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Via email to
aquind@planninginspectorate.gov.uk

FAO the Planning Inspectorate

Dear Sirs,

RE: Deadline 4 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 ('the ExA') requests for deadline 4 of the examination, please find responses on behalf of Portsmouth City Council in summary form set out below:

General comments on responses for Deadline 3

1. In respect of the Applicant's Response to Deadline 2 Submissions (doc ref 7.9.6) PCC will continue to reserve its position to respond to new evidence as the examination continues including in respect of points raised by its residents and the Applicant's responses regarding the Applicant's Response to Deadline 1 Submission from persons who have not registered as Interested Parties (doc ref 7.9.7)

2. PCC notes that the Applicant's proposed changes and amendments to the dDCO and Order limits are the subject of Procedural Decisions by the ExA set in a letter issued on 11 November 2020 under s89 of the Planning Act 2008 (PA 08) and Rule 9 of the Infrastructure Planning (Examination Procedure) Rules 2010 ('the Examination Rules') and s.123 of the PA 08 and Regulation 6 of the Planning (Compulsory Acquisition) Regulations ('the CA regulations')

3. This follows of course the Applicant's earlier attempts simply to introduce these changes on 6 October 2020 (REP1 – 002) which the ExA questioned in its Rule 17 letter of 15 October 2020 [PD-013] and which was duly followed by a formal change request by the Applicant dated 3 November 2020 [REP3-019](doc ref 7.7.15) "*Proposed Non-material Changes to the Order limits and rights"* (doc ref 7.7.15) which was accompanied by a *"Response to request for further information in relation to Proposed changes to the Order Limits and rights sought"* set out in a letter from the Applicant's solicitors Herbert Smith Freehils ('HSF') (doc ref 7.9.10) also dated 3 November.

4. The ExA in short has decided to accept the proposed changes which number some 12 separate alterations including the addition of further land to the Order limits.

5. PCC notes that the ExA's request for responses from Interested Parties and other to this procedural decision and the Applicant's proposals by midnight Thursday 24 December 2020 and PCC will accord with that requested.

6. In the interim however PCC notes the ExA's approach to this matter and that the ExA appears to have concluded on the one hand that some of these proposed changes are not material changes but on the other hand the addition of an area of land at the Baffins sports ground ('the Baffins land') engages the CA Regulations and is material change to the application.

7. PCC is the owner of the Baffins land and will endeavour to engage with the Applicant. PCC asks however that the ExA and the Applicant have due regard to the difficulties of consultation during this further Covid lockdown.

General Comments on Draft DCO

8. With regard the dDCO generally, PCC refers to its comments including those at Deadline 3 on the dDCO and reaffirms its intention to address the dDCO provisions at the Issue Specific Hearing in December. Nonetheless, the following supplementary comments are offered at Deadline 4 to reflect the tracked changed dDCO uploaded to the Examining Authority's website on 5 November 2020 [doc ref 3.1 v3].

Justification for deemed consent

9. With regard to Sch 3 proposed "*procedure for approvals, consents and appeals"* as well as approval procedures under the Sch 13 Protective Provisions PCC notes the continuing failure to address its concerns raised in respect of the proposed procedure which deems approval in the absence of a response from PCC as opposed to deemed refusal.

10. This is at odds however with the proposed Highways England approval procedures in Part 7 of Sch 13 which now at para 4(4)(c) Pt 7 Sch 13 states as follows:

"4) Any approval of Highway England required by this paragraph—

(a)….;

(b) …

(c) is deemed to have been refused if it is neither given or refused within 56 days of the submission of the relevant information…"

11. PCC considers its consent processes should be treated in the same way and will continue to raise and promote this as the clear and appropriate response to this scheme.

Trees and impact

12. PCC is pleased to note the reduction of the number of protected trees in Schedule 11 that would be affected. Nonetheless, this serves to underline PCC's original concerns that Aquind has taken an unreasonable and excessive approach to the powers it seeks and that which it seeks to be incorporated and overridden in the DCO. PCC still considers that the removal of any particular TPO tree is unnecessary and unjustified.

13. PCC maintains that the reduction to the scope of Schedule 11 offers no comfort in relation to trees in PCC's ownership that do not have formal statutory TPO protection and that no binding assurances are provided in the dDCO. PCC reiterates its scepticism that Aquind is well-placed to make decisions regarding trees in anything more than an overriding commercial capacity.

Scheme of Investigation

14. PCC can confirm that Draft Requirement 14(2) now addresses satisfactorily the need for a scheme of investigation with respect to archaeology for any onshore site preparation works.

Permit Scheme Disapplication

15. PCC maintains its objection to the disapplication of its Permit Scheme made pursuant to made pursuant to Part 3 of the Traffic Management Act 200 ("TMA") (Sections 32 to 39) and the Traffic Management Permit Schemes (England) Regulations 2007 ("the Regulations") (as notably does its sister authority Hampshire County Council (HCC's).

16. It is clearly relevant and persuasive that in granting the recent ESSO pipeline DCO there was no issue that HCC's Permit Scheme should be applied.

17. In reference to paragraph 111 of the Applicant's Response to Deadline 2 Submissions (ref 7.9.6) PCC asks the ExA to reject the Applicant's suggestions that PCC has failed to engage with the Applicant in respect of proposed Protective Provisions. The difficulty lies unfortunately with the Applicant's dogmatic commitment to dis-applying a permit scheme that could open up significant common ground as well as the fundamental issue as to deeming of consents mentioned above but which it has accepted to change to deemed refusals for Highways England consents. The ExA will be familiar with the difficulties Interested Parties have where the starting point from Applicant's is so unwavering. To be clear PCC does not consider there is any evidence to justify the Applicant's approach. PCC will continue to engage as best it can in the circumstances.

Lead Local Flood Authority

18. PCC is the Lead Local Flood Authority for its area and needs to be engaged with on that basis. Currently, only Hampshire County Council is acknowledged as the LLFA.

CEMP – and later details

19. With reference to paragraph 122 of the Applicant's Response to Deadline 2 Submissions (ref 7.9.6) which confirms again the Applicant seeks to defer important details as to construction until later within the examination or indeed after the DCO is granted.

20. PCC once again would highlight that this is unacceptable and would reiterate that the Applicant's responses appear either to defer detail to a later date or indeed flatly refuse to engage with PCC's suggestions.

21. PCC will continue to press the ExA to consider and take on board PCC's concerns, suggestions and proposals. PCC will continue to seek to assist the ExA as best it can but emphasises that the Applicant's own approach is entirely unhelpful and fails to accord with what PCC understands is the approach expected and required of DCO Applicants.

Funding

22. PCC in reviewing the responses provided by the Applicant in *'Applicant's Responses to Deadline 2 Submissions'* [REP3-014] (Doc ref 7.9.6) has considered in particular paragraphs 15 and 16 of table 2.12.

23. These paragraphs do not address the concerns that PCC has raised in respect of ambiguity and the absence of sufficient detail as to proper funding for the project.

24. In particular PCC considers that the applicant has failed to provide evidence of the availability of funds required for the compulsory acquisition powers being sought - powers which are blighting large areas of land within the Order limits.

25. PCC maintains that at a minimum a bond needs to put in place to ensure that the Applicant can demonstrate it has the resources to fund the proposed acquisition of rights and which are having a blighting effect on land now.

Fibre optic cable and ORS: 'associated development'

26. PCC notes that other Interested Parties such as Winchester City Council (WCC) (ref Table 2.10 para Doc 7.7.1) of *Applicant's Response to Deadline 2 Submissions* (ref 7.9.6)) also question the Applicant's case that the Commercial FOC and ORS somehow qualify as associated development under the PA 2008.

27. It is clear at this point that the ExA will have to examine this issue and make recommendations to the Secretary of State in respect of the very different respective positions of PCC (and WCC) and Aquind as described in references to paragraphs 10, 13 and 14 of the Applicant's Response to Deadline 2 Submissions (ref 7.9.6).

28. PCC maintains that the Applicant's arguments in its "*Statement in Relation to FOC"* (REP1-127) (doc ref 7.7.1) as confused, contradictory, contrived and ultimately draw a conclusion that does not bear scrutiny.

29. With reference to paragraphs 88-89 of the *Applicant's Response to Deadline 2 Submissions* (ref 7.9.6), PCC fundamentally disagrees that it would be lawful to include fibre optic cables and equipment as associated development for the purposes Aquind are seeking. The practical implications that this line of reasoning has had for the compulsory acquisition of land make this point especially stark: the addition of fibre optic cables to this electricity interconnector is directly responsible for the optical regeneration stations near Fort Cumberland and the Telecommunications Buildings at Lovedean and their excessive size. The ORS are designed solely to serve commercial data purposes totally distinct from the transmission of electricity. The dominance of the fibre optic elements of what is proposed as the actual Interconnector Scheme and which are wholly for commercial gain (in what is supposed to be solely electrical infrastructure) has become 'the tail that wags the dog' in this application.

30. The Applicants case for adding the commercial FOC elements is heavily reliant upon a suggestion that there is *"spare capacity within the fibre optic cables*" (ref para… doc ref 7.7.1). This at one point appeared to be a reference to spare capacity within the minimal FOCs required the Interconnector i.e. electricity however the "*Needs and Benefits Addendum* "[doc ref 7.7.7] states the following at para 5.1.1.1

> *"As set out in the Statement in Relation to Development Associated with AQUIND Interconnector [sic] (document reference 7.7.1)* [in fact the Statement in relation to FOC] *the industry standard single 5.1Fibre Optic Cable (FOC) has up to 192 fibres, but the number of fibres required for cable protection purposes is less than this. There will therefore be spare capacity on the fibre cables forming part of the Proposed Development. Whilst it would be possible to install a cable with fewer fibres in connection with the operation of the Project only (and therefore less spare capacity) this would not alter the appearance, characteristics or impacts to any degree. There is no benefit to such an approach being taken and it is considered this would limit the overall benefits to be provided by the Proposed Development. For the reasons set out below, we consider that it would be highly beneficial, in particular from a UK telecoms policy perspective, to utilise the spare FOC capacity for commercial use."*

31. The Applicant, on this basis therefore have decided simply to avail themselves of this "*spare capacity"* commercial FOC because paring back that spare capacity has no visual or physical impact benefits in their view but then availing themselves of that spare capacity then leads to the need for the large ORS.

32. The benefits relied upon are entirely commercial benefits to the operator.

33. The Applicant's case for the commercial FOC is therefore entirely self-fulfilling and there is no evidence of any 'need' for them associated with the interconnector for the spare capacity to be there or to remain. In fact the Applicant admits that it deliberately chose not to *"install a cable with fewer fibres in connection with the operation of the Project only (and therefore less spare capacity)*".

34. There is no evidence as yet to explain in detail why the excess capacity should arise in the first place and indeed whether such surplus capacity is somehow an inevitable feature of this interconnector. Indeed the evidence is pointing in the opposite direction based upon the statements in doc ref 7.7.7.

35. It is also clear that other interconnectors clearly have not sought to add on commercial FOC as an accompaniment. This element of course was not highlighted at earlier stages of this scheme, for example in the TEN-E Regulation EU 347/2013 documents in 2018.

36. The ExA is asked to press the Applicant to address these issues and provide clear evidence and/or confirm that the decision to have and then use the spare capacity was a matter of pure choice on the Applicant's part.

37. With regard to the "*Statement in Relation to FOC"* (REP1-127), paragraph 3.5 (doc ref 7.7.1) contains an extraordinary assertion namely that the s35 Direction meant that "***any*** *development associated with the Proposed Development is to be treated as development for which development consent is required*". In other words the Applicant is asking the ExA (and the SofS) to conclude that the SofS's direction was that both the electric and FOC cables related development is deemed to be development for which development consent is required under the PA 08 and to that end it seems the Applicant submits the FOC cabling does not fall to be assessed as 'associated development' under the PA 08 as part of the examination at all (see para 3.6 of doc ref 7.7.1.

38. This is clearly a nonsense. Further, this contrived conclusion relies upon a strained interpretation of what appears to be a standard, boilerplate passage from the Secretary of State's Direction at para 3.4

39. Beyond the above there is the further extraordinary assertion within the *Statement in Relation to FOC"* (REP1-127) (doc ref 7.7.1) at para 4.6 namely that *"the proposed Development is not an NSIP"*. Despite paragraph 100 of the '*Applicant's Response to Deadline 2 Submissions* (ref 7.9.6.) stating that this comment is meant to be understood to be that the Proposed Development is not an NSIP by reference to how "NSIP" is defined in the Planning Act 2008, the context of the comment is significant.

40. What Herbert Smith-Freehills argue on behalf of the Applicant is that the "Proposed Development" should include the FOC commercial cables (see para 3.3 of doc ref 7.7.1) however when it comes to applying the Government Guidance and especially PINS Advice Note 13 (AN 13), there is an obvious difficulty in arguing that this purported associated development is "*subordinate to the NSIP"* as well as "*necessary for the development to operate effectively to its design capacity*" as set out in AN 13 para 2.9. It is at this point it is suggested that there is some question over what is the NSIP following the s35 Direction.

41. PCC submits that the position is in fact palpably clear – the s35 Direction concluded that the scheme i.e. the electricity Interconnector should be treated as an NSIP under the PA 08 and that any other development sought by the application for a DCO under PA 08 should be assessed by reference to the development and operation of the electricity interconnector. The Applicant edges some way in that direction by using terms such as 'principal' and 'ancillary' used under the Town and Country Planning Act 1990 regime but PCC urges the ExA not to go down this route as the terms are clearly used in very different ways i.e. 'NSIP' and 'associated development' do not equate to 'principal' and 'ancillary'.

42. For completeness the ExA's attention is drawn to s.35 (1) PA 08 which inter alias confirms that the states the 'direction' thereunder *that* the Secretary of State may give *is "for development to be treated as development for which development consent is required"* and s.31 of the PA 08 confirms that *"Consent under this Act ("development consent") is required for development to the extent that the development is or forms part of a nationally significant infrastructure project.".* If the Applicant is asserting that none of the proposed development is or *"is or forms part of a nationally significant infrastructure project"* then this DCO application should clearly be withdrawn forthwith.

43. Furthermore the Statement in Relation to FOC (REP1-127) (doc ref 7.7.1) concedes that the full extent of the development (ORS building and telecommunications buildings) is materially influenced by the commercial FOC opportunities, which is extraneous to the central purpose of electricity transmission served by an interconnector. This ties in with the points raised above as to why this 'spare capacity' has arisen. Consequently, and in light of the Applicant's response to paragraph 105, this further underscores the need in PCC's submission for the ExA to hold an Issue Specific Hearing on Fibre Optic Cable and Associated development in order to ensure adequate examination of this important issue or at least to ensure that PCC has a fair chance to put forward its case that none of the commercial FOC related aspect of this proposed scheme can lawfully be the subject of this DCO application. Furthermore PCC. in the event of the ExA deciding to hold such an ISH would want to cross examine the Applicant's experts put forward to explain and justify this issue to ensure the adequate testing of the Applicant's case given their representations and responses to date as well as allowing PCC a fair chance to put its case in this regard. To be clear, whilst this may well be raised in the context of the CA hearings, the issue in PCC is a very important and material one to the ExA's task and the SofS's decision.

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

44. PCC set out its concerns and points of clarity in its Deadline 3 submission 'Response to Rule 17 in relation to Eastney and Milton Allotments' [REP3-026]. PCC maintains the allotment holders should be included in the Book of Reference, and welcomes the decision set out by the ExA in the letter published on 11th November 2020, 'Confirmation of s102 Parties and request for further information' [PD-021].

45. With regard to REP3-020 " (*Applicant's response to request for further information Rule 17 in relation to Eastney and Milton Allotments"* (doc ref 7.9.11), PCC notes the Applicant's acceptance that the drafting of the dDCO to date has lacked sufficient clarity and precision. PCC notes that further amendments will follow to address this.

46. PCC considers the ExA's rejection of the Applicant's contention that its approach meant it was only ever bound to consider the subsoil and entitled to disregard the occupants of the surface an important one and is consistent with PCC's overall and continuing concerns expressed to date.

47. PCC notes that the Applicant states it is "*considering the amendment of the Land Plans (REP1-011a), the Book of Reference and the Works Plans"* (REP1-014])' (fourth paragraph of response to point five in Herbert Smith Freehill's letter dated 3 November 2020 doc ref. [REP3-020] However, it is clear in PCC's view that this proposed action by the Applicant to address the shortcomings identified simply do not go far enough. This is because the amendments to the Land Plans and Book of Reference thus far acknowledged do not seek to specify acquisition of subsoil only.

48. Following the ExA's procedural decision that affected allotment holders are within sections 102A and 102B Planning Act 2008 and that the ExA must be furnished with their details by Deadline 5 in order to notify those who have not yet been identified, the ExA has given notice through its letter of 11 November 2020 that a number of allotment holders (Julian Lloyd, Millie Ansell, Bernard George, Andrew Leonard, Brian Simmons, Philippa Pettitt, Derek McCullough, Malcolm Williams, Mark Lemon, Catherine Reddy, and Kirsten McFarlane) have become Interested Parties.

49. As a matter of clarity and procedure PCC hereby notifies the ExA that Ms Millie Ansell is a council officer who has no legal interest in the allotment land. She was tasked with assisting allotment holders who have difficulty with electronic communication and she does not have any interest whatsoever in the allotment land so should not be an Interested Party.

50. PCC therefore respectfully suggests that Rebecca Winstanley should have been included in the list instead, as she was assisted by Ms Ansell. The ExA's records of correspondence received from Ms Ansell should reflect this. The only other individual assisted by Ms Ansell has been duly included within the ExA's list in the letter of 11 November 2020. PCC will endeavour to assist as best it can to address the identification of all relevant allotment holders and has corresponded with the ExA regarding the compatibility of the requested information with the GDPR restrictions over information sharing.

Impact on recreation/open space

51. PCC has reviewed the *'Applicant's Responses to Deadline 2 Submissions' [REP3-014]* (doc ref 7.6.9) in respect of the Special Category Land. In table 2.12 of doc ref 7.6.9 the Applicant fails to address PCC's concerns of PCC as to the inclusion of the impact on large areas of recreational land and the displacement of users over an extended period of time.

52. As PCC has set out previously up to 17 playing fields will be affected by the Applicant's proposals, and these are impacts that the Applicant has failed to address or mitigate appropriately in accordance with the harm that would be caused.

53. The Applicant states and relies upon on a number of occasions, including in paragraph 69 of table 2.12, that '[w]*hilst the Applicant will have 7 years to exercise the CPO powers, it is not the case that the works will be ongoing … for 7 years*.' However, the Applicant has not proposed any mechanisms within the application to manage the occupation of this recreational/open space land on a specified shorter temporary basis, and as such the prospect is one of users of recreational land being displaced and burdening uncertainty for 7 years.

54. In consideration of Farlington Playing Fields in particular, the Applicant states, again in paragraph 69 of table 2.12 (doc ref 7.6.9) that '*Despite mitigation measures, Chapter 25 (Socioeconomics) of the ES (APP-140) concludes that there are significant residual effects at Farlington Fields, due to the extent and duration of the impact*.'

55. This admission is completely contrary to the position taken by the Applicant in paragraph 1.5.5 of the Statement of Reasons [REP1-025] (doc ref 4.1 that:

> *The Applicant therefore considers that the special category land when burdened with the rights sought in the Order will be no less advantageous to any person or the public than it was before, and therefore the test provided for at section 132(3) of the Act is satisfied.'*

56. The Applicant has failed in its assessment of the impacts on Special Category Land to identify the burden of the temporary possession rights sought in the Order, the impact of which are 'significant' by their own assessment in the ES. As such, the impacts are not addressed, have not been mitigated and the test under section 132(2), PCC strongly argues, has failed to be satisfied.

57. With reference to paragraph 11 and 46 of the "*Applicants Response to Deadline 2 Submissions* "(doc ref 7.9.6) PCC and the Examination is still lacking a detailed assessment of recreational impacts by Aquind, despite long discussion of this, indeed as the Applicant's response details.

58. In a meeting between PCC and the Applicant on 12th November 2020, assurance was given by the Applicant that an updated assessment of recreational impacts would be provided and PCC were invited by the Applicant to use this document, when received, to suggest appropriate mitigation for the adverse impacts caused.

59. PCC will of course consider any assessment and proposal when received. However it is clear that to date the Applicant's submitted documents do not properly mitigate the harm to playing pitch and recreation infrastructure. This is illustrated by the reference to 4.4.3.4 to 4.4.3.9 of the OOCEMP (doc ref 6.9) which is an example of an anticipated communications strategy being used as a placeholder for any meaningful detail on the period of disruption to the playing fields.

60. As noted, PCC welcomes the opportunity to consider the Applicant's assessment of harm so that it can support the ExA in the identification of any impact and any an appropriate degree of mitigation thereof. Until such time as it receives the updated assessment from the Applicant, PCC much reserve its position on this matter.

61. PCC's remains, concerned however, with reference to paragraphs 64-75 of doc ref 7.6.9., as to the Applicant's claims set out in this response that phasing of works will, in its view, reduce impact on Victorious Camping at Farlington. The Framework Management Plan for Recreational Impacts (FMPRI) (doc ref 7.8.1.13) does not however allow for any reinstatement until after the scheduled camping event, leaving the available area greatly reduced. Further, the Applicant has also not confirmed when the drainage at Farlington will be reinstated. If this is not carried out on completion of phase 5 of FMP, pitches affected in phases 1 to 5 may not be playable for the period Oct 22 to March 23.

62. In its response to paragraph 11 of the "*Applicants Response to Deadline 2 Submissions*" (doc ref 7.9.6) the Applicant appears to make the rather trite point that its proposed works will not carry on throughout the whole of 7 years proposed construction period. PCC understands this of course but his rather glosses over the fact that the rights that the Applicant is seeking to acquire and impose over Farlington playing fields i.e. "*Special Category Land Open Space - New Connection Works Rights"* Classes (a), (b), (c), (d), (e), (f), (g) and (h) (as shown on the BOR (doc ref 4.3) are not temporary construction rights but permanent rights going forward allowing for access for such activities as maintenance.

63. PCC objects not only to the impact of the construction of the scheme on the playing fields but also to the compulsory acquisition of the interests in these plots and the imposition of those overriding rights being applied because the rights created could potentially disturb use (in this case play) for years to follow. If it is possible to avoid disturbance during the operational period by pulling faulty cables through cable link bays at the allotments rather than open-trenching, as has been suggested by the Applicant, PCC would expect the same protection to be secured for this crucial open space land.

64. These playing fields are quite properly recognised and protected as land forming part of Open Space and subject to the protections under s.131 and 132 of the PA 08 as special category land. No replacement land is proposed so to that end the ExA and the SofS must be satisfied that the exceptions to Special Parliamentary Procedure are made out in respect of open space land, namely (a) there is no suitable exchange land to be given for the right to be acquired, or is only available at prohibitive cost, and it is strongly in the public interest that the development should be capable of being begun sooner than the procedure would otherwise permit, or (b) the right is being acquired for a temporary purpose, even if possibly long-lived (see s.131 (4A & 4B) and 132 (4A & 4B). PCC's view remains that the Applicant has failed to meet these tests in respect of this Open Space.

Impact on Fort Cumberland carpark and the ORS

65. PCC maintains the position as set out in its *'Comments on responses to Deadline 2 and draft Development Consent Order'* [REP3-025] (Doc ref…) paragraph 10.47. PCC has reviewed *'Applicant's Responses to Deadline 2 Submissions*' [REP3-014] (doc ref 7.6.9). The Applicant's responses (in particular paragraph 11 of table 2.12 of doc ref 7.6.9) fail to recognise the impact of the temporary and permanent land take at the Fort Cumberland car park. It is noted that the temporary land take of this seasonally heavily used car park is for a period of 66 weeks in addition to the permanent land take.

66. Whether the car park at Fort Cumberland is Special Category Land by definition or not is perhaps a moot point; the users of the car park will clearly be displaced (due to the ORS building, screening and works) and thus the users of the Open Space that the car park serves will clearly be permanently displaced. It cannot therefore be maintained, as set out by the Applicant in paragraph 1.5.5 of the" *Statement of Reasons"* [REP1-025] (doc ref…)that:

> *that the special category land when burdened with the rights sought in the Order will be no less advantageous to any person or the public than it was before, and therefore the test provided for at section 132(3) of the Act is satisfied.*'

67. With reference to paragraph 45 of the "*Applicant's Response to Deadline 2 Submissions"* (doc ref 7.9.6) PCC notes the Applicant's declaration that there will be no permanent loss of playing fields following the installation of the cables. They have not addressed however the permanent loss of car park space at Fort Cumberland.

68. It should also be noted that some of the displacement from this land is unnecessary altogether. As set out in the PCC's case in respect of the proposed exercise compulsory acquisition powers, and noted above in the context of the justification for the FOC and its own infrastructure as 'associated development' within the meaning of the PC 08he ORS building clearly exceeds the requirements of the electricity interconnector i.e. the NSIP, as confirmed in the Applicant's 'Statement in Relation to FOC (Doc Ref 7.7.1)' submitted at Deadline 1) [REP1-127. This states: "*Whilst it is not possible to state with absolute certainty the extent to which the size of the ORS is dictated by the proposed commercial use, it is anticipated that approximately two thirds of the cabinets within the ORS will be available for commercial use".*

69. The Applicant therefore should acknowledge the displacement of users from Special Category Land in consequence of the ORS building. It is also PCC's case that the ORS building is not justified as associated development and its development as part of this DCO cannot be lawfully granted. Further or alternatively, if it is concluded that the principle of the ORS is justified, the ExA is asked to conclude that its size is clearly not.

70. In respect of the "*Applicant's Response to Deadline 2 Submissions"* (doc ref 7.9.6) paragraph 112 regarding the setting of designated heritage assets, PCC's Heritage Advisor agrees with the applicant's assessment (as set out at 21.5.11.10. of the ES) (doc ref 6.1.21.), that "*The group of assets which make up Fort Cumberland is considered to be of Very high significance. Their setting makes a high contribution to their significance, derived from their value as a group and the preserved surrounding landscape which contributes to their context and understanding as heritage assets. Although the presence of modern residential developments has impacted on the asset's historic setting*".

71. The ES goes on at para 21.6.4.30 (doc ref 6.1.21) to suggest that the car park (where the proposed structure would be located) does not currently contribute to the setting *of the fort, "but as it is still flat does allow continuation of the historic 'fields of fire' from the Ravelin towards Fort Cumberland Road*". This assertion is not accepted and PCC consider its reasoning is flawed.

72. Whilst the surface treatment of the carpark contrasts with its surroundings, it is at present 'open' (i.e. free of buildings), and for this reason contributes to the significance of the fort by sustaining uninterrupted views within the asset's historic field of fire (both from, and towards the asset). The introduction of a new structure (particularly of the footprint, scale, and height of the proposal) in this location cannot but erode and diminish the existing 'openness' which the car park and its environs provide and sustain.

73. The ES analysis of the fort concludes at para 21.6.4.30 of 21.6.4.30 with the assertion that the likely direct, permanent, long-term effect of the proposal on Fort Cumberland would be of negligible significance (prior to the implementation of mitigation measures).

74. The Council's Heritage Advisor is of the view that this assessment significantly downplays the impact of the proposal. It is suggested that the Applicant has brought insufficient consideration of the scheme's heritage impacts to bear in the justifications for acceptability. This 'setting aside' of impact (implicit in the approach taken by the applicant), lacks credibility and is unconvincing in PCC's submission.

75. Notwithstanding these observations, it is not asserted here that the impact of the structure, as it stands, would be 'substantially harmful' to the setting of the asset. It is also acknowledged, setting aside issues of route choice and landfall, that this scheme would inevitably require some form of above ground physical infrastructure at landfall. In light of this the point of contention is the, scale, height, finish and overall physical 'presence' of the structure within its setting.

76. At Para 7.5 of the Applicant's Design and Access Statement (doc ref 5.5) suggests that the "*The design and land take for the ORS and the Telecommunications Buildings will be minimised as much as possible".* As noted elsewhere the scale of the ORS building and compound is related to the Applicant's own choice as to the addition of the commercial FOCs and the need for an ORS. As such the Applicant's own purported claim about the limits it has imposed on the design are evidently hollow.

77. As set out above it is PCC's case that the commercial FOCs and ORS are not associated development and not lawfully justified as part of this DCO.

78. It is also unclear why the proposed boundary/ means of enclosure around the ORS site has the footprint it does. The 8m offset for example between the proposed boundary enclosure, and the buildings on the site is notable. These factors suggest that the statement made in the D&S is also unconvincing. The approach taken is inconsistent with the acknowledged 'very high' significance of the asset, and the value of its preserved surrounding landscape. Insufficient effort has been made to genuinely minimise the land take and other related design parameters for this structure.

79. In paragraph 112 of the "*Applicant's response to Deadline Submissions" (*doc ref 7.9.6) the Applicant refers to an assessment already made and does not therefore substantively respond to the question asked which raises issues as to the adequacy of the assessment carried out in light effects on the settings of assets and the "focus *exclusively on views, and relies, in some cases, on established or proposed planting to mitigate effects".* The point the Applicant refers to namely "*who maintains and manages the planting has no bearing on the impact or the significance of heritage assets through changes to setting*" is clearly not an answer.

80. It is PCC's experience and no doubt others that the survival and ongoing maintenance of planting is nevertheless frequently critical to the final impact/ outcome of a scheme, and this site is no different.

81. At Paragraph 140 of the Applicant's response ref 7.9.6 the Applicant's suggestion that the impact of the scheme would be negligible, given its scale, footprint and height, and the potential impact of its proposed mitigate on measures, lacks credibility. The presence of pre-existing development within the setting of the asset, does not in and of itself justify further erosion of the open setting of the asset. In addition, whether or not the car-park at Fort Cumberland is Special Category Land is immaterial in this respect. It is a car-park serving adjacent recreational land but due to its location it is within the setting of a heritage asset and as such its partial development for the ORS is harmful, as discussed above.

82. Finally, PCC has raised with the Applicant that they have identified permanent screening/landscaping around the ORS building for which the Applicant is seeking to create and acquire New Connection Rights. The rights however sought are clearly more consistent with simple permanent acquisition and should be identified as such.

83. Ensuring the long term maintenance of the landscaping is a concern to PCC. The Applicant has maintained in its response in table 2.12 paragraph 108 in *'Applicant's Responses to Deadline 2 Submissions'* Ref 7.9.6 that it intends to relinquish its obligation of replacement planting after 5 years. PCC maintains that, unless an appropriate commuted sum to enable PCC to undertaken the appropriate maintenance is provided, the Applicant itself

needs to maintain the landscaping required to screen its own infrastructure, including any replacement planting necessary, for the construction, operation and any decommissioning of the Proposed Development i.e. well beyond 5 years after planting.

Impact on Highway Network

84. In respect of the "*Applicant's Response to Deadline 2 Submissions" (*ref 7.9.6) paragraph 2, the Applicant has confirmed it has no intention to acquire land beneath the highway rather it seeks to acquire subsoil rights (easements) to install equipment therein. It remains the PCC LHA position that the equipment proposed to be laid will be within that depth below the surface which is required for support / drainage of the highway and which are part of the highway. Therefore no such easements are required.

85. In response at paragraph 3 of doc ref 7.9.6 the Applicant contends that where "*land which is in private ownership is affected, it is absolutely necessary to acquire rights over that land for the purpose of installing"* the equipment. PCC LHA maintain the view that as a statutory undertaker, the Applicant would require no further rights to install equipment at the depths indicated on the typical construction cross sections which the Applicant has shown and which as noted lie within the public highway and not private ownership.

86. To conclude otherwise would be contrary to the fact that all of the other statutory utility companies when installing and maintaining their equipment at these sorts of depths are within the highway and do not require additional licence beyond the highway. In other words they do not risk committing trespass or infringement of other private land rights or easements.

87. PCC LHA remains concerned about the inclusion of the power within the dDCO [to make, alter, impose and enforce TTROs. This power does not practically remove a layer from the process as suggested in the Applicant's response to PCC para 3 to Deadline 2 submission (doc ref 7.9.6), as despite approval of a Traffic Management Strategy, individual TTROs for other schemes will still require to be advertised and the orders made and sealed. The proposal in the DCO at [para 16 of the DDCO ref 3.1], will introduce a bespoke approach which will require the LHA to develop and operate new systems to review those proposals, approve the advertisement and conclude their acceptability in advance of approving the strategy. This will simply not be as efficient as the existing established procedures and will increase the risk of delay rather than reducing that.

88. Within their response to paragraph 4 of doc ref 7.9.6 the Applicant contends that the PCC Permit Scheme will not be applicable to these works and simply asserts that its position in this regard will not change.

89. This obviously establishes a fundamental difference between PCC LHA which the ExA will need to resolve.

90. As noted above, the Applicant complains that no comments have yet been received from PCC as to the Protective Provisions despite those having been provided to PCC several months ago. PCC however made significant commentary on the dDCO in the LIR and in its response at Deadline 1 to the EXQ1 re Section 5 Draft Development Consent Order. This identified the exclusion of a number of sections of NRSWA 91 from the dDCO which in PCC's view will need to be replicated. The Applicant responded at that they did not consider further amendment to the dDCO to be required (ref response to para 4 of the Applicant's response to Deadline 2 submissions 7.9.6) but has failed to explain how any of the excluded provisions would be provided for. Compliance with the PCC Permit Scheme would ensure all of the protective provisions required by the LHA and would be consistent with the approach taken to the ESSO pipeline DCO most recently granted.

91. Within the Applicant's response to paragraph 5 of doc ref 7.9.6 the Applicant confirms that it is producing a road safety technical note to support the TA together with suitable mitigation should that be necessary. The LHA remains concerned as indicated by this response that the safety aspects of construction have still not yet been considered or are only being considered at this stage whereas they should have been fundamental in informing route selection. This is because PCC retains concerns that the inadequate consideration of queuing will lead to impacts to the Strategic Road Network as highlighted in PCCs Deadline 3 response (see para 5.2.9 of that submission).

92. Once received, PCC hopes the road safety technical note will allow assessment of the FTMS to determine whether or not the strategy mitigates the construction impacts successfully.

93. Within their response to paragraph 6 of doc ref 7.9.6 the Applicant assesses traffic conditions coincident with football matches to be similar to weekday peak period congestion and intends the same mitigation with works on traffic sensitive routes scheduled largely outside of the football season, school term times and to avoid conflict with major events. The Applicant accepts the principle of avoiding lane closures during the PM peak period where possible although makes no commitment to that and is silent about the AM peak period. They indicate that this will be considered during the detailed design of the on shore cable route. The LHA is of the view that this should be a stated objective in the FTMS and inserted at this stage.

94. Within their response to paragraph 7 of doc ref 7.9.6 which deals with the proposed joint bay detail and location, PCC LHA has sought confirmation that the joint bays will be located outside of the highway and certainly outside of the carriageway. The Applicant has simply reiterated the intention to locate them outside of the highway *"as a preference"*. The LHA considers its should be a stated design objective that the joint bays be outside the highway except where it is not possible

95. With respect to doc REP3-036, the deadline 3 submission from Highways England they have simply advised that dialogue with the Applicant regarding the protective provisions in the draft DCO is ongoing without detailing any specific issues. They do raise concerns however about the potential adverse impacts to A3 (M) junctions 2 and 3 during the construction period but advise that discussions are ongoing and expect these to be concluded as part of an updated statement of common ground.

96. PCC is concerned, as advised in our Deadline 3 response, that HE have not identified that the modelling does not replicate the traffic conditions at either the A27/ A3 junction and A27 / Eastern Road junction nor consequently the potential safety issues which will arise from increased queuing during the construction period. This has been discussed at inter-authority meetings with HE and a joint meeting with PCC LHA, Hampshire LHA, HE and the Applicant is to be arranged to explore this matter further.

Impact on ecology, arboriculture and landscaping

97. Having reviewed the Deadline 3 submission (REP3-007) PCC remains concerned that the quantum of trees / hedgerows either at risk or to be lost (as shown shaded red and yellow on Figure 3: Tree and Hedgerow Retention Plans Sheets 6 - 10) is excessive as mentioned.

98. With regard to the Deadline 3 Submission – (doc ref 7.7.9) Biodiversity Position Paper - Rev002, PCC's view is as follows:

> Paragraph 4.4.2.1 of the methodology states that '*For the majority of the Study Area, habitat condition data was assigned via the assumption that all medium and high distinctiveness habitats were in moderate condition and all low distinctiveness habitats were in poor condition*.' However, habitat condition should be based on quantifiable field data, established via detailed botanical survey where necessary and using the Habitat Condition Sheets from the Technical Supplement of the Biodiversity Metric 2.0. It is possible to have a high distinctiveness habitat in poor condition, or vice versa. I am uncertain as to why it has been necessary to assume the condition of the habitats present when the ecologists who surveyed the site should have a clear idea of the actual condition of the habitats present. The assumption made is likely to have led to some rounding up and

rounding down scores and this is unacceptable. We would therefore ask that the methodology is revisited.

99. In addition, while the proposed gains in priority habitats are positive, and PCC supports these, the overall loss of biodiversity remains unacceptably high, at -18.92% for all area-based habitats. PCC would refer the ExA and the Applicant to the Good Practice Principles (Chapter 11 of the Biodiversity Net Gain Practical Guide), particularly Principle 5 which states '*habitat created to compensate for loss of a natural or semi-natural habitat should be of the same broad-type (e.g. new woodland to replace lost woodland) unless there is a good ecological reason to do otherwise (e.g. former habitat restoration*).'

100. With reference to paragraph 108 of the *"Applicant's Response to Deadline 2 Submissions*" (doc ref 7.9.6), PCC maintains that d DCO Requirement 8(2) should read: ": *'Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting* ***or completion of the project whichever is the later,*** *... must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority*.'". This will ensure an optimal landscaping outcome.

101. As noted above, it is unreasonable to expect PCC subsequently to fulfil the Applicant's clear obligation to maintain landscaping without a commuted sum. It is therefore also unreasonable to avoid offering the fall-back position that the ExA has asked it to articulate.

Compulsory acquisition and subsoil

102. PCC has reviewed the '*Applicant's response to request for further information Rule 17 in relation to Eastney and Milton Allotments'* [REP3-020] which also includes a response to concerns raised by PCC in respect of acquisition of highway land within the Book of Reference.

103. PCC notes *that 'the Applicant intends to update the Book of Reference to confirm in relation to each of the plots of land forming the highway and the subsoil beneath the highway, that all interests of the highway authority are excluded.*' This is welcomed by PCC. PCC also considers it would be appropriate to update the Statement of Reasons.

104. With reference to paragraph 12 of the Applicant's Response to Deadline 2 Submissions (doc ref 7.9.6) PCC note that the Applicant maintains that it requires private rights in the land beneath the highway which is not vested in the LHA. On the basis that such rights are required to install equipment in that land. The LHA as noted above maintain the view that as statutory undertaker no further rights are required to install equipment within the public

highway at the depths indicated on the typical construction cross sections which are within those necessary to support and drain the highway. To find otherwise would determine that all of the other statutory utility companies are committing trespass when installing and maintaining their equipment within the highway.

105. PCC is concerned however in the alternative position, if such private subsoil rights are required, the Applicant has not changed its position in respect of its approach to rights owners and compensation for subsoil interests, despite citing a number of projects where compensation was paid for subsoil rights.

106. PCC does not consider it relevant, as stated in paragraph 25 of table 2-12 of the Applicant's response (doc ref 7.6.9), whether the subsoil lies beneath a dwelling – the projects cited by the Applicant affected subsoil below a variety of interests, not limited to dwellings.

107. Again, whilst issues of compensation are not relevant to the ExA's examination and deliberations PCC would wish to highlight the Applicant's conduct and approach in line with the CA Guidance. It is irrelevant to take account of the surface interest in valuing subsoil; whether the subsoil is below a dwelling or agricultural land, the nominal value is the same. PCC is of the opinion that the Applicant should be demonstrating are far more reasonable approach and seeking to reflect the approach taken on other major infrastructure projects, particularly given the likes of HS2, the Channel Tunnel Rail Link (HS1) and Crossrail 1 were all publicly funded.

108. For a private commercial organisation to adopt an approach that is less generous, and where the impacts on those affected will be significant, represents a disappointing approach to the Proposed Development's stakeholders. It is the opinion of PCC that there is no distinction between the Proposed Development and the other projects that are cited by the Applicant and comparable compensation should be offered to those with subsoil interests included in the Order limits, including a contribution to professional fees.

Status of the Project – TEN-E Regulation EU 347/2013

109. Reference is made above to the TEN-E Regulation EU 347/2013 and the "*Needs and Benefits Addendum"* [doc ref 7.7.7]. In addition, the Applicant submitted an update to *"Other Consents and Licences" (*doc ref 5.2) dated 5 October 2020 which has been updated from the 12 November 2019 version submitted with the DCO application.

110. PCC notes that it lists some 7 consents required from the French authorities Préfet de Seine- Maritime; Conseil Departmental de Seine Maritime Direction; Interdépartementale des Routes du Nord- Ouest (DIRNO);Commune d'Hautot-sur- Mer and SNCF but in particular from the Ministère de la Transition écologique et solidaire – Direction Générale de l'Énergie et du Climat.

111. As the Guidance issued by BEIS "*Consents and planning applications for national energy infrastructure projects - Guidance on regulations covering new power generating plants and wayleaves"* updated in September 2018 ('the BEIS Guidance') explains *:*

"… (the TEN-E Regulation) sets out guidelines for streamlining the permitting processes for major energy infrastructure projects that contribute to European energy networks, referred to as "Projects of Common Interest" (PCIs). The first Union List of PCIs was published in the Official Journal of the European Union on 21 December 2013 and came into force on 10 January 2014.

112. PCC obviously understand that the effect of the TEN-E Regulations is that the National Competent Authorities for such PCIs must still carry out their relevant permit and consent process, the Aquind project is nevertheless no longer a PCI. It was removed from the latest Union List of PCIs (appended to the TEN-E Regulations) which came into effect March 2020.

113. To that end it would appear that the TEN-E Regulations no longer apply.

114. It is of course fundamental to the Aquind interconnector project that the French element of it has support and obtains approval. This must be in serious doubt in light of the loss of its PCI status.

115. This also must bring into doubt the claimed benefits from the Project as asserted in the *Needs and Benefits Addendum"* [doc ref 7.7.7] as well as the overall viability of the scheme. It also brings into further question the ability for the Applicant to demonstrate that there is a reasonable prospect of the requisite funds for compulsory acquisition being available.

116. PCC considers overall that the Applicant has failed to explain or address what appears to be some very fundamental issues with respect to the future of the Aquind Interconnector project and wishes the alert the ExA to this significant matter.

117. Setting aside PCC's views, it is clear that the Applicant needs to update the ExA as to the consequence of the loss of PCI status and also what if any progress is now being made with the French permitting bodies given that the applications made in France predate the amendment to the Union List.

118. The ExA will no doubt also need to be informed what the impact is generally with regard to the application hitherto of the TEN- E Regulation including its appeal before the CJEU against the ACER's decision to refuse exemptions under the TEN-E Regs (ref Aquind v Acer T-735/18 2019/C 103/60).

Statement of Common Ground (SoCG)

119. At a meeting between the Applicant and PCC on 12th November 2020 the Applicant endeavoured to provide an update from their perspective on the SoCG on 16th November 2020. This will obviously provide insufficient time to submit an agreed update to the ExA for Deadline 4. PCC and the Applicant have therefore agreed to seek to arrange the necessary meetings to enable progress on the SoCG to be made and recorded by Deadline 5.

Concluding comments

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

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

Yours sincerely,

Ian Maguire
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Cc
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