

Application by Aquind Limited for an Order Granting Development Consent for the  
Aquind Interconnector (Ref. EN020022)

WRITTEN REPRESENTATION OF PORTSMOUTH CITY COUNCIL  
October 2020

Planning Act 2008 – Section 90  
The Infrastructure Planning Examination Procedure Rules 2010 – Rule 10

## 0.0 Summary

- 0.1 Portsmouth City Council (PCC) maintains significant concerns, detailed below regarding the timing of the scheme, in light of ongoing litigation in the CJEU, and the funding of the proposal due to the paucity of information provided.
- 0.2 PCC is also concerned that the provision of the optical regeneration stations and fibre optic cables are unnecessary and exceed that which could be considered associated infrastructure under the Planning act
- 0.3 It is considered that the Applicant has made significantly insufficient efforts to engage with PCC to acquire land by agreement and more importantly that their evidence does not demonstrate that all of PCC's land is required for the development with the Order limits drawn manifestly too broadly for its purpose. PCC also retains significant concerns in respect of the applicant's unreasonable intention to acquire highway subsoil. And their engagement with Allotment Holders and intention to acquire rights over land currently in use as allotments.
- 0.4 PCC also raises significant concern over the likely implications for traffic management, congestion and the implications of the application proposal on Air Quality. The timeliness and accuracy of traffic modelling and understanding of the worst case scenario has raised concerns throughout the pre-application period and are retained. The applicant's intention to seek deviation from or disapplication of the NRSWA 1991 is also considered unnecessary and unreasonable.
- 0.5 Further significant concerns regarding the proper management or ground contamination and onshore ecology are also retained with considered additional work needed on this matters that are not considered appropriate to be deferred to post consent requirements.

- 0.6 Other concerns are discussed in more detail within the following representation, the previous relevant representation and the Council's responses to Examination Questions and the Local Impact Report.

## 1.0 Introduction:

- 1.1 These are the Written Representations of Portsmouth City Council (PCC) in respect of AQUIND Limited's ('Aquind' or 'the Applicant') application under the Planning Act 2008 (as amended) for a Development Consent Order (DCO) in respect of the AQUIND interconnector (the 'Project' or 'Proposed Development'): a 2000MW subsea and underground High Voltage Direct Current (HVDC) bi-directional electric power transmission link between Normandy in France and the South Coast of England.
- 1.2 The Proposed Development covers the administrative boundaries of four UK local planning authorities (also with a marine licence component, under jurisdiction of the Marine Management Authority). It affects land within the ownership of PCC ("PCC").
- 1.3 PCC is an 'affected person' within the meaning of the Planning Act 2008 ('the 2008 Act') and related legislation.
- 1.4 PCC objects to the DCO Application by Aquind in its capacities as a relevant authority in whose area the DCO land is located (including as local highway authority) and as an affected person under Planning Act 2008. It is an Interested Party under s.102 of the Planning Act 2008.
- 1.5 PCC set out its views and position in respect of Aquind's application for a DCO in its Relevant Representation (RR) dated 19 February 2020 (RR-185).
- 1.6 PCC asks the Examining Authority ('the ExA') to have regard to the RR together with the Local Impact Report also submitted by PCC in accordance with the ExA's Rule 8 timetable.

## 2.0 Procedural and Legal Issues

- 2.1 The issues related to concerns in respect of procedural and legal issues are summarised set out in the RR at section 2.
- 2.2 One of the most significant legal issues raised by this Proposed Development is the current litigation being conducted before Court of Justice of the European Union ("CJEU") relating to the regulation of the continental half of the interconnector. The 2 cases, Aquind v ACER, Case T-735/18 and Aquind and Others v Commission, Case T-885/19 are still pending before the CJEU. In Aquind v ACER, Case T-735/18, Aquind has specifically pleaded that the CJEU acknowledge "*the legal impossibility for the applicant to operate the proposed interconnector in France without an exemption*"<sup>1</sup>
- 2.3 This litigation clearly represents a serious impediment to the underlying scheme as well as raising questions of timing of any implementation of the Proposed Development within the 7 year time limit sought by the applicant or within a reasonable timescale or at all. It also raises clear issues as to the scheme's viability

- 2.4 There are also concerns about one of the variations of the route proposed going past Solent Infant School on Eveleigh Road close to its junction with Farlington Avenue. Schools are congested areas at the best of times, and with large sections of Farlington Avenue and potentially Eveleigh Road, depending on which route is chosen, proposed to be utilised during the construction phase, this would result in significant disruption and a significant detrimental effect on thousands of people's lives who live in the vicinity. This would be further exacerbated when accidents occur on the nearby M27 / A27 as then Farlington Avenue is regularly used as an alternative route
- 2.5 PCC understands that matters related to the adequacy of the applicant's compliance with relevant pre-application procedures and in particular its attempts to consult with the public and relevant authorities are not principal issues in themselves, given that the application was accepted. However PCC does consider it is important, appropriate and relevant that these matters are brought to the ExA's attention.
- 2.6 This is on the basis first, that these actions prior to the application belie and add to the weakness of the applicant's case that the DCO should be granted when there is a series of errors which are material that the applicant is only now seeking to address at the examination stage (which is far too late) and secondly, the applicant's conduct prior to the application is relevant in any event to the ExA's assessment of the applicant's justification for grant of powers of compulsory acquisition of land and rights through the DCO (and which are addressed in the next section).
- 2.7 Those errors include a fundamental failure to determine the route of the proposed development (combined with a failure to justify its initial decision as to the landfall location) which has in turn led to a clear excess of proposed landtake within the Order limits and an excess in the limits of deviation when the route is more determined.
- 2.8 PCC asks the ExA to note that it has been informed by the applicant that it is proposing to make a number of changes to the Order limits. PCC understands this will include proposed additional land as well as a reduction in the Order limits. The applicant confirmed to PCC at a meeting on 28 September 2020 that it would inform the ExA of these changes at the ExA's first programmed deadline i.e. 6 October 2020.
- 2.9 PCC will comment on these changes when they are clarified in evidence however as a general position PCC expects that where changes lead to less impact and less landtake and are beneficial, that will be acknowledged.
- 2.10 In terms of the legal and procedural implications of a series of changes which are material, PCC reserves its position.
- 2.11 The limits of deviation and extent of landtake are also manifestly affected by the fact that the applicant purports to seek consent under the Planning Act 2008 for commercial telecommunications infrastructure. This appears to be on the basis that all such telecommunications infrastructure ('the TI') is "associated development".
- 2.12 It is however only the minimal fibre optic cables which are said to be required for monitoring the interconnector scheme that appear to be justified as part of the NSIP. The remaining

telecommunications infrastructure, namely the commercially related fibre optic cables; two optical regeneration stations at Eastney and two telecommunications buildings within the Converter station area at Lovedean as part of this NSIP (see section 5.3 of the Statement of Reasons (APP-022)) clearly having nothing to do with the interconnector.

- 2.13 PCC would also draw attention to the fact that no other interconnector schemes involve any optical regeneration stations nor fibre optic cables for commercial use.
- 2.14 The Secretary of State's direction under s35 of the 2008 Act on 30 July 2018 directed that the Proposed Development, together with any development associated with it, is to be treated as development for which development consent is required. There is nothing within the Direction that suggests that the telecommunications infrastructure in whole or in part meets the definition of "associated development".
- 2.15 PCC is also aware of a Direction sought by Aquind from Ofcom under section 106(3) of the Communications Act 2003 ('CA 2003') applying the electronic communications code. This grants Aquind Code rights under Sch 3A of the CA 2003 but makes it clear that *"Ofcom...set the scope of the Code powers to exclude the UK Aquind Interconnector Fibre which would be deployed in the Aquind Interconnector. The Applicant has indicated that it will seek development consent for this part of the electronic communication network under the Planning Act 2008."*
- 2.16 In order for any of the telecommunications infrastructure which is commercially related in itself and has no function as part of the electricity interconnector to be treated as 'associated development' under the 2008 Act it needs meet the following in accordance with the relevant PINS Guidance:
- (i) a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development, or help address its impacts.
  - (ii) should not be an aim in itself but should be subordinate to the principal development.
  - (iii) should not be provided in order to cross-subsidise the cost of the principal development or only be necessary as a source of additional revenue for the applicant,
  - (iv) should be proportionate to the nature and scale of the principal development.
  - (v) should be typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project, for example (where consistent with the core principles above), a grid connection for a commercial power station.
- 2.17 It is clear in PCC's submission that none of the commercially related telecommunications infrastructure accords within any of the above.
- 2.18 This means that the limits of deviation provide for non NSIP development and are therefore unlawful under the PA 08.

- 2.19 In addition, the limits of deviation are excessive in any event based upon the premise of a level of uncertainty acknowledged now given the final route, its form and detail of the laying of the cabling is to be left to the as yet to be appointed contractors to resolve. This includes in particular the contractor having to resolve local issues regarding routing in the vicinity of Farlington Avenue / Eveleigh Road and Havant Road. For further details of this concern please see PCC's response to Examination question CA.1.3.108 and PCC's Local Impact Report ('the LIR')

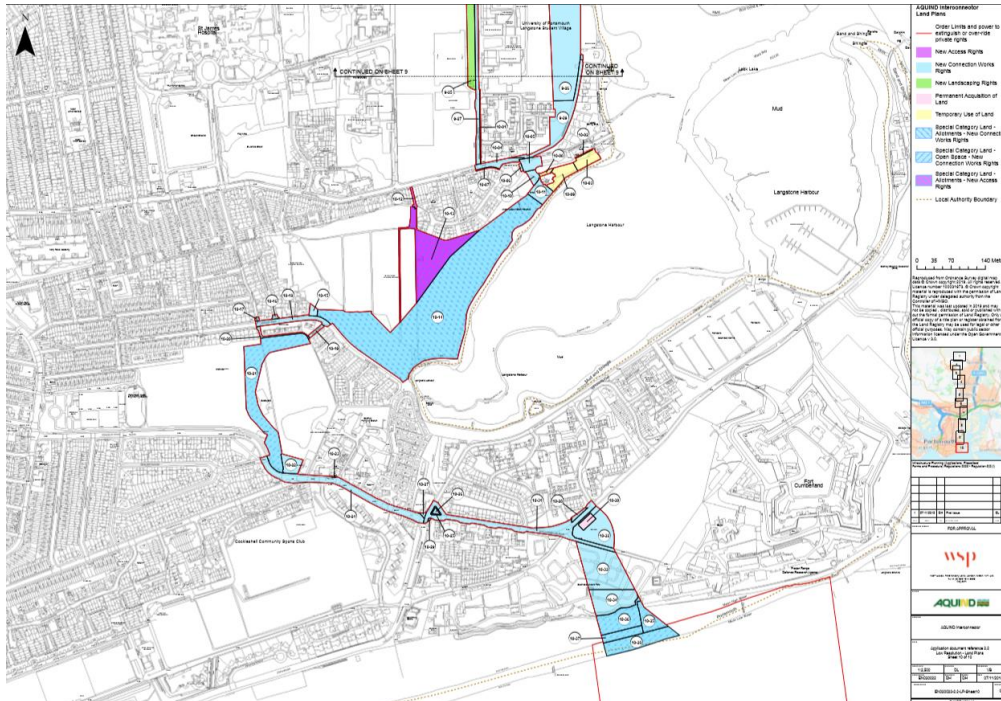
## 3.0 Compulsory Acquisition

- 3.1 Whilst the question of the justification for the compulsory acquisition powers as well as the temporary possession powers sought by the applicant overlap with the above, PCC considers it is necessary to consider these issues under a separate heading.
- 3.2 Prior to the application being accepted by the Planning Inspectorate the applicant (a) did not engage properly or at all with PCC about the compulsory acquisition sought of PCC land and compensation (b) did not provide heads of terms for PCC land (c) did not provide the proposed Order land plans or details of the parcels of land required for the Scheme. The first sight PCC had of the draft DCO was when the application had been accepted.
- 3.3 As set out in the Government's Guidance "*Planning Act 2008: guidance related to procedures for the compulsory acquisition of land*" ('the CA Guidance') §25
- "Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail".*
- 3.4 The Applicant has made no such efforts to engage with PCC to acquire land by agreement prior to the application for compulsory acquisition powers, and as such has not satisfied the requirements of the Guidance.
- 3.5 The applicant's evidence does not demonstrate that all of PCC's land is required for the development or is required to facilitate or is incidental to the proposed development (s122 PA 2008).
- 3.6 This is once again because the final cable route through the City of Portsmouth has not been identified and the breath of the order land sought is purposefully too wide for what Aquind purportedly need and is more than is reasonably required for the development.
- 3.7 In addition, this is once again because the land said to be required for the commercially related telecommunications infrastructure is not associated development and/or is not 'needed' for the NSIP as identified in the s35 direction. The compulsory acquisition of the land for these works is therefore not reasonably necessary for the purpose of the interconnector development and is not proportionate. Such powers therefore cannot lawfully be provided under the DCO.

- 3.8 The proposed interference with the Council's rights in land and the public's rights to use that land (highway, public open space and allotments) for the commercial telecommunications is not for a legitimate purpose and is not necessary or proportionate.
- 3.9 Further, the applicant has the benefit of an Electricity Interconnector Licence and is therefore a statutory undertaker for the purposes of the New Roads and Street Works Act 1991 (NRSW). The acquisition of highway subsoil is not necessary where NRSWA can be applied.
- 3.10 In addition, the Applicant has stated in terms that it was not the intention to negotiate the rights sought in the highway land. This is an explicit statement confirming the Applicant's intention not to acquire by agreement, in contradiction to the Guidance, and its stated position in the Statement of Reasons (Chapter 7.4 of Application document 4.1; APP-022).
- 3.12 There is no compelling case in the public interest to justify the compulsory acquisition of PCC's interests in land. The public benefit does not outweigh the loss that the Council, its residents and users of the land within the Order Limits (including the highway, public open space and allotments) will suffer.
- 3.11 The applicant is also seeking to acquire permanent rights, restrictive covenants, access rights as well as temporary use of all of the order land, during construction and subsequently for maintenance and monitoring purposes once the development is operational. The applicant also seeks to extinguish existing rights.
- 3.12 The applicant therefore seeks wide ranging and excessive powers to interfere with existing rights and interests not only during the construction of the development but also afterwards.
- 3.13 A large proportion of the land which the applicant seeks to interfere with its land over which the public has rights i.e. the public highway, public open space and allotments. As set out in the PCC's LIR this will significantly and adversely affect the existing and future use, character and nature of the Council's land and the enjoyment as well as rights of the public and residents of Portsmouth.
- 3.14 The applicant is seeking compulsory acquisition of rights of special category land. This land comprises of allotments, public open spaces (including Portsmouth Primary Public Sports Fields) .As set out in the PCC's LIR the proposals will be devastating to the recreational facilities across the City, including numerous playing fields (circa 17) taken out of use, some for years.
- 3.15 Once again lack of timely and meaningful engagement with PCC has resulted in the failure to adequately mitigate the impacts on critical recreational facilities either through provision of replacement land through the draft DCO (see paragraph 15.14), or through any proposed accommodation works, and as such there are outstanding impediments to the use of compulsory acquisition powers (paragraph 19 (second bullet) of the Guidance).
- 3.16 With regard to allotments land and open, space Article 23 of draft DCO seeks to grant compulsory acquisition of rights and the imposition of restrictive covenants for the allotments and public open space. PCC's view is that the developer has not satisfied the requirements of s132 of the Planning Act 2008 on the basis that it has identified such allotment land and open space as special category land (see Book of Reference (APP-024)). The applicant argues that the use or enjoyment of such land will not be affected as the

development will not affect the surface of such land and no replacement land is therefore being offered.

- 3.17 In addition, as with the applicant’s approach to acquisition of highways subsoil land, there has been no proper attempt to negotiate with the Council as freehold owners of the subsoil of the allotments and open space nor with the tenants of the allotments. Indeed with regard to the latter, there is no reference to these tenants’ interests at all within the Book of Reference or anywhere on the face of the application.
- 3.18 Specific concerns relate to Parcels 10-13 and 10-14 as shown on the Land Plans:



- 3.18 Setting aside whether as tenants the allotments holders have any interest in the subsoil, the new connection rights as well as the permanent access rights sought over the allotment land clearly grant future access rights over the surface of the allotments in order to maintain; repair or monitor the cables and equipment beneath once construction is complete and it is operational. Such tenants clearly have an interest in the land and therefore are affected persons within the meaning of the 2008 Act.
- 3.19 PCC is aware of recent discussions by the applicant with the allotment holders namely the Milton & Eastney Allotment Association on 29 September 2020. It is not aware that the applicant has informed them that they are such affected persons and indeed are Interested Parties under s.102 and 102B of the 2008 Act. The examination has not had representations from any such allotment holder.
- 3.20 This is a matter of serious concern which PCC brings to the ExA’s attention in its capacity as the freehold owner and landlord but also in its capacity as a public authority.
- 3.21 Any attempt to grant rights over this land without proper procedure will also clearly involve breaches of the European Convention on Human Rights (ECHR) i.e. Article 1 of the First Protocol – a right to protection of property and Article 6 – a right to a fair trial, which includes determination of the issues (i.e. compensation) within a reasonable time.

- 3.22 Overall, PCC considers that the applicant has failed in any event to take into account the nature and character of the land over which such rights are being sought and the persons currently benefitting from the land. The Applicant has not adequately considered alternatives, or modifications to the scheme which would have a lesser impact on such land (as is required under Paragraph 8 the Guidance).
- 3.23 PCC has referred above to the likely serious impediment to the underlying scheme represented by the current and ongoing CJEU litigation which raises questions over the timing of any implementation of the Proposed Development within the 7 year time limit sought by the applicant or within a reasonable timescale or at all.
- 3.24 Para 19 of the CA Guidance makes the following clear:  
*“19. The high profile and potentially controversial nature of major infrastructure projects means that they can potentially generate significant opposition and may be subject to legal challenge. It would be helpful for applicants to be able to demonstrate that their application is firmly rooted in any relevant national policy statement. In addition, applicants will need to be able to demonstrate that:*
- any potential risks or impediments to implementation of the scheme have been properly managed;*
  - they have taken account of any other physical and legal matters pertaining to the application, including the programming of any necessary infrastructure accommodation works and the need to obtain any operational and other consents which may apply to the type of development for which they seek development consent.”*
- 3.25 It is clear that the applicant has neither managed the risks to implementation properly (or at all) and has failed to take this guidance into account or accord with it.
- 3.26 As well as the issues raised above there are clear issues as to the scheme's viability not only as a consequence of the legal issues and impediments which will either prevent the scheme from proceeding but also will in any event delay it until any of these matters can be resolved.
- 3.27 The CA Guidance also makes the following clear with regard to the justification for compulsory acquisition and proof of funding:  
*“Resource implications of the proposed scheme*  
*17. Any application for a consent order authorising compulsory acquisition must be accompanied by a statement explaining how it will be funded. This statement should provide as much information as possible about the resource implications of both acquiring the land and implementing the project for which the land is required....*
- 18. The timing of the availability of the funding is also likely to be a relevant factor. Regulation 3(2) of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 allows for five years within which any notice to treat must be served, beginning on the date on which the order granting development consent is made, though the Secretary of State does have the discretion to make a different provision in an order granting development consent. Applicants should be able to demonstrate that adequate funding is likely to be available to enable the compulsory acquisition within the statutory period*



*following the order being made, and that the resource implications of a possible acquisition resulting from a blight notice have been taken account of.*

- 3.28 As set out in the section below the evidence provided to date by the applicant as to funding of the scheme and the compulsory acquisition is wholly insufficient.

## 4.0 Funding

- 4.1 Aquind Limited's Funding Statement is manifestly insufficient in detail as to how the proposed project costs have been calculated, and how the project is to be funded.
- 4.2 There is paucity of information regarding the ability of Aquind Limited to fund either the construction costs, or the costs of land acquisition of the proposed development. As acknowledged in the Funding Statement (doc ref 4.2; APP-023)§8.1, "*the Project does not have the benefit of full funding at this stage*", and in fact given that "*funding for the project is expected to be subject to grant of the development consent order*" this would indicate that the project is almost entirely unfunded and at risk.
- 4.3 Aquind Limited states it intends to raise equity capital and project debt financing to meet the estimated costs of the proposed development, these are stated to be secured against the operational profits of the project. However the Funding Statement is entirely silent on what levels of revenue will be generated by the project, the timing of such revenue, and whether these would be sufficient to act as the required security. This is a crucial component of the overall viability of the project as well as its case for compulsory acquisition.
- 4.4 Equity capital and project debt financing is proposed to be funded from a number of sources (including infrastructure funds and institutional investors). Aquind state that "*Market engagement has been undertaken*", this is not evidenced, and additionally there is only anecdotal evidence that there "is a strong interest in the provision of finance for the Project."
- 4.5 Usually, SPV companies promoting Development Consent Orders are backed either by Government departments or by UK registered parent companies (such as regulated utilities) or by publically listed companies with audited accounts, extensive assets and track records for delivery of similar projects and detailed public information regarding shareholdings and governance. Aquind Limited is a recently incorporated SPV company with little trading history. Its most recent set of accounts filed at Companies House (for the year ended 30 June 2018) show that the company has a Shareholders deficit of £1.85m. Additionally the accounts show an amount of £12.6m being owed to group undertakings, this is an overseas entity which would require an additional level of due diligence to be carried out on it.
- 4.6 The current capital cost estimate for the proposed development (£622m) shown within Aquind Limited's Funding Statement is based on an equal split of the estimated overall cost of the project between the elements in France and in the UK. This is an incredibly simplistic and rather unconvincing assumption and the Funding Statement does not in any way demonstrate how realistic this is. Are the construction elements required in France and the UK similar in nature? In complexity? The Funding Statement is entirely silent on this.
- 4.7 The broad breakdown of the proposed development cost estimate is very high-level. With regards to a project of this size PCC would expect to see a much more detailed breakdown, especially of the £599m construction cost figure (representing 96% of total costs). Additionally development costs are stated at £19m which is confusing given the statement

that "As at 30 June 2019, it is estimated that the total assets of the Applicant were approximately £24.5m, mainly consisting of the capitalised development costs of approximately £23m."

- 4.8 It is unclear whether there are any allowances for risk or contingency within the proposed development cost estimate, which would be a pre-requisite of any financial modelling at this stage of a project of this size and infancy.
- 4.9 Aquind Limited's Funding Statement asserts that "the costs of interest and other debt servicing will be met from revenues generated by the Project". To reiterate the comment made above, the Funding Statement is silent on what levels of revenue will be generated by the project and whether these would be sufficient to meet the costs of interest/debt servicing (as well as providing security for the project finance funding).
- 4.10 The land acquisition costs stated within the Funding Statement exclude the valuation of the Crown Estate's seabed interest. There is every chance that this is a material cost which would further add to the sizeable unfunded capital cost estimate of the project and would require additional funding to be identified and secured.
- 4.11 Aquind Limited also do not anticipate any claims for blight will arise, which is a rather disingenuous position given a project of this scale and the proposed route of the HVDC onshore cables. If they do arise they would add to the unfunded proposed development cost estimate.
- 4.12 Beyond that, there is only anecdotal evidence provided that there is any prospect of credible investors agreeing to invest the hundreds of millions of pounds necessary to deliver the proposed development on the basis of the limited business case set out in Aquind's Application.
- 4.13 The sort of evidence that is required to satisfy the ExA and the Secretary of State that Aquind is "*able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available*" is that sufficient to satisfy an investor, especially one expected to invest circa £600m, that the project is viable, and that there will be a return on their investment within a reasonable period.
- 4.14 A speculative assertion as here that funding for compensation liability will be secured at a later stage is incompatible with the CA Guidance. The CA Guidance also makes clear where financial ambiguity arises, that an applicant has to demonstrate it has taken steps to provide confidence that funds will be in place to resource the compensation liability.
- 4.15 In addition, the Applicant has not confirmed how any financial shortfalls will be met or produced evidence of investors underwriting the scheme.
- 4.16 The current Funding Statement and other application materials contain no information on how the estimated land compensation sum of £4m has been calculated. PCC does not consider that this figure represents a full and proper valuation of the costs of land acquisition for the proposed development.
- 4.17 Similarly, the Funding Statement and other application materials merely assert that the total construction cost of the proposed development will be £599million without any proper breakdown or explanation as to how this figure has been arrived at, or how this expenditure is to be phased through the life of the proposed development.

- 4.18 There is no consideration given in the Funding Statement or elsewhere in the application to the lifetime costs of the proposed development, or how ongoing maintenance costs are to be met from expected revenues.
- 4.19 There is no information on the expected operational revenues, which would be necessary in order to inform a view on the likely economic viability of the proposals. This is a key requirement due to the reliance on the revenues to secure project finance funding.
- 4.20 There is no evidence from the Application materials that Aquind Limited has actually assessed the commercial viability of the proposed development. There is no evidenced business case for the proposed development.
- 4.21 PCC considers in the circumstances that nothing short of a full viability appraisal by Aquind would be sufficient to satisfy the relevant test.
- 4.22 This should include as a minimum:
- details of the land valuations used in the model;
  - details of the assumptions and projections for build costs for each element of the proposals;
  - details of any allowances for risk and uncertain costs;
  - details of provisional values of operational costs, replacement costs and decommissioning costs;
  - revenue assumptions and short, medium and long-range revenue forecasts for each revenue element; and
  - details of project financing costs and structures.
- 4.23 Once the information detailed above has been provided and due diligence is carried out it will then and only then be possible to understand if Aquind Limited's development proposals are at all viable and realistic.
- 4.24 In the circumstances as they stand currently however there is simply insufficient financial evidence to support the exercise of compulsory acquisition powers and such powers cannot be justified and should not be granted.

## 5.0 Highways, Traffic and Transport

- 5.1 PCC has set out an assessment of the traffic and highways impact from the Proposed Development in the LIR. PCC has had regard to the advice of its own highways officers and has approached this evidence principally from its perspective as local highway authority. The views formed are based on consideration of the following application documents
- The draft DCO
  - The ES Vol Transport Assessment ('the TA')
  - The Framework Traffic Management Strategy (ES Appendix 22.1A)
  - The Environment statement ('ES') Vol 3 Appendix 22.2 Framework Construction Traffic Management Plan
  - Technical Note ERTN01 – Eastern Road Further Traffic Assessments

### Draft DCO highways issues

- 5.2 The Draft Development Consent Order (DCO) contains a number of articles pertaining to Highways; these include (but are not limited to) use and/or purchase of land, rights to undertake works and powers to alter the operation of the highway.
- 5.3 As the ExA will know, Portsmouth City Council as the Local Highway Authority (LHA) strongly objects to the compulsory acquisition of any part of the highway subsoil and disagree that this is in justified or necessary especially given the intended status of the applicant as statutory undertaker and the powers available in that event.
- 5.4 In the event however that the applicant is granted powers to compulsorily acquire the highway subsoil this could potentially impede the LHA from exercising its statutory powers as LHA, for example in respect of the operation or alteration of the publicly maintained highway in future. Further, it is possible that other statutory undertakers with apparatus already in-situ may be impeded from altering or maintaining said apparatus in future.
- 5.5 As the ExA again will be aware Portsmouth Council in its role as LHA ('the LHA') objects to any deviation from or disapplication of the NRSWA 1991 ('the '91 Act'). Statutory undertakers (such as Aquind following the grant of its Electricity Interconnector Licence) are provided with sufficient rights and protections under the 91 Act to install and maintain any apparatus or carry out any other activity related to the operation of that apparatus.
- 5.6 The LHA objects to an undertaker having rights to make, alter, impose and enforce Traffic Regulation Orders (both permanent and temporary) as if it were the LHA. The LHA will be unable to properly manage and control its network should the Undertaker be given such powers. The LHA already has robust set of processes for drafting, advertising and making TROs (both permanent and Temporary) that are used successfully for other undertakers carrying out works on the Highway. There appears to be no justification for the modification or exclusion of the normal statutory controls for TROs the result of which is disproportionate in this instance.
- 5.7 Art 8(3) disapplies the Traffic Management( Hampshire County Council) Permit Scheme Order 2019 (the Permit Scheme) and in its place proposes to adopt a statutory approvals process broadly in line with provisions of the 91' Act as described in Article 10 of the draft order.
- 5.8 Portsmouth are a permitting authority and consider the continued application and use of the mechanisms available under the Permit Scheme create the appropriate level of management and protection for traffic to allow for any works consented to as a consequence of a grant of a DCO for the Proposed Development. To that end PCC does not consider the Permit Scheme should be disapplied. In addition, it is likely that PCC will seek powers to implement a lane rental scheme during 2021. Should consent be granted for the Proposed Development any future works associated with this development will also need to take that rental scheme into account as will to comply with the street works process in place

in Portsmouth at the time of those works taking place. The Permit Scheme would allow for all these works to take place in but in a controlled fashion.

- t5.9 As covered in the response to the relevant Examination Question PCC note that The Draft DCO at Art 2 provides the definitions of various terms used within the Draft DCO. One such term is "onshore site preparation works"; under which is a number of activities that this term encompasses. With these activities excluded from the definition of "commence", whereby activities are only permitted once pre-commencement requirements are met, it is suggested that the works will be controlled by way of a Construction Environment Management Plan (CEMP) relevant to that phase of works. Where this work is on the Highway, it is expected that the applicant would adhere to the network booking process in place within the Portsmouth authority area at that time.
- 5.10 Where the term "phase of the works" is used, it is not clear how these phases currently defined; how many phases of work the applicant expect there to be; nor how many separate CEMP documents will be submitted for consideration. It is imperative that the Local Highway Authority (LHA) know how many documents to expect and in what timeframe so as to be able to adequately resource teams to review and respond to the applicant within set timescales.
- 5.11 The Draft DCP at Art 2 of Part 1 sets out various definitions including also offers term "maintain". This covers the areas included within section 48 of the New Roads and Street Works Act 1991 (the '91 act) but appears to extend the definition to also include "extending, enlarging....any part of the development". It is not clear what this might relate to and if it would be applicable anywhere within the confines of the order limits or even extend beyond the order limits. PCC therefore objects to this wording.
- 5.12 Art 2 defines "subsoil" as "any stratum of land that is below the surface of the ground". Where highways are considered it is not clear if this definition relates to the area immediately below the surface course of the highway, beneath the full depth of construction of the highway or from some other point beneath the highway. Note: the applicant has subsequently set out that in their opinion, only the first metre beneath the surface may be regarded as "highway" and for that reason they require ownership/rights over the "subsoil" however this is different to the approach of all other statutory undertakers who regularly place apparatus at a depth exceeding 1m beneath the surface of a road. This needs to be properly reflected on the face of the DCO and PCC objects to this wording as currently shown.
- 5.13 Art10 relates to the Power to alter layout etc. of streets. Para 7.5 of explanatory memorandum to the draft DCO refers to the "need for flexibility" in delivering the development and as a consequence asserts it is "not feasible to provide details of the alterations required in connection with the carrying out of the authorised development".
- 5.14 It is not clear what this means and would be unreasonable to give authority for the undertaker to alter any street without consent/approval of the LHA. For example, this provision would seem to make it possible for a CEMP/TMP to be agreed for a cable route across an area of land only to find that it is not feasible, and that section then be diverted into live carriageway without any further permissions from the LHA.

- 5.15 Para 7.7 of the Explanatory memorandum covers Article 11 (street works) and the additional powers added to a model provision that the undertaker would have. The paragraph goes on to say that the "consent of the highway authority is not required in connection with the carrying out of works pursuant to this power within the order limits". It is not clear whether this refer only to the additional powers or to all of the powers within the model provision. Further, it seems to exempt the undertaker from requiring a licence or complying with the permit scheme which is wholly unacceptable to the LHA. Article 11(2) then refers to sections 48(3) & 51(1) of the '91 act as justification for the powers requested in 11(1) however those sections of the '91 act require undertakers to gain consent from the street authority and consequently it does not so follow.
- 5.16 Article 11(3) seems to prevent the LHA from refusing use of a street outside of the order limits which is again wholly unacceptable to the LHA
- 5.17 Article 16 covers powers to make, impose and enforce Traffic Regulation Orders. The powers requested seem to give the undertaker equal standing to the LHA in this respect, if this is the case the LHA would strongly object to this. In that case the LHA have no rights to prevent imposition of new/altered TROs which would again be wholly unacceptable. Later in 16(7) it refers to the process as an "application" to the LHA however the remainder of that article does not appear to afford the LHA right of veto. Article 16(4) gives the undertaker power to enforce any TRO; the presumption is that this is related to any TRO that the undertaker makes/alters under the powers requested within Article 16 rather than any and all TROs although the article is not clear. The sort of enforcement is envisaged, and financial gain to the undertaker for such enforcement is not explained.

4.6 The traffic modelling has been carried out in line with the scoping note previously submitted to and agreed by the LHA. In line with this approach, the applicant has attempted to replicate a "worst case" scenario. However, the **initial** modelling **did not** cover a possible cable route along the A2030 between Tangier Road and Eastern Avenue **nor did it** account for cumulative residual impacts of traffic merging to pass-by works or diverting away from works. It is noted that SRTM does make an assumption as to the redirection of traffic however it does not accurately predict vehicle movements at a microscopic level and as a consequence, the overall impacts of the works are likely to be greater/wider than anticipated. **The applicant has also produced a technical note (ERTN01) to address the required lane closures at the Eastern Road/Tangier Road junction and demonstrate that the modelled scenarios where "worst-case" so far as the modelled sections were/are the most trafficked. However, the information submitted in support of the application still does not consider possible mitigation of impacts nor the potential road safety implications of increased congestion along the cable route or identified diversion routes. This is a fundamental omission without which the impacts of increased congestion arising during the construction period on the safety of the highway network cannot be determined.**

4.7 Abnormal loads are briefly referenced within the Framework Traffic Management Plan however incorrectly state that "a vehicle is considered abnormal when.... the gross weight is over 80 tonnes". The official definition of an abnormal load is those in excess of 40 tonnes (amongst other criteria). The applicant's consultants suggested during pre-submission consultations periods that 50 tonne cable drums would be brought to site each day during cable-pulling

(possibly from the Ferry port where the cable drums could be stored). This would result in abnormal loads being transported through the centre of Portsmouth on a daily basis, which would inevitably disrupt traffic and bus services even if undertaken outside of peak hours. The frequency and/or proposed route of abnormal loads have simply not been addressed or their impact assessed. **An updated technical note to correct this issue and highlight the abnormal load strategy has been promised by the applicant but as of 1<sup>st</sup> October has not been forthcoming and as such the management of abnormal loads cannot be assessed.**

4.8 A framework Construction Traffic Management Plan has been provided, however a tailored CTMP produced for each construction phase is proposed to be submitted only when a contractor(s) is appointed. This would be too late as the impact should be properly understood at this stage. **Whilst it is acknowledged that there will need to be some arrangements which will have to be reserved pending a detailed CTMP, at this stage basic information such as the final cable route and number and location of contractor compounds. Having previously enquired about Early Contractor Involvement, it would seem that there has not been any carried out to date to understand how a future contractor might look to construct the cable route, whether the phasing set out in the CTMP and FTMS is realistic/achievable and whether the numbers of staff on site is realistic and how it will be ensured they access the site sustainably.**

4.12 The proposed programme of works for the development will likely clash with significant schemes being delivered in Portsmouth and risks delaying these work packages; in the case of **committed** works associated with the Transforming Cities Fund any delay could jeopardise the overall delivery **given the time restrictions placed upon the funding**. The City Council, in conjunction with Hampshire County Council and the Isle of Wight Council, **have been successful in achieving funding from the Transforming Cities Fund and as such there are in excess of 20 schemes across the Portsmouth and S-E Hampshire funded for delivery**. The proposed cable route will intersect and travel along sections of the route proposed to form the new South East Hampshire Rapid Transit (SEHRT) network (both in Portsmouth and Hampshire authority areas). **The programme of works will run until March 2023, implementation of what will be a congested delivery period could not be delayed nor could newly installed highway infrastructure be disturbed/undermined.**

4.13 Through a PFI, Colas contractually undertake the network duty of coordination of third parties/statutory undertakers on the public highway acting as Local Highway Authority. All works on the public highway are required under the New Roads and Street Act 1991 and Traffic Management Act 2004 to have notices served correctly on the Street Works Register, appropriate traffic regulation orders etc. **Portsmouth is now operating a permit scheme (as of August 2020)**, with a lane rental scheme to follow; any works on the highway associated with this development will be expected to adhere to the procedures set out by the Local Highway Authority. Portsmouth LHA objects to any deviation from or disapplication of the NRSWA 1991 (the '91 act). As statutory undertaker, the '91 act provides sufficient rights and protections to undertakers to install and maintain any apparatus or carry out any other activity related to the operation of that apparatus. **It is also for this reason that the purchase of any highway subsoil by the applicant is strongly objected to and in the view of the highway authority, completely unnecessary.**

4.14 Portsmouth LHA objects to an undertaker having rights to make, alter, impose and enforce Traffic Regulation Orders (both permanent and temporary) as if it were the LHA. The LHA will be unable to properly manage and control its network should the Undertaker be given such powers. The LHA already has robust set processes for drafting, advertising and making TROs (both permanent and Temporary) that are used successfully for other undertakers carrying out works on the Highway. There appears to be no justification for obtaining this power other than previous precedent.

## 5.0 Air Quality & Noise

- 5.1 With regard to Air Quality, as set out in the Local Impact Report, Environmental campaign organisation ClientEarth has challenged the government's Air Quality plans in the High and Supreme Courts for failing to include an actions necessary to achieve legal limit value for nitrogen dioxide in the shortest possible time. As a result of this legal action Portsmouth City Council has been issued with four Ministerial Directions. These place a legally binding duty on the Council to undertake a number of steps to improve air quality in the city, in particular to reduce air pollution concentrations across the city to within legal limits in the shortest possible time.
- 5.2 The Eastern Road water bridge is a 'near exceedance' location. Technical studies have shown that the cause of the high nitrogen dioxide concentration in this location is queuing traffic travelling northbound out of the city. Whilst the proposals do not suggest lane closures along the water bridge, the use of temporary traffic management along the length of Eastern Road has potential to lead to queuing traffic in this location. There is a concern that the lane closures will result in increased queuing time for vehicles which will have a detrimental impact on air pollution concentrations at the 'near exceedance' location, potentially pushing this site into exceedance. Equally there is also concern that the lane closures on Eastern Road could also result in traffic rerouting via the M275 to travel into/ out of the city, meaning that additional traffic will be travelling through the exceedance locations, which again are sensitive to increases in traffic volumes and queuing.
- 5.3 The mitigation measures included in the Operation Management Plan and ES (chapter on Air Quality) are considered sufficient in reducing some of the air quality impacts of the proposal, however it is noted that there is uncertainty in the modelling and therefore ", it cannot be determined with certainty that an exceedance of the NO<sub>2</sub> annual mean objective will not occur as a result of diverted traffic."
- 5.4 Government require Portsmouth City Council (PCC) to implement a Class B charging Clean Air Zone (CAZ) in order to reduce the nitrogen dioxide emissions to within legal limits across the city, with a focus on the exceedance locations. If legal limits of concentrations of nitrogen dioxide are not met by the end of 2022, PCC could be required to implement a more stringent CAZ i.e charging additional vehicle classes vehicles. Therefore proposals which risk achievement of this legal objective should not be supported unless sufficient mitigation of the impacts can be found.
- 5.5 With regard to noise, the key concern is the potential for disruptive overnight construction work. In particular further noise assessment will be necessary, mitigation measures have



not been clarified and there is no mention of the contractors that will be carrying out the works.

## 6.0 Surface Water Resources

6.1 Nothing further to add

## 7.0 Heritage & Design

7.1 Nothing further to add

## 8.0 Impact on Trees

8.1 As stated in the RR, trees are a valuable component of the City's green infrastructure network. In addition, as explained in the RR, PCC's approach, common with many other local authorities, is not to TPO trees on its land holdings or in its guardianship. As such the revised proposal tabled by AQUIND on 29 September namely proposing to run the cables through Zetland Field (Parcels 7-04 to 7-08) while resulting in a potential reduction in traffic disruption through now promoting option 2 (as described in the statement of reasons) will have a likely adverse effect on trees in this area that has not been properly and fully considered. PCC are not satisfied that the extent of powers sought by the applicant over trees along and adjacent to works are proportionate and appropriate and the necessary requirements to the order should reflect the need for PCC to retain control over the protection and, if exceptionally required, replacement of trees following a full arboriculture assessment based on the accurate route and associated minimum land take.

## 9.0 Socio-Economics/Human Health

9.1 The Councils relevant representation and Local Impact report provide detailed concerns in respect of the deleterious effect to playing pitches and open space within the city derived from the application proposal. The implications for several business places and community assets and services are also identified within those documents.

## 11.0 Ground conditions/contamination

11.1 The inclusion of these areas raises issues not only relating to the acquisition of land but also raises issues of public health due to the previous history of the land. The Milton Allotments occupy reclaimed land (formerly a tidal inlet that was reclaimed from the sea and then landfilled with inert and non-inert waste).

11.2 As such and in order to demonstrate that it is not contaminated land, AQUIND must be required to carry out the following:

Preliminary Risk Assessment – Also known as a Phase I Desk Study, this work involves the collection and review of many different sources of information including: local authority registers, environmental databases, geological maps, and historic records. A site walkover is usually also undertaken to identify any specific sources of contamination and to collect relevant photographs. This information is compiled to produce a Conceptual Site Model (CSM). There are three essential elements to the concept of risk in the context of land contamination, which combine to form a 'contaminant linkage'. In order for a contaminant linkage to be active, a source, pathway, and receptor must all be present.

Site Investigation – This work should meet the criteria set out in British Standard 10175 entitled Investigation of Potentially Contaminated Sites - Code of Practice. It can typically involve completion of boreholes or trial pits and collection of soil or groundwater samples for submission to an appropriately accredited laboratory.

Generic/Detailed Risk Assessment – This process involves assessment of contaminant concentrations in the context of the site’s proposed end use. Assessment can be either generic (using predefined assessment criteria) or detailed (taking into account a number of site and receptor-specific factors).

Remedial Options Appraisal - Should the risk assessment demonstrate that unacceptable risks to human health or the surrounding environment are likely to exist, then some remedial work will be necessary. This process involves three key stages:

Identification of Remedial Options – A short-list of feasible remediation options, capable of achieving the remedial targets should be drawn up.

Remedial Options Appraisal – Each remedial option should be reviewed on its merits and drawbacks. Site-specific information should be considered along with the timescale and sustainability of each option.

Development of Remedial Strategy – A remedial method statement should be produced, which sets out how the remedial work will be implemented.

Implementation of the Remedial Strategy - Once the remedial strategy has been approved by relevant regulatory authorities then it should be implemented. A verification report should be produced upon completion of the work to demonstrate that remedial targets have been achieved. This work may include testing of remedial excavations, results of post-remedial monitoring, certification for imported material or membrane integrity testing, amongst other things. Details of ongoing/long-term monitoring may also need to be agreed at this stage, possibly under a Section 106 Agreement.

Upon completion of this process, the site should not pose a significant risk to future users or the surrounding environment and should be suitable for its end use. Once this process of site assessment has been completed successfully then any associated planning conditions can be discharged.

## 12.0 Onshore Ecology

- 12.1 Until there is greater clarity on the final cable route there is potential for significant effects on bird disturbance to the Solent SPAs (notably the adjacent Langstone and Chichester Harbour SPA, designated predominantly to protect over-wintering birds) and Functionally Linked Land lying outside the physical boundaries of the SPA/Ramsar sites used by birds associated with the designated sites or measures for mitigation required to reduce impacts to acceptable levels to ensure the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations) and integrity of any relevant European sites are met.
- 12.2 Eastern Solent Coastal Partnership (who provide a comprehensive coastal management service and is directly employed by PCC and three other partner authorities) raised concerns surrounding the adequacy of the impact mitigation and the impact being secured as part of

coastal defence projects being undertaken to Portsea Island. Cumulative impacts are based on inaccurate information and requires updating to reflect overlap in construction and therefore in-combination impacts. The DCO needs to ensure any flood defences are retained or replaced, to ensure the same level of flood protection is maintained and Aquind reduce any cumulative impacts and disruption, to ensure ecological mitigation of sea defence works remains effective.

#### Designated Sites and works

- 12.3 In respect of Statutory Designated Sites PCC conclude that overall, the ES and supporting documents make sensible recommendations regarding mitigation and enhancements to ensure a negligible residual effect. On this basis, PCC is satisfied with the mitigation proposed in principle as it meets the requirements of Local Plan PCS13 in relation to European sites. However, the measures proposed are not yet sufficiently detailed to be able to be secured and implemented. PCC are of the strong view that further information regarding the specific details of mitigation are still required, and the absence of the relevant detail at this stage of the application is of significant concern. For example, further details of an ecological programme of works showing phasing and timing, a detailed drawing identifying the location and specification of protected species mitigation and enhancement measures, as well as details of the areas of turf preservation and reinstatement, seeding and planting, long term management of created and reinstated habitats, ECoW involvement, a strategy for turf storage and reinstatement with justification for its likely success, planting and seeding specifications, taking into account species of local provenance, and suitability for the habitat in which planting and seeding will take place, etc. are all considered necessary to enable the necessary confidence that no adverse effects to European sites will occur.
- 12.4 In respect of the Non-Statutory Designated Site of Milton Common SINC PCC note that the cable crossing Milton Common was originally ruled out due to technical challenges associated with crossing of Milton Common, however it now forms part of the Order Limits. It is PCCs opinion that it is likely that the chosen route will either follow the sea defence footpath east of Milton Common or follow the southern and western boundaries of Milton Common. This SINC underwent a detailed botanical survey confirming the habitats as mainly disturbed and widespread, with an area of better quality MG5 grassland being a result of mitigation seeding for the recent coastal defences work. Temporary loss of 10.5ha of Milton Common SINC is expected, with habitat to be reinstated post-completion. SINCs are designated at county level and should be retained and enhanced through the planning process. Local Plan policy PCS13 requires refusal of proposals which result in the net loss of area from Milton Common (among other areas of green space identified on Map 21 of the Portsmouth Plan), but provided the outline mitigation measures are implemented, there should be no net loss. While temporary loss is of less concern it must be highlighted that 10.5ha is a substantial portion of the SINC, being almost one quarter of its total area. Effects of potential alterations to soil structure are also recognised. PCC therefore believes that it is essential that the applicant provides detail on the programming of this work to ensure its ecological function is maintained and to describe any interim measures for protecting green infrastructure and maintaining the island's ecological network while work is underway on Milton Common. Micrositing of the cable will be implemented along the chosen route to further minimise impacts, and this is welcomed.

- 12.5 The measures broadly outlined in the Outline CEMP include employment of an Ecological Clerk of Works (ECoW) for the scheme. Like many aspects of the applicants proposal specifics of the role have not been provided, such as confirmation that they will maintain a full-time presence for the life of the scheme and be suitably experienced to cover the range of species present across the full works area. PCC again consider that this lack of detail is unacceptable at this stage and recommend that a request be made for further detail in this regard.

#### Habitats

- 12.6 The draft Biodiversity Position Paper reports a significant predicted increases for hedgerow units (+5.1%) and calcareous grassland (+157%). However, PCC notes that there is an overall post-development net loss of 18.92% across all area-based habitats. PCC is committed to supporting habitat creation and retention, as illustrated in PCS13 of the Portsmouth Plan which sets out the council's commitment to ensure that *'development retains and protects the biodiversity value of the development site and produces a net gain in biodiversity wherever possible. Any unavoidable negative impacts on biodiversity as a result of development should be appropriately mitigated.'* Currently the proposals do not comply with local plan policy in this respect, as an overall net loss is proposed. PCC do not believe that the applicant has adequately demonstrated that their proposal has properly considered all alternatives available that would result in less ecological harm, nor that the proposal results in sufficient benefit to outweigh the harm to biodiversity through the net loss of habitat that is acknowledged.

#### Protected Species

- 12.7 The bat surveys undertaken were restricted to the Converter Station Area. No bat surveys were undertaken within Portsmouth, nor a written justification for this within the application provided. The ES chapter confirms that construction work will be restricted to daylight hours in areas where street lighting is absent, to reduce impacts to bats. The applicant has not provided sufficient clarity as to how this will affect areas within PCC, as the bat assessment is strongly focussed on the Converter Station Area. PCC are concerned that the temporary loss of 10.5ha of suitable bat foraging habitat from Milton Common may be significant for the city's bat population. Even if this habitat had been classed as low suitability for bats, the Bat Conservation Trust (BCT) Bat Surveys for Professional Ecologists: Good Practice Guidelines (Collins, 2016) recommend one visit per season in spring, summer and autumn to conduct transect and automated bat detector surveys, however, these have not been undertaken. PCC are of the opinion that Milton Common needs to be given some further evaluation in the local context. Portsmouth is a highly urbanised area, and there are very few areas of 'typical' high quality foraging habitat in the city – generally confined to discreet pockets of more open habitat such as allotments, cemeteries, and parks. The seafront and limited adjoining green areas such as Milton Common are among the better habitats available to bats in the city. Beach-interfacing habitats can be rich in invertebrates and therefore there is the potential for this area to be of potentially higher importance to local bat populations than might be expected if Milton Common were located further inland. There are relatively few formal bat records held by HBIC for this area of Portsmouth. However, it cannot be concluded from this that there are few bats in the city. The paucity of records may simply be due to a lack of recording effort. There is a very large number of buildings of various ages and construction type in close proximity to Milton Common, and many of these are likely to have bat roost suitability. The Common may therefore be of

particular value to local bat populations roosting across the nearby built-up areas. Furthermore, coastal and adjacent areas can be of seasonal value to some bat species. While the local bat population is likely to be largely dominated by more widespread species more adapted to urban environments, coastal areas can be of more seasonal value to species such as Nathusius' pipistrelle (which have been found using other urban and semi-urban areas of Hampshire's coastline). PCC also note that the CEMP states that the lighting strategy for Farlington Playing Fields will be designed in accordance with BCT guidance. There is however insufficient details of lighting across the remaining areas of the scheme, if this is indeed required, and how lighting will be minimised where possible in line with the guidance. Without suitable bat surveys of Milton Common and confirmation of lighting design elsewhere in the scheme PCC are of the opinion that the applicant has failed to provide necessary detail to enable the Examining Authority to reach an informed understanding of how effects on this species group can be adequately avoided, mitigated or compensated within the Portsmouth area.

- 12.8 Seven bird species of conservation interest were recorded breeding within the site during the breeding bird surveys, including black redstart listed on Schedule 1 of the Wildlife and Countryside Act 1981 (as amended) and six Species of Principal Importance. Black redstart is scarce in the UK and Hampshire and nests in brownfield habitat, relying on surrounding supporting habitat for foraging. The species was recorded breeding within Fraser Range and this and the immediate surrounding area may play an important part in linking the wider population of black redstart across Gosport, Portsmouth and Hayling. The ES chapter describes the breeding bird community as important at the Local scale, however PCC would assess the survey area to be at least of County importance for breeding birds given that black redstart is breeding adjacent to the site. The black redstart nest-site will not be directly affected by the proposals. The ES chapter states that 'the works' will be timed to avoid the breeding bird season. However, there are also plans to avoid certain works in the wintering season, and if both restrictions were applied to the same element of works, that would only leave September for these elements. Without a detailed programme of ecological works to explain how relevant works will be scheduled within these constraints PCC is of the opinion that the scheme will have an unmitigated adverse impact on protected birds.
- 12.9 Much like the works submitted in respect of Bats, the reptile assessment submitted focusses on the Converter Station Area, and suitable reptile habitat within PCC have not been surveyed. As 10.5ha of Milton Common is to be temporarily lost, and these losses could include areas of less-managed grassland and scrub which are suitable for reptiles, PCC retains a concern that widespread reptile species may be harmed during the construction phase if suitable mitigation is not implemented. Portsea Island is known to support pockets of widespread reptile species in available habitat, such as Milton Common. Slow-worm has been recorded on Milton Common and common lizard has been recorded in the Land West of Fort Cumberland SINC, adjacent to the site. There could be direct harm to individual reptiles if suitable mitigation is not implemented. Widespread species of native UK reptile (grass snake, slow worm, common lizard and adder) are legally protected under the Wildlife and Countryside Act 1981 (as amended). A Precautionary Method of Working is outlined for reptiles in Section 16.8.9 of the ES Onshore Ecology chapter. However, PCC find it unacceptable and unjustified that all areas south of the Converter Station Area have been dismissed as unsuitable for reptiles, when this is not the case. Therefore, the suitability of the remainder of the site for reptiles requires further consideration.

### Outline Landscape and Biodiversity Strategy

- 12.10 The Outline Landscape and Biodiversity Strategy sets out the applicant's intentions for providing mitigation for the effects of the proposals on landscape and biodiversity, and enhancements. Like many key details of the applicant's proposal, a detailed Landscape and Biodiversity Strategy will be produced for approval at a later date. This document is intended to provide detailed landscape mitigation, along with management, maintenance and monitoring plans. The Outline Strategy outlines management prescriptions for a 5-year aftercare period. PCC would suggest that a reasonable expectation for the management plan for biodiversity, in light of the above concerns regarding habitat and protected species would prescribe measures for the lifetime of the operational phase of the development. PCC are also concerned that Paragraph 1.3.2.7 of the outline plan states that no reptiles were recorded within the Landfall during surveys. However, the Reptile Survey Report appears not to include it.

## 13.0 Impact on Coastal Flood Defences

- 13.1 The project proposes HDD from Farlington to the north-west of Kendall's Wharf to avoid impacts on Langstone Harbour and Phase 1 of the North Portsea Island (NPI) coastal defence scheme. The project identifies a construction compound use of the yard to the south-west of Kendall's Wharf. Depending on timing there is the potential for conflict with delivery of NPI Phase 4 coastal defence works that already has its construction compound there.
- 13.2 To the south of Kendall's Wharf there are options for cabling (a) to the west of the Baffins Milton Rovers FC playing pitch, through the cricket pitch and the second southern football pitch before crossing a car park and into Eastern Road or (b) along the eastern side of the Baffins Milton Rovers FC pitch. If the latter option is used it would likely affect the landscaping/screening that will be installed as part of the NPI Phase 4 works to mitigate disturbance to birds using the Core SWBGS site (P11) from re-routing of the footpath landward of the Andrew Simpson Watersports Centre/Tudor Sailing Club.
- 13.3 Between Airport Service Road and the northern end of Milton Common the cabling options are in the carriageway and/or verge of the highway. The cumulative construction traffic effects and potential impacts on access to the NPI construction compounds/haul roads requires assessment. However, the Access and Rights of Way Plans includes land to the east of the highway that raises potential concern that (a) south of the Langstone Harbour Viewing Car Park, this land will be realigned in 2022 as part of the NPI Phase 4 coastal defence works and (b) on the northern end of Milton Common, this area will be used as a construction compound during the NPI Phase 4 works and based on the current programme will be unavailable from April 2021 until September 2022.
- 13.4 Across Milton Common, it is anticipated that the cable will progress through the corridor adjacent to the path which runs from north-to-south through the Common, parts of which form the coastal flood defences. At the northern part of the coastal defences, a short HDD will be required below the bund of the coastal defences. The cable would then continue south, adjacent to the path to the south-east corner of Milton Common. This suggests that only the crossing of the secondary defence will be HDD and the remainder of the route across the common will be open trenched.
- 13.5 The HRA (ref 6.8.1) and the Winter working restrictions (ref 6.3.16.14) documents indicate that no works will be undertaken in SWBGS core, primary or secondary sites during October

to March. There should, therefore, be no impact on the bird usage of the mitigation areas ESCP propose on Milton Common to offset the impact of the NPI Phase 4b Compound 6 on the SWBGS core site P23R during the winter (NB Aquind ES refers to P23R and P23A – in the latest [2018] version of the SWBGS these polygons have been merged and are both now included within P23R). However, these mitigation areas are very close and potentially overlapping the proposed route north-south across the common. The project must ensure that it would not inadvertently impact on the mitigation areas during construction works in the summer months and their need to be returned to grass by the end of September.

## 14.0 Cumulative Effects

- 14.1 New development at Fraser Range Eastney is identified. A planning application for this site, ref 19/00420/FUL, has been formally submitted for new housing (for 134 dwellings) with sea defence works, which is pending consideration.
- 14.2 Reference is also made to Coastal Defence Schemes for Portsea Island. A planning application for Phase 4A of the North Portsea Island defence scheme, between Kendall's Wharf and the A2030 (Eastern Road), was granted planning permission in July 2019. Construction of the Phase 4A works is underway. A planning application submitted for Phase 4B, between Kendall's Wharf and Milton Common, has been resolved to be in February 2020 and the intended construction programme will form a continuation of the Phase 4A works. Furthermore, in December 2019 planning permission was granted for the £115 million Southsea Sea Defence project. It relates to a 55.75ha site along a 4.5km stretch of seafront, from Old Portsmouth to Eastney, designed to protect 8,077 homes and 704 businesses from the risk of tidal flooding for the next century. Construction is programmed to start in early 2020 and the project completed in 2026.
- 14.3 The HRA in-combination assessment for onshore defers to the onshore ecology cumulative effects assessment. The NPI Phase 4 sea defence project (see above) has been screened out of cumulative effects with the Aquind project at Stage 2 on the basis that it "...will not interact with the Proposed Development to lead to cumulative effects." This cannot be accepted as correct. Based on the potential interactions outlined under 'Onshore Ecology' and 'Impact on Coastal Flood defences' and, in particular, the potential of the cable route and construction works to impact mitigation measures incorporated into the NPI Phase 4 works to avoid an adverse effect on the SWBGS sites there clearly would be such effects. The final cable route and its timing/access would require close working with the ESCP to ensure no adverse effect on brent geese and waders

## 16.0 Concluding Remarks

- 16.1 Portsmouth City Council objects in the foregoing terms both in respect of the substance of the application, the unjustified scale of the order limits and of the draft DCO scope to disapply other consenting regime and to identified procedural failing and legal concerns. PCC reserves its position to respond to new evidence as the examination continues

