

From: [Barnard, Megan](#)
To: [Aquind Interconnector](#)
Cc: [Maguire, Ian](#); [Williams, David](#); [Samuels, Tristan](#)
Subject: AQUIND - Portsmouth City Council - Deadline 3 Submission
Date: 03 November 2020 23:58:56
Attachments: [20201027 EN020022 AQUIND - Rule 17 to the Applicant and Portsmouth City Council.pdf](#)
[20201103 Rule 17 response to ExA re Allotments.pdf](#)
[Appendix A - Plan showing allotments affected \(not definitive\).pdf](#)
[Appendix B - Allotment Tenancy Agreement Form until 2019.pdf](#)
[Appendix C - Allotment rules, Jan 2019 v5.pdf](#)
[Appendix D - Pro-forma Allotment Invoice.pdf](#)
[Appendix E - Allotment Offer Letter Under simplified letting process, 2019 onwards.pdf](#)
[20201103 PCC Letter to PI re Deadline 3 Final.pdf](#)

Evening,

On behalf of Portsmouth City Council (PCC), please find attached submission for Deadline 3 in respect of the Application by AQUIND Limited for an Order granting Development Consent for the AQUIND Interconnector Project. We have also included a response to the ExA's Rule 17 letter dated 27th October 2020 addressed to PCC and the Applicant (attached as point of reference).

Grateful if you could confirm the likely publication date.

Kind regards, Meg

Megan Barnard
Head of PMO
Programme Management Office (PMO)
Regeneration Directorate
Portsmouth City Council
Tel: 07909227274
Email: megan.barnard@portsmouthcc.gov.uk
Web: www.portsmouth.gov.uk

This email is for the intended recipient(s) only.

If you have received this email due to an error in addressing, transmission or for any other reason, please reply to it and let the author know. If you are not the intended recipient, you must not use, disclose, distribute, copy or print it.

This email may be monitored, read, recorded and/or kept by Portsmouth City Council. Email monitoring and blocking software may be used.



Ian Maguire
Assistant Director Planning
& Economic Growth

Floor 4, Core 2-4
Guildhall Square
Portsmouth
PO1 2AL

Phone: 023 9283 4299

E-mail: Ian.Maguire@portsmouthcc.gov.uk

Our Ref: 20201103

Date: 03/11/2020

Via email to
aquind@planninginspectorate.gov.uk

FAO the Planning Inspectorate

Dear Sirs,

RE: Deadline 3 Submission in respect of the Application by AQUIND Limited for an Order granting Development Consent for the AQUIND Interconnector Project.

In line with the Examining Authority's requests for deadline 3 of the examination, please find responses on behalf of Portsmouth City Council in summary form set out below:

General comments on responses for Deadline 2

General Comments on Draft DCO

1. PCC will make detailed comments on the draft DCO at the forthcoming Issue Specific Hearing on 9 December 2020. PCC is monitoring the drafts as they come forward but considers it is of most assistance to the Examining Authority to proceed on this basis.
2. That said PCC would make the following comments in respect of the responses by the applicant to Deadline 2:
 - 2.1 *'Need' for deemed consent*
With reference to the applicant's response to the ExA question (ref 7.4.2) DCO1.5.42 - PCC considers the applicant's reasons for suggestion that the consenting regime under the DCO should allow for deemed approvals of consents after certain periods, as opposed to PCC's view that a system of deemed refusal after a short timescale is appropriate, are telling but do not provide a good reason. The applicant asks for deemed approval in the absence of a response from all consenting authorities not only PCC. The applicant considers this is justified because it considers PCC would not discharge its consenting function under the DCO in a lawful manner. Other

than an extraordinary suggestion by Aquind it is of considerable concern to PCC that it is asking the ExA as well as the Secretary of State to agree that PCC would deliberately withhold consents.

- 2.2 PCC wholly rejects the applicant's accusations asks the ExA to reject this contention outright. PCC urges the ExA to give no weight to such unreasonable justification and maintains that the obvious and proportionate outcome where a short timescale is imposed through a DCO for a consenting regime is for a deemed refusal if there is no response from the relevant authority.
- 2.3 PCC does however note that the applicant appears to recognise the additional weight imposed upon authority resources in order to address such future consents and intends to provide a PPA to cover the period of post DCO consent approvals to ensure resourcing and delivery, and look forwards to agreeing such a document without prejudice with the applicant prior to the resolution of the examination.

Trees and impact

- 2.4 In reference to the applicants response to the ExA question (ref 7.4.2) DCO1.5.9 - PCC's position remains that Aquind appear to remain reliant on previously submitted revised plans which have been reviewed and commented upon. They appear to remain sufficiently wide in scope and vague in detail that detailed comment of impact upon trees is difficult. The decision process for any other development proposal relies on detail of arboricultural impact assessment, mitigation, replacement planting, tree protection plans etc. most of which in the opinion of PCC this still lacks. Trees in planning remain a material constraint and influence the design and execution of a proposal from the outset, the applicant's approach however is seemingly to force the scheme upon the landscape regardless and which is unreasonable.

Refinement of DCO

- 2.5 With reference to the applicants response to the ExA question (ref 7.4.2) CA1.3.108 - PCC note that the applicant has not expressly answered the ExA's question relating to potential modification in line with the Thanet DCO. It can be inferred that the applicant is not willing to entertain such an approach. In PCC's view this shows an unreasonable resistance on the part of the applicant to the opportunity to improve an unsatisfactory dDCO.
- 2.6 The applicant has, without notice to the ExA and on informal basis notified the Council it was going to do so, sought materially to amend the Order limits at Deadline 1. These amendments both remove and seek to add landtake, undermining the initial claim within the application that a "robust justification for the compulsory acquisition of all the land" had been provided.
- 2.7 The detail of the amendments submitted has not surprisingly required a considerable number of follow-up questions from the ExA in light of the relevant statutory procedures required and tests to be applied when DCO applicants seek to amend a DCO.

- 2.8 PCC has given the applicant and the ExA detailed answers (I)-(viii) on how the route could be refined and received no considered response apart from the repetitive assertion that the Applicant' believes its own work to be satisfactory. In addition to the answers (i)-(viii) provided, PCC does not accept that the whole area of Milton Allotments (10-14 and 10-13) and Farlington Playing Fields (7-12) represent "a limited level of flexibility"; these parcels are excessive. PCC acknowledges that the ExA is considering proposed changes to the Order limits.
PCC welcomes the reductions in the Order limits but will continue to question why this is not possible elsewhere.

Scheme of Investigation

- 2.9 With regard to the applicant's response to the ExA question (ref 7.4.2) DCO1.5.17 - PCC note that the applicant has confirmed that a written scheme of investigation is required before any pre-construction archaeological investigations take place as part of "onshore site preparation works" and the relevant definition to enable this should be included.

Permit Scheme disapplication

- 2.10 With regard to the applicant's response to the ExA question (ref 7.4.2) DCO1.5.35 – PCC considers the applicant has disregarded the PCC's preferred mechanism to manage works on the highway and concerns for omissions in the dDCO. It has not provided details to explain why the permit scheme would be unacceptable other than the desire to achieve one consent for all areas within the DCO. Whilst the Highway Authority does appreciate the purpose of the DCO process and are content to agree suitable protective provisions and requirements within the DCO for other elements, we do not agree that disapplication of the permit scheme is in the public interest or is necessary. It is noted that other authorities with Permit Schemes agree (see representations by HCC). The processes involved in the permit scheme are used by all works promoters operating in England and similar schemes operate across the Country. Indeed such an approach has recently been found appropriate in respect of the ESSO pipeline DCO in Hampshire / Surrey which establishes that the use of a permit scheme is an entirely appropriate mechanism to manage the delivery of this sort of project. Such a framework should be acceptable to Aquind.
- 2.11 In respect of the applicant's response to the ExA question (ref 7.4.2) DCO1.5.42 – If managed through the permit scheme, for which an agile response process has been established, the LHA is confident that permissions can be granted in a timely manner although the creation of a bespoke management system as is proposed would undermine the effectiveness of the permit scheme and could introduce consenting delays. There is no reason why the interconnector works should somehow take precedence over other highways schemes as appears to be contended but should be able to sit alongside other permit applications and be managed that way in a fair and proportionate manner.

- 2.12 In the absence of the continued application of the permit scheme the LHA, the default position proposed whereby consent will be deemed in the absence of response by the LHA remains unjustified and unreasonable.

Section 3 - Fibre optic cable as associated development

- 3.1 PCC note that the applicant has chosen to provide no further commentary to justify the inclusion of FOC and the ORS at the scale proposed as associated development and relies on their submission at Deadline 1. This remains a matter of fundamental disagreement.
- 3.2 In respect of the applicant's response to the ExA question (ref 7.4.2) CH1.4.4 t PCC's position remains that it is fundamentally opposed to the justification of the size of the ORS as the need to accommodate commercial telecoms equipment rather than equipment or development that is properly associated development and/or 'ancillary' to the HVAC interconnector.

Section 4 - Impact on Milton allotments - protecting interests as affected persons of allotment holders an disruption to allotment as space

- 4.1 Further comments in respect of the allotments are set out in response to the Rule 17 letter from the ExA in respect of this matter are provided in a separate letter from PCC dated 3 November 2020.

Section 5 - Impact on recreation/open space

- 5.1 At a recent meeting between PCC and the applicant (29/10/2020) the applicant acknowledged that the submitted Framework Management Plan for recreational impact (ref 7.8.1.13) was inaccurate and required updating in light of their proposed changes to order limits. PCC must therefore reserve its final position awaiting the updated document. However to assist the ExA the following comments on the submitted information can be provided.

Bransbury Park (3.5)

- 5.2 PCC note that Doc ref 7.8.1.13 Framework Management Plan is indicative only and illustrates a potential, rather than fixed scenario. This makes it difficult for PCC to constructively evaluate and comment on the impact and proposed mitigation of the proposed works at Bransbury Park.
- 5.3 It is noted however that it is proposed that 1 pitch is to be out of use for 12 weeks construction and 8 weeks reinstatement, a total of around 5 months. Doc 7.8.1.13 Framework Management Plan does not detail the timing of these works to allow PCC fully to evaluate impact on the regular playing of football and general park provision and whether an 8 week reinstatement period is feasible.

- 5.4 Aquind suggest that a pitch could be realigned to the north of the field. PCC would advise that the City did previously have a pitch in this position but was removed several years ago due the unsuitability of the ground due to flooding in this area. As such this mitigation suggestion is not considered feasible.
- 5.5 It is noted that no mitigation for impact upon the car park at this site has been considered.

Langstone sports / Kendall's Stadium (3.10.3 - 4 & 3.11.3)

- 5.6 Again it is noted that Doc 7.8.1.13 Framework Management Plan is indicative and illustrates a potential, rather than fixed scenario, making it difficult for PCC to constructively evaluate and comment on the impact and proposed mitigation of the proposed works at Langstone. Works at Langstone are shown to be along the western side of the field encroaching on both the PCC football pitch and Baffins Milton pitch at Kendall's stadium as well as the cricket outfield in June to August 2023 for 1-3 weeks plus 8 weeks for reinstatement during the cricket season. If these timings are confirmed there would be some minor impact on the football at the start of the season (PCC pitch opens Mid Sept). The works on the cricket outfield would however mean PCC are losing 20 to 25% of our cricket availability for this 3 month period during the height of the cricket season. (Note: PCC only have 5 cricket squares for general usage in Portsmouth and 1 of these is used almost exclusively by one club at Drayton Park).
- 5.7 There appears to be no mitigation as to address the impact of upon the playing of these games and how that might continue.
- 5.8 PCC would also question if turfing could be successfully achieved and ready for use in 8 weeks during August, which is what appears to be proposed {Ref } during a potentially hot and dry period. Delay to this process later in the year would further extend the period of disruption.

Farlington Sports (3.12.1 - 4.7)

- 5.9 Again, and noting the intention to submit an updated version later PCC notes that the current Doc 7.8.1.13 Framework Management Plan is indicative and illustrates a potential, rather than fixed scenario, making it difficult for PCC to constructively evaluate and comment on the impact and proposed mitigation of the proposed works at Farlington. However to assist PCC has reviewed the impact on sports provision as detailed using the phasing shown on the Framework Management Plan and is detailed below.
- 5.10 The Order limits noted on Fig 4-1 affect 8 senior football, 1 junior football, cricket outfield to pitch 2, access roads and the car park. These Order limits are consistent across all phases of construction.

- 5.11 Since the Framework Management Plan FMP is indicative only with flexibility retained within the Order Limits, it is not clear whether:
1. Access will be required across the whole of the order limits or these can be reduced.
 2. Public access will be restricted over the areas included in the order limits or those shown in the phases.
 3. Whether access through the site will be available at all times to St John's College Playing Fields.

Order Limit impact

- 5.12 For all phases work order limits cover 8 senior pitches, 1 junior pitch, and outfield of cricket no 2

Summary of indicative works areas impact

- Phase 1 - April 2022 only 9 pitches available
 - Phase 2 - All football pitches closed after 11th April 2022
 - Phase 3 - All football Pitches closed until 5th Sept 2022
 - Phase 4 - Late August 2022 for 2 weeks only potentially only cricket square 1 available (plus re-instatement time 8 -12 weeks sept to Oct) Cricket square 2 could be out for rest of season as re-instatement not programmed until Sept to Nov. Football closed
 - Phase 5 - September 2022 Only 6 senior pitches available plus 9v9 pitch which could potentially be moved (plus re-instatement time 8 -12 weeks scheduled for Sept to Nov)
 - All pitches potentially available Dec to mid-April?
 - Phase 6 - October 2022 to March 2023 no works all pitches available subject to completion of re-instatement works which are scheduled to complete end of Nov. Therefore reduced pitches as phase 5 above until Dec 2022
 - Phase 7 - No football played after 11th April 2023 (pitches closed)
 - Phase 8 - June 2023 to August 2023 No football pitches closed. Cricket 1 and 2 appear to be unaffected and are not in work areas but included in work order limits?
 - Phase 10 - September 2023 there are 3 senior pitches affected only 7 available (plus re-instatement time 8 -12 weeks scheduled for completion end of Nov 23)
 - All pitches potentially available from Dec 2023
- 5.13 PCC continues to assess the overall adverse impact of this unmitigated loss of playing pitch and, subject to the updated Framework Management Plan must reserve its position in respect of this significant disturbance highlighted above until such time as additional clarity is provided.
- 5.14 PCC note the whole car park is within the order limits but only has a small area during phase 1 required for a works area and assume this means it will not be required at all for the remaining phases.

- 5.15 Even with a reduced provision of football pitches PCC would require approximately 90 spaces and around 30 spaces for the 2 cricket pitches based on 2 people per car which is not always the case. The alternative parking suggested by Aquind is not of equal provision, is used already by visitors to Farlington Marshes (using available provision) and a fair walk away across 2 slip roads serving the A27, potentially carrying equipment. It is clearly not suitable mitigation.

Farlington Victorious Camping (3.12.5)

- 5.16 The phasing within the Framework Management Plan shows the Victorious Camping festival coinciding during or at the end of works stages, prior to any reinstatement taking place. The Framework Management Plan shows a large area of field within the work areas for phases 1 to 3 potentially reducing the area for the campsite by 30 to 40% as no re-instatement is scheduled to commence until Sept 2022. This disruption is repeated in 2023.
- 5.17 If the site for the festival is not fully available or in suitable condition prior to use in association with the Festival, it would result in significant logistical and reputational impacts on the organisers and on PCC.

Farlington Timescales /Drainage (3.12.6 & 3.12.8)

- 5.18 PCC note the timescales of the duration of works over 2 years to be 52 weeks plus 8-10 weeks for re-instatement as stated in Doc 7.8.1.13 (REP 1-144) all of which are indicative and not confirmed.
- 5.19 PCC do not consider the 8 -10 week re-instatement time quoted is possible to get turf fully established for competitive sport to be played. In ideal weather and ground conditions it may be possible but does not allow for extensive land- drainage works, or full ground settlement following deep excavation works.
- 5.20 Farlington has an extensive drainage system covering the whole field (a plan can be provided to show this if required). Any damage to this system due to the trenching works, material storage or heavy vehicles tracking across the ground within the work areas, or within the work order limits, would mean having to completely relay the drains over the whole of the damaged area. This would be required at the end of indicative Phases 5 and again at the end of Phase 10 if the pitches are to be used in between.
- 5.21 PCC anticipate this would take significantly longer than the 8 -10 weeks reinstatement time quoted in the document due to the need for settlement following deep excavation works and when dealing with particularly shallow drain falls across the site for the land-drains to be effective.

Farlington Overwintering birds (3.12.11)

- 5.22 PCC note re-instatement of the field continues into October a conclusion that that according to Aquind has been agreed with Natural England. However the current Framework Management Plan shows reinstatement continuing into November. PCC are concerned therefore that unmitigated impact to overwintering birds will occur.

Zetland Field (3/12/1-2)

- 5.23 PCC note the limited timescales on site although indicative of 1-2 weeks construction plus 8 weeks for re-instatement and that access to the field would be maintained for the duration of the works.
- 5.24 PCC also note the offer by Aquind to move the recreational football goal towards the eastern boundary, this however may cause problems near the gardens backing onto the field, and PCC may depending on the timing of works accept the loss of this provision for the duration if confirmed at 10 weeks in total.

Section 6 - Impact on Fort Cumberland carpark and the ORS

- 6.1 In respect of the applicant's response to the ExA question (ref 7.4.2) MG1.1.22, PCC would advise the ExA that discussions are continuing between the authority and the applicant to understand their compulsory acquisition strategy in this area.
- 6.2 Concerns have been raised with the applicant in respect of a wish to retain 'responsibility for the maintenance of the landscaping' but do not wish to acquire the land where that landscaping is planted. This may render the proposed requirement 8 unenforceable.

Section 7 - Impact on Highway Network/Air Quality

- 7.1 In respect of section 5 of the applicant's response to PCC's Local Impact Report ('LIR')(ref 7.7.13) regarding Highways impact, PCC would say in summary the responses are noted but not necessarily agreed rather serve largely to establish points of difference between the parties. These can of course be reflected in any Statement of Common Ground. Further specific comments in this respect are included below:

5.2-5.4 - Given the applicant's confidence that the installation of the equipment will not impede the LHA from exercising its statutory powers, the LHA would require an indemnity from the applicant in the event costs are incurred by the LHA in association with the equipment or diversion of that in their exercise of those statutory powers

5.5 and 5.6 – As set out above, PCC remain of the view that the permit scheme (which the Council clearly understands is not a NRSWA related process) should not be disapplied see response to REP2-0008 DCO 1.5.35

above PCC disagrees with the applicant and considers that works within the highway need to be separately permitted as is provided for in the permit scheme and as has recently been found appropriate in respect of the ESSO pipeline DCO in Hampshire / Surrey which establishes that the use of a permit scheme is an entirely appropriate mechanism to manage the delivery of this sort of project and such a framework would be acceptable to PCC.

5.7-5.8 – see response on 5.5 / 5.6 above

5.12- With regard to subsoil highway works, the applicant's position seems to be that the land below that depth necessary to support / drain the highway does not form a part of the highway and therefore needs to be acquired in order to install the equipment lawfully. The installation cross sections indicate the cable installation at an average depth of 1m. The highway drainage infrastructure is generally significantly deeper than 1m below the surface (typically between 2 and 3m) and as a consequence the installation is in fact intended within the highway with no need for further compulsory acquisition. To be clear the extent of the highway does not 'stop' when physical elements of the highway are lower than the 'top 2 spits'. Any alternative interpretation must find that the equipment of all other statutory utilities has been installed beyond the highway limits unlawfully.

5.15 – see response on 5.6 /5.6 above

5.16 – the intent of the order limit is to establish the extent of the works such that the effect of those can be assessed and mitigation required if necessary – this provision provides scope for that assessment to be bypassed

5.17 – see response at 5.5 above

5.1.18 - it is implied that congestion caused by the works on Eastern Road will cause traffic to divert via minor roads to the effect that the strategic network will actually operate similarly to existing conditions. This cannot be the case as the effect of the works would introduce the lane reduction further to the north. This would extend the queue further to the north with consequent impacts on the operation of junctions again further to the north. The LHA has previously requested that a safety review of the impact of this queueing on these junctions be undertaken although this has yet to be presented.

5.1.28 - the view of the applicant that the extended queue length on the A27 off slip during the works will not increase the risk of accidents there is not one shared by the LHA as this lengthier queue is likely to increase the instances when this extends into the westbound lane of the M27.

5.2.3 - Misrepresents statutory utility enquiries as ECI – the LHA remain of the view that limited, if any, ECI has informed the route selection

5.2.7 - Any compromise to the delivery of TCF schemes by these works is a matter of clear and fundamental objection by the LHA as these programmes have significant and wide ranging benefit, and delay or interruption of them have proportionate detrimental impact.

5.2.9 - the LHA welcomes confirmation that a note on the safety implications of the works as requested on the 11th August will be provided in due course. Whilst the LPA awaits this Transport Assessment addendum, it is particularly concerned that the traffic modelling carried out to date, whilst using the best model available, does not realistically reflect the traffic queues on the off bound slip from the A27 to Eastern Road as are observed on a daily basis during peak times. If that modelling data is relied upon exclusively to inform the safety assessment then the real likelihood of this queue extending into the nearside through lane and consequent increase in likelihood of rear shunt type accidents may not be apparent. The perspective of the applicant as explained in their response on REP2-013 section 5.1.28 that the extended queue length on the A27 off slip during the works will not increase the risk of accidents is not one shared by the LHA. The Framework Construction Management Plan does not currently include management measures to mitigate against this impact nor the practical reduction in capacity which would arise on the A27. This should be addressed in the Transport Assessment addendum expressly although it is the initial LHA view that this could only be mitigated practically by closing the off bound slip during the period of work on Eastern Road which is not an acceptable option and will require an alternative route to be brought forward

5.3.2 - the working hours in the FTMS do not reflect the peak hour working time restrictions on sensitive traffic routes

5.3.4 - the LHA will require minimum retained or alternatively provided footway widths of 1.2m for this to be safe.

5.3.5 - where a 2.5m shared width for pedestrians / cyclist cannot be provided an alternative diversion route will be required again for safety reasons.

5.3.6 - the working hours in the FTMS do not reflect the peak hour working time restrictions. In addition the LHA objects to any process which would prevent interventions from the LHA in the event that the works have an unacceptable impact on congestion / traffic management other than on safety grounds as this appear so to do.

5.3.8 – The LHA asks that the term ‘vulnerable persons’ is clarified and in particular that it applies to children being taken to and from school and that access will be maintained to properties outside of working hours including the peak hour restricted periods

5.4.2 - see 5.3.4 and 5.3.5 above

5.4.4 - where construction is required on any and all traffic sensitive routes where peak hour working restrictions would normally apply the LHA considers that those works should only be undertaken outside of term times and in avoidance of all special events such as PFC football matches, the Great South Run, Victorious etc.

5.5.2 and 5.5.4 - joint bays should be located outside of the highway where practical and always outside of the carriageway to minimise the disruption that would arise for future reactive maintenance of the cable.

5.5.8 - in the event that the ESCP has not vacated the intended compound when required by Aquind, the applicant needs to explain what the alternative intention is to be.

5.6.12 - where trenching is undertaken the LHA considers in carriageway reinstatement should provide for resurfacing of the lane width.

- 7.2 With reference to the applicant's response to the ExA question (ref 7.4.2) TT1.16.9 – The LHA accepts that the baseline traffic surveys undertaken are adequate to inform assessment of the impact of the proposal.
- 7.3 With reference to the applicant's response to the ExA question (ref 7.4.2) TT1.16.16 – PCC consider that the response does not acknowledge there should be a restriction requiring works on traffic sensitive routes to be curtailed during peak periods

Section 8 - Impact on ecology and arboriculture

- 8.1 PCC note that the applicant, in their response to Written Representations at section 12.6 (Doc Ref 7.9.5) suggests that the Biodiversity Position Paper (REP1-138) provides an adequate response to the concerns PCC have raised regarding the significant net loss of habitat (18.92% across all area-based habitats). PCC note that this document focuses on the habitat-specific gains for hedgerows and calcareous grassland, but does not address the significant overall net loss of habitat and therefore has not addresses the concerns raised. Comments regarding arboriculture on specific sites are noted above.

Section 9 - Optioneering and route alternatives

- 9.1 With reference to the applicant's response to the ExA question (ref 7.4.2) CA1.3.106 - PCC must reserve its position on the implications of some of the proposed alternatives as the amended order limits and updated information continue to be considered.

- 9.2 At this stage however PCC would note the following:
- i) If amendments to the Order limits are agreed to utilise the Portsdown Hill car park, a timetable for the closure of the car-park should be provided. As the car-park is at a key viewpoint overlooking the city and Solent, the summer period (June to September) should be avoided or this adverse impact to recreational enjoyment recognised and mitigated.
 - ii) Solent Infant School term dates are published on their website (<https://solentinfant.thesolentschools.org/>)
 - iv) PCC is concerned that the applicant has only stated that it is 'an intention to retain the tree belt' at this site. It is vital that this tree belt be retained and this certainty should be secured at consent rather than delaying consideration to post consent approval of CEMPs.
 - v) Through agreed Common Ground Portsmouth University and PCC will be addressing the preferred route through the Langstone Campus site in light of confirmation of updates to the order limits and updates to the FMP.

Section 10 - Compulsory acquisition and subsoil

- 10.1 PCC has reviewed the submissions of the applicant made for Deadline 2 and makes the following comments in respect of compulsory acquisition matters.

AQUIND Limited Deadline 2 Submission - 6.6 - Mitigation Schedule - Rev 002 (REP2-005)

- 10.2 25.6 The Horizontal Directional Drilling Position Statement (REP1-132) outlines the requirements on the contractor for the HDD locations.
- 10.3 It would appear that if the applicant is seeking to limit its impact as stated and seeks only interests in the subsoil that needs to be reflected in the DCO; Book of Reference and Land Plans (as sub-soil acquisition only).
- 10.4 25.19 States amendment to 'dDCO Requirement 7 [Provision of Landscaping]; 'Areas of open space will be restored to the same condition as they were in prior to construction.' This needs to be amended in reference to Article 30 (4) to ensure the obligation holds to 'restore the land to the reasonable satisfaction of the owners of the land'.

AQUIND Limited Deadline 2 Submission - 7.4.2 - Applicant's Comments on Responses to Examining Authority's first Written Questions (REP2-008)

- 10.5 CA1.3.108 - PCC maintains its view that the applicant has been vague in its application for compulsory acquisition powers, with detail lacking in respect of proposed use over land within the broad Order limits. Further, it's response to PCC's position in respect of Requirement 6 is unsatisfactory and unclear.
- 10.6 DCO1.5.35 - The dDCO still includes acquisition of PCC Highway land – this needs to be removed from the Book of Reference to avoid the applicant' being able to compulsorily acquire highway land which is inconsistent with its position that it does not need to do so. Either it is necessary or it is not. Currently, as drafted, the dDCO enables the applicant to do so.

AQUIND Limited Deadline 2 Submission - 7.7.13 - Applicant's Comments on Local Impact Reports (REP2-013)

- 10.7 3.2.3 - PCC does not consider the sub-classes included in the Book of Reference provide any significant improvement in terms of understanding the extent of the powers sought. PCC also considers the applicant to be inconsistent with the extent of land sought in the Order. The applicant has consistently maintained that working within the highway corridor will be problematic due to the amount of other apparatus in the highway. However, the applicant has limited itself to narrow stretches of highway (circa 9.5 metres wide in places) which is wholly inconsistent with the wide swathes of Order land covering Special Category Land such as at Farlington Playing Fields.
- 10.8 The applicant should be limiting impacts to narrow working widths as per the Southampton to London Pipeline DCO over Special Category Land (in particular). It is also the case that the Applicant should identify where it only intends to acquire sub-soil; this should be clearly indicated in the Book of Reference and Land Plans.
- 10.9 3.3.1 – The proposed works at Fort Cumberland Car Park are extensive, with the majority of the car park to be used during construction and resulting in the permanent loss of car parking spaces (which will have the consequential knock-on effect of displacing users of the open space land). This has not be addressed or compensated for by the applicant contrary to S.132 of the Planning Act 2008.
- 10.10 3.5.1 – 4 - The proposed re-positioning of one of the playing fields as proposed by the applicant is inappropriate as it proposes an area which is subject to flooding. The Order widths as drafted do not mitigate against the loss of use of the playing field, and users of the land will also be displaced due to the use of the car park.
- 10.11 3.6.2 - 6, 8, 10 – 12 It would appear that the applicant should have identified the acquisition of subsoil interests only under the allotments where New Connection Rights are sought to be consistent with what it argues it wants.
- 10.12 3.6.7, 9 - The Book of Reference does not limit the acquisition of land to sub-soil only, and therefore even if it was the opinion of the applicant that the allotment tenancies did not provide an interest in sub-soil, the Book of Reference and Land Plans includes their (surface) interests. Neither document seeks to or describes the limits of the rights and powers sought to sub-soil only and as such the allotment holders at a minimum should have been included in the Book of Reference due to their interests in the surface of the allotments (it is also arguable that they have an interest in the subsoil given the nature of their tenancies and purpose of those tenancies i.e. the work the soil to grow crops and plants as well as recreation and health). The rights sought over the access tracks are relevant to all allotment users who 'are interested in' the land, as it could affect their access, and as such, should have been included in the Book of Reference.

- 10.13 3.6.13 – 14 and 3.7.2 As noted above, it would seem that the acquisition of rights needs to be limited to sub-soil only in the Book of Reference and Land Plans to reflect the commitments to HDD in the CEMP.
- 10.14 3.10.3 – 4 Comments noted – PCC wishes to pursue a land agreement with the applicant to secure the obligations referenced, which will be tripartite where appropriate (with Baffins FC).
- 10.15 3.11.3 - The proposed works will impact the Council owned (maintained and operated) cricket field and football pitch – there are no proposed mitigation measures that will lessen the impacts to these fields as mentioned above.
- 10.16 3.11.2 PCC confirms it will need to be party to any agreement with its tenant, Aggregate Industries.
- 10.17 3.11.4 PCC notes that an update to the Framework Traffic Management Strategy will be provided to address concerns regarding access to the Tudor Sailing Club.
- 10.18 3.11.5 PCC notes the applicant's intention to secure the temporary rights by agreement – as landlord, PCC will wish to be a party to the agreement and ensure the tenant's concerns are appropriately resolved.
- 10.19 3.11.6 - PCC will review the update to the Framework Traffic Management Strategy once prepared, to ensure impacts on the use of the car park is mitigated, and the operation of the ESCP site is not compromised.
- 10.20 3.11.7 = The applicant's update is noted, and PCC confirms it will need to be party to any agreement with its tenant.
- 10.21 3.11.9 - In respect of PCC's tenants, PCC confirms it will need to be a party to any agreements entered into with its tenants and the Applicant.
- 10.22 3.12.1 - 4, 7 & 9,10 and 3.12.6 - The proposed works will impact on up to 8 playing fields, with the use of the car park further displacing users, whilst compromising the hosting of the Victorious Festival camp site (which PCC is contractually obliged so to do). The works are indicatively shown to take from April 2022 to October 2023 (not 52 weeks as indicated by the applicant) plus re-turfing for which an 8 week period is unrealistic. Further, the applicant can carry out the works for the duration of the powers it secures in the DCO, if made, and it can be anticipated the programme could well be impacted for any number of factors, including unseasonal weather, Health and Safety impacts of supply chain issues. The impacts are severe, and no mitigation proposals have been identified to address these impacts.
- 10.23 3.12.5 - The applicant's response provides no certainty that the impacts can be mitigated. The whole of the car park is required for the camp site, and all of the fields are required for use of the camp site, for which considerable work is required to set up the site, and reinstate following the event.

- 10.24 3.12.8 - PCC will require an agreed pre-condition survey and that reinstatement requirements for the drainage solutions are identified prior to any works being undertaken. Works need to be undertaken by a recognised specialist drainage contractor and overseen by a Drainage Liaison Officer with whom PCC can raise any concerns. In the event of a dispute then there will need to be an Alternative Dispute Resolution process agreed and an obligation on the Applicant to remedy any failures of the reinstated drainage system and pay for any and all costs and losses arising from the failure.
- 10.25 3.13.1 – 2 - It is important that the trees are not affected at this site, and that if required the cable trenches are split to avoid impacting trees as they enter the fields from the highway. This land is very wet so works should be programmed to ensure no works are undertaken which will permanently impact on the land, and reinstatement of the land can be successfully delivered to PCC's reasonable satisfaction. The specific reinstatement requirements for land occupied temporarily will need to be identified and secured in the Land Agreement to be entered into between PCC and the Applicant, and to ensure substance to Article 30 (4) ('restore the land to the reasonable satisfaction of the owners of the land').
- 10.26 5.1.3 – 4 - PCC refers to Chapter 5 of its Written Representation (Rep1-174) which sets out in detail unresolved concerns regarding the applicant's approach to its application to powers over highway land.

AQUIND Limited Deadline 2 Submission - 7.9.5 - Applicant's Response to Written Representations (REP2-014)

- 10.27 89.01, 2.1 - 2.3 and 3.23 The outstanding result of the litigation and other (in particular, French) required consents represent impediments to the scheme and weigh clearly against the grant of any justification for powers of compulsory acquisition.
- 10.28 The applicant's Position Statement in respect of FOCs (REP1-127) does not change the fact that read in accordance with the relevant law and guidance the excess FOC capacity does not form and cannot part of the Proposed NSIP nor satisfies the definition of Associated Development.
- 10.29 The "Engagement" referred to by the applicant with PCC did not constitute reasonable efforts to negotiate the acquisition of rights by agreement or at all as expected under the Guidance. Heads of Terms for example were only issued following the submission of the application.
- 10.30 PCC maintains there have been no genuine efforts to acquire its interests by agreement and the applicant cannot demonstrate this.
- 10.31 The applicant's approach to the acquisition of rights in highway land remains inconsistent, and PCC requires that PCC owned highway land is omitted from the application for compulsory acquisition of rights in accordance with the reliance by the applicant on NRSWA rights as an undertaker.

- 10.32 With regard to the issue of the allotments, PCC considers that the applicant has failed to include allotment holders as affected persons. Further, commitments to undertake HDD underneath the allotments can only be addressed by a change to the extent of the rights the applicant is seeking under its CA powers in effect it should have sought sub-soil only rights of allotment land for the construction and maintenance of its cables. It is not for PCC to advise how this matter can lawfully be addressed within the examination.
- 10.33 1.5 - 1.6 - PCC has reviewed the applicant's response (REP1-160) to its Relevant Representation but does not consider the points raised have been appropriately addressed, as discussed in this and other PCC submissions.
- 10.34 2.5, 2.6 and 2.7 - PCC reiterates the concerns raised in Chapter 2 of its Written Representation (REP1-174) and the applicant's rebuttal of these concerns is unsatisfactory.
- 10.35 2.8 - 2.9 PCC notes the response and will respond to the consultation on the changes by the deadline if the process for accepting changes is agreed to have been satisfied by the ExA.
- 10.36 2.11 - 2.12 - The Applicant's response and Position Statement (REP1-127) does not alter PCC's opinion that the excess capacity derived from the additional FOC do not form part of the Proposed Development or satisfy the definition of Associated Development.
- 10.37 2.14 - The applicant's response does not affect the PCC's position as set out in Chapter 2 of its Written Representation.
- 10.38 2.16 - 2.17, 2.18 PCC does not consider that the additional capacity that will be created by the additional FOCs beyond the limited FOCs required to support the Proposed Development satisfies the DCLG Guidance to which the applicant has referenced. Paragraph 5 sub-section (i) states that for development to be considered associated development it 'requires a direct relationship between the associated development and the principal development.' There is no direct relationship between the additional FOCs that will result in additional (i.e., over and above that required to support the Proposed Development) capacity. Sub-section (iii) also sets out that 'Development should not be treated as associated development if it is only necessary as a source of additional revenue for the applicant, in order to cross-subsidise the cost of the principal development.' It is clear that the additional FOCs are only being added to the interconnector for the purpose of deriving additional commercial revenue. This will as a matter of logic be used to subsidise the Proposed Development. As such, the DCLG Guidance confirms that the additional FOCs cannot be treated as Associated Development.

- 10.39 2.19 - PCC will respond to the changes proposed by the Applicant to the Order limits if and when the proposed consultation is held to be valid by the ExA. PCCs position remains unaltered from the concerns raised in Chapter 3 of the Council's Written Representation (Rep1-174) and the Council's Local Impact Report (REP1-173).
- 10.40 3.2 - 3.4 - The Council's position remains that there were no reasonable efforts to acquire the rights sought by the Applicant in advance of the submission of the application. As such the applicant does not comply with the CA Guidance.
- 10.41 3.5 - 3.6 - PCC maintains that the Order limits are drawn too widely with the consequential concerns detailed in Chapter 2 and 3 in particular of the PCC's Written Representation (REP1-174).
- 10.42 3.7 - Please see PCC responses to 2.16, 2.17 and 2.18 (within this document) – PCC does not consider the additional FOCs to be Associated Development and as such compulsory acquisition powers should not be granted to facilitate the additional FOCs.
- 10.43 3.8 - Please see Council responses to 2.16, 2.17 and 2.18 (within this document).
- 10.44 3.9 - The applicant's response is noted – accordingly PCC reiterates its position that the proposed acquisition of powers and rights over PCC highway land should be removed from the Book of Reference.
- 10.45 3.10 - PCC does not consider that the Applicant has acted in accordance with the Guidance, and has confirmed its concerns in respect of the approach taken as per the Applicant's 'Highway Subsoil Acquisition Position Statement' (REP1-131) in its response to CA1.13.5 in its Comments on Responses to Deadline 1 (REP2-018) in particular paragraphs 24-29 of that response.
- 10.46 3.12(1), 3.11, 3.12 (2) and 3.13 The Council does not consider that a compelling case in the public interest can be shown by the applicant for the rights and interests sought, especially given the significant impact that the Proposed Development will have on occupiers of the land within Order limits. The effect of the acquisition of permanent rights and temporary rights should both have to meet any test of proportionality. The deprivation of right temporarily in this instance will in fact likely give rise to the greatest amount of disruption and displacement of users, along with associated financial and environmental loss. In short temporary acquisition can have permanent effects.
- 10.47 13.14, 3.16 and 3.22 - PCC maintains that the proposals are devastating in respect of the impacts on Special Category Land. As set out in the Council's LIR, (REP1-173), the impacts are severe and the displacement of users from the land could extend for 7 years. The proposals included in the Framework Management Plan (REP1-144) are unsatisfactory – there is no replacement land proposed in the dDCO, and the indicative timescales have no statutory or contractual obligations applied to them; as such, they are as meaningless as

they are optimistic. PCC has clarified its position in respect of the allotment land which appears to be 'garden allotment' and not fuel or field garden allotment. It is therefore protected by the Allotment Acts not by being special category land under the PA 08.

- 10.48 3.15 - The draft Framework Management Plan (REP1-144) was only provided to PCC in June 2020, nine months after the Application was submitted. Impacts should be assessed and mitigation measures proposed and agreed (where possible) in advance of an application for development consent being submitted, when Order limits can still be defined and impediments to the scheme removed. The applicant has not properly mitigated the impacts of the Proposed Development and has not provided itself with enough time to do so. As such, the applicant cannot show that there is a compelling case in the public interest to grant powers of compulsory acquisition to this applicant.
- 10.49 3.17 - PCC will address this matter in its response to a Rule 17 Letter issued on 27th October to PCC and the Applicant in respect of the allotment holders. With regard to highway sub-soil, please see comments in respect of 3.10 in this document.
- 10.50 3.18 - PCC has addressed this matter in its response to a Rule 17 Letter issued on 27th October to PCC and the Applicant in respect of the allotment holders.
- 10.51 3.19 - 3.20 PCC will address this matter in its response to a Rule 17 Letter issued on 27th October to PCC and the Applicant in respect of the allotment holders.
- 10.52 3.21 - PCC has addressed this matter in its response to a Rule 17 Letter issued on 27th October to PCC and the Applicant in respect of the allotment holders – however, the omission of those with an interest in the allotment land from the Book of Reference has prejudiced their ability to engage in the Examination and therefore gives rise to the breach of Human Rights.
- 10.53 3.24- 3.25 PCC maintain that the applicant has not complied with the Guidance; key risks have not been managed and programming of accommodation works to mitigate the impact of the proposed works have not been considered. As such the applicant has confirmed in its response that it has had to seek flexibility in the draft Order, which increases the footprint of the Proposed Development in the absence of properly considered and agreed mitigation. To be clear the applicant has to show and the Secretary of State has to be satisfied that all the land sought to be acquired compulsorily is required and necessary. Enabling the contractor subsequently to define the route within a wide parameter which is what this DCO seeks does not meet the relevant legal tests. CA of rights cannot be justified on the basis that the acquiring authority or DCO undertaker wants to have sufficient room as possible to decide where it will build once it has carried out further investigations as to any constraints nor can such rights be justified on the basis that they allow the undertaker room for error.

- 10.54 3.27 - 3.28, 4.1 – 4.5, 4.7 – 4.8, 4.12 – 4.24 See PCC Comments on Responses to Deadline 1 (REP2-018) in respect of response to CA1.3.1 – PCC maintains that a speculative assertion that investors to fund the compensation liability will be secured at a later stage is incompatible with the Guidance.
- 10.55 1224.11 - PCC references its comments in respect of CA1.4.4 in its Comments on Responses to Deadline 1 (REP2-018).
- 10.56 5.2 - 5.4 - See the PCC's Comments on Responses to Deadline 1 (REP2-018) in respect of comment to CA1.3.5, paragraphs 20-29.
- 10.57 5.12 Regardless of the definition of subsoil, the exclusion of the acquisition of rights of PCC highway land needs to be explicitly confirmed in the Book of Reference (see PCC's Comments on Responses to Deadline 1 (REP2-018) in respect of comment to CA1.3.5, paragraphs 20-24.

Section 11 - Other Matters

In respect of Noise and disturbance and in reference to the applicant's response to the ExA question (ref 7.4.2) N1.11.2 the council would say as follows:

- 11.1 Notwithstanding the applicant's comments PCC would note that the methodology used is as given in Guidance BS-5288 Part 1 - Code of Practice for Noise and Vibration on Construction Sites. BS-5288 gives methods of noise control relating to construction sites and open works where activities/operations generate significant noise levels and also provides guidance on predicting and measuring noise, and assessing its impact upon those exposed to the noise. This document is used by acousticians and local authorities. The Environmental Statement - Volume 1 - Chapter 24 - Noise and Vibration only provides noise levels for out of hours work and the number of properties that are likely to experience a disturbance for daytime noise. It does not provide details of day time noise levels for construction. The ExA is asked therefore to request further information with regards to daytime noise levels during the construction works in order to assess this matter.
- 11.2 The night-time equipment used for breaking and cutting of the road surface and re-surfacing of the road have been excluded from the assessment (24.6.6.13, 24.6.7.10 and 24.6.9.19), and the noise report states that these are the loudest elements of trenching activities given the close proximity of sensitive receptors and would be considered unacceptable during the night time in any circumstances.
- 11.3 PCC considers that the following information is missing and that the ExA is asked to require its production in order to test and understand the issues raised which are relevant and important to the DCO:

- Further clarity is required as to why night-time works would be required and what works would be done that would not cause any impact on nearby residential properties?
- A noise assessment if night time works are to include breaking and cutting of road surface and resurfacing of the roads.
- Details of noise levels for day time work in areas 5 to 10 and a work programme for the number of days that work will be carried out
- Clarify the route through Farlington and noise assessment for sensitive receptors.

11.4 In respect of the applicant's response to the ExA question (ref 7.4.2) N1.11.5 - Table 24.3 should be read in conjunction with table 24.4.as this reflects the noise levels as to which is likely to cause a significant disturbance to residential properties. The levels specified are relevant for the period of the construction. These tables have been drawn up in align with the ABC Method as given in BS5228.

11.5 PCC note that the only reference that BS5288 makes with regard to consecutive periods is for sound insulation. It would appear that the Environmental Statement gives reference to this for magnitude level and if the noise levels are exceeded as set out in table 24.3 between the hours specified for daytime, evening and weekend, and night time works, then this will have a significant impact upon sensitive receptors, as stated in table 24.4.

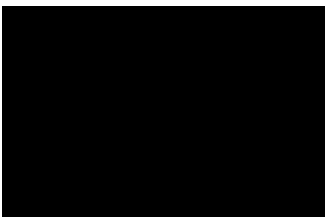
Comments on the Statement of Common Ground (SoCG) requested by the ExA

12 Due to the significant number of additional documents submitted within the applicant's responses, the Statement of Common Ground has not been formally progressed since Deadline 1. Officers will continue to meet with the applicant, and other parties, to discuss matters arising and anticipate being in a position to provide an updated Statement of Common Ground by Deadline 4.

Concluding comments

13 We reserve the right to expand on these comments at the appropriate time. We trust that the above and enclosed submissions meet your requirements.

14 Should you require any additional information or clarification, please do not hesitate to contact me.



Ian Maguire
Assistant Director Planning & Economic Growth

Cc

David Williams, Chief Executive, Portsmouth City Council

Tristan Samuels, Director of Regeneration, Portsmouth City Council