construction or maintenance of the authorised development.

(5) In this article “premises” has the same meaning as in section 79 of the Environmental Protection Act 1990(a).

## PART 3 STREETS

### **Application of the permit scheme**

#### **9A –**

(1) The permit schemes apply to the construction and maintenance of the authorised development and will be used by the undertaker in connection with the exercise of any powers conferred by this Part.

(2) For the purposes of this Order–

- (a) a permit in relation to the construction of the authorised development may not be granted subject to conditions which conflict with the framework traffic management strategy or require the authorised development to be carried out in a manner which conflicts with any approvals granted pursuant to this Order (including any relevant approved traffic management strategy) or where the undertaker would be unable to comply with those conditions through the exercise of the powers conferred by this Order;
- (b) a permit in relation to the construction of the authorised development may not be refused where the proposed reason for refusal is the inability to impose a condition which will not comply with paragraph 2(a);
- (c) a permit in relation to the construction of the authorised development may not be refused or granted subject to conditions which relate to the imposition of a moratoria; and
- (d) where a provisional advance authorisation has been granted to the undertaker in advance of the grant of a permit in relation to the construction of the authorised development the relevant street authority may not grant a permit for any other works in the location during the time period to which that provisional advance authorisation relates save that nothing will restrict the ability of the local highway authority to grant a permit for immediate works.

(3) Irrespective of anything which is stated to the contrary within the permit schemes, where the undertaker submits an application for a permit in relation to the construction of the authorised development subject to proposed conditions and the relevant highway authority wishes for different conditions to be imposed on the permit the relevant highway authority must seek to reach

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(a) 1990 c. 43.



agreement with the undertaker on the conditions subject to which the permit is to be granted and provide alternative permit conditions to the undertaker within 10 working days following the date on which the application for the permit is made by the undertaker and must not refuse an application for a permit before the end of the period which is 5 working days following the date on which the alternative permit conditions are provided to the undertaker.

(4) Where the undertaker confirms its agreement to the alternative permit conditions provided by the relevant highway authority pursuant to paragraph (3) before the expiry of 5 working days following the date on which any such alternative permit conditions are provided to the undertaker, the relevant highway authority must grant the permit subject to those conditions.

(5) Any alternative permit conditions provided by a relevant highway authority in accordance with paragraph (3) must comply with paragraph 2(a).

(6) References to moratoria in paragraph (2)(c) mean restrictions imposed under section 58 (restrictions on works following substantial road works) or section 58A (restrictions on works following substantial street works) of the 1991 Act.

(7) Reference to immediate works in paragraph 2(d) means emergency works as that term is defined in section 52 of the 1991 Act and urgent works as that term is defined in regulation 3(1) of the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007.

(8) Without restricting the undertaker's recourse to any alternative appeal mechanism which may be available under the permit schemes or otherwise, the undertaker may appeal any decision to refuse to grant a permit, or to grant a permit subject to conditions, in accordance with the mechanism set out in Schedule 3 of this Order.

#### **Power to alter layout etc. of streets**

**10.**—(1) Subject to paragraph (3), the undertaker may for the purpose of constructing and maintaining the authorised development, permanently or temporarily alter the layout of any street (and carry out works ancillary to such alterations) whether or not within the Order limits and the layout of any street having a junction with such a street and, without limiting the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track, central reservation or verge within a street;
- (b) alter the level or increase the width of any such street, kerb, footpath, footway, cycle track, central reservation or verge;
- (c) reduce the width of the carriageway of the street;
- (d) execute any works to widen or alter the alignment of pavements;
- (e) make and maintain crossovers and passing places;
- (f) execute any works of surfacing or resurfacing of the street;
- (g) carry out works for the provision or alteration of parking places, loading bays and cycle tracks;
- (h) carry out works necessary to alter or provide facilities for the management and protection of pedestrians; and
- (i) execute any works to provide or improve sight lines required by the relevant street authority.

(2) The undertaker must restore to the reasonable satisfaction of the street authority any street that has been temporarily altered pursuant to this article.

(3) The powers conferred by paragraph (1) must not be exercised without the approval of the relevant street authority and such approval is not to be unreasonably withheld or delayed.

(4) If a street authority which receives an application for approval under paragraph (3) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was made, it is deemed to have granted consent.



## **Street works**

**11.**—(1) The undertaker may, for the purpose of the authorised development, enter on so much of any of the streets as is within the Order limits and may without the consent of the relevant street authority—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street or carry out works to strengthen or repair the carriageway;
- (c) place or keep apparatus in, on or under the street;
- (d) maintain, renew or alter apparatus in, on or under the street or change its position;
- (e) execute and maintain any works to provide hard and soft landscaping;
- (f) carry out re-lining and placement of road markings;
- (g) remove and install temporary and permanent signage;
- (h) remove, replace and relocate any street furniture; and
- (i) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (h).

(2) Without limiting the scope of the powers conferred by paragraph (1) but subject to the consent of the relevant street authority, which consent must not be unreasonably withheld or delayed, the undertaker may, for the purposes of the authorised development, enter on so much of any other street whether or not within the Order limits, for the purposes of carrying out the works set out at paragraph (1) above.

(3) If a relevant street authority that receives an application for consent under paragraph (2) fails to notify the undertaker of its decision within 42 days beginning with the date on which the application was made, that authority will be deemed to have granted consent.

(4) The authority given by paragraphs (1) and (2) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(5) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act and also expressly includes Work No. 4 and Work No. 5.

## **Application of the 1991 Act**

**12.**—(1) The provisions of the 1991 Act mentioned in paragraph (2) that apply in relation to the carrying out of street works under that Act and any regulations made or code of practice issued or approved under those provisions apply (with all necessary modifications) in relation to—

- (a) carrying out of works under article 11 (Street works);
- (b) the temporary closure, temporary alteration or temporary diversion of a street by the undertaker under article 13 (Temporary closure of streets and public rights of way),

whether or not the carrying out of the works or the closure, alteration or diversion constitutes street works within the meaning of that Act.

(2) The provisions of the 1991 Act are –

- (a) subject to paragraph (3), section 55 (notice of starting date of works);
- (b) section 57 (notice of emergency works);
- (c) section 59 (general duty of street authority to co-ordinate works);
- (d) section 60 (general duty of undertakers to co-operate);
- (e) section 65 (safety measures);
- (f) section 67 (qualifications of supervisors and operatives);
- (g) section 68 (facilities to be afforded to street authority);
- (h) section 69 (works likely to affect other apparatus in the street);
- (i) section 70 (duty of undertaker to reinstate);



- (j) section 71 (materials, workmanship and standard of reinstatement);
- (k) section 72 (powers of streets authority in relation to reinstatement);
- (l) section 73 (reinstatement affected by subsequent works);
- (m) section 75 (inspection fees);
- (n) section 76 (liability for cost of temporary traffic regulation);
- (o) section 77 (liability for cost of use of alternative route);
- (p) section 79 (records of location of apparatus);
- (q) section 80 (duty to inform undertakers of location of apparatus);
- (r) section 81 (duty to maintain apparatus);
- (s) section 82 (liability for damage or loss caused);
- (t) all provisions of that Act that apply for the purposes of the provisions referred to in subparagraphs (a) to (q)

(3) Section 55 of the 1991 Act has effect as if references in section 57 of that Act to emergency works included a reference to a closure, alteration or diversion (as the case may be) required in a case of emergency.

### **Temporary closure, alteration, diversion or restriction of streets, public rights of way and permissive paths**

13.—(1) The undertaker, during and for the purpose of constructing and maintaining the authorised development, may temporarily close, alter, divert or restrict any street, public right of way or permissive path within the Order limits and may for any reasonable time—

- (a) divert the traffic from the street, public right of way or permissive path; and
- (b) subject to paragraph (3), prevent all persons from passing along the street, public right of way or permissive path.

(2) Without limitation on the scope of paragraph (1), the undertaker may use as a temporary working site any street, public right of way or permissive path which has been temporarily closed, altered, diverted or restricted under the powers conferred by this article.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street or public right of way affected by the temporary closure, alteration, diversion or restriction under this article if there would otherwise be no reasonable access.

(4) Without limitation to the generality of paragraph (1), the undertaker may temporarily close, alter, divert or restrict the streets, public rights of way or permissive paths specified in column (1) of Schedule 8 (Streets, public rights of way and permissive paths to be temporarily closed, altered, diverted or restricted) to the extent specified, by reference to the letters and numbers shown on the access and rights of way plans and stated in column (2) of Schedule 8.

(5) The undertaker must not temporarily close, alter, divert or restrict;

- (a) any street, public right of way or permissive path as mentioned in paragraph (4) without first consulting the relevant street authority; and
- (b) any other street, public right of way or permissive path without the consent of the street authority which may attach reasonable conditions to any consent, but such consent may not be unreasonably withheld or delayed.

(6) Where the undertaker provides a temporary diversion under paragraph (3), the temporary alternative route is not required to be of a higher standard than the temporarily closed street, or public right of way.

(7) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in the case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.



(8) If a relevant street authority that receives an application for consent under paragraph (5)(b) fails to notify the undertaker of its decision within 42 days of receiving the application, that relevant street authority will be deemed to have granted consent.

(9) References to temporary stopping up of any street or highway in Schedule 13 (protective provisions) are to be construed as a reference to the closure of that street or highway under this article.

### **Access to works**

**14.—**(1) The undertaker may, for the purposes of the authorised development and subject to paragraph (2) with the consent of the relevant highway authority (such consent not to be unreasonably withheld or delayed) following consultation by the relevant highway authority with the relevant planning authority, form and lay out such means of access (permanent or temporary) or improve any existing means of access at such locations within the Order limits (including in the locations identified on the access and rights of way plans) as the undertaker reasonably requires for the purposes of the authorised development.

(2) The consent of the relevant highway authority under paragraph (1) is not required in relation to Work No. 2 (bb).

(3) If the relevant highway authority which has received an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was made, it is deemed to have granted consent.

### **Agreements with street authorities**

**15.—**(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) any closure, alteration or diversion of a street authorised by this Order; or
- (b) the carrying out in the street of any of the works referred to in article 10 (power to alter layout etc. of streets) and article 11 (street works); and
- (c) such other works as the parties may agree.

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) specify a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and other matters as the parties consider appropriate.

### **Traffic regulation**

**16.—**(1) Subject to the provisions of this article and the consent of the relevant traffic authority in whose area the street is situated, which consent may not to be unreasonably withheld or delayed, the undertaker may, for the purposes of or in connection with the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act in so far as it is inconsistent with any prohibition, restriction or other provision made by the undertaker under this article;
- (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road;
- (f) place traffic signs on or near a street, subject to and in conformity with the directions issued by the Secretary of State pursuant to powers conferred by section 64, 65 and 85 of the 1984 Act.



either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) Before complying with the provisions of paragraph (3) the undertaker must consult the chief officer of police and the relevant highway authority in whose area the street is situated.

(3) The undertaker must not exercise the powers in paragraphs (1) unless it has—

- (a) given not less than 28 days' notice in writing of its intention so to do to the chief officer of police and to the relevant traffic authority in whose area the street is situated; and
- (b) advertised its intention in such manner as the relevant traffic authority may specify in writing within 7 days' of its receipt of notice of the undertaker's intention as provided for in sub-paragraph (a).

(4) Any prohibition, restriction or other provision made by the undertaker under paragraph (1)

(a) has effect as if duly made by—

- (i) the relevant traffic authority in whose area the street is situated as a traffic regulation order under the 1984 Act; or
- (ii) the local authority in whose area the street is situated as an order under section 32 (Power of local authorities to provide parking spaces) of the 1984 Act(a),

and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and

(b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(b)

(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers of paragraph (1) at any time.

(6) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

(7) If the relevant traffic authority fails to notify the undertaker of its decision within 42 days of receiving an application for consent under paragraph (1) the relevant traffic authority is deemed to have granted consent.

## PART 4

### Supplemental powers

#### Discharge of water

17.—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, operation or maintenance of the authorised development and for that purpose may inspect, lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or use of a public sewer or drain by the undertaker pursuant to paragraph (1) is determined as if it were a dispute under section 106 of the Water Industry Act 1991(c) (right to communicate with public sewers).

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(a) As amended by section 102 of, and Schedule 7 to, the Local Government Act 1985 (c. 51) and section 168(1) of, and paragraph 39 of Schedule 8 to, the 1991 Act.

(b) 2004 c.18.

(c) 1991 c.56. Section 106 was amended by section 35(8)(a) of the Compensation and Service (Utilities) Act 1992 (c.43) and sections 36(2) and 99 of the water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.



(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld or delayed.

(4) The undertaker must not make any opening into any public sewer or drain pursuant to paragraph (1) except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld or delayed; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) Where the person receives an application for consent under paragraphs (3) or approval under paragraph (4)(a) and fails to notify the undertaker of its decision within 28 days' of receiving an application, that person will be deemed to have granted consent or given approval, as the case may be.

(6) The undertaker must not, in carrying out or maintaining the authorised development pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(7) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(8) This article does not authorise entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulations 12 of the Environmental Permitting (England and Wales) Regulations 2016(a)

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and
- (b) except as provided in article 2 (Interpretation), other expressions used both in this article and in the Environmental Permitting (England and Wales) Regulations 2016 have the same meaning as in those Regulations.

### **Protective work to buildings**

**18.—**(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits or which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the day on which that part of the authorised development is first brought into operational use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and

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(a) S.I. 2016/1154



- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 10 working days' notice of its intention to exercise that right and in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5) the owner or occupier of the building or land concerned may by serving a counter-notice within the period of 10 working days' beginning with the day on which the notice was served require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 45 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of five years beginning with the day on which the part of the authorised development constructed in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Without affecting article 35 (no double recovery), nothing in this article relieves the undertaker from any liability to pay compensation under section 152 (compensation in a case where no right to claim nuisance) of the 2008 Act.

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

### **Authority to survey and investigate the land**

**19.—**(1) The undertaker may for the purposes of this Order enter on any land within the Order limits landwards of MLWS or which may be affected by the authorised development within Works Nos. 1 to 5 (inclusive) and—

- (a) survey, monitor or investigate the land (including any watercourses, groundwater, static water bodies or vegetation on the land);



- (b) without limitation to the generality of sub-paragraph (a), make trial holes, boreholes and excavations in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer, subsoil and groundwater and remove samples;
- (c) without limitation to the generality of sub-paragraph (a), carry out ecological or archaeological investigations and monitoring on such land, including the digging of trenches; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes, boreholes and excavations.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 10 working days' notice has been served on every occupier of the land.

(3) Any person entering on any land under this article on behalf of the undertaker—

- (a) must, if so required entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes, boreholes or excavations are to be made under this article—

- (a) in land forming a railway without the consent of Network Rail<sup>(a)</sup>
- (b) in land by or in right of the Crown without the consent of the Crown;
- (c) in land located within the highway boundary without the consent of the relevant highway authority; or
- (d) in a private street without the consent of the relevant street authority

but such consent must not be unreasonably withheld or delayed.

(5) As soon as reasonably practicable following the completion of any activities carried out under paragraph (1), the undertaker must remove any apparatus and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) If either a relevant highway authority or a relevant street authority which receives an application for consent under this article fails to notify the undertaker of its decision within 28 days' of receiving the application, that authority will be deemed to have granted consent.

(8) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

## PART 5

### Powers of acquisition

#### **Compulsory acquisition of land**

**20.**—(1) The undertaker may—

- (a) acquire compulsorily so much of the Order land within the permanent limits and described in the book of reference and shown on the land plans as is required for the

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(a) As defined in Part 4 of Schedule 13 (For Protection of Railway Interests)



construction, operation or maintenance of the authorised development or to facilitate it, or as is incidental to it; and

- (b) use any land so acquired for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the undertaking.

(2) This article is subject to article 22 (Time limit for the exercise of the Order), article 23 (Compulsory acquisition of rights and the imposition of restrictive covenants), article 27 (Acquisition of subsoil and airspace only), article 29 (Rights under or over streets), article 30 (Temporary use of land for carrying out authorised development) and article 47 (Crown rights).

### **Statutory authority to override easements and other rights**

**21.**—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) (nuisance: statutory authority) of the 2008 Act, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or  
(b) a breach of a restriction as to user of land arising by virtue of contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

- (a) an interference with an interest or right to which this article applies; or  
(b) a breach of a restriction as to user of land arising by virtue of contract,

authorised by virtue of this Order and the operation of section 158 of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(4) Subsection (2) of section 10 of the 1965 Act applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act is to be applied to the construction of paragraph (2) (with any necessary modifications).

### **Time limit for exercise of authority to acquire land compulsorily**

**22.**—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act (which makes provision for compulsory acquisition under the Acquisition of Land Act 1981); and  
(b) no declaration is to be executed under section 4 of the 1981 Act as applied by article 25 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)(a),

in respect of the acquisition by the undertaker of land for the authorised development under this Order.

### **Compulsory acquisition of rights and the imposition of restrictive covenants**

**23.**—(1) Subject to the provisions of this article, the undertaker may acquire compulsorily the rights, and impose the restrictions, over so much of the Order land within the permanent limits

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(a) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Sections 10 and 11 and Schedule 1 were amended by S.I. 2009/137. Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.



described in the book of reference and shown on the land plans as is required for the construction, operation or maintenance of the authorised development or to facilitate it, or as is incidental to it, by creating them as well as by acquiring rights and benefits of restrictions already in existence.

(2) Subject to section 8 of the 1965 Act (provisions as to divided land), as substituted by article 28 (Acquisition of part of certain properties), where the undertaker acquires a right over land or imposes a restriction under paragraph (1), the undertaker is not to be required to acquire a greater interest in that land.

(3) Schedule 9 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(4) In any case where the acquisition of rights or imposition of a restrictive covenant under paragraph (1) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights or impose such restrictive covenants to the statutory undertaker in question.

(5) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (4) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(6) Nothing in this article authorises the acquisition of rights over, or the imposition of restrictions affecting, an interest which is for the time being held by or on behalf of the Crown.

### **Private rights of way**

**24.**—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order will be extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on to the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the Order limits, is required for the purposes of this Order will be extinguished on the commencement of any activity authorised by this Order which interferes with or breaches such rights.

(3) Subject to the provisions of this article, all private rights of way over land of which the undertaker takes temporary possession under this Order will be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 33 (Statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land or acquisition of rights or the imposition of restrictive covenants over or affecting the land;
  - (ii) the undertaker's appropriation of it;
  - (iii) the undertaker's entry onto it; or



- (iv) the undertaker’s taking temporary possession of it, that any or all of those paragraphs will not apply to any right specified in the notice; and
  - (b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.
- (7) If any such agreement as is referred to in paragraph (6)(b)—
- (a) is made with a person in or to whom the right is vested or belongs; and
  - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it will be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

- 25.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as so applied, has effect with the following modifications.
- (3) In section 1 (Application of Act) for subsection (2) there is substituted—
- (a) “(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”
- (4) In section 5(2) (earliest date for execution of declaration) omit the words from “, and this subsection” to the end.
- (5) Section 5A (Time limit for general vesting declaration) is omitted(a).
- (6) In section 5B (Extension of time limit during challenge)—
- (a) for “section 23 of the Acquisition of Land Act 1981 (Application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (Legal challenges relating to applications for orders granting development consent)”; and
  - (b) for “the three year period mentioned in section 4” substitute “the 5 year period mentioned in article 22 of the AQUIND Interconnector Order 202[\*]”.
- (7) In section 6 (Notices after execution of declaration) for subsection (1)(b) there is substituted—
- (a) “(1) (b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 of the Planning Act 2008.”
- (8) In section 7 (Constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” are omitted.
- (9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).
- (10) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are to be construed as references to the 1965 Act as applied by section 125 of the 2008 Act (application of compulsory acquisition provisions) to the compulsory acquisition of land under this Order.

### **Modification of Part 1 of the Compulsory Purchase Act 1965**

- 26.**—(1) Part 1 of the 1965 Act, as applied to this Order by Section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows:
- (2) In section 4 (time limit for giving notice to treat) for “after the end of the period of 3 years beginning the day on which the compulsory purchase order becomes operative” substitute “after

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(a) Section 5A to the 1981 Act was inserted by Section 182 of the Housing and Planning Act 2016 (c.22).



the end of the period stated in article 22 (Time limit for exercise of authority to acquire compulsorily) of the AQUIND Interconnector Order 202[ ]”

- (3) In section 4A (1) (extension of time limit during challenge) –
  - (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”;
  - (b) for “the three year period mentioned in section 4” substitute “the 5 year period mentioned in article 22 (Time limit for exercise of authority to acquire land compulsorily) of the AQUIND Interconnector Order 202[ ]”.
- (4) In section 11A (powers of entry: further notices of entry) –
  - (a) in subsection (1)(a) after “land” insert “under that provision”; and
  - (b) in subsection (2), after “land” insert “under that provision”.
- (5) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 22 (Time limit for exercise of authority to acquire land compulsorily) of the AQUIND Interconnector Order 202[\*]”
- (6) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat) –
  - (a) for paragraphs 1(2) and 14(2) substitute –
  - (b) “(2) But see article 26(3) (acquisition of subsoil only) of the AQUIND Interconnector Order 202[\*], which excludes the acquisition of subsoil from this Schedule”; and
  - (c) at the end insert –

## “Part 4

### Interpretation

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 18 (protective work to buildings), article 30 (temporary use of land for carrying out the authorised development) or article 32 (temporary use of land for maintaining the authorised development) of the AQUIND Interconnector Order 202[ ].”

### **Acquisition of subsoil and airspace only**

**27.—**(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of and the airspace over the land referred to in paragraph (1) of article 20 (compulsory acquisition of land) or article 23 (Compulsory acquisition of rights and the imposition of restrictive covenants) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of or rights in the subsoil of or the airspace over any land under paragraph (1) the undertaker will not be required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only-

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) Section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the Town and Country Planning Act 1990.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.



### **Acquisition of part of certain properties**

**28.—**(1) This article applies instead of section 8 of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 28 days’ beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner is required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question of whether the owner is required to sell only the land subject to the notice to treat must, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the Tribunal.

(5) If on such a reference the Tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner must sell the land subject to the notice to treat.

(6) If on such a reference the Tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is to be deemed to be a notice to treat for that part.

(7) If on such a reference the Tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the Tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is to be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where by reason of a determination by the Tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice the



undertaker may within the period of 6 weeks beginning with the day on which the determination is made withdraw the notice to treat; and in that event, pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice to be determined in case of dispute by the Tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

### **Rights under or over streets**

**29.**—(1) The undertaker may enter on and appropriate and use so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, will be entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not be payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### **Temporary use of land for the construction of the authorised development**

**30.**—(1) Subject to paragraph (5), the undertaker may in connection with the construction of the authorised development—

- (a) enter on and take temporary possession of—
  - (i) the land specified in column (2) of Schedule 10 for the purpose specified in relation to that land in column (1) of that Schedule; and
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access), haul roads, security fencing, buildings and structures on that land;
- (d) use the land for the purposes of a construction compound with access to the construction compound in connection with the authorised development; and
- (e) construct any works specified in relation to that land in column (1) of Schedule 10 (land of which temporary possession may be taken), or any other mitigation works.

(2) Subject to paragraph (5), not less than 14 days' before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land remain in possession under this article—



- (a) in the case of land specified in paragraph 1(a)(i) above (excluding plot 10-14) after the end of the period of 1 year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (1) of Schedule 10 unless and to the extent that it is authorised to do so by the acquisition of rights over land or the creation of new rights over land pursuant to article 23 (Compulsory acquisition of rights and the imposition of restrictive covenants);
- (b) in the case of plot 10-14 and in relation to any and all times temporary possession is taken of that plot, once the purposes for which temporary possession may be taken have been achieved; or
- (c) in the case of land referred to in paragraph 1(a)(ii), after the end of the period of 1 year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must either acquire the land or rights over the land subject to the temporary possession or, unless otherwise agreed with the owners of the land, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land, but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) remove any drainage works installed by the undertaker under this article;
- (c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 8 (Streets subject to street works);
- (d) restore the land to a condition better than the relevant land was in before temporary possession;
- (e) remove any ground strengthening works which have been placed on the land to facilitate construction and operation of the authorised development;
- (f) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; or
- (g) remove or reposition any apparatus belonging to statutory undertakers or necessary mitigation works.

(5) In exercising the powers of the article in respect of plot 10-14 the undertaker may not undertake any of the activities listed in paragraph (1) (b), (c), (d) or (e) and must when entering on and taking temporary possession of any part of plot 10-14 provide so much notice to the owners and occupiers of the land (which may include notification following the taking of temporary possession where necessary) as is reasonably practicable in the circumstances.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of any power conferred by this article.

(7) Any dispute as to the persons entitlement to compensation under paragraph (6), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the construction of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) nor acquire compulsorily any new rights or impose any restrictive covenants over that land except that the undertaker is not precluded from carrying out a survey of that land under article 19 (Authority to survey and investigate the land).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.



(11) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in paragraph (1).

### **Time limit for exercise of authority to temporarily use land for the construction of the authorised development**

**31.**—(1) Subject to paragraph (2), the authority to enter onto land pursuant to article 30 (Temporary use of land for the construction of the authorised development) ceases to apply at the end of the period of 5 years beginning on the day on which this Order is made.

(2) Nothing in paragraph (1) prevents the undertaker remaining in possession of land after the end of that period if the land was entered and possession was taken before the end of the period.

### **Temporary use of land for maintaining the authorised development**

**32.**—(1) Subject to paragraph (2), and without prejudice to any other rights enjoyed by the undertaker from time to time, at any time during the maintenance period relating to any part of the authorised development the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits landwards of MLWS if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) construct such temporary works (including the provision of means of access) and structures and buildings on the land as may be reasonably necessary for that purpose;
- (c) enter onto any land within the Order limits landwards of MLWS for the purpose of gaining access as is reasonably required for the purpose of maintaining the authorised development.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days' before entering on and taking temporary possession of land under this article the undertaker is required to serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of—

- (a) the authorised development or any of its parts;
- (b) the public; or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

(5) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker is required to remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(7) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.



(8) Any dispute as to the persons entitlement to compensation under this article, or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (Further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (7).

(10) Where the undertaker takes possession of land under this article the undertaker is not required to acquire the land or any interest in it.

(11) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(12) In this article “the maintenance period”, in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is brought into operational use, except where the authorised development is replacement or landscape planting where “the maintenance period” means the period of 5 years beginning with the date on which that part of the replacement or landscape planting is completed.

### **Statutory undertakers**

**33.—**(1) Subject to the provisions of Schedule 13 (Protective provisions), the undertaker may—

- (a) acquire compulsorily or acquire new rights or impose restrictive covenants over the land belonging to statutory undertakers within the Order limits landwards of MLWS and described in the book of reference;
- (b) extinguish or suspend the rights of, remove, alter, renew, relocate or reposition the apparatus belonging to statutory undertakers over or within the Order limits landwards of MLWS; and
- (c) construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers and other like bodies within the Order limits landwards of MLWS.

(2) Subject to the provisions of Schedule 13 (Protective provisions) the undertaker may for the purposes of article 11 (Street works) remove or reposition apparatus belonging to statutory undertakers which is laid beneath any of the streets within the Order limits.

### **Recovery of costs of new connections**

**34.—**(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 33 (Statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 32 (Statutory undertakers), any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which Part 3 of the 1991 Act applies.



(4) In this article—

“public communications provider” has the meaning given in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the meaning given in section 329 of the 1980 Act.

### **No double recovery**

**35.—**(1) Compensation will not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more provisions of this Order.

### **Special category land**

**36.—**(1) So much of the special category land as is required for the purposes of the exercising by the undertaker of the Order rights is discharged from all rights, trusts and incidents to which it was previously subject, so far as their continuance would be inconsistent with the exercise of the Order rights.

(2) So far as the temporary use of land under either article 30 (Temporary use of land for carrying out the authorised development) and article 32 (Temporary use of land for maintaining the authorised development) is concerned, then the discharge in paragraph (1) is only for such time as any land required only temporarily is being used under either of those articles.

(3) In this article—

“Order rights” means rights and powers exercisable over the special category land by the undertaker under article 23 (Compulsory acquisition of rights), article 30 (Temporary use of land for carrying out the authorised development) and article 32 (Temporary use of land for maintaining the authorised development); and

“the special category land” means the land identified as forming part of a common, open space, or fuel or field allotment in the book of reference and on the land plans.

## **PART 6**

### **Operations**

#### **Deemed marine licence under the 2009 Act**

**37.—**(1) The deemed marine licence set out in Schedule 15 (deemed marine licence under the 2009 Act) is deemed to be granted on the date this Order comes into force to the undertaker under Part 4 (marine licensing) of the 2009 Act for the licensed marine activities set out in Part 1, and subject to the conditions set out in Part 2 of that Schedule.

## **PART 7**

### **Miscellaneous and general**

#### **Protective provisions**

**38.—**(1) Schedule 13 (Protective provisions) to this Order has effect.

#### **Application of landlord and tenant law**

**39.—**(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and



(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants is to prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

### **Operational land for purposes of the 1990 Act**

**40.**—(1) Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

### **Felling or lopping of trees and removal of hedgerows**

**41.**—(1) The undertaker may fell, lop, prune, coppice, pollard or reduce in height any tree or shrub within or overhanging the Order limits landwards of MLWS, or may cut back the roots of a tree or shrub where they extend into the Order limits, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from—

- (a) obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) constituting a danger to persons involved in the construction, maintenance and operation of the authorised development.

(2) In carrying out any activity authorised by paragraph (1) or (3), the undertaker must not do any unnecessary damage to any tree, shrub or hedgerow and must pay compensation to any person for any loss or damage arising from such activity for that loss or damage.

(3) The undertaker may, for the purposes of and in so far as it reasonably believes is necessary in connection with the authorised development—

- (a) subject to paragraph (2), remove any hedgerows within the Order limits landwards of MLWS that may be required for the purposes of carrying out the authorised development; and
- (b) remove important hedgerows as are within the Order limits landwards of MLWS and identified in Schedule 12.

(4) The power conferred by paragraph (3) removes any obligation upon the undertaker to secure any consent under the Hedgerow Regulations 1997(a).

(5) Nothing in this article authorises any works to any tree subject to a Tree Preservation Order.

(6) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) In this article "hedgerow" and "important hedgerow" have the meaning given in the Hedgerow Regulations 1997.



### **Trees subject to tree preservation orders**

42.—(1) The undertaker may fell, lop or prune part of any tree which is within, over or under land within the Order limits and which is described in column (1) of Schedule 11, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker must not cause unnecessary damage to any tree and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) does not apply.

(3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

### **Certification of plans and documents, etc.**

43.—(1) The undertaker must, as soon as practicable after the date on which this Order is made, submit to the Secretary of State copies of the documents and plans identified in Schedule 14 (Certified Documents) of this Order for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document identified in Schedule 14 so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(3) Where a plan or document certified under paragraph (1)—

- (a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and
- (b) identifies the provision by number or combination of numbers and letters, which is different from the number or combination of numbers and letters by which the corresponding provision of this Order is identified in the Order as made; and

the reference in the plan or document concerned must be construed for the purposes of this Order as referring to the provision (if any) corresponding to that provision in the Order as made.

### **Service of notices**

44.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (9), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(a) (references to service by post) as it applies for the purposes of this article, the proper address of any person in relation to the

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(a) 1978 c. 30. There are amendments to this Act which are not relevant to this Order.



service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Paragraphs (6) to (9) apply where a person (“A”) is required or authorised to serve or send a notice or other document for the purposes of this Order on or to another person (“B”).

(6) A may serve or send the notice or other document by electronic transmission if—

- (a) B has sent A notice that B agrees to receive that notice or document (or notices and documents of a description including that notice or document) by electronic transmission;
- (b) B has not subsequently withdrawn that agreement in accordance with paragraph (8); and
- (c) A complies with any conditions as to addressing or mode of transmission that B has specified in agreeing to receive notices or other documents by electronic transmission.

(7) If B notifies A within 7 days’ of receiving a notice or other document by electronic transmission that B requires a paper copy of all or any part of the notice or other document, A must provide B with such a copy as soon as reasonably practicable.

(8) B may withdraw agreement to receive a notice or document (or notices or documents of a specified description) by electronic transmission by sending a notice to that effect to A.

(9) Notice under paragraph (8) is final and takes effect on a date specified by B in the notice but that date must not be less than 7 days’ after the date on which the notice is given.

(10) This article does not exclude the employment of any method of service not expressly provided for by it.

### **Arbitration**

**45.**—(1) Subject to article 49 (saving provisions for Trinity House), except where otherwise expressly provided for in this Order, any difference under any provision of this Order (other than a difference which falls to be determined by the Tribunal) shall be referred to and settled in arbitration in accordance with the rules at Schedule 17 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) For the avoidance of doubt, any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order shall not be subject to arbitration.

### **Procedure in relation to certain approvals etc.**

**46.**—(1) Schedule 3 (Procedure for approvals, consents and appeals) is to have effect in relation to all consents, agreement or approvals granted, refused or withheld in relation to the requirements unless otherwise agreed between the undertaker and the discharging authority.

(2) The procedure set out in paragraph (1) relating to the appeal process of Schedule 3 has effect in relation to any other consent, agreement or approval required under this Order (including the requirements but excluding any matter for which the consent, agreement or approval of the Marine



Management Organisation is required) where such consent, agreement or approval is granted subject to any condition to which the undertaker objects, or is refused or is withheld.

(3) Where an application is made to or a request is made of the relevant planning authority, highway authority, street authority or the owner of a watercourse, sewer or drain for any agreement or approval required or contemplated by any of the provisions of the Order, such agreement or approval must, if given, be given in writing and may not be unreasonably withheld.

### **Crown rights**

47.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any lessee or licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the Government Department having the management of that land; or
- (c) belonging to a Government Department or held in trust for Her Majesty for the purposes of a Government Department without the consent in writing of that Government Department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in section 227 of the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act). A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and is deemed to have been given in writing where it is sent electronically.

### **Removal of human remains**

48.—(1) In this article “the specified land” means land within the Order limits which the undertaker reasonably considers contains human remains.

(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it will remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land the undertaker will give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker will send a copy of the notice to relevant discharging authority for the area in which the land is located.

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or



(b) removed to, and cremated in, any crematorium,  
and that person will, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who will remove the remains and as to the payment of the costs of the application.

(8) The undertaker will pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article 48.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified, subject to paragraph (10) the undertaker will remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves will be re-interred in individual containers which will be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker will comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation will be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) will be sent by the undertaker to the relevant discharging authority for the area in which the land is located mentioned in paragraph (4).

(12) No notice is required under paragraph (3) before the removal of any human remains where the undertaker is satisfied that—

- (a) that the remains were interred more than 100 years ago; and
- (b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

(13) In this article—

- (a) references to a relative of the deceased are to a person who—
  - (i) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased; or
  - (ii) is, or is a child of, a brother, sister, uncle or aunt of the deceased.
- (b) references to personal representative of the deceased are to person who—
  - (i) is the lawful executor or executrix of the estate of the deceased; or



(ii) is the lawful administrator of the estate of the deceased.

(14) The removal of the remains of any deceased person under this article is to be carried out in accordance with any directions which may be given by the Secretary of State.

(15) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(16) Section 25 of the Burial Act 1857<sup>(a)</sup> (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) does not apply to a removal carried out in accordance with this article.

(17) Section 239 (use and development of burial grounds) of the 1990 Act applies—

(a) In relation to land, other than a right over land, acquired for the purposes of the authorised development (whether or not by agreement), so as to permit use by the undertaker in accordance with the provisions of the Order; and

(b) In relation to a right over land so acquired (whether or not by agreement), or the temporary use of land pursuant to article 30 (Temporary use of land for carrying out the authorised development) and article 32 (Temporary use of land for maintaining the authorised development), so as to permit the exercise of that right or the temporary use by the undertaker in accordance with the provisions of this Order,

And in section 240(1) (provisions supplemental to ss.238 and 239) of the 1990 Act reference to “regulations made for the purposes of section 283(3) and (4) and 239(2) means, so far as applicable to land or a right over land acquired under this Order, paragraphs (2) to (15) of this article and in section 240(3) of the 1990 Act reference to a “statutory undertaker” includes the undertaker and reference to “any other enactment” includes this Order.

(18) The Town and Country Planning Act (Churches, Places of Worship and Burial Grounds) Regulations 1950<sup>(b)</sup> do not apply to the authorised development.

### **Saving provisions for Trinity House**

49.—(1) Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

### **Development consent obligations**

50.—(1) The authorised development must not begin for the purposes of section 155(1) of the 2008 Act unless and until the undertaker completes the following development consent obligations pursuant to section 106 of the 1990 Act—

(a) the Hampshire County Council development consent obligation.

(b) the Portsmouth City Council development consent obligation; and

(c) the South Downs National Park Authority development consent obligation.

### **Guarantees in respect of the payment of compensation etc.**

51.—(1) The authorised development landwards of MHWS must not begin for the purposes of section 155(1) of the 2008 Act and the undertaker must not exercise the powers in articles 20 to 36 until—

(a) subject to paragraph (3), security of £4.97 million has been provided in respect of the liabilities of the undertaker to pay compensation to landowners in connection with the acquisition of their land or of rights over their land or the temporary use of land by the undertaker exercising its powers under Part 5 of this Order; and

(b) the Secretary of State has approved the security in writing.

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(a) 1857 c.81.

(b) S.I. 1950/792.



(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 parent company or companies of the undertaker;
- (g) a guarantee by a person of sufficient financial standing (other than the undertaker).

(3) A guarantee given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor by any person to whom such compensation is payable.

(4) The Secretary of State is to have no liability to pay compensation in respect of the compulsory acquisition of land or otherwise under this Order.

Signed by Authority of the Secretary of State for Business, Energy and Industrial Strategy

Head of [x]

Address  
Name  
Date

Department for Business, Energy and Industrial Strategy



## SCHEDULE 1

Article 3

### Authorised Development

1. Development which is to be treated as development for which development consent is required as directed by the Secretary of State in the direction issued pursuant to section 35 of the 2008 Act dated 30 July 2018 and associated development within the meaning of section 115(2) of the 2008 Act which is located approximately 13.5 kilometres north of the south coast near Lovedean to the exclusive economic zone boundary between the UK and France, comprising -

*Work No. 1* – substation connection works within the area shown on the works plans consisting of -

- (a) extension of the existing substation, including site establishment, earthworks, civil and building works;
- (b) up to 2 400 kilovolt air and or gas insulated switchgears and associated equipment;
- (c) onshore HVAC cables of up to 800 metres in length (each cable circuit);
- (d) up to 5 link boxes per cable circuit with dimensions of up to 0.8 metres in length by 0.8 metres in width by 0.6 metres in height;

*Work No. 2* – works to construct the converter station and associated equipment within the area shown on the works plans consisting of -

- (a) site clearance, preparation, establishment and earth works;
- (b) onshore HVDC cables of up to 400 metres in length (each cable circuit);
- (c) 2 converter hall buildings;
- (d) 1 control building associated with the converter hall buildings;
- (e) 6 transformers;
- (f) a spare transformer;
- (g) HVAC cable termination equipment including two 400 kilovolt air and or gas insulated switchgears and busbars;
- (h) HVDC cable termination equipment including two 400 kilovolt air and or gas insulated switchgears and busbars;
- (i) 2 valve cooling systems;
- (j) 1 spares building with an internal perimeter fence;
- (k) up to 2 standby back-up diesel generators with a capacity of up to 800 kilowatt;
- (l) up to 2 distribution transformers (supplied from two individual DNO connections at 11 kilovolt), each 2400 kilowatt
- (m) up to 2 auxiliary transformers (supplied from tertiary winding of main transformer), each 2400 kilowatt
- (n) 6 valve reactors;
- (o) up to 6 AC filter banks. Each filter bank will typically contain reactor, resistor and capacitor banks
- (p) up to 8 lightning masts;
- (q) up to 40 lighting columns;
- (r) HVAC cables of up to 100 metres in length (each cable circuit);
- (s) Up to 5 link boxes per cable circuit with dimensions of up to 0.8 metres in length by 0.8 metres in width by 0.6 metres in height;
- (t) converter station compound outer security perimeter fence and inner electrified fence separated by a sterile zone including up to 2 security gates;



- (u) up to 2 telecommunications buildings with a security perimeter fence including a security gate and in-between sterile zone and parking for up to 2 vehicles at any one time and associated fibre optic data transmission cables; and
- (v) an access road;
- (w) works required to replace an 11 kilovolt overhead electricity line with an 11 kilovolt underground electricity cable to facilitate the safe passage of construction vehicles along the proposed access road;
- (x) up to 2 attenuation ponds and associated landscaping with a combined capacity of up to 2,500m<sup>3</sup>;
- (y) up to 2 fire protection deluge systems;
- (z) permanent car parking for up to 10 vehicles;
- (aa) soft and hard landscaping including bunds and haul roads to facilitate their construction;
- (bb) access junction and associated gated highway link;

*Work No. 3* – a temporary work area of up to five hectares associated with Work No. 1, Work No. 2 and Work No. 4 within the area shown on the works plans consisting of –

- (a) a construction and laydown compound;
- (b) car parking for up to 206 vehicles including associated vegetation removal and groundworks;

*Work No. 4* – works to lay the onshore HVDC cables within the area shown on the works plans consisting of –

- (a) onshore HVDC cables of up to 20,000 metres in length (each cable circuit);
- (b) up to 25 joint bays per cable circuit with dimensions of up to 6 metres in length by 3 metres in width by 1.85 metres in depth;
- (c) up to 6 link boxes per cable circuit with dimension of up to 0.8 metres in length by 0.8 metres in width by 0.6 metres in height;
- (d) up to 6 link pillars per cable circuit with dimensions of up to 1 metres in length by 1 metres in width by 0.6 metres in height;
- (e) 4 HDD crossings including entry/exit pits and associated temporary construction compounds;
- (f) 1 trenchless installation technique crossing including an entry/exit pit and associated temporary construction compounds;
- (g) temporary work areas and laydown areas associated with the installation and pulling of the onshore HVDC cables;

*Work No. 5* – onshore connection works within the area shown on the works plans consisting of –

- (a) onshore HVDC cables of up to 50 metres in length (each cable circuit) from Work No. 4 to the transitional joint bays;
- (b) 2 transitional joint bays with dimensions of up to 8 metres in length by 3 metres in width by 2 metres in depth with an excavation of up to 15 metres in length by 5 metres in width by 2 metres in depth;
- (c) associated constructions working and pulling area;
- (d) 1 HDD with up to 4 entry/exit pits and associated temporary construction compounds;
- (e) onshore HVDC cables to Work No. 6 of up to 250 metres in length (each cable circuit);
- (f) up to 1 link box per cable circuit with dimension of up to 0.8 metres in length by 0.8 metres in width by 0.6 metres in height;
- (g) up to 1 link pillar per cable circuit with dimensions of up to 1 metres in length by 1 metres in width by 0.6 metres in height;
- (h) 2 optical regeneration stations;



- (i) compound for 2 optical regeneration stations with secure fencing, access and parking for up to two vehicles at any one time;
- (j) auxiliary power supply equipment for the optical regeneration stations and fuel storage in relation to that equipment;

*Work No. 6* – marine HVDC cables and ducts within the Order limits seaward of MHWS and landward of MLWS between Work No. 5 and Work No. 7 within the area shown on the works plans including where required works to facilitate HDD.

*Work No. 7* – marine HVDC cable works within the area shown on the works plans consisting of –

- (a) marine HVDC cables and ducts of up to 109 kilometres (each cable circuit) between the UK exclusive economic zone with France and Works No. 6 including where required works to facilitate HDD; and
- (b) 1 HDD with up to 4 entry/exit pits; and
- (c) a temporary work area for vessels to carry out intrusive activities.

**2.** In connection with Work Nos. 1 to 5 and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including but not limited to -

- (a) ramps, means of access and footpaths;
- (b) bunds, embankments, swales, landscaping, fencing and boundary treatments;
- (c) cable ducts, cable protection, joint protection, manholes, marker posts, underground cable maker, tiles and tape and lighting and all other works associated with cable laying;
- (d) works for the provision of apparatus, including cabling, water and electricity supply works, foul drainage provision, surface water management systems and culverting;
- (e) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (f) works to alter the course or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (g) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (h) works for the benefit of the protection of land affected by the authorised development;
- (i) working sites in connection with the construction of the authorised development, lay down areas and works compounds, storage compounds and their restoration;
- (j) permanent and temporary works for the benefit or protection of land, structures, apparatus or equipment affected by the authorised development; and
- (k) such other works as may be necessary or expedient for the purpose of or in connection with the construction or use of the authorised development and which do not give rise to any materially new or materially different environmental effects from those assessed as set out in the environmental statement.

and in connection with such Works Nos. 6 to 7 and to the extent that they do not otherwise form part of any such work, further associated development within the meaning of section 115(2) of the 2008 Act comprising other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence, including but not limited to –

- (l) temporary cable burial equipment trials;
- (m) cable protection;
- (n) the removal of material from the seabed required for the construction of Work Nos. 6 and 7 and the disposal of up to 1,754,000m<sup>3</sup> of inert material of natural origin at the disposal



sites with reference WI048 and WI049 within the extent of the Order limits seaward of MHWS produced during the Works;

- (o) the construction of crossing structures over cables that are crossed by the marine HVDC cable; and
- (p) such other works as may be necessary or expedient for the purpose of or in connection with the construction or use of the authorised development and which do not give rise to any materially new or materially different environmental effects from those assessed as set out in the environmental statement.

3. The grid coordinates for that part of the authorised development which is seaward of MHWS are specified below –

<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	50°47'8.146"N	1°2'20.857"W	135	50°42'0.397"N	0°54'1.872"W
2	50°47'8.216"N	1°2'20.480"W	136	50°41'55.699"N	0°53'35.726"W
3	50°47'8.268"N	1°2'20.179"W	137	50°41'33.679"N	0°52'58.934"W
4	50°47'8.339"N	1°2'19.690"W	138	50°40'20.249"N	0°51'13.974"W
5	50°47'8.386"N	1°2'19.364"W	139	50°39'59.881"N	0°50'52.430"W
6	50°47'8.451"N	1°2'18.889"W	140	50°39'42.599"N	0°50'29.607"W
7	50°47'8.508"N	1°2'18.470"W	141	50°39'36.524"N	0°50'11.733"W
8	50°47'8.553"N	1°2'18.104"W	142	50°39'12.728"N	0°48'58.524"W
9	50°47'8.628"N	1°2'17.588"W	143	50°38'30.615"N	0°46'2.020"W
10	50°47'8.690"N	1°2'17.204"W	144	50°37'46.726"N	0°43'23.708"W
11	50°47'8.771"N	1°2'16.708"W	145	50°37'36.508"N	0°42'41.575"W
12	50°47'8.826"N	1°2'16.349"W	146	50°37'15.582"N	0°41'15.354"W
13	50°47'8.931"N	1°2'15.812"W	147	50°37'15.513"N	0°39'46.232"W
14	50°47'8.992"N	1°2'15.489"W	148	50°36'41.713"N	0°34'22.448"W
15	50°47'9.096"N	1°2'14.962"W	149	50°36'14.831"N	0°32'37.009"W
16	50°47'9.166"N	1°2'14.555"W	150	50°36'7.973"N	0°31'7.231"W
17	50°47'9.231"N	1°2'14.186"W	151	50°36'0.215"N	0°30'36.542"W
18	50°47'9.328"N	1°2'13.628"W	152	50°35'54.791"N	0°30'15.095"W
19	50°47'9.426"N	1°2'13.061"W	153	50°35'23.567"N	0°29'13.075"W
20	50°47'9.490"N	1°2'12.710"W	154	50°34'29.494"N	0°26'42.742"W
21	50°47'9.587"N	1°2'12.132"W	155	50°32'41.551"N	0°23'38.096"W
22	50°47'9.639"N	1°2'11.857"W	156	50°30'3.541"N	0°17'33.192"W
23	50°47'9.789"N	1°2'11.023"W	157	50°28'42.521"N	0°15'42.064"W
24	50°47'9.878"N	1°2'10.527"W	158	50°28'4.707"N	0°14'50.247"W
25	50°47'9.983"N	1°2'9.954"W	159	50°27'43.034"N	0°14'20.562"W
26	50°47'10.053"N	1°2'9.496"W	160	50°26'55.786"N	0°13'15.884"W
27	50°47'10.093"N	1°2'9.212"W	161	50°26'56.222"N	0°13'14.495"W
28	50°47'10.142"N	1°2'8.960"W	162	50°26'57.457"N	0°13'4.676"W
29	50°47'10.205"N	1°2'8.572"W	163	50°26'57.027"N	0°12'54.690"W
30	50°47'10.259"N	1°2'8.304"W	164	50°26'54.961"N	0°12'45.218"W
31	50°47'10.327"N	1°2'7.966"W	165	50°26'51.400"N	0°12'36.908"W
32	50°47'10.374"N	1°2'7.740"W	166	50°26'46.587"N	0°12'30.324"W
33	50°47'10.456"N	1°2'7.347"W	167	50°26'40.850"N	0°12'25.916"W
34	50°47'10.514"N	1°2'7.079"W	168	50°26'34.580"N	0°12'23.983"W
35	50°47'10.587"N	1°2'6.756"W	169	50°26'28.204"N	0°12'24.658"W
36	50°47'10.648"N	1°2'6.496"W	170	50°26'22.156"N	0°12'27.894"W
37	50°47'10.741"N	1°2'6.131"W	171	50°26'21.336"N	0°12'28.756"W
38	50°47'10.822"N	1°2'5.803"W	172	50°26'10.359"N	0°12'13.745"W



39	50°47'10.862"N	1°2'5.617"W	173	50°24'8.032"N	0°9'25.526"W
40	50°47'10.921"N	1°2'5.371"W	174	50°24'2.766"N	0°9'16.501"W
41	50°47'10.939"N	1°2'5.284"W	175	50°23'57.213"N	0°9'5.200"W
42	50°47'10.978"N	1°2'5.099"W	176	50°23'51.251"N	0°8'52.570"W
43	50°47'11.045"N	1°2'4.740"W	177	50°23'46.360"N	0°8'39.092"W
44	50°47'11.107"N	1°2'4.474"W	178	50°21'32.398"N	0°2'15.439"W
45	50°47'11.167"N	1°2'4.178"W	179	50°21'29.076"N	0°2'5.945"W
46	50°47'11.222"N	1°2'3.897"W	180	50°21'28.324"N	0°2'3.795"W
47	50°47'11.281"N	1°2'3.598"W	181	50°21'6.855"N	0°1'12.898"W
48	50°47'11.337"N	1°2'3.294"W	182	50°20'46.163"N	0°0'32.608"W
49	50°47'11.366"N	1°2'3.150"W	183	50°20'34.684"N	0°0'15.657"W
50	50°47'11.403"N	1°2'2.966"W	184	50°20'32.670"N	0°0'12.683"W
51	50°47'11.423"N	1°2'2.845"W	185	50°20'16.756"N	0°0'10.817"E
52	50°47'11.460"N	1°2'2.657"W	186	50°17'36.424"N	0°5'11.894"E
53	50°47'11.492"N	1°2'2.498"W	187	50°16'31.253"N	0°9'3.799"E
54	50°47'11.540"N	1°2'2.249"W	188	50°16'10.086"N	0°11'24.856"E
55	50°47'11.573"N	1°2'2.089"W	189	50°16'7.791"N	0°11'36.422"E
56	50°47'11.617"N	1°2'1.860"W	190	50°16'6.240"N	0°11'43.952"E
57	50°47'11.654"N	1°2'1.683"W	191	50°16'2.500"N	0°12'0.714"E
58	50°47'11.704"N	1°2'1.424"W	192	50°15'56.441"N	0°12'17.698"E
59	50°47'11.767"N	1°2'1.116"W	193	50°15'53.389"N	0°12'23.459"E
60	50°47'11.802"N	1°2'0.862"W	194	50°15'53.179"N	0°12'23.855"E
61	50°47'11.807"N	1°2'0.827"W	195	50°15'53.678"N	0°12'24.498"E
62	50°47'11.827"N	1°2'0.809"W	196	50°15'50.634"N	0°12'30.244"E
63	50°47'11.877"N	1°2'0.444"W	197	50°15'50.355"N	0°12'30.769"E
64	50°47'11.901"N	1°2'0.405"W	198	50°15'44.773"N	0°11'56.429"E
65	50°47'11.904"N	1°2'0.370"W	199	50°15'47.089"N	0°11'49.938"E
66	50°47'11.863"N	1°2'0.317"W	200	50°15'50.773"N	0°11'33.424"E
67	50°47'11.847"N	1°2'0.307"W	201	50°15'53.839"N	0°11'17.971"E
68	50°47'11.847"N	1°2'0.307"W	202	50°16'15.223"N	0°8'55.462"E
69	50°47'11.847"N	1°2'0.307"W	203	50°17'21.968"N	0°4'57.948"E
70	50°47'11.895"N	1°1'59.868"W	204	50°20'4.461"N	0°0'7.202"W
71	50°47'11.912"N	1°1'59.866"W	205	50°20'21.112"N	0°0'31.792"W
72	50°47'11.939"N	1°1'59.841"W	206	50°20'23.127"N	0°0'34.767"W
73	50°47'11.965"N	1°1'59.584"W	207	50°20'33.765"N	0°0'50.477"W
74	50°47'11.966"N	1°1'59.512"W	208	50°20'53.239"N	0°1'28.399"W
75	50°47'11.965"N	1°1'59.496"W	209	50°21'13.893"N	0°2'17.366"W
76	50°47'11.964"N	1°1'59.435"W	210	50°23'31.655"N	0°8'51.889"W
77	50°47'11.965"N	1°1'59.415"W	211	50°23'37.115"N	0°9'6.938"W
78	50°47'11.953"N	1°1'59.406"W	212	50°23'43.773"N	0°9'21.043"W
79	50°47'11.953"N	1°1'59.406"W	213	50°23'49.858"N	0°9'33.428"W
80	50°47'11.953"N	1°1'59.406"W	214	50°23'56.230"N	0°9'44.349"W
81	50°47'11.962"N	1°1'59.198"W	215	50°25'59.269"N	0°12'33.560"W
82	50°47'11.971"N	1°1'59.095"W	216	50°26'10.266"N	0°12'48.600"W
83	50°47'11.985"N	1°1'58.947"W	217	50°26'9.831"N	0°12'49.988"W
84	50°47'11.992"N	1°1'58.887"W	218	50°26'8.596"N	0°12'59.805"W
85	50°47'12.008"N	1°1'58.758"W	219	50°26'9.026"N	0°13'9.789"W
86	50°47'12.020"N	1°1'58.658"W	220	50°26'11.091"N	0°13'19.258"W
87	50°47'12.029"N	1°1'58.582"W	221	50°26'14.651"N	0°13'27.567"W
88	50°47'12.031"N	1°1'58.566"W	222	50°26'19.463"N	0°13'34.151"W
89	50°47'12.040"N	1°1'58.493"W	223	50°26'25.200"N	0°13'38.561"W



90	50°47'12.049"N	1°1'58.409"W	224	50°26'31.470"N	0°13'40.497"W
91	50°47'12.060"N	1°1'58.316"W	225	50°26'37.846"N	0°13'39.825"W
92	50°47'12.079"N	1°1'58.149"W	226	50°26'43.894"N	0°13'36.591"W
93	50°47'12.110"N	1°1'57.942"W	227	50°26'44.714"N	0°13'35.729"W
94	50°47'12.123"N	1°1'57.869"W	228	50°28'31.442"N	0°16'1.912"W
95	50°47'12.141"N	1°1'57.733"W	229	50°29'50.837"N	0°17'50.820"W
96	50°47'12.158"N	1°1'57.645"W	230	50°32'28.318"N	0°23'54.527"W
97	50°47'12.175"N	1°1'57.550"W	231	50°34'15.790"N	0°26'58.375"W
98	50°47'12.189"N	1°1'57.467"W	232	50°35'9.556"N	0°29'27.862"W
99	50°47'12.212"N	1°1'57.339"W	233	50°35'40.062"N	0°30'28.457"W
100	50°47'12.228"N	1°1'57.251"W	234	50°35'44.745"N	0°30'46.976"W
101	50°47'12.250"N	1°1'57.145"W	235	50°35'51.526"N	0°31'13.797"W
102	50°47'12.272"N	1°1'57.028"W	236	50°35'58.386"N	0°32'43.614"W
103	50°47'12.291"N	1°1'56.926"W	237	50°36'25.406"N	0°34'29.597"W
104	50°47'12.310"N	1°1'56.838"W	238	50°36'50.593"N	0°38'30.650"W
105	50°47'12.339"N	1°1'56.698"W	239	50°36'54.547"N	0°39'8.625"W
106	50°47'12.356"N	1°1'56.579"W	240	50°36'58.685"N	0°39'48.398"W
107	50°47'12.319"N	1°1'56.560"W	241	50°36'58.756"N	0°41'20.244"W
108	50°47'12.319"N	1°1'56.560"W	242	50°37'31.141"N	0°43'33.714"W
109	50°47'12.319"N	1°1'56.560"W	243	50°38'15.012"N	0°46'11.964"W
110	50°47'12.377"N	1°1'56.330"W	244	50°38'57.306"N	0°49'9.233"W
111	50°47'12.390"N	1°1'56.270"W	245	50°39'21.609"N	0°50'24.001"W
112	50°47'12.406"N	1°1'56.188"W	246	50°39'29.289"N	0°50'46.600"W
113	50°47'12.425"N	1°1'56.105"W	247	50°39'49.747"N	0°51'13.619"W
114	50°47'12.443"N	1°1'56.031"W	248	50°40'9.842"N	0°51'34.878"W
115	50°47'12.460"N	1°1'55.963"W	249	50°41'21.878"N	0°53'17.854"W
116	50°47'11.065"N	1°1'55.703"W	250	50°41'40.626"N	0°53'49.178"W
117	50°45'45.014"N	1°1'39.017"W	251	50°41'45.252"N	0°54'14.928"W
118	50°45'33.952"N	1°1'29.392"W	252	50°43'22.501"N	0°57'7.513"W
119	50°45'23.239"N	1°1'14.438"W	253	50°43'31.132"N	0°57'27.942"W
120	50°45'13.571"N	1°0'56.514"W	254	50°43'29.651"N	0°57'29.496"W
121	50°45'2.494"N	1°0'25.147"W	255	50°43'40.579"N	0°57'55.368"W
122	50°44'50.712"N	0°59'52.953"W	256	50°43'42.061"N	0°57'53.814"W
123	50°44'39.281"N	0°59'22.406"W	257	50°43'43.756"N	0°57'57.828"W
124	50°44'2.379"N	0°57'54.977"W	258	50°43'44.075"N	0°57'57.664"W
125	50°44'0.123"N	0°57'49.635"W	259	50°43'48.906"N	0°58'9.102"W
126	50°44'0.446"N	0°57'49.479"W	260	50°44'25.563"N	0°59'35.955"W
127	50°43'56.072"N	0°57'39.124"W	261	50°44'36.732"N	1°0'5.805"W
128	50°43'54.590"N	0°57'40.678"W	262	50°44'48.414"N	1°0'37.724"W
129	50°43'43.661"N	0°57'14.804"W	263	50°45'0.207"N	1°1'11.121"W
130	50°43'45.143"N	0°57'13.250"W	264	50°45'11.652"N	1°1'32.340"W
131	50°43'35.866"N	0°56'51.292"W	265	50°45'24.564"N	1°1'50.365"W
132	50°42'27.974"N	0°54'50.779"W	266	50°45'39.934"N	1°2'3.740"W
133	50°42'23.228"N	0°54'42.359"W	267	50°47'8.146"N	1°2'20.857"W
134	50°42'18.988"N	0°54'34.839"W			



## SCHEDULE 2

Article 3

### Requirements

#### Interpretation

1.—(1) In addition to article 2 (Interpretation), the terms in this Schedule have the following meaning, unless the context provides otherwise —

“construction gang” means a group of up to 8 construction workers;

“converter station access drawing” means the converter station access drawing contained at appendix 2 to the framework construction traffic management plan;

“converter station and telecommunications building parameter plans” means the document certified by the Secretary of State as the converter station and telecommunications building parameter plans under article 43 (Certification of plans and documents, etc.) for the purposes of this Order;

“design principles” means the design principles located at section 6 of the DAS;

“employment and skills strategy” means the document certified by the Secretary of State as the employment and skills strategy under article 43 (Certification of plans and documents, etc.) for the purposes of this Order;

“flood risk assessment” means the documents certified by the Secretary of State as the flood risk assessment and the flood risk assessment addendum under article 43 (Certification of plans and documents, etc.) for the purposes of this Order;

“framework construction traffic management plan” means the document certified by the Secretary of State as the framework construction traffic management plan under article 43 (Certification of plans and documents, etc.) for the purposes of this Order;

“framework construction worker travel plan” means the framework construction worker travel plan which forms part of the framework construction traffic management plan;

“lead local flood authority” means Hampshire County Council or Portsmouth City Council as the case may be;

“framework signage strategy” means the framework signage strategy contained at appendix 3 to the framework traffic management strategy;

“operational broadband and octave band noise criteria document” means the document certified by the Secretary of State as the operational broadband and octave band noise criteria document under article 43 (Certification of plans and documents, etc.) for the purposes of this Order;

“onshore cable route construction impacts on access to properties and car parking and communication strategy” means the onshore cable route construction impacts on access to properties and car parking and communication strategy contained at appendix 1 to the framework traffic management strategy;

“onshore outline construction environmental management plan” means the document certified by the Secretary of State as the onshore outline construction environmental management plan under article 43 (Certification of plans and documents, etc.) for the purposes of this Order;

“optical regeneration stations parameter plan” means the document certified by the Secretary of State as the optical regeneration stations parameter plan under article 43 (Certification of plans and documents, etc.) for the purposes of this Order;

“outline landscape and biodiversity strategy” means the document certified by the Secretary of State as the outline landscape and biodiversity strategy under article 43 (Certification of plans and documents, etc.) for the purposes of this Order;

“outline materials management plan” means the outline materials management plan appended to the onshore outline construction environmental management plan;



“outline soil resources plan” means the outline soil resources plan appended to the onshore outline construction environmental management plan;

“outline site waste management plan” means the outline site waste management plan appended to the onshore outline construction environmental management plan;

“phase” means any defined section or part of the authorised development, the extent of which is shown in a scheme submitted to the relevant planning authority pursuant to requirement 3 and which may individually or collectively include the onshore site preparation works (phases of the authorised development onshore);

“Portsmouth Water” means Portsmouth Water Limited of PO Box No8, West Street, Havant, Hampshire, PO9 1LG;

“start-up and shut-down activities” means at the start of the working day the opening up of the site, the arrival of site staff & contractors, changing into appropriate PPE wear, pre-shift briefings, site inductions, tool box talks, and all associated site safety checks and at the end of the working day the cleaning and tidying of work areas, changing out PPE wear, post-shift debrief, the departure of site staff and contractors, and closing and securing the sites only;

“statutory historic body” means the Historic Buildings and Monuments Commission, otherwise known as Historic England or any successor of that function;

“SPZ1” means the source protection zone 1 as shown on the document certified by the Secretary of State as the source protection zones plans under article 43 (Certification of plans and documents, etc.) for the purposes of this Order; and

“surface water drainage and aquifer contamination mitigation strategy” means the document certified by the Secretary of State as the aquifer contamination mitigation strategy under article 43 (Certification of plans and documents, etc.) for the purposes of this Order;

“travel demand management strategy” means the document certified by the Secretary of State as the travel demand management strategy under article 43 (Certification of plans and documents, etc.) for the purposes of this Order;

(2) Where any requirement—

- (a) refers to a scheme, drawing, document or plan, that scheme, document or plan will be taken to be the version certified by the Secretary of State under article 43 (Certification of plans and documents, etc.) of this Order or to any subsequent version of that scheme, drawing, document or plan approved by the discharging authority under a requirement; or
- (b) provides that the authorised development is to be carried out in accordance with details, or a scheme, plan or other document approved by the discharging authority, the approved details, scheme, plan or other document must be taken to include any amendments or revisions subsequently approved by the discharging authority.

(3) Where an approval of details or other document is required under the terms of any requirement or where compliance with a document contains the wording “unless otherwise agreed” by the discharging authority, such approval of details or of any other document (including any subsequent amendments or revisions) or agreement by the discharging authority is not to be given except in relation to minor or immaterial changes or deviations where it has been demonstrated to the satisfaction of the discharging authority that the subject matter of the approval or agreement sought does not give rise to any materially new or materially different environmental effects to those assessed in the Environmental Statement.

(4) Where any requirement identifies a parameter for a building or structure, that parameter identifies the envelope for that building or structure and does not include any external projections including telecommunications infrastructure (including aerials and satellites), access structures and safety measures (including ladders and handrails), mechanical plant, utilities infrastructure, minor architectural features (including gutters and lighting), external surface level areas, and associated compounds and storage areas.

(5) Unless otherwise provided in this Order, where a Requirement relates to a specific Work (or a part thereof) and it specifies “commencement of development”, it refers to the commencement of development in relation to those Works only.



(6) For the purposes of requirement 5, the parameters for the buildings and other structures comprised in Work No. 2 and Works No. 5 are to be measured as follows—

- (a) length is to be measured as the external horizontal dimension from abutment to abutment;
- (b) height is to be measured as the vertical dimension from the finished floor level to the top of the highest part of the structure;
- (c) width is to be measured as the external horizontal width from an abutment to a parallel abutment.

(7) For the purposes of discharging requirements in phases, the undertaker may—

- (a) submit a plan or plans to the discharging authority identifying a part or parts of any of the sites to which each phase or design relates; or
- (b) submit notices to the discharging authority in respect of individual or combined work packages.

### **Time limits**

2.—(1) The authorised development must commence (which for the purposes of this requirement includes the undertaking of any works comprised in Work No. 2 (bb)) no later than the expiration of five years beginning with the date on which this Order comes into force.

(2) The undertaker will provide to each local planning authority in whose area the authorised development is located landwards of MLWS written notice of commencement not less than 7 days' prior to the proposed date on which the authorised development is commenced.

(3) The undertaker will provide to each local planning authority in whose area the authorised development is located landwards of MLWS written notice of any onshore site preparation works first being undertaken not less than 7 days' prior to the proposed date on which they are to be first undertaken.

(4) The undertaker must provide to each relevant planning authority written notice of the authorised development becoming operational within not more than 14 days following the date on which the Authorised Development first becomes operational.

### **Phases of authorised development onshore**

3.—(1) No authorised development landwards of MHWS including the onshore site preparation works may commence until a written scheme setting out all the phases of the authorised development has been submitted to the relevant planning authority and highway authority detailing the phases of the onshore works within each planning authority's administrative area.

(2) The authorised development landwards of MHWS must be carried out in accordance with the written scheme submitted pursuant to paragraph 1 (as may be updated from time to time).

### **Converter station option confirmation**

4. Prior to the commencement of Work No. 2 or the carrying out of any onshore site preparation works in respect of the perimeter area where the converter station is to be located the undertaker will confirm to the relevant planning authority which converter station perimeter option shown on the converter station and telecommunications building parameter plans listed in Schedule 7 to the Order with reference EN020022-2.6-PARA-Sheet1 listed in Schedule 7 the converter station will be constructed within.

### **Converter station and optical regeneration station parameters**

5.—(1) 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) The buildings and equipment identified in Work No. 2 and listed in table WN2 may only be constructed within the relevant parameter plan zone listed in Table WN2 below and shown on the converter station and telecommunications building parameter plans listed in Schedule 7 to the



Order; with reference EN020022-2.6-PARA-Sheet 2 in the event option b(i) is confirmed to be the location for the converter station in accordance with requirement 4; or with reference EN020022-2.6-PARA-Sheet 3 in the event option b(ii) is confirmed to be the location for the converter station in accordance with requirement 4, and in respect of any building in accordance with the maximum dimensions shown in that table for the building –

**Table WN2**

<i>Component</i>	<i>Parameter Zone</i>	<i>Maximum Parameter (m)</i>		
		<i>Length</i>	<i>Width</i>	<i>Height</i>
Converter hall buildings	4	90	50	26
Control building	4	26	50	15
Transformers	3	-	-	-
Spare Transformer	3	-	-	-
HVAC cable termination equipment	3	-	-	-
HVDC cable termination equipment	4	-	-	-
Valve Cooling Systems	4	-	-	-
Spares building	4	27	25	15
Spares building internal perimeter fence	4	-	-	2.4
Standby back-up diesel generators	3	-	-	-
Distribution transformers	3	-	-	-
Auxiliary transformers	3	-	-	-
Reactors	3	-	-	-
Filters	3	-	-	-
Lightning masts	3/4	-	-	30
Lighting columns	3	-	-	15
Outer security perimeter fence	2	-	-	2.4
Inner electrified fence	2	-	-	3.4
Telecommunications building	5	8	4	3
Telecommunications building compound	5	30	10	-
Telecommunications building security perimeter fence	5	30	10	2.45
Access road	1	1,200	7.3	-
Fire protection deluge system	3	-	-	-

(3) In accordance with the converter station and telecommunications building parameter plans no building within Work No. 2 may be a height which is above +111.100 metres above ordnance datum (excluding the lightning masts which may not be a height which is above +115.100 meters above ordnance datum).

(4) The optical regeneration stations identified in Works No.5 and listed in table WN5 may only be constructed within the relevant parameter plan zone shown on the optical regeneration stations parameter plan listed in Schedule 7 to the Order with reference EN020022-2.11-PARA-Sheet 1 and in accordance with the maximum dimensions shown in that table for the buildings and compound –

**Table WN5**

<i>Component</i>	<i>Maximum Parameter (m)</i>		
	<i>Length</i>	<i>Width</i>	<i>Height</i>
Optical Regeneration Station	11	4	4



Compound	35	18	-
Security Perimeter Fence	35	18	2.45

### Detailed design approval

6.—(1) The construction of any phase of Works No. 2 or the carrying out of any onshore site preparation works in respect of the area where Works No.2 is to be located (excluding Works No.2 (bb)) must not commence until written details of the –

- (a) layout of buildings;
- (b) scale of buildings;
- (c) existing and proposed site levels;
- (d) proposed finished ground floor slab level;
- (e) design of building foundations;
- (f) proposed piling;
- (g) external appearance and materials of buildings;
- (h) hard surfacing materials;
- (i) location of the attenuation ponds;
- (j) the access road, permanent parking and circulation areas;
- (k) external lighting and lightning protection;
- (l) permanent fencing; and
- (m) proposed services above and below, ground, including surface water drainage, foul water drainage, power and communications cables and pipelines, manholes and supports or any other associated ancillaries,

in so far as relevant to that phase of those works and confirming how those details accord with the design principles for the converter station and the surface water drainage and aquifer contamination mitigation strategy and the flood risk assessment (in so far as relevant to the design of Work No. 2) have been submitted to and approved in writing by the relevant planning authority (in consultation with the South Downs National Park Authority and, in relation to matters relevant to the surface water drainage and aquifer contamination mitigation strategy only, the Environment Agency, Portsmouth Water and the lead local flood authority).

(2) The construction of Work No. 2 (bb) (the general arrangement of which is shown on converter station access drawing) must not begin for the purposes of section 155(1) of the 2008 Act until written details of the–

- (a) siting;
- (b) design;
- (c) layout;
- (d) visibility splays; and
- (e) landscaping

in so far as relevant to those works have been submitted to and approved in writing by the relevant planning authority (in consultation with the South Down National Park Authority and the relevant highway authority).

(3) The construction of any phase of Work No. 3 or the carrying out of any onshore site preparation works in respect of the area where the Works No.3 is to be located must not commence until written details of the –

- (a) layout;
- (b) surfacing materials;
- (c) vehicular access, parking and circulation areas; and
- (d) drainage measures,



relating to that phase of those works and confirming how those details accord with the surface water drainage and aquifer contamination mitigation strategy have been submitted to and approved in writing by the relevant planning authority (in consultation with the Environment Agency, Portsmouth Water and the lead local flood authority in relation to matters relevant to the surface water drainage and aquifer contamination mitigation strategy only).

(4) The construction of any phase of Works No. 4 which is not located on the highway must not commence until written details of the –

- (a) proposed layout of the onshore HVDC cables;
- (b) proposed depth of installation of the onshore HVDC cables;
- (c) indicative location of the joint bays, link boxes and link pillars;
- (d) where included within the relevant phase the spatial extent and layout of any HDD compound (which must be located within the areas identified for HDD compounds on the works plans only); and
- (e) where included within the relevant phase the spatial extent and layout of any trenchless installation techniques compound (which must be located within the areas identified for trenchless installation techniques compounds on the works plans only),

relating to that phase of those works and confirming how those details accord with the design principles for the onshore cable corridor and the flood risk assessment (in so far as is relevant) have been submitted to and approved in writing by the relevant planning authority.

(5) The construction of any phase of Works No.4 which is located on the highway must not commence until written details of –

- (a) proposed horizontal alignment of cable ducts;
- (b) proposed vertical alignment of cable ducts detailing proposed cover from the top of the cable duct to existing ground level;
- (c) cross sections at intervals of not less than 100 metres and at all locations where the cable ducts cross apparatus;
- (d) proposed indicative location of and specification for joint bays;
- (e) proposed location of and specification for link boxes and link pillars;
- (f) existing apparatus, including drainage apparatus and street lighting; and
- (g) where included in the relevant phase any existing bridge structures,

relating to that phase of those works and confirming how those details accord with the design principles for the onshore cable corridor and the flood risk assessment (in so far as is relevant) have been submitted to and approved in writing by the relevant highway authority.

(6) The construction of the optical regeneration stations within Works No. 5 must not commence until written details of the –

- (a) layout;
- (b) scale;
- (c) proposed finished floor levels;
- (d) external appearance and materials;
- (e) hard surfacing materials;
- (f) vehicular access, parking and circulation areas;
- (g) permanent fencing; and
- (h) proposed services above and below, ground, including drainage, power and communications cables and pipelines, manholes and supports, security measures and plant,

relating to the optical regeneration stations and confirming how those details accord with the design principles for the optical regeneration stations and the flood risk assessment have been



submitted to and approved in writing by the relevant planning authority (in consultation with the lead local flood authority and the statutory historic body).

(7) The construction of any phase of Works No.5 (excluding the optical regeneration stations) must not commence until written details of the –

- (a) layout;
- (b) external appearance and materials;
- (c) hard surfacing materials;
- (d) vehicular access, parking and circulation areas;
- (e) proposed services above and below, ground, including drainage, power and communications cables and pipelines, manholes and supports;

relating to that phase of those works and confirming how those details accord with the flood risk assessment have been submitted to and approved in writing by the relevant planning authority (in consultation with the lead local flood authority).

(8) Works No. 2, 3 and 5 must be carried out in accordance with the approved details.

(9) Works No. 4 must be carried out in accordance with the approved details, save for in relation to such details which are indicative which Work No. 4 must be carried out substantially in accordance with.

(10) The external appearance of the buildings within Work No. 2 shall be retained as approved during the operational period unless an amendment or variation is previously agreed in writing by the relevant planning authority save that this shall not prevent the replacement of the approved materials with other materials with the same external appearance.

(11) Unless otherwise agreed with the relevant planning authority there shall be no lighting installed on any elevations of the converter hall buildings during the construction of the converter hall buildings or the operational period other than any such lighting which is approved in accordance with requirement 6(1).

(12) Any approved permanent fencing in relation to the converter station, the telecommunications buildings and the optical regeneration stations must be completed before the converter station, the telecommunications buildings or the optical regeneration stations (respectively) are brought into use, and maintained for the operational lifetime of the converter station, the telecommunications buildings and the optical regeneration stations (respectively).

(13) HDD must be used for the purpose of passing under–

- (a) Denmead Meadows (in the area identified as a trenchless crossing zone on Sheet 3 of the works plans);
- (b) Langstone Harbour (in the area identified for a trenchless crossing zone on Sheets 7 and 8 of the works plans);
- (c) Sea Defences at Milton Common (in the area identified as a trenchless crossing zone on Sheet 9 of the works plans);
- (d) Eastney and Milton Allotments (in the area identified as a trenchless crossing zone on Sheet 10 of the works plans); and
- (e) Eastney Beach (in the area identified as a trenchless crossing zone on Sheet 10 of the works plans)

(14) Trenchless installation techniques must be used for the purpose of passing under the Brighton to Southampton Railway Line (in the area identified for a trenchless crossing zone on Sheets 7 of the works plans).

### **Provision of landscaping**

7.—(1) No phase of Works No. 2, Works No.4 or the construction of the optical regeneration stations within Works No. 5 may commence and no onshore site preparation works in relation to any such phase (for the avoidance of doubt excluding Work No. 2 (bb)) may be carried out until a detailed landscaping scheme in relation to that phase (which accords with the outline landscape



and biodiversity strategy in so far as relevant to it and the design principles relating to landscaping) has been submitted to and approved by the relevant planning authority (and where related to any phase of Works No. 2 in consultation with the South Downs National Park Authority).

(2) A detailed landscaping scheme for any phase must include details of all proposed hard and soft landscaping and enhancement works, including (in so far as relevant) -

- (a) surveys, assessments and method statements as guided by BS 5837;
- (b) location, number, species, size, plant protection measures and planting density of any proposed planting and the location of areas to be seeded;
- (c) cultivation, importing of materials and other operations to ensure plant establishment;
- (d) hard surfacing materials;
- (e) implementation timetables for all landscaping works;
- (f) management, maintenance and monitoring plans and prescriptions; and
- (g) management responsibilities.

### **Implementation and maintenance of landscaping**

8.—(1) All landscaping and enhancement works must be carried out in accordance with any detailed landscaping scheme approved under requirement 7 applicable to them and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards.

(2) Any tree or shrub planted or any area seeded as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, or in the case of any seed area, reseeded with the same type, unless otherwise approved by the relevant planning authority.

(3) All landscaping provided in connection with Works No.2 and the optical regeneration stations within Works No. 5 must be retained, managed and maintained during the operational period.

### **Biodiversity management plan**

9.—(1) No phase of Works No. 2 or Works No. 5 may commence until a written biodiversity management plan in relation to that phase (which accords with the outline landscape and biodiversity strategy in so far as relevant and the relevant recommendations of appropriate British Standards) has been submitted to and approved by the relevant local planning authority in consultation with the relevant statutory nature conservation bodies and (where works have the potential to have an impact on wetland habitats) the Environment Agency.

(2) No phase of Works No.4 may commence until a written biodiversity management plan in relation to that phase (which accords with the outline landscape and biodiversity strategy in so far as relevant and the relevant recommendations of appropriate British Standards) has been submitted to and approved by the relevant local planning authority in consultation with the relevant statutory nature conservation bodies and (where works have the potential to have an impact on wetland habitats) the Environment Agency.

(3) No part of the onshore site preparation works (excluding Work No. 2 (bb)) may commence until a written biodiversity management plan (which accords with the outline landscape and biodiversity strategy in so far as relevant to those works and the relevant recommendations of appropriate British Standards) relating to those works has been submitted to and approved by the relevant local planning authority in consultation with the relevant statutory nature conservation bodies.

(4) Any approved written biodiversity management plan must include –

- (a) measures to protect existing scrub and trees that are to be retained;



- (b) details of a scheme for the reinstatement of land used as temporary compounds during construction and any replacement planting to replace removed sections of hedgerow or removed trees;
- (c) an implementation timetable;
- (d) biodiversity management and maintenance measures; and
- (e) reptile and stag beetle precautionary method statements of works.

(5) Any works for which a written biodiversity management plan has been approved must be carried out in accordance with the written biodiversity management plan approved in relation to them.

(6) Where any approved written biodiversity management plan includes the undertaking of future management and maintenance measures those future management and maintenance measures must be undertaken as required in accordance with that approved written biodiversity management plan.

### **Highway accesses**

**10.—**(1) No phase of the authorised development landwards of MHWS may commence until written details of the -

- (a) siting;
- (b) design;
- (c) layout;
- (d) visibility splays;
- (e) access management measures; and
- (f) a maintenance programme,

in respect of any new permanent or temporary means of access to a highway to be used by vehicular traffic (for the avoidance of doubt excluding Work No. 2 (bb)), or any alteration or improvement to an existing means of access to a highway used by vehicular traffic, relevant to that phase, has been submitted to and approved by the relevant planning authority (in consultation with the relevant highway authority).

(2) The highway accesses (including visibility splays) must be constructed and maintained in accordance with the approved details.

### **Construction fencing and other means of enclosure**

**11.—**(1) All construction sites, must remain securely fenced at all times during construction of the authorised development landwards of MHWS.

(2) Any temporary fencing must be removed on completion of the construction of the phase of the authorised development landwards of MHWS it was erected in connection with.

### **Surface and foul water drainage**

**12.—**(1) The construction of any phase of Work No. 2 (excluding Works No.2 (a) and for the avoidance of doubt Work No. 2 (bb)) must not commence until a surface water drainage and aquifer contamination management plan (in accordance with the surface water and aquifer contamination mitigation strategy) relevant to that phase has been submitted to and approved by the relevant local planning authority (in consultation with the Environment Agency, Portsmouth Water and the lead local flood authority).

- (2) The surface water drainage and aquifer contamination management plan must include –
  - (a) emergency oil containment and water management plan;
  - (b) installation, operation and maintenance manual;
  - (c) sustainable drainage system operation and maintenance strategy; and



(d) civil asset management plan.

(3) The surface and foul water drainage system for each phase must be maintained in accordance with the approved surface water drainage and aquifer contamination management plan for the operational period.

(4) The construction of the optical regeneration stations within Works No. 5 must not commence until a sustainable drainage system operation and maintenance strategy relevant to those works has been submitted to and approved by the relevant local planning authority (in consultation with the lead local flood authority) and the sustainable drainage system for the optical regeneration stations must be maintained in accordance with the approved sustainable drainage system operation and maintenance strategy during the operational period.

### **Contaminated land and groundwater**

**13.—**(1) No phase of the authorised development landwards of MHWS within the area of a relevant planning authority may commence until a written scheme applicable to that phase in accordance with the onshore outline construction environmental management plan and surface water drainage and aquifer contamination mitigation strategy (in so far as relevant), to deal with the contamination of any land, including groundwater, within the Order limits landwards of MHWS which is likely to cause significant harm to persons or pollution of controlled waters or the environment, has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency and, to the extent it relates to the intertidal area, the MMO.

(2) The term commence as used in requirement 13(1) includes any onshore site preparation works (excluding Work No. 2 (bb)).

(3) If, during the carrying out of the authorised development contamination of any land, including groundwater, within the Order limits landwards of MLWS which is likely to cause significant harm to persons or pollution of controlled waters or the environment not previously identified is found to be present then the developer will halt the continuation of such part of the authorised development as is to be carried out in the area where the contamination has been identified and submit, and obtain approval from the relevant planning authority in consultation with the Environment Agency and, to the extent it relates to the intertidal area, the MMO for, a written scheme detailing how the contamination will be dealt with.

(4) Any scheme submitted to deal with the contamination of any land, including groundwater, within the Order limits landwards of MHWS which is likely to cause significant harm to persons or pollution of controlled waters or the environment will include an investigation and assessment report, prepared by a specialist consultant approved by the relevant planning authority, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(5) Remediation must be carried out in accordance with the approved scheme.

(6) Upon completion of the approved scheme, a verification report demonstrating completion of the works set out in the approved scheme and the effectiveness of the remediation will be submitted to and approved, in writing, by the relevant planning authority which must include results of sampling and monitoring carried out to demonstrate that site remediation criteria have been met and a plan for long-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, if appropriate, and for the reporting of this to the relevant planning authority.

(7) Any approved long-term monitoring and maintenance plan will be implemented as approved.

### **Archaeology**

**14.—**(1) No phase of the authorised development landwards of MHWS may commence until for that phase a written scheme for the investigation of areas of archaeological interest as identified in the environmental statement has been submitted to and approved by the relevant planning



authority or the relevant planning authority has confirmed its agreement that a written scheme for the investigation of areas of archaeological interest is not required in relation to that phase.

(2) The term commence as used in requirement 14(1) includes any onshore site preparation works (excluding Work No. 2 (bb)).

(3) The scheme will identify areas where field work and/or a watching brief are required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(4) Any archaeological works or watching brief carried out under the scheme must be by a suitably qualified person or body approved by the relevant local planning authority.

(5) Any archaeological works or watching brief must be carried out in accordance with the approved scheme.

### **Construction environmental management plan**

**15.—**(1) No phase of the authorised development landwards of MHWS may commence and no onshore site preparation works in relation to any such phase may be carried out until a construction environmental management plan relating to that phase has been submitted to and approved by the relevant planning authority (in consultation with the relevant highway authority in so far as such phase of the authorised development is located on the highway).

(2) Any construction environmental management plan must be in accordance with the onshore outline construction environmental management plan and, so far as relevant to that phase, must –

- (a) contain a record of all sensitive environmental features that have the potential to be affected by construction;
- (b) Contain details of a local community liaison responsibilities;
- (c) Include the following management plans and measures (as relevant to and necessary in connection with the relevant phase of the authorised development) –
  - (i) soil resources management plan (in accordance with the outline soil resources plan);
  - (ii) materials management plan (in accordance with the outline materials management plan);
  - (iii) site waste management plan (in accordance with the outline site waste management plan);
  - (iv) arboriculture method statements;
  - (v) dust management plan;
  - (vi) construction surface water management plan;
  - (vii) emergency pollution and spill response plan;
  - (viii) earthworks management plan;
  - (ix) silt management plan;
  - (x) HDD management plan;
  - (xi) environmental risk assessment and method statement;
  - (xii) piling risk assessment; and
  - (xiii) air quality stakeholder communication plan.

(3) When approving any construction environmental management plan relating to a phase of Work No. 2, Work No. 3 and Work No. 4 the relevant planning authority must consult with the Environment Agency, Portsmouth Water and the lead local flood authority in relation to any –

- (a) materials management plan;
- (b) site waste management plan;
- (c) construction surface water management plan;
- (d) earthworks management plan;



- (e) silt management plan;
- (f) HDD management plan;
- (g) environmental risk assessment and method statement; and
- (h) piling risk assessment,

in so far as those plans are relevant to be included within the construction environmental management plan relating to the relevant phase of the works and only in so far as they relate to SPZ1.

(4) The construction of any phase of the authorised development landwards of MHWS must be carried out in accordance with the construction environmental management plan and all supplementary plans approved in relation to it.

### **External construction lighting**

16. No phase of Works No. 2 may commence until written details of external construction lighting to be installed at any of the construction sites within that phase or in relation to that phase in accordance with the onshore outline construction environmental management plan (in so far as relevant) have been submitted to and approved by the relevant local planning authority (in consultation with the South Downs National Park Authority) and any approved means of external construction lighting must be installed only in accordance with the approved details and removed prior to the operational period.

### **Construction traffic management**

17.—(1) The construction of any phase of Work No. 2 (bb) and the undertaking of any onshore site preparation works in connection with Work No.2 prior to construction of Work No.2 (bb) must not begin for the purposes of section 155(1) of the 2008 Act until a construction traffic management plan (in accordance with the framework construction traffic management plan) relating to that those works been submitted to and approved by the relevant highway authority.

(2) No phase of the authorised development landwards of MHWS may commence until a construction traffic management plan (in accordance with the framework construction traffic management plan) relating to that phase has been submitted to and approved by the relevant highway authority (in consultation with Highways England in so far as the relevant construction traffic management plan relates to the strategic road network managed by them).

(3) The construction of any phase of the authorised development landwards of MHWS must be carried out in accordance with the construction traffic management plan approved in relation to it.

(4) Notwithstanding anything contained in any approved construction traffic management plan, Work No. 2 (bb) (access junction and associated gated highway link) shall not be used for more than 71 two-way HGV movements (142 in total) per day in connection with the construction of the authorised development landwards of MHWS.

### **Construction hours**

18.—(1) Subject to requirements 18(3) and 18(4), other than where expressly stated in a construction environmental management plan approved pursuant to requirement 15, construction work landwards of MHWS will not take place other than –

- (a) in relation to Works No.1, Works No.2 and Works No. 5 between 0800 and 1800 hours on weekdays and 0800 and 1300 hours on Saturdays, excluding public holidays, except in the event of emergency unless otherwise agreed by the relevant local planning authority; and
- (b) in relation to Works No.3 between 0700 and 1800 hours on weekdays and 0800 and 1300 hours on Saturdays, excluding public holidays, except in the event of emergency unless otherwise agreed by the relevant local planning authority;



- (c) in relation to Works No.4 between 0700 and 1700 hours on weekdays and 0800 and 1300 hours on Saturdays, excluding public holidays, except in the event of emergency unless otherwise agreed by the relevant local planning authority;

(2) In the event of an emergency, notification of that emergency must be given to the relevant planning authority as soon as is reasonably practicable.

(3) The operations which it is stated in the onshore outline construction environmental management plan may be carried out outside of the core working hours may be carried out outside of the core working hours in accordance with the working hours stated in the onshore outline construction environmental management plan.

(4) Nothing in this requirement 18 precludes –

- (a) start-up and shut-down activities up to an hour either side of the core working hours;
- (b) the receipt of oversized deliveries, the arrival and departure of personnel to and from the site, on-site meetings or briefings, and the use of welfare facilities and non-intrusive activities; and
- (c) works on a traffic sensitive street outside of core working hours where so directed by the relevant highway authority pursuant to a permit granted under the permit schemes in accordance with Article 9A of this Order following consultation by the relevant highway authority with the environmental health officer at the relevant planning authority under the terms of such scheme and where it has been evidenced by the relevant highway authority that the direction proposed will not cause impacts which fall outside the scope of the residual likely significant environmental impacts reported in the environmental statement.

(5) In this requirement –

- (a) “core working hours” means the working hours stated in relation to the relevant operations at paragraphs (1)(a), (1)(b) and 1(c);
- (b) “emergency” means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable opinion of the undertaker would outweigh the adverse effects to the public (whether individuals, classes or generally as the case may be) of taking that action;
- (c) “non-intrusive activities” means activities which would not create any discernible light, noise or vibration outside the Order limits; and
- (d) “traffic sensitive street” means a street which has been designated as traffic sensitive by the relevant street authority in accordance with section 64 of the 1991 Act and any regulations referred to therein and where any limited designation applies only in so far as such designation applies.

#### **Converter station operational access strategy**

19. Prior to the operation of the converter station a strategy for the access and egress of vehicles associated with the operation and maintenance of the converter station shall be submitted to and approved by the relevant highway authority.

#### **Control of noise during the operational period**

20.—(1) Prior to the operation of that relevant part of the authorised development landwards of MHWS a noise management plan for –

- (a) Work No. 2; and
- (b) the optical regeneration stations;

must be submitted to and approved by the relevant planning authority.

(2) The noise management plans must set out the particulars of –



- (a) the broadband and octave band noise criteria that must be achieved, which unless otherwise agreed will be those set out in the operational broadband and octave band noise criteria document;
  - (b) the noise attenuation and mitigations required to achieve the broadband and octave band noise criteria; and
  - (c) a noise monitoring scheme for testing the attenuation and mitigation measures provided under subparagraph (b) which must include –
    - (i) the circumstances under which noise will be monitored;
    - (ii) the locations at which noise will be monitored, which unless otherwise agreed will be the locations specified in the operational broadband and octave band noise criteria document;
    - (iii) the method for noise measurement (which must be in accordance with BS 4142:2014+A1:2019, an equivalent successor standard or other agreed noise measurement methodology appropriate to the circumstances); and
    - (iv) a complaints procedure
- (3) The noise management plans must be implemented as approved and maintained for the operational period of those parts of the authorised development.

### **Travel plan**

**21.**—(1) No phase of the authorised development landwards of MHWS will be commenced until, after consultation with the relevant planning authority and the relevant highway authority, a travel plan for the contractor’s workforce in accordance with the framework construction worker travel plan (in so far as relevant), which must include details of the expected means of travel to and from Works No. 2 (including in connection with Works No.4) and Works No.5 and any parking to be provided, has been submitted to and approved by the relevant highway authority(s).

(2) The plan approved under paragraph (1) must be implemented during the construction of the authorised development.

### **Restoration of land used temporarily for construction**

**22.** The undertaker must confirm to the relevant planning authorities the date of the completion of the construction of any phase of the authorised development and any land within the Order limits landwards of MLWS which is used temporarily for construction of a relevant phase of the authorised development and which is not required for such use in connection with any other phase of the authorised development must be reinstated to its former condition, or such condition as the relevant local planning authority may approve but which may not be to a standard which is higher than its former condition, within not more than twelve months of the date of the completion of the construction of the relevant phase of the authorised development.

### **Control of lighting during the operational period**

**23.** During the operational period there will be no external lighting of Works No.2 or the optical regeneration stations within Works No. 5 during the hours of darkness save for in exceptional circumstances, including in the case of emergency and where urgent maintenance is required.

### **Decommissioning**

**24.**—(1) Within –

- (a) twenty four months of the parts of the authorised development landwards of MHWS used for the purposes of electricity transmission, ensuring security of supply and the provision of ancillary services to facilitate and support the continuous flows of electricity permanently ceasing operation for all of those purposes (either actively or on a standby basis); or



- (b) twelve 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 the relevant part of the authorised development to the relevant planning authority for approval.

(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.

### **Traffic management**

**25.**—(1) No phase of Works No.4 to be undertaken on the highway may commence until a travel demand management plan (in accordance with the travel demand management strategy) has been submitted to and approved by the relevant highway authority's.

(2) The travel demand management plan must identify the measures which are to be undertaken to ensure persons are aware of the construction of Work No.4 on the highway and the travel options available to them to reduce potential impacts through changes to travel behaviour and how the effectiveness of the travel demand management plan will be monitored and evaluated during its implementation.

(3) The approved travel demand management plan must be implemented as approved for the period of the construction of Work No.4 on the highway.

(4) No phase of Works No. 4 to be undertaken on the highway may commence until a strategic signage strategy (in accordance with the framework signage strategy) has been submitted to and approved by the relevant highway authority's (in consultation with Highways England);

(5) The strategic signage strategy must identify the locations for and approach to the provision of strategic highway signage to provide suitable warning to drivers to allow for them to reassign onto appropriate alternative routes and the approach to providing information on a project website regarding the construction of Work No.4 on the highway;

(6) The approved strategic signage strategy must be implemented as approved for the period of the construction of Work No.4 on the highway.

(7) No phase of Works No.4 to be undertaken on the highway may commence until a traffic management strategy (substantially in accordance with the framework traffic management strategy) relating to that phase has been submitted to and approved by the relevant highway authority detailing –

- (a) plans detailing the extent of the works;
- (b) the construction methodology in relation to the works including details of the hours of the day within which the works are to be carried out;
- (c) a schedule of timings for the works, including the dates and durations for any closures of any part of the highway;



- (d) the traffic management strategy to be implemented in relation to those works, including details of any local traffic signals and signs and any traffic regulation measures proposed in connection with those works;
- (e) the measures to be taken in relation to access to residences, businesses and community facilities (in accordance with the onshore cable route construction impacts on access to properties and car parking and communication strategy);
- (f) a schedule of condition of any part of the highway to be affected by the works;
- (g) a specification of the condition of the parts of the highway where the works are to be undertaken;
- (h) details of any lighting to be used in connection with the works for the duration that the works are being undertaken;
- (i) contact details for the client and contractor carrying out the works;
- (j) details of the advanced publicity to be carried out in connection with those works; and
- (k) details of the proposed approach to the reinstatement of the highway in connection with those works, including (where applicable) details of both temporary and permanent reinstatement.

(8) The construction of any phase of Works No.4 to be undertaken on the highway must be carried out in accordance with the traffic management strategy approved in relation to it.

(9) No more than six construction gangs may carry out works comprised in Work No.4 on the highway at any one time.

### **Employment and skills plan**

26.—(1) No phase of the authorised development landwards of MHWS may commence until an employment and skills plan in relation to the construction of the authorised development landwards of MHWS (which accords with the employment and skills strategy) has been submitted to and approved by Winchester City Council (in consultation with Portsmouth City Council, East Hampshire District Council and Havant Borough Council).

(2) The employment and skills plan must identify opportunities for access to employment, apprenticeships, supply chain opportunities, engagement with educational institutions and community support and engagement in connection with the construction of the authorised development, and the means for publicising such opportunities.

(3) The approved employment and skills plan must be implemented as approved during the construction of the authorised development.

### **Requirement for written approval**

27. Where under any of the above requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be given in writing.

### **Amendments to approved details**

28.—(1) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority or the relevant highway authority or any other person, the approved details must be carried out as approved unless an amendment or variation is previously agreed in writing by the relevant planning authority or the relevant highway authority or that person in accordance with subparagraph (2).

(2) Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to changes which are not material where it has been demonstrated to the satisfaction of the relevant planning authority or the relevant highway authority or that person that



the subject matter of the agreement sought is not likely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(3) The approved details must be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority or that other person.



## Procedure for approvals, consents and appeals

### Applications made under a Requirement

1.—(1) Where an application has been made to a discharging authority for any consent, agreement or approval under a requirement included in this Order –

- (a) the undertaker must give the discharging authority sufficient information to identify the requirement(s) to which the application relates;
- (b) the undertaker must provide such particulars, and the request must be accompanied by such plans and drawings, as are reasonably considered necessary to deal with the application; and
- (c) the discharging authority must give notice to the undertaker of its decision on the application before the end of the decision period.

(2) For the purposes of sub-paragraph (1) and (3), the decision period is –

- (a) where no further information is requested under paragraph 2, 42 days from the day immediately following that on which the application is received by the authority;
- (b) where further information is requested under paragraph 2, 42 days from the day immediately following that on which further information has been supplied by the undertaker under paragraph 2; or
- (c) such longer period as may be agreed by the undertaker and the discharging authority in writing before the end of the period in sub-paragraph (a) or (b).

(3) In the event the discharging authority does not determine an application within the decision period the discharging authority is taken to have granted all parts of the application (without any condition or qualification) at the end of that period unless otherwise agreed in writing.

### Further Information

2.—(1) In relation to any application to which this Schedule applies, the discharging authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(2) If the discharging authority considers such further information to be necessary and the requirement does not specify that consultation with a requirement consultee is required, it must, as soon as is reasonably practicable and within 5 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement specifies that consultation with a requirement consultee is required, the discharging authority must issue a copy of materials in support of the application to the requirement consultee within 5 working days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within 5 working days of receipt of such a request and in any event within 21 days of receipt of the application.

(4) If the discharging authority does not give such notification as specified in sub-paragraph (2) or (3) or otherwise fails to request any further information within the timescales provided for in this paragraph, it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without agreement of the undertaker.

### Fees

3.—(1) Unless otherwise agreed between the undertaker and the relevant discharging authority, where an application or a request for comments is made to a relevant discharging authority for any



consent, agreement or approval required by a Requirement, a fee must be paid to the relevant discharging authority as follows –

- (a) such fee as may be prescribed (under sections 303 and 333(2A) of the 1990 Act for the discharge of conditions attached to a planning permission); or
- (b) a fee of £97 per application or request.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 35 days of –

- (a) the application or request being rejected as invalidly made; or
- (b) the relevant discharging authority failing to determine the application or to provide written comments within 42 days from the date on which the application is received, unless within that period the undertaker agrees in writing that the fee may be retained by the relevant discharging authority and credited in respect of a future application or a future request for comments.

## Appeals

4.—(1) The undertaker may appeal to the Secretary of state in the event that –

- (a) the discharging authority refuses an application for any agreement or approval required by a requirement included in this Order;
- (b) on receipt of a request for further information pursuant to paragraph 2 the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
- (c) on receipt of any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The procedure for appeals is as follows –

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where paragraph 3(b) or (c) applies) within 42 days of the receipt of a request for further information pursuant to paragraph 2 or notification that the information provided is inadequate;
- (b) the undertaker must submit to the Secretary of State a copy of the application submitted to the discharging authority and any supporting documentation which the undertaker may wish to provide (“the appeal documentation”);
- (c) the undertaker must on the same day provide copies of the appeal documentation to the discharging authority and requirement consultee (if applicable);
- (d) as soon as is practicable after receiving the appeal documentation and within not more than 28 days, the Secretary of State must appoint a person to determine the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;
- (e) the discharging authority and the requirement consultee (if applicable) must submit any written representations to the appointed person in respect of the appeal within 10 working days of the date on which the appeal parties are notified of the appointment of a person under sub-paragraph (d) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (f) the appeal parties may make any counter-submissions to the appointed person within 10 working days beginning with the first day immediately following the date of receipt of written representations pursuant to sub-paragraph (e); and
- (g) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 20 working days of the



receipt of written representations pursuant to sub-paragraph (e) or if submitted the receipt of any counter-submissions pursuant to sub-paragraph (f).

(3) The appointment of the person pursuant to sub-paragraph (2)(d) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) If the appointed person considers that further information is necessary to enable the appointed person to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required pursuant to sub-paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person.

(6) Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 10 working days of the date mentioned in sub-paragraph (4) and the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 20 working days of the receipt of any such written representations.

### **Outcome of appeals**

5.—(1) On an appeal under paragraph 3 of this Schedule, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(2) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed, or set by the appointed person, under paragraph 3 of this Schedule.

(3) The appointed person may proceed to a decision even though no written representations have been made within those time limits if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(4) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review within 6 weeks of the date of the appointed person's decision beginning with the date of that decision.

(5) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Schedule 2 (Requirements) of this Order as if it had been given by the discharging authority.

(6) The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) must not be taken to affect or invalidate the effect of the appointed person's determination.

(7) Save where a direction is given pursuant to sub-paragraph (8) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person must be met by the undertaker.

(8) On application by the discharging authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it must be made, the appointed person must have regard to the Planning Practice Guidance: Appeals (March 2014) published by the Ministry of Housing, Communities & Local Government, or any circular or guidance which may from time to time replace it.



## **Interpretation of this Schedule**

**6.** In this Schedule –

“the appeal parties means” the discharging authority, the requirement consultee and the undertaker; and

“requirement consultee” means any body named in a requirement which is the subject of an appeal as a body to be consulted by the discharging authority in discharging that requirement.



## SCHEDULE 4

Article 2

### Land plans

<i>Drawing number</i>	<i>Rev</i>	<i>Drawing Title</i>	<i>Scale</i>	<i>Paper size</i>
EN020022-2.2-LP-Sheet0	005	Land Plans - Sheet 0 of 10	1:22,500	A1
EN020022-2.2-LP-Sheet1	005	Land Plans - Sheet 1 of 10	1:2,500	A1
EN020022-2.2-LP-Sheet2	005	Land Plans - Sheet 2 of 10	1:2,500	A1
EN020022-2.2-LP-Sheet3	005	Land Plans - Sheet 3 of 10	1:2,500	A1
EN020022-2.2-LP-Sheet4	005	Land Plans - Sheet 4 of 10	1:2,500	A1
EN020022-2.2-LP-Sheet5	005	Land Plans - Sheet 5 of 10	1:2,500	A1
EN020022-2.2-LP-Sheet6	005	Land Plans - Sheet 6 of 10	1:2,500	A1
EN020022-2.2-LP-Sheet7	005	Land Plans - Sheet 7 of 10	1:2,500	A1
EN020022-2.2-LP-Sheet8	005	Land Plans - Sheet 8 of 10	1:2,500	A1
EN020022-2.2-LP-Sheet9	005	Land Plans - Sheet 9 of 10	1:2,500	A1
EN020022-2.2-LP-Sheet10	005	Land Plans - Sheet 10 of 10	1:2,500	A1



## SCHEDULE 5

Article 2

### Works plans

<i>Drawing number</i>	<i>Rev</i>	<i>Drawing Title</i>	<i>Scale</i>	<i>Paper size</i>
EN020022-2.4-WP-Sheet0	006	Works Plans - Sheet 0 of 12	1:150,000	A1
EN020022-2.4-WP-Sheet1	006	Works Plans - Sheet 1 of 12	1:2,500	A1
EN020022-2.4-WP-Sheet2	006	Works Plans - Sheet 2 of 12	1:2,500	A1
EN020022-2.4-WP-Sheet3	006	Works Plans - Sheet 3 of 12	1:2,500	A1
EN020022-2.4-WP-Sheet4	006	Works Plans - Sheet 4 of 12	1:2,500	A1
EN020022-2.4-WP-Sheet5	006	Works Plans - Sheet 5 of 12	1:2,500	A1
EN020022-2.4-WP-Sheet6	006	Works Plans - Sheet 6 of 12	1:2,500	A1
EN020022-2.4-WP-Sheet7	006	Works Plans - Sheet 7 of 12	1:2,500	A1
EN020022-2.4-WP-Sheet8	006	Works Plans - Sheet 8 of 12	1:2,500	A1
EN020022-2.4-WP-Sheet9	006	Works Plans - Sheet 9 of 12	1:2,500	A1
EN020022-2.4-WP-Sheet10	006	Works Plans - Sheet 10 of 12	1:2,500	A1
EN020022-2.4-WP-Sheet11	006	Works Plans - Sheet 11 of 12	1:75,000	A1
EN020022-2.4-WP-Sheet12	006	Works Plans - Sheet 12 of 12	1:75,000	A1



## SCHEDULE 6

Article 2

### Access and rights of way plans

<i>Drawing number</i>	<i>Rev</i>	<i>Drawing Title</i>	<i>Scale</i>	<i>Paper size</i>
EN020022-2.5-AROW-Sheet0	004	Access and Right of Way Plan - Sheet 0 of 10	1:22,500	A1
EN020022-2.5-AROW-Sheet1	004	Access and Right of Way Plan - Sheet 1 of 10	1:2,500	A1
EN020022-2.5-AROW-Sheet2	004	Access and Right of Way Plan - Sheet 2 of 10	1:2,500	A1
EN020022-2.5-AROW-Sheet3	004	Access and Right of Way Plan - Sheet 3 of 10	1:2,500	A1
EN020022-2.5-AROW-Sheet4	004	Access and Right of Way Plan - Sheet 4 of 10	1:2,500	A1
EN020022-2.5-AROW-Sheet5	004	Access and Right of Way Plan - Sheet 5 of 10	1:2,500	A1
EN020022-2.5-AROW-Sheet6	004	Access and Right of Way Plan - Sheet 6 of 10	1:2,500	A1
EN020022-2.5-AROW-Sheet7	004	Access and Right of Way Plan - Sheet 7 of 10	1:2,500	A1
EN020022-2.5-AROW-Sheet8	004	Access and Right of Way Plan - Sheet 8 of 10	1:2,500	A1
EN020022-2.5-AROW-Sheet9	004	Access and Right of Way Plan - Sheet 9 of 10	1:2,500	A1
EN020022-2.5-AROW-Sheet10	004	Access and Right of Way Plan - Sheet 10 of 10	1:2,500	A1



## SCHEDULE 7

Article 2

### Parameter plans

<i>Drawing number</i>	<i>Rev</i>	<i>Drawing Title</i>	<i>Scale</i>	<i>Paper size</i>
EN020022-2.6- PARA- Sheet1	02	Converter Station and Telecommunications Buildings Parameter Plans Combined Options - Sheet 1 of 3	1:1,250	A1
EN020022-2.6- PARA-Sheet2	02	Converter Station and Telecommunications Buildings Parameter Plans Option B(i) - Sheet 2 of 3	1:1,250	A1
EN020022-2.6- PARA-Sheet3	02	Converter Station and Telecommunications Buildings Parameter Plans Option B(ii) - Sheet 3 of 3	1:1,250	A1
EN020022-2.11- PARA-Sheet1	02	Optical Regeneration Parameter Plan - Sheet 1 of 1	1:500	A1



## SCHEDULE 8

Article 13

### Streets, public rights of way and permissive paths to be temporarily closed, altered, diverted or restricted

<i>(1) Street, public right of way or permissive paths to be temporarily closed, altered, diverted or restricted</i>	<i>(2) Extent of temporary closure, alteration, diversion or restriction</i>	<i>(3) Access and rights of way plans sheet number</i>
<b>Highways (footway and roadway)</b>		
Broadway Lane and Day Road	Between points TSH/1/b and TSH/1/c	Sheet 1
Broadway Lane	Between points TSH/1/d and TSH/1/e	Sheet 1
Anmore Road	Between points TSH/2/a and TSH/2/b	Sheet 2
London Road	TSH/5/a and TSH/5/b	Sheet 5
Farlington Avenue, Havant Road and Eveleigh Road	Between points TSH/6/a, TSH/6/b and TSH/6/c	Sheet 6
Havant Road	Between points TSH/6/d and TSH/6/e	Sheet 6
Eastern Avenue	Between points TSH/9/a and TSH/9/b	Sheet 9
Moorings Way	Between points TSH/9/c and TSH/9/d	Sheets 9 and 10
Bransbury Road and Ironbridge Lane	Between points TSH/10/a and TSH/10/b	Sheet 10
Ironbridge Lane	Between points TSH/10/c and TSH/10/d	Sheet 10
Unnamed road	Between points TSH/10/e and TSH/10/f	Sheet 10
<b>Footpaths</b>		
Footpath 4	Between points TSF/1/b and TSF/1/c	Sheet 1
Footpath 13	Between points TSF/2/a and TSF/2/b	Sheet 2
Footpath 24	Between points TSF/6/a and TSF/6/b	Sheet 6
Footpath 33	Between point TSF/7/a and TSF/7/b	Sheet 7
<b>Permissive paths</b>		
Permissive paths in and around Milton Common	Between points TSPP/9/a, TSPP/9/b and TSPP/9/c	Sheet 9
	Between points TSPP/9/d and TSPP/9/e	Sheet 9
	Between points TSPP/9/f and TSPP/9/g	Sheet 9
	Between points TSPP/9/h and TSPP/9/i	Sheet 9
	Between points TSPP/9/j and TSPP/9/k	Sheet 9
	Between points TSPP/9/l and	Sheet 9



	TSPP/9/m	
	Between points TSPP/9/n and TSPP/9/o	Sheet 9
	Between points TSPP/9/r, TSPP/9/p and TSPP/9/q	Sheet 9



## Modification of compensation and compulsory purchase enactments for the creation of new rights and restrictive covenants

### Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply in respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limiting paragraph 1, the Land Compensation Act 1973(a)(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4 —

- (a) for “land is acquired or taken” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is or the restrictive covenant enforceable”.

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1961 has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) of the 1961 Act, after ‘if’ substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act;
- (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 10 of Schedule 9 to the AQUIND Interconnector Order [\*]) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,  
the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”

### Application of the 1965 Act

4.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land must be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right or,

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(a) 1973 c.26.



in relation to the imposition of a restriction, with the modifications specified in the following provisions of this Schedule.

5. For section 7 of the 1965 Act (measure of compensation) substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

6.—(1) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restriction, [as well as notice of entry as required by subsection (1)], it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A (powers of entry: further notices of entry), 11B (counter-notice requiring possession to be taken on a specified date), 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 (interests omitted from purchase) of the 1965 Act is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

10. For Schedule 2A of the 1965 Act substitute—

## “SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

### **Introduction**

1. – (1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of



the 1981 Act as applied by article 25 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the AQUIND Interconnector Order [\*] in respect of the land to which the notice to treat relates.

(2) But see article 27(3) (acquisition of subsoil or airspace only) of the AQUIND Interconnector Order 202[\*] which excludes acquisition of subsoil only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

### **Counter-notice requiring purchase of land**

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

### **Response to counter-notice**

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat;
- (b) accept the counter-notice; or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decides to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority does not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

### **Determination by Upper Tribunal**

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory; or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant;
- (b) the use to be made of the right or covenant proposed to be acquired or imposed; and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.



**12.** If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

**13.** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

**14.—(1)** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”



## SCHEDULE 10

Article 30

### Land of which temporary possession may be taken

<i>(1) Purpose for which temporary possession may be taken</i>	<i>(2) Plot reference (as shown on land plans)</i>	<i>(3) Land plans sheet number</i>
Activities in connection with the construction of Work. No. 2	1-34, 1-45, 1-46, 1-49a, 1-50, 1-54, 1-57, 1-60, 1-65, 1-71, 1-73	Sheet 1
Temporary work area (Work No. 3) in connection with Work No.s 1, 2 and 4	1-39, 1-60	Sheet 1
Activities in connection with Work No. 4	3-11, 7-10a, 7-14, 7-15, 8-09, 10-02, 10-03, 10-08, 10-09	Sheets 3, 7, 8 and 10
For the purpose of and for the duration required to clear any breakout of bentonite drilling lubricant in connection with the undertaking of a HDD beneath the Eastney and Milton Allotments	10-14	Sheet 10



SCHEDULE 11

Article 42

Trees subject to tree preservation orders

<i>Type survey reference</i>	<i>Indicative works to be carried out</i>	<i>TPO reference</i>	<i>TPO name</i>
T2016, T2018	Potential removal	43/1977	No.2, 2A & 4 Down End Road, Farlington, Portsmouth
T925	Potential removal	201/1997	Scoutlands, 261 Havant Road, Farlington, Portsmouth
T59	Potential removal	195/1997	Great Salterns, Mansion, Eastern Road, Copnor, Portsmouth
G593, G602, G739	Potential removal	230/2004	Halliday Crescent, Southsea
T168, T169, T172	Potential removal	1002	150-152, London Road, Waterlooville
G651	Potential removal	1303	Land south of the Vicarage, London Road, Purbrook
W2001	Potential removal	1472	The Vicarage, London Road, Purbrook
T2006	Potential removal	1560	Elettra Avenue, Waterlooville
T154	Potential removal	1619	1 and 2 Silverthorne Way, Waterlooville
G652	Potential removal	1842	Land South of Marrelswood Estate
T160	Potential removal	1899	134 London Road, Waterlooville
G688	Potential removal	1945	138 London Road, Waterlooville
T161	Potential removal	2007	Land to the west of Maurepas Way, Waterlooville
T2016, T2018	Potential removal	43/1977	No.2, 2A & 4 Down End Road, Farlington, Portsmouth



## SCHEDULE 12

Article 41

### Removal of important hedgerows

<i>Area</i>	<i>Hedgerow ID</i>	<i>Sheet Reference</i>	<i>Plan</i>	
			<i>Removal, partial removal or retained</i>	
			<i>Option B(i)</i>	<i>Option B(ii)</i>
Winchester	HR05	EN020022-2.12-HTPO-Sheet1	Partial removal	Retained
Winchester	HR06	EN020022-2.12-HTPO-Sheet1	Partial removal	Retained
Winchester	HR07	EN020022-2.12-HTPO-Sheet1	Partial removal	Partial removal
Winchester	HR08	EN020022-2.12-HTPO-Sheet1	Removal	Retained
Winchester	HR10	EN020022-2.12-HTPO-Sheet1	Partial removal	Retained
Winchester	HR13	EN020022-2.12-HTPO-Sheet1	Partial removal	Partial removal
Winchester	HR15	EN020022-2.12-HTPO-Sheet1	Partial removal	Partial removal
Winchester	HR16	EN020022-2.12-HTPO-Sheet1	Removal	Removal
East Hampshire	HR17	EN020022-2.12-HTPO-Sheet1	Partial removal	Partial removal
Winchester	HR19	EN020022-2.12-HTPO-Sheet1	Partial removal	Partial removal
East Hampshire	HR20	EN020022-2.12-HTPO-Sheet1	Partial removal	Partial removal
East Hampshire	HR23	EN020022-2.12-HTPO-Sheet1	Removal	Removal
Winchester	HR28	EN020022-2.12-HTPO-Sheet1	Partial removal	Partial removal
Winchester	HR31	EN020022-2.12-HTPO-Sheet3	Partial removal	Partial removal
Winchester	HR57	EN020022-2.12-HTPO-Sheet3	Partial removal	Partial removal
Havant	HR66	EN020022-2.12-HTPO-Sheet4	Partial removal	Partial removal



## Protective provisions

## Part 1

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE  
UNDERTAKERS**Application**

1.—(1) The provisions of this Part have effect for the protection of the statutory undertakers referred to in this Part, unless otherwise agreed in writing between the undertaker and the statutory undertaker concerned.

**Interpretation**

2.—(1) In this part —

“alternative apparatus” means alternative apparatus adequate to enable the statutory undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of a statutory undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by the statutory undertaker for the purposes of electricity supply;
- (b) in the case of a statutory undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a statutory undertaker within paragraph (c) of the definition of that term, mains, pipes or other water apparatus belonging to or maintained by the statutory undertaker for the purposes of water supply and any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991 at the time of the works mentioned in this Part; and
- (d) in the case of a statutory undertaker within paragraph (d) of the definition of that term —
  - (i) any drain or works vested in the sewerage undertaker under the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act, and

includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and in each case includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“statutory undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;



- (b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986<sup>(a)</sup>;
- (c) a water undertaker within the meaning of the Water Industry Act 1991<sup>(b)</sup>;
- (d) a sewerage undertaker within the meaning of part 1 (preliminary) of the Water Industry Act 1991; and

for the area of the authorised development, and in relation to any apparatus, means the statutory undertaker to whom it belongs or by whom it is maintained.

### **On-street apparatus**

3. This Part does not apply to apparatus in respect of which the relations between the undertaker and the statutory undertaker are regulated by Part 3 of the 1991 Act.

### **Apparatus in stopped up streets**

4. Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 13 (temporary stopping up of streets and public rights of way), a statutory undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

### **Protective works to buildings**

5. The undertaker, in the case of the powers conferred by article 19 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

### **Acquisition of apparatus**

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

### **Removal of apparatus**

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the statutory undertakers apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of a statutory undertaker to maintain that apparatus in that land and to gain access to it will not be extinguished until, if so required by the statutory undertaker, alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker in question in accordance with paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the statutory undertaker in question 28 days' written notice of that requirement, together with a plan and section of the work proposed and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a statutory undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the statutory undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

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(a) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

(b) 1991 c.56.



(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in subparagraph (2) in land in which the alternative apparatus or part of such apparatus is to be constructed the statutory undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in other land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the statutory undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 45 (arbitration).

(5) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 45 (Arbitration), and after the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (2) and (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the statutory undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus, that work, instead of being executed by the statutory undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the statutory undertaker.

#### **Facilities and rights for alternative apparatus**

**8.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a statutory undertaker facilities and rights for the construction and maintenance in land of the undertaker for alternative apparatus in substitution for apparatus to be removed, those facilities and rights will be granted upon such terms and conditions as may be agreed between the undertaker and the statutory undertaker in question or in default of agreement settled by arbitration in accordance with article 45 (Arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the statutory undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator may make such provision for the payment of compensation by the undertaker to that statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### **Retained apparatus: protection**

**9.**—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the statutory undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the statutory undertaker for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a statutory undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.



(4) If a statutory undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraph 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

### **Compensation**

**10.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraphs 5 or 7(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertaker, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by that statutory undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that statutory undertaker for any other expenses, loss, demands or proceedings, damages, claims, penalty or costs incurred by the statutory undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a statutory undertaker on behalf of the undertaker or in accordance with a plan approved by a statutory undertaker or in accordance with any requirement of a statutory undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) must impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or default of a statutory undertaker, its officers, servants, contractors or agents.

(4) A statutory undertaker must give the undertaker reasonable prior written notice of any claim or demand, and no settlement or compromise may be made without the consent of the undertaker who, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand..

### **Expenses**

**11.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the statutory undertaker in question the reasonable expenses incurred by that statutory undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2)..

(2) The value of any apparatus removed under this Part is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with this Part of this Schedule —

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or



(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 45 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a statutory undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker in question any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

### **Co-operation**

12. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a statutory undertaker requires the removal of apparatus under paragraph 7(2) or a statutory undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the statutory undertaker's undertaking and each statutory undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

### **Disputes**

13. Any difference or dispute arising between the undertaker and a statutory undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the statutory undertaker in question, be determined by arbitration in accordance with article 45 (arbitration).

### **Enactments and agreements**

14. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a statutory undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.



## Part 2

### PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS NETWORKS

#### Application

1.—(1) The provisions of this Part have effect for the protection of operators unless otherwise agreed in writing between the undertaker and the operator in question.

(2) This Part does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

#### Interpretation

2. In this part —

“2003 Act” means the Communications Act 2003;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

“electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 (application of the electronic communications code) of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

“operator” means the operator of an electronic communications code network.

#### Electronic communications apparatus installed on, under or over any land

3. The exercise of the powers in article 33 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

#### Compensation

4.—(1) Subject to sub-paragraphs (2) to (3), if as the result of the authorised development or its construction, any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or the property of an operator, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by that statutory undertaker in making good such damage or restoring the supply;



- (b) make reasonable compensation to that statutory undertaker for any other expenses, loss, demands or proceedings, damages, claims, penalty or costs incurred by the statutory undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) Any difference arising between the undertaker and the operator under this paragraph must, unless otherwise agreed in writing between the operator and the undertaker, be referred to and settled by arbitration under article 45 (Arbitration).

(4) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

### **Co-operation**

5. In respect of any specified work or the acquisition of rights under or over or use of the statutory undertaker's property, the statutory undertaker must co-operate with the undertaker with a view to avoiding undue delay.

### **Enactments and agreements**

6. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## **Part 3**

### **FOR THE PROTECTION OF SOUTHERN GAS NETWORKS PLC AS GAS UNDERTAKER**

### **Application**

1. For the protection of SGN the following provisions will, unless otherwise agreed in writing between the undertaker and SGN, have effect.

### **Interpretation**

2. In this part —

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of SGN to enable SGN to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by SGN for the purposes of gas distribution together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of SGN for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;



“commence” has the same meaning as in article 2 and commencement shall be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include all matters comprised in the Onshore Site Preparation Works save for the temporary display of site notices and advertisement;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by SGN (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for SGN’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of SGN including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“rights” shall include rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

“SGN” means Southern Gas Networks plc or its successors in title or successor bodies and/or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986.

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which will or may be:

- (a) situated over, or within 15m measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 6(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 7(2) or otherwise;

“undertaker” means the undertaker as defined in article 2 of this Order.

### **On street apparatus**

3.—(1) Except for paragraphs 4 (Apparatus of SGN in stopped up streets), 7 (Removal of apparatus) in so far as sub-paragraph 3(2) applies, 8 (Facilities and rights for alternative apparatus) in so far as sub-paragraph 3(2) below applies, 9 (Retained apparatus: protection of SGN) and 10 (Expenses and costs) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of SGN, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and SGN are regulated by the provisions of Part 3 of the 1991 Act.



(2) Paragraph 7 and 8 of this Part of this Schedule shall apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

(3) Notwithstanding articles 11, 12, 30 and 35 or any other powers in the Order generally, s85 of the 1991 Act in relation to cost sharing and the regulations made thereunder shall not apply in relation to any diversion of apparatus of SGN under the 1991 Act.

#### **Apparatus of SGN in stopped up streets**

4.—(1) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary stopping up of streets and public rights of way), SGN will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the temporary stopping up or diversion was in that highway.

#### **Protective works to buildings**

5.—(1) The undertaker, in the case of the powers conferred by article 18 (*protective works to buildings*), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of SGN and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of SGN or any interruption in the supply of gas by SGN, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by SGN in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall:

- (a) pay compensation to SGN for any loss sustained by it by reason or in consequence of any such damage or interruption; and
- (b) indemnify SGN against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by SGN, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of SGN or its contractors or workmen.

(3) SGN will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by SGN, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

#### **Acquisition of land**

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of SGN otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between SGN and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of SGN and/or affects the provisions of any enactment or agreement regulating the relations between SGN and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as SGN reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between SGN and the



undertaker acting reasonably and which must be no less favourable on the whole to SGN unless otherwise agreed by SGN.

(3) The undertaker and SGN agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by SGN and/or other enactments relied upon by SGN as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by SGN under paragraph 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 6(1).

(5) As a condition of an agreement between the parties in sub-paragraph 6(1) that involves de-commissioned apparatus being left in situ in any land of the undertaker, the undertaker must accept a surrender of any existing easement and/or other interest of SGN in such decommissioned apparatus and consequently acquire title to such decommissioned apparatus and release SGN from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any SGN right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 7 do not apply, the undertaker must:

- (a) retain any notice of SGN's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of SGN's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of SGN's easement, right or other interest in relation to such acquired land; and
- (c) provide up to date official entry copies to SGN within 20 working days of receipt of such up to date official entry copies.

### **Removal of apparatus**

7.—(1) If, in the exercise of the powers conferred by this Order or under any agreement reached in accordance with paragraph 6 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed or requires that SGN's apparatus is relocated or diverted, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of SGN to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation and the rights and facilities referred to in sub-paragraph (2) have been provided to the reasonable satisfaction of SGN and in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to SGN not less than 28 days' written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order SGN reasonably needs to move or remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to SGN to its satisfaction (taking into account sub-paragraph 8(1) below) the necessary facilities and rights:

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus); and



(c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus).

(3) If the undertaker is unable to afford the alternative apparatus such necessary facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, SGN must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligations shall not extend to the requirement for SGN to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between SGN and the undertaker.

(5) SGN must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to SGN of such facilities and rights as are referred to in sub-paragraph (2) or (3) have been afforded to SGN to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

#### **Facilities and rights for alternative apparatus**

**8.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for SGN facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and SGN and must be no less favourable on the whole to SGN than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by SGN.

(2) If the facilities and rights to be afforded by the undertaker and agreed with SGN under sub-paragraph 8(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to SGN than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in SGN's reasonable opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 14 of this Part of this Schedule (arbitration) and the arbitrator shall make such provision for the payment of compensation by the undertaker to SGN as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### **Retained apparatus: protection of SGN**

**9.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to SGN a plan and, if reasonably required by SGN, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to SGN under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.



(3) SGN shall use its reasonable endeavours to provide its approval to or any comments on any plan submitted pursuant to sub-paragraph (2) and detail any reasonable requirements as may be made in accordance with sub-paragraph (6)(a) within not more than 28 days of the date on which a plan under sub-paragraph (1) is submitted to it.

(4) Where SGN provides comments on any plan submitted pursuant to sub-paragraph (1) the undertaker shall provide a response to those comments and where necessary provide any updates to that plan to address the comments made by SGN and SGN shall use reasonable endeavours to confirm whether the plan is approved or whether it has any further comments within 14 days following the date of the response from the undertaker.

(5) Where SGN has provided comments on any plan submitted to sub-paragraph (1) or in response to any response received from the undertaker the undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until SGN has given written approval of the plan so submitted.

(6) Any approval of SGN provided under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub paragraphs (5) or (7); and
- (b) must not be unreasonably withheld or delayed.

(7) In relation to any work to which sub-paragraphs (1) and/or (2) apply, SGN may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(8) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (4), as approved and in accordance with such reasonable conditions given in accordance with sub-paragraph (6)(a) or as amended from time to time by agreement between the undertaker and SGN, and SGN will be entitled to watch and inspect the execution of those works.

(9) Where SGN requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to SGN's reasonable satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required.

(10) Any requirements made by SGN under sub-paragraph (8) must be made within a period of 42 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it

(11) If SGN, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 7(2).

(12) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(13) The undertaker is not required to comply with sub-paragraphs (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to SGN notice as soon as is reasonably practicable and a plan of those works and must comply with—

- (a) the conditions imposed under sub-paragraph (6)(a) insofar as is reasonably practicable in the circumstances; and
- (b) sub-paragraph (14) at all times.

(14) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works the undertaker shall implement an appropriate ground mitigation scheme save that SGN retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.



## Expenses and costs

10.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to SGN following receipt of an invoiced demand (including where necessary anticipated disbursements) all charges, costs and expenses reasonably anticipated or incurred by SGN in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or rights or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by SGN in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by SGN as a consequence of SGN;
  - (i) if it elects to do so using its own compulsory purchase powers to acquire any necessary rights under sub-paragraph 7(3); and/or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting SGN;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to sub-paragraph 9(7).

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 14 of this Part of this Schedule (Arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to SGN by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and



- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

### **Enactments and agreements**

11. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between SGN and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and SGN in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

12.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or SGN requires the removal of apparatus under sub-paragraph 7(2) or SGN makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its best endeavours to co-ordinate the execution of the works

- (a) in the interests of safety;
- (b) taking into account the efficient and economic execution of the authorised works; and
- (c) taking into account the need to ensure the safe and efficient operation of SGN's undertaking;

and SGN must co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever SGN's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

### **Access**

13. If in consequence of the agreement reached in accordance with sub paragraph 6(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable SGN to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

14. Save for differences or disputes arising under sub-paragraphs paragraph 9 any difference or dispute arising between the undertaker and SGN under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and SGN, be determined by arbitration in accordance with article 45 (arbitration).

### **Notices**

15. The plans submitted to SGN by the undertaker pursuant to sub-paragraph 9(1) must be sent to SGN at easements@sgn.co.uk or such other address as SGN may from time to time appoint instead for that purpose and notify to the undertaker.



## Part 4

### FOR THE PROTECTION OF RAILWAY INTERESTS

#### Application

1. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15 of this Part of this Schedule, any other person on whom rights or obligations are conferred by that paragraph..

#### Interpretation

2. In this part —

“construction” includes execution, placing, alteration and reconstruction, and “construct” and “constructed” are to be construed accordingly;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited (registered company number 2904587) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 (meaning of “subsidiary” etc.) of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail Infrastructure Limited and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15m of, or may in any way adversely affect, railway property.

#### Railway operational procedures

3.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and



- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works pursuant to this Order.

### **Acquisition of land**

- 4.—(1) The undertaker must not exercise the powers conferred by—
- (a) article 3 (development consent etc. granted by the Order);
  - (b) article 4 (authorisation of use);
  - (c) article 5 (power to maintain authorised development);
  - (d) article 14 (access to works);
  - (e) article 17 (discharge of water);
  - (f) article 18 (protective works to buildings);
  - (g) article 19 (authority to survey and investigate the land);
  - (h) article 20 (compulsory acquisition of land);
  - (i) article 21 (statutory authority to override easements and other rights);
  - (j) article 23 (compulsory acquisition of rights and the imposition of restrictive covenants);
  - (k) article 24 (private rights of way);
  - (l) article 27 (acquisition of subsoil and airspace only);
  - (m) article 30 (temporary use of land for carrying out the authorised development);
  - (n) article 32 (temporary use of land for maintaining the authorised development);
  - (o) article 33 (statutory undertakers);
  - (p) article 41 (felling or lopping of trees and removal of hedgerows);
  - (q) article 42 (trees subject to tree preservation orders)

or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 21 (statutory authority to override easements and other rights), article 24 (private rights of way) or article 33 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

### **Approval of plans etc.**

5.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration in accordance with paragraph 22 of this Part of this Schedule.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his or her disapproval of those plans and



the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying his or her approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his or her reasonable satisfaction.

### **Carrying out of works**

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

### **Facilities**

7.—(1) The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and



- (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

### **Network Rail Apparatus**

9.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3) of this Part of this Schedule, pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) of this Part of this Schedule provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

### **Expenses**

10.—(1) The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) of this Part of this Schedule or in constructing any protective works under the provisions of paragraph 5(4) of this Part of this Schedule including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the



construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

### **Electromagnetic interference**

11.—(1) In this paragraph-

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) of this Part of this Schedule for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)-

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) of this Part of this Schedule in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) of this Part of this Schedule have effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations comprised in the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI, then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail’s apparatus.

(7) In the event of EMI having occurred –



- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6) –

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) such modifications must be carried out and completed by the undertaker in accordance with paragraph 6 of this Part of this Schedule.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) of this Part of this Schedule applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) of this Part of this Schedule any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in paragraph 22 of this Part of this Schedule to the President of the Institution of Civil Engineers shall be read as a reference to the President of the Institution of Engineering and Technology.

### **Maintenance of the authorised development**

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not to adversely affect railway property.

### **Illuminated signs etc.**

13. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

### **Additional expenses**

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be paid by the undertaker to Network Rail.



## **Indemnity**

**15.**—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to the provisions of this paragraph and article 35 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision does not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) shall include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

## **Cost estimates**

**16.** Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 15 of this Part of this Schedule) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

**17.** In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.



### **Agreements relating to the transfer of land etc.**

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (1) any railway property shown on the works and land plans and described in the book of reference;
- (2) any lands, works or other property held in connection with any such railway property; and
- (3) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

### **Enactments**

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

### **Notice in relation to transfer**

20. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 7 (Consent to transfer benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (1) the nature of the application to be made;
- (2) the extent of the geographical area to which the application relates; and
- (3) the name and address of the person acting for the Secretary of State to whom the application is to be made.

### **Provision of plans**

21. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 43 (certification of plans and documents, etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in an electronic format to be agreed between Network Rail and the undertaker.

### **Arbitration**

22. Any dispute arising under this Part of this Schedule (except for those disputes referred to in paragraph 11(11) of this Part), unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers

## **Part 5**

### **FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY UNDERTAKER**

#### **Application**

1.—(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.



(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 7 (consent to transfer benefit of Order) –

- (a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid.

## **Interpretation**

### **2. In this Part of this Schedule—**

“1991 Act” means the New Roads and Street Works Act 1991;

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means a third party liability insurance effected and maintained by the undertaker with a limit of indemnity of not less than £25,000,000.00 (twenty five million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the construction period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an “acceptable credit provider”, such policy shall include (but without limitation):

- (a) National Grid as a Co-Insured;
- (b) a cross liabilities clause; and
- (c) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either:

- (a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc to cover the undertaker’s liability to National Grid Electricity Transmission Plc to a total liability cap of £25,000,000.00 (twenty five million pounds) (in a form reasonably satisfactory to National Grid and where required by National Grid, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or
- (b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Electricity Transmission Plc to cover the undertaker’s liability to National Grid Electricity Transmission Plc for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £25,000,000.00 (twenty five million pounds) (in a form reasonably satisfactory to the National Grid);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;



“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as provided for at article 2(1) save that for the purposes of this Part of this Schedule it shall include any below ground surveys, monitoring, operations or the receipt and erection of construction plant and equipment and the words “commencement” and “commenced” are to be construed accordingly;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”

“undertaker” means the undertaker as defined in article 2(1) of this Order;



## **On Street Apparatus**

3. Except for paragraphs 4 (apparatus in stopped up streets), 9 (retained apparatus: protection) 10 (expenses) and 11 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

## **Apparatus of National Grid in stopped up streets**

4. Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary closure, alteration, diversion or restriction of streets, public rights of way and permissive paths), National Grid is at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

## **Protective works to buildings**

5.—(1) The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid (such consent not to be unreasonably withheld) and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity by National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to National Grid for any loss sustained by it; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by National Grid, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

## **Acquisition of land**

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable



on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 9 (retained apparatus: protection of electricity undertaker) or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

7.—(1) — If, in the exercise of the powers conferred by the Order or under an agreement reached in accordance with paragraph 6 (acquisition of land) or in any other authorised manner, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works comprised in the authorised works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its reasonable satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.



### **Facilities and rights for alternative apparatus**

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 15 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection of electricity undertaker**

9.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing; -

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and



- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of at least 26 tonnes in weight.
- (4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.
- (5) Any approval of National Grid required under sub-paragraphs (4)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
  - (b) must not be unreasonably withheld.
- (6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.
- (8) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grids' satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).
- (9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).
- (10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.
- (11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.
- (12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

## **Expenses**

**10.—**(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably and properly anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—



- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 15 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## Indemnity

11.—(1)— Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 (benefit of order granting development consent) of the 2008 Act or article 7 (consent to transfer benefit of order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph 11 applies where it is within National Grid’s reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid’s control and if reasonably requested to do so by the undertaker National Grid shall provide an explanation of how the claim has been minimised, where relevant.

(6) The undertaker must not commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid’s apparatus until the following conditions are satisfied:

- (a) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction



period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same to the undertaker in writing; and

- (b) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it will maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

(7) In the event that the undertaker fails to comply with 11(6) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

### **Enactments and agreements**

12. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

13.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 7(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 9 the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement approval or expression of satisfaction is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

### **Access**

14. If in consequence of the agreement reached in accordance with paragraph 6 and/or the exercise of the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

15. Save for differences or disputes arising under paragraph 7(2), 7(4) 8(1), and 9 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 45 (arbitration).

### **Notices**

16. Any plans submitted to National Grid by the undertaker pursuant to paragraph 9 of this Part of this Schedule must be sent to National Grid Plant Protection at [plantprotection@nationalgrid.com](mailto:plantprotection@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## Part 6

### FOR THE PROTECTION OF HIGHWAYS ENGLAND

#### **Application**

1. The provisions of this Part of this Schedule apply for the protection of Highways England and have effect unless otherwise agreed in writing between the undertaker and Highways England.

#### **Interpretation**

2.—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph 2 the latter shall prevail.

(2) In this part of this Schedule—

“as built information” means one digital copy of the following information—

- (a) as constructed drawings in both PDF and Auto CAD DWG formats for anything designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document;
- (b) list of suppliers and materials used and test results;
- (c) method statements for the works carried out;
- (d) product data sheets and technical specifications for all products used;
- (e) as constructed information for any utilities discovered or moved during the works;
- (f) in relation to any road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;
- (g) as constructed programme;
- (h) any test results and records required in accordance with the detailed design information and during the construction phase of the authorised development; and
- (i) the health and safety file.

“condition survey” means a survey of the condition of Highways England structures and assets (including, but not limited to, any existing drainage and cabling) within the Order limits that in the reasonable opinion of Highways England may be affected by a specified work;

“contractor” means any contractor or sub-contractor appointed by the undertaker to carry out a specified work;

“detailed design information” means drawings specifications and calculations as is appropriate to the specified work for the following—

- (a) earthworks including supporting geotechnical assessments required by CD622 (Managing geotechnical risk) of the DMRB or any successor document and any required strengthened earthworks appraisal form certification;
- (b) any proposed departures from applicable DMRB standards;
- (c) any utilities diversions;
- (d) topographical survey;
- (e) health and safety information including any asbestos survey required by GD05/16 (asbestos management in trunk road assets) or any successor document; and
- (f) other such information that may be reasonably required by Highways England to inform the detailed design of a specified work.



“DMRB” means the Design Manual for Roads and Bridges or any replacement, revision or modification of it;

“highway structure” means structures or installations within the scope of the DMRB and that are situated under, over or adjacent to a motorway or other trunk road;

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of a specified work as notified to Highways England from time to time;

“programme of works” means a document setting out the sequence and timetabling of a specified work;

“specified work” means so much of any work authorised by this Order, including any maintenance of that work, as is in or under the trunk road network for which Highways England is the highway authority; and

“trunk road network” for these protective provisions means the crossing under the A27 in the location shown on the Works Plans Sheet No.7.

## **General**

3. Notwithstanding the powers granted to the undertaker pursuant to this Order, the undertaker must not carry out any specified work in or on any highway for which Highways England is the highway authority, or under any highway for which Highways England is the highway authority, at a distance of less than 4 metres from the lowest point of the ground (including, but not limited to, works set out in articles 10(1) and 11(1) of the Order), unless it has first entered into an agreement with Highways England prior to commencing the relevant works.

## **Prior approvals**

4.—(1) No specified works may commence until—

- (a) the programme of works has been submitted to and approved by Highways England, such approval not to be unreasonably withheld or delayed;
- (b) the following details relating to the specified work have been submitted to and approved by Highways England, such approval not to be unreasonably withheld or delayed—
  - (i) the detailed design information;
  - (ii) the identity of the contractor and nominated persons;
  - (iii) details of any proposed road space bookings; and
  - (iv) (if details have been supplied pursuant to paragraph 4(b)(iii) above) a scheme of traffic management.
- (c) (if the carrying out of a specified work requires the booking of any road space with Highways England) a scheme of traffic management and a process for stakeholder liaison has been submitted to and approved by Highways England, such scheme to be capable of amendment by agreement between the undertaker and Highways England from time to time.
- (d) any stakeholder liaison that may be required has taken place in accordance with the process for such liaison agreed between the undertaker and Highways England under subparagraph 4(1)(c) above
- (e) any further information that Highways England may reasonably request within 28 days of the submission of the detailed design information in respect of a specified work has been supplied to Highways England; and
- (f) a condition survey and a reasonable regime of monitoring the highways structures and assets that were surveyed under the condition survey has been submitted to and approved, acting reasonably, by Highways England.

(2) Highways England must provide the undertaker with a list, which is to be agreed between the parties acting reasonably, of all the highways structures and assets to be subject to both a

condition survey and reasonable regime of monitoring pursuant to sub-paragraph (1)(f) and paragraph 7(1) of this Part of this Schedule before the first condition survey is conducted and the reasonable regime of monitoring is implemented.

(3) Highways England must prior to the commencement of a specified work inform the undertaker of the identity of the person who will act as a point of contact on behalf of Highways England to consider the information required under sub-paragraph (1) and of the identity of the person or persons who are authorised to give consent or approval on behalf of Highways England for any matter requiring approval or consent in these provisions.

(4) Any approval of Highways England required by this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds of refusal;
- (c) is deemed to have been refused if it is neither given or refused within 56 days of the submission of the relevant information (if further information is requested by Highways England any such request must be submitted to the undertaker within 28 days of submission of the relevant information under sub-paragraph 4(1)(e) and the provision of such further information by the undertaker will not be deemed to constitute a new application for approval pursuant to this paragraph); and
- (d) may be given subject to any reasonable conditions as Highways England considers necessary.

(5) If the undertaker requires entry onto land which forms part of the trunk road network to exercise the powers over that land set out in article 19 (authority to survey and investigate the land) of this Order, the undertaker must supply details of any proposed road space bookings (in accordance with Highways England's Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy) and submit to Highways England and obtain the approval of Highways England of a scheme of traffic management prior to the exercise of the power.

### **Construction of the specified work**

**5.—**(1) The undertaker must, prior to commencement of a specified work, give to Highways England 28 days' notice in writing of the date on which the specified work will start unless otherwise agreed by Highways England.

(2) If the carrying out of any part of the authorised development requires the booking of road space with Highways England, the undertaker must comply with Highways England's usual road space booking procedures prior to and during the carrying out of the specified work and no specified work for which a road space booking with Highways England is required must commence without a road space booking having first been secured from Highways England.

(3) Any specified work must be carried out to the reasonable satisfaction of Highways England (acting reasonably) in accordance with—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 4(1)(a) and 4(1)(b)(i) or as subsequently varied by agreement between the undertaker and Highways England;
- (b) DMRB document CD622 (Managing geotechnical risk) (or any revised version or successor of CD622 as may be issued);
- (c) any conditions of Highways England notified by Highways England to the undertaker pursuant to paragraph 4(4)(d) of this Part of this Schedule.

(4) The undertaker must ensure that (where possible) without entering the highway the specified work is carried out without disturbance to the highway and so that the highway remains open for traffic at all times unless otherwise agreed with Highways England.

(5) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by Highways England (whose identity must have been previously notified to the undertaker by Highways England) to gain access to a specified work for the purposes of inspection and supervision of a specified work or method of construction of such work.



(6) If any specified work is constructed—

- (a) other than in accordance with the requirements of this Part of this Schedule; or
- (b) in a way that causes damage to the highway, any highway structure or asset or any other land of Highways England,

(7) Highways England may by notice in writing require the undertaker, at the undertaker's own expense, to comply with the requirements of this Part of this Schedule or put right any damage notified to the undertaker under this Part of this Schedule.

(8) If within 56 days of the date on which a notice under sub-paragraph (6) is served on the undertaker, the undertaker has failed to take steps to comply with the notice, Highways England may carry out the steps required of the undertaker and may recover from the undertaker any expenditure reasonably incurred by Highways England in so doing, such sum to be payable within 30 days of demand. Where the steps required to be taken pursuant to any notice require the submission of any information for the prior approval of Highways England, the submission of that information will evidence that the undertaker has taken steps to comply with a notice served by Highways England under sub-paragraph (6).

(9) Highways England may, at its discretion, in its notice in writing to the undertaker given pursuant to sub-paragraph (6) state that Highways England intend to put right the damage notified to the undertaker, and if it intends to do so it must give the undertaker not less than 28 days' notice of its intention to do so and Highways England may recover from the undertaker any reasonable expenditure incurred by Highways England in so doing.

(10) Nothing in this Part of this Schedule prevents Highways England from, in the event of an emergency or to prevent the occurrence of danger to the public, carrying out any work or taking any such action as it reasonably believes to be necessary as a result or in connection with of the carrying out of the specified work without prior notice to the undertaker and Highways England may recover from the undertaker any reasonable expenditure incurred by Highways England in so doing.

## **Payments**

6.—(1) The undertaker must pay to Highways England a sum equal to the whole of any costs and expenses which Highways England incurs (including costs and expenses for using internal or external staff) in relation to any specified work including—

- (a) the checking and approval of the information required under paragraph 4(1) of this Part of this Schedule;
- (b) the supervision of a specified work;
- (c) reasonable legal and administrative costs, reasonably and properly incurred, in relation to sub-paragraphs (a) and (b); and
- (d) any value added tax which is payable by Highways England only in respect of such costs and expenses arising under this paragraph 6(1) and for which it cannot obtain reinstatement from HM Revenue and Customs,

(2) together comprising “the HE costs”.

(3) The undertaker must pay to Highways England upon demand and prior to such costs being incurred the total costs that Highways England believe will be properly and necessarily incurred by Highways England in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing any specified work or that are incurred in connection with a specified work.

(4) Highways England must provide the undertaker with a fully itemised invoice showing its estimate of the HE costs prior to the commencement of a specified work and the undertaker must pay to Highways England the estimate of the HE costs prior to commencing a specified work and in any event prior to Highways England incurring any cost.

(5) If at any time after the payment referred to in sub-paragraph (3) has become payable, Highways England reasonably believes that the HE costs will exceed the estimated HE costs in respect of a specified work it may give notice to the undertaker of the amount that it believes the

HE costs will exceed the estimate of the HE costs (excess) and the undertaker must pay to Highways England within 28 days of the date of the notice a sum equal to the excess.

(6) Highways England must give the undertaker a final account of the costs, as a fully itemised invoice, referred to in sub-paragraph (1) within 30 days of the undertaker notifying to Highways England that a specified work has been completed.

(7) Within 30 days of the issue of the final account—

- (a) if the final account shows a further sum as due to Highways England the undertaker must pay to Highways England the sum shown due to it; or
- (b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by Highways England, Highways England must refund the difference to the undertaker.

(8) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 1 per cent above the rate payable in respect of compensation under Section 32 of the 1961 Act for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

### **Completion of a specified work**

7.—(1) Within 56 days of the completion of a specified work, the undertaker must arrange for the highway structures and assets that were the subject of the condition survey carried out in respect of the specified work to be re-surveyed and must submit the re-survey to Highways England for its approval.

(2) If the re-survey carried out pursuant to sub-paragraph (1) indicates that any damage has been caused to any highways structure or asset, the undertaker must submit a scheme for remedial works in writing to Highways England for its approval in writing, which must not be unreasonably withheld or delayed, and must carry out the remedial works at its own cost and in accordance with the approved scheme.

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme, Highways England may carry out the steps required of the undertaker and may recover from the undertaker any expenditure reasonably incurred by Highways England in so doing, such sum to be payable within 30 days of demand.

(4) Highways England may, at its discretion, at the same time as giving its approval to the condition survey carried out pursuant to sub-paragraph (1), give notice in writing to the undertaker stating that Highways England will remedy the damage identified by the condition survey and Highways England may recover from the undertaker any reasonable expenditure incurred by Highways England in so doing.

(5) Within 10 weeks of the completion of a specified work, the undertaker must submit to Highways England the as built information.

(6) The undertaker must make available to Highways England upon reasonable request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the undertaker may from time to time carry out.

### **Indemnification**

8.—(1) The undertaker must indemnify Highways England from and against all costs, expenses, damages, losses and liabilities suffered by Highways England arising from or in connection with any claim, demand, action or proceedings resulting from:

- (a) the construction or maintenance of a specified work; and
- (b) the placing or presence in or under the highways of the specified work,



(c) provided that Highways England notifies the undertaker upon receipt of any claim; and following the acceptance of any claim notifies the quantum of the claim to the undertaker in writing.

(2) Within 30 days of the receipt of the notification referred to in sub-paragraph (1) the undertaker must pay to Highways England the amount specified as the quantum of such claim.

(3) Sub-paragraphs (1) and (2) do not apply if the costs, expenses, liabilities and damages were caused by or arose out of the neglect or default of Highways England or its officers, servants agents or contractors or any person or body for whom it is responsible.

### **Expert determination**

9.—(1) Article 45 (arbitration) of this Order does not apply to this Part of this Schedule;

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 45 (arbitration).

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

## SCHEDULE 14

Article 43

### Certified documents

<i>Document title</i>	<i>Document reference</i>	<i>Revision</i>
Book of reference – regulation 5(2)(d)	Application Document 4.3	007
Schedule of documents forming the environmental statement – Regulation 5(2)(q)	Application Document 7.9.9.1	005
Onshore outline construction environmental management plan – Regulation 5(2)(o)	Application Document 6.9	007
Habitats regulations assessment – Regulation 5(2)(g)	Application Document 6.8.1	006
Land plans – Regulation 5(2)(i)	Application Document 2.2	005
Crown land plans – Regulation 5(2)(n)	Application Document 2.3	004
Works plans – Regulation 5(2)(j)	Application Document 2.4	006
Access and rights of way plans – Regulation 5(2)(k)	Application Document 2.5	005
Converter station and telecommunications building parameter plan – Regulation 5(2)(o)	Application Document 2.6	003
Optical regeneration stations parameter plans – Regulation 5(2)(o)	Application Document 2.11	002
Outline marine construction environmental management plan – Regulation 5(2)(o)	Application Document 6.5	001
Hedgerow and Tree Preservation Order Plans	Application Document 2.12	004
Outline landscape and biodiversity strategy – regulation 5(2)(o)	Application Document 6.10	005
Design and access statement – Regulation 5(2)(q)	Application Document 5.5	005
Surface water drainage and aquifer contamination mitigation strategy – Regulation 5(2)(o)	Application Document 6.3.3.6	005



Marine archaeology outline written scheme of investigation	Application Document 6.3.14.3	001
Framework traffic management strategy - Regulation 5(2)(o)	Application Document 6.3.22.1A	004
Framework construction traffic management plan – Regulation 5(2)(o)	Application Document 6.3.22.2	004
Flood risk assessment – Regulation 5(2)(o)	Application Document 6.3.20.4	001
Flood risk assessment addendum – Regulation 5(2)(o)	Application Document 7.8.18	001
Operational broadband and octave band noise criteria document – Regulation 5(2)(o)	Application Document 7.7.11	001
Employment and skills strategy – Regulation 5(2)(q)	Application document 7.9.35	001
Source protection zones plans - Regulation 5(2)(o)	Application document 6.2.19.4	001
Travel demand management strategy	Application Document 7.9.37	002
Hampshire County Council development consent obligation	Application Document 7.5.25	001
South Down National Park Authority development consent obligation	Application Document 7.5.26	001
Portsmouth City Council development consent obligation	Application Document 7.5.27	001

## Deemed marine licence under the 2009 Act

## PART 1

## Licensed marine activities

## 1.—(1) In this licence —

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“the 2011 Regulations” means the Marine Licensing (Licence Application Appeals) Regulations 2011;

“authorised deposits” means the substances and particles specified in paragraph 5 of Part 1 of this licence;

“authorised development” means Works No. 6 and 7 described in paragraph 3 of Part 1 of this licence or any part of that work and further associated development within the meaning of section 115(2) of the 2008 Act comprising other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement;

“cable circuit” means a number of electrical conductors necessary to transmit electricity between two points within the authorised development; this comprises in the case of a HVDC cable, two conductors;

“cable protection” means physical measures for the protection of cables including rock, rock bags and gravel placement, concrete or frond mattresses, tubular protection and grout bags;

“Cefas” means the Centre for Environment, Fisheries and Aquaculture Science or any successor body to its function;

“commence” means the first carrying out of any licensed marine activities authorised by this marine licence, save for pre-construction surveys approved under this licence and “commenced” and “commencement” is to be construed accordingly;

“condition” means a condition under Part 2 of this licence;

“disposal” means the deposit of dredged material at the disposal sites with reference WI048 and WI049 within the extent of the Order limits seaward of MHWS and “dispose” and cognate expression is to be construed accordingly;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order in accordance with article 43 (Certification of plans and documents, etc.);

“Health and Safety Executive” means the independent national regulator that aims to prevent work-related death, injury and ill-health and “HSE” is to be construed accordingly;

“horizontal directional drilling work area” means the area within which the temporary horizontal directional drilling entry/exit pits are to be located as identified within the outline marine construction environmental management plan;

“licensed activities” means the activities specified in Part 1 of this licence;

“maintain” includes inspect, upkeep, repair, adjust, alter, improve, preserve and further includes remove, reconstruct and replace any part of the authorised development, provided such works do not give rise to any materially new or materially different environmental effects



to those identified in the environmental statement and “maintenance” must be construed accordingly;

“Marine Management Organisation” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence or any successor of that function and “MMO” is to be construed accordingly;

“MCA” means the Maritime and Coastguard Agency;

“MCA safety guidance” means those aspects of MGN543 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues” and its annexes that are relevant to the authorised development;

“marine emergency action card” means the MCA bespoke emergency action card template that will be completed to inform emergency response actions during the construction of the authorised development;

“mean high water springs” or “MHWS” means the average throughout the year of two successive high waters during a 24-hour period in each month when the range of the tide is at its greatest;

“marine HVDC cables” means two 320 kilovolt HVDC cable circuits for the transmission of electricity which may be bundled as two pairs of cables or take the form of single cables, together with: (i) fibre optic data transmission cables accompanying each HVDC cable circuit, for the purpose of control, monitoring, and protection of the HVDC cable circuits and converter station, and for commercial telecommunications; and (ii) one or more cable crossing;

“Order” means the AQUIND Interconnector Order 202[ ];

“Order limits” means the limits shown on the works plans within which the authorised development may be carried out, whose grid co-ordinates seaward of MHWS are set out in paragraph 6 of Part 1 of this licence;

“outline marine construction environmental management plan” means the document certified by the Secretary of State under article 43 (Certification of plans and documents, etc.) of this Order as the outline marine construction environmental management plan;

“marine archaeology outline written scheme of investigation” means the document certified by the Secretary of State under article 43 (Certification of plans and documents, etc.) of this Order as the marine archaeology outline written scheme of investigation;

“screened out” means to pass through grid screens no larger than 30cm;

“standard marking schedule” means UK Standard Marking Schedule for Offshore Installation (DECC 04/11);

“statutory historic body” means the Historic Buildings and Monuments Commission, otherwise known as Historic England or any successor of that function;

“statutory nature conservation body” means an organisation charged by the government with advising on nature conservation matters;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“UK Hydrographic Office” means the UK Hydrographic Office of Admiralty Way, Taunton, Somerset TA1 2DN;

“undertaker” means AQUIND Limited (company number 06681477) or the person who has the benefit of this Order in accordance with article 6 (Benefit of Order) and 7 (Consent to transfer benefit of Order);

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“works plans” means the plans certified by the Secretary of State as Works Plans under article 43 (Certification of plans and documents, etc.) for the purposes of the Order and identified in Part 2 of Schedule 5 of the Order (Works Plans); and

“working day” means Monday to Friday excluding bank holidays and other public holidays;

(2) A reference to any statute, order, regulation or similar instrument is to be construed as reference to a statute, order, regulation or similar instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated –

- (a) all time are taken to be Greenwich Mean Time (GMT);
- (b) all co-ordinates are taken to be latitude and longitude degrees minutes and seconds to three decimal places.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and address for returns of correspondence are –

(a) Marine Management Organisation (head office)

Offshore Marine Licensing  
Lancaster House, Hampshire Court  
Newcastle Business Park  
Newcastle Upon Tyne  
NE4 7YH  
Tel: 0300 123 1032;

(b) Marine Management Organisation (local office)

Offshore Marine Licensing  
Lynx House  
1 Northern Road  
Portsmouth  
PO6 3XB  
Tel: 02392 373435

(c) Trinity House

Tower Hill  
London  
EC3N 4DH  
Tel: 020 7481 6900;

(d) The United Kingdom Hydrographic Office

Admiralty Way  
Somerset  
TA1 2DN  
Tel: 01823 337 900;

(e) Maritime and Coastguard Agency

Technical Services Navigation  
Bay 2/20, Spring Place  
105 Commercial Road  
Southampton  
SO15 1EG  
Tel: 020 3817 2000;

(f) Natural England



4<sup>th</sup> floor, Eastleigh House  
Upper Market Street  
Eastleigh  
Hampshire  
SO50 9YN  
Tel: 0300 060 39000

(g) Historic Buildings and Monuments Commission for England

Cannon Bridge House  
25 Dowgate Hill  
London  
EC4R 2YA  
Tel: 020 7973 370

(h) Centre for Environment, Fisheries and Aquaculture Science

Parkfield Road  
Suffolk  
NR33 0HT  
Tel: 01502 562 244;

### **Details of Licensed Marine Activities**

2. Subject to the licence conditions, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) of the 2009 Act –

(1) the deposit at sea of the authorised deposits from any vessel, any container floating in the sea or any structure on land constructed or adapted wholly or mainly for the purpose of depositing substances and articles in the sea;

(2) the construction of works in or over the sea and/or on the seabed;

(3) dredging including (but not limited to) mass flow excavation for the purposes of seabed preparation for the works;

(4) the removal of out of service cables, seabed debris and static fishing equipment;

(5) boulder clearance works either by displacement ploughing or subsea grab technique or another equivalent method;

(6) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation;

(7) the disposal of up to 1,754,000m<sup>3</sup> of inert material of natural origin produced during the Works comprised within Works Nos 6 and 7; and

(8) any other works comprised in the preparation of the seabed for the Works.

3. Such activities are authorised in relation to the construction, maintenance and operation of –

*Work No. 6* – marine HVDC cable circuits and ducts within the Order limits seaward of MHWS and landward of MLWS between Work No. 5 and Work No. 7 within the area shown on the works plans including where required works to facilitate HDD.

*Work No. 7* – marine HVDC cable works within the area shown on the works plans consisting of –

(a) marine HVDC cable circuits and ducts between the UK exclusive economic zone with France and Works No. 6;

(b) up to 4 temporary HDD entry/exit pits; and

(c) a temporary work area for vessels to carry out intrusive activities.

4. In connection with Works Nos. 6 and 7 and to the extent that they do not otherwise form part of any such work, subject to the licence conditions this licence authorises further associated development within the meaning of section 115(2) of the 2008 Act comprising other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence, including but not limited to –

(1) cable protection, including cable protection at the Atlantic Cable and proposed CrossChannel Fibre Cable crossings (pre-lay berm, 100 m x 30 m and post-lay berms of approximately 600 m x 30 m for each crossing) covering a maximum footprint of 37,800 m<sup>2</sup> for each crossing;

(2) temporary cable burial equipment trials;

(3) the removal of material from the seabed required for the construction of Work Nos. 6 and 7 and the disposal of up to 1,754,000m<sup>3</sup> of inert material of natural origin produced during the Works; and

(4) the construction of crossing structures over in-service cables that are crossed by the marine HVDC cable.

5. The substances or articles authorised for deposit includes –

(1) Iron, steel, copper and aluminium;

(2) Stone, rock, and concrete;

(3) sand and gravel;

(4) plastic and synthetics;

(5) drilling liquids;

(6) material extracted from within the Order limits seawards of MHWS during construction, drilling and seabed preparation for the Works; and

(7) marine coatings and other chemicals:

(8) any other material of substance to the extent its effects have been considered within the environmental statement.

6. The grid coordinates for that part of the authorised development comprising Works Nos.6 and 7 are specified below and more particularly on the works plans –

<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	50°47'8.146"N	1°2'20.857"W	135	50°42'0.397"N	0°54'1.872"W
2	50°47'8.216"N	1°2'20.480"W	136	50°41'55.699"N	0°53'35.726"W
3	50°47'8.268"N	1°2'20.179"W	137	50°41'33.679"N	0°52'58.934"W
4	50°47'8.339"N	1°2'19.690"W	138	50°40'20.249"N	0°51'13.974"W
5	50°47'8.386"N	1°2'19.364"W	139	50°39'59.881"N	0°50'52.430"W
6	50°47'8.451"N	1°2'18.889"W	140	50°39'42.599"N	0°50'29.607"W
7	50°47'8.508"N	1°2'18.470"W	141	50°39'36.524"N	0°50'11.733"W
8	50°47'8.553"N	1°2'18.104"W	142	50°39'12.728"N	0°48'58.524"W
9	50°47'8.628"N	1°2'17.588"W	143	50°38'30.615"N	0°46'2.020"W
10	50°47'8.690"N	1°2'17.204"W	144	50°37'46.726"N	0°43'23.708"W
11	50°47'8.771"N	1°2'16.708"W	145	50°37'36.508"N	0°42'41.575"W
12	50°47'8.826"N	1°2'16.349"W	146	50°37'15.582"N	0°41'15.354"W
13	50°47'8.931"N	1°2'15.812"W	147	50°37'15.513"N	0°39'46.232"W
14	50°47'8.992"N	1°2'15.489"W	148	50°36'41.713"N	0°34'22.448"W
15	50°47'9.096"N	1°2'14.962"W	149	50°36'14.831"N	0°32'37.009"W
16	50°47'9.166"N	1°2'14.555"W	150	50°36'7.973"N	0°31'7.231"W
17	50°47'9.231"N	1°2'14.186"W	151	50°36'0.215"N	0°30'36.542"W
18	50°47'9.328"N	1°2'13.628"W	152	50°35'54.791"N	0°30'15.095"W



19	50°47'9.426"N	1°2'13.061"W	153	50°35'23.567"N	0°29'13.075"W
20	50°47'9.490"N	1°2'12.710"W	154	50°34'29.494"N	0°26'42.742"W
21	50°47'9.587"N	1°2'12.132"W	155	50°32'41.551"N	0°23'38.096"W
22	50°47'9.639"N	1°2'11.857"W	156	50°30'3.541"N	0°17'33.192"W
23	50°47'9.789"N	1°2'11.023"W	157	50°28'42.521"N	0°15'42.064"W
24	50°47'9.878"N	1°2'10.527"W	158	50°28'4.707"N	0°14'50.247"W
25	50°47'9.983"N	1°2'9.954"W	159	50°27'43.034"N	0°14'20.562"W
26	50°47'10.053"N	1°2'9.496"W	160	50°26'55.786"N	0°13'15.884"W
27	50°47'10.093"N	1°2'9.212"W	161	50°26'56.222"N	0°13'14.495"W
28	50°47'10.142"N	1°2'8.960"W	162	50°26'57.457"N	0°13'4.676"W
29	50°47'10.205"N	1°2'8.572"W	163	50°26'57.027"N	0°12'54.690"W
30	50°47'10.259"N	1°2'8.304"W	164	50°26'54.961"N	0°12'45.218"W
31	50°47'10.327"N	1°2'7.966"W	165	50°26'51.400"N	0°12'36.908"W
32	50°47'10.374"N	1°2'7.740"W	166	50°26'46.587"N	0°12'30.324"W
33	50°47'10.456"N	1°2'7.347"W	167	50°26'40.850"N	0°12'25.916"W
34	50°47'10.514"N	1°2'7.079"W	168	50°26'34.580"N	0°12'23.983"W
35	50°47'10.587"N	1°2'6.756"W	169	50°26'28.204"N	0°12'24.658"W
36	50°47'10.648"N	1°2'6.496"W	170	50°26'22.156"N	0°12'27.894"W
37	50°47'10.741"N	1°2'6.131"W	171	50°26'21.336"N	0°12'28.756"W
38	50°47'10.822"N	1°2'5.803"W	172	50°26'10.359"N	0°12'13.745"W
39	50°47'10.862"N	1°2'5.617"W	173	50°24'8.032"N	0°9'25.526"W
40	50°47'10.921"N	1°2'5.371"W	174	50°24'2.766"N	0°9'16.501"W
41	50°47'10.939"N	1°2'5.284"W	175	50°23'57.213"N	0°9'5.200"W
42	50°47'10.978"N	1°2'5.099"W	176	50°23'51.251"N	0°8'52.570"W
43	50°47'11.045"N	1°2'4.740"W	177	50°23'46.360"N	0°8'39.092"W
44	50°47'11.107"N	1°2'4.474"W	178	50°21'32.398"N	0°2'15.439"W
45	50°47'11.167"N	1°2'4.178"W	179	50°21'29.076"N	0°2'5.945"W
46	50°47'11.222"N	1°2'3.897"W	180	50°21'28.324"N	0°2'3.795"W
47	50°47'11.281"N	1°2'3.598"W	181	50°21'6.855"N	0°1'12.898"W
48	50°47'11.337"N	1°2'3.294"W	182	50°20'46.163"N	0°0'32.608"W
49	50°47'11.366"N	1°2'3.150"W	183	50°20'34.684"N	0°0'15.657"W
50	50°47'11.403"N	1°2'2.966"W	184	50°20'32.670"N	0°0'12.683"W
51	50°47'11.423"N	1°2'2.845"W	185	50°20'16.756"N	0°0'10.817"E
52	50°47'11.460"N	1°2'2.657"W	186	50°17'36.424"N	0°5'11.894"E
53	50°47'11.492"N	1°2'2.498"W	187	50°16'31.253"N	0°9'3.799"E
54	50°47'11.540"N	1°2'2.249"W	188	50°16'10.086"N	0°11'24.856"E
55	50°47'11.573"N	1°2'2.089"W	189	50°16'7.791"N	0°11'36.422"E
56	50°47'11.617"N	1°2'1.860"W	190	50°16'6.240"N	0°11'43.952"E
57	50°47'11.654"N	1°2'1.683"W	191	50°16'2.500"N	0°12'0.714"E
58	50°47'11.704"N	1°2'1.424"W	192	50°15'56.441"N	0°12'17.698"E
59	50°47'11.767"N	1°2'1.116"W	193	50°15'53.389"N	0°12'23.459"E
60	50°47'11.802"N	1°2'0.862"W	194	50°15'53.179"N	0°12'23.855"E
61	50°47'11.807"N	1°2'0.827"W	195	50°15'53.678"N	0°12'24.498"E
62	50°47'11.827"N	1°2'0.809"W	196	50°15'50.634"N	0°12'30.244"E
63	50°47'11.877"N	1°2'0.444"W	197	50°15'50.355"N	0°12'30.769"E
64	50°47'11.901"N	1°2'0.405"W	198	50°15'44.773"N	0°11'56.429"E
65	50°47'11.904"N	1°2'0.370"W	199	50°15'47.089"N	0°11'49.938"E
66	50°47'11.863"N	1°2'0.317"W	200	50°15'50.773"N	0°11'33.424"E
67	50°47'11.847"N	1°2'0.307"W	201	50°15'53.839"N	0°11'17.971"E
68	50°47'11.847"N	1°2'0.307"W	202	50°16'15.223"N	0°8'55.462"E
69	50°47'11.847"N	1°2'0.307"W	203	50°17'21.968"N	0°4'57.948"E

70	50°47'11.895"N	1°1'59.868"W	204	50°20'4.461"N	0°0'7.202"W
71	50°47'11.912"N	1°1'59.866"W	205	50°20'21.112"N	0°0'31.792"W
72	50°47'11.939"N	1°1'59.841"W	206	50°20'23.127"N	0°0'34.767"W
73	50°47'11.965"N	1°1'59.584"W	207	50°20'33.765"N	0°0'50.477"W
74	50°47'11.966"N	1°1'59.512"W	208	50°20'53.239"N	0°1'28.399"W
75	50°47'11.965"N	1°1'59.496"W	209	50°21'13.893"N	0°2'17.366"W
76	50°47'11.964"N	1°1'59.435"W	210	50°23'31.655"N	0°8'51.889"W
77	50°47'11.965"N	1°1'59.415"W	211	50°23'37.115"N	0°9'6.938"W
78	50°47'11.953"N	1°1'59.406"W	212	50°23'43.773"N	0°9'21.043"W
79	50°47'11.953"N	1°1'59.406"W	213	50°23'49.858"N	0°9'33.428"W
80	50°47'11.953"N	1°1'59.406"W	214	50°23'56.230"N	0°9'44.349"W
81	50°47'11.962"N	1°1'59.198"W	215	50°25'59.269"N	0°12'33.560"W
82	50°47'11.971"N	1°1'59.095"W	216	50°26'10.266"N	0°12'48.600"W
83	50°47'11.985"N	1°1'58.947"W	217	50°26'9.831"N	0°12'49.988"W
84	50°47'11.992"N	1°1'58.887"W	218	50°26'8.596"N	0°12'59.805"W
85	50°47'12.008"N	1°1'58.758"W	219	50°26'9.026"N	0°13'9.789"W
86	50°47'12.020"N	1°1'58.658"W	220	50°26'11.091"N	0°13'19.258"W
87	50°47'12.029"N	1°1'58.582"W	221	50°26'14.651"N	0°13'27.567"W
88	50°47'12.031"N	1°1'58.566"W	222	50°26'19.463"N	0°13'34.151"W
89	50°47'12.040"N	1°1'58.493"W	223	50°26'25.200"N	0°13'38.561"W
90	50°47'12.049"N	1°1'58.409"W	224	50°26'31.470"N	0°13'40.497"W
91	50°47'12.060"N	1°1'58.316"W	225	50°26'37.846"N	0°13'39.825"W
92	50°47'12.079"N	1°1'58.149"W	226	50°26'43.894"N	0°13'36.591"W
93	50°47'12.110"N	1°1'57.942"W	227	50°26'44.714"N	0°13'35.729"W
94	50°47'12.123"N	1°1'57.869"W	228	50°28'31.442"N	0°16'1.912"W
95	50°47'12.141"N	1°1'57.733"W	229	50°29'50.837"N	0°17'50.820"W
96	50°47'12.158"N	1°1'57.645"W	230	50°32'28.318"N	0°23'54.527"W
97	50°47'12.175"N	1°1'57.550"W	231	50°34'15.790"N	0°26'58.375"W
98	50°47'12.189"N	1°1'57.467"W	232	50°35'9.556"N	0°29'27.862"W
99	50°47'12.212"N	1°1'57.339"W	233	50°35'40.062"N	0°30'28.457"W
100	50°47'12.228"N	1°1'57.251"W	234	50°35'44.745"N	0°30'46.976"W
101	50°47'12.250"N	1°1'57.145"W	235	50°35'51.526"N	0°31'13.797"W
102	50°47'12.272"N	1°1'57.028"W	236	50°35'58.386"N	0°32'43.614"W
103	50°47'12.291"N	1°1'56.926"W	237	50°36'25.406"N	0°34'29.597"W
104	50°47'12.310"N	1°1'56.838"W	238	50°36'50.593"N	0°38'30.650"W
105	50°47'12.339"N	1°1'56.698"W	239	50°36'54.547"N	0°39'8.625"W
106	50°47'12.356"N	1°1'56.579"W	240	50°36'58.685"N	0°39'48.398"W
107	50°47'12.319"N	1°1'56.560"W	241	50°36'58.756"N	0°41'20.244"W
108	50°47'12.319"N	1°1'56.560"W	242	50°37'31.141"N	0°43'33.714"W
109	50°47'12.319"N	1°1'56.560"W	243	50°38'15.012"N	0°46'11.964"W
110	50°47'12.377"N	1°1'56.330"W	244	50°38'57.306"N	0°49'9.233"W
111	50°47'12.390"N	1°1'56.270"W	245	50°39'21.609"N	0°50'24.001"W
112	50°47'12.406"N	1°1'56.188"W	246	50°39'29.289"N	0°50'46.600"W
113	50°47'12.425"N	1°1'56.105"W	247	50°39'49.747"N	0°51'13.619"W
114	50°47'12.443"N	1°1'56.031"W	248	50°40'9.842"N	0°51'34.878"W
115	50°47'12.460"N	1°1'55.963"W	249	50°41'21.878"N	0°53'17.854"W
116	50°47'11.065"N	1°1'55.703"W	250	50°41'40.626"N	0°53'49.178"W
117	50°45'45.014"N	1°1'39.017"W	251	50°41'45.252"N	0°54'14.928"W
118	50°45'33.952"N	1°1'29.392"W	252	50°43'22.501"N	0°57'7.513"W
119	50°45'23.239"N	1°1'14.438"W	253	50°43'31.132"N	0°57'27.942"W
120	50°45'13.571"N	1°0'56.514"W	254	50°43'29.651"N	0°57'29.496"W



121	50°45'2.494"N	1°0'25.147"W	255	50°43'40.579"N	0°57'55.368"W
122	50°44'50.712"N	0°59'52.953"W	256	50°43'42.061"N	0°57'53.814"W
123	50°44'39.281"N	0°59'22.406"W	257	50°43'43.756"N	0°57'57.828"W
124	50°44'2.379"N	0°57'54.977"W	258	50°43'44.075"N	0°57'57.664"W
125	50°44'0.123"N	0°57'49.635"W	259	50°43'48.906"N	0°58'9.102"W
126	50°44'0.446"N	0°57'49.479"W	260	50°44'25.563"N	0°59'35.955"W
127	50°43'56.072"N	0°57'39.124"W	261	50°44'36.732"N	1°0'5.805"W
128	50°43'54.590"N	0°57'40.678"W	262	50°44'48.414"N	1°0'37.724"W
129	50°43'43.661"N	0°57'14.804"W	263	50°45'0.207"N	1°1'11.121"W
130	50°43'45.143"N	0°57'13.250"W	264	50°45'11.652"N	1°1'32.340"W
131	50°43'35.866"N	0°56'51.292"W	265	50°45'24.564"N	1°1'50.365"W
132	50°42'27.974"N	0°54'50.779"W	266	50°45'39.934"N	1°2'3.740"W
133	50°42'23.228"N	0°54'42.359"W	267	50°47'8.146"N	1°2'20.857"W
134	50°42'18.988"N	0°54'34.839"W			

7. This licence remains in force until the authorised development has been decommissioned in accordance with a programme to be approved by the MMO and the completion of such programme has been confirmed by the MMO in writing.

8. The provisions of section 72 of the 2009 Act apply to this licence except that the provisions of section 72(7) relating to the transfer of the licence only apply to a transfer not falling within article 6 (Benefit of the Order).

9. With respect to any condition which requires the licensed activities to be carried out in accordance with the plans, protocols or statements approved under this Schedule, the plans, protocols or statements so approved are taken to include amendments that may be approved in writing by the MMO subsequent to the first approval of those plans, protocols or statements.

10. Any amendments to or variations from the approved plans, protocols or statements must be minor or immaterial and it must be demonstrated to the satisfaction of the MMO that they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

## PART 2

### Conditions

#### Design Parameters

1. The total length of the marine HVDC cables from MHWS to the EEZ and cable protection and the cable protection area must not exceed the following –

<i>Work</i>	<i>Cable length</i>	<i>Cable protection length</i>	<i>Cable protection area</i>
Works No. 6 and 7	109km	23.5km	0.74km <sup>2</sup>

#### Notifications and Inspections

2.—(1) The undertaker must ensure that –

- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to –
  - (i) all agents and contractors notified to the MMO in accordance with condition 4(c)(vi); and

- (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with condition 4(c)(vi).
  - (b) within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above must provide a completed confirmation form to the MMO confirming receipt of this licence.
- (2) Only those persons and vessels notified to the MMO pursuant to condition 4(1)(c)(vi) are permitted to carry out the licensed activities.
- (3) Copies of this licence must also be available for inspection at the following locations –
- (a) the undertakers registered address;
  - (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or disposal of the authorised deposits; and
  - (c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.
- (4) The documents referred to in sub-paragraphs (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3)(b) above.
- (5) The undertaker must provide access, and if necessary appropriate transportation, to the marine construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during the construction and operation of the authorised development.
- (6) The undertaker must inform the MMO Local Office in writing at least five days prior to the commencement of the licensed activities or any part of them.
- (7) The undertaker must inform the Kingfisher Information Service of Seafish by e-mail to [kingfisher@seafish.co.uk](mailto:kingfisher@seafish.co.uk) of details regarding the vessel routes, timings and locations relating to the construction of the authorised development or relevant part –
- (a) at least 14 days prior to the commencement of marine activities for inclusion in the Kingfisher Fortnightly Bulletin and marine hazard awareness data; and
  - (b) as soon as reasonably practicable and not later than 24 hours on completion of construction of all licensed marine activities’
- and confirmation of notification in accordance with this paragraph (7) must be provided MMO within 5 days.
- (8) A local notification to mariners must be issued at least 14 days prior to the commencement of the licensed activities or any part of them advising of the start date of Works No. 6 and Works No. 7 and the expected vessel routes from the construction ports to the relevant location. Copies of all notices must be provided to the MMO, the MCA and the UK Hydrographic Office within 5 days.
- (9) The local notification to mariners must be updated and reissued at weekly intervals during construction activities and at least 5 days before any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under condition 7(1)(b). Copies of all notices must be provided to the MMO and the UK Hydrographic Office within 5 days.
- (10) The undertaker must notify the UK Hydrographic Office both of the commencement (within 14 days), progress and completion of construction (within 14 days) of the licensed activities in order that all necessary amendments to the nautical charts are made and the undertaker must send a copy of such notifications to the MMO within 5 days.
- (11) The undertaker must notify HM Coastguard at least 14 days prior to commencement of the licence activities or any part of them advising of the start date of Works No. 6 and Works No. 7 by e-mail to the relevant zone contacts ([zone15@hmcg.gov.uk](mailto:zone15@hmcg.gov.uk) or [zone16@hmcg.gov.uk](mailto:zone16@hmcg.gov.uk)) and a copy of that notice must be provided to the MMO within 5 days.



(12) The undertaker must notify the Environment Agency at least 14 days prior to the commencement of Works No. 6 and the temporary HDD entry/exit pits forming part of Work No. 7.

(13) In case of damage to, or destruction or decay of, the authorised development or any part thereof the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify the MMO, the MCA, Trinity House, the Kingfisher Information Service of Seafish and the UK Hydrographic Office.

(14) In case of exposure of the marine HVDC cables on or above the seabed, the undertaker must within 3 days following identification of any exposure of the marine HVDC cables, issue a local notice to mariners and by informing Kingfisher Information Service of Seafish of the location and extent of the exposure. Copies of all notices must be provided to the MMO, the MCA, Trinity House and the UK Hydrographic Office within 5 days.

### **Pre-construction surveys**

3.—(1) Surveys in relation to the pre-construction phase of the authorised development will include –

- (a) a swath-bathymetry survey within the Order limits seaward of MHWS to:
  - (i) inform future navigation risk assessments as part of the cable specification and installation plan; and
  - (ii) determine the location, extent and composition of any biogenic and geogenic reef habitat within the Order limits seaward of MHWS identified in the environmental statement.

(2) The pre-construction surveys must not be carried out until details of the proposed pre-construction surveys, including methodologies and timings, and a proposed form and content for a pre-construction baseline report have been submitted to and approved by the MMO in consultation with the relevant statutory bodies.

(3) The MMO must determine an application for approval made under sub-paragraph (2) within a period of 8 weeks commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

(4) Where the MMO is minded to refuse an application for consent made under this condition 3 and notifies the undertaker accordingly, or fails to determine the application for approval under this condition 3 within the period prescribed in sub-paragraph (3), the undertaker may appeal to the Secretary of State in accordance with the procedure at Schedule 16 to the Order.

(5) The undertaker must carry out the pre-construction surveys agreed under sub-paragraph (2) or approved following an appeal under sub-paragraph (4) and as may be updated from time to time and provide the baseline report to the MMO in the agreed format in accordance with the agreed timetable, unless otherwise agreed with the MMO in consultation with the relevant statutory nature conservation bodies.

### **Pre-construction plans and documentation**

4.—(1) The licensed activities or any part of those activities must not commence until the following (as relevant to that part) have been submitted to and approved in writing by the MMO –

- (a) A design plan at a scale of 1:25,000 and 1:50,000, including detailed representation of the most suitably scaled admiralty chart, to be agreed in writing with the MMO which shows –
  - (i) the length and arrangement of all cables comprised in Works No. 6 and 7;
  - (ii) the indicative location of the temporary horizontal directional drilling entry/exit pits within the horizontal direction drilling work area;
  - (iii) indicative location of cable crossings; and

to ensure compliance with the description of Works No. 6 and 7 and compliance with condition 1 above.

- (b) a construction programme to include details of –
  - (i) the proposed construction start date; and
  - (ii) the proposed timings for mobilisation of plant, delivery of materials and installation works; and
  - (iii) an indicative construction programme for the carrying out of the works comprised in Works No. 6 and 7;
 which may be amended from time to time subject to the approval in writing of the MMO.
- (c) a cable burial and installation plan in accordance with the construction methods assessed in the environmental statement and including details of –
  - (i) marine HVDC cable installation methodology, including the methods for disposal;
  - (ii) technical specification of marine HVDC cables below MHWS and cable burial depths in accordance with industry good practice;
  - (iii) a detailed cable laying plan for the Order limits seaward of MHWS, incorporating a burial assessment which includes the identification of any part of the marine HVDC cables that exceeds 5% of navigable depth referenced to chart datum and, in the event of the identification of any area of cable protection that exceeds 5% of navigable depth, details of any steps (to be determined following consultation with Trinity House and the MCA) to be taken to ensure existing and future safe navigation is not compromised or such similar assessment to ascertain suitable burial depths and cable laying techniques, including cable protection,
  - (iv) proposals for monitoring the marine HVDC cables including cable protection during the operation of the authorised development which includes a risk based approach to the management of unburied or shallow buried cables;
  - (v) advisory safe passing distances for vessels around construction sites;
  - (vi) the name and function of any agent or contractor appointed to engage in the licensed activities vessels and vessel transit corridors and a completed Hydrographic Note H102 listing the vessels to be used in relation to the licensed activities;
  - (vii) codes of conduct for vessel operators;
  - (viii) details of any required micro-siting in relation to biogenic and geogenic reef habitat or archaeological construction exclusion zones within the Order limits seaward of MHWS; and
  - (ix) associated ancillary works.
- (d) an environmental management plan (in accordance with the outline marine construction environmental management plan) covering the period of construction to include details of –
  - (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised development in relation to all activities to be carried out;
  - (ii) a biosecurity plan detailing how risk of the introduction and spread of invasive non-native species will be minimised;
  - (iii) waste management and disposal arrangements;
  - (iv) the appointment and responsibilities of a fisheries liaison officer; and
  - (v) a fisheries liaison and coexistence plan to ensure relevant fishing fleets are notified of commencement of the licensed activities and to address the interaction of the licensed activities with fishing activities.

(2) The licensed activities or any part of the activities must not commence unless a written scheme of archaeological investigation has been submitted to and approved by the MMO, in accordance with the marine archaeology outline written scheme of investigation, and in accordance with industry good practice and in consultation with the statutory historic body to include –



- (a) details of responsibilities of the undertaker, archaeological consultant and contractor;
- (b) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO;
- (c) delivery of any mitigation including the use of archaeological construction exclusion zones in agreement with the MMO;
- (d) a requirement for the undertaker to ensure that a copy of any agreed archaeological report is deposited with the National Record of the Historic Environment, by submitting a Historic England OASIS ('Online Access to the Index of archaeological InvestigationS') form with a digital copy of the relevant report within six months of completion of construction of the authorised development, and to notify the MMO that the OASIS form has been submitted to the National Record of the Historic Environment within two weeks of submission; and
- (e) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised development.

(3) No part of the licensed activities may commence until a statement confirming how the undertaker has taken into account the MCA safety guidance in so far as is applicable to that part of the licensed activities has been submitted to and approved by the MMO, in consultation with the MCA.

5.—(1) Each programme, statement, plan, protocol or scheme required to be approved under condition 4 must be submitted for approval at least four months prior to the intended commencement of the licensed activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(2) Save in respect of any plan which secures mitigation to avoid adversely affecting the integrity of a European Site, where the MMO fails to determine that application for approval under condition 4 within the period referred to in sub-paragraph (1), the programme, statement, plan, protocol or scheme is deemed to be approved by the MMO.

(3) The MMO must determine an application for approval made under condition 4 within a period of four months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

(4) Where the MMO is minded to refuse an application for approval made under condition 4 and notifies the undertaker accordingly, or the MMO fails to determine the application for consent under condition 4 within the period prescribed in sub-paragraph (3), the undertaker may appeal to the Secretary of State in accordance with the procedure at Schedule 16 to the Order.

(5) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 4 or approved following an appeal under sub-paragraph (4) and as may be updated from time to time, unless otherwise agreed in writing by the MMO.

(6) Prior to the commencement of Work No. 6 and the temporary HDD entry/exit pits forming part of Work No. 7, the undertaker must provide the Environment Agency with a copy of any construction programme approved by the MMO pursuant to condition 4(1)(b) and any method statement relating to sediment mobilising activities relevant to the temporary HDD entry/exit pits forming part of Work No. 7.

### **Reporting of engaged agents, contractors and vessels**

6. Any change to the details supplied pursuant to condition 4(1)(c)(vi) must be notified to the MMO in writing prior to the agent, contractor, or vessel engaging in the licensed activities.

### **Aids to Navigation**

7.—(1) Any vessels utilised during the licensed activities, when jacked up, must exhibit signals in accordance with the standard marking schedule;

(2) The undertaker must during the whole period from the commencement of the licensed activities to completion of decommissioning of the authorised development exhibit such lights, marks, sounds, signals and other aids to navigation, and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct;

(3) The undertaker must during the period from the start of construction of the authorised development to completion of decommissioning of the authorised development keep Trinity House and the MMO informed of progress of the authorised development including the following

- (a) notice of commencement of construction of the authorised development within 24 hours of commencement having occurred;
- (b) notice within 24 hours of any aids to navigation being established or relocated by the undertaker; and
- (c) notice within 5 days of completion of construction of the authorised development.

(4) In the event the provisions of condition 2(13) or 2(14) are invoked, the undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House.

### **Chemicals, drilling and debris**

8.—(1) The Undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by the Health and Safety Executive and guidance for pollution prevention issued by the government.

(2) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(3) The undertaker must ensure that only inert material of natural origin produced during dredging in connection with the carrying out of the Works is disposed of at the disposal sites with reference WI048 and WI049 within the extent of the Order limits seaward of MHWS and all other materials must be screened out before the disposal of inert material and disposed of to land.

(4) The undertaker must inform the MMO of the location of and quantities of material disposed of each month under the Order, by submission of a disposal return by 14 February each year for the months August to January inclusive, and by 15 August for the months February to July inclusive.

(5) The undertaker must ensure any rock material used in the construction of the authorised development is from a recognised source, free from contaminants and containing minimal fines.

(6) In the event that any rock material is misplaced or lost below MHWS, the undertaker must report the loss to the District Marine Office within 48 hours and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the undertaker must endeavour to locate the material and recover it.

(7) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO, Marine Pollution Response Team in accordance with the marine pollution contingency plan agreed under condition 4(1)(d)(i);

(8) All dropped objects must be reported to the MMO using the Dropped Object Procedure Form as soon as reasonably practicable and in any event within 24 hours of the undertaker becoming aware of an incident. On receipt of the Dropped Object Procedure Form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if reasonable to do so and the MMO may require obstructions to be removed from the seabed at the undertakers expense if reasonable to do so.

### **Force majeure**

9.—(1) If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits outside of the Order limits seaward of MHWS or to



dispose of dredged material within the Order limits seaward of MHWS but outside of the disposal sites with reference WI048 and WI049 because the safety of human life and/or the vessel is threatened, within 48 hours full details of the circumstances of the disposal must be notified to the MMO.

(2) The unauthorised deposits must be removed at the expense of the undertaker unless written approval is obtained from the MMO.

### **Post-construction surveys**

**10.**—(1) Within 6 months of the completion of the construction of the authorised development the undertaker is to submit to the MMO for approval a swath-bathymetry survey within the Order limits seaward of MHWS in order to:

- (a) inform of any dropped objects or residual navigational risk; and
- (b) to determine any change in the location, extent and composition of any biogenic or geogenic reef features identified in the pre-construction survey in the parts of the Order limits seaward of MHWS in which construction works were carried out.

(2) Where requested by the MMO following the completion of construction of the authorised development the undertaker will produce an electromagnetic deviation survey to confirm that there must be no more than a 3 degree electromagnetic variation for 95% of the marine HVDC cables and no more than a 5 degree electromagnetic variation for the remaining 5% of the marine HVDC cables in water depths of 5m and deeper as a result of the operation of the authorised development.

(3) Within 3 months of completion of construction of the authorised development the undertaker must submit International Hydrographic Office (IHO Order 1A) approved Multi Beam Echo Sounder survey data and report to the MMO, the MCA, Trinity House and UK Hydrographic Office, meeting MGN 543 hydrographic survey guidelines and confirming the final clearance depths over the marine HVDC cables and the associated cable protection. If the MMO, the MCA, Trinity House or the UKHO identify any area as a possible danger to navigation to exhibit such lights, marks, sounds, signals and other aids to navigation as are reasonably required by the MMO, the MCA, Trinity House and/or UK Hydrographic Office unless otherwise agreed.

### **Cable burial management plan**

**11.**—(1) Following the completion of construction of the authorised development the undertaker will submit a cable burial management plan including results of the post installation surveys to the MMO for its approval (in consultation with the statutory nature conservation body) which is to include:

- (a) as built plans showing location of the marine HVDC cables and cable protection;
- (b) details of the proposed frequency and extent of future cable burial surveys;
- (c) details of scour/erosion around the Atlantic Cable and proposed CrossChannel Fibre Cable crossings described in paragraph 4(1) of Part 1; and
- (d) proposals for maintaining marine cables including cable protection during the operational lifetime of the authorised development which includes a risk based approach to the management of unburied or shallow buried cables;

and which may be amended from time to time subject to the approval in writing of the MMO.

(2) Following the laying of any new cable protection following the completion of the construction in accordance with condition 12 the undertaker will submit an updated cable burial management plan including results of the post installation surveys to the MMO for its approval (in consultation with the statutory nature conservation body) which is to include as built plans showing location of the marine HVDC cables and the new cable protection;

(3) The cable burial management plan approved by the MMO as may be updated from time to time must be implemented during the operational lifetime of the project and reviewed as specified

within the plan, following cable burial surveys, installation of cable protection, or periodically as required.

### **Maintenance of the authorised development**

12.—(1) The undertaker may at any time maintain the authorised development, except to the extent that this licence or an agreement made under this licence provides otherwise;

(2) No works of maintenance whose likely effect is not assessed in the environmental statement or which are likely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement may be carried out, unless otherwise approved by the MMO.

(3) Works of maintenance include but are not limited to –

- (a) cable repairs, including but not limited to the removal of defective cable and sediment to undertake those repairs, and addition of sections of cable to replace defective cable and the removal and replacement of cable protection;
- (b) remedial cable burial

(4) Where the MMO's approval is required under paragraph (2), such approval may be given only where it has been demonstrated to the satisfaction of the MMO that the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(5) The laying of new cable protection following the completion of construction must not extend for longer than 15 years from the date of the issue of the notification of the completion of construction to be issued pursuant to condition 2(10) unless otherwise agreed with the MMO.

(6) Prior to the laying of any new cable protection following the completion of the construction the undertaker must provide details of and justification for the deployment of new cable protection including a description of seabed habitat which is to be informed by survey data less than 5 years old, unless otherwise agreed with the MMO, in the location/s where the laying of additional cable protection is proposed for the approval of the MMO and must not lay any new cable protection until the MMO has approved its deployment.

(7) The undertaker must inform the MMO Local Office in writing at least 5 days prior to the commencement of the laying of any new cable protection following the completion of construction.

(8) The undertaker must issue a local notification to mariners at least 5 days prior to the laying of any new cable protection following the completion of construction and that notice must be forwarded to the MMO within 5 days of issue.

(9) The undertaker must issue a notice to the UK Hydrographic Office at least 5 days prior to the laying of any new cable protection following the completion of construction to permit the promulgation of maritime safety information and updating of nautical charts and publications

(10) The undertaker must notify the MMO Local Office of the completion of the laying of any new cable protection following the completion of construction no later than 14 days after the completion of the laying of the new cable protection.

(11) Within 4 weeks of the completion of laying of any new cable protection following the completion of construction, unless otherwise agreed with the MMO, the undertaker must submit International Hydrographic Office (IHO Order 1A) approved Multi Beam Echo Sounder survey data and report to the MMO, the MCA and UKHO, meeting MGN 543 hydrographic survey guidelines and confirming the final clearance depths over the protected cables where the new cable protection has been laid. Once this data has been assessed, if any area is identified as a possible danger to navigation it may require marking with aids to navigation at the undertakers expense.

(12) The MMO must determine any application for approval made under this condition 12 within a period of 8 weeks commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.



(13) Where the MMO is minded to refuse an application for consent made under this condition 12 and notifies the undertaker accordingly, or fails to determine the application for approval under this condition 12 within the period prescribed in sub-paragraph (12), the undertaker may appeal to the Secretary of State in accordance with the procedure at Schedule 16 to the Order.

### **Post-construction approvals**

**13.**—(1) The MMO must determine any application for approval made under condition 10 or 11 within a period of four months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

(2) Where the MMO is minded to refuse an application for approval made under condition 10 or 11 and notifies the undertaker accordingly, or the MMO fails to determine the application for approval within the period prescribed in sub-paragraph (1), the undertaker may appeal to the Secretary of State in accordance with the procedure at Schedule 16 to the Order.

### **Herring mitigation**

**14.** Unless otherwise agreed in writing with the MMO, the licensed activities or any part of those activities are not to be undertaken between Kilometre Points 90 to 109 during the period of 15th December to 15th January inclusive.

### Deemed marine licence procedure for appeals

1. Where the MMO refuses an application for approval under conditions 3, 4, 10, 11 and 12 of the deemed marine licence and notifies the undertaker accordingly, or fails to determine the application for approval in accordance with any of those conditions the undertaker may by notice appeal against such a refusal or non-determination and the 2011 Regulations apply subject to the modifications set out in paragraph 2 below.

2. The 2011 Regulations are modified so as to read for the purposes of this Order only as follows –

(1) For regulation 4(1) (Appeal against marine licensing decisions) substitute –

“A person who has applied for approval under condition [x] of Part 2 of Schedule 15 to the AQUIND Interconnector Order 202[x] may by notice appeal against a decision to refuse such an application or a failure to determine such an application.”

(2) For regulation 6(1) (Time limit for the notice of appeal) substitute –

“Notice of an appeal must be received by the Secretary of State within the period of four months beginning with the date of the decision to which the application relates or, in the case of non-determination, the date by which the application should have been determined.”

(3) For regulation 7(2)(a) (Contents of the notice of appeal) substitute –

“a copy of the decision to which the appeal relates or, in the case of non-determination, the date by which the application should have been determined; and”

(4) In regulation 8(1) (Decision as to appeal procedure and start date) the words “as soon as practicable after” are substituted with the words “within the period of 2 weeks beginning on the date of”.

(5) In regulation 10(3) (Representations and further comments) the word “At” is substituted with the words “By no later than”.

(6) In regulation 10(5) (Representations and further comments) the words “as soon as is reasonably practicable after” are substituted with the words “by no later than the end of”.

(7) In regulation 12(1) (Establishing the hearing or inquiry) after the words “(“the relevant date”)” the words “which must be within 14 weeks of the start date” are inserted.

(8) In regulation 13(2) (Pre-inquiry meeting) the words “4 weeks” are substituted with the words “2 weeks”.

(9) In regulation 22(1) (Determining the appeal – general) after the words “against a decision” the words “or a non-determination” are inserted and for regulation 22(1)(b) and (c) substitute –

“(a) allow the appeal, and where the appeal is against a decision, quash the decision in whole or in part;

(b) where the appointed person allows the appeal, and in the case of an appeal against a decision quashes that decision in whole or in part, direct the Authority to approve the application for approval to which the appeal relates”

(10) In regulation 22(2) (Determining the appeal – general) after the words “in writing of the determination” insert the words “within the period of 12 weeks beginning with the start date where the appeal is to be determined by written representations or within the period of 12 weeks beginning on the day of the close of the hearing or inquiry where the appeal is to be determined by way of a hearing or inquiry.”



## Arbitration Rules

**Primary Objective**

1.—(1) The primary objective of these Arbitration Rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the Arbitrator is appointed pursuant to article 45 (arbitration) of the Order.

(2) The Parties will first use their reasonable endeavours to settle a dispute amicably through negotiations undertaken in good faith by the senior management of the Parties. Any dispute which is not resolved amicably by the senior management of the Parties within twenty business days of the dispute arising, or such longer period as agreed in writing by the Parties, shall be subject to arbitration in accordance with the terms of this Schedule.

(3) The Arbitration shall be deemed to have commenced when a party (“the Claimant”) serves a written notice of arbitration on the other party (“the Respondent”).

**Time periods**

2.—(1) All time periods in these Arbitration Rules will be measured in business days and this will exclude weekends, bank and public holidays.

(2) Time periods will be calculated from the day after the Arbitrator is appointed which shall be either—

- (a) the date the Arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or
- (b) the date the Arbitrator is appointed by the Secretary of State.

**Timetable**

3.—(1) The timetable for the arbitration will be that set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 15 days of the Arbitrator being appointed, the Claimant shall provide both the Respondent and the Arbitrator with—

- (a) a written Statement of Claim which describes the nature of the difference between the parties, the legal and factual issues, the Claimant’s contentions as to those issues, and the remedy it is seeking; and
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 15 days of receipt of the Claimant’s statements under sub-paragraph (2) by the Arbitrator and Respondent, the Respondent shall provide the Claimant and the Arbitrator with—

- (a) a written Statement of Defence responding to the Claimant’s Statement of Claim, its statement in respect of the nature of the difference, the legal and factual issues in the Claimant’s claim, its acceptance of any element(s) of the Claimant’s claim, its contentions as to those elements of the Claimant’s claim it does not accept;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports; and
- (c) any objections it wishes to make to the Claimant’s statements, comments on the Claimant’s expert report(s) (if submitted by the Claimant) and explanations for the objections.

(4) Within 5 days of the Respondent serving its statements sub-paragraph (3), the Claimant may make a Statement of Reply by providing both the Respondent and the Arbitrator with—

- (a) a written statement responding to the Respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;
- (b) all statements of evidence and copies of documents in response to the Respondent's submissions;
- (c) any expert report in response to the Respondent's submissions;
- (d) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent; and
- (e) its written submissions in response to the legal and factual issues involved.

**Procedure**

4.—(1) The Arbitrator shall make an award on the substantive difference based solely on the written material submitted by the parties unless the Arbitrator decides that a hearing is necessary to explain or resolve any matters.

(2) Either party may, within 2 days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(3) Within 5 days of receiving the last submission, the Arbitrator will notify the parties whether a hearing is to be held and the length of that hearing.

(4) Within 10 days of the Arbitrator advising the parties that he will hold a hearing, the date and venue for the hearing will be fixed by agreement with the parties, save that if there is no agreement the Arbitrator shall direct a date and venue which he considers is fair and reasonable in all the circumstances. The date for the hearing shall not be less than 35 days from the date of the Arbitrator's direction confirming the date and venue of the hearing.

(5) A decision will be made by the Arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the Arbitrator, then any expert(s) attending the hearing may be asked questions by the Arbitrator.

(6) There will be no process of examination and cross-examination of experts, but the Arbitrator shall invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the Arbitrator's questions. Prior to the hearing the procedure for the expert(s) will be that—

- (a) at least 20 days before a hearing, the Arbitrator will provide a list of issues to be addressed by the expert(s);
- (b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 10 days of the issues being provided; and
- (c) the form and content of a joint report shall be as directed by the Arbitrator and must be provided at least 5 days before the hearing.

(7) Within 10 days of a Hearing or a decision by the Arbitrator that no hearing is to be held the Parties may by way of exchange provide the Arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The Arbitrator shall take these submissions into account in the Award.

(8) The Arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within 4 months of the date on which they are appointed, unless both parties otherwise agree to an extension to the date for the award.

(9) If a party fails to comply with the timetable, procedure or any other direction then the Arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before them attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure and/or direction.

(10) The Arbitrator's award shall include reasons. The parties shall accept that the extent to which reasons are given shall be proportionate to the issues in dispute and the time available to the Arbitrator to deliver the award.



### **Arbitrator's powers**

5.—(1) The Arbitrator has all the powers of the Arbitration Act 1996(a), including the non-mandatory sections, save where modified by these Rules.

(2) There shall be no discovery or disclosure, except that the Arbitrator shall have the power to order the parties to produce such documents as are reasonably requested by another party no later than the Statement of Reply, or by the Arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the Arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the Arbitrator. In the absence of agreement, the Arbitrator may vary the timescales and/or procedure—

- (a) if the Arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then;
- (b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the Arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the Arbitrator's fees and expenses.

### **Costs**

6.—(1) The costs of the Arbitration shall include the fees and expenses of the Arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the Arbitration.

(2) Subject to sub-paragraph (3), the Arbitrator will award recoverable costs on the general principle that each party should bear its own costs.

(3) The Arbitrator may depart from the general principle in sub-paragraph (2) and make such other costs award as it considers reasonable where a party has behaved unreasonably as defined within the National Planning Practice Guidance or such other guidance as may replace it.

### **Confidentiality**

7.—(1) Subject to sub-paragraphs (2) and (3), any arbitration hearing and documentation shall be open to and accessible by the public.

(2) The Arbitrator may direct that the whole or part of a hearing is to be private or any documentation to be confidential where it is necessary in order to protect commercially sensitive information.

(3) Nothing in this paragraph shall prevent any disclosure of a document by a party pursuant to an order of a court in England and Wales or where disclosure is required under any enactment.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises AQUIND Limited (referred to in this Order as the undertaker) to construct, operate and maintain an electricity interconnector near Lovedean, Hampshire out to the EEZ boundary between UK and France waters, to be known as AQUIND Interconnector, as well associated development. The Order imposes requirements in connection with the electricity interconnector and the associated development, together the authorised development.

The Order permits the undertaker to acquire, compulsorily or by agreement, lands and rights in land and to use land for the purposes of the authorised development.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 43 (Certification of plans and documents, etc.) of this Order may be inspected free of charge at [xx].







SIZEWELL C PROJECT -  
RESPONSES TO EXAMINING AUTHORITY'S  
WRITTEN QUESTIONS ISSUED ON 21<sup>ST</sup> APRIL 2021

**NOT PROTECTIVELY MARKED**

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APPENDIX 26D AQUIND INTERCONNECTOR -  
LEGAL AGREEMENT WITH SOUTH DOWNS  
NATIONAL PARK AUTHORITY

**NOT PROTECTIVELY MARKED**





**AQUIND Limited**

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## **AQUIND INTERCONNECTOR**

Signed Legal agreement with South Downs National Park Authority in respect of the Development Consent Obligation

The Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and Procedure)

Regulations 2009 Regulation 5(2)(c)

Document Ref: 7.5.26

PINS Ref.: EN020022

**AQUIND Limited**

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# **AQUIND INTERCONNECTOR**

Signed Legal agreement with South Downs National Park Authority in respect of the Development Consent Obligation

**PINS REF.: EN020022**

**DOCUMENT: 7.5.26**

**DATE: 05 MARCH 2021**

WSP

WSP House

70 Chancery Lane

London

WC2A 1AF

+44 20 7314 5000

[www.wsp.com](http://www.wsp.com)



## DOCUMENT

<b>Document</b>	<b>7.5.26 Signed Legal agreement with South Downs National Park Authority in respect of the Development Consent Obligation</b>
<b>Revision</b>	001
<b>Document Owner</b>	WSP
<b>Prepared By</b>	HSF
<b>Date</b>	05 March 2021
<b>Approved By</b>	HSF
<b>Date</b>	05 March 2021

DATED 3<sup>rd</sup> March 2021

(1) AQUIND LIMITED

(2) SOUTH DOWNS NATIONAL PARK AUTHORITY

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**LEGAL AGREEMENT**

made pursuant to section  
65A Environment Act 1995  
relating to the AQUIND Interconnector

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Herbert Smith Freehills LLP



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THIS DEED made on  
BETWEEN:

3<sup>rd</sup> March

2021

- (1) **AQUIND LIMITED** (company registration number 06681477) whose registered office is at OGN House, Hadrian Way, Wallsend NE28 6HL (the "**Undertaker**"), and
- (2) **SOUTH DOWNS NATIONAL PARK AUTHORITY** of South Downs Centre, North Street, Midhurst, West Sussex, GU29 9DH (the "**Authority**")

**WHEREAS:**

- (A) The Undertaker has made the Application
- (B) The terrestrial elements of the Project in the UK are to be located between Eastney, Portsmouth and the National Grid Substation at Lovedean, being part of the Project comprising a high voltage direct current electrical interconnector between France and the UK
- (C) The Authority is the local planning authority for the South Downs National Park which is in close proximity to the Converter Station Area and will be deemed to be a local planning authority for the purposes of section 106 of the 1990 Act in accordance with Article 8(4)(b) of the Development Consent Order
- (D) The Undertaker will be the undertaker for the purposes of the Development Consent Order. The Undertaker intends to construct, operate and maintain the Development as authorised by the Development Consent Order
- (E) If the Development Consent Order is granted in the final form proposed by the Undertaker, the Undertaker will be deemed to be a person interested in the DCO Land in accordance with Article 8(4)(a) of the Development Consent Order, and by virtue of Article 50 will not be authorised to commence the Development until a development consent obligation with the Authority has been completed in the form certified by the Secretary of State pursuant to the Development Consent Order
- (F) The Authority has agreed to enter into this Deed in order to provide the Undertaker with assurance that it will execute and authorise completion of a development consent obligation in the certified form at the Undertaker's request following the granting of the Development Consent Order

**IT IS AGREED** as follows

**1 DEFINITIONS AND INTERPRETATION**

1.1 In this Deed (which includes the Recitals to it) the following words and expressions have the following meanings unless the context otherwise requires

"1990 Act"	means the Town and Country Planning Act 1990,
"2008 Act"	means the Planning Act 2008,
"Application"	means the application for the DCO submitted to the Secretary of State for the Development and accepted by the Planning Inspectorate on 12 December 2019 with reference EN020022,



<b>“Authority”</b>	means the South Down National Park Authority including successors to its statutory functions as the local planning authority,
<b>“Certified Form”</b>	means the form set out in the Appendix to this Deed,
<b>“Commencement”</b>	means the carrying out of a material operation as defined in section 155 of the 2008 Act comprised in the Development and the words "Commence" and "Commenced" and cognate expressions shall be construed accordingly,
<b>“DCO Land”</b>	means the land within the Order limits for which the Authority is deemed by the Development Consent Order to be a planning authority,
<b>“Development”</b>	means those elements of the Project located in the UK and the UK Marine Area for which the DCO is granted,
<b>“Development Consent Obligation”</b>	means an agreement pursuant to section 106 of the 1990 Act between the Undertaker and the Authority in the Certified Form, subject only to such changes to references etc as are necessary to reflect the Development Consent Order as granted,
<b>“Development Consent Order”</b>	means the development consent order to be made pursuant to the Application and any variation properly made to that development consent order and references to “DCO” shall be construed accordingly,
<b>“Dispute”</b>	means any dispute, issue, difference or claim as between the parties in respect of any matter contained in or arising from or relating to this Deed or the parties' obligations and rights pursuant to it (other than in respect of any matter of law),
<b>“Expert”</b>	means an independent person appointed in accordance with the provisions of clause 7 to determine a Dispute between the parties to this Deed,
<b>“Project”</b>	means AQUIND Interconnector a new 2,000 MW subsea and underground High Voltage Direct Current ('HVDC') bi-directional electric power transmission link between the South Coast of England and Normandy in France,
<b>“Request”</b>	means a written request from the Undertaker to the Authority to execute the Development Consent Obligation,
<b>“Working Day”</b>	means any day apart from Saturday, Sunday and any statutory bank holiday on which clearing banks are open in England for the transaction of ordinary business, and
<b>“Undertaker”</b>	means AQUIND Limited or any person to whom the benefit of the Development Consent Order is lawfully transferred pursuant to powers in the Development Consent Order,

1 2 In this Deed, unless stated otherwise

1 2 1 reference to the masculine feminine and neuter genders shall include other genders,

- 1 2 2 reference to the singular include the plural and vice versa unless the contrary intention is expressed,
- 1 2 3 references to natural persons include firms, companies, corporations, and vice versa,
- 1 2 4 a reference to a clause, sub-clause, Schedule, recital or appendix is (unless the context otherwise requires) a reference to the relevant clause, sub-clause, Schedule, recital or appendix to this Deed,
- 1 2 5 words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of the restriction,
- 1 2 6 references in this Deed to any statute or statutory provision include references to
- (A) all Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Deed,
  - (B) any orders, regulations, instruments or other subordinate legislation made or issued under that statute or statutory provision, and
  - (C) in each case shall include any re-enactment thereof for the time being in force and any modifications or amendments thereof for the time being in force,
- 1 2 7 where in this Deed the Authority is required to give any approval, consent or agreement then such approval, consent or agreement by the Authority shall not be deemed to have been given unless given in writing,
- 1 2 8 if any provision of this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Deed shall not in any way be deemed thereby to be affected, impaired or called into question,
- 1 2 9 the recitals, table of contents and headings in this Deed are for convenience only and shall not affect its construction, interpretation or otherwise have any binding legal effect,
- 1 2 10 in the event of any conflict between the terms, conditions and provisions of this Deed and of any document appended hereto or referred to herein, the terms, conditions and provisions of this Deed shall prevail,
- 1 2 11 reference to “the parties” shall mean the parties to this Deed and reference to a “party” shall mean any one of the parties,
- 1 2 12 references to “notice” shall mean notice in writing,
- 1 2 13 references to “including” shall mean “including without limitation or prejudice to the generality of any description, defining terms or phrase preceding that word” and the word “include” and its derivatives shall be construed accordingly, and
- 1 2 14 the Interpretation Act 1978 shall apply to this Deed,

## 2 LEGAL EFFECT

2 1 This Deed is made pursuant to section 65A of the Environment Act 1995 and all other powers so enabling

## 3 CONDITIONALITY

3 1 The parties agree that the terms, conditions and provisions of this Deed shall have immediate operative effect when dated

4 **OBLIGATIONS IN RELATION TO EXECUTION OF THE DEVELOPMENT CONSENT OBLIGATION**

- 4 1 The Authority covenants with the Undertaker to lawfully execute the Development Consent Obligation and to return it to the Undertaker within ten (20) Working Days of a Request
- 4 2 The Authority confirms that the Undertaker has its irrevocable authority to complete the Development Consent Obligation following receipt of the Development Consent Obligation duly executed by the Authority
- 4 3 The Undertaker covenants to provide the Authority with the Development Consent Obligation or a certified copy thereof, within five (5) Working Days of completion of the Development Consent Obligation
- 4 4 Until such time as the Development Consent Obligation is completed, nothing in this clause shall prevent the Undertaker from serving additional Requests on the Authority PROVIDED THAT such further Requests shall only be made by the Undertaker in the case of an error in the form or execution of the Development Consent Obligation provided to the Authority with a previous Request

5 **RELEASE AND EXPIRY**

- 5 1 If the Development Consent Order expires without having been Commenced then this Deed shall forthwith determine and cease to have effect
- 5 2 Upon service by the Undertaker of confirmation to the Authority that the Development Consent Obligation has been completed, performance discharge or other fulfilment of the obligations of the Authority or the Undertaker under the terms of this Deed shall absolutely cease and determine save in respect of any antecedent breach

6 **RESOLUTION OF DISPUTES**

- 6 1 In the event of any Dispute arising between the parties then the parties will attempt to resolve that Dispute amicably including holding a meeting attended by at least 3 representatives from each party
- 6 2 If the parties are unable to resolve the Dispute amicably pursuant to clause 6 1, one party may by serving notice on all the other parties (the "Notice") refer the Dispute to an Expert for determination
- 6 3 The Notice must specify
- 6 3 1 the nature, basis and brief description of the Dispute,
- 6 3 2 the clause or paragraph of this Deed pursuant to which the Dispute has arisen, and
- 6 3 3 the proposed Expert
- 6 4 In the event that the parties are unable to agree whom should be appointed as the Expert within 10 Working Days after the date of the Notice then either party may request the President of the Law Society to nominate the Expert at their joint expense, and the parties shall request that such nomination shall be made within 10 Working Days of the request, and any failure for such nomination to be made within 10 Working Days shall entitle any party to withdraw from the process of appointing an Expert and to refer the Dispute to the courts of England and Wales instead
- 6 5 If the appointed Expert is or becomes unable or unwilling to act, any party may within 5 Working Days of the Expert being or becoming unable or unwilling to act, serve a notice on all the other parties proposing a replacement Expert and the parties will follow the process at Clause 6 4 to settle the appointment of the replacement Expert
- 6 6 The Expert shall act as an expert and not as an arbitrator and his decision will (in the absence of manifest error) be final and binding on the parties hereto and at whose cost shall be at his discretion or in the event that he makes no determination, such costs will be borne by the parties to the Dispute in equal shares

- 6 7 The Expert is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision
- 6 8 The Expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 30 Working Days from the date of his appointment to act
- 6 9 The Expert will be required to give notice to each of the said parties inviting each of them to submit to him within 10 Working Days written submissions and supporting material and will afford to each of the said parties an opportunity to make counter submissions within a further 10 Working Days in respect of any such submission and material
- 6 10 Nothing in this Deed shall fetter any party's right to bring an action in Court

7 **NOTICES**

- 7 1 Any notice, consent or approval or other communication required to be given under or in connection with this Deed to or upon the parties must be in writing and shall be addressed as provided for in clause 7 3
- 7 2 Any such notice must be delivered by hand (including by courier or process server) or by pre-paid recorded delivery post and shall conclusively be deemed to have been received
- 7 2 1 if delivered by hand, upon delivery at the relevant address, and
- 7 2 2 if sent by first class post, at 9 00 a m on the second Working Day after the date of posting,
- except that where any such notice or other communication is or would be deemed to be received after 5 30 p m , such notice shall be deemed to be received at 9 00 a m on the next Working Day
- 7 3 Subject to clause 7 4, the address, relevant addressee and reference for each party are
- 7 3 1 in the case of the Authority
- |                    |   |
|--------------------|---|
| Address            | South Down National Park Authority, Planning S106 Officer, South Downs Centre, North Street, Midhurst, West Sussex, GU29 9DH, with a copy also sent by e-mail to planning@southdowns.gov.uk |
| Relevant addressee | ██████████ Major Planning Projects and Performance Manager  |
| Reference          | AQUIND Interconnector S106  |
- 7 3 2 For the Undertaker
- |                    |   |
|--------------------|---|
| Address            | AQUIND Limited, 78 Pall Mall, London, SW1Y 5ES with a copy also sent by e-mail to ██████████@aquind.co.uk |
| Relevant addressee | ██████████ – Managing Director  |
| Reference          | AQUIND Interconnector S106  |
- 7 4 Any party may give notice of a change to its name, address, or relevant addressee for the purposes of this clause 8 provided that such notification shall only be effective on
- 7 4 1 the date specified in the notification as the date on which the change is to take place, or
- 7 4 2 if no date is specified or the date specified is less than five clear Working Days after the date on which the notice is received or deemed to be received, the fifth Working Day after the notice of any such change is given



8. **NO FETTER ON DISCRETION**

- 8.1 Save as provided for in Clause 4 nothing herein contained or implied shall prejudice of affect the discretionary powers, duties and obligations of the Authority under all statutes, by-laws, instruments, orders and regulations in the exercise of its statutory functions.
- 8.2 Nothing in this Deed shall be taken to operate so as to fetter or prejudice the statutory rights, powers, discretions or duties of the Authority or the Undertaker.

9. **GOOD FAITH, GOOD PRACTICE AND REASONABLENESS**

- 9.1 The parties agree with one another to act reasonably and in good faith in the fulfilment of their respective obligations in this Deed.
- 9.2 Unless expressly stated otherwise where under this Deed any approval, agreement, consent, certificate, confirmation or an expression of satisfaction or response is required to be given by or reached or taken by any party or any response is requested by any such approval, agreement, consent, certificate, confirmation or an expression of satisfaction or response, it will not be unreasonable or unreasonably withheld or delayed and the parties will act reasonably at all times.

10. **LEGAL FEES AND COSTS**

- 10.1 The Undertaker shall pay on the date of this Deed to the Authority its reasonable legal costs properly incurred in the negotiation and completion of this Deed up to the sum of £800.

11. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 11.1 No person other than the Undertaker or the Authority (which for the avoidance of doubt shall include their successors) has any right to enforce any term of this Deed under the Contract (Rights of Third Parties) Act 1999.

12. **JURISDICTION**

- 12.1 This Deed including its construction, validity, performance and enforcement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 12.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

13. **COUNTERPARTS**

- 13.1 This Deed may be executed in any number of counterparts, each of which is an original and all of which may together evidence the same agreement.

14. **DATE OF DELIVERY**

- 14.1 This Deed is delivered on the date of this Deed.

IN WITNESS whereof this Deed has been duly executed by the parties to this Deed on the date which appears at the head of this document.

EXECUTED as a DEED by SOUTH )  
DOWNS NATIONAL PARK )  
AUTHORITY by: - )

[Redacted signature block]

Authorised signatory



SIGNED as a DEED by )  
AQUIND LIMITED )  
acting by two directors or one director )  
and the company secretary: )

[Redacted signature block]

Director

Director/Secretary

[Redacted signature block]

APPENDIX 1  
CERTIFIED FORM OF DEVELOPMENT CONSENT OBLIGATION

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DATED \_\_\_\_\_ 2021

(1) AQUIND LIMITED

(2) SOUTH DOWNS NATIONAL PARK AUTHORITY

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**DEED OF DEVELOPMENT CONSENT  
OBLIGATIONS**  
pursuant to section 106 of  
the Town and Country Planning Act 1990  
relating to the AQUIND Interconnector

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Herbert Smith Freehills LLP

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THIS DEED is made on  
BETWEEN.

2021

- (1) **AQUIND LIMITED** (company registration number 06681477) whose registered office is at OGN House, Hadrian Way, Wallsend NE28 6HL (the "**Undertaker**"), and
- (2) **SOUTH DOWNS NATIONAL PARK AUTHORITY** of South Downs Centre, North Street, Midhurst, West Sussex, GU29 9DH (the "**Authority**")

WHEREAS:

- (A) On [XXX] the Secretary of State for Business, Energy and Industrial Strategy made the Development Consent Order
- (B) The terrestrial elements of the Project in the UK are to be located between Eastney, Portsmouth and the National Grid Substation at Lovedean, being part of the Project comprising a high voltage direct current electrical interconnector between France and the UK
- (C) The Authority is the local planning authority for the South Downs National Park which is in close proximity to the Converter Station Area and is deemed to be a local planning authority for the purposes of section 106 of the 1990 Act in accordance with Article 8(4)(b) of the Development Consent Order
- (D) The Undertaker is the undertaker for the purposes of the Development Consent Order. The Undertaker intends to construct, operate and maintain the Project in the UK as authorised by the Development Consent Order and is deemed to be a person interested in the Converter Station Area in accordance with Article 8(4)(a) of the Development Consent Order
- (E) The Parties to this Deed have agreed to enter into this Deed in order to secure the performance of the development consent obligations contained in it pursuant to the provisions of section 106 of the 1990 Act and all other enabling powers

IT IS AGREED as follows

1 **DEFINITIONS AND INTERPRETATION**

1.1 In this Deed (which includes the Recitals to it) the following words and expressions have the following meanings unless the context otherwise requires

"1990 Act" means the Town and Country Planning Act 1990,

"2008 Act" means the Planning Act 2008,

"Application" means the application for the DCO submitted to the Secretary of State for the Development and accepted by the Planning Inspectorate on 12 December 2019 with reference EN020022,

"Authority" means South Downs National Park Authority,

"Commencement" means the carrying out of a material operation as defined in section 155 of the 2008 Act comprised in the Development other than operations consisting of Onshore Site Preparation



	Works and the terms "Commence" and "Commenced" and cognate expressions shall be construed accordingly,
<b>"Commencement Date"</b>	means the date of Commencement,
<b>"Contributions"</b>	means the Woodland Improvement Contribution, the Public Rights of Way Contribution and the Section 106 Agreement Monitoring Fee,
<b>"Converter Station"</b>	means the converter station and associated electrical equipment to be constructed as part of the Development and which comprises Work No 2,
<b>"Converter Station Area"</b>	means the area where the Converter Station is to be located shown edged red on Converter Station Area Plan,
<b>"Converter Station Area Plan"</b>	means the plan located at Appendix 1 of this Deed,
<b>"Development"</b>	means those elements of the Project for which the DCO is granted located in the Converter Station Area,
<b>"Development Consent Order"</b>	means the AQUIND Interconnector Order 202[X] made by the Secretary of State for Business, Energy and Industrial Strategy on [XXX] and references to "DCO" shall be construed accordingly,
<b>"Dispute"</b>	means any dispute, issue, difference or claim as between the parties in respect of any matter contained in or arising from or relating to this Deed or the parties' obligations and rights pursuant to it (other than in respect of any matter of law),
<b>"Expert"</b>	means an independent person appointed in accordance with the provisions of clause 12 to determine a Dispute between the parties to this Deed,
<b>"Index"</b>	means the All in Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors or any successor or amending body,
<b>"Index Linked"</b>	means increased (if applicable) in accordance with Clause 14,
<b>"Onshore Site Preparation Works"</b>	means operations consisting of <ul style="list-style-type: none"> <li>a) pre-construction archaeological investigations,</li> <li>b) environmental surveys and monitoring,</li> <li>c) site clearance,</li> <li>d) removal of hedgerows, trees and shrubs (excluding any Highways Tree),</li> <li>e) investigations for the purpose of assessing ground conditions,</li> <li>f) remedial work in respect of any contamination or adverse ground conditions,</li> <li>g) receipt and erection of construction plant and equipment,</li> </ul>

	<ul style="list-style-type: none"> <li>h) the temporary display of site notices and advertisements,</li> <li>i) erection of temporary buildings, structures or enclosures, and</li> <li>j) Work No 2 (bb) (access junction and associated gated highway link),</li> </ul>
<b>"Project"</b>	means AQUIND Interconnector a new 2,000 MW subsea and underground High Voltage Direct Current ('HVDC') bi-directional electric power transmission link between the South Coast of England and Normandy in France,
<b>"Public Rights of Way Contribution"</b>	means the sum of £20,000 Index Linked payable by the Undertaker to be applied towards improvements to the public rights of way network within two kilometres of the Converter Station only,
<b>"Qualifying Interest"</b>	means such interest in the land sufficient to meet the requirements of Section 106(1) of the 1990 Act which shall include the Undertaker's status as undertaker for the purposes of the DCO in accordance with the provisions of article 8(4)(a) of the DCO whereby the undertaker is deemed to be a person interested in the DCO Converter Station Land for the purposes of Section 106(1) of the 1990 Act,
<b>"Section 106 Agreement Monitoring Fee"</b>	means the sum of £5,000 payable by the Undertaker to be applied towards monitoring this Deed only,
<b>"Successor"</b>	means any person deriving title from the Undertaker in respect of its Qualifying Interest and for the purposes of Section 106(3)(b) of the 1990 Act shall include any person to whom powers are transferred further to Article 7 of the DCO,
<b>"Woodland Improvement Contribution"</b>	means the sum of £250,000 00 (two hundred and fifty thousand pounds) Index linked payable by the Undertaker in accordance with paragraph 1 of Schedule 1 and which is to be applied towards Woodland Improvements only,
<b>"Woodland Improvements"</b>	means <ul style="list-style-type: none"> <li>a) the creation of new woodland planting,</li> <li>b) the enhancement of existing areas of woodland, including through new planting,</li> <li>c) measures to address the effects of Ash Dieback, and</li> <li>d) gapping up of hedgerows,</li> </ul> within five kilometres of the Converter Station,
<b>"Working Day"</b>	means any day apart from Saturday, Sunday and any statutory bank holiday on which clearing banks are open in England for the transaction of ordinary business, and
<b>"Undertaker"</b>	means AQUIND Limited and any Successors

1 2 In this Deed, unless stated otherwise

- 1 2 1 reference to the masculine feminine and neuter genders shall include other genders,
- 1 2 2 reference to the singular include the plural and vice versa unless the contrary intention is expressed,
- 1 2 3 references to natural persons include firms, companies, corporations, and vice versa,
- 1 2 4 references to the Authority include the successors to the Authority's statutory functions as the local planning authority,
- 1 2 5 references to the Undertaker shall include its Successors and its respective successors in respect of its Qualifying Interest (except where the contrary is expressly provided),
- 1 2 6 references to "Work Nos " or to a "Work No " are references to the works forming part of the Development listed in Schedule 1 to the DCO,
- 1 2 7 a reference to a clause, sub-clause, paragraph, sub-paragraph, Schedule, recital or appendix is (unless the context otherwise requires) a reference to the relevant clause, sub-clause, paragraph, sub-paragraph, Schedule, recital or appendix to this Deed,
- 1 2 8 words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of the restriction,
- 1 2 9 references in this Deed to any statute or statutory provision include references to
- (A) all Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Deed,
- (B) any orders, regulations, instruments or other subordinate legislation made or issued under that statute or statutory provision, and
- (C) in each case shall include any re-enactment thereof for the time being in force and any modifications or amendments thereof for the time being in force,
- 1 2 10 where in this Deed the Authority is required to give any approval, consent or agreement then such approval, consent or agreement by the Authority shall not be deemed to have been given unless given in writing,
- 1 2 11 if any provision of this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Deed shall not in any way be deemed thereby to be affected, impaired or called into question,
- 1 2 12 the recitals, table of contents and headings in this Deed are for convenience only and shall not affect its construction, interpretation or otherwise have any binding legal effect,
- 1 2 13 in the event of any conflict between the terms, conditions and provisions of this Deed and of any document appended hereto or referred to herein, the terms, conditions and provisions of this Deed shall prevail,
- 1 2 14 reference to "the parties" shall mean the parties to this Deed and reference to a "party" shall mean any one of the parties,
- 1 2 15 references to "notice" shall mean notice in writing,
- 1 2 16 references to "including" shall mean "including without limitation or prejudice to the generality of any description, defining terms or phrase preceding that word" and the word "include" and its derivatives shall be construed accordingly,
- 1 2 17 the Interpretation Act 1978 shall apply to this Deed, and

- 1 2 18 where any payment in this Deed is expressed to be payable before an event or activity that event or activity shall not commence until the relevant payment has been made

## 2 LEGAL EFFECT

- 2 1 This Deed contains planning obligations that are development consent obligations for the purposes of section 106 of the 1990 Act and is also entered into pursuant to section 65A of the Environment Act 1995 and all other powers so enabling
- 2 2 The planning obligations contained within this Deed are enforceable by the Authority as local planning authority in accordance with section 106(3) of the 1990 Act against
- 2 2 1 the Undertaker in respect of its Qualifying Interest in the Converter Station Area as bound under clause 3, and
- 2 2 2 the Undertaker's Successors to its Qualifying Interest in the Converter Station Area as bound under clause 3

## 3 LAND BOUND

- 3 1 Subject to clause 4 (Conditionality) and clause 7 (Release and Expiry) the planning obligations in this Deed bind the Converter Station Area
- 3 2 The parties agree that the planning obligations contained in this Deed will not be enforceable against any other owner of any land interest in the Converter Station Area who is not a party to this Deed nor against any successors in title to or any person claiming through or under the other such owner's interest in the Converter Station Area (save for the Undertaker) unless that person itself undertakes any part of the Development
- 3 3 The parties agree that the planning obligations contained in this Deed shall not be enforceable against any mortgagee or chargee of the whole or any part of the Converter Station Area from time to time or any person deriving title from such mortgagee or chargee unless and until any such party takes possession of the Converter Station Area (or any part thereof to which such obligation relates) in which case it will be bound by the obligations as a person deriving title from the Undertaker PROVIDED THAT neither any mortgagee or chargee or person deriving title through such mortgagee or chargee will be liable for any breach of the obligations contained in this Deed unless committed at a time when that person is in possession of the Converter Station Area (or any part thereof to which such obligation relates)

## 4 CONDITIONALITY

- 4 1 Subject to clauses 4 2 and 4 3, the parties agree that, save for the covenant in clause 18 1, none of the terms, conditions or provisions of this Deed shall have operative effect unless and until the Development has been Commenced
- 4 2 Where the Development Consent Order becomes the subject of any judicial review proceedings
- 4 2 1 until such time as such proceedings including any appeal have been finally determined, the terms and provisions of this Deed will remain without operative effect unless the Development has been Commenced,
- 4 2 2 if following the final determination of such proceedings the Development Consent Order is quashed and, in the event that the court orders the Application to be remitted to the Secretary of State, the Application is subsequently refused, this Deed will cease to have any further effect and any money paid to the Authority pursuant to Schedule 1 and not spent or committed by the Authority shall be repaid in full within 20 Working Days of the final determination of such proceedings, and
- 4 2 3 if following the final determination of such proceedings the Development Consent Order is capable of being Commenced, then this Deed will take effect in accordance with its terms



- 4 3 Wherever in this Deed reference is made to the final determination of judicial review proceedings (or cognate expressions are used), the following provisions will apply
- 4 3 1 proceedings by way of judicial review are finally determined
- 4 3 2 when permission to bring a claim for judicial review has been refused and no further application may be made,
- 4 3 3 when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused, or
- 4 3 4 when any appeal is finally determined and no further appeal may be made

5 **OBLIGATIONS OF THE UNDERTAKER**

- 5 1 The Undertaker covenants with the Authority to observe and perform or cause to be observed and performed the obligations on the part of the Undertaker contained in Schedule 1 at the times and in the manner provided therein
- 5 2 The Undertaker covenants with the Authority to serve written notice to the Authority at least twenty Working Days in advance of the proposed Commencement Date
- 5 3 Where the proposed Commencement Date provided in clause 5 2 does not take place, the Undertaker shall provide written notice to the Authority of the revised date as soon as is reasonably practicable and in any event at least 10 Working Days in advance of the revised date

6 **OBLIGATIONS OF THE AUTHORITY**

- 6 1 The Authority covenants with the Undertaker to observe and perform or cause to be observed and performed the obligations on the part of the Authority contained in Schedule 2 at the times and in the manner provided therein

7 **RELEASE AND EXPIRY**

- 7 1 The Undertaker shall not be liable for a breach of any of its obligations under this Deed after it has parted with all of its interests in the Converter Station Area (including Qualifying Interests) or the part in respect of which the breach arises (as the case may be) save in either case for antecedent breaches
- 7 2 If the Development Consent Order expires without having been Commenced or is revoked prior to the Commencement Date then this Deed shall forthwith determine and cease to have effect
- 7 3 Nothing in this Deed shall prohibit or limit the right to develop any part of the Converter Station Area in accordance with a planning permission or development consent order or other statutory authority (other than the DCO) granted (whether or not on appeal) after the date of this Deed
- 7 4 No Successor to the Undertaker shall be liable for any breach of any obligation in this Deed committed at a time when that Successor does not hold a Qualifying Interest in the Converter Station Area
- 7 5 Upon the performance discharge or other fulfilment of the covenants and obligations (or any of them) of the Undertaker, any Successor, or the Authority under the terms of this Deed such covenant, obligation or obligations shall absolutely cease and determine save in respect of any antecedent breach

8 **LOCAL LAND CHARGES**

- 8 1 This Deed is a local land charge and may be registered as such by the Authority

9 **WAIVER**

- 9 1 No waiver (whether express or implied) by the Authority of any breach or default by the Undertaker in performing or observing any of the obligations, covenants or conditions on

the Undertaker's part contained in this Deed shall constitute a continuing waiver and no such waiver shall prevent the Authority from enforcing any of the said obligations, covenants and conditions or from acting upon any subsequent breach or default in respect thereof by the Undertaker

10 **REMEDIES**

- 10 1 Where the Authority becomes aware of a breach or non-compliance with a provision of this Deed by the Undertaker, the Authority may serve notice of such breach upon the Undertaker and the notice of breach shall state the nature of the breach, the steps reasonably required to remedy the breach and a reasonable timescale for remedying the breach
- 10 2 The Undertaker shall within 10 Working Days of receiving a notice served pursuant to clause 10 1 give written notification to the Authority of its response to the notice including any claim that it will remedy the breach within the stated timescale, that the timescale is too short or that it rejects the notice for the reason that no breach has occurred
- 10 3 The Authority and the Undertaker shall hold discussions about the notice of the breach where either party so requests
- 10 4 In the event of a dispute arising regarding any notice of breach served pursuant to clause 10 1, the matter shall be determined under clause 12

11 **CERTIFICATES OF COMPLIANCE**

- 11 1 The Authority will without delay upon request by the Undertaker certify compliance or partial compliance (as and if appropriate) with the provisions of this Deed

12 **RESOLUTION OF DISPUTES**

- 12 1 In the event of any Dispute arising between the parties then the parties will attempt to resolve that Dispute amicably including holding a meeting attended by at least 2 representatives from each party
- 12 2 If the parties are unable to resolve the Dispute amicably pursuant to clause 12 1, one party may by serving notice on all the other parties (the "Notice") refer the Dispute to an Expert for determination
- 12 3 The Notice must specify
- 12 3 1 the nature, basis and brief description of the Dispute,
- 12 3 2 the clause or paragraph of this Deed pursuant to which the Dispute has arisen, and
- 12 3 3 the proposed Expert
- 12 4 In the event that the parties are unable to agree whom should be appointed as the Expert within 10 Working Days after the date of the Notice then either party may request the President of the Law Society to nominate the Expert at their joint expense, and the parties shall request that such nomination shall be made within 10 Working Days of the request, and any failure for such nomination to be made within 10 Working Days shall entitle any party to withdraw from the process of appointing an Expert and to refer the Dispute to the courts of England and Wales instead
- 12 5 If the appointed Expert is or becomes unable or unwilling to act, any party may within 5 Working Days of the Expert being or becoming unable or unwilling to act, serve a notice on all the other parties proposing a replacement Expert and the parties will follow the process at Clause 12 4 to settle the appointment of the replacement Expert
- 12 6 The Expert shall act as an expert and not as an arbitrator and his decision will (in the absence of manifest error) be final and binding on the parties hereto and at whose cost shall be at his discretion or in the event that he makes no determination, such costs will be borne by the parties to the Dispute in equal shares



- 12.7 The Expert is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision.
- 12.8 The Expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 30 Working Days from the date of his appointment to act.
- 12.9 The Expert will be required to give notice to each of the said parties inviting each of them to submit to him within 10 Working Days written submissions and supporting material and will afford to each of the said parties an opportunity to make counter submissions within a further 10 Working Days in respect of any such submission and material.
- 12.10 Nothing in this Deed shall fetter any party's right to bring an action in Court.

### 13. NOTICES

- 13.1 Any notice, consent or approval or other communication required to be given under or in connection with this Deed to or upon the parties must be in writing and shall be addressed as provided for in clause 13.3.
- 13.2 Any such notice must be delivered by hand (including by courier or process server) or by pre-paid recorded delivery post and shall conclusively be deemed to have been received:
- 13.2.1 if delivered by hand, upon delivery at the relevant address; and
- 13.2.2 if sent by first class post, at 9:00 a.m. on the second Working Day after the date of posting,

except that where any such notice or other communication is or would be deemed to be received after 5:30 p.m., such notice shall be deemed to be received at 9:00 a.m. on the next Working Day.

- 13.3 Subject to clause 13.4, the address, relevant addressee and reference for each party are:

- 13.3.1 in the case of the Authority:

Address: South Downs National Park Authority, S106 Officer, South Downs Centre, North Street, Midhurst, West Sussex, GU29 9DH with a copy also sent by e-mail to [planning@southdowns.gov.uk](mailto:planning@southdowns.gov.uk).

Relevant addressee: [REDACTED] Major Planning Projects and Performance Manager

Reference: AQUIND Interconnector S106

- 13.3.2 For the Undertaker:

Address: AQUIND Limited, 78 Pall Mall, London, SW1Y 5ES with a copy also sent by e-mail to [REDACTED]@aquind.co.uk.

Relevant addressee: [REDACTED] Managing Director

Reference: AQUIND Interconnector S106

- 13.4 Any party may give notice of a change to its name, address, or relevant addressee for the purposes of this clause 13 provided that such notification shall only be effective on:

- 13.4.1 the date specified in the notification as the date on which the change is to take place; or
- 13.4.2 if no date is specified or the date specified is less than five clear Working Days after the date on which the notice is received or deemed to be received, the fifth Working Day after the notice of any such change is given.

### 14. INDEXATION

- 14.1 Any sum which is referred to in this Deed as Index Linked and required to be paid by the Undertaker to the Authority shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable in accordance with the following formula:

$$A \times (B/C) = D$$

Where:

A is the amount of money to be paid pursuant to this Deed

B is the figure shown in the relevant index for the period immediately prior to the date on which the sum concerned is due to be paid in accordance with the provisions in this Deed;

C is the figure shown in the relevant index for the period immediately prior to the date the Development Consent Order is made unless expressly stated otherwise; and

D is the amount of money required to be paid

**PROVIDED THAT** if the relevant index is no longer maintained then the above formula will be applied mutatis mutandis (so far as it relates to periods after it ceases to be maintained) by reference to such other publication or index as may be agreed from time to time between the Parties or determined by an Expert pursuant to Clause 12.

### 15. NO FETTER ON DISCRETION

- 15.1 Nothing in this Deed shall be taken to operate so as to fetter or prejudice the statutory rights, powers, discretions or duties of the Authority or the Undertaker.

### 16. GOOD FAITH, GOOD PRACTICE AND REASONABLENESS

- 16.1 The parties agree with one another to act reasonably and in good faith in the fulfilment of their respective obligations in this Deed.
- 16.2 Unless expressly stated otherwise where under this Deed any approval, agreement, consent, certificate, confirmation or an expression of satisfaction or response is required to be given by or reached or taken by any party or any response is requested by any such approval, agreement, consent, certificate, confirmation or an expression of satisfaction or response, it will not be unreasonable or unreasonably withheld or delayed and the parties will act reasonably at all times.

### 17. COMMUNITY INFRASTRUCTURE LEVY

- 17.1 The Parties agree that the planning obligations contained in the Schedules to this Deed are necessary to make the Development acceptable in planning terms, are directly related to the Development and are fairly and reasonably related in scale and kind to the Development and thus satisfy the three tests set out in regulation 122(2)(a) – (c) of the Community Infrastructure Regulations 2010.

### 18. LEGAL FEES

- 18.1 The Undertaker shall pay on the date of this Deed to the Authority its reasonable legal costs properly incurred in the completion of this Deed.

### 19. INTEREST ON LATE PAYMENTS

- 19.1 Without prejudice to any other right remedy or power herein contained or otherwise available to the Authority if any payment of any sum referred to herein shall have become due but shall remain unpaid for a period exceeding 5 Working Days the Undertaker shall pay on demand to the Authority interest thereon at the interest rate of four percent per



annum above the base lending rate of National Westminster Bank plc from the date when the same became due until payment thereof

20 **VAT**

- 20 1 All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable in respect thereof
- 20 2 The Undertaker acknowledges and agrees that if at any time VAT is required to be paid in respect of any of the payments made under this Deed then to the extent that VAT had not been previously charged in respect of that payment the Authority shall have the right to issue a VAT invoice to the Undertaker in respect of any vatable supplies properly incurred under this Deed and the VAT shall be paid by the Undertaker accordingly following the receipt of a valid VAT invoice

21 **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 21 1 Without prejudice to clauses 1 2 4 and 1 2 5, a person who is not a party to this Deed does not have any right to enforce any term of this Deed under the Contract (Rights of Third Parties) Act 1999

22 **JURISDICTION**

- 22 1 This Deed including its construction, validity, performance and enforcement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law
- 22 2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims)

23 **COUNTERPARTS**

- 23 1 This Deed may be executed in any number of counterparts, each of which is an original and all of which may together evidence the same agreement

24 **DATE OF DELIVERY**

- 24 1 This Deed is delivered on the date of this Deed

**SCHEDULE 1  
UNDERTAKER OBLIGATIONS**

1 **WOODLAND IMPROVEMENT CONTRIBUTION**

- 1 1 The Undertaker shall pay to the Authority the Woodland Improvement Contribution in the following instalments
- 1 1 1 £100,000 (one hundred thousand pounds) prior to the Commencement of the Development,
- 1 1 2 £100,000 (one hundred thousand pounds) on the first anniversary of the payment made in accordance with paragraph 1 1 1 of this Schedule 1, and
- 1 1 3 £50,000 (fifty thousand pounds) on the second anniversary of the payment made in accordance with paragraph 1 1 1 of this Schedule 1

2 **PUBLIC RIGHTS OF WAY CONTRIBUTION**

- 2 1 The Undertaker shall pay to the Authority the Public Rights of Way Contribution prior to the Commencement of the Development

3 **SECTION 106 AGREEMENT MONITORING FEE**

- 3 1 The Undertaker shall pay to the Authority the Section 106 Agreement Monitoring Fee prior to the Commencement of the Development

**SCHEDULE 2  
AUTHORITY'S OBLIGATIONS**

**1 USE OF CONTRIBUTIONS**

- 1 1 The Authority shall use the Contributions paid to the Authority for the purposes for which they are paid only
- 1 2 The Authority will provide to the Undertaker an annual statement of how the Contributions paid by the Undertaker to the Authority prior to the date of each statement have been applied and the amount of the Contributions not yet applied and still held by the Authority together with the amount of any accrued interest
- 1 3 In the event the Authority has not spent or entered into a commitment to spend any part of the Contributions received by the Authority pursuant to this Deed within 10 years of the date of the payment made pursuant to paragraph 1 1 1 of Schedule 1 to this Deed the Authority shall repay to the Undertaker (here meaning the person who paid the Contributions or relevant part thereof) within 30 Working Days of the 10<sup>th</sup> anniversary of the payment made pursuant to paragraph 1 1 1 of Schedule 1 to this Deed or the relevant part thereof which remains unspent together with accrued interest (if any)

**IN WITNESS** whereof this Deed has been duly executed by the parties to this Deed on the date which appears at the head of this document

**SIGNED as a DEED by SOUTH )  
DOWNS NATIONAL PARK )  
AUTHORITY by - )**

Authorised Signatory

**SIGNED as a DEED by )  
AQUIND LIMITED )  
acting by two directors or one director )  
and the company secretary )**

Director

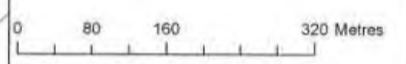
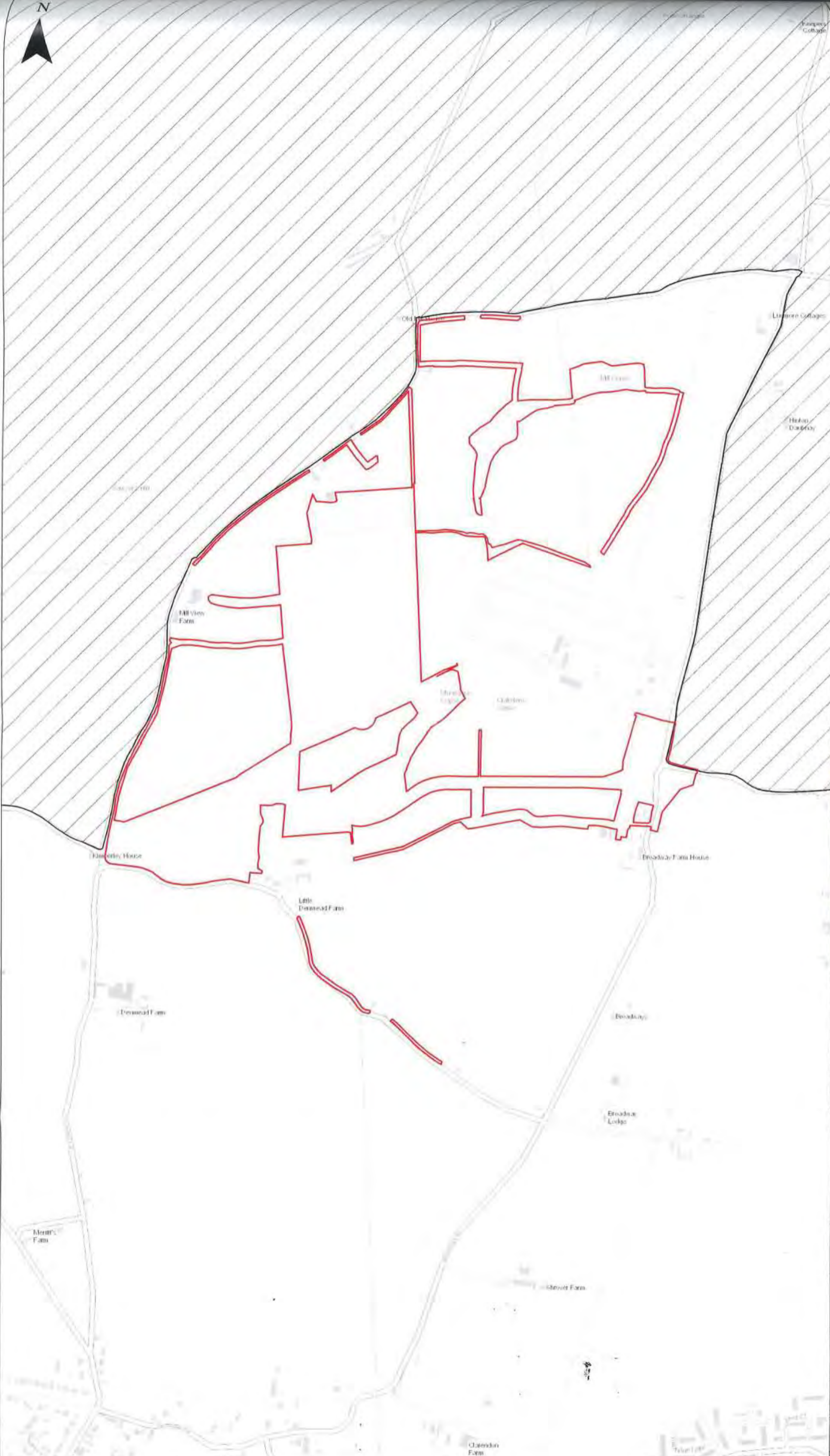
Director/Secretary



APPENDIX 1  
CONVERTER STATION AREA PLAN



Administrative Infrastructure  
**Converter Station Area Plan**  
 South Downs National Park Administrative Area  
 Converter Station Area



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Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 - Regulation 5(2)(i)

REV	DATE	BY	DESCRIPTION	CHK	APP
01	18/02/2021	AH	First Issue	DL	VB

FOR APPROVAL



AQUIND Interconnector

Converter Station Area Plan  
 Sheet 1 of 1

SCALE AS SHOWN	DRAWN	CHECKED	APPROVED
1:4,000	DL	DL	VB
PROJECT NO	DESIGNED BY	DRAWN BY	DATE
EN020022	AH	AH	18/02/2021
DRAWING NO	SHEET NO		SHEET TOTAL
EN020022-EM-7.5.26.1-Sheet1			01







SIZEWELL C PROJECT -  
RESPONSES TO EXAMINING AUTHORITY'S  
WRITTEN QUESTIONS ISSUED ON 21<sup>ST</sup> APRIL 2021

**NOT PROTECTIVELY MARKED**

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## APPENDIX 26E AQUIND INTERCONNECTOR - LEGAL AGREEMENT WITH HAMPSHIRE COUNTY COUNCIL

**NOT PROTECTIVELY MARKED**





**AQUIND Limited**

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## **AQUIND INTERCONNECTOR**

Signed Legal Agreement with Hampshire  
County Council in respect of the Development  
Consent Obligation

The Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and Procedure)

Regulations 2009 Regulation 5(2)(c)

Document Ref: 7.5.25

PINS Ref.: EN020022

**AQUIND Limited**

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# **AQUIND INTERCONNECTOR**

Signed Legal Agreement with Hampshire  
County Council in respect of the Development  
Consent Obligation

**PINS REF.: EN020022**

**DOCUMENT: 7.5.25**

**DATE: 05 MARCH 2021**

WSP

WSP House

70 Chancery Lane

London

WC2A 1AF

+44 20 7314 5000

[www.wsp.com](http://www.wsp.com)



## DOCUMENT

<b>Document</b>	<b>7.5.25 Signed Legal Agreement with Hampshire County Council in respect of the Development Consent Obligation</b>
<b>Revision</b>	001
<b>Document Owner</b>	WSP
<b>Prepared By</b>	HSF
<b>Date</b>	05 March 2021
<b>Approved By</b>	HSF
<b>Date</b>	05 March 2021

**DATED** 3 MARCH **2021**

(1) AQUIND LIMITED

(2) HAMPSHIRE COUNTY COUNCIL

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**LEGAL AGREEMENT**

made pursuant to section 111  
Local Government Act 1972  
relating to the AQUIND Interconnector

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Herbert Smith Freehills LLP



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THIS DEED made on  
BETWEEN:

3 MARCH

2021

- (1) **AQUIND LIMITED** (company registration number 06681477) whose registered office is at OGN House, Hadrian Way, Wallsend NE28 6HL (the "**Undertaker**"); and
- (2) **HAMPSHIRE COUNTY COUNCIL** of Hampshire County Council, the Castle, Winchester, SO23 8UJ (the "**County Council**")

**WHEREAS:**

- (A) The Undertaker has made the Application.
- (B) The terrestrial elements of the Project in the UK are to be located between Eastney, Portsmouth and the National Grid Substation at Lovedean, being part of the Project comprising a high voltage direct current electrical interconnector between France and the UK.
- (C) The County Council is a local highway authority and lead local flood authority for the area within which the DCO Land is situated. The County Council is also a local planning authority with the capacity to enter into planning obligations in accordance with section 106 of the 1990 Act.
- (D) The Undertaker will be the undertaker for the purposes of the Development Consent Order. The Undertaker intends to construct, operate and maintain the Development as authorised by the Development Consent Order.
- (E) If the Development Consent Order is granted in the final form proposed by the Undertaker, the Undertaker will be deemed to be a person interested in the DCO Land in accordance with Article 8(4)(a) of the Development Consent Order, and by virtue of Article 50 will not be authorised to commence the Development until a development consent obligation with the County Council has been completed in the form certified by the Secretary of State pursuant to the Development Consent Order.
- (F) The County Council and the Undertaker have agreed to enter into this Deed in order to provide mutual assurance that they will execute and authorise completion of a development consent obligation in the certified form at the Undertaker's request following the granting of the Development Consent Order.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Deed (which includes the Recitals to it) the following words and expressions have the following meanings unless the context otherwise requires:

"1990 Act"	means the Town and Country Planning Act 1990;
"2008 Act"	means the Planning Act 2008;
"Application"	means the application for the DCO submitted to the Secretary of State for the Development and accepted by the Planning Inspectorate on 12 December 2019 with reference EN020022;



<b>“Certified Form”</b>	means the form set out in Appendix 1 to this Deed;
<b>“Commencement”</b>	means the carrying out of a material operation as defined in section 155 of the 2008 Act comprised in the Development and the words "Commence" and "Commenced" and cognate expressions shall be construed accordingly;
<b>“County Council”</b>	means Hampshire County Council including successors to its statutory functions as the lead flood authority, local highway authority and local planning authority;
<b>“DCO Land”</b>	means so much of the land within the Order limits of the Development Consent Order as is within the administrative boundary of the County Council;
<b>“Development”</b>	means those elements of the Project located onshore in the UK for which the DCO is granted;
<b>“Development Consent Obligation”</b>	means an agreement pursuant to section 106 of the 1990 Act between the Undertaker and the County Council in the Certified Form, subject only to such minor changes to references etc. as are necessary to reflect the Development Consent Order as granted;
<b>“Development Consent Order”</b>	means the development consent order to be made pursuant to the Application and references to “DCO” shall be construed accordingly;
<b>“Dispute”</b>	means any dispute, issue, difference or claim as between the parties in respect of any matter contained in or arising from or relating to this Deed or the parties' obligations and rights pursuant to it (other than in respect of any matter of law);
<b>“Expert”</b>	means an independent person appointed in accordance with the provisions of clause 7 to determine a Dispute between the parties to this Deed;
<b>“Project”</b>	means AQUIND Interconnector a new 2,000 MW subsea and underground High Voltage Direct Current ('HVDC') bi-directional electric power transmission link between the South Coast of England and Normandy in France;
<b>“Request”</b>	means a written request from the Undertaker to the County Council to execute the Development Consent Obligation;
<b>“Working Day”</b>	means any day apart from Saturday, Sunday and any statutory bank holiday on which clearing banks are open in England for the transaction of ordinary business; and
<b>“Undertaker”</b>	means AQUIND Limited or any person to whom the benefit of the Development Consent Order is lawfully transferred pursuant to powers in the Development Consent Order;

1.2 In this Deed, unless stated otherwise:

- 1.2.1 reference to the masculine feminine and neuter genders shall include other genders;

- 1.2.2 reference to the singular include the plural and vice versa unless the contrary intention is expressed;
- 1.2.3 references to natural persons include firms, companies, corporations, and vice versa;
- 1.2.4 a reference to a clause, sub-clause, Schedule, recital or appendix is (unless the context otherwise requires) a reference to the relevant clause, sub-clause, Schedule, recital or appendix to this Deed;
- 1.2.5 words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of the restriction;
- 1.2.6 references in this Deed to any statute or statutory provision include references to:
  - (A) all Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Deed;
  - (B) any orders, regulations, instruments or other subordinate legislation made or issued under that statute or statutory provision; and
  - (C) in each case shall include any re-enactment thereof for the time being in force and any modifications or amendments thereof for the time being in force;
- 1.2.7 where in this Deed the County Council is required to give any approval, consent or agreement then such approval, consent or agreement by the County Council shall not be deemed to have been given unless given in writing;
- 1.2.8 if any provision of this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Deed shall not in any way be deemed thereby to be affected, impaired or called into question;
- 1.2.9 the recitals, table of contents and headings in this Deed are for convenience only and shall not affect its construction, interpretation or otherwise have any binding legal effect;
- 1.2.10 in the event of any conflict between the terms, conditions and provisions of this Deed and of any document appended hereto or referred to herein, the terms, conditions and provisions of this Deed shall prevail;
- 1.2.11 reference to "the parties" shall mean the parties to this Deed and reference to a "party" shall mean any one of the parties;
- 1.2.12 references to "notice" shall mean notice in writing;
- 1.2.13 references to "including" shall mean "including without limitation or prejudice to the generality of any description, defining terms or phrase preceding that word" and the word "include" and its derivatives shall be construed accordingly; and
- 1.2.14 the Interpretation Act 1978 shall apply to this Deed;

## 2. **LEGAL EFFECT**

- 2.1 This Deed is made pursuant to section 111 of the Local Government Act 1972 and all other powers so enabling.

## 3. **CONDITIONALITY**

- 3.1 The parties agree that the terms, conditions and provisions of this Deed shall have immediate operative effect when dated.



**4. OBLIGATIONS IN RELATION TO EXECUTION OF THE DEVELOPMENT CONSENT OBLIGATION**

- 4.1 The Undertaker covenants with the County Council to lawfully execute in duplicate the Development Consent Obligation and to issue the Development Consent Obligation duly executed by the Undertaker to the County Council together with a Request within not more than ten (10) Working Days of the date of the Development Consent Order being made by the Secretary of State.
- 4.2 The County Council covenants with the Undertaker to lawfully execute and complete the Development Consent Obligation within ten (10) Working Days of receipt of the Request.
- 4.3 The Undertaker confirms that the County Council has its irrevocable authority to complete the Development Consent Obligation following receipt of the Development Consent Obligation duly executed by the Undertaker.
- 4.4 The County Council covenants to provide the Undertaker with a completed part of the Development Consent Obligation within five (5) Working Days of completion of the Development Consent Obligation.
- 4.5 The Undertaker covenants with the County Council not to Commence the Development unless and until the Development Consent Obligation has been completed.

**5. RELEASE AND EXPIRY**

- 5.1 Upon service by the County Council of confirmation to the Undertaker that the Development Consent Obligation has been completed, performance discharge or other fulfilment of the obligations of the County Council or the Undertaker under the terms of this Deed shall absolutely cease and determine save in respect of any antecedent breach.

**6. RESOLUTION OF DISPUTES**

- 6.1 In the event of any Dispute arising between the parties then the parties will attempt to resolve that Dispute amicably including holding a meeting attended by at least 3 representatives from each party.
- 6.2 If the parties are unable to resolve the Dispute amicably pursuant to clause 6.1, one party may by serving notice on all the other parties (the "Notice") refer the Dispute to an Expert for determination.
- 6.3 The Notice must specify:
- 6.3.1 the nature, basis and brief description of the Dispute;
  - 6.3.2 the clause or paragraph of this Deed pursuant to which the Dispute has arisen; and
  - 6.3.3 the proposed Expert.
- 6.4 In the event that the parties are unable to agree whom should be appointed as the Expert within 10 Working Days after the date of the Notice then either party may request the President of the Law Society to nominate the Expert at their joint expense, and the parties shall request that such nomination shall be made within 10 Working Days of the request, and any failure for such nomination to be made within 10 Working Days shall entitle any party to withdraw from the process of appointing an Expert and to refer the Dispute to the courts of England and Wales instead.
- 6.5 If the appointed Expert is or becomes unable or unwilling to act, any party may within 5 Working Days of the Expert being or becoming unable or unwilling to act, serve a notice on all the other parties proposing a replacement Expert and the parties will follow the process at Clause 7.4 to settle the appointment of the replacement Expert.
- 6.6 The Expert shall act as an expert and not as an arbitrator and his decision will (in the absence of manifest error) be final and binding on the parties hereto and at whose cost shall be at his discretion or in the event that he makes no determination, such costs will be borne by the parties to the Dispute in equal shares.

- 6.7 The Expert is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision.
- 6.8 The Expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 30 Working Days from the date of his appointment to act.
- 6.9 The Expert will be required to give notice to each of the said parties inviting each of them to submit to him within 10 Working Days written submissions and supporting material and will afford to each of the said parties an opportunity to make counter submissions within a further 10 Working Days in respect of any such submission and material.
- 6.10 Nothing in this Deed shall fetter any party's right to bring an action in Court.

**7. NOTICES**

- 7.1 Any notice, consent or approval or other communication required to be given under or in connection with this Deed to or upon the parties must be in writing and shall be addressed as provided for in clause 7.3.
- 7.2 Any such notice must be delivered by hand (including by courier or process server) or by pre-paid recorded delivery post and shall conclusively be deemed to have been received:
  - 7.2.1 if delivered by hand, upon delivery at the relevant address; and
  - 7.2.2 if sent by first class post, at 9:00 a.m. on the second Working Day after the date of posting,

except that where any such notice or other communication is or would be deemed to be received after 5:30 p.m., such notice shall be deemed to be received at 9:00 a.m. on the next Working Day.

- 7.3 Subject to clause 8.4, the address, relevant addressee and reference for each party are:
  - 7.3.1 in the case of the County Council:
 

Address:	Hampshire County Council, Law and Governance Department, The Castle, Winchester, SO23 8UJ with a copy also sent by e-mail to HLS@hants.gov.uk.
Relevant addressee:	██████████ - Head of Legal Services
Reference:	Aquind Interconnector s106/135915

- 7.3.2 For the Undertaker:
 

Address:	AQUIND Limited, 78 Pall Mall, London, SW1Y 5ES with a copy also sent by e-mail to ██████████@aquind.co.uk.
Relevant addressee:	██████████ - Managing Director
Reference:	AQUIND Interconnector S106

- 7.4 Any party may give notice of a change to its name, address, or relevant addressee for the purposes of this clause provided that such notification shall only be effective on:
  - 7.4.1 the date specified in the notification as the date on which the change is to take place; or
  - 7.4.2 if no date is specified or the date specified is less than five clear Working Days after the date on which the notice is received or deemed to be received, the fifth Working Day after the notice of any such change is given.



**8. NO FETTER ON DISCRETION**

8.1 Save as provided for in Clause 4 nothing herein contained or implied shall prejudice or affect the discretionary powers, duties and obligations of the County Council under all statutes, by-laws, instruments, orders and regulations in the exercise of its statutory functions.

8.2 Nothing in this Deed shall be taken to operate so as to fetter or prejudice the statutory rights, powers, discretions or duties of the County Council or the Undertaker.

**9. GOOD FAITH, GOOD PRACTICE AND REASONABLENESS**

9.1 The parties agree with one another to act reasonably and in good faith in the fulfilment of their respective obligations in this Deed.

9.2 Unless expressly stated otherwise where under this Deed any approval, agreement, consent, certificate, confirmation or an expression of satisfaction or response is required to be given by or reached or taken by any party or any response is requested by any such approval, agreement, consent, certificate, confirmation or an expression of satisfaction or response, it will not be unreasonable or unreasonably withheld or delayed and the parties will act reasonably at all times.

**10. LEGAL FEES AND COSTS**

10.1 The Undertaker shall pay on the date of this Deed to the County Council its reasonable legal costs up to the amount of £20,000 and development control costs up to the amount of £5,000 properly incurred in the negotiation and completion of this Deed.

**11. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

11.1 No person other than the Undertaker or the County Council (which for the avoidance of doubt shall include their successors) has any right to enforce any term of this Deed under the Contract (Rights of Third Parties) Act 1999.

**12. JURISDICTION**

12.1 This Deed including its construction, validity, performance and enforcement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

12.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

**13. COUNTERPARTS**

13.1 This Deed may be executed in any number of counterparts, each of which is an original and all of which may together evidence the same agreement.

**14. DATE OF DELIVERY**

14.1 This Deed is delivered on the date of this Deed.

IN WITNESS whereof this Deed has been duly executed by the parties to this Deed on the date which appears at the head of this document.

EXECUTED as a DEED by )  
affixing the common seal of )  
HAMPSHIRE COUNTY )  
COUNCIL in the presence of: - )

[Redacted]

Authorised signatory

Name

[Redacted]

Position

DEPUTY HEAD OF LOCAL



37/6396

SIGNED as a DEED by )  
AQUIND LIMITED )  
acting by two directors or one director )  
and the company secretary: )

Director

[Redacted]

Director/~~Secretary~~

[Redacted]



**APPENDIX 1**  
**CERTIFIED FORM OF DEVELOPMENT CONSENT OBLIGATION**

**DATED** \_\_\_\_\_ **202[X]**

**(1) AQUIND LIMITED**

**(2) HAMPSHIRE COUNTY COUNCIL**

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**DEED OF DEVELOPMENT CONSENT  
OBLIGATIONS**  
pursuant to section 106 of  
the Town and Country Planning Act 1990  
relating to the AQUIND Interconnector

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Herbert Smith Freehills LLP



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THIS DEED made on

202[X]

**BETWEEN:**

- (1) **AQUIND LIMITED** (company registration number 06681477) whose registered office is at OGN House, Hadrian Way, Wallsend NE28 6HL (the "**Undertaker**"); and
- (2) **HAMPSHIRE COUNTY COUNCIL** of Hampshire County Council, The Castle, Winchester, SO23 8UJ (the "**County Council**")

**WHEREAS:**

- (A) On [XXX] the Secretary of State for Business, Energy and Industrial Strategy made the Development Consent Order.
- (B) The terrestrial elements of the Project in the UK are to be located between Eastney, Portsmouth and the National Grid Substation at Lovedean, being part of the Project comprising a high voltage direct current electrical interconnector between France and the UK.
- (C) The County Council is a local highway authority and lead local flood authority for the area within which the DCO Land is situated. The County Council is also a local planning authority with the capacity to enter into planning obligations in accordance with section 106 of the 1990 Act.
- (D) The Undertaker is the undertaker for the purposes of the Development Consent Order. The Undertaker intends to construct, operate and maintain the Development as authorised by the Development Consent Order and is deemed to be a person interested in the DCO Land in accordance with Article 8(4)(a) of the Development Consent Order.
- (E) The Undertaker intends to acquire freehold and/or leasehold interests in the DCO Land in the future in connection with the Development (whether compulsorily or by agreement).
- (F) The Parties to this Deed have agreed to enter into this Deed in order to secure the performance of the development consent obligations contained in it pursuant to the provisions of section 106 of the 1990 Act and all other enabling powers.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Deed (which includes the Recitals to it) the following words and expressions have the following meanings unless the context otherwise requires:

"1990 Act"	means the Town and Country Planning Act 1990;
"2008 Act"	means the Planning Act 2008;
"Access and Rights of Way Plans"	means the plans certified as the access and rights of way plans by the Secretary of State under article 43 (Certification of plans and documents, etc.) and identified in Schedule 6 to the DCO;
"Account"	means an interest bearing account of the County Council into which the Bus Delay Mitigation Fund the Bus Delay Mitigation Contingency Fund and the Patronage Marketing Contribution

shall be held by the County Council and from which the County Council may draw down sums in accordance with Schedule 3;

<b>"AIL Street Works"</b>	means temporary works to streets and street furniture for which the County Council is responsible to facilitate the movement of abnormal indivisible loads in connection with the construction of the Development;
<b>"Application"</b>	means the application for the DCO submitted to the Secretary of State for the Development and accepted by the Planning Inspectorate on 12 December 2019 with reference EN020022;
<b>"Baseline Condition"</b>	means the average journey time between the relevant bus stops for the relevant Specified Route for the relevant month in the Baseline Year;
<b>"Baseline Year"</b>	means January 2019 – January 2020;
<b>"Bus Delay Mitigation Contingency Fund"</b>	means the sum of £275,517.50 (two hundred and seventy five thousand five hundred and seventeen pounds and fifty pence) (Index Linked) which once paid is to be drawn down by the County Council to be paid to the relevant Bus Operator in respect of the cost of the provision of an additional bus(es) on the Specified Route in arrears;
<b>"Bus Delay Mitigation Fund"</b>	means the sum of £1,102,070 (one million one hundred and two thousand and seventy pounds) (Index Linked) which once paid is to be drawn down by the County Council to be paid to the relevant Bus Operator in respect of the cost of the provision of an additional bus(es) on the Specified Route in arrears;
<b>"Bus Delay Mitigation Request"</b>	means a written request from a Bus Operator in respect of a Specified Route which includes the following information: <ul style="list-style-type: none"><li>a) the Specified Route Baseline for the Specified Route;</li><li>b) the percentage decrease in Start Point Compliance for the Specified Route prior to the provision of an additional bus;</li><li>c) actual journey time point to point data identifying all delays experienced by the Specified Route;</li><li>d) actual journey time point to point data identifying delays experienced by the Specified Route in connection with Traffic Management;</li><li>e) Scheduled Journey Time;</li><li>f) Traffic Management Journey Time; and</li><li>g) evidence that an additional bus has been provided on the Specified Route;</li></ul>
<b>"Bus Operators"</b>	means First Bus and Stagecoach (respectively) or any successor operator in respect of a Specified Route;
<b>"CAVAT Assessment"</b>	means the assessment of the value of any Highways Tree to be removed in connection with the construction of the Development to be undertaken in accordance with the



	CAVAT Assessment Methodology and which shall calculate the CAVAT Compensation Amount for the Highways Tree to be removed;
<b>"CAVAT Assessment Methodology"</b>	means the Capital Asset Value of Amenity Trees methodology produced by the London Tree Officers Association dated January 2020 or any replacement thereof;
<b>"CAVAT Compensation Amount"</b>	means the compensation to be paid to the County Council in connection with the removal of any Highways Tree which is to be determined in accordance with the CAVAT Assessment and which is to be applied by the County Council towards the provision of replacement trees;
<b>"Commencement"</b>	means the carrying out of a material operation as defined in section 155 of the 2008 Act comprised in the Development on the DCO Land other than operations consisting of Onshore Site Preparation Works and the words "Commence" and "Commenced" and cognate expressions shall be construed accordingly;
<b>"Commencement Date"</b>	means the date of Commencement;
<b>"Completion of Construction"</b>	means the date of service of a notice on the County Council by the Undertaker stating that the construction of the Development is complete prior to commissioning;
<b>"Completion of HCC Highway Works"</b>	means the date of service of a notice on the County Council by the Undertaker stating that the construction of all parts of Work No.4 as are located on the highway within the DCO Land is complete;
<b>"Completion of Work No.4"</b>	means the completion of the construction of all parts of Work No.4 which are located on the public highway;
<b>"Control Routes"</b>	means: <ul style="list-style-type: none"> <li>a) in relation to any Patronage Marketing Contribution Request by First Bus bus route no. X5 and 9; or</li> <li>b) in relation to any Patronage Contribution Request by Stagecoach bus route no. 1 (Aldershot) and Pulse (Worthing);</li> </ul>
<b>"Converter Station"</b>	means the converter station and associated electrical equipment to be constructed as part of the Development and which comprises Work No.2;
<b>"Converter Station Access Works"</b>	means the permanent access junction and associated gated highway link to be constructed as part of the Development and which comprises Work No.2 (bb) in general accordance with drawing number AQD-WSP-UK-OS-DR-Z-200215 Rev 05 located at Appendix 2 together with the 4 no. passing places to be constructed on Day Lane in connection with the construction of the Development;
<b>"Converter Station Access Works Completion Certificate"</b>	means a certificate to be issued by the County Council pursuant to the Converter Station Access Works Highways Agreement to denote the completion of the Converter Station Access Works to the satisfaction of the County Council;

<b>“Converter Station Access Works Highways Agreement”</b>	means an agreement to be entered into between the Undertaker and the County Council pursuant to section 278 of the Highways Act 1980 in relation to the delivery of the Converter Station Access Works substantially in the form located at Appendix 3;
<b>“County Council”</b>	means Hampshire County Council;
<b>“DCO Land”</b>	means so much of the land within the Order limits as is within the administrative boundary of Hampshire County Council as shown shaded and edged red on the DCO Land Plan;
<b>“DCO Land Plan”</b>	means the plan located at Appendix 1 of this Deed;
<b>“Development”</b>	means those elements of the Project located onshore in the UK and for which the DCO is granted;
<b>“Development Consent Order”</b>	means the AQUIND Interconnector Order 202[X] made by the Secretary of State for Business, Energy and Industrial Strategy on [XXX] and references to “DCO” shall be construed accordingly;
<b>“Dispute”</b>	means any dispute, issue, difference or claim as between the parties in respect of any matter contained in or arising from or relating to this Deed or the parties’ obligations and rights pursuant to it (other than in respect of any matter of law);
<b>“Expert”</b>	means an independent person appointed in accordance with the provisions of clause 13 to determine a Dispute between the parties to this Deed;
<b>“First Bus”</b>	means First Hampshire & Dorset Limited of Empress Road, Southampton SO14 0JW with company registration number 01999120 and any Group Company of the same;
<b>“Group Company”</b>	means any connected person (as defined in by Section 122 of the Corporation Tax Act 2010);
<b>“Highways Tree”</b>	means a tree which is located on the public highway within the DCO Land and which is in the ownership of the County Council;
<b>“Index”</b>	means the Retail Price Index published by the Office for National Statistics or any successor or amending body;
<b>“Index Linked”</b>	means increased (if applicable) in accordance with clause 19;
<b>“Ladybridge Roundabout Development Works”</b>	means the works for the realignment improvement and widening of the existing roundabout at the junction of London Road and Ladybridge Road and re-alignment of Purbrook Heath Road and provision of a toucan crossing on London Road south of the existing roundabout shown indicatively on the Ladybridge Roundabout Development Works Plan which are to be undertaken by or on behalf of the County Council as required in accordance with the Section 106 Agreement dated 30 March 2012 entered into in connection with the planning permission with reference 10/02868/OUT dated 30 March 2012 issued by Winchester City Council;



<b>"Ladybridge Roundabout Development Works Plan"</b>	means the plan located at Appendix 6 of this Deed;
<b>"Ladybridge Roundabout Highway Works"</b>	means such parts of Work No.4 as overlap with the Ladybridge Roundabout Development Works;
<b>"Monitoring Fee"</b>	means the sum of £2,000;
<b>"Onshore Cable Route"</b>	means any part of Work No.4 which is located on the public highway;
<b>"Onshore Site Preparation Works"</b>	means operations consisting of: <ul style="list-style-type: none"> <li>a) pre-construction archaeological investigations;</li> <li>b) environmental surveys and monitoring;</li> <li>c) site clearance;</li> <li>d) removal of hedgerows, trees and shrubs (excluding any Highways Tree);</li> <li>e) investigations for the purpose of assessing ground conditions;</li> <li>f) remedial work in respect of any contamination or adverse ground conditions;</li> <li>g) receipt and erection of construction plant and equipment;</li> <li>h) the temporary display of site notices and advertisements;</li> <li>i) erection of temporary buildings, structures or enclosures; and</li> <li>j) Work No.2 (bb) (access junction and associated gated highway link);</li> </ul>
<b>"Order Limits"</b>	has the same meaning as is given in the DCO;
<b>"Patronage Marketing Contribution"</b>	means the sum of £290,000 (two hundred and ninety thousand pounds) (Index Linked) which once paid is to be drawn down by the County Council and paid to the Bus Operators towards costs incurred in respect of pro-bus marketing campaigns following the Completion of Work No.4 in accordance with the provisions of paragraph 2 of Schedule 3;
<b>"Patronage Marketing Contribution Request"</b>	means a request from a Bus Operator which includes the following information: <ul style="list-style-type: none"> <li>a) the percentage increase in bus patronage for the Specified Routes of the relevant Bus Operator for the period between the date of the payment of the Bus Delay Mitigation Fund into the Account and the date of confirmation of the Completion of Work No.4; and</li> <li>b) the percentage increase in patronage for the Control Routes for the period between the date of the</li> </ul>

payment of the Bus Delay Mitigation Fund into the Account and the date of confirmation of the Completion of Work No.4;

<b>"Project"</b>	means AQUIND Interconnector a new 2,000 MW subsea and underground High Voltage Direct Current ('HVDC') bi-directional electric power transmission link between the South Coast of England and Normandy in France;
<b>"Qualifying Interest"</b>	means such interest in the land sufficient to meet the requirements of Section 106(1) of the 1990 Act which shall include the Undertaker's status as undertaker for the purposes of the DCO in accordance with the provisions of article 8(4)(a) of the DCO whereby the undertaker is deemed to be a person interested in the DCO Land for the purposes of Section 106(1) of the 1990 Act;
<b>"Scheduled Journey Time"</b>	means the journey time for a bus to travel between the bus stop before the Traffic Management and first bus stop following the Traffic Management in the Baseline Condition;
<b>"Specified Routes"</b>	means the following bus routes operating within the Order limits: <ul style="list-style-type: none"><li>a) First Bus bus route No.7</li><li>b) First Bus bus route No.8</li><li>c) First Bus bus route No. 13</li><li>d) First Bus bus route No. D1</li><li>e) First Bus bus route No. D2</li><li>f) Stagecoach bus route No. 20</li><li>g) Stagecoach bus route No. 21</li><li>h) Stagecoach bus route No. 23</li><li>i) Stagecoach bus route No. 37</li><li>j) Stagecoach bus route No. 39</li></ul>
<b>"Specified Route Baseline"</b>	means the percentage of Start Point Compliance for the relevant Specified Route within the relevant month of the Baseline Year;
<b>"Stagecoach"</b>	means Stagecoach (South) Limited of Stagecoach Shared Service Centre, One Stockport Exchange, 20 Railway Road, Stockport SK1 3SW with company registration number 1673542 and any Group Company of the same;
<b>"Start Point Compliance"</b>	means where a bus on a Specified Route leaves its first stop not more than 4 minute and 59 seconds after the scheduled start time;
<b>"Successor"</b>	means any person deriving title from the Undertaker in respect of its Qualifying Interest and for the purposes of Section 106(3)(b) of the 1990 Act shall include any person to whom powers are transferred further to Article 7 of the DCO;
<b>"Supplemental Deed"</b>	means a supplemental deed substantially in the form attached at Appendix 9;



<b>"TCF Works"</b>	means the works to be undertaken by the County Council to deliver highway improvements pursuant to funding secured from the government's Transforming Cities Fund to introduce a northbound bus gate to the south of Ladybridge Roundabout and reactivation of the southbound bus gate 570m to the north of the roundabout along with on carriageway cycle priority for northbound movements through the bus gate shown on the TCF Works Plan;
<b>"TCF Works Plan"</b>	means the plan located at Appendix 5 of this Deed;
<b>"TD Plan Monitoring Annual Fee"</b>	means the sum of £3,000 per annum until the Completion of HCC Highway Works payable by the Undertaker and to be applied towards the monitoring and evaluation of the TD Plan;
<b>"TD Plan"</b>	means the travel demand plan submitted to and approved by the County Council pursuant to Requirement 25 of the DCO;
<b>"Temporary Construction Access"</b>	means such new temporary means of access or improved existing means of access within the DCO Land (including in the locations identified on the Access and Rights of Way Plans) as the Undertaker reasonably requires for the purposes of the construction of the Development and which for the avoidance of doubt excludes the permanent access junction comprised in the Converter Station Access Works and the typical layout for which is shown on the Temporary Construction Access Typical Layout Drawing;
<b>"Temporary Construction Access Completion Certificate"</b>	means a certificate to be issued by the County Council pursuant to a Temporary Construction Access Highways Agreement to denote the completion of a Temporary Construction Access to the satisfaction of the County Council;
<b>"Temporary Construction Access Highways Agreement"</b>	means an agreement to be entered into between the Undertaker and the County Council pursuant to section 278 of the Highways Act 1980 in relation to the delivery of any Temporary Construction Access substantially in the form located at Appendix 4;
<b>"Temporary Construction Access Typical Layout Drawing"</b>	means the drawing located at Appendix 7 of this Deed;
<b>"Traffic Management"</b>	means traffic management associated with the construction of the Onshore Cable Route;
<b>"Traffic Management Journey Time"</b>	means the actual journey time between the bus stop before the Traffic Management and the first bus stop following the Traffic Management;
<b>"Travel Plan"</b>	means any and all travel plans for the contractor's workforce submitted to and approved by the County Council pursuant to Requirement 21 of the DCO;

<b>"Travel Plan Monitoring Annual Fee"</b>	means the sum of £3,000 per annum until the Completion of Construction payable by the Undertaker and to be applied towards the auditing and monitoring of the Travel Plan;
<b>"Working Day"</b>	means any day apart from Saturday, Sunday and any statutory bank holiday on which clearing banks are open in England for the transaction of ordinary business; and
<b>"Undertaker"</b>	means AQUIND Limited and any Successors;

1.2 In this Deed, unless stated otherwise:

- 1.2.1 reference to the masculine feminine and neuter genders shall include other genders;
- 1.2.2 reference to the singular include the plural and vice versa unless the contrary intention is expressed;
- 1.2.3 references to natural persons include firms, companies, corporations, and vice versa;
- 1.2.4 references to the County Council include the successors to the County Council's statutory functions as the lead flood authority, local highway authority and local planning authority;
- 1.2.5 references to the Undertaker shall include its Successors and its respective successors in respect of its Qualifying Interest (except where the contrary is expressly provided);
- 1.2.6 references to "Work Nos." or to a "Work No." are references to the works forming part of the Development listed in Schedule 1 to the DCO;
- 1.2.7 a reference to a clause, sub-clause, paragraph, sub-paragraph, Schedule, recital or appendix is (unless the context otherwise requires) a reference to the relevant clause, sub-clause, paragraph, sub-paragraph, Schedule, recital or appendix to this Deed;
- 1.2.8 words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of the restriction;
- 1.2.9 references in this Deed to any statute or statutory provision include references to:
  - (A) all Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Deed;
  - (B) any orders, regulations, instruments or other subordinate legislation made or issued under that statute or statutory provision; and
  - (C) in each case shall include any re-enactment thereof for the time being in force and any modifications or amendments thereof for the time being in force;
- 1.2.10 where in this Deed the County Council is required to give any approval, consent or agreement then such approval, consent or agreement by the County Council shall not be deemed to have been given unless given in writing;
- 1.2.11 if any provision of this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Deed shall not in any way be deemed thereby to be affected, impaired or called into question;



- 1.2.12 the recitals, table of contents and headings in this Deed are for convenience only and shall not affect its construction, interpretation or otherwise have any binding legal effect;
- 1.2.13 in the event of any conflict between the terms, conditions and provisions of this Deed and of any document appended hereto or referred to herein, the terms, conditions and provisions of this Deed shall prevail;
- 1.2.14 reference to "the parties" shall mean the parties to this Deed and reference to a "party" shall mean any one of the parties;
- 1.2.15 references to "notice" shall mean notice in writing;
- 1.2.16 references to "including" shall mean "including without limitation or prejudice to the generality of any description, defining terms or phrase preceding that word" and the word "include" and its derivatives shall be construed accordingly;
- 1.2.17 the Interpretation Act 1978 shall apply to this Deed; and
- 1.2.18 where any payment in this Deed is expressed to be payable before an event or activity that event or activity shall not commence until the relevant payment has been made.

## 2. **LEGAL EFFECT**

- 2.1 This Deed contains planning obligations that are development consent obligations for the purposes of section 106 of the 1990 Act and is also entered into pursuant to section 1 of the Localism Act 2011, section 111 of the Local Government Act 1972 and all other powers so enabling.
- 2.2 The planning obligations contained within this Deed are enforceable by the County Council as local planning authority in accordance with section 106(3) of the 1990 Act against:
  - 2.2.1 the Undertaker in respect of its Qualifying Interest in the DCO Land as bound under clause 3;
  - 2.2.2 the Undertaker's Successors to its Qualifying Interest in the DCO Land as bound under clause 3.

## 3. **LAND BOUND**

- 3.1 Subject to clause 5 (Conditionality) and clause 8 (Release and Expiry) the planning obligations in this Deed bind the DCO Land.
- 3.2 The parties agree that the planning obligations contained in this Deed will not be enforceable against any other owner of any land interest in the DCO Land who is not a party to this Deed nor against any successors in title to or any person claiming through or under the other such owner's interest in the DCO Land (save for the Undertaker) unless that person itself undertakes any part of the Development.
- 3.3 The parties agree that the planning obligations contained in this Deed shall not be enforceable against any mortgagee or chargee of the whole or any part of the DCO Land from time to time or any person deriving title from such mortgagee or chargee unless and until any such party takes possession of the DCO Land (or any part thereof to which such obligation relates) in which case it will be bound by the obligations as a person deriving title from the Undertaker PROVIDED THAT neither any mortgagee or chargee or person deriving title through such mortgagee or chargee will be liable for any breach of the obligations contained in this Deed unless committed at a time when that person is in possession of the DCO Land (or any part thereof to which such obligation relates).

## 4. **BINDING FURTHER INTERESTS**

- 4.1 If and to the extent that the Undertaker acquires any freehold interest or leasehold interest of seven years or more in respect of any part of the DCO Land the Undertaker covenants

to notify the County Council in writing of each and every such acquisition within three (3) Working Days of the same occurring and to promptly enter into and deliver to the County Council an executed agreement substantially in the form of the Supplemental Deed so as to bind and make such interests subject to the obligations, covenants and conditions contained in this Deed in so far as they relate to such interests and/or parts of the DCO Land and remain to be observed, performed and/or complied with.

## **5. CONDITIONALITY**

- 5.1 Subject to clauses 5.2 and 5.3, the parties agree that, save for the covenant in clause 18.1, none of the terms, conditions or provisions of this Deed shall have operative effect unless and until the Development has been Commenced.
- 5.2 Where the Development Consent Order becomes the subject of any judicial review proceedings:
- 5.2.1 until such time as such proceedings including any appeal have been finally determined, the terms and provisions of this Deed will remain without operative effect unless the Development has been Commenced;
  - 5.2.2 if following the final determination of such proceedings the Development Consent Order is quashed and, in the event that the court orders the Application to be remitted to the Secretary of State, the Application is subsequently refused, this Deed will cease to have any further effect and any money paid to the County Council pursuant to Schedule 1 or Schedule 3 and not spent or committed by the County Council shall be repaid in full within 20 Working Days of the final determination of such proceedings; and
  - 5.2.3 if following the final determination of such proceedings the Development Consent Order is capable of being Commenced, then this Deed will take effect in accordance with its terms.
- 5.3 Wherever in this Deed reference is made to the final determination of judicial review proceedings (or cognate expressions are used), the following provisions will apply:
- 5.3.1 proceedings by way of judicial review are finally determined:
    - (A) when permission to bring a claim for judicial review has been refused and no further application may be made;
    - (B) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or
    - (C) when any appeal is finally determined and no further appeal may be made.

## **6. OBLIGATIONS OF THE UNDERTAKER**

- 6.1 The Undertaker covenants with the County Council to observe and perform or cause to be observed and performed the obligations on the part of the Undertaker contained in Schedule 1 and Schedule 3 at the times and in the manner provided therein.
- 6.2 The Undertaker covenants with the County Council to serve written notice to the County Council at least twenty Working Days in advance of the proposed Commencement Date.
- 6.3 Where the proposed Commencement Date provided in clause 6.2 does not take place, the Undertaker shall provide written notice to the County Council of the revised date as soon as is reasonably practicable and in any event at least 10 Working Days in advance of the revised date.
- 6.4 The Undertaker covenants with the County Council to serve written notice to the County Council notifying of the Completion of Construction as soon as reasonably practicable following the Completion of Construction.



- 6.5 The Undertaker covenants with the County Council to serve written notice to the County Council notifying of the Completion of HCC Highway Works as soon as reasonably practicable following the Completion of HCC Highway Works.
- 7. OBLIGATIONS OF THE COUNTY COUNCIL**
- 7.1 The County Council covenants with the Undertaker to observe and perform or cause to be observed and performed the obligations on the part of the County Council contained in Schedule 2 and Schedule 3 at the times and in the manner provided therein.
- 8. RELEASE AND EXPIRY**
- 8.1 The Undertaker shall not be liable for a breach of any of its obligations under this Deed after it has parted with all of its interests in the DCO Land (including Qualifying Interests) or the part in respect of which the breach arises (as the case may be) save in either case for antecedent breaches.
- 8.2 If the Development Consent Order expires without having been Commenced or is revoked prior to the Commencement Date then this Deed shall forthwith determine and cease to have effect.
- 8.3 Nothing in this Deed shall prohibit or limit the right to develop any part of the DCO Land in accordance with a planning permission or development consent order or other statutory authority (other than the DCO) granted (whether or not on appeal) after the date of this Deed.
- 8.4 No Successor to the Undertaker shall be liable for any breach of any obligation which occurs in relation to any area of the DCO Land which that Successor does not own or control or which is carried out by any person other than that Successor.
- 8.5 Upon the performance discharge or other fulfilment of the covenants and obligations (or any of them) of the Undertaker, any Successor, or the County Council under the terms of this Deed such covenant, obligation or obligations shall absolutely cease and determine save in respect of any antecedent breach.
- 9. LOCAL LAND CHARGES**
- 9.1 This Deed is a local land charge and may be registered as such by the County Council.
- 10. WAIVER**
- 10.1 No waiver (whether express or implied) by the County Council of any breach or default by the Undertaker in performing or observing any of the obligations, covenants or conditions on the Undertaker's part contained in this Deed shall constitute a continuing waiver and no such waiver shall prevent the County Council from enforcing any of the said obligations, covenants and conditions or from acting upon any subsequent breach or default in respect thereof by the Undertaker.
- 11. REMEDIES**
- 11.1 Where the County Council becomes aware of a breach or non-compliance with a provision of this Deed by the Undertaker, the County Council may serve notice of such breach upon the Undertaker and the notice of breach shall state the nature of the breach, the steps reasonably required to remedy the breach and a reasonable timescale for remedying the breach.
- 11.2 The Undertaker shall within 10 Working Days of receiving a notice served pursuant to clause 11.1 give written notification to the County Council of its response to the notice including any claim that it will remedy the breach within the stated timescale, that the timescale is too short or that that it rejects the notice for the reason that no breach has occurred.
- 11.3 The County Council and the Undertaker shall hold discussions about the notice of the breach where either party so requests.

- 11.4 In the event of a dispute arising regarding any notice of breach served pursuant to clause 11.1, the matter shall be determined under clause 13.
12. **CERTIFICATES OF COMPLIANCE**
- 12.1 The County Council will without delay upon request by the Undertaker certify compliance or partial compliance (as and if appropriate) with the provisions of this Deed.
13. **RESOLUTION OF DISPUTES**
- 13.1 In the event of any Dispute arising between the parties then the parties will attempt to resolve that Dispute amicably including holding a meeting attended by at least 3 representatives from each party unless expressly stated otherwise.
- 13.2 If the parties are unable to resolve the Dispute amicably pursuant to clause 13.1, one party may by serving notice on all the other parties (the "Notice") refer the Dispute to an Expert for determination.
- 13.3 The Notice must specify:
- 13.3.1 the nature, basis and brief description of the Dispute;
  - 13.3.2 the clause or paragraph of this Deed pursuant to which the Dispute has arisen; and
  - 13.3.3 the proposed Expert.
- 13.4 In the event that the parties are unable to agree whom should be appointed as the Expert within 10 Working Days after the date of the Notice then either party may request the President of the Law Society to nominate the Expert at their joint expense, and the parties shall request that such nomination shall be made within 10 Working Days of the request, and any failure for such nomination to be made within 10 Working Days shall entitle any party to withdraw from the process of appointing an Expert and to refer the Dispute to the courts of England and Wales instead.
- 13.5 If the appointed Expert is or becomes unable or unwilling to act, any party may within 5 Working Days of the Expert being or becoming unable or unwilling to act, serve a notice on all the other parties proposing a replacement Expert and the parties will follow the process at clause 13.4 to settle the appointment of the replacement Expert.
- 13.6 The Expert shall act as an expert and not as an arbitrator and his decision will (in the absence of manifest error) be final and binding on the parties hereto and at whose cost shall be at his discretion or in the event that he makes no determination, such costs will be borne by the parties to the Dispute in equal shares.
- 13.7 The Expert is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision.
- 13.8 The Expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 30 Working Days from the date of his appointment to act.
- 13.9 The Expert will be required to give notice to each of the said parties inviting each of them to submit to him within 10 Working Days written submissions and supporting material and will afford to each of the said parties an opportunity to make counter submissions within a further 10 Working Days in respect of any such submission and material.
- 13.10 Nothing in this Deed shall fetter any party's right to bring an action in Court.
14. **NOTICES**
- 14.1 Any notice, consent or approval or other communication required to be given under or in connection with this Deed to or upon the parties must be in writing and shall be addressed as provided for in clause 14.3.



14.2 Any such notice must be delivered by hand (including by courier or process server) or by pre-paid recorded delivery post and shall conclusively be deemed to have been received:

14.2.1 if delivered by hand, upon delivery at the relevant address; and

14.2.2 if sent by first class post, at 9:00 a.m. on the second Working Day after the date of posting,

except that where any such notice or other communication is or would be deemed to be received after 5:30 p.m., such notice shall be deemed to be received at 9:00 a.m. on the next Working Day.

14.3 Subject to clause 14.4, the address, relevant addressee and reference for each party are:

14.3.1 in the case of the County Council:

Address: Hampshire County Council, Legal Services, The Castle, Winchester, SO23 8UJ with a copy also sent by e-mail to HLS@hants.gov.uk.

Relevant addressee: [REDACTED] – Head of Legal Services

Reference: Aquind Interconnector s106/135915

14.3.2 For the Undertaker:

Address: AQUIND Limited, 78 Pall Mall, London, SW1Y 5ES with a copy also sent by e-mail to [REDACTED]@aquind.co.uk.

Relevant addressee: [REDACTED] – Managing Director

Reference: AQUIND Interconnector S106

14.4 Any party may give notice of a change to its name, address, or relevant addressee for the purposes of this clause 14 provided that such notification shall only be effective on:

14.4.1 the date specified in the notification as the date on which the change is to take place; or

14.4.2 if no date is specified or the date specified is less than five clear Working Days after the date on which the notice is received or deemed to be received, the fifth Working Day after the notice of any such change is given.

## 15. NO FETTER ON DISCRETION

15.1 Nothing in this Deed shall be taken to operate so as to fetter or prejudice the statutory rights, powers, discretions or duties of the County Council or the Undertaker.

## 16. GOOD FAITH, GOOD PRACTICE AND REASONABLENESS

16.1 The parties agree with one another to act reasonably and in good faith in the fulfilment of their respective obligations in this Deed.

16.2 Unless expressly stated otherwise where under this Deed any approval, agreement, consent, certificate, confirmation or an expression of satisfaction or response is required to be given by or reached or taken by any party or any response is requested by any such approval, agreement, consent, certificate, confirmation or an expression of satisfaction or response, it will not be unreasonable or unreasonably withheld or delayed and the parties will act reasonably at all times.

## 17. COMMUNITY INFRASTRUCTURE LEVY

17.1 The Parties agree that the planning obligations contained in the Schedules to this Deed are necessary to make the Development acceptable in planning terms, are directly related to the Development and are fairly and reasonably related in scale and kind to the

Development and thus satisfy the three tests set out in regulation 122(2)(a) – (c) of the Community Infrastructure Regulations 2010.

**18. LEGAL FEES AND COSTS**

- 18.1 The Undertaker shall pay on the date of this Deed to the County Council its reasonable legal costs properly incurred in the negotiation and completion of this Deed and the Monitoring Fee.

**19. INDEXATION**

- 19.1 Any sum which is referred to in this Deed as Index Linked and required to be paid by the Undertaker to the County Council shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable in accordance with the following formula:

$$A \times (B/C) = D$$

Where:

**A** is the amount of money to be paid pursuant to this Deed

**B** is the figure shown in the relevant index for the period immediately prior to the date on which the sum concerned is due to be paid in accordance with the provisions in this Deed;

**C** is the figure shown in the relevant index for the period immediately prior to the date the Development Consent Order is made unless expressly stated otherwise; and

**D** is the amount of money required to be paid

**PROVIDED THAT** if the relevant index is no longer maintained then the above formula will be applied mutatis mutandis (so far as it relates to periods after it ceases to be do maintained) by reference to such other publication or index as may be agreed from time to time between the Parties or determined by an Expert pursuant to clause 13.

**20. INTEREST ON LATE PAYMENTS**

- 20.1 Without prejudice to any other right remedy or power herein contained or otherwise available to the County Council if any payment of any sum referred to herein shall have become due but shall remain unpaid for a period exceeding 5 Working Days the Undertaker shall pay on demand to the County Council interest thereon at the interest rate of four percent per annum above the base lending rate of National Westminster Bank plc from the date when the same became due until payment thereof.

**21. VAT**

- 21.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable in respect thereof.
- 21.2 The Undertaker acknowledges and agrees that if at any time VAT is required to be paid in respect of any of the payments made under this Deed then to the extent that VAT had not been previously charged in respect of that payment the County Council shall have the right to issue a VAT invoice to the Undertaker in respect of any vatatable supplies properly incurred under this Deed and the VAT shall be paid by the Undertaker accordingly following the receipt of a valid VAT invoice.

**22. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 22.1 Without prejudice to clauses 1.2.4 and 1.2.5, a person who is not a party to this Deed does not have any right to enforce any term of this Deed under the Contract (Rights of Third Parties) Act 1999.



23. **JURISDICTION**

- 23.1 This Deed including its construction, validity, performance and enforcement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 23.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

24. **COUNTERPARTS**

- 24.1 This Deed may be executed in any number of counterparts, each of which is an original and all of which may together evidence the same agreement.

25. **DATE OF DELIVERY**

- 25.1 This Deed is delivered on the date of this Deed.

## SCHEDULE 1

### UNDERTAKER OBLIGATIONS

#### 1. CONVERTER STATION ACCESS WORKS

- 1.1 The Undertaker shall not Commence the Development unless and until it has:
- 1.1.1 provided evidence of ownership of the land that is to be dedicated as highway in accordance with the Converter Station Access Works Highways Agreement or of the agreement of all persons with ownership of that land to the dedication of that land in the future to the satisfaction of the County Council prior to entering into the Converter Station Access Works Highways Agreement with the County Council referred to in paragraph 1.1.2 below; and
  - 1.1.2 entered into the Converter Station Access Works Highways Agreement with the County Council.
- 1.2 The Undertaker shall not Commence the Development unless and until the Converter Station Access Works have been completed and the County Council has issued the Converter Station Access Works Completion Certificate in respect of the whole of the Converter Station Access Works.

#### 2. TEMPORARY CONSTRUCTION ACCESSES

- 2.1 The Undertaker shall not Commence the construction of any Temporary Construction Access unless and until it has entered into a Temporary Construction Access Highways Agreement with the County Council in relation to that Temporary Construction Access.
- 2.2 The Undertaker shall not permit the use of any Temporary Construction Access for the purposes of constructing the Development on the DCO Land unless and until that Temporary Construction Access has been completed and the County Council has issued the Temporary Construction Access Completion Certificate in relation to it.

#### 3. HIGHWAY WORKS DESIGN CONSULTATION

- 3.1 Not less than two months prior to the anticipated date of the submission for approval of any Ladybridge Roundabout Highway Works and any parts of Work No.4 which overlap with the TCF Works pursuant to the requirements of the DCO, the Undertaker must issue to the County Council the proposed design details for Ladybridge Roundabout Highway Works and any parts of Work No.4 which overlap with the TCF Works, such design details to include:
- 3.1.1 proposed layout of the onshore HVDC cables;
  - 3.1.2 proposed depth of installation of the onshore HVDC cables; and
  - 3.1.3 indicative location of any joint bays, link boxes and link pillars
- and following submission of the relevant design details, the Undertaker shall use reasonable endeavours to discuss the design details and how they relate to the Ladybridge Roundabout Development Works or the TCF Works (as is relevant) with the County Council to agree how those design details and the Ladybridge Roundabout Development Works or the TCF Works (as is relevant) may be revised having regard to:
- 3.1.4 the respective project requirements for the Undertaker and the County Council in relation to the delivery of:
    - (A) the Ladybridge Roundabout Highway Works and the Ladybridge Roundabout Development Works; and
    - (B) the TCF Works and any parts of Work No.4 which overlap with the TCF Works;
  - 3.1.5 the need for:



- (A) the Ladybridge Roundabout Highway Works and the Ladybridge Roundabout Development Works; and
- (B) The TCF Works and any parts of Work No.4 which overlap with the TCF Works;

to be delivered in a timely manner;

3.1.6 the nature and location of the constraints associated with:

- (A) the Ladybridge Roundabout Highway Works and the Ladybridge Roundabout Development Works; or
- (B) the TCF Works and any parts of Work No.4 which overlap with the TCF Works;

3.1.7 the anticipated sequence of the delivery of:

- (A) the Ladybridge Roundabout Highway Works and the Ladybridge Roundabout Development Works; or
- (B) the TCF Works any parts of Work No.4 which overlap with the TCF Works;

and;

3.1.8 the desire to avoid the design of:

- (A) the Ladybridge Roundabout Highway Works and the Ladybridge Roundabout Development Works; or
- (B) the TCF Works and any parts of Work No.4 which overlap with the TCF Works,

increasing the cost of the delivery of Ladybridge Roundabout Highway Works and the Ladybridge Roundabout Development Works or the TCF Works and any parts of Work No.4 which overlap with the TCF Works (as is relevant) and the costs for the County Council associated with the future maintenance of the Ladybridge Roundabout Development Works or the TCF Works (as is relevant).

3.2 Following the receipt of any comments from the County Council in accordance with paragraph 3.2 of Schedule 2 in relation to the design details submitted to the County Council by the Undertaker, the Undertaker shall have regard to those comments and use reasonable endeavours to amend the relevant design details to minimise any additional cost to the County Council in respect of the delivery and future maintenance of the Ladybridge Roundabout Development Works or the TCF Works (as is relevant in the circumstances) prior to the submission for approval of any Ladybridge Roundabout Highway Works or any parts of Work No.4 which overlap with the TCF Works pursuant to the requirements of the DCO (as is relevant in the circumstances) and where the County Council do not provide comments within the time period provided for within paragraph 3.2 of Schedule 2 the Undertaker shall not be required to amend the relevant design details and the County Council shall not be able to seek the payment of any additional costs in relation to such works.

3.3 The Undertaker shall following receipt from the County Council of the estimated amount of any additional costs to the County Council in undertaking the delivery and the future maintenance of the Ladybridge Roundabout Development Works or the TCF Works (as is relevant in the circumstances) solely as a consequence of the approved design of the Ladybridge Roundabout Highway Works or any parts of Work No.4 which overlap with the TCF Works, use reasonable endeavours to agree the amount of such additional costs and the phasing for the payment of any such amount with the County Council as soon as reasonably practicable and the Undertaker may refer the matter to be determined in accordance with clause 13 where not agreed within three months of the County Council providing to the Undertaker the estimate of any additional costs in accordance with paragraph 3.3 of Schedule 2.

- 3.4 The Undertaker covenants to pay to the County Council the amount of any additional costs agreed with the County Council in accordance with paragraph 3.3 of this Schedule 1 or otherwise determined in accordance with clause 13 in accordance with the phasing for the payment of any such amount agreed with the County Council or otherwise determined in accordance with clause 13.

**4. HIGHWAYS TREES**

- 4.1 The Undertaker shall not remove any Highways Tree in connection with the construction of the Development on the DCO Land unless and until:

- 4.1.1 the Undertaker has submitted to the County Council a CAVAT Assessment for that Highways Tree for agreement; and
- 4.1.2 the CAVAT Assessment for that Highways Tree has been agreed by the County Council and the Undertaker.

- 4.2 The Undertaker must within not more than 20 Working Days of the date of removal of any Highways Tree on the DCO Land pay to the County Council the CAVAT Compensation Amount in accordance with the CAVAT Assessment agreed between the Undertaker and the County Council for that Highways Tree pursuant to paragraph 4.1.2 of this Schedule.

**5. TRAVEL PLAN AND TD PLAN MONITORING FEES**

- 5.1 The Undertaker must pay to the County Council the Travel Plan Monitoring Annual Fee and the TD Plan Monitoring Annual Fee prior to the Commencement of the Development and shall not Commence the Development unless and until such time as the Travel Plan Monitoring Fee and the TD Plan Monitoring Annual Fee has been paid to the County Council.
- 5.2 The Undertaker must pay to the County Council the Travel Plan Monitoring Annual Fee within not more than 20 Working Days following each anniversary of the Commencement Date until the Completion of Construction.
- 5.3 The Undertaker must pay to the County Council the TD Plan Monitoring Annual Fee within not more than 20 Working Days following each anniversary of the Commencement Date until the Completion of HCC Highways Works.

**6. AIL STREET WORKS**

- 6.1 The Undertaker covenants with the County Council not to undertake any AIL Street Works unless and until a minor works agreement pursuant to section 278 of the Highways Act 1980 has been entered into with the County Council in relation to those AIL Street Works.



## SCHEDULE 2

### COUNTY COUNCIL'S OBLIGATIONS

1. **USE OF CONTRIBUTIONS**
- 1.1 The County Council shall use the Travel Plan Monitoring Annual Fee, the TD Plan Annual Monitoring Fee and any CAVAT Compensation Amount paid to the County Council for the purposes for which they are paid only.
2. **HIGHWAYS AGREEMENTS**
- 2.1 The County Council covenants with the Undertaker to use reasonable endeavours to enter into:
  - 2.1.1 the Converter Station Access Works Highways Agreement;
  - 2.1.2 any and all Temporary Construction Access Highways Agreements;
  - 2.1.3 any and all minor works agreement pursuant to section 278 of the Highways Act 1980 in respect of ALL Street Works.
3. **HIGHWAY WORKS DESIGN CONSULTATION**
- 3.1 Following the receipt of any design details from the Undertaker in accordance with paragraph 3.1 of Schedule 1, the County Council shall use reasonable endeavours to discuss those design details and how they relate to the Ladybridge Roundabout Development Works or the TCF Works (as is relevant) with the Undertaker within not more than 20 Working Days to agree how those design details and the Ladybridge Roundabout Development Works or the TCF Works (as is relevant) may be revised having regard to:
  - 3.1.1 the respective project requirements for the Undertaker and the County Council in relation to the delivery of:
    - (A) the Ladybridge Roundabout Highway Works and the Ladybridge Roundabout Development Works; and
    - (B) the TCF Works and any parts of Work No.4 which overlap with the TCF Works;
  - 3.1.2 the need for:
    - (A) the Ladybridge Roundabout Highway Works and the Ladybridge Roundabout Development Works; and
    - (B) the TCF Works and any parts of Work No.4 which overlap with the TCF Works ;to be delivered in a timely manner;
  - 3.1.3 the nature and location of the constraints associated with:
    - (A) the Ladybridge Roundabout Highway Works and the Ladybridge Roundabout Development Works; or
    - (B) the TCF Works and any parts of Work No.4 which overlap with the TCF Works;
  - 3.1.4 the anticipated sequence of the delivery of the:
    - (A) the Ladybridge Roundabout Highway Works and the Ladybridge Roundabout Development Works; or
    - (B) the TCF Works and any parts of Work No.4 which overlap with the TCF Works;and;
  - 3.1.5 the desire to avoid the design of:

- (A) the Ladybridge Roundabout Highway Works and the Ladybridge Roundabout Development Works; or
- (B) the TCF Works and any parts of Work No.4 which overlap with the TCF Works

increasing the cost of the delivery of Ladybridge Roundabout Highway Works and the Ladybridge Roundabout Development Works or the TCF Works and any parts of Work No.4 which overlap with the TCF Works (as is relevant) and the costs for the County Council associated with the future maintenance of the Ladybridge Roundabout Development Works or the TCF Works (as is relevant).

- 3.2 Following the discussion with the Undertaker in relation to the design details and how they relate to the Ladybridge Roundabout Development Works or the TCF Works (as is relevant) in accordance with paragraph 3.1 of this Schedule 2, the County Council shall provide the Undertaker with comments in relation to the design details submitted to the County Council by the Undertaker within not more than 30 Working Days of the date of the submission of the relevant design details by the Undertaker to the County Council pursuant to paragraph 3.1 of Schedule 1 to confirm the amendments that are reasonably considered to be required to minimise any additional cost to the County Council in respect of the delivery and future maintenance of the Ladybridge Roundabout Development Works or the TCF Works (as is relevant in the circumstances) having regard to the amendments that may reasonably be made to the design of the Ladybridge Roundabout Development Works or the TCF Works (as is relevant) to minimise any additional cost to the County Council in respect of the delivery and future maintenance of the Ladybridge Roundabout Development Works or the TCF Works and where the County Council do not provide comments to the Undertaker within the time period provided for within this paragraph 3.2 the Undertaker shall not be required to amend the relevant design details and the County Council shall not be able to seek the payment of any additional costs in relation to such works.
- 3.3 Following the approval of any Ladybridge Roundabout Highway Works or any parts of Work No.4 which overlap with the TCF Works pursuant to the requirements of the DCO (as is relevant in the circumstances) the County Council shall within not more than 30 Working Days provide to the Undertaker an estimate of any additional costs to the County Council in undertaking the delivery and future maintenance of the Ladybridge Roundabout Development Works or the TCF Works (as is relevant in the circumstances) solely as a consequence of the approved design of the Ladybridge Roundabout Highway Works or any parts of Work No.4 which overlap with the TCF Works **SUBJECT ALWAYS** to the need to take into account the amendments that may have reasonably been made to the design of the Ladybridge Roundabout Development Works or the TCF Works (as is relevant) to minimise any additional cost to the County Council in respect of the delivery and future maintenance of the Ladybridge Roundabout Development Works or the TCF Works.
- 3.4 The County Council shall use reasonable endeavours to agree with the Undertaker the amount of the additional costs to the County Council in undertaking the delivery and future maintenance of the Ladybridge Roundabout Development Works or the TCF Works (as is relevant in the circumstances) solely as a consequence of the approved design of the Ladybridge Roundabout Highway Works or any parts of Work No.4 which overlap with the TCF Works and the phasing for the payment of any such amount with the Undertaker as soon as reasonably practicable and the County Council may refer the matter to be determined in accordance with clause 13 where not agreed within three months of the County Council providing to the Undertaker the estimate of any additional costs in accordance with paragraph 3.3 of this Schedule 2.
- 3.5 The County Council covenants to keep the Undertaker informed of the progress made in relation to the design and proposed delivery of the Ladybridge Roundabout Development Works and the TCF Works prior to the submission of all design details by the Applicant in relation to the Ladybridge Roundabout Highway Works or any part of Work No.4 which overlaps with the TCF Works (as is relevant) and the County Council shall provide to the



Undertaker details of the proposed design for the Ladybridge Roundabout Development Works or any of the TCF Works not less than three months before such design details are anticipated to be approved and shall use reasonable endeavours to agree how those design details and the Ladybridge Roundabout Highway Works or any parts of Work No.4 which overlap with the TCF Works (as is relevant) may be revised having regard to the matters listed in paragraph 3.1 prior to the approval of those design details.

**4. HIGHWAYS TREES**

4.1 Where the County Council is requested to provide agreement of a CAVAT Assessment pursuant to paragraph 4.1.1 of Schedule 1 the County Council shall use reasonable endeavours within 10 Working Days of that request from the Undertaker to:

4.1.1 confirm the agreement of the CAVAT Assessment in writing to the Undertaker; or

4.1.2 give notice in writing to the Undertaker of the reasons why CAVAT Assessment cannot be agreed to by the County Council including any further information that it may require from the Undertaker

and where the County Council is unable to satisfy the requirements of paragraph 4.1.1 or paragraph 4.1.2 within 10 Working Days it shall provide the Undertaker with a reasonable explanation of the reasons for not being able to do so.

4.2 The procedure set out in paragraph 4.1 above shall be repeated following the provision of any updated CAVAT Assessment or the provision of any further information in relation to any CAVAT Assessment to address the reasons specified in the notice given by the County Council pursuant to paragraph 4.1.2 SAVE THAT nothing in this paragraph 4 shall restrict the ability of either party to refer any Dispute in respect of the CAVAT Assessment (including the CAVAT Compensation Amount) to an Expert for determination in accordance with clause 13.

**SCHEDULE 3**  
**BUS MITIGATION**

- 1. BUS DELAY MITIGATION FUND**
- 1.1 The Undertaker covenants not to Commence any part of the Onshore Cable Route unless and until it has paid the Bus Delay Mitigation Fund to the County Council and it shall notify the County Council in writing on the date of payment that such payment has been made whereupon the County Council shall pay the Bus Delay Mitigation Fund into the Account and provide the Undertaker with written notice of receipt and acknowledgement in the form attached at Appendix 8 to this Deed.
- 1.2 Following the receipt of a Bus Delay Mitigation Request from a Bus Operator the County Council must verify the Bus Delay Mitigation Request to confirm whether a decrease in Start Point Compliance of 3 percent or more against the Specified Route Baseline is as a result of Traffic Management.
- 1.3 Where the County Council following the verification of a Bus Delay Mitigation Request confirm a decrease in Start Point Compliance of 3 percent or more against the Specified Route Baseline is as a result of Traffic Management the County Council shall provide a copy of the verified Bus Delay Mitigation Request to the Undertaker and the Undertaker may dispute the Bus Delay Mitigation Request within a period of 5 Working Days following the receipt of the verified Bus Delay Mitigation Request.
- 1.4 Where following the receipt of a verified Bus Delay Mitigation Request from the County Council the Undertaker disputes that a decrease in Start Point Compliance of 3 percent or more against the Specified Route Baseline is as a result of Traffic Management it shall inform the County Council in writing providing reasons for the dispute and the parties shall use reasonable endeavours to resolve that dispute amicably within not more than 5 Working Days and only where the dispute is not resolved between the parties within 5 Working Days may either party refer dispute to the Expert for determination in accordance with clause 13.
- 1.5 Where following the receipt of a verified Bus Delay Mitigation Request from the County Council:
  - 1.5.1 the Undertaker confirms this is not disputed or otherwise does not dispute the Bus Delay Mitigation Request within a period of 5 Working Days following the receipt of the verified Bus Delay Mitigation Request from the County Council;
  - 1.5.2 the Undertaker does dispute in accordance with paragraph 1.3 but that dispute is resolved between the parties in accordance with paragraph 1.4 confirming a decrease in Start Point Compliance of 3 percent or more against the Specified Route Baseline is as a result of Traffic Management; or
  - 1.5.3 the Expert determines that a decrease in Start Point Compliance of 3 percent or more against the Specified Route Baseline is as a result of Traffic Management;the County Council may draw down the amount of £2,885 from the Account (provided the Account is in credit to that sum) and provide those monies to the Bus Operator which is equivalent to the cost of providing an additional bus on the Specified Route for a period of 7 days.
- 1.6 Following the verification by the County Council of a Bus Delay Mitigation Request which confirms a decrease in Start Point Compliance of 3 percent or more against the Specified Route Baseline as a result of Traffic Management and which:
  - 1.6.1 the Undertaker does not dispute in accordance with paragraph 1.3;
  - 1.6.2 the Undertaker does dispute in accordance with paragraph 1.3 but that dispute is resolved between the parties in accordance with paragraph 1.4 confirming a decrease in Start Point Compliance of 3 percent or more against the Specified Route Baseline is as a result of Traffic Management; or



1.6.3 the Expert determines in relation to that Bus Delay Mitigation Request that a decrease in Start Point Compliance of 3 percent or more against the Specified Route Baseline is as a result of Traffic Management;

the County Council will provide to the undertaker the information provided to them by the Bus Operator evidencing in respect of each 7 day period that:

1.6.4 the Traffic Management Delay Journey Time exceeds the Scheduled Journey Time; and

1.6.5 an additional bus has been provided on the Specified Route as a result of the increase in journey time between the Traffic Management Journey Time and the Scheduled Journey Time,

and the Undertaker may dispute the information provided within a period of 5 Working Days following the receipt from the County Council and **FOR THE AVOIDANCE OF DOUBT** the information to be provided may relate to any period of time which is in excess of 7 days.

1.7 Where following the receipt of the information from the County Council pursuant to paragraph 1.6 the Undertaker disputes that information it shall inform the County Council in writing providing reasons for the dispute and the parties shall use reasonable endeavours to resolve that dispute amicably within not more than 5 Working Days and only where the dispute is not resolved between the parties within 5 Working Days may either party refer dispute to the Expert for determination in accordance with clause 13.

1.8 Where following the receipt of the information from the County Council pursuant to paragraph 1.6:

1.8.1 the Undertaker confirms this is not disputed or otherwise does not dispute information within a period of 5 Working Days following the receipt of the information from the County Council;

1.8.2 the Undertaker does dispute the information in accordance with paragraph 1.6 but that dispute is resolved between the parties in accordance with paragraph 1.7 confirming the 7 day periods where the Traffic Management Delay Journey Time exceeds the Scheduled Journey Time and an additional bus has been provided on the Specified Route as a result of the increase in journey time between the Traffic Management Journey Time and the Scheduled Journey Time; or

1.8.3 the Expert determines in relation to that information the 7 day periods where the Traffic Management Delay Journey Time exceeds the Scheduled Journey Time and an additional bus has been provided on the Specified Route as a result of the increase in journey time between the Traffic Management Journey Time and the Scheduled Journey Time,

the County Council may draw down the amount of £2,885 from the Account in respect of each 7 day period that is confirmed (provided the Account is in credit to that sum):

1.8.4 the Traffic Management Delay Journey Time exceeds the Scheduled Journey Time; and

1.8.5 an additional bus has been provided on the Specified Route as a result of the increase in journey time between the Traffic Management Journey Time and the Scheduled Journey Time,

and provide those monies to the relevant Bus Operator.

1.9 The County Council will promptly provide to the Undertaker a statement each six months following the payment of the Bus Delay Mitigation Fund and otherwise on reasonable written request to confirm the payments made out of the Account and the amount which is remaining in the Account (including the amount of any accrued interest).

1.10 The County Council shall notify the Undertaker where the amount Bus Mitigation Delay Fund held in the Account is an amount which is less than 10 percent of the full amount of the Bus Delay Mitigation Fund and the Undertaker shall in those circumstances pay the

Bus Delay Mitigation Contingency Fund to the County Council within 20 Working Days following the receipt of the notification from the County Council whereupon the County Council shall pay the Bus Delay Mitigation Contingency Fund into the Account provide the Undertaker with written notice of receipt and acknowledgement in the form attached at Appendix 8 to this Deed.

- 1.11 The Undertaker shall notify the County Council of the Completion of Work No.4 and the County Council shall:
  - 1.11.1 confirm their agreement that the Completion of Work No.4 has occurred; or
  - 1.11.2 dispute that the Completion of Work No.4 has occurred,within not more than 10 Working Days following the receipt of the notification from the Undertaker.
- 1.12 Where the County Council dispute that the Completion of Work No.4 has occurred the parties shall use reasonable endeavours to agree whether the Completion of Work No.4 has occurred and either party may refer the dispute to be determined by the Expert in accordance with clause 13 where not agreed within 20 Working Days.
- 1.13 Within not more than 20 Working Days following:
  - 1.13.1 the County Council confirming their agreement that Completion of Work No.4 has occurred; or
  - 1.13.2 the Expert determining that the Completion of Work No.4 has occurred;and
  - 1.13.3 all claims in relation to draw down from the Account having been fully and finally settled,the County Council shall repay to the Undertaker any and all remaining amounts of the Bus Delay Mitigation Fund and/or the Bus Delay Mitigation Contingency Fund held in the Account (including any accrued interest).
2. **PATRONAGE MARKETING CONTRIBUTION**
- 2.1 Prior to the Completion of Work No.4 the Undertaker shall pay the Patronage Marketing Contribution to the County Council and shall notify the County Council in writing on the date of payment that such payment has been made whereupon the County Council shall pay the Patronage Marketing Contribution into the Account and provide the Undertaker with written notice of receipt and acknowledgement in the form attached at Appendix 8 to this Deed.
- 2.2 Where following the Completion of Work No.4 the County Council receive a Patronage Marketing Contribution Request from a Bus Operator which states that the increase in bus patronage on the relevant Specified Routes between the date of the payment of the Bus Delay Mitigation Fund into the Account and the date of the confirmation that the Completion of Work No.4 has occurred in accordance with paragraph 1.11 or 1.12 is more than 2 percent less than the increase in bus patronage on the relevant Control Routes the County Council shall notify the Undertaker of the same and provide to the Undertaker the Patronage Marketing Contribution Request.
- 2.3 The Undertaker may dispute a Patronage Marketing Contribution Request within a period of 20 Working Days following the receipt of the Patronage Marketing Contribution Request.
- 2.4 Where the Undertaker disputes a Patronage Marketing Contribution Request it shall inform the County Council in writing providing reasons for the dispute and the parties shall use reasonable endeavours to resolve that dispute amicably within not more than 20 Working Days and only where the dispute is not resolved between the parties within 20 Working Days may either party refer dispute to the Expert for determination in accordance with clause 13.
- 2.5 Where:



- 2.5.1 the Undertaker confirms this is not disputed or otherwise does not dispute a Patronage Marketing Contribution Request in accordance with paragraph 2.3; or
- 2.5.2 the Undertaker does dispute the information in accordance with paragraph 2.3 but that dispute is resolved between the parties in accordance with paragraph 2.4 confirming the increase in bus patronage on the relevant Specified Routes between the date of the payment of the Bus Delay Mitigation Fund into the Account and the date of the confirmation that the Completion of Work No.4 has occurred in accordance with paragraph 1.11 or 1.12 is more than 2 percent less than the increase in bus patronage on the relevant Control Routes; or
- 2.5.3 the Expert determines in relation to a Patronage Marketing Contribution Request that the increase in bus patronage on the relevant Specified Routes between the date of the payment of the Bus Delay Mitigation Fund into the Account and the date of the confirmation that the Completion of Work No.4 has occurred in accordance with paragraph 1.11 or 1.12 is more than 2 percent less than the increase in bus patronage on the relevant Control Routes;

the County Council may draw down the Patronage Marketing Contribution from the Account and may pay this to the relevant Bus Operator(s) towards costs incurred in respect of pro-bus marketing campaigns following the Completion of Work No.4 and the County Council covenants with the Undertaker not to use the Patronage Marketing Contribution for any other purpose.

2.6 Where:

- 2.6.1 no Patronage Marketing Contribution Request is made by a Bus Operator within 3 months of the date on which the Completion of Work No.4 is confirmed to have occurred in accordance with paragraph 1.11 or 1.12; or
- 2.6.2 Patronage Marketing Contribution Requests are made by the Bus Operators within 3 months of the date on which the Completion of Work No.4 is confirmed to have occurred in accordance with paragraph 1.11 or 1.12 but it is subsequently determined by the Expert in relation to those that the increase in bus patronage on the relevant Specified Routes between the date of the payment of the Patronage Marketing Contribution into the Account and the date on which the Completion of Work No.4 is confirmed to have occurred in accordance with paragraph 1.11 or 1.12 is not more than 2 percent less than the increase in bus patronage on the relevant Control Routes such that the Patronage Marketing Contribution is not eligible for draw down from the Account by the County Council;

the County Council shall repay to the Undertaker the Bus Patronage Contribution held in the Account (including any accrued interest) within not more than 20 Working Days of:

- 2.6.3 the date which is 3 months of the date on which the Completion of Work No.4 is confirmed to have occurred in accordance with paragraph 1.11 or 1.12; or
- 2.6.4 the date of determination by the Expert that the Patronage Marketing Contribution is not eligible for draw down in respect of all Patronage Marketing Contribution Requests made within 3 months of the of the date on which the Completion of Work No.4 is confirmed to have occurred in accordance with paragraph 1.11 or 1.12;

whichever is the later.

3. **CONFIDENTIALITY**

- 3.1 The Undertaker acknowledges that any and all information provided to the Undertaker by the County Council in relation to any Bus Delay Mitigation Request and any Patronage Marketing Contribution Request constitutes confidential information and the Undertaker covenants with the County Council that if required to do so by the County Council or the Bus Operators it shall enter into non-disclosure agreements and further covenants not to release any such information received from the County Council to any other person save

where necessary in connection with the referral of a matter for determination by an Expert in accordance with Clause 13.



**IN WITNESS** whereof this Deed has been duly executed by the parties to this Deed on the date which appears at the head of this document.

**EXECUTED** as a **DEED** by )  
affixing the common seal of )  
**HAMPSHIRE COUNTY** )  
**COUNCIL** in the presence of: - )

Authorised signatory

Name

Position

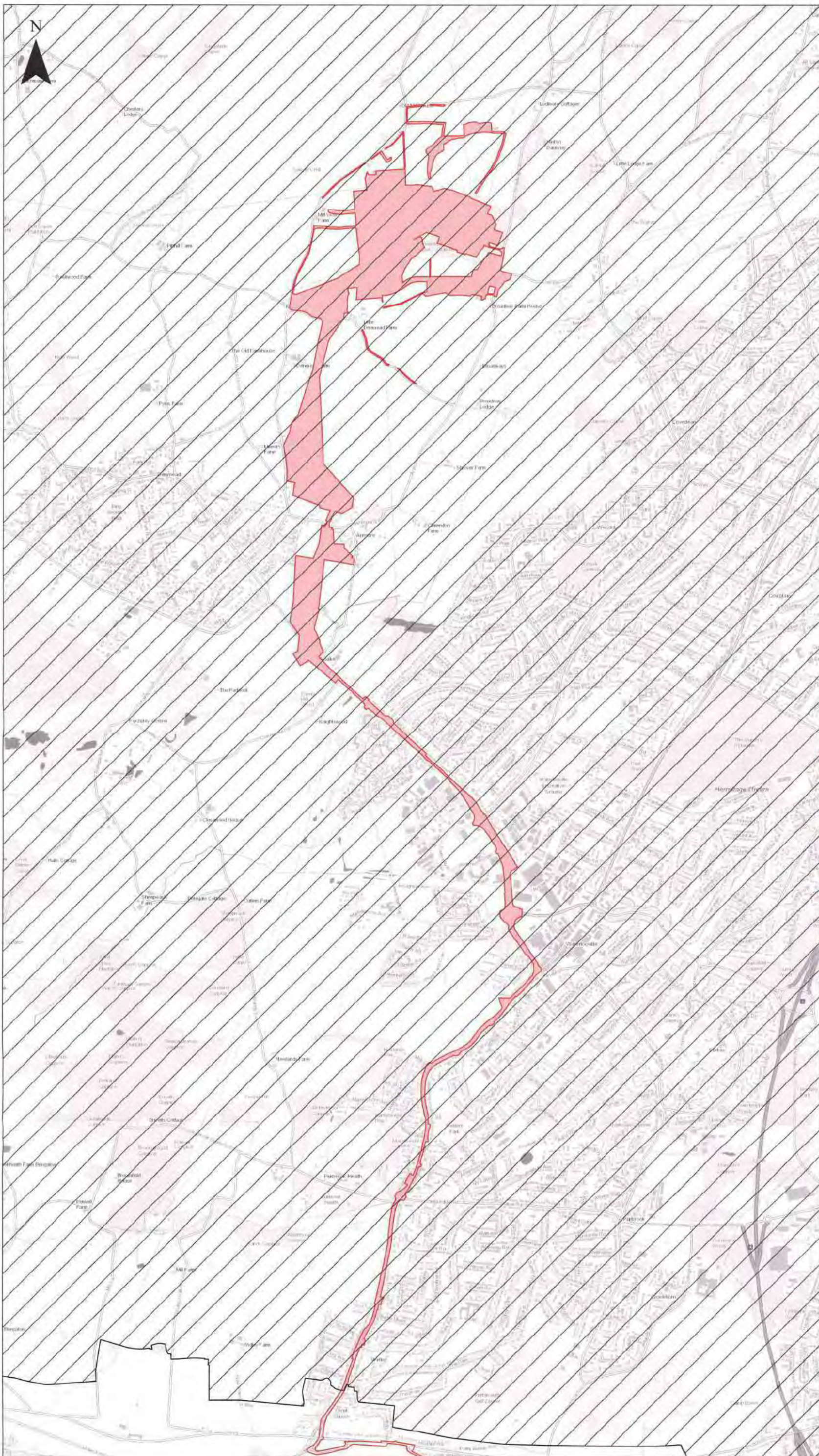
**SIGNED** as a **DEED** by )  
**AQUIND LIMITED** )  
acting by two directors or one director )  
and the company secretary: )

Director




Director/Secretary

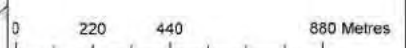
**APPENDIX 1**  
**DCO LAND PLAN**





**AQUIND Interconnector  
Order Land within Hampshire County Council  
Administrative Area**

-  Hampshire County Council Administrative Area
-  Order Limits
-  Order Land within Hampshire County Council Administrative Area



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Infrastructure Planning (Applications, Prescribed Forms and Procedure) Regulations 2009 - Regulation 5(2)(i)


01	26/02/2021	AH	First Issue	DL	VB
REV	DATE	BY	DESCRIPTION	CHK	APP

DRAWING STATUS: **FOR APPROVAL**



**AQUIND Interconnector**

**Order Land within Hampshire County Council Administrative Area  
Sheet 1 of 1**

SCALE: 1:10,500	CHECKED: DL	APPROVED: VB
PROJECT: EN020022	DESIGNED: AH	DRAWN: AH
DATE: 26/02/2021		



**APPENDIX 2**  
**CONVERTER STATION ACCESS WORKS DRAWING**





**APPENDIX 3**  
**CONVERTER STATION ACCESS WORKS HIGHWAYS AGREEMENT**



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202[X]

**HAMPSHIRE COUNTY COUNCIL**

and

**AQUIND LIMITED**

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**DEED OF AGREEMENT**

in relation to Highway Works at  
Broadway Lane and Day Lane  
pursuant to (inter alia) S.278 and S.38 Highways  
Act 1980

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Herbert Smith Freehills LLP

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THIS AGREEMENT is made as a Deed the [ ] day of [ ] 202[X]

**PARTIES:**

- (1) **HAMPSHIRE COUNTY COUNCIL** of The Castle Winchester Hampshire SO23 8UJ ("**the County Council**"); and
- (2) **AQUIND LIMITED** (Company Registration Number 06681477) whose registered office is situated at OGN House, Hadrian Way, Wallsend NE28 6HL ("**the Developer**")
- (3) **[LAND OWNER'S FULL NAME]** [If individual enter full postal address for service here] [(Company Registration Number [registered number to be inserted here]) whose registered office is situated at [registered address to be inserted here]] ("**the Owner**")
- (4) **[MORTGAGEES FULL NAME]** (Company Registration Number [registered number to be inserted here]) whose registered office is situated at [registered address to be inserted here] ("**the Mortgagee**")

**WHEREAS**

- (A) The County Council is the Highway Authority for Hampshire.
- (B) On [xxx] 202[x] the Secretary of State granted the AQUIND Interconnector Order 202[x] (the "**Development Consent Order**") which granted development consent for the elements of AQUIND Interconnector which are located in the UK and the UK Marine Area (the "**Development**"). The Developer is the undertaker for the purposes of the AQUIND Interconnector Order 202[x] and is undertaking the construction of the Development.
- (C) The Development includes a permanent access junction to the Converter Station on Broadway Lane and an associated gated highway link between Broadway Lane and Day Lane which comprises Work No.2 (bb) as detailed in Schedule 1 to the DCO, and it is also necessary in connection with the construction of the Development for temporary passing places to be installed along Day Lane to facilitate the continued safe movement of traffic.
- (D) [The [Developer/Owner] is the registered proprietor with title absolute of the Land registered at Land Registry under Title Number(s) [HP ] for the benefit of which Land the Works hereinafter referred to are carried out [subject to a Charge in favour of the Mortgagee]]
- (E) The Developer is desirous of entering into this Agreement for the purposes of securing the carrying out of the Works as defined herein and the Developer has agreed that it will pay the cost of construction, maintenance and (where relevant) the reinstatement of the Works.
- (F) The [Developer/Owner] has agreed to dedicate as public highway part of the land upon which the Works are to be constructed which does not currently form part of the public highway to ensure that visibility splays are maintained and the County Council agrees to accept such dedication and adopt that part of the land and the Works thereon as highway maintainable at public expense on the terms and conditions hereinafter contained.
- (G) The County Council is satisfied pursuant to Section 278 of the Highways Act 1980 that it will be of benefit to the public for the County Council to enter into this Agreement in relation to the execution of the Works at the expense of the Developer which Works are the subject of development consent granted by the Development Consent Order.

**NOW THIS DEED OF AGREEMENT WITNESSETH** as follows:

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following expressions shall have the following meanings:

**"Additional Works"** a written list of any additional works required to be carried out in order to achieve the issue of a Certificate of Completion;

**"Bond"** means a bond in the sum [xxx(£xxx)] being the tender price of such parts of the Works as are located on the public highway and the Dedication Land [(as confirmed by the Developer and as approved by the County Council)] [plus the estimated cost of any commuted sums payable in accordance with Clause 6.1.4 hereof in both cases] as approved by the County Council together with the cost of any statutory undertakers works plus 10% thereof;

**"CG300"** means procedures for Technical Approval of Highway Structures published by Highways England March 2020 or any subsequent revision thereof

**"CDM Regulations"** means the Construction (Design and Management) Regulations 2015;

**"Certificate of Completion"** means a certificate issued by the County Council confirming the Works have been executed to its satisfaction and can be placed on maintenance;

**"Certificate of Maintenance"** means a certificate issued by the County Council in respect of the Converter Station Access Junction Works pursuant to the provisions of Clause 8.2;

**"Certificate of Reinstatement"** means a certificate issued by the County Council in respect of the Day Lane Passing Place Works pursuant to the provisions of Clause 8.7;

**"Chartered Engineer"** means a person registered as an engineer with the Engineering Council as having the technical knowledge and practical experience to satisfy its preferred requirements to be employed under an approved construction contract in accordance with Schedule 2 paragraph 7.2 and be independent of the Contractor;

**"Contractor"** means a contractor who complies with Section 5.2 of the Section 278 Technical Submission Requirements appointed by the Developer to undertake the Works;

**"Construction Contract"** means the contract between the Developer and the Contractor [incorporating the third edition of the Conditions of Contract approved by the Institution of Civil Engineers and commonly known as the NEC3 Engineering and Construction Contract Suite of Contract] approved by the County Council in accordance with Schedule 2 paragraph 1.3;

**"Converter Station"** means the converter station and associated electrical equipment to be constructed as part of the Development and which comprises Work No.2;

**"Converter Station Access Junction Works"** means the works to construct the permanent access junction and associated gated highway link to the Converter Station to be constructed as part of the Development and which comprises Work No.2 (bb) in general accordance with drawing number [xxx] located at Appendix 1 and more particularly described in Part 1 of Schedule 1;

**"Converter Station Access Junction Works Maintenance Period"** means a period of at least 6 months following the completion of the construction of the Converter Station or the completion of the construction of Works No. 4 (whichever shall be the later);

**"Day Lane Passing Places Works"** means the works to construct the 4no. passing places on Day Lane in the locations identified indicatively on drawing [xxx] located at Appendix 2 and more particularly described in Part 2 of Schedule 1;

**"Day Lane Passing Places Works Maintenance Period"** means from the date of the issue of the Certificate of Completion for the Works until the issue of the Certificate of Reinstatement;



**"Dedication Land"** means the land shaded orange and labelled **"Dedication Land"** on the Dedication Land Plan which is to be dedicated as highway and adopted as highway maintainable at the public expense by the County Council for the purpose of providing visibility splays;

**"Dedication Land Plan"** means the plan attached hereto at Appendix [x];

**"Development"** means those elements of the Project located in the UK onshore for which the DCO is granted;

**"Development Consent Order"** means the AQUIND Interconnector Order 202[x] and any variation properly made to that from time to time and references to **"DCO"** shall be construed accordingly;

**"Director of Economy Transport and Environment"** means the County Council's Director of Economy Transport and Environment or such other officer or officers as may from time to time be primarily responsible for the County Council's functions duties and responsibilities as a Highway Authority and the term **"Director"** shall be construed accordingly;

**"Guidance Notes"** means the **"Section 278 Technical Submission Requirements"** and **"Section 278 Guidance for Developers"** prepared by the Director of Economy Transport and Environment to inform of the processes practices and procedures required by the County Council when undertaking design and works on a highway under section 278 Highways Act 1980;

**"Head of Law and Governance and Monitoring Officer"** means the County Council's Head of Law and Governance and Monitoring Officer or such other officer or officers as may from time to time be primarily responsible for the provision of legal advice to the County Council;

**"Highway Structure"** means any structure or structures (as the context so requires) as defined in CG300;

**"Interest Accrued"** means the interest accrued on any Security Deposit provided to the County Council pursuant to Clause 5;

**"Management Plan"** means a management plan produced by the Developer showing how in the course of the planning and construction of the Works the Developer will:

- (a) minimise disruption to all types of traffic;
- (b) avoid instances of newly surfaced highway having to be re-excavated or have further works carried out on them;
- (c) minimise the number of closures/diversions required by the Works;
- (d) ensure that it takes into consideration the safety of all types of traffic that may be diverted or affected by the Works;
- (e) comply with the Hampshire County Permit Scheme (in accordance with Article [9A] of the DCO); and
- (f) prevent deposits on the highway of earth mud and subsoil;

**"Programme"** means the programme for the execution of the Works agreed from time to time in writing by the County Council pursuant to Schedule 2 paragraph 1.1 and shall include;

- (a) start dates, access dates, key dates and completion dates;
- (b) the order and timing of operations of the contractor employed to undertake the Works;
- (c) traffic management operations and resources to be employed;
- (d) allowances for others as required for undertaking works; and
- (e) float, time risk and weather allowances.

**"Project"** means AQUIND Interconnector a new 2,000 MW subsea and underground High Voltage Direct Current ('HVDC') bi-directional electric power transmission link between the South Coast of England and Normandy in France;

**"Security Deposit"** means a security deposit in the sum of [xxx(£xxx)] being the tender price of such parts of the Works as are located on the public highway and the Dedication Land (as confirmed by the Developer) [plus the estimated cost of any commuted sums payable in accordance with Clause 5.1.2 hereof] together with the cost of any statutory undertakers works in both cases as approved by the County Council plus 10% thereof;

**"Specification"** Means a specification for the Works agreed from time to time in writing by the County Council pursuant to Schedule 2 paragraph 1.1 which takes account of:

- (a) the 'Manual of contract documents for highway works: Volume 1 Specification for highway works' published by TSO in November 2009 as modified and extended by any supplements and revisions and further as modified and extended by Hampshire County Council's Model Contract Specification (available on request);
- (b) Hampshire County Council's Highway Construction Standard Details (available at [www.hants.gov.uk/transport/developers/standard-details](http://www.hants.gov.uk/transport/developers/standard-details));
- (c) Hampshire County Council's Technical Guidance Notes (available at [www.hants.gov.uk/transport/developers/technical-guidance](http://www.hants.gov.uk/transport/developers/technical-guidance)); and
- (d) Hampshire County Council's Companion Document to Manual for Streets where applicable (available at [http://documents.hants.gov.uk/transport/manual\\_for\\_streets.pdf](http://documents.hants.gov.uk/transport/manual_for_streets.pdf)),

all as in force at the date of commencement of the Works and in so far as relevant to the Works;

**"TSO"** means The Stationery Office Limited (03049649) and whose registered office is at 55 Wells Street London W1A 3AE being formerly Her Majesty's Stationery Office;

**"Working Day"** means any day Monday to Friday inclusive excluding bank holidays between the hours of 0830 and 1630 and the expression 'Working Days' shall be construed accordingly; and

**"Works"** means the Converter Station Access Junction Works and the Day Lane Passing Places Works described in Schedule 1 hereto.

1.2 In this Agreement unless stated otherwise:

- 1.2.1 clause, schedule and paragraph headings shall not affect the interpretation of this Agreement;
- 1.2.2 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.3 the Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules;
- 1.2.4 a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.5 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.6 a reference to any party shall include that party's personal representatives, successors or permitted assigns;
- 1.2.7 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time provided that, as between the parties, no such amendment, extension or re-enactment shall apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party;



- 1.2.8 a reference to a statute or statutory provision shall include any subordinate legislation, codes of practice or other directions or given thereunder from time to time under that statute or statutory provision;
- 1.2.9 a reference to in writing or written does not include e-mail;
- 1.2.10 documents in an agreed form are documents in the form agreed by the parties and initialled by or on behalf of them for identification;
- 1.2.11 a reference to "this Agreement" or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other document or agreement as varied from time to time;
- 1.2.12 references to clauses and schedules are to the clauses and schedules of this Agreement and references to paragraphs are to paragraphs of the relevant schedule;
- 1.2.13 an obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done;
- 1.2.14 references to "including" shall mean "including without limitation or prejudice to the generality of any description, defining terms or phrase preceding that word" and the word "include" and its derivatives shall be construed accordingly;
- 1.2.15 if any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected, impaired or called into question;
- 1.2.16 where any agreement certificate or approval is to be given by the County Council under the terms of this Agreement then the same shall be in writing and not be unreasonably withheld or delayed;
- 1.2.17 references to the County Council include the successors to the County Council's statutory functions as the local highway authority;
- 1.2.18 references to the Developer shall include shall include any person to whom powers are transferred pursuant to Article 7 of the DCO in so far as relevant to the Works; and
- 1.2.19 references to "Work Nos." or to a "Work No." are references to the works forming part of the Development listed in Schedule 1 to the DCO.

## **2. LEGAL EFFECT**

- 2.1 This Agreement is made pursuant to Sections 38 and 278 of the Highways Act 1980, Section 111 of the Local Government Act 1972, Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and Section 1 of the Localism Act 2011 and all other statutory and other enabling powers and shall be enforceable accordingly including the Localism Act 2011.
- 2.2 For the purposes of Section 251 of the Highways Act 1980 the County Council certifies that this Agreement is made in connection with its functions as Highway Authority under the Highways Act 1980

## **3. DEVELOPER'S COVENANTS**

- 3.1 The Developer hereby covenants with the County Council as follows:
  - 3.1.1 to carry out at its own expense and at no cost to the County Council the Works and any Additional Works as contractor for the County Council in a good and workman like manner and with proper materials and in accordance in all respects with the terms and conditions described in Schedule 2;
  - 3.1.2 to maintain or procure the maintenance of the Works in accordance with the terms of this Agreement;

- 3.1.3 unless otherwise agreed by the County Council (having first consulted with the South Downs National Park Authority and East Hampshire District Council) to carry out the reinstatement of the Day Lane Passing Place Works within not more than 6 months of the confirmation from the County Council that reinstatement is required in accordance with Clause 8.5;
- 3.1.4 to dedicate the Dedication Land in accordance with the terms of this Agreement; and
- 3.1.5 without prejudice to its liability under Clause [4.1] and [4.2] hereof to indemnify the County Council to be insured against public liability risks for a sum of at least £10,000,000 in respect of any one claim and shall ensure that any person or persons carrying out the Works on its behalf is similarly insured against public liability risks and the Developer or any person authorised by it to carry out the Works shall (without prejudice to the requirements of Schedule 2 paragraph [1.7] of this Agreement) on request by the County Council produce for inspection the relevant original policies of insurance together with receipts for the premiums paid.

#### **4. INDEMNITIES**

- 4.1 The Developer shall indemnify and keep indemnified the County Council in respect of all actions claims demands fees charges expenses and proceedings arising out of or in connection with or incidental to the carrying out of the Works and any works required by any statutory undertaker including (but not limited to) any costs expenses and penalties incurred by the County Council in the event the Developer exceeds the timescale specified in the Programme other than those arising under Parts I and II of the Land Compensation Act 1973 in respect of which clause 4.2 applies.
- 4.2 The Developer shall indemnify the County Council against all costs associated with its responsibilities and all claims under section 10 of the Compulsory Purchase Act 1965 and pursuant to Part I and Part II of the Land Compensation Act 1973 (as amended) and regulations made thereunder (including claims for compensation under the provisions of the Noise Insulation Regulations 1975) arising out of, or in connection with or incidental to, the carrying out of the Works and the subsequent use of such parts of the Works as are located on the public highway and the Dedication Land.
- 4.3 The indemnities provided at clauses 4.1 and 4.2 shall not apply to the extent any action, cost, claim, demand, charge or expense or any negligent or defective act, default or omission on the part of or attributable to the County Council and its employees or contractors.
- 4.4 The indemnity provided at clause 4.1 is conditional upon the cause of such liabilities, actions, costs, claims and demands occurring before the issue of the Certificate of Maintenance and/or the Certificate of Reinstatement (as is relevant in relation to the Works which give rise to such liabilities etc.).
- 4.5 Should the County Council recover (whether by payment, discount, credit, saving, relief or other benefit whatsoever) a sum that is directly attributable to a claim the County Council shall give the credit to the Developer (as appropriate) for the sum which is the lesser of (a) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any costs and expenses incurred by the County Council in recovering the same and (b) the amount paid by the Developer under the indemnities provided at Clause 4.1 and 4.2.
- 4.6 The County Council shall use reasonable endeavours to mitigate any claim.

#### **5. SECURITY FOR THE PERFORMANCE OF THE DEVELOPER'S OBLIGATIONS**

- 5.1 The Developer shall not commence the Works (or any part thereof) until it has provided to the County Council:
  - 5.1.1 a Bond by a surety acceptable to the Head of Law and Governance and Monitoring Officer to the effect that if the Developer fails at any time to carry out or observe any of the terms conditions and stipulations on its part contained in



this Agreement or in the event of the Developer becoming bankrupt or going into liquidation or entering administrative receivership or entering into a deed of arrangement for the benefit of its creditors the surety shall pay to the County Council on demand such sum as may be certified by the County Council to be required in order to complete the Works or reinstate the highway or complete such alternative works as the County Council considers appropriate and remedy any defects occurring or discovered during the Converter Station Access Junction Works Maintenance Period and the Day Lane Passing Places Works Maintenance Period and the cost of any other sums due under the terms of this Agreement together with such further sum as the Head of Law and Governance and Monitoring Officer may certify to be necessary to fully reimburse the County Council in respect of any costs and expenses incurred by the County Council in the enforcement of the obligations on the part of the Developer under this Agreement together with the cost to the County Council of preparing an alternative contract and of supervising the execution of this alternative contract PROVIDED THAT the sums to be paid to the County Council pursuant to the Bond shall in no circumstances exceed the amount of the Bond and PROVIDED FURTHER THAT upon issue of the Certificate of Completion the Bond will be reduced by 85% or to the sum of £5,000.00 whichever is the greater value or to such other sum as may be agreed between the parties or if the County Council has drawn down on the Bond the Bond shall be reduced to 85% of such figure remaining or to the sum of £5,000.00 whichever is the greater value or to such other sum as may be agreed between the parties and PROVIDED FURTHER THAT upon issue by the County Council of the Certificate of Maintenance and the Certificate of Reinstatement the Bond shall be fully released; or

- 5.1.2 the Security Deposit and if the Developer fails at any time to carry out or observe any of the terms conditions and stipulations on its part contained in this Agreement or in the event of the Developer becoming bankrupt or going into liquidation or entering administrative receivership or entering into a deed of arrangement for the benefit of its creditors the County Council may itself carry out and complete the Works or reinstate the highway or complete such alternative Works as the County Council considers appropriate and remedy any defects occurring or discovered during the Converter Station Access Junction Works Maintenance Period and the Day lane Passing Place Works Maintenance Period and may use the Security Deposit or any part thereof to fully reimburse the County Council in respect of any costs and expenses incurred by the County Council in doing so together with the cost to the County Council of preparing an alternative contract and of supervising the execution of this alternative contract together with the cost of any other sums due under the terms of this Agreement PROVIDED THAT the sums to be paid to the County Council shall in no circumstances exceed the amount of the Security Deposit and PROVIDED FURTHER THAT upon issue of the Certificate of Completion the County Council will pay the Security Deposit plus any Interest Accrued on the Security Deposit to the Developer so as to reduce the sum held to 85% of the Security Deposit or to the sum of £5,000.00 whichever is the greater value or to such other sum as may be agreed between the parties or if the County Council has used part of the Security Deposit in accordance with this clause then the sum held shall be reduced to 85% of such figure remaining or to the sum of £5,000.00 whichever is the greater value or to such other sum as may be agreed between the parties and PROVIDED FURTHER THAT upon issue by the County Council of the Certificate of Maintenance and the Certificate of Reinstatement the balance of such part of the Security Deposit remaining plus any Interest Accrued on the Security Deposit shall be repaid to the Developer.

- 5.2 The County Council covenants with the Developer that if the sum paid to the County Council pursuant to a Bond or drawn from the Security Deposit exceeds the cost of the County Council carrying out and completing the Works or reinstating the highway or completing such alternative works as the County Council considers appropriate (together

with the County Council's reasonable costs in connection with so doing) to repay to the surety or the Developer within 20 Working Days following the date of the Completion of the works by the County Council the amount of any excess.

## 6. PAYMENTS

6.1 The Developer further covenants with the County Council to pay to the County Council:

- 6.1.1 on the date hereof the whole of the reasonable and proper legal and disbursements costs and the Director's costs incurred by the County Council in connection with the preparation and completion of this Agreement;
- 6.1.2 within 20 Working Days of demand and in any event prior to commencement of the Works (or the relevant part thereof) the reasonable cost to the County Council of approving the detailed contract drawings for the Works (or such part as is relevant) including the cost of approval of preliminary design check drawings and any structural approvals (less any pre-check fees already paid to the County Council on account of such costs);
- 6.1.3 within 20 Working Days of demand and in any event prior to commencement of the Works (or the relevant part thereof) a sum equal to 5 per cent of the tender price of the Works on the public highway and the Dedication Land (or such part as is relevant) [(as confirmed by the Developer and as approved by the County Council)] or £2,000 (whichever is the greater and such sum to be paid only once) being a sum on account of the County Council's reasonable costs incurred in inspecting and administering the Works and further shall pay any additional sum incurred by the County Council in inspecting and administering the Works within 20 Working Days following receipt of an invoice from the County Council.
- 6.1.4 Prior to the issue of a Certificate of Completion and in respect of future maintenance in so far as such parts of the Converter Station Access Junction Works are located on the public highway or the Dedication Land only:-
- (A) in respect of soakaways (if any) including any rubble drains terminal soakaways or linear ditch soakaways a commuted sum of £3,500.00 per soakaway PROVIDED THAT should any soakaway have a cubic capacity exceeding 5 cubic metres an additional sum will be payable calculated pro rata in respect of any cubic capacity in excess of 5 cubic metres;
  - (B) in respect of unusual paving surfacing and high friction surfaces (if any) a commuted sum equal to the replacement cost;
  - (C) in respect of illuminated signs (if any) a commuted sum equal to the replacement cost;
  - (D) in respect of decorative (i.e. non-standard) street lighting (if any) a commuted sum equal to the replacement cost;
  - (E) in respect of landscape works (if any) a commuted sum of £40 per square metre;
  - (F) in respect of hydrobrakes petrol interceptors pebble drains linear ditches (if any) a commuted sum equal to the replacement cost per hydrobrake petrol interceptor pebble drains linear ditch; and
  - (G) in respect of water attenuation systems Sustainable Drainage Systems (SUDS) and any other drainage systems other than those referred to in Clauses 6.1.4(A) and 6.1.4(F) above (if any) a commuted sum of [Cost as identified by instructing officer and agreed between the parties] such systems being solely for the disposal of highway water,
- 6.1.5 within 20 Working Days of demand and in any event prior to the issue of a Certificate of Completion the costs of all design checks and inspections in relation to the Works (or such part as is relevant);



- 6.1.6 prior to the issue of a Certificate of Completion any sums due pursuant to Schedule 2 in relation to the Works (or such part as is relevant);
  - 6.1.7 within 20 Working Days of demand and in any event prior to the reduction of the of the Bond or Security Deposit the sum of £150 for costs incurred by the County Council in approving administering and reducing the Bond or Security Deposit as required pursuant to Clause 5;
  - 6.1.8 within 20 Working Days of demand and in any event prior to the release of the Bond or Security Deposit the sum of £150 for costs incurred by the County Council in approving administering and releasing the Bond or Security Deposit as required pursuant to Clause 5;
  - 6.1.9 within 20 Working Days of demand and in any event prior to the issue of the Certificate of Maintenance the costs of all design checks and inspections;
  - 6.1.10 prior to the issue of the Certificate of Maintenance any sums due pursuant to Schedule 2 relevant to the Converter Station Access Junction Works but not paid at that time; and
  - 6.1.11 prior to the issue of the Certificate of Reinstatement any sums due pursuant to Schedule 2 relevant to the Day Lane Passing Places Works but not paid at the time.
- 6.2 Where any payment due to the County Council under this Agreement has not been paid within the timescales provided for in this Agreement the Developer covenants with the County Council that the Developer shall pay interest at a rate of 4% per annum above the base lending rate of [the HSBC or other preferred bank] at the date on which the payment was due to be paid pursuant to this Agreement on the sum outstanding from the due date under this Agreement until the actual date of payment to the County Council.

## 7. COUNTY COUNCIL'S COVENANTS

- 7.1 The County Council hereby covenants with the Developer as follows:
- 7.1.1 that it hereby authorises the Developer and the Contractor to carry out the Works within the public highway subject to and strictly in accordance with the terms conditions and stipulations in Schedule 2;
  - 7.1.2 to use reasonable endeavours to approve any detailed contract drawings, Programme, Specification and traffic management measures prepared by the Developer and the form of Construction Contract for the Works submitted to the County Council within not more than 20 Working Days of the day following which they are submitted by the Developer for approval or such other timeframe as is agreed between the Developer and the County Council (save that for the avoidance of doubt nothing in this Clause 7.1.2 shall be taken to require the County Council to provide such approvals or to fetter the County Council complying with its statutory obligations in relation to the public highway);
  - 7.1.3 that as soon as reasonably practicable following the notification of the completion of the Works (or part thereof) by the Developer the County Council shall:
    - (A) inspect the Works; and
    - (B) where required provide the Developer with a written list specifying any Additional Works.
  - 7.1.4 in the event that any Additional Works are required to be undertaken by the Developer, as soon as reasonably practicable following notification of the completion of the Additional Works the County Council shall:
    - (A) inspect the Additional Works; and
    - (B) where required provide the Developer with a written list specifying any Additional Works.

and this process shall be repeated until such time as the Additional Works are complete to the reasonable satisfaction of the County Council. As soon as reasonably practicable following a satisfactory inspection of the Works (or part thereof) the County Council will issue the Certificate of Completion in respect of the Works

**8. Maintenance and Dedication of the Works**

8.1 From and including the date of a Certificate of Completion:

8.1.1 that part of the Works as are at the date of this Agreement within the public highway shall be open to use by vehicles and pedestrians;

8.1.2 the Developer [and the [Owner] [and the Mortgagee]] agree to dedicate the Dedication Land as highway to remain open for use of the public at large but it is acknowledged by the parties to this Agreement that the Dedication Land shall not become highway maintainable at the public expense until the date of issue of the Certificate of Maintenance;

8.1.3 for the duration of the Converter Station Access Junction Works Maintenance Period the Developer shall maintain the Converter Station Access Junction Works; and

8.1.4 for the duration of the Day Lane Passing Places Works Maintenance Period the Developer shall maintain the Day Lane Passing Places Works.

8.2 The County Council shall promptly after the expiry of the Converter Station Access Junction Works Maintenance Period and PROVIDED ALWAYS that the Converter Station Access Junction Works have been fully maintained as aforesaid and that any defects appearing or safety issues identified during the Converter Station Access Junction Works Maintenance Period have been made good and all sums due under this Agreement have been paid issue the Certificate of Maintenance.

8.3 The [Developer/Owner] hereby dedicate the Dedication Land such dedication to take effect from the issue of the Certificate of Completion [and the Mortgagee consents to such dedication].

8.4 The [Developer], the Owner] and the County Council agree that the Dedication Land shall become highway maintainable at the public expense on the grant of the Certificate of Maintenance.

8.5 The County Council shall within not more than 20 Working Days following a request from the Developer following the completion of the construction of the Converter Station or the completion of the construction of Works No. 4 (whichever shall be the later) confirm to the Developer whether the Day Lane Passing Places are required to be reinstated.

8.6 Where the County Council confirms to the Developer that the reinstatement of the Day Lane Passing Places Works is required to be undertaken pursuant to Clause 8.5 above the Developer shall notify the County Council following the reinstatement of the Day Lane Passing Places Works and the County Council shall promptly following of the receipt of notification of the reinstatement of the Day Lane Passing Places Works:

8.6.1 inspect the reinstatement undertaken; and

8.6.2 where required provide the Developer with a written list of any works required prior to the issue of the Certificate of Reinstatement,

and this process shall be repeated until such time as the reinstatement of the Day Lane Passing Places Works is complete to the reasonable satisfaction of the County Council.

8.7 Promptly following:

8.7.1 confirmation from the County Council that the Developer is not required to undertake the reinstatement of the Day Land Passing Places Works pursuant to Clause 8.5; or



8.7.2 a satisfactory inspection of the reinstatement of the Day Lane Passing Places Works being undertaken by the County Council'

the County Council will issue the Certificate of Reinstatement.

**9. FURTHER AGREEMENT BETWEEN PARTIES**

9.1 It is further agreed between the parties that in accordance with Regulation 4(8) of the CDM Regulations the Developer hereby elects to be the only client for the purposes of the CDM Regulations for any part of the Works as may be within the public highway and the County Council consents to such an election and for the avoidance of doubt the County Council shall have a duty only under Regulations 4(4), 8(4) and 8(6) of the CDM Regulations insofar as those duties relate to health and safety information in the County Council's possession as a Highway Authority.

9.2 If the estimated value of the contract for the Works equals or exceeds the threshold identified in Regulation 5(1) of the Public Contracts Regulations 2015 then the Developer as contractor for the County Council shall in appointing an economic operator to carry out the Works comply with the Public Contracts Regulations 2015.

9.3 If the Department for Transport Technical Design Standards or Advice is amended after the date of this Agreement the County Council shall be at liberty to review the Works and require any amendments it deems necessary to ensure that the Works comply with the revised standards and advice SAVE THAT in circumstances where detailed contract drawings have been approved in writing by the County Council and the Works are commenced then SUBJECT ALWAYS TO AND WITHOUT PREJUDICE to Schedule 2 paragraph 14 hereof the County Council shall not seek any amendments to the Works

**10. NON-COMPLIANCE**

10.1 Without prejudice to the terms hereof if the Developer fails to execute or complete the Works in accordance with its obligations hereunder the County Council shall after not less than fourteen days' notice in writing to the Developer (or immediately in any case of emergency or danger) be entitled to complete the Works or reinstate the highway or complete such alternative works as the County Council considers appropriate in default with its own employees or by contract or otherwise (entering the Land if necessary to do so) and to recover the cost as certified by the County Council from the Developer and the County Council shall have the right to enter the Dedication Land to complete the Works and in this case dedication shall be effective from the date of such entry.

10.2 In the event that the Developer fails to execute or complete the Works in accordance with the timescale set out within the notice referred to in clause 10.1 and the County Council is subsequently required to exercise its powers set down in clause 10 hereof then the authority given to the Developer under clause 7.1.1 shall be immediately revoked.

**11. ARBITRATION**

11.1 Save for matters of interpretation of this Agreement (which shall be matters for the Court) in the event of any dispute arising between the parties hereto in respect of any matter contained in this Agreement including questions of value and any question of reasonableness the same shall be referred to an expert ("**Expert**") to be agreed upon between the parties hereto or at the request and option of either of them to be nominated at their joint expense by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors and the Expert's decision shall (in the absence of manifest error) be final and binding on the parties hereto and whose costs shall be borne by the parties at his discretion.

11.2 The Expert shall:

11.2.1 have at least ten years post qualification experience in the subject matter of the dispute;

11.2.2 be appointed subject to an express requirement that he reaches a decision and communicates it to the parties within the minimum practicable timescale allowing

for the nature and complexity of the dispute and in any event in not more than 30 Working Days from the date of his appointment to act; and

11.2.3 be required to give notice to each of the parties inviting each of them to submit to him within 10 Working Days of his appointment written submissions and supporting material and shall afford to each of the parties an opportunity to make counter submissions within a further 5 Working Days in respect of any such submission and material and the Expert shall disregard any representations made out of time and the Expert's decision shall be given in writing within 15 Working Days from receipt of any counter submissions or in the event that there are no counter submissions within 15 Working Days of receipt of the written submissions and supporting material with reasons.

11.3 It is hereby declared and agreed between the parties hereto that nothing in this Clause 11 shall be taken to fetter the ability of any party to seek legal redress of any breach of the obligations entered into by the Developer in this Agreement.

## 12. LAPSE OF AGREEMENT

12.1 If the Works have not commenced in accordance with the terms of this Agreement within two (2) years of the date hereof this Agreement (save always for any outstanding liabilities on the part of the Developer) shall absolutely determine and cease to have any effect unless otherwise agreed in writing and the County Council shall repay to the Developer any monies paid to the County Council pursuant to this Agreement which have not been expended at that time.

## 13. TRANSFER OF POWERS

13.1 In the event that:

13.1.1 any person other than the Developer is appointed as the "Undertaker" (as defined in the DCO) for the purposes of the Order in relation to the Works; and/or

13.1.2 powers of the "Undertaker" relevant to the Works are devolved to any other person,

(the 'Transferee'), the Developer will:

13.1.3 prior to the transfer of powers require the Transferee to

(A) enter into a deed of covenant in favour of County Council that the Transferee shall observe and perform the obligations covenants and restrictions on the Developer under this Agreement as they relate to the exercise of the powers which are to be transferred as though the Transferee had been an original party to this Agreement; and

(B) provide to the satisfaction of the County Council a bond acceptable to the Head of Law and Governance and Monitoring Officer or security deposit in relation to the Works for an amount equal to the amount of any Bond or Security Deposit remaining in accordance with Clause 5.1; and

13.1.4 remain liable for any breach of this Agreement relevant to such part of the Works for which the Transferee is to be the "Undertaker" or to which Transferee the powers of the Undertaker are to be devolved until the Transferee has entered into a deed of covenant in accordance with this clause.

13.2 The Undertaker shall not transfer, assign or otherwise part with the benefit of this Agreement in whole or in part without the prior written consent of the County Council (such consent not to be unreasonably withheld or delayed) and without fulfilling the provisions of Clause 13.1.3 (A) and (B) above.

## 14. MINOR ALTERATIONS

14.1 If the Developer wishes to amend the Specification, the Programme or the detailed contract drawings it shall submit details in writing to the County Council and no amendments or



revisions shall be implemented without the prior written approval of the County Council (such approval not to be unreasonably withheld or delayed).

**15. EXTENSION OF TIME TO COMPLETE THE WORKS**

- 15.1 If the Developer considers that it will be unable to complete the Works (or any part thereof) within the timeframe set out in the Programme, the Developer may request an extension of time to complete the Works and such a request must be in writing (such extension not to be unreasonably withheld or delayed).
- 15.2 Without prejudice to any remedy of the County Council, the County Council may give written notice to the Developer granting an extension of time to complete the Works (or any part thereof) (such extension not to be unreasonably withheld or delayed).

**16. NOTICES**

- 16.1 Any notice, consent or approval or other communication required to be given under or in connection with this Deed to or upon the parties must be in writing and shall be addressed as provided for in clause 16.3.
- 16.2 Any such notice must be delivered by hand (including by courier or process server) or by pre-paid recorded delivery post and shall conclusively be deemed to have been received:
- 16.2.1 if delivered by hand, upon delivery at the relevant address; and
- 16.2.2 if sent by first class post, at 9:00 a.m. on the second Working Day after the date of posting,

except that where any such notice or other communication is or would be deemed to be received after 5:30 p.m., such notice shall be deemed to be received at 9:00 a.m. on the next Working Day.

- 16.3 Subject to clause 16.4, the address, relevant addressee and reference for each party are:

16.3.1 in the case of the County Council:

Address: Hampshire County Council, Legal Services, the Castle,  
Winchester, SO23 8UJ with a copy also sent by e-mail to  
hls@hants.gov.uk.

Relevant addressee: Head of Law and Governance and Monitoring Officer

Reference: 135915/CS

16.3.2 For the Undertaker:

Address: AQUIND Limited, 78 Pall Mall, London, SW1Y 5ES with a copy  
also sent by e-mail to [REDACTED]@aquind.co.uk;

Relevant addressee: [REDACTED] – Managing Director

Reference: AQUIND Interconnector – S278

- 16.4 Any party may give notice of a change to its name, address, or relevant addressee for the purposes of this clause 16 provided that such notification shall only be effective on:

16.4.1 the date specified in the notification as the date on which the change is to take place; or

16.4.2 if no date is specified or the date specified is less than five clear Working Days after the date on which the notice is received or deemed to be received, the fifth Working Day after the notice of any such change is given.

**17. THIRD PARTY RIGHTS**

- 17.1 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Agreement confers or purports to confer any rights to enforce any of the terms and provisions herein on any person who is not a party hereto.

18. **NO WAIVER**

- 18.1 In no event shall any delay, neglect or forbearance on the part of the County Council in enforcing (in whole or in part) any provision of this Agreement be or be deemed to be a waiver of that provision or any other provision.

19. **GOVERNING LAW**

- 19.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 19.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

20. **GOOD FAITH, GOOD PRACTICE AND REASONABLENESS**

- 20.1 The parties agree with one another to act reasonably and in good faith in the fulfilment of their respective obligations in this Agreement.
- 20.2 Unless expressly stated otherwise where under this Agreement any approval, agreement, consent, certificate, confirmation or an expression of satisfaction or response is required to be given by or reached or taken by any party or any response is requested by any such approval, agreement, consent, certificate, confirmation or an expression of satisfaction or response, it will not be unreasonable or unreasonably withheld or delayed and the parties will act reasonably at all times.

21. **LOCAL LAND CHARGE**

- 21.1 As soon as practicable following the date of completion of this Agreement the Council shall apply to enter this Agreement and its terms and conditions in the local land charges register in relation to the Dedication Land.

This Agreement has been entered into as a Deed on the date stated at the beginning of it.



## SCHEDULE 1 – DESCRIPTION OF THE WORKS

The Works referred to in this Agreement and shown in principle on Drawing(s) attached hereto which comprise the provision of:-

1. Converter Station Access Junction Works: works to provide access to the Converter Station site via a bellmouth junction and associate haul road as shown in principle on drawing [xxx]
2. Day Lane Passing Places Works: works to Day Lane to provide 4no. passing places on Day Lane between the junction with Broadway Lane and Lovedean Lane as shown in principle on drawing [xxx]

including but not limited to such ancillary works as may be required by the County Council which ancillary works may include inter alia the provision of traffic signs carriageway markings footways street furniture and drainage and any necessary alterations to statutory undertakers equipment;

## SCHEDULE 2 – TERMS AND CONDITIONS OF WORKS

The Works shall be carried out in accordance with the following terms and conditions:

1. The Works (or any part thereof) shall not be commenced until:
  - 1.1 detailed contract drawings, a Programme, a Specification (with the Programme and Specification to be prepared in accordance with the Guidance notes), and traffic management measures have been prepared by the Developer and approved by the County Council in writing;
  - 1.2 the Developer has demonstrated to the satisfaction of the County Council how it will comply with the Code of Practice for the Co-ordination of Street Works for Road Purposes and Related Matters 1992 and has submitted to the County Council a Management Plan;
  - 1.3 written details of the form of Construction Contract for the Works has been submitted to the County Council and approved by the County Council;
  - 1.4 where in accordance with Regulation 4(8) of the CDM Regulations the Works are notifiable the Developer as the only client has provided to the County Council:-
    - 1.4.1 a copy of the notice to be served under Reg 6(2) of the CDM Regulations and a copy of the Notification of Project (form HSE10) to the HSE; and
    - 1.4.2 confirmation that duties under Reg 4(4) and 4(5) of the CDM Regulations are being carried out.
  - 1.5 where in accordance with Regulation 5(1) of the CDM Regulations there is more than one contractor or it is foreseeable that there will be more than one contractor carrying out the Works the Developer as the only client shall provide to the County Council written details of the principal designer and the principal contractor who will undertake these roles during the construction phase of the Works;
  - 1.6 the Developer has paid all sums due prior to commencement of the Works pursuant to Clause 6;
  - 1.7 the relevant original policies of insurance referred to in Clause 3.1.4 or copies thereof certified by a solicitor have been produced;
  - 1.8 a noise survey and assessment in respect of the Works has been undertaken by a competent noise expert in accordance with the advice and instruction contained in the technical memorandum entitled 'Calculation of Road Traffic Noise' published June 1988 by the TSO as may be amended from time to time and a copy of the survey and assessment has been submitted to the County Council and all and any requirements arising therefrom have been undertaken by the Developer at its own expense; and
  - 1.9 the Developer has provided in writing to the satisfaction of the County Council measures to ensure the highway remains adequately lit at all times during the works which may include the supply temporary lighting when required.
  - 1.10 Where the estimated value of the contract for the works equals or exceeds the threshold provided in Regulation 5(1) of the Public Contracts Regulations 2015 tenders have been invited under the Open Procedure and in compliance with the Public Contract Regulations 2015 and copies of the Contract Award Notice independent financial tender and evaluation report justifying the selection of the economic operator in accordance with Regulation 58 has been submitted to the County Council;
  - 1.11 the Developer has obtained any necessary licences and given any necessary notices pursuant to the New Roads and Street Works Act 1991 (and for the avoidance of doubt it is acknowledged the statutory authority provided by Article 11 of the Development Consent Order shall be sufficient in place of the need to obtain any necessary licences pursuant to the New Roads and Street Works Act 1991) and obtained any necessary permits required under the permit scheme (as applied by Article 9A of the Development Consent Order); and



- 1.12 the Developer has obtained any necessary consents and permissions from any railway canal, inland navigation, dock or harbour undertakers or any other party or organisation where the consent or permission of the undertaker, party or organisation is required for the Works to be lawfully undertaken and completed
2. Detailed contract drawings for Highway Structures (if any) shall be prepared by the Developer and submitted for written approval to the County Council in accordance with Department for Transport Document BD2/12 or any revision or replacement thereof and the structural design and checking procedure shall be carried out by a chartered engineer familiar with Department of Transport Codes of Practice who shall state on Form TA1 or revision or replacement thereof the documents to be agreed as applicable.
3. The Developer shall notify the County Council as follows:
  - 3.1 without prejudice to the Programme, following the approval of detailed contract drawings, the Programme and traffic management measures the date proposed for the commencement of the Works at least 1 month prior to the commencement of the Works;
  - 3.2 at least 10 Working Days prior to commencement of the Works (or any part thereof) of its intention to proceed with the Works;
  - 3.3 that the Works have commenced no later than the next Working Day following commencement of the Works; and
  - 3.4 at least 24 hours prior to the commencement of each and every stage of excavation and construction operations associated with highway structures (if any).
4. Unless otherwise agreed at least 1 month prior to commencement of the Works (or part thereof) the Developer shall give notice to any and all statutory undertakers for the time being of any service(s) which may be affected by the Works of the proposal to carry out the Works or which might be required in consequence of the Works and shall as part of those works relocate any street furniture affected to the satisfaction of the County Council.
5. The Works shall be signed and protected to at least the standards of the Traffic Signs Manual Chapter 8 2nd Edition published by TSO in March 2009 and the Safety at Street Works and Road Work A Code of Practice published by Department of Transport in June 2014 and the proposed arrangements shall be approved in writing by the County Council before the Works commence.
6. The Works shall be carried out in accordance with the Specification and Programme (as approved from time to time).
7. The Works shall be carried out:
  - 7.1 unless agreed otherwise by the County Council under the terms of a Construction Contract; and
  - 7.2 under the direction and instructions of a Chartered Engineer (or where agreed by the County Council a nominated person approved by the County Council) who shall be authorised to issue instructions to the Contractor in the normal execution of duties under the Construction Contract.
8. The Chartered Engineer (or where agreed by the County Council a nominated person approved by the County Council) shall further be responsible for negotiating and implementing any design changes to the Works reasonably considered to be necessary for the proper and safe function of the highway that might be agreed during the course of construction of the Works by the County Council.
9. The inspection and direction of the County Council shall be accepted and the Works shall be carried out in accordance with the approved detailed contract drawings the Specification and the Programme (as may be amended from time to time) and to a standard of workmanship and quality of materials approved by the County Council.
10. During the construction of the Works the Developer shall give or procure for the County Council free access to every part of the Works being constructed for the purpose of inspecting the same and all materials used or intended to be used for the Works and the

Developer shall give effect to any reasonable requirements made or reasonable direction given by the County Council so that the Works conform to the approved detailed contract drawings and the Specification.

11. The Developer shall not cover up any works without the approval of the County Council and shall afford full opportunity for it to examine and measure any work which is about to be covered up and to examine foundations before permanent work is placed thereon and shall give at least three working days' notice to the County Council whenever any such work or foundations is or are ready or are about to be ready for inspection.
12. The County Council shall have power in its reasonable discretion to test or require the testing of materials plant and workmanship used or proposed to be used in the Works on the public highway and the Dedication Land (subject to doing so within a reasonable timescale) and to reject any materials plant or workmanship so tested which it may reasonably find to be not in accordance with the approved detailed contract drawings and the Specification.
13. The Developer shall as soon as is reasonably practicable replace or repair any materials plant or workmanship which have been found to be not in accordance with the approved detailed contract drawings and the Specification (as may be amended from time to time).
14. Immediately prior to the issue of the Certificate of Completion on site road safety audits shall be carried out by the Developer in the presence of the County Council and arising therefrom the County Council shall be at liberty to require such alterations to the approved detailed contract drawings and to the Works at the expense of the Developer as may be reasonably required to ensure the safety of users of the highway.
15. The Works shall be completed to the satisfaction of the County Council in accordance with the timescale specified in the Programme or any variation thereof agreed by the County Council (such agreement not to be unreasonably withheld or delayed).
16. Only in so far as is necessary to protect the County Council's legitimate interest as Highway Authority and the effective operation of the public highway should the Works not be completed to the reasonable satisfaction of the County Council in accordance with the timescale specified in the approved Programme or any variation thereof agreed by the County Council the Developer shall if required by the County Council pay to the County Council on demand a sum proportionate to the disruption caused to the public highway by the delayed works of up to £2,000 as stipulated by the County Council per Working Day for each day the Works continue on the public highway past the timescale specified in the Programme which the County Council shall apply towards the purpose of developing policies for the promotion and encouragement of safe integrated and economic transport facilities and services to from and within its area.
17. The Developer shall fully maintain the Works for the Converter Station Access Junction Works Maintenance Period and the Day Lane Passing Places Works Maintenance Period (respectively) and shall make good any defects or damage which may arise or be discovered in relation to the relevant Works during such period.
18. The Developer shall provide the County Council with the following prior to issue of a Certificate of Completion
  - 18.1 where any drainage is provided as part of the Works CCTV Drain Survey together with details of gully manhole and catchpit locations in an agreed GPS format;
  - 18.2 in respect of highway structures (if any) a maintenance manual to include suitable scale electronic data sets and paper sets of "as built" drawings soil reports records of materials tested Health and Safety file and revised forms AIP and associated certificates;
  - 18.3 accurate 1:500 scale of "as built" drawings supplied dwg format (packaged with any associated XRefs) and PDF format;
  - 18.4 records of the any earthworks showing sources of material used in areas of fill, description of fill materials, descriptions of sub-grades in cut areas, and copies of any results of tests of material carried out as part of the supervision of the construction of the earthworks; and



18.5 records of the sources of supply of all other manufactured materials (e.g. drainage goods fencing materials traffic signs electrical components and cables etc.).

**IN WITNESS** whereof the parties hereto have executed this document as a Deed delivered the day and year first before written

**EXECUTED** as a **DEED** by affixing the )  
**COMMON SEAL** of **HAMPSHIRE** )  
**COUNTY COUNCIL** in the presence of:- )

Authorised Signatory

Name

Position

**EXECUTED** as a **DEED** by )  
**AQUIND LIMITED** )

acting by [Names of two of )  
its directors/a director and its secretary] )

.....  
Director

.....  
[Director/Secretary]



**APPENDIX 1**

**Converter Station Access Junction Works Drawing**

**APPENDIX 2**

**Day Lane Passing Places Works Drawing**



**APPENDIX 4**  
**TEMPORARY CONSTRUCTION ACCESS WORKS HIGHWAYS AGREEMENT**

DATED

202[X]

**HAMPSHIRE COUNTY COUNCIL**

and

**AQUIND LIMITED**

Minor Works Agreement for Highway Works at  
[ ]  
pursuant to (inter alia) S.278 Highways Act 1980



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**HAMPSHIRE COUNTY COUNCIL**  
**SECTION 278 MINOR WORK AGREEMENT**

Date:

202[ ]

**PARTIES:**

1. **Hampshire County Council** of The Castle Winchester SO23 8UJ (the “**County Council**”)
2. **AQUIND Limited** (Company Registration Number 06681477) of OGN House, Hadrian Way, Wallsend NE28 6HL (the “**Developer**”)

**WHEREAS**

- A. On [xxx] 202[x] the Secretary of State granted the AQUIND Interconnector Order 202[x] (the “**Order**”) which granted development consent for the elements of the AQUIND Interconnector which are located in the UK and the UK Marine Area (the “**Development**”).
- B. The Developer is the undertaker for the purposes of the AQUIND Interconnector Order 202[x] and is undertaking the construction of the Development.
- C. The County Council is the local highway authority for the administrative area of Hampshire pursuant to the Highways Act 1980
- D. It is necessary in connection with the construction of the Development for temporary construction accesses to be installed and following the completion of the construction of the relevant elements of the Development for those temporary construction accesses to be reinstated.
- E. **THE PARTIES HAVE AGREED** that highway works comprising the provision of [a temporary access junction in connection with the construction of the Development] (the “**Temporary Works**”) together with the subsequent removal of the Temporary Works upon completion of the Development (the “**Reinstatement Works**”) as identified on approved drawing number[s] [general arrangement] (the “**Drawing/s**” – all attached hereto) (the Temporary Works and Reinstatement Works being collectively referred to as the “**Works**”) may be carried out by the Developer in accordance with the Specification set out in Recital F and subject to the terms and conditions set out beneath which constitutes an agreement



between the County Council and the Developer pursuant to Section 278 of the Highways Act 1980.

- F. The "Specification" referred to means the 'Manual of contract documents for highway works: Volume 1 Specification for highway works' published by TSO in November 2009 as modified and extended by any supplements and revisions and further as modified and extended by Hampshire County Council's Model Contract Specification (available on request), Hampshire County Council's Highway Construction Standard Details (available at [www.hants.gov.uk/transport/developers/standard-details](http://www.hants.gov.uk/transport/developers/standard-details)), Hampshire County Council's Technical Guidance Notes (available at [www.hants.gov.uk/transport/developers/technical-guidance](http://www.hants.gov.uk/transport/developers/technical-guidance)) and Hampshire County Council's Companion Document to Manual for Streets where applicable (available at [http://documents.hants.gov.uk/transport/manual\\_for\\_streets.pdf](http://documents.hants.gov.uk/transport/manual_for_streets.pdf)) all as in force at the date of commencement of the Works
- G. The County Council is satisfied pursuant to Section 278 of the Highways Act 1980 that it will be of benefit to the public for the County Council to enter into this Agreement for the execution of the Works by and at the expense of the Developer which Works are the subject of the development consent granted by the AQUIND Interconnector Order 202[x].

**NOW THIS DEED OF AGREEMENT WITNESSETH** as follows:

1. This Deed of Agreement is made pursuant to Section 278 of the Highways Act 1980 Section 111 of the Local Government Act 1972 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and all other enabling powers including the Localism Act 2011.

**Prior to construction of the Works**

2. Unless otherwise agreed in writing the Developer shall give the County Council such written notice as is necessary in accordance with the requirements of the New Roads and Street Works Act 1991 and the Hampshire County Permit Scheme Order (in accordance with Article [9A] of the DCO), such period being

no less than 1 month prior to the intention to commence both the Temporary Works and the Reinstatement Works (respectively).

3. Before commencement of construction of the Works the Developer shall obtain such consents, licences or permissions as may be required for carrying out the Works and shall comply with these WHICH FOR THE AVOIDANCE OF DOUBT includes the consents and permissions provided for within the Order and shall pay the inspection fee deposit (being an amount equivalent to 5% of the tender price for the Works (as confirmed by the Developer and as approved by the County Council)) (the '**Inspection Fee Deposit**') for use by the County Council in connection with the inspection of the Works only.
4. The Developer shall not carry out the Works except in accordance with the Drawing/s and the Specification.
5. The Developer shall prior to commencing construction of the Temporary Works pay all current outstanding costs incurred by the County Council in relation to development control approval design checks, project management and legal fees for the purpose of negotiating and completion of this Agreement, and any costs in respect of approval of the design and certification of any street lighting and illuminated equipment by the County Council's PFI provider (where provided as part of the Works and where necessary).
6. The Cash Deposit ("**Cash Deposit**") in the sum of [IN FIGURES] (£[ ]) being equivalent to 110% of the estimated cost of the Works shall be paid by the Developer to the County Council on the date hereof and returned to the Developer in three phases with 25% being returned on the issue of the Certificate of Completion of the Temporary Works ("**First Certificate of Completion**"), a further 25% being returned on the issue of the Certificate of Completion of the Reinstatement Works ("**Second Certificate of Completion**") with a minimum of FIVE THOUSAND POUNDS (£5,000) retained and the remaining balance being returned on the issue of the Certificate of Maintenance ("**Certificate of Maintenance**") together with any interest accrued on the Cash Deposit. If the Developer fails at any time to carry out or observe any of the



terms of this Agreement or becomes bankrupt or goes into liquidation or enters liquidation the County Council shall use the Cash Deposit to fully reimburse the County Council in respect of any fees costs and expenses it has incurred FURTHERMORE any fees costs and expenses incurred over and above the Cash Deposit limit shall be recoverable from the Developer and any costs monies fees due to the County Council shall be paid by the Developer within 21 days of written demand.

7. The Developer shall indemnify the County Council in respect of any third party actions claims fees charges expenses proceedings or demands which may arise out of or in connection with or incidental to the carrying out of the Works and until the County Council assumes responsibility for the highway on which the Works are located following issue of the Certificate of Maintenance. The Developer shall also indemnify the County Council in respect of all costs associated with its responsibilities and all claims under the Land Compensation Act 1973 and regulations made thereunder (including claims the County Council determine should be met under the Noise Insulation Regulations 1975) arising out of the use of the Works from the date of the commencement of the Temporary Works until the date of issue of the Certificate of Maintenance.
8. The Developer shall be insured against public liability risks for a sum of at least £10,000,000 in respect of any one claim and shall ensure that any person or persons carrying out the Works on its behalf is similarly insured against public liability risks until the issue of the Certificate of Maintenance and a copy of the insurance policy and receipts for the premiums paid must be provided by the Developer to the County Council prior to the commencement of the Temporary Works and thereafter prior to commencement of the Reinstatement Works.

### **Construction of the Works**

9. The Developer shall minimise obstruction to vehicle and pedestrian traffic and sign and guard the Works as necessary in accordance with chapter 8 (Parts 1 and 2) of the Traffic Signs Manual 2009 and chapter 8 (Part 3) of the Traffic

Signs Manual 2016 as modified extended amended supplemented or revised including any replacement thereof.

10. The Developer shall provide a traffic management plan in relation to the construction of both the Temporary Works and thereafter the Reinstatement Works if required by the County Council.
11. The Developer shall not interfere with any drain, culvert, gully, bridge, wall or other highway structure without the consent of the County Council and shall not close any part of the highway in connection with the construction of the Works unless the County Council has agreed previously.
12. The Developer shall carry out the Works as contractor for the County Council in a good and workman like manner and in accordance with the Drawing/s and the Specification within the period specified and to the satisfaction of the County Council. The Developer shall comply with all relevant legislation.
13. The Developer shall, during the carrying out of the Works, give access at any time to the County Council and any authorised officer for the purposes of inspections.

#### **Duration and Completion of the Temporary Works**

14. The Developer shall complete the construction of the Temporary Works within a period of [X] weeks, using a contractor the County Council (acting reasonably) deems to be appropriately qualified.
15. The Developer shall notify the County Council of completion of the construction of the Temporary Works and if these have been completed to the County Council's satisfaction, a First Certificate of Completion shall be issued (the issue of which by the County Council shall not be unreasonably withheld or delayed) and from that date the Developer shall be responsible for the correction of any defects and maintaining the Temporary Works until such time as it commences the Reinstatement Works.



16. Prior to the issue of the First Certificate of Completion the Developer shall ensure all outstanding fees have been paid including any design check fees, project management and inspection fees and FURTHER provide to the County Council all necessary drawings, health and safety certificates, site road safety audits and any other documentation the County Council reasonably requires.

#### **Duration and Completion of Reinstatement Works**

17. The Developer shall undertake and complete the Reinstatement Works within a period of [x ] weeks using a contractor the County Council (acting reasonably) deems to be appropriately qualified SUBJECT TO the provisions of Clauses 3 and 4 following completion of the construction phase of the Development requiring use of the Temporary Access
18. The Developer shall notify the County Council of completion of the Reinstatement Works and if these have been completed to the County Council's satisfaction, a Second Certificate of Completion shall be issued (the issue of which by the County Council shall not be unreasonably withheld or delayed) and from that date for a period of 12 calendar months ("the Maintenance Period") the Developer shall be responsible for the correction of any defects and maintaining the Reinstatement Works until such time as the County Council issues the Certificate of Maintenance.
19. Prior to the issue of the Second Certificate of Completion the Developer shall ensure all outstanding fees have been paid including any design check fees, project management and inspection fees in respect of the Reinstatement Works and FURTHER provide to the County Council all necessary drawings, health and safety certificates, site road safety audits and any other documentation the County Council reasonably requires.
20. On completion of the Maintenance Period the Developer shall notify the County Council who shall inspect and notify the Developer of any required remedial works in respect of the Reinstatement Works. Once these have been carried

out to the County Council's satisfaction and all outstanding fees have been paid including any design check fees, project management and inspection fees the County Council shall issue a Certificate of Maintenance (the issue of which by the County Council shall not be unreasonably withheld or delayed) and from that time the County Council shall resume responsibility for the maintenance of the highway in the location where the Works were located and shall repay any amount of the Inspection Fee Deposit not expended in inspecting the Works.

21. Where any payment due to the County Council under this Agreement is outstanding the Developer covenants with the County Council that the Developer shall pay all outstanding payments to the County Council within ten working days of the County Council's written demand (the "**Demand**") as well as the interest at a rate of 4% per annum above the base lending rate of the [HSBC or other preferred bank] at the date of the demand on any sum outstanding from the due date under this Agreement until the actual date of payment to the County Council.
22. In no event shall any delay, neglect or forbearance on the part of the County Council in enforcing (in whole or in part) any provision of this Agreement be or be deemed to be a waiver of that provision or any other provision or shall in any way prejudice the right of that party under this Agreement.



IN WITNESS whereof the parties hereto have executed this Agreement as a Deed delivered the day and year first before written

**EXECUTED** as a **DEED** by affixing the )  
**COMMON SEAL** of **HAMPSHIRE** )  
**COUNTY COUNCIL** in the presence of:-)

Authorised Signatory

Name and Position of Signatory

**EXECUTED** as a **DEED** by )  
**AQUIND LIMITED** )  
acting by two directors or one )  
director and the company secretary )

Director

Director/Secretary

**APPENDIX 5**  
**TCF WORKS PLAN**





- KEY**
- PROPOSED KERBLINE
  - PROPOSED PRECAST CONCRETE EDGING
  - HIGHWAY BOUNDARY



INDICATIVE LAYOUT OF EXISTING  
STORM WATER BOX CULVERT

PROPOSED NEW  
NORTHBOUND BUS GATE

LONDON ROAD

**NB:**  
Topographical survey provided by  
Brunel Surveys Ltd.

**ATKINS**

Project: Waterlooville Corridor - Ladybridge Roundabout

Title: Existing Roundabout with Bus Gate on Southern Arm

Scale: NTS

Date: 25/08/2020

Drawing Number: SEHRT-ATK-HGN-C487-SK-08

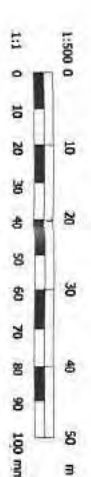
Rev: A

**APPENDIX 6**  
**LADYBRIDGE ROUNDABOUT DEVELOPMENT WORKS PLAN**





KEY	
[Yellow box]	EXISTING CARBURELWAY
[Dark grey box]	PROPOSED ADAPTABLE CARBURELWAY
[Light grey box]	PROPOSED ADAPTABLE FOOTPATH
[White box]	PROPOSED VEHICLE CROSSOVER
[Green box]	PROPOSED SOFT LANDSCAPE - SMALL TREES
[Light green box]	PROPOSED SOFT LANDSCAPE - ADAPTABLE VERGE
[Green box with dots]	PROPOSED PAVEMENT BLENDED TACTILE SURFACE
[Green box with dots]	SEE HCC DETAIL HCC3/C3/3A0
[Green box with dots]	PROPOSED CONCRETE HAZARD WARNING SURFACE
[Green box with dots]	SEE HCC DETAIL HCC3/C3/3A0
[Dashed line]	EXISTING HIGHWAY BOUNDARY
[Dashed line]	PROPOSED PAVEMENT GROUND RAIL
[Dashed line]	PROPOSED STREET LIGHTING COLUMN REFER TO SEE DWG: SEE24129-1D-01/002
[Dashed line]	PROPOSED BOLLARD - KEEP LEFT
[Dashed line]	PROPOSED BOLLARD - MAIN ASPECT
[Dashed line]	PROPOSED BOLLARD - REFLECTIVE



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**A1 ORIGINAL**

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- Notes:
1. To be read in conjunction with all other GTW/LESA drawings.
  2. Slips Attention Ponds to be refilled during detailed design phase to avoid highway boundary where required.
  3. Phase 4 to be constructed to adaptable standards for handover under S18 Agreement.
  4. Purbrook Heath Road / London Road junction to be stopped up. Redundant carriageway to be combined footway/cycleway.

**Berewood**  
HAMPSHIRE  
**FOR APPROVAL**  
MAY 2014

REV.	amendment	checked	date
1	Prepared following Stage 1/SLA	RVA	04/11/2013
2	SLA/SLA review	HVA	19/07/2013
3	Opening title and project amended for consistency. Design updated to HCC Report No. 09/05/03A.	RVA	08/07/2013
4	Design returned to address comments from HCC.	RVA	12/09/2013
5	Design returned to address Safety Audit problems.	RVA	14/11/2013
6	New Road & Lane Road Junction added to works. Landscape Road segment adjusted.	RVA	28/09/2013
7	Options reviewed for clarity	RVA	06/09/2017
8	Amendments to Purbrook Heath Road western side of roundabout (DART)	RVA	07/10/18
9	New topographic survey added, change proposed to walk. Southern end island amended to suit RTA diversion works (DART)	RVA	19/12/14
10	New amendments to junction on south end west side of roundabout (DART)	RVA	02/04/14

**m3**  
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**graininger plc**  
Berewood, Watlington, Oxford, OX23 8BA

Project: BEREMOOD, WATERLOOVILLE  
SOUTHERN ACCESS, SECTION 278 WORKS

Scale: 1:500  
Drawn by: DMR  
Checked by: PAS

Date: JANUARY 2014  
Ref: GA\_01.dwg

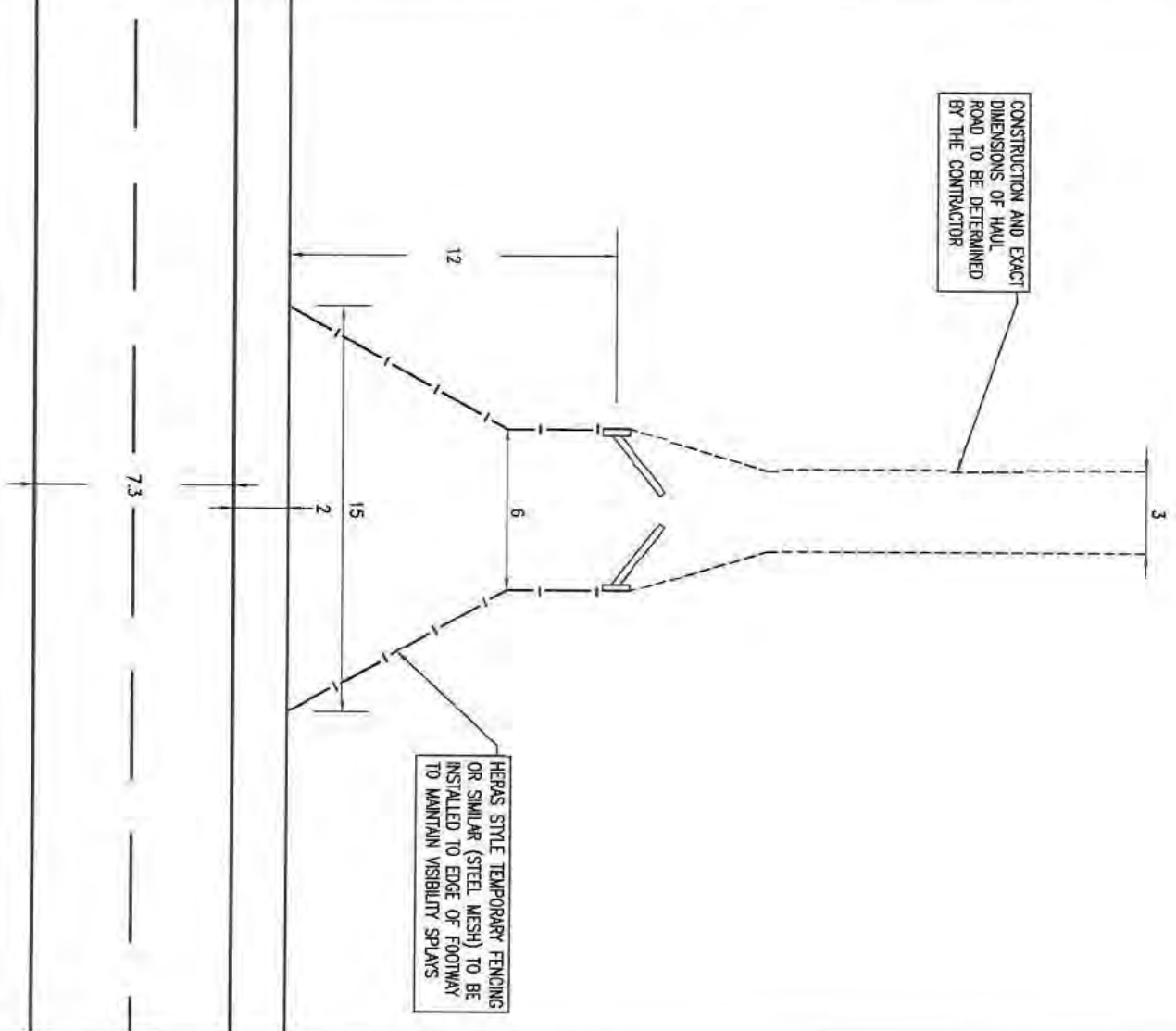
General Arrangement

Drawing number: GTWVILLE\_SA/GA/01  
Rev: J

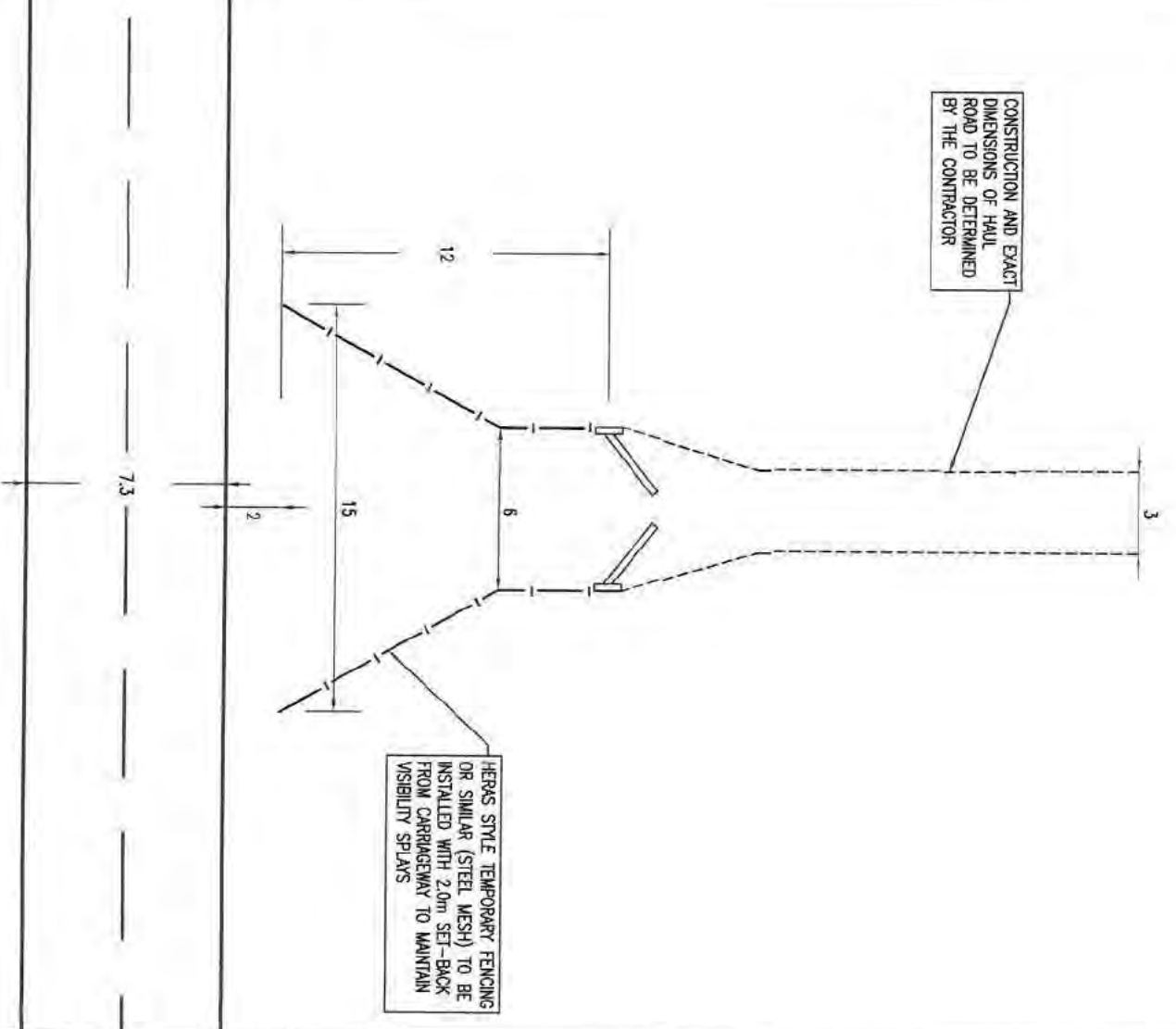
**APPENDIX 7**  
**TEMPORARY CONSTRUCTION ACCESS TYPICAL LAYOUT DRAWING**



CONSTRUCTION ACCESS WITH FOOTWAY



CONSTRUCTION ACCESS WITHOUT FOOTWAY

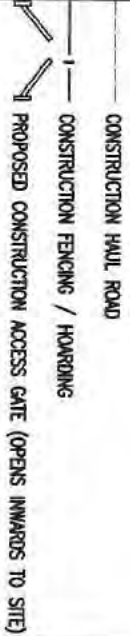


DO NOT SCALE

NOTES:

1. ALL DIMENSIONS ARE IN METRES UNLESS OTHERWISE STATED.
2. THIS PROVISIONAL PRELIMINARY DESIGN IS FOR GUIDANCE PURPOSES ONLY. FOR ACCURATE ADVANCE A DETAILED DESIGN SHOULD BE CARRIED OUT AT THE APPROPRIATE DESIGN STAGE, THEREFORE, USE OF THE INFORMATION IS ENTIRELY AT YOUR OWN RISK.
3. ACCESS GATES WILL BE MANAGED AT ALL TIMES TO PREVENT VEHICLES FROM BLOCKING CARRIAGEWAY.
4. WHEEL WASHING FACILITIES WILL BE AVAILABLE PRIOR TO EXITING THE SITE IN ACCORDANCE WITH THE FRAMEWORK CONSTRUCTION TRAFFIC MANAGEMENT PLAN.
5. VISIBILITY SPLAYS ARE TO BE IN ACCORDANCE WITH MANUAL FOR STREET 2 PRINCIPLES MEASURED AT 2.0M FROM EDGE OF CARRIAGEWAY WHERE 85TH PERCENTILE VEHICLE SPEED ARE LESS THAN 37mph. IN ALL OTHER CASES DMRB VISIBILITY SPLAYS STANDS WILL BE REQUIRED UNLESS AGREED WITH THE HIGHWAY AUTHORITY.
6. DETAILS OF VEHICLE CROSSOVER CONSTRUCTION TO BE CONFIRMED DURING DETAILED DESIGN.
7. ANY PROTECTION FOR APPARATUS WILL BE AGREED WITH THE STATUTORY UNDERTAKER IN ADVANCE OF ANY WORKS.

KEY:



REV	DATE	BY	DESCRIPTION	CHK	APP
B	18/12/2020	AMS	CONSTRUCTION ACCESS WITHOUT FOOTWAY OFFSET INCREASED TO 2M AND NOTES UPDATED.		
A	11/11/2020	AVI	FIRST ISSUE		

DRAWING STATUS: S2 - FOR INFORMATION



Gosvenor House, 2 Gosvenor Square, Southampton, SO15 2BE, UK  
T +44 (0) 2380 101 700  
wsp.com



CLIENT: AQUIND  
ARCHITECT: AQUIND

TYPICAL CONSTRUCTION ACCESS LAYOUT

SCALE @ A3:	CHECKED:	APPROVED:
1:250	CW	CW
PROJECT No:	DESIGNED:	DATE:
62100616	AVI	December 20

DRAWING No: AQ-UK-DCO-TR-LAY-001  
© WSP UK Ltd

**APPENDIX 8**  
**FORM OF NOTICE OF RECEIPT AND ACKNOWLEDGEMENT**

**ON THE LETTERHEAD OF THE COUNTY COUNCIL**

[Date            ]

Dear Sirs

We refer to the Deed of *[insert date of deed]* made between AQUIND Limited and the County Council ("the "Deed"), and in particular paragraph [x.x] of Schedule 3 thereto.

We hereby acknowledge receipt of the sum of *[insert amount of the contribution received]* (being the amount of the *[insert reference to contribution as defined in the Deed]* and confirm that this amount is held, and shall not be used other than, in accordance with and for the purposes specified in the Deed.

The County Council further acknowledges its obligations in paragraph[s] *[insert paragraph references relevant to the payment of the contribution received]* to repay those funds to AQUIND Limited (or its Successor) in the circumstances set out in that paragraph.

Yours faithfully,

For and behalf of Hampshire County Council



**APPENDIX 9  
SUPPLEMENTAL DEED**

**THIS SUPPLEMENTAL DEED** is made the [ ] day of [ ] 20[ ]

**BETWEEN:**

- (1) **AQUIND LIMITED** (company registration number 06681477) whose registered office is at OGN House, Hadrian Way, Wallsend NE28 6HL (the "**Undertaker**"); and
- (2) **HAMPSHIRE COUNTY COUNCIL** of Hampshire County Council, The Castle, Winchester, SO23 8UJ (the "**County Council**")

**WHEREAS:**

- (A) On [XXX] the Secretary of State for Business, Energy and Industrial Strategy made the Development Consent Order.
- (B) On [XXX] the Undertaker and the County Council entered into the Principal Agreement (as defined within this Deed) which contains development consent obligations relating to the Development.
- (C) Clause 4 of the Principal Agreement requires the Undertaker, upon acquiring any freehold interest or leasehold interest of seven years or more in the DCO Land, to enter into an agreement so as to bind and make such interests subject to the obligations, covenants and conditions contained in the Principal Agreement in so far as they relate to such interests and/or parts of the DCO Land and remain to be observed, performed and/or complied with.
- (D) The Undertaker acquired a [freehold interest/leasehold interest] in the Acquired Land (as defined within this Deed) on [ ].
- (E) The Parties have agreed to enter into this Deed so that the undertakings, obligations and covenants contained in the Principal Agreement bind the Undertaker's interest in the Acquired Land for the purposes of section 106 of the 1990 Act.

**Operative Clauses**

**1. DEFINITIONS AND INTERPRETATION**

**1.1** In this Deed where the context so admits:

- 1.1.1 references to clauses, paragraphs and Schedules are references to those clauses, paragraphs and Schedules in the Principal Agreement; and
- 1.1.2 words and phrases whose meanings are not set out in clause 1.1 have the same meanings as in the Principal Agreement.

**1.2** The following expressions shall have the meanings set out below:

- 1.2.1 "**Acquired Land**" means the land shown edged in [ ] on the plan annexed to this Deed;
- 1.2.2 "**Parties**" means the parties to this Deed and "**Party**" shall be construed accordingly; and

1.2.3 **"Principal Agreement"** means the Deed dated [ ] 202[x] made pursuant to section 106 of the 1990 Act which was entered into between (1) the Undertaker and (2) the County Council.

## 2. **LEGAL EFFECT**

- 2.1 This Deed is supplemental to the Principal Agreement and relates to and binds the Undertakers [freehold/leasehold] interest in the Acquired Land and is made pursuant to the provisions of section 106 of the 1990 Act section 111 Local Government Act 1972 section 1 of the Localism Act 2011 and all other enabling powers.
- 2.2 This Deed contains development consent obligations for the purposes of the 1990 Act which are given by the Undertaker so as to bind the Undertaker's [freehold/leasehold] interest in the Acquired Land and are enforceable by the County Council as local planning authority.
- 2.3 The Undertaker agrees that as from the date hereof the development consent obligations and other covenants, agreements and provisions in the Principal Agreement given by the Undertaker to the County Council in so far as such development obligations and other covenants, agreements and provisions in the Principal Agreement relate to the Undertaker's interest in the Acquired Land and remain to be observed, performed and/or complied with shall be binding on the Undertaker's [freehold/leasehold] interest in the Acquired Land pursuant to section 106 of the 1990 Act as if the relevant development consent obligations and other covenants, agreements and provisions in the Principal Agreement were set out herein in full with the intent that the relevant development consent obligations and other covenants, agreements and provisions shall be enforceable by the County Council not only against the Undertaker but also against any successors in title to or assignees of the Undertaker and any person claiming through or under it an interest or estate in the Acquired Land as if the Undertaker had been an original covenanting party in respect of its interest in the Acquired Land when the Principal Agreement was entered into.
- 2.4 The County Council agrees that as from the date hereof the covenants in the Principal Agreement given by the County Council to the Undertaker shall be given to the Undertaker in relation to the Undertaker's interest in the Acquired Land as if the relevant covenants in the Principal Agreement were set out herein in full with the intent that the relevant covenants shall be enforceable by the Undertaker against the County Council in relation to the Undertaker's interest or estate in the Acquired Land.
- 2.5 This Deed comes into effect on the date of this Deed.
- 2.6 [The Mortgagee/Chargee/Beneficiary agrees that its security over the Undertaker's [freehold/leasehold] interest in the Acquired Land shall take effect subject to this Deed and the Principal Agreement PROVIDED THAT the Mortgagee/Chargee/Beneficiary shall otherwise have no liability under this Deed and the Principal Agreement and shall not be enforced against unless it takes possession of the whole or any part of the Acquired Interest or any part thereof in which case it too will be bound by the obligations in relation to that part of the Acquired Land as if it were a person deriving title from the Undertaker.] [WHERE APPLICABLE]
- 2.7 To the extent that any development consent obligations and other covenants, agreements and provisions in the Principal Agreement have already been satisfied in accordance with the terms of the Principal Agreement, such development consent obligations and other covenants, agreements and provisions shall be deemed to be similarly so satisfied under the terms of this Deed.
- 2.8 No person shall be liable for any breach of the obligations, covenants and conditions contained in this Deed in relation to any part of the Acquired Land in which they no longer have an interest (but without prejudice to the liability of such person for any breach occurring prior to its parting with such interest).
- 2.9 The Parties agree that any mortgagee or chargee (from time to time) of the whole or part of the Acquired Land will be bound by the obligations in this Deed and that the security of the mortgage or charge over the Acquired Land or any part of thereof shall take effect subject

to this Deed PROVIDED THAT the mortgagee or chargee (from time to time) shall have no liability under this Deed unless it takes possession of the whole or part of the Acquired Land in which case it too will be bound by the obligations in relation to that part of the Acquired Land as a person deriving title from the Undertaker.

3. **LOCAL LAND CHARGE**

3.1 This Deed is a local land charge and shall be registered as such by the County Council.

4. **ENDORSEMENT**

4.1 Promptly following completion of this Deed the County Council and the Undertaker shall endorse a memorandum of variation on the Principal Agreement in the following terms:

"A Supplemental Deed dated [ ] and made between (1) AQUIND Limited (2) Hampshire County Council [and (3) [Mortgagee/Chargee/Beneficiary]] has been entered in relation to this Agreement."

5. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

5.1 A person who is not a party to this Deed shall not have any rights under, or in connection with, it by virtue of the Contracts (Rights of Third Parties) Act 1999.

6. **JURISDICTION**

6.1 The construction validity and performance of this Deed including its enforcement and any dispute or claim arising out of or in connection with it or its subject matter or information (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and shall be subject to the jurisdiction of the English Courts.



*IN WITNESS* whereof this Deed has been duly executed by the parties to this Deed on the date which appears at the head of this document.

**EXECUTED** as a **DEED** by )  
affixing the common seal of )  
**HAMPSHIRE COUNTY** )  
**COUNCIL** in the presence of: - )

*Authorised signatory*

Name

Position

**SIGNED** as a **DEED** by )  
**AQUIND LIMITED** )  
acting by two directors or one director )  
and the company secretary: )

*Director*

*Director/Secretary*

**SIGNED** as a **DEED** by )  
**[MORTGAGEE/CHARGEE/** )  
**BENEFICIARY]** acting by two )  
directors or one director and )  
the company secretary: )

*Director*

*Director/Secretary*

