From:	Noviss Adrian
To:	Aquind Interconnector
Cc:	Kasseean Anita
Subject:	AQUIND (EN020022) - DEADLINE 4 - Mr Geoffrey Carpenter & Mr Peter Carpenter (ID: 20025030) [BMG-LEGAL FID44973420]
Date:	17 November 2020 23:48:41
Attachments:	DEADLINE 4 - Cover Letter plus Schedules - FINAL SUBMISSION - 17 NOV 2020 PDF

Dear Sirs

Application by AQUIND Limited for an Order granting Development Consent for the AQUIND Interconnector Project (PINS reference: EN020022)

Mr. Geoffrey Carpenter and Mr. Peter Carpenter (Registration Identification Number: 20025030)

Submitted in relation to Deadline 4 of the Examination Timetable

We act for Mr Geoffrey Carpenter and Mr Peter Carpenter (our "**Clients**").

We refer to the above and attach our Clients' submissions in relation to Deadline 4 of the Examination Timetable.

Kind regards,

Adrian Noviss
Associate
For and on behalf of Blake Morgan LLP

Read the firm's COVID information page here: https://www.blakemorgan.co.uk/covid-19/
Find information on our Planning team here: https://www.blakemorgan.co.uk/service/planning-lawyers/
Read the team's latest Planning Blog here: https://www.blakemorgan.co.uk/planning-applications-during-covid-19-avoid-constitutional-pitfalls/

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If you are due to meet any member of the firm in person, please contact them so that they can make alternative arrangements, where appropriate. We hope that you understand the need for this precau ionary measure due to the developing COVID-19 situation and thank you for your assistance.

We are here to help and support you during this difficult time. If you have any ques ions, please do not hesitate to get in touch at any time or access our coronavirus guidance.

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Our ref: 00584927/000006

17 November 2020

Dear Sirs

Application by AQUIND Limited for an Order granting Development Consent for the AQUIND Interconnector Project (PINS reference: EN020022)

Mr. Geoffrey Carpenter and Mr. Peter Carpenter (Registration Identification Number: 20025030)

Submitted in relation to Deadline 4 of the Examination Timetable

As you are aware, we act for Mr Geoffrey Carpenter and Mr Peter Carpenter (our "**Clients**").

Our Clients jointly own the freehold interest in land known as Little Denmead Farm, Broadway Lane, Denmead, Waterlooville, PO8 0SL.

We attach our Clients' submissions in relation to Deadline 4, which are scheduled to this letter as follows:

1. **Schedule 1** – Our Clients' comments on document reference REP3-014, which are the Applicant's responses to Deadline 2 submissions that were submitted at Deadline 3;

2. **Schedule 2** – A summary of the status of our Clients' written representations in light of the Applicant's responses submitted to date during the Examination. As: (i) we have received only limited responses from the Applicant; (ii) the Application appears to be evolving iteratively and changing quite late in the Examination period; and (iii) we are are nearing the start of the issue specific hearings, we have produced this document to assist the Examining Authority (**ExA**) with understanding where our Clients' objection stands now, by setting out in one document a summary of their contentions (some appear resolved at this stage of the Examination, but the majority have not been resolved);

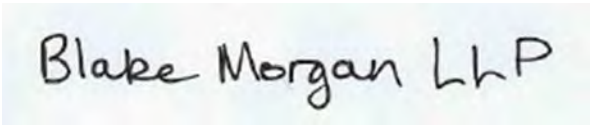
3. **Schedule 3** – A note responding to the ExA's Procedural Decision dated 11 November 2020 to accept the Applicant's changes to the Application (letter references PD-019 and PD-020);

4. **Schedule 4** – In line with the previously expressed concerns of the ExA, a cross-referenced Submission Note produced by us with DCO Counsel (Mr. Christiaan Zwart of [redacted])

advising our Clients in relation to whether the use of fibre optic cables within the FOC Cable (or spare capacity above otherwise necessary redundancy) for commercial telecommunications (and related infrastructure) can lawfully, or would be, able to be evaluated on the Applicant's evidence as "authorised development", together with a summary of the consequences of it not being so and concerns over extensive land take; and

5. **Schedule 5** – A letter from Blake Morgan LLP to the Applicant requesting certain technical information, and the AutoCAD drawings for the Land Plans.

Yours faithfully



Blake Morgan LLP

SCHEDULE 1 TO COVERING LETTER

Date: 17 November 2020

Aquind Interconnector application for a Development Consent Order for the 'Aquind Interconnector' between Great Britain and France (PINS reference: EN020022)

Mr. Geoffrey Carpenter & Mr. Peter Carpenter (ID: 20025030)

Interested Party Comments on the Applicant's Responses (REP3-014) to the Carpenters' Comments (REP2-027)

Submitted in relation to Deadline 4 of the Examination Timetable

BLAKE MORGAN

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AQUIND INTERCONNECTOR

DCO APPLICATION REFERENCE EN020022

MR. GEOFFREY CARPENTER & MR. PETER CARPENTER (ID: 20025030)

EXAMINATION - DEADLINE 4 (17 NOVEMBER 2020)

Interested Party Comments on the Applicant's Responses (REP3-014) to the Carpenter's Comments (REP2-027)

General point:

We note that the Applicant, in its submissions on documents provided at Deadline 2, has also made additional comments on documents we submitted on behalf of our Clients at Deadline 1.

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) **(Paragraph Number)**	**AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)**	**BLAKE MORGAN COMMENT AT DEADLINE 4**
	Amenity (Noise, Dust, and Vibration)		
1.	**Para 3.4:** The dust produced by construction traffic will settle on our Clients' fields and paddocks, and will prevent grazing. Construction traffic noise and vibration, and noise and from the cooling fans during operation, will have a significant detrimental impact on use	1) The impact from dust during construction will be managed through mitigation as outlined in the measures in the **updated** Onshore Outline CEMP (REP1-087). Air Quality measures including for dust can be found in section 5.11. This will ensure the potential effect on grazing of any dust settling on fields and paddocks will be	1) The Applicant has (merely) replicated its response provided at Deadline 2 (REP2-014). Row 23 of our Clients' Deadline 3 submissions (REP3-043) already addresses this. A particularised response from the Applicant remains outstanding. 2) The responses in tables 5.15 and 5.17 of REP1-160 merely refer to chapter 24 of the Environmental Statement, a document which we

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
	and enjoyment of Little Denmead Farm, and on our Clients' livestock. The Applicant's response is wholly inadequate. In section 5.12 of page 5-104 of its Responses to Relevant Representations, the Applicant states "*The noise and vibration assessment can be found in Chapter 24 (Noise and Vibration) of the ES (APP-139).*" The Applicant provides no further response or justification to explain how Chapter 24 addresses our Clients' concerns, and which specific parts of Chapter 24 are relevant. We have in paragraph 8 of our Client's Written Representations (document reference number REP1-232) made submissions in relation to Chapter 24 of the Environmental Statement. We therefore maintain our Clients' objections in relation to noise, dust, and vibration and reserve their position. We will consider the Applicant's responses to our Clients' Written Representations (which are to be submitted at Deadline 2) in relation to these issues, and comment further at Deadline 3 of the Examination timetable.	avoided. 2) In addition to the sentence contained in section 5.12 of the Applicant's Response to Relevant Representations (REP1-160), the Applicant provided further responses (in tables 5.15 and 5.17 of REP1-160) to the points raised in Relevant Representation 054 regarding noise and vibration. 3) The Applicant refers to paragraph 8 of our Clients' Written Representations (REP1-232), and provides further responses in relation to that. We address these within row 2 of this table.	have already commented on. No evidence is provided by the Applicant in its current response to address our specific concerns relating to Chapter 24. Table 5.15 of REP1-160 also refers to conclusions relating to the prospect of building damage as a result of noise and vibration, whereas our Clients' concerns encompass the (wider) impacts on their amenity and livestock grazing. The second paragraph of table 5.17 of REP1-160 seems to be a restatement of the Applicant's view that operational noise effects are expected to be negligible, and it does not address our request for a specific explanation as to how our Clients' concerns relating to Little Denmead Farm have been addressed and assessed. Similar arguments have already been responded to by us at rows 16, and 29 of our REP3-043. As the Applicant has failed at Deadline 3 to provide particular responses, we maintain our representations in this regard.
2.	**Paragraph 8.1 of our Clients' Written Representations (REP1-232) SUBMITTED AT DEADLINE 1:** Little Denmead Farm is identified as being a key environmental receptor with respect to noise and	Paragraph 8.1: "*Given the topic material, chapter 24 of the ES (APP-139) is a technical document. Please refer to Chapter 24 of the Non-Technical Summary (REP1-*	The Non-Technical Summary is that. Chapter 24 of the Non-Technical Summary (REP1-079) does not provide the level of information and particularisation requested in relation to Measurement Point 1 and R5. It does not contain any explanation underpinning the asserted

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
	vibration (please for example see page 2-9 of the Onshore Outline Construction Environmental Management Plan (document number 6.9). Paragraph 24.4.1.2 of chapter 24 of the Environmental Statement (document number 6.1.24) states that Little Denmead Farm was part of 'Measurement Position 1' of the Promotor's baseline noise survey. Little Denmead Farm is also referred to as 'R5' in the context of it being a sensitive receptor to noise due to its location being within 300m of the proposed converter station (see paragraph 24.4.2.7 of Chapter 24 of the Environmental Statement). What is lacking from Chapter 24 is an analysis in layman's terms of what all the different sets of data presented for R5 mean and an explanation as to how the Promoter concluded that overall noise effects from the proposed works and the operation of the converter station would be "negligible". Until such information is provided, it is difficult to accept the Promoter's conclusions.	*079) for a non-technical description of the conclusions identified in Chapter 24 of the ES.* *The data collected during the Applicant's baseline noise survey were used to inform the noise criteria used in the operational assessment of converter station noise. As explained in Paragraph 24.6.2.18 of the ES (APP-139) and Paragraph 17.2.5.2 of the ES Addendum (REP1-139), the operational effects of the converter station are expected to be negligible at Little Denmead Farm. For the operational assessment, the term 'negligible' is used to describe an effect where the noise level from the converter station is equal to or below the noise assessment criterion (i.e. does not exceed the existing background noise level at a given receptor).* *Please refer to the information in the paragraphs below in response to the Construction noise related query raised in Paragraph 8.1 of the Interested Parties' Written Representation (REP1-232).*"	conclusion that there will be a negligible effect in relation to these two specific receptors. For example, paragraph 24.3.1.2 of REP1-079 states that *"Additional construction stage mitigation, such as consideration of programme changes to reduce **residents'** noise exposure, is also specified **for some areas of construction** where work is being undertaken during sensitive periods and/or very close to sensitive receptors.."* but it does not state which residents and which sensitive receptors will benefit from this. Paragraph 24.3.1.3 of REP1-079 also states *"Additional mitigation has been recommended to reduce Converter Station noise levels **at one receptor.**"* Further, it remain unclear whether these relate to Little Denmead Farm? The Applicant has failed to date to provide particular responses and gaps remain. We maintain our representations in this regard. We note, in the Applicant's recent reply, their assertion that "'negligible' is used to describe an effect where the noise level from the Converter Station is equal to or below the noise assessment criterion (i.e. does not exceed the existing background noise level at a given receptor). However, Table 24.3 of Chapter 24 of the Environmental Statement (APP-139) states for construction noise to be negligible it must be less than or equal to 65dB during the day, less than or equal to 55dB during the evenings and weekend,

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
			and less than or equal to 45dB during the night. The Applicant also invites us to read REP1-079 but Chapter 24 of the Non-Technical Summary (REP1-079) does not detail how the overall noise effects from the proposed works and the operation of the converter stations would be negligible. Therefore, our question is what is negligible? Is it the value given by the Applicant in Table 24.3 or is it the description given by the Applicant in their most recent comment? In addition, we note that the Applicant has defined the noise assessment criterion at Little Denmead Farm to be 33dB. See paragraph, 24.4.5.6, Table 24.9 (APP-139). This noise assessment criterion has been taken from the background noise level for measurement position 1, found at Table 24.15 (APP-139) as outlined at paragraph 24.2.4.8 (APP-139) and as such is 33dB. However, despite background noise levels being 33dB, average ambient noise level averaged as 45dB for the day and 43dB for the night at measurement position 1, as seen at paragraph 24.5.1.5, Table 24.15 (APP-139). There is no explanation as to why background noise levels have been used rather than average ambient noise levels to form the 'noise assessment criterion'. We request for the Applicant to provide this

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
			explanation and why it has chosen an elevated and not a lower baseline as background. Raising the baseline reduces (potentially artificially) the real noise impacts generated by the Application Development. In addition, we cannot identify in the documents provided by the Applicant any resultant noise predictions in decibels ("dB") incorporating current ambient and background noise readings. The Applicant has provided figures for the operation noise levels, construction noise levels, pre-existing background noise levels, and pre-existing ambient noise levels but does not provide the expected resulting uplift in noise levels during construction and operation. Dealing with the figures provided at Tables 24.21-24.24 (APP-139), the Applicant has not commented whether the noise levels during construction are those calculated in absence of the background noise levels or in addition to the pre-existing background noise. Therefore, in relation to Table 24.3 (APP-139) we are unable to tell if the noise that is being measured as 'negligible' is the total noise levels of the area with both construction and background included, or if the Applicant is measuring the construction noise levels in isolation. In addition, if the Applicant is using total noise

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
			levels, does the Applicant use the background noise levels of 33dB or ambient noise levels of 45dB, as depending on which one we consider that this might make a material difference to the final calculation of dB readings caused by the construction and operation of the Application Development? We request that if the Applicant is using background noise levels to calculate total noise levels to provide their reason for doing this.
3.	**Paragraph 8.2 of our Clients' Written Representations (REP1-232) SUBMITTED AT DEADLINE 1: :** Paragraph 3.7.1.3 of Chapter 3 of the Environmental Statement (document number 6.1.3) states that the construction works and activities relating to the converter station area is anticipated to take place in 10-hour shifts over six days a week, between 8am and 6pm, with one hour either side of these hours for start-up/shut down activities, oversized deliveries and for the movement of personnel. This will cause significant noise impacts for our Clients as it will affect our Clients' peaceful enjoyment of their property. One of our Clients is not in good health, has recently suffered from a stroke, has underlying heart conditions, and has asthma. Given the proximity with which our Clients will live to the works, they	Paragraph 8.2: *"The construction core working hours for the Converter Station area (Works No. 1 and 2) are specified in Requirement 18 of Schedule 2 of the dDCO as being between 0800 and 1800 hours on weekdays and between 0800 to 1300 hours on Saturdays, with start-up and shut-down activities up to an hour either side of the core working hours. These are standard construction working hours.* *Construction noise predictions at surrounding residential receptors, including Little Denmead Farm (R5), for the key work stages, has been*	The Applicant is side-stepping our point and has not addressed it. Instead, it merely re-iterates its responses already provided at Deadline 2. We have already provided an answer on this point at row 17 of our submissions for Deadline 3 (REP3-043.). The Applicant does provide additional references to information relating to noise and vibration predictions, but these do not answer the points we have made in relation to our Client's health. To summarise Tables 24.21 to 24.24 of Chapter 24 of the ES (APP-139), in relation to our Clients. 1. Construction of main site access road – 55dB – Negligible 2. Establishment of car parking and site

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	will be highly impacted by the noise and vibration caused by the works. We are also instructed by our Clients that representatives of Promoter, in their limited dealings with our Clients, made verbal representations that the works would only operate for five days a week and between 8am and 5pm. This is not what is stated in the Environmental Statement and so served to give our Clients, at best unclear and, at worst misrepresentative information.	*completed and are presented in Tables 24.21 to 24.24 of Chapter 24 of the ES (APP-139). These noise predictions have followed the principles of the methodology set out in in British Standard (BS) 5228-1:2009+A1:2014 Code of practice for noise and vibration control on construction and open sites – Part 1: Noise. Based on this assessment the construction noise impacts at Little Denmead Farm are assessed as being negligible.* *The vibration assessment has also concluded that there will be negligible effects at all receptors from Converter Station construction activities (Paragraph 24.6.2.14 of Chapter 24 of the ES (APP-139)). Further information regarding vibration is provided in table 2.6 of this document under Paragraph 3.6."*	welfare area – 53dB negligible 3. Construction of substructure of telecommunications buildings – 53dB – negligible 4. Construction of superstructure of telecommunications building – 52dB – negligible 5. Landscaping car parking and site welfare area – 52dB – negligible The evidence leases out of account the impact of the Convertor Station on R5. We request evidence of the impact on R5 from the Converter Station and request an explanation as the basis for excluding the impact of the building of the substructure and the superstructure of the Converter Station for receptor R5 (Little Denmead Farm) from Tables 24.22 and 24.23. This seems a significant omission. In addition, we cannot identify in the Application documents any resultant noise predictions in decibels ("dB") incorporating current ambient and background noise readings. The Applicant has provided figures for the operation noise levels, construction noise levels,

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
			pre-existing background noise levels, and pre-existing ambient noise levels but does not provide the expected resulting uplift in noise levels during construction and operation. Dealing with the figures provided at Tables 24.21-24.24 (APP-139), the Applicant has not commented whether the noise levels during construction are those calculated in absence of the background noise levels or in addition to the pre-existing background noise. Therefore, in relation to Table 24.3 (APP-139), it is impossible to ascertain whether the noise that is being measured as 'negligible' is the total noise levels of the area with both construction and background included, or if the Applicant is measuring the construction noise levels in isolation excluding background. In addition, if the Applicant is using total noise levels, does the Applicant use the background noise levels of 33dB or ambient noise levels of 45dB, as depending on which one we consider that this might make a material difference to the final calculation of dB readings caused by the construction and operation of the Application Development? We therefore maintain our representations in this regard.

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
4.	**Paragraph 8.3 of our Clients' Written Representations (REP1-232) SUBMITTED AT DEADLINE 1:** Paragraph 5.3.12.8 of the Planning Statement (document number 5.4) states: "*The Converter Station Area is located in a sparsely populated area, and therefore it is feasible to predict the noise level from each stage of the construction works at specific surrounding sensitive Receptors, of which six were noted within 300 m of construction activities. The ES concludes that no significant Impacts will occur at the Converter Station Area during the Construction Stage noting the distances to the six sensitive Receptors and the temporary nature of the construction works. The implementation of the Onshore Outline CEMP will ensure that Impacts are reduced as far as practicable through the imposition of standard construction working hours and best practice construction methods including screening of works.*" Our Clients' residential properties on the Retained Land (e.g. Little Denmead Cottage and the static caravan) lie within 300m of the construction activities. We question whether a 300m distance was an appropriate maximum distance to measure from and would request the Promoter to explain the basis of selecting this distance. Moreover, we would not categorise an estimated 3-year construction and commissioning period for the converter station as a "temporary"	Paragraph 8.3: *"The justification for undertaking noise predictions for all receptors within 300m of a given construction activity is provided in Paragraph 24.4.2.6 of Chapter 24 of the ES (APP-139). In summary this follows the guidance in BS 5228, and furthermore, no significant construction noise effects will occur at receptors located further than 300m from an activity. For the avoidance of doubt, where a receptor is located closer than 300m from a given construction activity, the actual distance between the construction activity and the receptor has been used to predict the noise level at that receptor.* *As explained in paragraph 4.2.4.1 of Chapter 4 of the ES (APP-119), environmental effects are classified as either permanent or temporary, and permanent are those changes which are irreversible or will last for the foreseeable period. Construction noise and vibration activities are considered to be temporary effects which is an accepted EIA approach. All construction effects identified have been categorised as short, medium or*	We note the generalised response of the Applicant to rely on mere generalised guidance to avoid undertaking a particular assessment of the impact of the Application Development on our Clients' land and business. We note that paragraph 24.4.2.6 of the Environmental Statement (APP-139) explains that the guidance BS 5228-1 states that construction noise predictions at distances over 300 m should be treated with caution due to the increasing importance of meteorological effects and uncertainty regarding noise attenuation over soft ground. Furthermore, given the distances involved, it is asserted that no significant construction effects would occur at distances beyond 300m. However, this does not respond to our point that, in the circumstances of this matter, why a lesser distance was not adopted as representative of the receptor sites, rather than selecting an arbitrary and generalised guidance distance of 300m which is on the borderline of the warning relating to using this guidance. With regard to the Applicant's response as to what is "temporary", paragraph 4.2.4.1 of the Environmental Statement (APP-119) states that the duration of effects lasting between 1 and 5 years is classed as "medium term". The 3 year construction

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	period of time. Being exposed to noise impacts for such a long period of time, especially where one of our Clients suffers from severe health issues, would cause significant harm to his health and wellbeing. This has not been adequately assessed by the Promoter, and we would request the Promoter to explain what specific noise reduction methods it would apply in relation to our Clients given their circumstances and location.	*long term, and as described in the relevant Paragraphs of section 24.6.2 of the ES (APP-139), some of the construction noise and vibration effects for the converter station works have been categorised as medium-term to reflect their anticipated duration. Due to the negligible construction noise and vibration effects identified at Little Denmead Farm, no additional noise mitigation measures to those contained in the Onshore Outline CEMP (REP1-087) are considered necessary. "*	period will, therefore, be a medium term effect. That, in itself, sounds more serious than a "temporary" effect. The Applicant also, yet again, makes a blanket reference to a large section of the Environmental Statement (para 24.6.2 of APP-139) that we are already aware of and that our Client's written representation is based on in this regard. No attempt has been made by the Applicant in its response to demonstrate it has adequately assessed the specific impacts on our Clients. Simply telling us which large section we need to read (already knowing we have read it) is not enough. The Applicant has still failed to explain **why and how** it has concluded that the effects of noise and vibration will be negligible specifically in relation to Little Denmead Farm and our Clients' specific health conditions, based on the technical analysis contained in Chapter 24 of the ES. The Applicant continues to merely assert they will be negligible. We therefore maintain our representations in this regard.

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
5.	**Paragraph 8.4 of our Clients' Written Representations (REP1-232) SUBMITTED AT DEADLINE 1:** Whilst the 'Community Liaison' section of the Onshore Outline Construction Environmental Management Plan (document number 6.9) states on page 5-52 that "*Any noise complaints will be reported to the appointed contractor and immediately investigated, including a review of mitigation measures for the activity that caused the complaint*", there is no mention in that document of whether the Promoter would then take positive steps to deal with source of the complaint. At the moment it only requires a 'review'. Our Clients' concern is that there is no guarantee from the Promoter that action will be taken and this could therefore expose our Clients to a continuing source of what is to them, unacceptable noise levels, both from a human health perspective but also in terms of the health of their livestock if they are affected by noise too.	Paragraph 8.4: *"As stated in section 5.12 of the Onshore Outline CEMP (REP1-087), at all stages of construction, all contractors on-site will be required to follow Best Practicable Means, as defined in the Control of Pollution Action 1974. As part of this, in the event of a noise complaint, the contractor will review and ensure that working practices are mitigating noise and vibration as far as reasonably practicable. The detailed CEMP for these works, which will be produced following the appointment of a Principal Contractor, will contain detail in the community liaison section. This will include detailed information on a procedure in the event of complaints, which will be agreed in consultation with the environmental health department at the relevant local planning authorities."*	The Applicant's response does not address the gap we have identified. There has been no change in that section to create an obligation to take positive steps to deal with the source of the complaint, and any detailed CEMP will need to be in line with the provisions of the outline CEMP. The possibility of a complaints procedure is irrelevant to the concerns we are raising – it still does not oblige positive steps to be taken to resolve issues. We therefore maintain our representations in this regard.

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
6.	**Paragraph 8.5 of our Clients' Written Representations (REP1-232) SUBMITTED AT DEADLINE 1:** Chapter 22 of the Environmental Statement (document number 6.1.22) dealing with traffic and transport, states at paragraph 22.4.6.3 that during the peak construction in the converter station area, it is anticipated there would be an estimated 43 two-way HGV movements (86 in total) per day, and an estimated 150 two-way employee car movements (300 in total) per day. It is unclear however whether the analysis in the noise chapter of the Environmental Statement (chapter 24) takes this into account. We request the Promoter confirms whether it does and explain what specific noise mitigation measures will be put into place for residents who live directly next to plot 1-32. This is a significant amount of traffic movement and is likely to cause considerable noise disturbance to our Clients.	Paragraph 8.5 "*The construction stage road traffic noise assessment has accounted for the construction traffic (both HGV and employee car movements) created by the Converter Station and Onshore Cable Corridor construction activities on the wider road network (Paragraph 24.4.4.4 of Chapter 24 of the ES (APP-139)).* *The use of the Converter Station access road has not been included in the noise and vibration assessment. However, based on the quantity of vehicle movements assumed in the transport assessment and the time periods that these vehicle movements are expected to occur, the access road will not result in any significant noise or vibration effects. This is because the magnitude of noise level at Little Denmead Farm from vehicles travelling along the access road, located over 50m away, and is predicted to be negligible. Therefore, no additional noise mitigation measures to those contained in the Onshore Outline CEMP (REP1-087) specific to Little*	Little Denmead Farm is within 300m of the converter station and is a classed as a sensitive noise and vibration receptor. The Applicant admits that the construction, use for construction and equipment traffic, and presence of the access road has not been considered in the noise and vibration assessment. This is a significant oversight. In light of this, the Applicant has no technical basis to conclude that the vehicle movements will not result in any significant noise or vibration effects. The Applicant has no evidence to support this. We therefore maintain our representations in this regard.

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
		Denmead Farm are necessary."	
	Business Impact		
7.	3.5 Our Clients' Relevant Representations highlighted that the freehold interest to over 30 acres of the 52 acre farm covered by plot 1-32 is to be compulsorily acquired. This represents 58% of the farm's landholding. With over 60% of the farm being affected overall by this, and the compulsory acquisition of new permanent access rights (plot 1-51), acquisition of permanent landscaping rights (plots 1-38, 1-69, 1-70, and 1-72), and temporary possession of land (plots 1-57 and 1-71), this will significantly interfere with our Clients' farming activities. The farm's landholding is relatively small compared to neighbouring landowners, and it will therefore have a disproportionate impact on Little Denmead Farm compared to others. There will also be a significant detrimental impact on the remaining parts of the farm as existing fields will be split up, leaving small, irregular shaped paddocks without straight boundaries. This will make it difficult to carry out farming activities as there will be insufficient space for livestock grazing and access will be rendered difficult. There is no other suitable farming land of this size available in the vicinity to replace the land that will be lost. Reducing the farm to just 22 acres means that the farm is	It is not the case that the Applicant has considered only the type (i.e. grade) of agricultural land that would be lost and has failed to consider the effect on the agricultural business that operates on the land. The relevant baseline description of the farm holding affected in set out in paragraph 17.5.1.8 of Chapter 17 of the ES (Soils and Agricultural Land Use) (APP-132) and the impacts during construction at paragraph 17.6.2.10. This states that approximately 12.8 ha (60% of the land holding) will be required temporarily and permanently from Little Denmead Farm, which would be a high magnitude of impact on a low sensitivity holding and give rise to moderate adverse temporary and permanent effects, which are considered significant for the farm. The impact on the land holding has therefore been formally assessed within	The Applicant's reference to Chapter 17 the ES (Soils and Agricultural Land Use) (APP-132) does not deal with the explicit question of **business impact.** Paragraph 17.5.1.8 of Chapter 17 of the ES (Soils and Agricultural Land Use) (APP-132) state that the proposals "*give rise to **moderate** adverse temporary and permanent effects. These are considered to be significant effects on the farm.*" As such, we maintain our representations in this regard. The Applicant has continued to fail to adequately assess the significant harm that the DCO would have on Little Denmead Farm's ability to function. The Applicant has also failed to formally assess the loss of businesses and livelihoods (not only in relation to our Clients but also in general) in the context of the examination into whether the compulsory acquisition powers being sought satisfy the relevant legal and guidance requirements. As such, we maintain our representations in this regard. We are also aware of the information provided by the Applicant in answers CA1 and CA2 of REP2-014. To this we repeat our answers submitted in REP3-043 Comments on the Applicant's Responses (REP2-014) to the Carpenters' Written

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
	unlikely to be able to continue to operate as a viable business. The Applicant has failed to adequately assess the significant harm that the DCO would have on the farm's ability to function, considering only the type of agricultural land that would be lost and failing to consider the effect on the agricultural business that operates on that land. Section 5.12 (on page 5-106) of the Applicant's Responses to Relevant Representations does not provide sufficient justification to address these concerns. The response in section 5.12 makes a general reference to Chapter 17 of the Environmental Statement (Soils and Agricultural Land Use), Appendix 27.3 (Cumulative Effects Assessment Matrix (Stage 1 & 2)) (APP-479) and Appendix 27.4 (Cumulative Effects Assessment Matrix (Stage 3 &4)) (APP-480). The Applicant does not however explain how these documents address our Clients' concerns. The response also states that "as discussions are ongoing with landowners, no account has been taken of any potential mitigation measures for land holdings so the assessment in the ES presents a worst case for the effects on farm holdings. Paragraph 17.8.1.6 of Chapter 17 states that 'Mitigation relating to the permanent loss of farmable area to the affected farm holdings are matters of private negotiation and therefore cannot be incorporated into this assessment'. Discussions are ongoing with landowners with regards to acquisition in the hope of reaching	the ES. The Applicant provided further information in relation to the justification for the acquisition of the land and rights for the Application Development in the Converter Station area in answers CA1 and CA2 of the Applicant's Response to Written Representations (REP2-014), the key points of which are repeated below. Plot 1-32 (owned by the owners of Little Denmead Farm), together with Plots 1-20, 1-23 and 1-29 will accommodate the Converter Station, the Telecommunications Buildings, two attenuation ponds, the Access Road and significant areas of landscaping. These are shown on the Indicative Landscape Mitigation Plans for Option B (i) (APP-281) and B (ii) (REP1-137). The land which has been identified as being required is no more than is necessary for the construction, operation and maintenance of the Application Development. The Application Development has been deemed to be Nationally Significant	Representation (REP1-232). This is that, we are fully aware of the facts of what is being proposed on plot 1-32. However, the Applicant has not provided sufficient reasons or any analysis as to why the alternative compulsory acquisition powers we have suggested will not be appropriate, other than state there are "security and safety" reasons. No further detail is provided as to what these security and safety reasons are. We note the reliance placed by the Applicant on the terms of the Direction of the Secretary of State. That reliance remains misplaced. See the terms of the Direction and the underlying Statement requesting a Direction. The Applicant remains required to justify its Application Development, the terms of the DCO it seeks, and the lawful justification for the authorisation of compulsory acquisition rights in relation to our Clients' land at Little Denmead Farm.

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
	an agreement with the impacted parties." Firstly, the Applicant needs to demonstrate that the public interest outweighs the harm that will be caused by the exercise of such compulsory acquisition powers, and that those powers being sought are proportionate. The harm that will be caused to our Clients is the loss of their business and livelihoods. Such a significant harm should not be relegated to the subject of private negotiations only, without any assessment by the Applicant, or scrutiny by the ExA. In this regard, we submit that the loss of businesses and livelihoods (not only in relation to our Clients but also in general) needs to be formally assessed and considered in the context of the examination into whether the compulsory acquisition powers being sought satisfy the relevant legal and guidance requirements. Secondly, despite what the Applicant states, there has been very little progress (on its part) in private negotiations with our Clients. We therefore maintain our Clients' objections in relation to business impact. Please see paragraphs 4.5.1 and 4.5.4 of this letter for further details of the lack of engagement with our Clients in relation to reaching a voluntary agreement and in relation to the proposals' impacts on our Clients' business.	Infrastructure and will be capable of meeting GB energy objectives along with numerous other benefits as set out in the Needs and Benefits Report (APP-115) and the Needs and Benefits Addendum - Rev 001 (REP1-135) These clearly demonstrate the national and international benefits of the Application Development, which outweigh the harm caused by the Application Development and justify the interference with human rights for this legitimate purpose in a necessary and proportionate manner. The Applicant has issued revised and improved Heads of Terms to the Landowner at Deadline 3 and the Applicant has requested further information from the Landowner to allow further assessment of the impact on the farm business. A series of weekly calls has also been proposed to progress outstanding matters privately with the landowner and their representatives.	

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	Compulsory Acquisition		
8.	3.6 Our Clients' Relevant Representations set out arguments as to why we do not believe the compulsory acquisition powers being sought in relation to Little Denmead Farm are necessary and proportionate. Section 5.20 on page 5-111 of the Applicant's Responses to Relevant Representations refers us to the Statement of Reasons (APP-022). However, there is no explanation provided by the Applicant beyond this as to why the powers are necessary and proportionate and which parts of the Statement of Reasons they consider relevant to our Clients' concerns in this regard. Our Clients' Written Representations submitted at Deadline 1 (document reference number REP1-232) sets out in full why we do not consider the Statement of Reasons adequately addresses our Clients' objections in this regard. We therefore maintain our Clients' objections in relation to the necessity and proportionality of the compulsory acquisition powers being sought, and reserve their position. We will consider the Applicant's responses to our Clients' Written Representations (which are to be submitted at Deadline 2) in relation to this issue, and comment further at Deadline 3.	The justification for the proposed grant of powers to authorise the compulsorily acquisition of land and rights in connection with the Application Development, including the reasons why there is a compelling case in the public interest given the national significance of the Application Development, is explained within the Statement of Reasons (SoR) (REP1-025). The Statement of Reasons is not a standalone document and needs to be considered along with other documents, many of which it refers out to, which have been submitted by the Applicant. In this case the Applicant refers specifically to the Needs and Benefits Report (APP-115) and the Needs and Benefits Addendum - Rev 001 (REP1-135) [sic]. These clearly demonstrate both the need for and the benefits of the Application Development. The Applicant provided further	Para 7.2.6 of REP1-025 states that the extent of the land to be affected by the Application Development will be no more than is reasonably necessary in connection with the construction, operation and maintenance of the Application Development and is therefore necessary and proportionate. We note the assertion by the Applicant. It remains necessary for the Applicant to establish the justification for the need for taking our Clients' land comprised of plot 1-32. The Needs and Benefits Report (APP-115) (and the belated Needs and Benefits Addendum – Rev 001 (REP1-136)) do not provide the justification necessary to support the use of compulsory powers of acquisition in relation to the Application Development. We are also aware of the information provided by the Applicant in a response to CA1 and CA2 of REP2-014. We repeat our answers submitted in REP3-043 Comments on the Applicant's Responses (REP2-014) to the Carpenters' Written Representation (REP1-232): we remain aware of what is being proposed on plot 1-32. However, the

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
		information in relation to the justification for the acquisition of the land and rights for the Application Development in the Converter Station area in answers CA1 and CA2 of the Applicant's Response to Written Representations (REP2-014), the key points of which are repeated below. Plot 1-32 (owned by the owners of Little Denmead Farm), together with Plots 1-20, 1-23 and 1-29 will accommodate the Converter Station, the Telecommunications Buildings, two attenuation ponds, the Access Road and significant areas of landscaping. These are shown on the Indicative Landscape Mitigation Plans for Option B(i) (APP-281) and B(ii) (REP1-137). The land which has been identified as being required is no more than is necessary for the construction, operation and maintenance of the Application Development. The landscaping measures proposed by the Applicant (in Plot 1-32 as well as Plots 1-38, 1-69, 1-70 and 1-72) reflect extensive engagement with and feedback received from Statutory Consultees such as Winchester City	Applicant has not provided a rational basis or any assessment as to why the alternative extent of powers suggested would not be appropriate. Instead, the Applicant merely asserts there to be generalised "security and safety" reasons. No evidence or particularised detail is provided as to what these security and safety reasons may be. We request clarification from the Applicant in relation to their statement that *'third party rights over these areas would be significantly constrained by the potential presence of the Converter Station … and the landscaping which is to be located on this land in the event of either option, meaning access and enjoyment of the land will not be possible (for both options) once the landscaping to be provided in connection with the proposals is in situ.*' Would the Applicant please specifically explain which areas of land where *access and enjoyment of the land will not be possible due to landscaping?* It is our understanding from the entire above statement is in relation to Plot 1-32 as well as Plots 1-38, 1-69, 1-70 and 1-72. It had been our understanding that landscaping rights were not so prescriptive as to remove rights of access for Plot 1-38, Plot 1-69, 1-70, and 1-72. We have also addressed the Applicant's contentions relating to third party rights in row 5 of our Clients' Deadline 3 submissions (REP3-043), and we maintain those comments.

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		Council and South Downs National Park Authority regarding concerns over loss of vegetation in this area and the Applicant's proposals will significantly strengthen the landscape features in this area, providing an important visual screening function, as well as provide biodiversity enhancements, to address the feedback received. Any third party rights over these areas would be significantly constrained by the potential presence of the Converter Station Site (for Option B(i)) and the landscaping which is to be located on this land in the event of either option, meaning access and enjoyment of the land will not be possible (for both options) once the landscaping to be provided in connection with the proposals is in situ. Further information relating to the landscaping measures is provided in the response to query 3.7 below.	
	Landscaping		
9.	3.7 Our Clients' Relevant Representations state that the Applicant has failed to justify the need for the laydown area/works compound on plot 1-32 to be required on a permanent basis for *landscaping* and landscaping over a considerable extent of	Plot 1-32 as referred to on the updated Land Plans (REP1-011 and 011a) includes the Converter Station footprint, Access Road, two attenuation ponds and land immediately surrounding such	Our Client's land lies in the setting of the South Downs. The Downs regulator has advised that their advice is to retain the existing situation and address the sensitivities of the farmsteads and the local landscape character. The landscaped area

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
	their land. The existing farm landscape is grassed pasture for livestock. Surprisingly, the Application proposed a quite different landscape broken up and comprised of grassland rather than as high screening, with hedges and few trees. There appears no need to acquire permanently their land to then re-provide (newer) grass nor fragment existing field patterns. The Applicant has not provided any justification as to why permanent landscaping rights are required in respect hedgerows and which would prevent our clients from being able to evolve their land for its existing farm purpose. Section 5.25 on page 5-118 of the Applicant's Responses to Relevant Representations states that those rights are required as part of the landscaping strategy to assist with the screening of the Converter Station. The areas of land identified for this purpose are considered to be reasonable and only so much as is necessary and aligns with the scale of the project. The Applicant refers us to section 6.1.7 of the Statement of Reasons (APP-022). However, paragraph 6.1.7 does not contain any relevant explanation or justification; it merely states: "New Landscaping Rights: Rights are sought over the land shown green on the Land Plans for landscaping and ecological measures required in connection with the visual screening of the converter station and at the University of	features. The landscaping on plot 1-32 in the area where the temporary laydown area/works compound is to be located during construction is not "only grassland", it consists of woodland, scrub and hedgerows and new calcareous grassland. The planting serves not just a visual screening function in specific locations but also seeks to connect with Stoneacre Copse (ancient woodland to the south east), addressing concerns over the need to improve connections to nationally important habitats as referred to at the Applicant's Response to Written Representations (4.23) (REP2-014) and responds to LPA management strategy objectives in terms of landscape character (as detailed below) and referred to in Appendix 15.4 of the ES (Landscape Character) (APP-402). • South Downs National Park Landscape Character Area D (D2 Hambledon and Clanfield Downland Mosaic) Management Strategy seeks to conserve and extend areas of unimproved chalk grassland at Butser Hill and species-rich chalk grassland, yew woodland and rare juniper scrub at Old Winchester Hill. The landscape mitigation measures	around the Convertor Station is at odds with the existing situation and appears to be a preferred landscape scheme seeking to justify a larger extent of land take than is necessary for the Converter Station's situation. However, the landscape scheme is not itself nationally important infrastructure but (mere) landscaping of currently open grassland fields used by livestock and able to be used for livestock farming. The Applicant asserts that its proposed landscape appearance is preferable to the existing local landscape of the farmstead. It asserts that that preference for a different local landscape appearance around the Converter Station footprint is necessary and proportionate for the proposed Converter Station. It relies on addressing concerns over the need to improve connections to nationally important habitats as referred to, by a single sentence, in the Applicant's Reponses to Written Representations (4.23) (REP2-014). Whereas livestock can move through open fields presently, they cannot move across the proposed new vegetative barriers indicated on the (indicative unfixed) landscape plans. The envisaged new connections do not accommodate the existing farmstead connections

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	Portsmouth Langstone Campus adjacent to Furze Lane." To therefore simply state that the rights being sought are required and are reasonable, without any further explanation or evidence to support why they are required and are reasonable, is insufficient. We therefore maintain our Clients' objections in relation to landscaping and reserve their position. We have made further representations in respect of landscaping in our Clients' Written Representations (REP1-232). We will consider the Applicant's responses to those (which are to be submitted at Deadline 2), and comment further at Deadline 3.	seek to support this objective. • East Hampshire LCT 3fi Downland Mosaic (LCA 3fii) Management Strategy seeks to restore hedgerow boundaries to provide visual unity and intactness and increase biodiversity and links to areas of woodland and promote growth of hedgerow trees to be required on a Permanent basis. • Winchester City Council Hambledon Downs 17 (WCTW2) Management Strategy seeks to encourage the extension of existing chalk downland, through agricultural and planning policies (e.g. compensation for unavoidable loss of wildlife habitats resulting from planned development), encourage the protection and conservation of important wildlife and historic features such as ancient hedgerows and woodlands, tracks and historic parks, especially where they provide a link with other semi-natural habitats and conserve and restore the structure and condition of the woodlands through appropriate management such as thinning,	situation. Further, it is difficult to see what in particular the landscape indications are mitigating at all at the local level of the nearby farmstead. If the purpose of these powers is to improve connections to nationally important habitats, why is the very considerable horizontal breadth over large swathes of our Clients' freehold land proportionate or necessary in the context of the purpose of the Converter Station infrastructure? As the Applicant points to the Needs and Benefits report to indicate the proportionality of its desired acquisition, this needs and benefits report does not encompass the need to create habitat cohesion. In addition, if the Applicant was seeking to create better habitat cohesion with the Ancient Woodland, why can this not be done by means other than compulsory acquisition? The Applicant refers to the South Downs National Park Landscape Character Area D (D2 Hambledon and Clanfield Downland Mosaic) Management Strategy and the desire (not need) therein to conserve and extend Buster Hill and Old Winchester Hill. It is difficult to follow why the Applicant references this Strategy when these distant features that are both over five miles away from the site and not within the SDNP area.

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		coppicing, replanting, ride and edge management and the removal of invasive alien species. Revisions to the indicative landscape mitigation plans Figure 15.48 and 15.49 (REP1-036 and 037 respectively) and landscape mitigation plans for Option B(ii) (REP1-137) submitted for Deadline 1 demonstrate further measures to improve connectivity further with the ancient woodland. The Applicant also refers to the Applicant's Response to Written Representations (CA3) (REP2-014) which explains that the proposals also reflect the extensive engagement with, and feedback received from the LPAs and that the proposals strengthen the visual screening function as well as biodiversity enhancement. Permanent landscaping rights re hedgerows: In terms of permanent rights the Applicant also refers to the Applicant's Response to Written Representations (CA4) (REP2-014) which explains LPAs concerns over	The Applicant references the East Hampshire LCT 3fi Downland Mosaic (LCA 3fii) Management Strategy. We note that the Applicant states that this strategy seeks to restore hedgerow boundaries to provide visual unity and intactness. We note that this strategy is formed for the entire Character Area 3f Horndean – Clanfield Edge and not simply the area around the Lovedean station. It cannot be ascertained how the Applicant plans on increasing already established hedgerows in this area to increase biodiversity. In addition the East Hampshire LCT 3fi Downland Mosaic (LCA 3fii) Management Strategy also asks to conserve the pattern of small assorted [sic] fields and seek to conserve/reinstate hedgerow boundaries and seek to ensure good management of horse paddocks to conserve the rural setting. The Applicant's submissions seem to be in conflict with these considerations. Also, there is also a consideration to monitor the expansion of the urban edge of Horndean and Clanfield to ensure that it does not expand further onto areas of open rolling chalk download. As such we consider that on balance, the Applicant's proposals are more in breach of the East Hampshire LCT 3fi Downland Mosaic (LCA 3fii) Management Strategy than in accordance with it. In regards to Winchester City Hambledon Downs 17 (WCTW2) Management Strategy, we have been

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
		potential loss of vegetation in this area and that Applicant's proposals will significantly strengthen the landscape features in this area, providing an important screening function, to address the feedback received. As such, the acquisition of the rights and restrictions in question is necessary in connection with the Application Development.	unable to find this document online as so invite the Applicant to provide it as they are seeking reliance on it. In relation to the Applicant's statement that the indicative landscape mitigation plans Figure 15.48 and 15.49 demonstrate further measures to improve connectivity further with the ancient woodland, we again question how this is relevant to the Application Development. The Applicant refers to extensive engagement and feedback with LPAs. We request that the Applicant provide evidence as to the feedback given and where it would state that additional areas of land would have to be compulsorily acquired in order to improve the connectivity of the ancient woodland. Regarding the Applicant's comment on permanent landscaping rights in relation to hedgerows and the provision of a screening function, the Applicant has previously failed to answer our queries in this regard which featured in our written representations. The Applicant has not provided, and has failed to provide, justification for the need for permanent landscaping rights over the full lengths of hedgerows in order for them to provide screening, when the existing hedgerows are *already* fully mature. The hedgerows would continue to provide screening for the Applicant's Application Development, whether or not the

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			Applicant has rights over that land.
	Relevant Representations not responded to		
10.	3.8 Our Clients' Relevant Representations also raised issues relating to access, the proximity of the proposed scheme to the South Downs National Park, why the proposed telecommunications building on plot 1-32 cannot be moved eastwards in order to preserve the paddocks belonging to our Clients, the effect of the proposed scheme on the nature of the area (turning it from an agricultural into an industrial area), and the protection of their human rights. The Applicant's Responses to Relevant Representations do not provide any direct response to these concerns. FROM RR-055: 1. (Access) The proposed acquisition will split up fields (for example the proposed permanent access route (Plot 1-51) will bisect the existing field into two), leaving small, irregular shaped	The Application Development has been deemed to be Nationally Significant Infrastructure and will be capable of meeting GB energy objectives along with numerous other benefits as set out in the Needs and Benefits Report (APP-115) and the Needs and Benefits Addendum - Rev 001 (REP1-135). These clearly demonstrate the national and international benefits of the Application Development, which outweigh the harm caused by the Application Development and justify the interference with human rights for this legitimate purpose in a necessary and proportionate manner. 1. Access - The Applicant notes the	We note the Applicant's response in regards to our very real access concern. However, the Applicant has failed to recognise this concern or to provide credible evidence to justify its conclusions on the impacts that the Application Development will have over access to the farm. We made points in this regard at paragraph 6.5.9 of our Client's Written Representations (REP1-232) and have provided further comments so refer to our comments above relating to business impact. We remain aware of the facts of what is being proposed on plot 1-32. With regard to the Telecommunications Building, the Applicant continues to have failed to explain why the Telecommunications Building cannot be placed slightly east to avoid the break up on an additional paddock and has also failed to establish why the Telecommunications Building cannot be included in the Converter Station compound, a point we

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	paddocks without straight boundaries, making it difficult to carry out farming activities as there will be insufficient space for livestock grazing and access will be rendered difficult. There is no other suitable farming land of this size available in the vicinity to replace the land that will be lost. Reducing the Farm to just 22 acres means that the Farm is unlikely to be able to continue to operate as a viable business. 2. (Proximity to South Downs National Park) A recent planning application for a battery storage development was refused partly due to the close proximity of South Downs National Park. The Converter Station would hugely impact the area on the very edge of the National Park. Our clients are still willing to work with AQUIND to achieve agreement on reasonable terms to the satisfaction of both parties. However, if agreement is not reached wish to maintain their objection. Our clients reserve the right to make further detailed representations during the Examination stage of the DCO. 3. (Use of Plot 1-32) - Over 30 acres are to be compulsorily purchased (Plot 1-32), representing 58% of the Farm's landholding….. AQUIND have failed to demonstrate that the extent of the compulsory acquisition is necessary and proportionate, taking only what is required. For example, AQUIND have failed to demonstrate	acquisition of land necessary for the Application Development will split up fields such as in the case of Plot 1-51, which is required for the access road and associated landscaping. This will modify the boundaries of the fields in this area and the resulting boundaries will have a gentle curve. The Applicant recognises the loss of land will have a significant impact on the farm but does not believe the shape of the resulting boundaries and resulting fields will materially negatively impact the ability to use remaining areas. 2. The Applicant acknowledges that the Application Development does lie in close proximity to the South Downs National Park, and as referred to in the Applicant's Comments on Local Impact Reports Table 9.1 paragraph 5.4 (REP2-013) there will be significant effects on the setting of the designated landscape is perceived within 3km of the Converter Station Area. The Application Development has been sited to utilise the topography and existing vegetation to partially screen the Converter Station from some angles. It has been carefully designed	established in paragraph 6.5.7 of our Clients' written representations (REP1-232) and not yet acknowledged by the Applicant. We note: the Applicant's comments in regard to the nature of the area; that the Applicant asserts that whilst the area is rural it is dominated by features of undisguised industrial nature. We consider the Applicant's assertion to be enthusiastic: despite hosting overhead pylons, the area of our Clients' land is unmistakably a rural agricultural area.

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
	why the telecommunications building (in Plot 1-32) cannot be situated further east towards the woods, leaving the existing 4 acre paddock intact. AQUIND have failed to justify the need for the laydown area/works compound on the Plot to be required on a permanent basis for landscaping, when such landscaping will only consist of grassland rather than as screening, nor provided adequate justification as to why permanent landscaping rights are required in respect hedgerows which prevents our clients from being able to reshape the remaining parts of the Farm. 4. (Change on nature of the area) The Converter Station is likely to encourage further similar development turning this agricultural landscape into an industrial area.	to take into account impacts on landscape and visual amenity, having regard to siting, operational and other relevant constraints to minimise harm to the landscape and visual amenity, providing reasonable mitigation. With regard to the mitigation proposed, given the necessary size of the Converter Station taking into account its functional requirements it will always have a post mitigation residual impact. It is noted in this regard that NPS EN-1 acknowledges in relation to landscape impact and decision making at paragraph 5.9.8 that "virtually all nationally significant energy infrastructure projects will have effects on the landscape" and that "Projects need to be designed carefully, taking account of the potential impact on the Landscape… to minimise harm to the landscape, providing reasonable mitigation where possible and appropriate." This is the case with the Application Development. 3. The Telecommunication Buildings were deliberately sited at a lower level to the Converter Station to minimise visual impacts. The buildings were also	

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
		sited to the west of the Access Road to minimise impacts on Stoneacre Copse ancient woodland working within the offsets and standoffs set based on the range of utilities and landscape and ecological constraints present. As indicated in the revisions to the indicative landscape mitigation plans Figure 15.48 and 15.49 (REP1-036 and 037 respectively) and landscape mitigation plans for Option B(ii) (REP1-137) submitted for Deadline 1, proposed planting in the form of scrub will provide partial screening. As shown on the Indicative Landscape Mitigation Plans for Option B(i) (APP-281) and B(ii) (REP1-137), apart from the Telecommunications Building, Plot 1-32 will also accommodate the Converter Station, two attenuation ponds, the Access Road and significant areas of landscaping. The Applicant considers that the use of these areas for agricultural use would have a material negative effect on the development and retention of the landscaping proposed. Furthermore, the Applicant considers it is necessary to acquire the freehold of the entirety of these areas to prevent third party access for safety and security related reasons during the construction and operation of the	

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
		Application Development. 4. As referred to in the Applicant's Comments on Local Impact Reports Table 9.1 paragraph 5.4.2 and Table 11.1 paragraph 2.2 (REP2-013) the landscape of the Converter Station Area immediately around the buildings will change as a result of the development, however the landscape whilst rural is characterised by the existing Lovedean Substation and, particularly the overhead terminal towers / pylons and lines which are of an undisguised industrial nature. As described in ES Chapter 15 (APP-130) paragraph 15.5.3.4 "the existing Lovedean Substation, associated pylons and overhead lines are dominant elements in the landscape of the Converter Station Area and immediate surrounding area."	
	APPLICANT'S RESPONSES TO ExQ1		
11.	**MG1.1.2 - siting of the Converter Station** **BLAKE MORGANS' COMMENT AT DEADLINE 2 (REP2-027) ON THE APPLICANT'S**	The Applicant's agent has specifically discussed Options B(i) and B(ii) with the owners of Little Denmead Farm and their agents at meetings held on 07 March 2019 and 21 August 2019 and	The Applicant did provide at Deadline 3 revised draft Heads of Terms, which we are currently considering on behalf of our Clients. We reserve the right to make further comments on

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
	RESPONSE: The Applicant's response refers to ongoing discussions with landowners in relation to the siting of the Converter Station and that it is confident those negotiations can be concluded in advance of the end of the Examination period. Our Clients have never been contacted by the Applicant to specifically discuss these specific issues. Whilst we share the Applicant's hope to conclude negotiations before the end of Examination, our comments at paragraph 4.5.1 of this letter illustrate how little progress is being made by the Applicant in relation to starting proper negotiations with our Clients. We respectfully request the ExA to require the Applicant to engage more with our Clients and to do so with more speed.	with the owners of Hillcrest and Mill View Farm at a meeting on 07 February 2019, in advance of their agents being appointed in September 2019. The issue relating to the siting of the Converter Station is dependent on finalising an agreement to secure the necessary land rights from National Grid to use Plot 1-27. The other plots which the Applicant is seeking to permanently acquire or secure rights over in the Converter Station area are not affected by these discussions as they are required for the Proposed Development irrespective of whether Option B(i) or Option B(ii) is chosen. The Applicant has issued revised and improved Heads of Terms to the Landowner at Deadline 3 and the Applicant has requested further information from the Landowner to allow the impact on the farm business be further considered and assessed. A series of weekly calls has also been proposed to progress outstanding matters privately with the landowner and their representatives	the Applicant's quality and frequency of engagement should this deteriorate once again. We maintain our Clients' account of the Applicant's engagement.
12.	**MG1.1.21 (management under the Outline Landscape and Biodiversity Strategy):**	The Applicant has issued revised and improved Heads of Terms to the Landowner at Deadline 3 and the	The Applicant did provide at Deadline 3 revised draft Heads of Terms, which we are currently

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
	BLAKE MORGANS' COMMENT AT DEADLINE 2 (REP2-027) ON THE APPLICANT'S RESPONSE: The Applicant states that it is in discussions with a number of landowners in the vicinity of the Converter Station Area to agree the acquisition of land and easements to provide the rights required for the long term management of the land, including hedgerows, to enable the implementation and maintenance of the measures set out in the updated Outline Landscape and Biodiversity Strategy. Again, whilst we share the Applicant's hope to conclude negotiations, our comments at paragraph 4.5.1 of this letter illustrate how little progress is being made by the Applicant in relation to starting proper negotiations with our Clients. We respectfully request the ExA to require the Applicant to engage more with our Clients and to do so with more speed.	Applicant has requested further information from the Landowner to allow further assessment of the impact on the farm business. A series of weekly calls has also been proposed to progress outstanding matters privately with the landowner and their representatives	considering on behalf of our Clients. We reserve the right to make further comments on the Applicant's quality and frequency of engagement should this deteriorate once again.
13.	**CA1.3.12:** **BLAKE MORGANS' COMMENT AT DEADLINE 2 (REP2-027) ON THE APPLICANT'S RESPONSE:** The ExA asked the Applicant: "Why do the Order limits shown on the Land Plans [APP-008] extend to include a large proportion of best and most versatile agricultural land (49% of the agricultural	The proportion of best and most versatile land within the Order limits is 26% rather than 49%. Paragraphs 17.6.6.1 and 17.6.6.2 and Table 17.6 of Chapter 17 (Soils and Agricultural Land Use) of the ES (APP-132) indicate that a total of 65.5ha of agricultural land will be required temporarily for the Proposed Development, of which 16.9ha (25.8%) is best and most	The Applicant has not answered the ExA's question: What would the actual effects on availability and productivity on such land be taking a realistic approach to cable routing and Compulsory Acquisition?"

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
	land implicated by the Order)? What would the actual effects on availability and productivity on such land be taking a realistic approach to cable routing and Compulsory Acquisition?" We note the Applicant does not provide a direct response to this question, but instead addresses a wide range of other issues, from extent of engagement carried out, to noise and vibration. We request that a more specific response be provided by the Applicant.	versatile land. For land required permanently, this proportion is reduced to 20% (5ha of best and most versatile land (Subgrade 3a) from a total permanent agricultural land requirement of 24.9ha). Permanent landtake for Grade 3a land is needed for access and landscaping	
14.	**Engagement** **BLAKE MORGANS' COMMENT AT DEADLINE 2 (REP2-027) ON THE APPLICANT'S RESPONSE:** Engagement: The Applicant's response mixes up engagement relating to its consultation activities, with initial and cursory engagement it has had to date with our Clients in relation to acquiring Little Denmead Farm by voluntary agreement. The Applicant states it has been in discussions with our Clients since late 2016 to acquire Little Denmead Farm, which included numerous face to face meetings, and that heads of terms offered have been refined, reflecting "increased certainty" in the amount of land over which rights are required. The Applicant also states that its agent has provided regular and detailed updates to our	As noted in the submission, the Applicant has been engaged with the owners of Little Denmead Farm since late 2016. The Applicant has offered Heads of Terms to the landowner's agent on March 2017, December 2017, September 2018, November 2018 and November 2019. A further set of revised Heads of Terms have been issued to the landowner at Deadline 3. The certainty about the amount of land over which it is necessary to acquire land and land rights in relation to the Proposed Development has of course increased as the Applicant's proposals for the Proposed Development have evolved, reflecting feedback which has been received from various consultees, including statutory consultees such as Winchester City Council and South	Our Clients and its agents disagree with the Applicant's assertions in relation to its version of how it has seemly engaged with our Clients and we maintain our Clients' account. The Applicant did at Deadline 3 provide revised draft Heads of Terms, which we are currently considering on behalf of our Clients. We reserve the right to make further comments on the Applicant's quality and frequency of engagement should this deteriorate once again.

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
	Clients. As a matter of fact, the Applicant's response in these respects is not entirely correct. The Applicant's engagement with our Clients since 2016 has been mainly in relation to its consultation activities and how the proposals have evolved up until submission of the DCO application. The Applicant's engagement has not been focussed on discussing and progressing a voluntary agreement with our Clients in order to avoid the use of compulsory acquisition powers. Our Clients strenuously contend that interactions with them were all one-way conversations by the Applicant, where the Applicant's agents simply told our Clients what the Applicant was proposing on their land at different points in time, what the DCO process involved, and how the proposals were changing. There were no meaningful discussions in relation to acquiring our Clients' land and the rights that the Applicant would need in relation to landscaping if compulsory acquisition powers were to be avoided. Our Clients (and their agents) also deny there were any meaningful discussions about the extent of the landscaping rights being sought through the DCO application. There was a meeting on 21 August 2019 with the Applicant's agents where a passing comment was made by the Applicant's agent in relation to the extent of landscaping rights the Applicant may need, and the possibility of entering into a covenant in relation to Little Denmead Farm where our Clients were not to cut the hedgerows to below a particular height (e.g. 5m). That	Downs National Park Authority, in relation to landscaping and biodiversity measures. In relation to the comments about each set of Heads of Terms being vastly different to the preceding version, the Heads of Terms from March 2017 and December 2017 were offered in advance of the January 2018 consultation and before a decision had been made between the Option A and Option B site. The Heads of Terms from September 2018 were based on acquiring the vast majority of the landowner's land. It should be noted that the amount of land the Applicant has been seeking to acquire the freehold of has not changed significantly since the November 2018 Heads of Terms were issued, seeking to acquire the freehold of 29.4 acres. The Book of Reference (REP1-027) now identifies the amount of land which the Applicant seeks to acquire the freehold of in Plot 1-32 as 124,023m2 which equates to 30.65 acres. As noted above, Applicant has issued revised and improved Heads of Terms to the Landowner at Deadline 3 and the Applicant has requested further information from the Landowner to	

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
	discussion was never furthered. Mr Peter Carpenter has also confirmed to us that any previous calls he placed directly to the Applicant or its agents were to seek clarification about the detail of the changing nature of the proposals and not to negotiate terms of private agreement in relation to Little Denmead Farm. The Applicant has also never explained to our Clients why through its DCO application it needs to own the freehold interest to the parts of Little Denmead Farm it only proposes to landscape or create the access road on. Each time the scheme proposals changed, a new set of draft Heads of Terms was sent to our Clients, to the point where it became very confusing for our Clients to understand exactly what the Applicant was proposing. Each draft of the Heads of Terms was vastly different to the previous version (i.e. they were not "refined" to reflect "increased certainty", as the Applicant has put it). That is why there are currently 5 different versions of draft Heads of Terms – each one represented a very different iteration of the pre-application proposals. It is not the case (as the Applicant's response implies) that the same set of Heads of Terms have been negotiated by our Clients since 2016 and that we are now at version 5. To date and despite requests from Blake Morgan LLP, the Applicant has not even sent our Clients a first draft of a private voluntary agreement to consider – given that we are 4 years on since consultation commenced, this illustrates how slow the Applicant has been to properly	allow further assessment of the impact on the farm business. A series of weekly calls has also been proposed to progress outstanding matters privately with the landowner and their representatives. The Applicant is also preparing a draft legal agreement for discussion with the landowner and is committed to securing the rights required by agreement, subject to consideration payable for the rights being reasonable	

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
	commence any meaningful voluntary agreement negotiations with our Clients. All efforts by the Applicant to progress draft Heads of Terms and a voluntary agreement have ceased since December 2019. Please see Schedule 1 to this letter for a full breakdown of engagement by the Applicant with our Clients' agents and with Blake Morgan. The last draft of the Heads of Terms was sent to our Clients nearly a year ago and despite many chasers, an updated version has to date not been issued. We have also tried to encourage the Applicant to not allow negotiations on value to stall progress on agreeing other terms on a draft legal agreement, but there has been no movement on this by the Applicant despite our requests. The Applicant's response that its engagement with our Clients has been "regular" is therefore inaccurate. It is also inaccurate for the Applicant to state that it "continues to engage with the landowners via their respective agents with the aim of securing a voluntary agreement for the land and land rights required for the Proposed Development." To this end, we respectfully request that the ExA requires the Applicant to fully and properly engage with our Clients immediately, to start legal agreement negotiations, as per our repeated requests, in order to avoid seeking and using compulsory acquisition powers in relation to Little Denmead Farm.		

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
15.	**Impact on business:** **BLAKE MORGANS' COMMENT AT DEADLINE 2 (REP2-027) ON THE APPLICANT'S RESPONSE:** The Applicants' response covers the impacts on our Clients' farming business. The Applicant states that Little Denmead Farm is not a livestock farm and that only a small number of horses are kept on it. This is incorrect, and demonstrates the Applicant's lack of proper and accurate assessment. The threat of compulsory acquisition changed the way Mr Peter Carpenter farms the holding at Little Denmead Farm. He had every intention to erect modern livestock buildings on the holding, however given that he would only be left with 14 acres of grazing (if the DCO is granted and the compulsory acquisition powers are exercised), Mr Carpenter made the early decision that it would not be economically viable to invest in modern livestock housing as he would not have the land to accompany the new buildings. It would have put further financial strain on the farming business. At the time he made that decision, he was unsure as to whether a private agreement could be reached, and he felt under pressure to act quickly. The decision was also taken not to purchase replacement beef heifers in 2017, as Mr	The Applicant's assessment of Little Denmead Farm not being a livestock farm was based on the absence of livestock on the farm in recent years, although has acknowledged that there are a small number of horses. Water is used for drinking supply for the horses. Business owners whose property has the potential to be affected by compulsory acquisition are generally advised to continue operating their business, including any plans for expansion, as normal, given there are adequate compensation provisions in place to cover any losses that could be incurred as a result of the effects of the compulsory acquisition on the business. The Applicant is surprised that the landowner has not applied this principle or been advised to apply this principle to protect his position. The Applicant also notes the landowner had substantial plans for expansion of the farming business as set out in the Planning Statement and Agricultural Appraisal submitted in support of a planning application for 'Extension to	We are surprised that the Applicant has stated that there are adequate compensation provisions for loss of business. This is subjective and it has not been supported by any evidence. By section 106(1)(c) of the Planning Act 2008, matters relating to compensation may be disregarded. With regard to the Applicant's statement that it "*is surprised that the landowner has not applied this principle or been advised to apply this principle to protect his position...*" is both condescending to our Clients and presumptuous. Our Clients did not have any legal representation when they took the decision to remove their livestock. They did so as lay people who did not understand how DCOs and CPOs work and as people who thought they were about to lose their land soon; it was done out of fear and haste, which they cannot and should not be criticised or penalised for (as the Applicant is now doing). This cannot be used as a reason to conclude that Little Denmead Farm is not a livestock farm and to demonstrate that it is, our Clients will shortly be re-introducing livestock onto its farm. In terms of our Clients' plans for expansion, our Clients are simply waiting to see what the outcome of the current DCO application will be, before committing any further time and money to pursing

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
	Carpenter knew it would take up to 5 years for those heifers to produce calves and for the calves to be reared for slaughter. With the threat of the use of compulsory acquisition looming, he had no certainty that he would continue to retain freehold ownership of the land to rear and finish those cattle over the next 5 years. Mr Peter Carpenter has continued to farm on Little Denmead Farm, growing and producing hay from the holding. Little Denmead Farm is a pasture farm and has the buildings and facilities to be used for keeping and grazing cattle, sheep or horses. The farm is fenced, with water being supplied to irrigate the fields. Our Clients therefore strongly disagree with the Applicant's statement that Little Denmead Farm is not a livestock farm.	existing temporary siting of mobile home for agricultural worker' (12_02536_FUL) in November 2012, though it does not appear those plans came to fruition either.	its expansion plans. It is only sensible and logical to do so given the threat of CPO and the Applicant's aggressive approach in relation to reaching a voluntary arrangement with them.
16.	**Access** **BLAKE MORGANS' COMMENT AT DEADLINE 2 (REP2-027) ON THE APPLICANT'S RESPONSE:** The Applicant states that in relation to rights for our Clients to cross the access road, such rights "can be provided". This is not reflected in the DCO application documents. We would therefore question whether this is actually the Applicant's intention. We would also question why, for example, specific reference is not made in the draft DCO to make it clear that the owners of Little	The Applicant can confirm the rights for the landowner to cross the access road will be provided, save for any temporary restrictions required for health and safety purposes during the construction period, though it is anticipated the Applicant and landowner will be able to privately agree a suitable working arrangement to manage such occurrences. This point is addressed in the revised Heads of Terms issued at Deadline 3.	The Applicant did at Deadline 3 provide revised draft Heads of Terms, which we are currently considering on behalf of our Clients. We reserve the right to make further comments on the Applicant's quality and frequency of engagement should this deteriorate once again. We note that the potential provision of access rights to enable their entitlement to return to their current freehold land (whilst being logically circular) does not resolve all our Clients' access issues. In paragraph 6.7.1 of our Clients' Written Representations (REP1-232), it was explained that

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
	Denmead Farm will have rights to cross the new access road to the Converter Station. Also, there is a big difference between stating rights to cross "can" be provided, and that they "will" be provided. There has been no private agreement with our Clients or any meaningful negotiation as to how to secure such crossing rights privately. The Applicant has not sent our Clients a first draft of any legal agreement to secure any such rights. On the contrary, the rights and powers the Applicant is seeking across Little Denmead Farm through the DCO application will prevent our Clients from crossing the access road, which is contrary to any statements the Applicant may have made to our Clients privately.		the effect of Article 30(3)(a) of the draft DCO (document number 3.1) is that the Promoter could take possession of plot 1-71 (the track) for a maximum of 4 years given that the construction and commissioning works for the Converter Station is estimated to take place between 2021 and 2024. This would result in the severe restriction of access for the Clients to their land and for their business (in whatever form that would remain) and these would suffer because heavy vehicles would not be able to access the land they will retain. This resulting situation would be a disproportionate interference with our Clients' interests and rights as no exceptions are available for our Clients to make use of, in order to mitigate the severe impacts. We request that amendments are made to the proposals to allow for heavy vehicles and animals to continue to use this track in our Clients' case, and for practical arrangements to be left to be agreed between the Promoter and our Clients. The Applicant responded at Deadline 2 at para Te1 of document REP2-014 that it would grant our Clients' access over plot 1-71 to resolve these issues. Regrettably, the revised draft Heads of Terms that have now been sent to our Clients do NOT provide these access rights. The Applicant continues to pay

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			lip service to the approach to the taking of our Clients' land against their will and has failed to do what it has represented to the ExA it would do. This is both surprising and disappointing but appears reflective of the private limited company promoting the Application Development and which appears unaccustomed to exercising discretions in the public interest as opposed to in its exclusively private interest. We therefore maintain our Clients' representations in this respect.
17.	**CA1.3.14:** **BLAKE MORGANS' COMMENT AT DEADLINE 2 (REP2-027) ON THE APPLICANT'S RESPONSE:** The ExA asked the Applicant: "*The Relevant Representations from Mr and Mrs Carpenter [RR-054] and Little Denmead Farm [RR-055] raise significant objections with regards to Compulsory Acquisition of farmland and the rights for landscaping around the Converter Station. Notwithstanding the response to Relevant Representations required at Deadline 1, please provide detailed justification as to the approach to Compulsory Acquisition with respect these landholdings and respond to the Compulsory*	The Applicant refers to the answer provided at 4.5.1 above and will continue to engage with the landowner and its advisors to agree the rights required by voluntary agreement, subject to consideration payable for the rights being reasonable.	The Applicant's response does not provide what the ExA has asked for, which is a detailed justification as to the assessment and approach to compulsory acquisition in relation to Little Denmead Farm. The answer the Applicant refers the ExA to relates alone to the Applicant's subjective perspective of how it views its engagement in discussions with our Clients. This approach, however, remains not relevant for the purposes of the ExA's question (please see row 14 of this Table relating to engagement).

	Argument contained in Carpenter's comments on Applicant's response to Relevant Representations under Deadline 1 (REP2-027) (Paragraph Number)	AQUIND response (provided at Deadline 3 in section 3 of Table 2.5 of REP3-014)	BLAKE MORGAN COMMENT AT DEADLINE 4
	Acquisition concerns raised by the landowners, including the concerns of limited consultation and engagement with them despite their land appearing critical to the success of the Proposed Development." The Applicant's response to this effectively repeats its responses to question CA1.3.12. Without wishing to repeat our comments, we refer to our comments at paragraph 4.5 of this letter		

Blake Morgan LLP

17 November 2020

Submitted in relation to Deadline 4

SCHEDULE 2 TO COVERING LETTER

Date: 17 November 2020

Aquind Interconnector application for a Development Consent Order for the 'Aquind Interconnector' between Great Britain and France (PINS reference: EN020022)

Mr. Geoffrey Carpenter & Mr. Peter Carpenter (ID: 20025030)

Summary of the Status of the Carpenters' Written Representations in Light of the Applicant's Responses Submitted to Date During the Examination
Submitted in relation to Deadline 4 of the Examination Timetable

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AQUIND INTERCONNECTOR

DCO APPLICATION REFERENCE EN020022

MR. GEOFFREY CARPENTER & MR. PETER CARPENTER (ID: 20025030)

EXAMINATION - DEADLINE 4 (17 NOVEMBER 2020)

SUMMARY OF THE STATUS OF THE CARPENTERS' WRITTEN REPRESENTATIONS IN LIGHT OF THE APPLICANT'S RESPONSES SUBMITTED TO DATE DURING THE EXAMINATION

To assist the Examining Authority ("ExA") with where our Clients are so far in relation to the Applicant's responses to their Written Representation (REP1-232), we set out below in summary our Clients' contentions and whether the Applicant has addressed these concerns, or not, or incompletely in order to assist the ExA in identifying the remaining outstanding issues.

	Summary of argument	**Status**
	Landscaping	
1.	The Landscaping images are illegible. Requested that the Applicant provides larger scale images of the illustrative landscape mitigation plates shown in paragraph 7.4 of the Design and Access Statement (document number 5.5) or confirm whether these plates are available on a legible larger scale in another Application document. (REP1-232 Para 4.7)	**NOT RESOLVED** The Applicant has failed to address this request for evidence in its Deadline 2 response (REP2-014) We repeated our request in our Deadline 3 submission (REP3-043) that the Applicant address this point. We maintain our request.

	Compulsory Acquisition	
2.	Lawful Justification for use of the Proposed Compulsory Acquisition Powers As the ExA will know but so as to remind the Applicant, the taking of land of a party against its will is the most draconian interference of land rights and the law safeguards against unlawful takings. We have requested the Applicant to provide lawful justification for the envisaged extent and scope of compulsory acquisition powers sought for the Application Development in relation to our Clients' freehold land. For example, the extent of the freehold interest envisaged to be compulsorily acquired in plot 1-32 is currently not justified and so must be limited to the footprint of the Converter Station. (REP1-232 Para 6.5.1)	**NOT RESOLVED** The Applicant has not provided justification for the extent of land envisaged to be taken against the will of our Clients, nor for the scope and nature of the envisaged rights, beyond mere preference for a different landscape appearance extending over a wide area, a desire for unnecessary fibre optic cables and related unmanned Telecommunications Buildings and spur road, and a single use construction access leading to an unmanned Convertor Building. It remains difficult to see how the ExA can lawfully recommend confirmation of section 122 PA 2008 powers, or evaluate the unnecessary fibres for commercial telecommunications (and related infrastructure) as associated development (underpinning section 122 considerations). In REP2-014, the Applicant sidestepped engaging with justifying its envisaged taking of our Clients' land and explained the powers it was seeking in relation to plot 1-32 which we are already aware of. This was a surprising generalised response and without particularisation. The Applicant's response in REP3-014 was an explanation that the justification was contained in the Statement of Reasons (REP1-025) and further that that document is not a standalone document and needed to be considered along with other documents, with the Applicant specifically referring to the Needs and Benefits Report (APP-115) and the Needs and Benefits Addendum - Rev 001 (REP1-135) [sic]. Whilst our Clients' recognise the novel iterative to the envisaged taking of our Clients' land against their will in contrast to the orthodox position whereby (for example) a public authority may be expected to have its case for compulsory acquisition lawfully justified before it starts the authorisation of acquisition process, it remains not justified in extent of area, and scope and nature of rights. The position remains that the extent and scope of acquisition powers cannot be authorised under section 122 of the Planning Act 2008 in relation to our Clients' land.

		We request that the ExA be particularly astute to the seeking by a private limited company of draconian powers by which to take land in the absence of lawful and rational justification. The law does not require our Clients to defend their land from compulsory acquisition in order to avoid authorisation of powers. At about the mid-point of the Examination Hearing process, the extent of land take remains in flux (see the Applicant's Proposed Changes to the Application Area (3rd November 2020). In relation to Proposed Change I, the Applicant's envisaged land take is too small and requires to be increased. In relation to our Clients' freehold land, the Applicant's envisaged land take remains incomplete in relation to its justification. There remains as at the 17th November 2020 no evidence to justify the extent and scope of the envisaged acquisition. The Applicant has not established why it is necessary (and thereafter, proportionate) to acquire the extent of the freehold interest in the entirety of plot 1-32, being a very much greater extent than the proposed footprint of the Converter Station. In this respect, that Converter Station is envisaged to be an unmanned building and so, once built, any regular access would be very limited to mere maintenance. The Applicant has asserted there being "security and safety reasons" for requiring the freehold to the entirety of plot 1-32 but we do not understand that the Converter Station building would be openly accessible but for the wider land take and would be fitted with lockable doors. Other than this, evidence remains unprovided to justify the wide extent and nature of powers sought by the Applicant and no explanation why it cannot modify its powers so that it only acquires the freehold interest covering the footprint of the Converter Station. The initial Needs and Benefits Report (APP-115) (very recently amplified by the Needs and Benefits Addendum – Rev 001 (REP1-136)) do not justify the extent of the land take envisaged nor the scope of powers. The reliance placed by the Applicant on the scope of the Secretary of State's Direction is misplaced. We note that our concerns align with those of the ExA which has also asked the Applicant to provide lawful justification for the use of compulsory acquisition powers over our Clients' land in its (very) First Written Questions (CA1.3.14). Surprisingly, but in line with its underlying lack of justification for the taking of

		the extent and scope of our Clients' land, the Applicant's response in Table 2.5 of REP3-014 refers to its efforts to reach a private agreement. We therefore maintain our representation in this respect and envisage proposing changes to the draft DCO as to the extent and scope of land envisaged to be taken and the scope of the Application Development to align with the development lawfully requiring development consent.
3.	Justification for Compulsory Acquisition of Freehold Interest of Land to be Landscaped Requesting justification for acquiring the freehold interest of the remaining land in plot 1-32 that will be landscaped. (REP1-232 Para 6.5.2)	**NOT RESOLVED** The Applicant has not provided a response to this. The Applicant's position appears to be that a large landscape belt is envisaged around the Convertor Station so as to mitigate the impact of that large building on the National Park's setting i.e. without that landscape belt, the effect would be material and the impact weight against the project. This raises consideration of whether alternative locations not requiring landscaping have been lawfully addressed, and the question of whether landscape mitigation measures for a project (as opposed to the project elements itself) can lawfully justify here the taking our Clients' land against their will. The Applicant's generalised response in Table 2.5 of REP3-014 refers our Clients simply to numerous 'strategy' documents of various local authorities which has formed the basis for the detail of the proposed landscaping, but the Applicant fails to justify a logically prior matter: why do they need to compulsorily acquire our Clients' freehold interest for landscaping when the land is undeveloped? They have explained why they are proposing to landscape the land in this way, but have not provided a justification for these particular compulsory acquisition powers in respect of the Application project elements. The genesis of this particular mitigation measure therefore remains opaque. For example, no justification has been given by the Applicant for why it needs to compulsorily acquire the extent of the area of land located to the west of Stoneacre Copse and east of the access road or the area of land situated to the west of the access road, north of the Telecommunications Building when such areas of land will only be used as grassland. The Applicant seeks to establish that the acquisition of land and rights around the Converter Station footprint is necessary and proportionate for the development so that the Applicant can address concerns over the need to

		improve connections to nationally important habitats as referred to, by a single sentence, in the Applicant's Reponses to Written Representations (4.23) (REP2-014). If the purpose of these powers is to improve connections to nationally important habitats, why is this proportionate and necessary in the context of the purpose of the infrastructure? As the Applicant points to the Needs and Benefits report to indicate the proportionality of its desired acquisition, this needs and benefits report does not extend to the need to create habitat cohesion. In addition, if the Applicant was simply seeking to create better habitat cohesion with the Ancient Woodland, why can this not be done by means other than acquisition? We maintain our representation in this respect.
4.	Alternative Compulsory Acquisition of Landscaping Rights The Applicant should seek to compulsorily acquire new landscaping rights over the part of plot 1-32 to be landscaped (rather than permanent acquisition of the freehold interest). (REP1-232 Paras 6.5.3 & 6.5.4)	**NOT RESOLVED** In line with its generalised approach, the Applicant has not provided a particularised response to this. The responses we could locate were CA1, CA2 and CA3 of REP2-014, but they do not directly relate to this representation. Therefore, the Applicant continues to be unable to particularise its case in relation to our Clients' land. We have reviewed the updated Outline Landscape and Biodiversity Strategy in REP1-034 but it does not provide the information to justify the extent or scope of the envisaged enforced land take and is (another) 'strategy' document. A less intrusive means to ensure landscaping would be for the Applicant to seek (or the ExA to restrict the scope of rights to) a right to enter and establish and periodically maintain landscaping for a period over our Clients' land in conjunction with its subsisting freehold use for pasture and animal use. We proposed that, if the Applicant can lawfully justify the extent of land necessary, then the Applicant be restricted to relying on landscaping rights (rather than compulsory acquisition of the freehold to the entire area of plot 1-32). We note that it is logically inconsistent to substitute a third party farmer or agricultural contractor in place of our Clients who remain the farmers of their freehold land. In this respect we note that:

		(a) the frequency of landscaping management activities is envisaged to be up to twice a year; (b) the proposed landscaping be natural landscaping (not ornamental); (c) agricultural contracting businesses is a broad category that can cover a whole manner of activities and not necessarily specialise in landscaping; (d) the Applicant envisages taking our Clients' freehold interest in their land in order to grant a landscaping contract to another farmer whereas that very proposal by the Applicant justifies it not taking the freehold of our Clients' land because a mere change in the identity of a person could not justify a draconian taking of land; and (e) whereas the Applicant continues to refuse to engage with our Clients, it has not been suggested that landscaping access terms could not be agreed. There remains no need for the Applicant to own the freehold interest to parts of plot 1-32 that are to be planted up for landscaping. The envisaged taking of freehold land for the mere planting in the land surface of plants remains not justified and could be ensured by lesser rights over land. We maintain our representation in this respect.
5.	Alternative Landscaping Rights Protected by Article 23 of the Draft DCO There is therefore no need for the permanent compulsory acquisition of the freehold interest in the entirety of plot 1-32. Alternative landscaping rights over the relevant parts of plot 1-32 would be protected by Article 23 which includes powers to impose restrictive covenants, prevent operations which may obstruct, interrupt or interfere with the infrastructure and the exercise of the new rights granted over the land. (REP1-232 Para 6.5.5)	**NOT RESOLVED** The Applicant has not provided a response to this. The closest generalised responses we could find were CA1, CA2 and CA3 of REP2-014, but they do not directly relate to this representation. We maintain our representation in this respect.

6.	Alternative Compulsory Acquisition of New Access Rights The Applicant could compulsorily acquire new rights of access to the part of the new access road in plot 1-32 instead of compulsorily acquiring the freehold interest. (REP1-232 Para 6.5.6)	**NOT RESOLVED** No response provided. We therefore maintain our representation.
7.	Compulsory Acquisition – Telecommunications Building The Applicant has failed to demonstrate that the extent of the compulsory acquisition is proportionate, taking only what is required, in relation to the Telecommunications Building (plot 1-32) with no explanation as to why this building cannot be situated further east or located within the Converter Station compound. (REP1-232 Para 6.5.7)	**NOT RESOLVED** The Applicant has explained in Table 2.5 of REP3-014 that it needs to situate the Telecommunications Building to minimise visual impacts and to minimise impacts on Stoneacre Copse. (Leaving aside the absence of lawful justification for this Telecommunications Building and its cabling), the Applicant fails to justify the basis for the great distance between it and the Converter Station building and the basis for the Telecommunications Building situation farther west from the envisaged (temporary) access road to avoid the fragmentation of an additional paddock. The Applicant has failed to evidence the physical need for any gap between the Converter Station and the Telecommunications Building, a point we raised some time ago in paragraph 6.5.7 of our Clients' written representations (REP1-232) and not yet acknowledged by the Applicant. The Telecommunications Buildings are also unnecessary because they are parasitic on the unnecessary fibre optic cables, being “required solely in connection with the commercial use” of the fibre. See paragraph 5.4 of the “Statement in Relation to FOC”, Document Ref: 7.7.1. The spur road serving the Telecommunications Buildings is also unnecessary, being parasitic on the situation of the Telecommunications Buildings, it is difficult to see how there is any justification for a spur road to it. Similarly, once erected, the Convertor Station (and Telecommunications Buildings) will be unmanned. Since such buildings would not be manned, it is difficult to see how a permanent spur or access road could be justified instead of a less intrusive temporary road for construction purposes.

		We therefore maintain our representation.
8.	Compulsory Acquisition – Powers of Temporary Possession Questioned the need to compulsorily acquire our Clients' freehold interest in the entirety of plot 1-32 if the Applicant would have powers of temporary possession should it only compulsorily acquire new landscaping rights and new access rights over the majority of plot 1-32. (REP1-232 Para 6.5.8)	**NOT RESOLVED** No response provided. We therefore maintain our representation.
9.	Compulsory Acquisition – Business Impact Reducing Little Denmead Farm to 22 acres renders it an unviable business as a livestock farm with a significant detrimental impact on the remaining parts of the farm (with existing fields split up, leaving small, irregular shaped paddocks, making it difficult for livestock to graze and insufficient space for livestock to graze, rendering access difficult) with no other suitable farming land of this size available in the vicinity. Paragraph 17.9.1.3 of Chapter 17 of the Environmental Statement (document number 6.1.17) refers to farms being affected but it is impossible to know which farms are being referenced. Applicant requested to explain what its assessment of Little Denmead Farm is in this context. The Applicant has failed to adequately assess the significant harm the proposals would have on the ability of our Clients' business to continue, considering only the type of agricultural land that would be lost and failing to consider the effect on the agricultural business that operates on that land. (REP1-232 Para 6.5.9)	**NOT RESOLVED** In Table 2.5 of REP3-014 the Applicant responded by asserting that its relevant baseline is its description of the farm holding affected as it set out in paragraph 17.5.1.8 of Chapter 17 of the ES (Soils and Agricultural Land Use) (APP-132) and the impacts during construction at paragraph 17.6.2.10. This states that approximately 12.8 ha (60% of the land holding) will be required temporarily and permanently from Little Denmead Farm, which would be a high magnitude of impact on a low sensitivity holding and give rise to moderate adverse temporary and permanent effects, which are considered significant for the farm. The Applicant further states that the impact on the land holding has *therefore* been formally assessed within the ES. The Applicant's reference to Chapter 17 the ES (Soils and Agricultural Land Use) (APP-132) does not deal with the particular question of **business impact** arising from the Application Development and the proposed compulsory acquisition of our Clients' freehold land. Paragraph 17.5.1.8 of Chapter 17 of the ES (Soils and Agricultural Land Use) (APP-132) state that the proposals "*give rise to **moderate** adverse temporary and permanent effects. These are considered to be significant effects on the farm.*" As such, we maintain our representations in this regard. The Applicant has continued to fail to adequately assess the significant harm that the DCO would have on Little Denmead Farm's ability to function as a whole as a single farm business. The Applicant has failed to assess the loss of business and livelihood (in relation to our Clients and also in general) in the context of the examination into whether the

		compulsory acquisition powers being sought satisfy the relevant legal and guidance requirements (as opposed to compensation). The Applicant asserts that Little Denmead Farm is not a livestock business. This assertion is incorrect. Our Clients' farm remains capable of livestock farming at all times, save only that livestock be situated on their land. As they have explained in REP2-027, the sole reason why there is currently no livestock on their farm is because they previously sold their livestock in the foreshadow of the Application out of fear and misunderstanding when they were first notified of the DCO application and the threat of compulsory acquisition first arose. Surprisingly, the Applicant has criticised our Clients for doing this in Table 2.5 of REP3-014, which is also disappointing as our Clients did not have the benefit of any legal representation at that time and were merely behaving as any other lay person would reasonably do in those circumstances of such a threat to their ongoing business. The Applicant's assertion that our Clients' farm is not a livestock farm business relies on a bootstraps argument and is otherwise without real foundation. As such, we maintain our representations in this regard.
10.	Compulsory Acquisition – Alternative Power of Temporary Possession Articles 30 and 32 of the draft DCO introduce uncertainty, and to a large degree, over what land within the Order Limits that our Clients will retain its freehold ownership of (plots 1-38, 1-51, 1-57, 1-69, 1-70, 1-71, and 1-72). Not knowing whether in practice the Applicant could take temporary possession of these plots too will make it impossible for our Clients to plan ahead or to assess how soon they could be to losing their business. The effect of Articles 30 and 32 is not accurately reflected in the Land Plans (document number 2.2) or the Book of Reference (document number 4.3). Request that the relevant Land Plans and that the Book of Reference be amended to	**NOT RESOLVED** No response provided. We therefore maintain our representation.

	make it clearer that many more plots of land are under the threat of temporary possession. (REP1-232 Para 6.5.10)	
11.	Restoration of Land Used Temporarily for Construction Requirement 22 of Schedule 2 to the draft DCO does not state how the "former condition" is to be assessed and by whom, nor is there any requirement on the Applicant to agree with the relevant owner of land what the "former condition" is. Request amendment to Requirement 22 to oblige the Applicant to obtain an independent and suitable assessment to establish the baseline condition of the relevant land before temporary possession and use commences. (REP1-232 Para 6.7.2)	**NOT RESOLVED** The OOCEMP referred to in the Applicant's response (REP1-087) contains limited reference to restoration provisions. The Applicant's Response contains gaps and is inadequate in failing to provide detail and fails to address important landscape and ecological elements that would be reasonably expected to be included in the justification for taking our Clients' land against their will and reduce the long term impacts on our Clients. We therefore maintain our representation.
12.	Exploration of all reasonable alternatives to compulsory acquisition. There has been very little negotiation with our Clients or effort by the Applicant to reach a voluntary arrangement and avoid seeking compulsory acquisition powers. Request that the Applicant be required by the Secretary of State to put more effort and time into seeking a voluntary arrangement with our Clients. (REP1-232 Para 6.8)	The Applicant has provided its own perspective of its engagement with our Clients in Table 2.5 of REP3-014. Our Clients disagree with the Applicant's account of fact. The Applicant has, for the very first time, however, soon after Deadline 3 suddenly sent us revised draft Heads of Terms which we are currently considering on behalf of our Clients. We, however, reserve the right to make further comments on the Applicant's quality and frequency of engagement should this deteriorate once again.
13.	Compulsory Acquisition – Impact on Human Rights Articles 1 and 8 of the European Convention on Human rights have been infringed due to:	**NOT RESOLVED** No response provided. We therefore maintain our representation.

	(a) the Applicant not seeking to minimise the amount of land it needs to compulsorily acquire; (b) Less intrusive measures being available – the Applicant does not have to compulsorily acquire all of our Clients' freehold interest and less intrusive compulsory acquisition powers can be sought; and (c) there is no compelling case in the public interest for the extent of the powers being sought with the harm outweighing the potential societal gain. The Applicant has therefore not met the requirements of law and Guidance (REP1-232 Para 6.9)	These Articles remain, surprisingly but not unexpectedly, unsatisfied as at Deadline 4.
	Access & Rights of Way	
14.	Access to Track Requested amendments to the proposals to allow our Clients to continue to use the track in plot 1-71 for heavy vehicles and animals where Article 30(3)(a) of the draft DCO currently allows the Applicant to take possession of the track for up to 4 years during construction and commissioning works. Heavy vehicles would not be able to access the land our Clients would retain. This is a disproportionate interference with our Clients' interests and rights as no exceptions are available for our Clients. Amendments to the proposals were requested to allow for our Clients' heavy vehicles and animals to continue to use this track. (REP1-232 Para 6.7.1)	**NOT RESOLVED** The Convertor Station is envisaged to be an unmanned building once completed and so access to its perimeter would necessarily be limited to periodic maintenance and inspection. No decommissioning is envisaged by the Application nor has it been justified. It can, therefore, be anticipated that the Converter Station would remain in perpetuity. There appears to our Clients' no rational basis for the maintenance of a permanent access way over their land between the highway and the Station footprint after its erection. Rather, there is no reason why no more than access rights for maintenance (but not for decommissioning) may be required. This would reduce the extent of land take and the scope of rights sought to be taken also whilst simultaneously enabling our Clients' to maintain their farming

		business, raise livestock and live in their Farm (instead of it being decimated and destroyed as a going concern). The Applicant responded at Deadline 2 at para Te1 of document REP2-014 that it would grant our Clients access over plot 1-71 to resolve these issues but this puts the cart before the horse and avoids the logically prior justification for the prior taking of our Clients' freehold land in the first place. Further, the revised draft Heads of Terms that have now been sent to our Clients **do NOT** provide these access rights. The Applicant has therefore failed to do what it has told the ExA it would do. We therefore maintain our Clients' representations in this respect.
15.	Temporary Stopping UP of Footpath 4 and Footpath 16 Footpath 4 and Footpath 16 could be temporarily stopped up for up to 4 years, making it near impossible for our Clients to operate a reduced-scale farming and agricultural business with potential loss in income and livelihood. Paragraph 22.6.5.12 of chapter 22 of the Environmental Statement (document number 6.1.22) states that there is an alternate route via PRoW 19 and 28. In our Clients' case, given their age and health conditions, PRoW 19 and 28 will not be alternate routes due to their distance. (REP1-232 Para 7.8)	**NOT RESOLVED** The Applicant has artificially restricted its discussions to state that it will discuss with our Clients to attempt to agree suitable measures to accommodate access. The Applicant appears to consider that the authorisation by the Secretary of State (following a recommendation from the ExA) to obtain compulsory purchase powers over the whole of our Clients' land for the Application Development is a given. We request that the ExA scrutinise with care the Applicant's case for its Application Development and the extent of land take and range of rights sought through the appropriate lens of compulsory acquisition. Given the Applicant's (at best) 'lip service' approach to privately agree terms thus far at Deadline 4, we therefore maintain our representation that amendments be made to the draft DCO to align its terms to the lawful extent of the Application Development and to such of the compulsory purchase powers as may (or may not) be justified and, if so, that express rights of access are granted to our Clients.
16.	Access for Horse and Larger Vehicles	**NOT RESOLVED**

	Article 13(3) of the draft DCO does not extend to granting our Clients access for their horses or larger vehicles which must use Footpaths 16 and 4. (REP1-232 Para 7.9)	The Applicant has stated that it will only discuss with our Clients to attempt to agree suitable measures to accommodate access. Given the Applicant's minimal attempts at engaging in reaching a private agreement thus far we therefore maintain our representation that amendments be made to the draft DCO so that express rights of access are granted to our Clients.
	Noise & Vibration	
17.	Analysis of Effects of Noise on Little Denmead Farm Chapter 24 of the Environmental Statement lacks a simple analysis of what the data presented for Little Denmead Farm as sensitive receptor R5 mean and lacks an explanation as to how the Applicant concluded that overall noise effects from the proposed works and the operation of the Converter Station would be "negligible". (REP1-232 Para 8.1)	**NOT RESOLVED** Whilst the Applicant refers to some mitigation measures in REP2-014 and in REP3-014, it does not justify how they will mitigate the noise and vibration impacts in relation to Little Denmead Farm itself. For example, the second paragraph of Table 5.17 of REP1-160 seems to be a restatement of the Applicant's assertion that operational noise effects are expected to be negligible, and it does not address our request for a specific explanation as to how our Clients' concerns relating to Little Denmead Farm have been addressed and assessed. Similar arguments have already been responded to by us at rows 16, and 29 of our REP3-043. The Applicant has also referred us to the non-technical summary of Chapter 24 of the Environmental Statement. Chapter 24 of the Non-Technical Summary (REP1-079) does not provide the information and clarity we requested in relation to Measurement Point 1 and R5. It does not contain any further explanation of the conclusion that there will be a negligible effect in relation to these two specific receptors. For example, paragraph 24.3.1.2 of REP1-079 states that *"Additional construction stage mitigation, such as consideration of programme changes to reduce **residents'** noise exposure, is also specified **for some areas of construction** where work is being undertaken during sensitive periods and/or very close to sensitive receptors.."* but it does not state which residents and which sensitive receptors will benefit from this. Paragraph 24.3.1.3 of REP1-079 also states *"Additional mitigation has been recommended to reduce Converter Station noise levels **at one receptor**."* Do these relate to Little Denmead Farm?

		We therefore maintain our representation.
18.	Noise from Vehicular Movements Paragraph 3.7.1.3 of Chapter 3 of the Environmental Statement (document number 6.1.3) states that Converter Station Area construction works will take place in 10-hour shifts over six days a week, with one hour either side of these hours for start-up/shut down activities, oversized deliveries and for the movement of personnel. This will cause significant noise impacts for our Clients, given their proximity and health issues. (REP1-232 Para 8.2)	**NOT RESOLVED** Chapter 24 of the ES lacks an analysis in layman's terms of what all the different sets of data presented for receptor R5 (Little Denmead Farm) mean and an explanation as to how the Applicant concluded that overall noise effects from the proposed works and the operation of the Converter Station would be "negligible". We asked the Applicant to explain how it reached the conclusion that there would be no significant effects on Little Denmead Farm where there will be 10-hour construction work shifts over six days a week, between 8am and 6pm, with one hour either side of these hours for start-up/shut down activities, oversized deliveries and for the movement of personnel, all taking place within 300m of Little Denmead Farm. The Applicant has failed to provide an explanation. For example, the Applicant in Table 2.5 of REP3-014 refers us to Table 5.15 of REP1-160 which refers to conclusions relating to the prospect of building damage as a result of noise and vibration, whereas our Clients' concerns stretch to wider impacts on their amenity and livestock land use. The Applicant's provision of additional references in Table 2.5 of REP3-014 (to information relating to noise and vibration predictions) does not answer the points we have made in relation to our Client's health. The Applicant stated in Table 2.5 of REP3-014 that the data collected during the Applicant's baseline noise survey were used to inform the noise criteria used in the operational assessment of converter station noise and that for the operational assessment, the term 'negligible' is used to describe an effect where the noise level from the Converter Station is equal to or below the noise assessment criterion (i.e. does not exceed the existing background noise level at a given receptor). To summarise, Tables 24.21 to 24.24 of Chapter 24 of the ES (APP-139), in relation to our Clients. 1. Construction of main site access road – 55dB – Negligible 2. Establishment of car parking and site welfare area – 53dB negligible

		3. Construction of substructure of telecommunications buildings – 53dB – negligible 4. Construction of superstructure of telecommunications building – 52dB – negligible 5. Landscaping car parking and site welfare area – 52dB – negligible We question why the impact of the building of the substructure and the superstructure of the converter station for receptor R5 (Little Denmead Farm) has been excluded from Tables 24.22 and 24.23. We therefore maintain our representation.
19.	Noise Reduction Methods Questioned whether a 300m distance was an appropriate maximum distance to measure sensitive Receptors from (given our Clients' residential properties lie within 300m of the construction activities). Requested the Applicant to explain the basis of selecting this distance. Asserted that an estimated 3-year construction and commissioning period for the Converter Station is not a "temporary" period of time and exposure to noise impacts for such a long period of time, would cause significant harm which has not been adequately assessed. Applicant requested to explain what specific noise reduction methods it would apply in relation to our Clients given their circumstances and location. (REP1-232 Para 8.3)	**NOT RESOLVED** The Applicant's response in Table 2.5 of REP3-014 that the justification for undertaking noise predictions for all receptors within 300m of a given construction activity follows the guidance in BS 5228, and clarified that where a receptor is located closer than 300m from a given construction activity, the actual distance between the construction activity and the receptor has been used to predict the noise level at that receptor. The Applicant further stated that environmental effects are classified as either permanent or temporary, and permanent are those changes which are irreversible or will last for the foreseeable period and that construction noise and vibration activities are considered to be temporary effects which is an accepted EIA approach and that due to the negligible construction noise and vibration effects identified at Little Denmead Farm, no additional noise mitigation measures to those contained in the Onshore Outline CEMP (REP1-087) are considered necessary. We note that paragraph 24.4.2.6 of the Environmental Statement (APP-139) explains that BS 5228-1 states that construction noise predictions at distances over 300m should be treated with caution due to the increasing importance of meteorological effects and uncertainty regarding noise attenuation over soft ground. Furthermore, given the large distances involved, no significant construction effects would occur at distances beyond 300m. However, this does not answer our initial argument of why a lesser distance was not chosen that might have been more representative of the receptor sites, rather than

		selecting a distance of 300m which is just on the borderline of the warning relating to using this standard. With regard to the Applicant's response as to what is "temporary", paragraph 4.2.4.1 of the Environmental Statement (APP-119) states that the duration of effects lasting between 1 and 5 years are classed as "medium term". The 3 year construction period will therefore be a medium term effect. That in itself sounds more serious than a "temporary" effect. The Applicant also, yet again, makes a blanket reference to a large section of the Environmental Statement (para 24.6.2 of APP-139) that we are already aware of and that our Clients' written representation is based on in this regard. No attempt has been made by the Applicant in its response to demonstrate it has adequately assessed the specific impacts on our Clients. Simply telling us which large section we need to read (already knowing we have read it) is not enough. The Applicant remains unable to explain **why and how** it has concluded that the effects of noise and vibration will be negligible specifically in relation to Little Denmead Farm and our Clients' specific health conditions, based on the technical analysis contained in Chapter 24 of the ES. The Applicant continues to merely state they will be negligible. We therefore maintain our representations in this regard.
20.	Responding to Noise Complaints There is no obligation in the 'Community Liaison' section of the Onshore Outline Construction Environmental Management Plan (document number 6.9) to take positive steps to deal with source of noise complaints, only a 'review'. (REP1-232 Para 8.4)	**NOT RESOLVED** The Applicant responded in Table 2.5 of REP3-014 that section 5.12 of the Onshore Outline CEMP (REP1-087) will require all on-site contractors to follow Best Practicable Means, as defined in the Control of Pollution Action 1974 and that in the event of a noise complaint, the contractor will review and ensure that working practices are mitigating noise and vibration as far as reasonably practicable and that the detailed CEMP will contain detailed information on a procedure in the event of complaints, to be agreed in consultation with local planning authorities' environmental health departments. The Applicant's response does not address the gap we have identified. There has been no change in that section to create an obligation to take positive steps to deal with the source of a complaint, and any detailed CEMP will need to be in line with the provisions of the outline CEMP. The possibility of a complaints

		procedure is toothless and so not relevant to the concerns we are raising because it still does not oblige positive steps to be taken to resolve issues that arise. We therefore maintain our representations in this regard.
21.	Noise from Vehicular Movements Requested that the Applicant confirms whether the analysis in the noise chapter of the Environmental Statement (chapter 24) takes into account the HGV movements and employee car movements and explain what specific noise mitigation measures will be put into place for residents who live directly next to plot 1-32. (REP1-232 Para 8.5)	**NOT RESOLVED** The Applicant responded in Table 2.5 of REP3-014 that the construction stage road traffic noise assessment has accounted for the construction traffic (both HGV and employee car movements) created by the Converter Station and Onshore Cable Corridor construction activities on the wider road network (Paragraph 24.4.4.4 of Chapter 24 of the ES (APP-139)), but the use of the Converter Station access road had not been included in the noise and vibration assessment. This is surprising, not least because our Clients' land remains a livestock farm and livestock kept on the land would be alarmed by the crashing and banging of construction of the Convertor Station and other structures and emplacements. The Applicant stated that the access road will not result in any significant noise or vibration effects, due to the access road being over 50m away from the farm and that no additional noise mitigation measures to those contained in the Onshore Outline CEMP (REP1-087) specific to Little Denmead Farm are necessary. Little Denmead Farm is within 300m of the Converter Station and is a classed as a sensitive noise and vibration receptor in itself. The Applicant candidly admits that the access road has not been considered in the noise and vibration assessment. This is a significant admission. In light of this, the Applicant has no technical evidential basis to conclude that the vehicle movements will not result in any significant noise or vibration effects. The Applicant has no evidence to support this assertion.

		We therefore maintain our representations in this regard.
	Dust	
22.	Dust Risk Level Applicant to explain the conflict in risk level between Table 5.2 on page 5-50 of the Onshore Outline Construction Environmental Management Plan (document number 6.9) stating a medium risk and Table 23.78 (Summary of the Overall Dust Risk Construction Site Activity) of chapter 23 of the Environmental Statement (document number 6.1.23) stating that there is a high risk of dust. Seek confirmation of which risk level is correct, and why. (REP1-232 Para 9.2)	**RESOLVED** The Applicant confirmed in their Deadline 2 response (REP2-014) that the Converter Station Area is at a high risk of dust impacts.
23.	Impact of Dust during Construction A construction and commissioning works period for three years cannot be classed as being "temporary" and illogical to conclude that there is a low impact of dust if there is also assessed be a high risk of dust. (REP1-232 Para 9.3)	**NOT RESOLVED** No response provided. We therefore maintain our representation.
24.	Dust Mitigation Measures Questioned whether the measures in the Onshore OCEMP go far enough and how realistic it would be to catch all sources of dust with water sprays. Noted that there were no details of what "precautions" will be taken when transporting materials off-site and no guarantee that air monitoring would be carried out to check effectiveness of the measures taken. Requested stronger binding measures ensuring that the anticipated high risk of dust will be mitigated.	**NOT RESOLVED** In AQ2 of REP2-014 the Applicant stated that the mitigation measures set out in the Onshore Outline Construction Environmental Management Plan (REP1-087) are considered to be sufficient. The revised OCEMP (REP1-087) continues to have gaps in respect of the matters we raise. We requested that the Applicant explain why it considers the measures to be "sufficient" and refuses to commit to monitoring the air for

	(REP1-232 Para 9.4)	construction dust whilst accepting that its activities will generate a high risk of dust. We therefore maintain our representation.
	Air Quality	
25.	Emissions During Construction We questioned how a three year construction period equates to involving "temporary" emissions from construction vehicles in paragraphs 16.6.1.9 and 16.6.1.10 of Chapter 16 the Environmental Statement (document number 6.1.16). (REP1-232 Para 10.2)	**NOT RESOLVED** The Applicant responded in REP2-014 that the assessment in Chapter 23 (Air Quality) had been revised providing detail on air quality changes associated with back-up diesel generators and additional modelling for NOX concentrations, nutrient N deposition and N acid deposition at the adjoining ancient woodland site. We requested that the Applicant explain what the new details revealed and concluded, and provide a specific response to the points we made in paragraph 10 of REP1-232. We therefore maintain our representation.
	Land Contamination	
26.	Paragraph 16.6.1.8 of Chapter 16 of the Environmental Statement (document number 6.1.16) does not elaborate on what "effects" could be caused to Stoneacre Copse from increases in pollutants during the construction stage, nor is there a positive requirement in the draft DCO to remediate any contamination of land outside the Order Limits (REP1-232 Para 11.1)	**NOT RESOLVED** The Applicant responded in REP2-014 that the assessment in Chapter 23 (Air Quality) had been revised providing detail on air quality changes associated with back-up diesel generators and additional modelling for NOX concentrations, nutrient N deposition and N acid deposition at the adjoining ancient woodland site.

		We requested that the Applicant explain what the new details revealed and concluded, and provide a specific response to the points we made in paragraph 11 of REP1-232. The Applicant also stated that contamination within the Order Limits would be remediated under Requirement 13 of the DCO (REP1-021) and mitigation measures make the spread of contamination outside of the Order Limits highly unlikely. Our Clients' points in relation to remediation outside the Order Limits still stand. Section 5.5 of the revised OCEMP (REP1-087 & REP1-088) relates only to measures to prevent pollution of surface water and ground water. There is no section 6.9.2 in the revised OCEMP (REP1-087 & REP1-088). We therefore maintain our representation.
	Artificial Light	
27.	Lack of Definition of "Exceptional Circumstances" No definition of "exceptional circumstances" in Requirement 23 of the draft DCO in which operational external lighting is allowed. (REP1-232 Para 12.3)	**NOT RESOLVED** The Applicant's response in REP2-014 merely repeats the drafting inadequacies we objected to. We therefore maintain our representation.
28.	Lack of External Lighting Strategy No requirement in the draft DCO for the Applicant to submit any form of external lighting strategy for operational purposes in relation to exceptional circumstances to the relevant local planning authority. (REP1-232 Para 12.5)	**RESOLVED** The Applicant provided further information on lighting as part of Deadline 1. The updated Onshore Outline Construction Environmental Management Plan (REP1-087) requires the appointed contractor to develop a Lighting Scheme for the Construction and Operational Stages of the Converter Station Area.

29.	Request that Requirement 23 in the draft DCO be amended to require the submission of a lighting strategy and a particular definition of "exceptional circumstances". (REP1-232 Para 12.6)	**PARTIALLY RESOLVED** The Applicant provided further information on lighting as part of Deadline 1. The updated Onshore Outline Construction Environmental Management Plan (REP1-087) requires the appointed contractor to develop a Lighting Scheme for the Construction and Operational Stages of the Converter Station Area. In relation to the definition of "exceptional circumstances", as noted above, the Applicant's response in REP2-014 merely repeats the sloppily framed drafting we objected to. We therefore maintain this part of our representation.
	Human Health	
30.	Impacts from Air, Dust, Light, Noise and Vibration It is questionable to conclude that the impacts on human health within the Converter Station Area from air, dust, light, noise and vibration during construction and operation will be negligible to minor adverse given the conclusions in Chapter 26 of the Environmental Statement that there could be associated adverse effects on psychological health for nearby residents given that the residual operational noise from the Converter Station Area will be permanent and long-term and given the age and health conditions of our Clients. (REP1-232 Para 13)	**NOT RESOLVED** No specific response provided. We therefore maintain our representation.
	Wildlife & Conservation	
31.	Badgers	**NOT RESOLVED**

	Questioned the extent to which the assessment in chapter 16 of the Environmental Statement (Onshore Ecology) (document number 6.1.16) considers the presence of wildlife on our Clients' land and how they will be protected from harm. Noted the presence of badgers and questioned whether there would be a requirement to conduct further assessment before works begin, to ensure their protection.	Our questions related to the extent of assessment and asked if there was to be a further assessment of badgers to identify the presence and extent of a clan. The Applicant's response in REP2-014 did not substantively address the points raised about the re-assessment of badgers. We therefore maintain our representation.
32.	Reinstatement Asked the Applicant to explain how it has factored in the amount of time it would take to restore the loss of important species through re-landscaping and re-planting. (REP1-232 Para 14.2)	**NOT RESOLVED** The Applicant's response avoided and failed to address the point we make. Their response only referred to the carrying out of reinstatement work to land to restore its former condition, which may not be the same thing as actually restoring the land to its former condition. The Applicant was asked to clarify whether it is confirming it will take 12 months to restore the loss of important species. If so, would Requirement 22 of the draft DCO should be amended to make it clear that the 12-month period includes the restoration of the loss of important species. We therefore maintain our representation.
	Hedgerows	
33.	No explanation or assessment provided as to how long it will take for the new planting to grow in order to provide an increase in the overall long term area of habitat. Therefore difficult to accept that there will be a low magnitude of impact on species affected by hedgerow removal. (REP1-232 Para 15.4)	**NOT RESOLVED** The Applicant's responses did not address the point we made. We therefore maintain our representation.

	Decommissioning	
34.	Selection of Converter Station Option Requirement 4 of Schedule 2 of the draft DCO does not state to who the Applicant needs to provide its confirmation regarding which option will be selected for the Converter Station (REP1-232 Para 16.1)	**RESOLVED** Requirement 4 of the updated draft DCO submitted at Deadline 1 (document reference REP1-022) was amended to address our comment.
35.	The Draft DCO does not contain any provisions relating to decommissioning (REP1-232 Para 16.2)	**NOT RESOLVED** The Applicant responded in REP2-014 that development consent was not being sought for decommissioning as part of the application and that it considered that a Requirement securing a decommissioning strategy is not necessary. This assumes that the Convertor Station and other Application Development will remain in perpetuity. This is surprising because infrastructure in England is commonly expected to have a lifespan of, for example, 125 years at most. In this Application, however, the Applicant has confirmed that the Application Development would have a much shorter life space of 40 years. Therefore, there is no justification for the period of land acquisition to be greater than 40 years. It follows that the scope and extent of compulsory purchase powers to take the freehold of our Clients' land remains unjustified and that, instead, a lease of 40 years would be sufficient to enable the Converter Station to be situated on their land, with access rights for the Applicant thereto. Further, on its own evidence of its accepted basis that the onshore design life is 40 years, the Applicant accepts that decommissioning will be required in about 2060. But the Applicant only goes as far as stating that it will be done in "the appropriate manner". This response evidences that the Applicant has no idea how it may decommission the Application Development (if at all). How is

		that to be judged? How will it be controlled? Who will decide its impacts? In the absence of any decommissioning plan at Deadline 4, is it envisaged to 'repower' the Application Development in 40 years' time by substituting then new equipment and cables? These questions remain unanswered. We therefore maintain our objection in this regard.

Blake Morgan LLP

17 November 2020

Submitted in relation to Deadline 4

SCHEDULE 3 TO COVERING LETTER

Date: 17 November 2020

Aquind Interconnector application for a Development Consent Order for the 'Aquind Interconnector' between Great Britain and France (PINS reference: EN020022)

Mr. Geoffrey Carpenter & Mr. Peter Carpenter (ID: 20025030)

Interested Party Comments on the Examining Authority's Procedural Decision dated 11 November 2020 to Accept the Applicant's Proposed Changes to the Application Development Area (Letter References PD-019 and PD020)

Submitted in relation to Deadline 4 of the Examination Timetable

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AQUIND INTERCONNECTOR

DCO APPLICATION REFERENCE EN020022

MR. GEOFFREY CARPENTER & MR. PETER CARPENTER (ID: 20025030)

EXAMINATION - DEADLINE 4 (17 NOVEMBER 2020)

INTERESTED PARTY COMMENTS ON THE EXAMINING AUTHORITY'S PROCEDURAL DECISION DATED 11 NOVEMBER 2020 TO ACCEPT THE APPLICANT'S PROPOSED CHANGES TO THE APPLICATION DEVELOPMENT AREA (LETTER REFERENCES PD019 and PD020)

1. On the 3 November 2020, the Applicant proposed numerous changes to the area of its Application. The changes fall into two categories: (a) reductions in the area of land envisaged for the Application Development; and (b) increase in the area of land envisaged for the Application Development.

2. We refer to the Examining Authority's ("ExA") Procedural Decision dated 11 November 2020 to accept the Applicant's changes to the Application (letter references PD-019 and PD-020) in category (a). We also concur with the ExA's interim decision that the proposed addition of no less than some 1,457m^2 of land (required to be taken to ensure adequate working width is available for the Rovers' Football Club pitch following the taking of other areas of their land) is a material change that necessarily requires to be advertised due to the compulsory nature of the powers used for taking that land.

3. We have interpreted these letters as meaning that the ExA's position is that it remains at this time unable to conclude in advance of the conclusion of that advertising process (and the opportunity for any third party to comment on the same) whether, on the then available evidence, the proposed changes to the Order Limits to include additional land to be compulsorily acquired constitutes an acceptable change.

4. We understand the letters to mean that the ExA will not make a decision until a consultation process has been concluded to ensure that those affected by the proposed inclusion of additional land have had an opportunity to comment and have their views taken into account by the Applicant.

5. We understand the sensible approach of the ExA to be in line with the decisions in *R (on the application of Holborn Studios Ltd) v Hackney LBC* [2017] EWHC 2823 (Admin), *Bernard Wheatcroft Ltd v Secretary of State for the Environment* (1982) 43 P & CR 233 and *Main v Swansea City Council* (1985) 49 P & CR 26).

6. We note that this is in contrast to the Applicant's view that the inclusion of additional land does not amount to a material change notwithstanding the compulsory acquisition proposed.

7. We agree with the requirement for additional consultation as being the lawful and practical way forward, and that the ExA will await the outcome of that process before evaluating at that time whether or not to accept that additional land take as part of the Application and so as to not prejudge the outcome of that process.

8. We therefore await in due course the ExA's decision on whether it will accept the Applicant's proposed changes to include additional land for compulsory acquisition.

Blake Morgan LLP

17 November 2020

Submitted in relation to Deadline 4

SCHEDULE 4 TO COVERING LETTER

INTRODUCTION

1. By its Application Form, Document Ref: 1.4, the Applicant seeks development consent under the Planning Act 2008 ("PA 2008") for development described in paragraph 5 of that Form, being an "Aquind Interconnector ("the Project") [being] an interconnector with a nominal capacity of 2,000 MW between Great Britain and France …[that] includes … The Marine Cable …The Onshore Cable …. A Convertor Station and associated electrical and telecommunications infrastructure … connecting [that station] to the [GB] electrical transmission network, the National Grid, at Lovedean Substation and Fibre Optic Cable ("FOC") together with each of the HVDC and HVAC Circuits and associated infrastructure".

2. A (second) draft Development Consent Order ("AQ dDCO"), Document Ref: 3.1 describes the development sought to be consented in outline terms under section 115 of the PA 2008. The extent of the development is envisaged to be sited permanently in land whose freehold is owned by the Carpenters. The Applicant seeks to have included in its AQ dDCO provisions entitling it to take the land of the Carpenters against their will. The Carpenters object to their land being taken against their will. As the Hearing has progressed, the Applicant's plans have evolved and it has published (iteratively) further (indicative) information in support of its outline proposals. This information includes a revised Design and Access Statement (6th October 2020), a Statement in Relation to FOC (6th October 2020), a Needs and Benefits Addendum (6th October 2020), and a second iteration of the AQ dDCO (3rd November 2020).

3. Plates 3.3, and 3.23-24 of the ES, Document Ref: 6.1.3 show the "FOC" cable. The FOC cable is intended to comprise some 192 individual fibre optic cables. Those cables are intended to enable data transmission along and between the HVDC and AC cables and appear to be an industry standard size rather than a bespoke design for the particular interconnector. As a result of the difference between the necessary capacity of individual fibre optic cables within the FOC cable and the industry standard, both spare capacity of individual fibres and also spare fibres are anticipated to be present within the FOC cable. The Applicant asserts that the spare capacity and/or spare fibre optic cables within the operational development described as "FOC cable" (and that is intended to be used for the provision of commercial telecommunications) qualifies as "associated development" within the meaning of section 115(1)(b) of the PA 2008. The Applicant relies on two reasons: a) it asserts that that development was categorised as "associated development" by the Secretary of State in his Direction (30th July 2018); and, in any event; b) it qualifies as "associated development".

4. The ExA has raised concerns in its DCOs 1.5.1, DCO 1.5.2, DCO 1.5.3, and DCO 1.5.4 of its First Written Questions, Document ref: 7.4.1.4, about whether the spare fibre optic cables within the FOC cable shown in Plates 3.3, and 3.23-24, or any surplus capacity (unnecessary for interconnector purposes), with related structures, qualifies as "associated development". The Carpenters' share those concerns.

LEGAL FRAMEWORK

5. By section 31 of the PA 2008, consent is required for "development to the extent that it is *or forms part of*" a nationally significant infrastructure project. By section 14(1)(a), such a project must be within specified descriptions that include "the construction or extension of a generating station". The Secretary of State ("SoS") is empowered to add other descriptions but they must be within the scope of the specified fields of which section 14(6) includes "energy". Parliament has not prescribed "commercial telecommunications" as an available "field" within section 14(6) of the PA 2008.

6. By section 35(1), the SoS is empowered to direct that "development" be treated as development for which development consent is required. Consistent with the scope of sections 31 and 14(6), the scope of that power is expressly restricted, including in subsection (2)(a) of Section 35 by which that the development is or *forms part of* a project (or proposed project) *in prescribed fields* that include "energy". Parliament has not prescribed "commercial telecommunications" as an available "field" within section 35(2(a)(i)).

7. However, Parliament has provided for a direction to potentially encompass "a business or commercial project (or proposed project) of a prescribed description". In doing so, it continues to recognise that some such categories may be subject to the development consent regime but only if within the scope of a prescribed description. As at Deadline 4, the Applicant has not relied on a prescribed description notwithstanding that AQ dDCO: Article 2(1) defines "onshore HVDC cables" to include "i) fibre optic data transmission cables … for commercial telecommunications" and "telecommunications building" to include "for the commercial use of the fibre optic data transmission cables housed within the building"; Similarly, Article 7(6)(c) provides for the transfer benefit of the Order "so far as it relates to the commercial telecommunications use of the fibre optic data transmission cables".

8. By section 115(1), the SoS is empowered to grant development consent for "development" which is: a) development for which development consent is required, or b) "associated development". "Associated development" is a defined term in subsection (2) and must be "associated with the development in (1)(a) (or any part of it)".

9. In interfacing with other development regimes, section 115(6) ensures that "to the extent that development consent is granted for associated development", section 33 applies to it. By section 33(1)(a), "to the extent that development consent is required for development", planning permission is not required to be obtained. Thereby, development within an application for development consent that is "associated development" does not require planning permission whereas development that is not "associated development" requires planning permission that may be secured on further or separate

application under the Town and Country Planning Act 1990 to the relevant local planning authority or authorities under that statutory regime. Thus, commercial telecommunications are allocated *locally*.

THE SECRETARY OF STATES' DIRECTION (30th July 2018)

10. On 19th June 2018, the Applicant requested the SoS to direct that what it described in its request as "elements of AQUNID Interconnector (the Development)" be designated as a nationally significant infrastructure project, Document Ref. AS-036. It identified "the elements" in its request Statement, paragraph 3.5 and the UK Onshore elements in particular at paragraph 3.5.1(A) – (D). (C) expressly refers to a "convertor station" and (D) to two pairs of underground direct current cables "together with smaller fibre optic cables for date transmission" with potential signal enhancing and management equipment along the land cable route in connection with the fibre optic cables. The request made includes no reference to a "prescribed description" within which the proposal (or element of it) may fall; nor to a discrete "telecommunications building"; nor that fibre cable-related equipment could not be housed in the convertor station.

11. In paragraph 3.12, the request evinced a stated "intention" (but no more) to seek consent to "*use* the *spare fibre capacity* for the provision of telecommunications services" and would seek development consent for "this commercial telecommunications use" on the basis that "it is associated development". As referred to above, the Applicant did not identify or rely on any prescribed business description under section 35(2)(a)(ii) of the PA 2008 notwithstanding that Parliament provides for certain such category.

12. The terms of the Direction expressly refer back to that request and refers to "elements of the AQUIND Interconnector". See paragraph 1. Those elements can only mean those referred to in paragraph 3.5.1(A)-(D) and no other. The Direction also describes those elements as "the Development" in line with the request made to him. The Direction includes no reference to prescribed business descriptions. Read on its face, the SoS could direct that the certain energy field development elements could properly be treated as requiring development consent on the basis of the request made to him.

13. The Direction also provides that: "together with *any* development associated with it" be treated as requiring development consent. This reflects section 115(1)(a) of the PA 2008. But, whether or not development may qualify as "associated development" is an evaluative matter of judgement for a decision taker properly directing its mind in law on the relevant facts. It being evident that the SoS understood the Applicant "intended" (but no more) to apply for use of fibre optic cables for commercial telecommunications and their being no such "field" in the PA, and in the absence of reliance on a "prescribed description" of commercial development. In using the term "any", the SoS ensured that the Applicant could make certain its proposals and that their evaluation could occur through the Hearing Process. That is, "any" infers that there may be some or none. This is because he was not asked to

designate the "associated development" as a paragraph 3.5.1 certain "element" of the project in the request to him and, at its highest, the Applicant evinced (and no more than) an express "intention" alone to seek consent for "associated development". Nor did the Applicant explain in its request how the envisaged development might qualify within the guidance on associated development (April 2013).

14. It is an error to rewrite the terms of the public document SoS Direction so as to expressly encompass within it a direction that merely intended development certainly requires development consent, or to make the term "any" read as "commercial telecommunications", or to interpret "any" as meaning "any development that the Applicant might imagine to be [is associated development]".

15. On its face, the Direction does not "deem" nor "treat" the spare capacity of fibre optic cables, or of unnecessary additional fibre optic cables within the FOC cable, as "associated development". On its plain common sense reading, the Direction confirms nothing more than a generalised opportunity for the Applicant to bring forward certain (not intended) development for evaluation, to make its case and have it tested, and that may be assessed for qualification (or not) within the scope of "associated development". Thus, the Carpenters disagree with the Applicant's assertion in paragraphs 3.5 – 3.7, and 8.1, of its **"Statement in Relation to FOC" (6th October 2020), Document Ref: 7.7.1**.

16. Further, that the Applicant needs to further assert that spare capacity (or additional unnecessary fibre optic cables) within a standard sized FOC cable qualifies as "associated" development under paragraphs 5 and 6 of the PA 2008 Guidance on Associated Development (April 2013) reveals a recognition of its (enthusiastic) misreading of the Direction. The Carpenters own the freehold land in which it is envisaged to situate permanently FOC cable containing fibre optic cables with spare capacity or unnecessary additional fibre optic cables, *for commercial telecommunications and its related infrastructure*. That permanent situation and related infrastructure for the practical reason would reduce the size of their farm land and the area available for livestock grazing and appears to be development outside the scope of section 115(1)(b) by reason of its separate purpose unrelated to the interconnector's purpose. In law, reinforced by a lawful evaluation of fact and degree by the ExA, such development cannot be included in the development consent order being sought.

17. The Carpenters disagree with the Applicant's assertion in Section 4, paragraphs 4.1, 4.4-4.5, 4.7, and 8.2-8.4 **"Statement in Relation to FOC" (6th October 2020), Document Ref: 7.7.1**., and the assertions or contentions in Annex 1 thereto that spare capacity of fibre optic cables within the FOC Cable, or of unnecessary but additional but fibre optic cables within the FOC cable, can or would qualify within the scope of section 115(1)(b) of the PA 2008.

18. The Carpenters' set out the reasons for their disagreement and request that the ExA carefully evaluate the evidence, properly directing themselves in law, in particular because the asserted "associated

development" is envisaged to be situated on land taken from the Carpenters' against their will and is relied on (with related infrastructure) to assert a lawful justification for compulsory acquisition.

ASSOCIATED DEVELOPMENT GUIDANCE (APRIL 2018)

19. Paragraph 1 of the Explanatory Notes state that they do not form part of the PA 2008 and have not been endorsed by Parliament.

20. The phrase in section 31 of the PA 2008 - "to the extent that the development is or forms part of" an NSIP – and in 115(1)(b) and (2)(a) – "associated" – is a value laden word requires an evaluation and judgement. The ordinary meaning of "associated" includes: "joined in function; concomitant; sharing in function but with secondary or subordinate status"; connect as an idea; combine for a common purpose". See Shorter Oxford Dictionary, 6th Edition, in **Appendix 1** hereto.

21. In evaluating whether or not the "intended" development referred to in the request for the Direction can or does qualify as "associated development", the SoS has provided guidance in paragraphs 5 and 6 of his Guidance on Associated Development Applications for Major Infrastructure Projects (April 2018) under "Associated Development Principles" and it requires a case sensitive assessment. The Guidance is not expressed on its face have the status of "statutory guidance" but remains guidance to which regard is required to be had.

ASSOCIATED DEVELOPMENT, PARAGRAPH 6 – TYPICAL OR ATYPICAL?

22. Guidance paragraph 6 provides: it is "expected" that associated development will, in most case, be typical of the development brought forward alongside the relevant type of principal development or that it "is usually necessary to support" a project.

23. The Applicant asserts in paragraphs 1.2 and 1.3 of Annex 1 to its "Statement in Relation to FOC" (6th October 2020), Document Ref: 7.7.1 that the commercial fibre optic cables and Telecommunications Buildings *are typical* of the examples given in the "2008" [sic] Guidance, Annexes A and B, as brought forward alongside the relevant type of principal development. Annex A gives examples under "connections to national, regional or local networks" that include references to "electricity networks" and "telecommunications networks". The Application would "connect" to the existing Lovedean electricity sub-station adjacent to the Carpenters' land but there is no pre-existing telecommunications network that would be connected to and it remains the case that, as at 2020, Parliament has no extended the "fields" of what it recognises as "nationally significant infrastructure projects" to encompass "telecommunications" nor are they a prescribed commercial project. Annex B refers to "electric lines" and concerns control buildings relating to those and not to telecommunications cables. In its "Appendix 1 – GB Interconnectors" to its Needs and Benefits Report, Document Ref: 5.6 (22nd October 2019), the Applicant has referred to a range of interconnectors without reference to their inclusion of

commercial telecommunications fibre optic cables or Telecommunications Buildings. There is no such reference in its most recent "Needs and Benefits Addendum" (6th October 2020), Document ref: 7.7.7.

24. The Carpenters' evaluation in **Appendix 2** hereto (as to whether interconnectors typically or atypically include use for commercial telecommunications of spare capacity in fibre optic cables, or of the inclusion and use of unnecessary additional fibre optic cables within the FOC cable, or Telecommunications Buildings) shows there is no nationally significant infrastructure project that includes such cables or buildings "for commercial telecommunications". This finding is consistent with the scope of projects and fields prescribed by Parliament in the PA 2008, by 2020, as not extending beyond the prescribed "fields" to encompass "telecommunications". Thus, the inclusion of development comprised of the use of such spare capacity, or of such fibre optic cables in the FOC cables and their use for such commercial telecommunications use, (and of equipment and buildings related to and for such use in this Application) is atypical and not to be expected in the PA 2008 sphere of NSIP projects, is outside of the scope of Parliament's specified (broad) "fields" and is not within a prescribed description of commercial development defined under the Act. Their inclusion in the Application results in this proposal being isolated and unique.

ASSOCIATED DEVELOPMENT PRINCIPLES, PARAGRAPH 5

25. Paragraph 5 of the Guidance sets out 4 criteria principles in (i) – (iv).

Principle (i)

26. Paragraph 5(i) refers to a requirement for a "direct relationship" between the associated development and the principal development. The type of relationship is further amplified as being one that "either support[s] the construction or operation of the principal development, or help[s] address its impact".

27. The Planning Statement, Document Ref. 5.4, summarises the Application Development as including an element described as: *High Voltage Direct Current ('HVDC') Marine Cables from the boundary of the UK Exclusive Economic Zone ('EEZ') to the UK at Eastney in Portsmouth; HVDC Onshore Cables Smaller diameter Fibre Optic Cables ('FOC') installed together with the HVDC and HVAC Cables and associated infrastructure ('FOC Infrastructure').* Paragraph 1.3.1.4 repeats this. A typical cross-section of cable appears in Plates 3.2 and 3.3 in ES, Document ref: 6.1.3. Paragraph 3.5.3.7 describes that two fibre optic cables (about 35-55mm in diameter) "will be laid together with the Marine Cables within a shared trench…Each [fibre optic cable] will include fibres for a Distributed Temperature Sensing … system as well as protection, control and communications". Plates 3.23 and 3.24 show a Typical Arrangement of HVDC cables onshore and the fibre optic cables. See also Plate 3.5. Paragraph 3.6.3.22 of the ES describes: "The [fibre optic cables] will have sufficient fibres to accommodate redundancy for failures".

28. Within the "Statement in Relation to FOC" (6th October 2020), Document ref: 7.7.1, paragraph 5.2 includes: "To withstand the various physical impacts which the fibre cables are likely to be subject to associated with transportation, installation and operation in the marine and underground environment and protect the glass fibres within it, the fibre optic cables are required to be of adequate outer diameter. Within the required outer diameter for the fibre optic cables [i.e. the FOC cable], 192 [individual] glass fibres may be installed. Each fibre optic cables [sic] is required to include a sufficient amount of glass fibres for its use in connection with the primary use of the interconnector and as redundancy for this purpose is less than 192 [cables] though this is a multiple of fibres that is commonly produced by manufacturers of such cables … Noting … the use of standard cables, the size of the cable would not reduce if the number of glass fibres within it was reduced from 192 to a lesser multiple. … [I]t would be possible to install a cable with fewer glass fibres (and thus less spare capacity) … ".

29. The "Needs and Benefits Addendum" (6th October 2020), Document Ref: 7.7.7, paragraphs 5.1.1.1 – 2 reiterates that: "the industry standard single Fibre Optic Cable (FOC) has up to 192 fibres, but the number of fibres required for cable protection is less than this" with the result that "[t]here will therefore be spare capacity on [sic] the fibres cables ...". The reason for the 192 fibres appears to be an industry standard *size* of cable rather than because of an Applicant bespoke choice or design that matches the requirements of the particular interconnector project. Further, paragraph 3.6.3.22 of the ES, Document Ref: 6.1.3, describes: The industry standard for the amount of fibres within a single cable continues to increase as technology develops". It would appear that, because only a specified number of fibres (and related redundancy levels) within (but less than) the 192 fibre optic cables (that can but are not otherwise necessary for data transmission to populate the overall diameter of a cable) are *necessary* or required for the function of supporting the electricity bearing cables, then, because the industry appears to be supplying FOC cables of a higher diameter than is necessary, or of the necessary diameter but with (ever) smaller fibre optic cables within that FOC cable resulting in an increased number of fibres within the FOC cable, then there can be either spare capacity in some fibre optic cables, or additional fibre optic cables within an overall FOC cable that would have (as here) no support function role or purpose at all in relation to the electricity bearing cables and are functionless fibre optic cables.

30. Thus, it is evident that alongside each HVDC and HVAC cable would be situated a different FOC cable of adequate *overall* diameter to withstand environmental effects upon it and that would contain 192 individual fibre optic cables of which 192: a) some would relate to the function of supporting the cables nearing electricity; b) some would have redundancy capacity related to that support function; c) some would have "spare" capacity not related to that redundancy nor to the necessary support function; and d) some individual fibre optic cables would have no function related to the support of electricity bearing

cables at all. Categories (a) and (b) would satisfy paragraph 5(i) (but have been included by the Secretary of State in his Direction as element (D) ("together with smaller diameter fibre optic cables for data transmission"); whereas (c) and (d) could not.

31. However, it is also intended that, because of the choice of industry to make overall FOC cables of certain diameters, and the Applicant's choice to use an industry standard cable diameter, in respect of the anticipated environmental effects bearing upon such cable, then, instead of the cable containing packing to maintain a minimal diameter of FOC cable, the Applicant would choose to use a standard FOC cable side that, by happenstance, includes additional fibre optic cables and spare capacity (i.e. those in categories (c) and (d) above). The additional fibre optic cables would necessarily result in there being more than adequate, or spare capacity within the FOC cable in the form of either additional 'spare' fibre optic cables or 'spare' capacity within additional fibre cables not wholly exclusively used for data transmission relating to the support or monitoring of electricity bearing cables. See, e.g. paragraph 5.2 of the "Statement in Relation to FOC"; paragraph 3.6.3.22 of the ES, Document ref: 6.1.3; paragraphs 5.1.1.1-2 of the "Needs and Benefits Addendum", Document Ref: 7.7.7.

32. That additional spare capacity (from such capacity and/or from unnecessary additional fibre optic cables within the FOC cable) results from a choice by the Applicant to not use an overall FOC cable of lesser diameter or of the same diameter but that contained fewer individual fibre optic cables, or because of a happenstance mismatch between the diameter of the cable required to withstand environmental effects and the number of fibre optic cables that it may contain. (A happenstance mismatch cannot be said to be a designed fibre optic cable for commercial telecommunications but is merely spare capacity devoid of use, function, aim or purpose to which the Applicant desires to apply one).

33. In either situation, it is then desired that the spare capacity in fibres over and above the required redundancy level required in relation to support fibre optic cables, or of additional fibres that are unnecessary for monitoring of the electricity bearing cables, may be used instead exclusively for commercial telecommunications transmission. Such use of additional fibre optic cables capacity or of additional but unnecessary fiber optic cables within the industry standard diameter FOC cable, or the use of the spare capacity above the level of the redundancy relating to the fibre optic cables supporting operation of the electricity transfer cables, for commercial telecommunications transmission is unrelated to the support function of the other fibres within the overall FOC cable. It cannot be directly related to the support function by reason of discrete use of fibres within the overall cable diameter for unrelated data transmission: one category of fibre cables transmitting support information; the other category of fibre cables transmission commercial telecommunications.

34. The physically disparate nature of the capacity and fibre optic cables within the FOC from the capacity and support function of the particular cables within the 192 cables within the FOC cable is reinforced by the requirement for the Telecommunications Buildings being required to be physically disconnected from the Convertor Station. The Optical Regeneration Station ("ORS") includes 2/3rds discrete cabinets for such particular use. See paragraphs 6.3 and 7.4 of the "Statement in Relation to FOC" (6th October 2020), Document Ref: 7.7.1. . Thus, paragraph 5(i) could not be satisfied.

Principle (ii)

35. Paragraph 5(ii) refers to a requirement that "associated development should not be an aim in itself but should be subordinate to the principal development".

36. The aim of the principal development is set out in paragraph 4.2.1.3 of the Planning Statement, Document ref: 5.4; and 3.5.3.1 of the ES, Document Ref: 6.1.3, being to facilitate transfer of up to 1,000 MW of electricity. Paragraph 3.6.3.1 describes how the Convertor Stations convert electricity from HVDC.

37. The aim of the fibre optic cables referred to in paragraph 3.5.3.7 of the ES, Document Ref: 6.1.3, is that they "will be used for communications *between* the French and UK Convertor Stations *in connection with* the control and protection systems [and] to monitor the condition of both Onshore and Marine *Cables*". *Those* cables will have "sufficient fibres to accommodate levels of redundancy for failures". See paragraphs 3.6.2.21 and 22 of the ES, Document Ref: 6.1.3. Paragraph 3.6.2.8 of the ES describes (certain of) the fibre optic cables (within the FOC cable) being installed alongside each HVAC cable "for control and cable monitoring purposes".

38. By contrast, the aim of the fibre optic cables within the envisaged wider diameter cable, or of additional redundancy above the level of the redundancy of the fibre optic cable supplying a necessary support role to the operation of the particular electricity bearing cable, is not for supporting operation of the electricity bearing cables. Instead, it is defined in Article 2(1) of the AQ dDCO, Document Ref: 3.1, as being "<u>for</u> commercial telecommunications". This is amplified in Article 7(6)(c) as being "the commercial telecommunications use <u>of</u> the fibre optic data transmission cables". Paragraphs 5.1.3.3 and 5.1.3.5 of the Needs and Benefits Addendum (6th October 2020), Document Ref: 7.7.7, being for commercial use (for a premium) by third party private companies, and described in paragraph 5.1.5.2 as "*in addition to* their primary use" . (There is no evidence to support the asserted ES statement that the spare capacity is not "primary" whereas the ES statement admits that the use for commercial telecommunications is an 'additional' (separate) use to that of the interconnector or the functionally and purposefully supporting fibre optic cables of the 192 cables within each of the FOC cables.

39. The stated aim of the fibre optic cables, or of redundancy of fibres above the level of redundancy otherwise required for data transmission in necessary support of electricity bearing cables, "*for* commercial telecommunications" is an aim in itself.

40. Similarly, the exclusive aim of the Telecommunications Building is identified by the Applicant in its "Statement in Relation to FOC" (6th October 2020), Document Ref: 7.7.1., paragraph 5.4 as follows: "The Telecommunications Buildings are *required solely in connection with* the commercial use".

41. Similarly, the aim of at least an identifiable part of the ORS is identified by the Applicant in its "Statement in Relation to FOC" (6th October 2020), Document Ref: 7.7.1, paragraph 5.3: as follows: "the extent … of the size of the ORS is dictated by the proposed commercial use" and, in paragraph 7.4: "it is anticipated that approximately two thirds of the cabinets within the ORS will be available *for* commercial use".

42. Similarly, the Applicant has a "sole purpose" of developing the Interconnector. See paragraph 4.1 of the Funding Statement 14th November 2019), Document Ref: 4.2) and not for commercial telecommunications.

43. Furthermore, the difference in aim of purpose of the categories of fibre optic cables within the anticipated 192 fibres, that are included as an industry standard within the chosen FOC cable, is reinforced by the statutory purposes of each of the two categories. The Applicant is a beneficiary of an "Electricity Interconnector Licence" (and its Standard Conditions) (dated 9th September 2016) under section 6(1)(e) of the Electricity Act 1989 (see **Appendices 3 & 4** hereto). Condition 1,(1) covers "ancillary service", being "a service necessary for the operation of the licensee's interconnector or an interconnected system" and a "transmission licence" means one granted under section 6(1)(b). Condition 9 concerns revenues, Part B(2) restricts use of revenues from the interconnector capacity, and Part D precludes use of revenues statement without prior approval of the Authority. Part III concerns electricity trading and the "GB transmission system" and its "interconnections" and also differentiates the "licensee's transmission system" as those parts of the GB transmission system which are owned or operated by a transmission licensee within its transmission area. Condition 19 relates to operation and development of the interconnector.

44. By contrast, the different, discrete, and unrelated aim or purpose of the commercial telecommunications infrastructure is adverted to by the Applicant in paragraph 5.1.4.9 and footnote 50 of the Needs and Benefits Addendum (6th October 2020), Document Ref: 7.7.7. wherein the Applicant refers to is application to Ofcom to apply Code powers under the Communications Act 2003 to the Applicant. On the 27th March 2020, Ofcom made its direction under section 106 of the Communications Act 2003 by which it directed that the Code powers apply to the Applicant's "provision of part of an

electronic communication network" but excludes "the UK Aquind Interconnector Fibre which would be deployed in the Aquind Interconnector" (see **Appendix 5** hereto). The UK Aquind Interconnector Fibre is defined in that direction to mean that "part of the Applicant's electronic communications network in England … and is subject to a Direction issued on 30th July 2018, by the Secretary of State… pursuant to section 35 of the Planning Act 2008". The Ofcom direction affirms the separate aim or purpose of those parts (and in contrast with the separate purpose of Ofgem relied on at paragraph 1.4.5, bullet 2 of the Statement of Reasons, Document Ref; 4.1, and the scope of the Electricity Act Licence for that different particular aim or purpose.

45. The use, within the 192 fibre optic cables of the FOC cable, of fibre optic cables, or of spare levels of capacity within envisaged fibre optic cables (above that otherwise exclusively used for the necessary supporting function of data transmission in relation to electricity bearing cables) cannot satisfy paragraph 5(ii) because that use "for commercial telecommunications" is a separate unrelated aim or purpose from that of the other fibres within the 192, or from other capacity over and above the redundancy level of supporting fibres.

46. The same logic applies to the separate aim of the Telecommunications Buildings (to which the Carpenters have previously objected to being situated on their land) and is now confirmed by the Applicant as being "required solely in connection with that commercial use", and also to some 2/3rds of the ORS equipment with its separate aim relating to that commercial telecommunications use.

Principle (iii)

47. Paragraph 5(iii) requires development <u>not</u> to be treated as "associated development if it is only necessary as a source of additional revenue *for the applicant*".

48. The use of the fibre optic cables (overprovided for in the cables), or the use of the spare capacity in the fibre optic cables provided for in the cables, for commercial telecommunications, together with use of the Telecommunications Buildings for commercial telecommunications, together with some 2/3rds of the ORS equipment for commercial telecommunications would engender revenue described in the Needs and Benefits Addendum (6th October 2020), Document Ref: 7.7.7, paragraphs 5.1.5.1, bullet 2: "leasing out the spare capacity"; 5.1.3.5: "leasing 'dark fibre'"; and in 5.1.3.3: "a surge in demand for capacity from content providers such as Facebook, Netflix and Amazon (who are streaming vast quantities of video content to users)" and "significant growth in the 'cloud computing' market"; with, at 5.1.4.2 targets to "have 15 million premises connected to full fibre …by 2025…".

49. The Applicant has provided a Funding Statement (14th November 2019), Document Ref: 4.2, that refers in paragraph 3.2.4 to the "telecommunications infrastructure" as part of "the Proposed Development", and to the Direction in paragraph 3.5. Paragraphs 5.3 and 5.4 refers to estimated total capital costs of

"the Proposed Development" as being some £622m as against assets in paragraph 4.6 of some £24.5m. There is an apparent shortfall of a not inconsiderable sum of about £588m that is said in paragraph 6.1 to be funded and secured "against the operational profits (revenues) of the Project" "[T]he Project" is defined by paragraph 3.2 to mean the elements of the "Proposed Development".

50. The Applicant makes no mention of the need for, or provision of, cross-subsidy from the commercial telecommunications income to support the provision of the Interconnector Development. See the Funding Statement, paragraph 8.1. Paragraph 4.2.1.4 of the Planning Statement, Document Ref: 5.4 explains that the investment cost will be Euros 1.4bn.

Principle (iv)

51. Paragraph 5(iv) requires associated development to be proportionate to the nature and scale of the principal development and requires regard to be had to all relevant matters. The provision of unnecessary Telecommunications Buildings on the Carpenters' freehold farm land, together with excessive and unnecessary fibre optics cables or their use, and a related spur road cannot be said to be proportionate.

CONCLUSIONS ON WHETHER THE ENVISAGED DEVELOPMENT CAN BE ASSOCIATED DEVELOPMENT

52. Whereas those fibre optic cables within the 192 envisaged to comprise the FOC cable have been directed under element (D) of the SoS's Direction to be development requiring development consent, and would qualify as "associated development" within section 115(1)(b) also, other fibre optic cables within that 192 number not serving to support the electricity bearing cables of the Aquind Interconnector cannot qualify as "associated development" by reason of their disparate aim, non-direct relationship to the development, and their clear qualification outside of the scope of the PA 2008, not being in the field of "energy" nor any other field specified by Parliament to be the subject of the DCO regime.

53. In line with the interface within section 33 between the PA 2008 and the Town and Country Planning Act 1990, in the event that the Applicant seeks to pursue commercial telecommunications development, then it may apply to the relevant local planning authority/authorities for planning permission for the same; and enjoin with such planning authorities as it may agree for the use by such authorities of their Town Planning compulsory acquisition powers by which to give effect to such planning permission in the absence of relevant agreements.

54. In line with the Town and Country Planning Act 1990 regime for permitted development for statutory undertakers, the legal framework allocates the requirement for authorisation for excessive fibre optic cables within the 192 of the FOC cable and the parasitic operational development of the

Telecommunications Buildings and spur road to the 1990 Act on application to the relevant local planning authority or authorities. In the event that agreement cannot be reached with the relevant landowners, in the orthodox manner, a developer can seek to agree a development agreement with a local authority to use its compulsory acquisition powers to secure development "for commercial telecommunications".

CONSEQUENTUAL REFINEMENTS TO THE DRAFT DEVELOPMENT CONSENT ORDER

55. In light of the above, and recognising the proposal for the AQ dDCO to include compulsory powers of acquisition by which to take their land against their will, the Carpenters' would anticipate the ExA requiring the draft DCO to be refined so as to:

a) delete from it any express reference to:

i) the use of any fibre optic cables or equipment "for commercial telecommunications";

ii) the presence of Telecommunications Buildings;

b) include a Requirement:

i) to ensure that no spare capacity of any whole fibre optic cable (above the necessary redundancy of fibre optic cables supporting the operation of electricity bearing cables) may be used "for commercial telecommunications";

ii) to ensure that no spare capacity of any part of any equipment (above the necessary redundancy of fibre optic cables supporting the operation of electricity bearing cables) may be used for commercial telecommunications.

COMPULSORY PURCHASE

56. By section 120 of the PA 2008:

1) An order granting development consent may impose requirements in connection with the development for which consent is granted.
2) The requirements may in particular include –
a. requirements corresponding to conditions which could have been imposed on the grant of any permission, consent or authorisation, or the giving of any notice, which (but for section 33(1)) would have been required for the development;
b. requirements to obtain the approval of the Secretary of State or any other person, so far as not within paragraph (a).
3) An order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted.
4) The provision that may be made under subsection (3) includes in particular provision for or relating to any of the matters listed in Part 1 of Schedule 5….

57. Part 1 of Schedule 5 includes, under paragraph 1: *The acquisition of land, compulsorily or by agreement.* Paragraph 2 provides: *The creation, suspension or extinguishment of, or interference with, interests in or rights over land (including rights of navigation over water), compulsorily or by agreement.*

58. By section 122:

> *1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that the conditions in subsections (2) and (3) are met.*
> *2) The condition is that the land —*
> *a. is required for the development to which the development consent relates,*
> *b. is required to facilitate … that development, …*
> *3) The condition is that there is a compelling case in the public interest for the land to be acquired compulsorily.*

59. It is clear from the Works Plans and the HM Land Registry Plans of the Carpenters' freehold land, together with the AQ dDCO scope of "authorised development" and Schedule 1, that the Applicant envisages permanently situating on the Carpenters' freehold farm land: fibre optic cables; Telecommunications Buildings; a road; a landscape area; and a Convertor Station; pursuant to proposed compulsory purchase powers and for which the Applicant relies on section 122(1)(a).

60. The Carpenters have previously objected to the presence of the Telecommunications Buildings on their land and it is now clear from the Applicant's iterative design process that those buildings are parasitic upon the commercial function of some of the 192 fibres within the FOC cable for commercial telecommunications: being "required solely in connection with the commercial use" (see paragraph 5.4 of the Statement in Relation to the FOC" (6th October 2020), Document Ref: 7.7.1. . The same logic applies to the spur road leading to those buildings. That land would otherwise remain existing undeveloped grassed pasture for livestock on the Carpenters' farmstead.

61. In relation to the structures envisaged to be situated on the Carpenters' land:

a) "[I]t would be possible to install a cable with fewer fibre optic cables (and thus less spare capacity)" (see paragraph 5.2 of the "Statement in Relation to Funding"; "overcapacity is in fact unavoidable due to industry standard sizing of fibre optic cables" (see Column 2, page 10, Statement in Relation to FOC"). At its highest, as at Deadline 4, the Applicant's position is that it "desires" to make use of otherwise excessive spare capacity in over-specified industry standard cables: "The Proposed Development is an Interconnector, and the Applicant is desiring of utilising the Proposed Development to its full design capacity and benefit". See Column 2, Response 17, page 2-9, of Applicant's Response to Deadline 2 Submissions (3rd November 2020), Document Ref: 7.9.6. In fact, the "design capacity" is no more than a choice to use an industry standard cable with excessive

unnecessary capacity. See paragraph 5.2 of the Statement in Relation to FOC, and paragraph 5.2. It is difficult to see how a "desire" to make use of otherwise unnecessary fibre optic cable;

b) The Telecommunications Buildings are also unnecessary because they are parasitic on the unnecessary fibre optic cables, being "required solely in connection with the commercial use" of the fibre. See paragraph 5.4 of the "Statement in Relation to FOC";

c) The spur road serving the Telecommunications Buildings is also unnecessary, being parasitic on the situation of the Telecommunications Buildings. It is difficult to see how there is any justification for a spur road to it. Similarly, once erected, the Convertor Station (and Telecommunications Buildings) will be unmanned. Since such buildings would not be manned, it is difficult to see how a permanent spur or access road could be justified instead of a less intrusive temporary road for construction purposes;

d) The rational basis for the considerable extent of locally landscaped area envisaged to be in the north eastern part remains incomprehensible. We refer to the advice of the South Downs Authority referred to in "Landscape and Visual Correspondence" (6th October 2020), Document Ref: 7.4.1.8:

> *Email dated 18th October 2018, 15:12:*
> *Overall, I'm interested in securing the best outcome for the setting of the National Park, which in my view is responded to best by retaining and improving the existing landscape character as much as possible…*
> *Mitigation Approach*
> - *The principle of retaining existing vegetation is our preferred option …*
>
> *Vegetation*
> - *… I would like to see the scheme deliver more benefits and respond better to its local landscape…*

The local existing landscape comprises open fields for livestock owned by the Carpenters. The existing vegetation is grass (in fields) for livestock.

The email continues:

> - *The current proposed orientation of the buildings, and tracks, are totally at odds with the patterns of elements in the landscape …*
>
> *Photomontage …*
> *[I have the] following comments/caveats:*
> - *… tighter footprint …*
> - *A affects the setting of both farmsteads … What are their sensitivities? …*
> - *B generates the need for a huge track which I do not support …*

62. In respect of the Convertor Station, an unmanned building, it remains difficult to see how any land take beyond the footprint of the Station can be permanently justified were access and maintenance rights granted in relation to the use of part of the Carpenters' surrounding land for that purpose.

APPENDIX 1

Shorter Oxford English Dictionary

ON HISTORICAL PRINCIPLES

Sixth edition

VOLUME 1 · A–M

OXFORD
UNIVERSITY PRESS

▸ †**II** Other uses.

6 Custom, practice; mode, manner, fashion. ME–L15.

7 Site; situation. LME–L15.

8 Measurement, dimensions, size; measure, extent. LME–M17.

▸ †**B** *verb trans.* **1** Decree, ordain. LME–L15.

2 Decide, judge; try. LME–L17.

3 Assess. LME–E17.

4 Regulate (weights, measures, prices, etc.) according to an ordinance or standard. M16–M19.

▪ **assizer** *noun* = ASSIZOR (b) L16. **assizor** *noun* (*a*) each of those who constituted an assize or inquest; (*b*) *Scot.* a member of a jury: ME.

associable /ə'səʊʃɪəb(ə)l, -sɪ-/ *adjective.* M16.

[ORIGIN French, from *associer* from Latin *associare*: see ASSOCIATE *verb*, -ABLE.]

†**1** Companionable. *rare.* M16–L17.

2 That may be associated (*with*) or joined in association. E19.

associate /ə'səʊʃɪət, -sɪ-/ *adjective & noun.* LME.

[ORIGIN Latin *associatus* pa. pple, formed as ASSOCIATE *verb*: see -ATE², -ATE¹.]

▸ **A** *adjective.* **1** Joined in companionship, function, or dignity; allied; concomitant. LME.

C. MARLOWE With him is Edmund gone associate? R. KNOLLES Christ our Sauiour, equall and associate to his Father. POPE Amphinomus survey'd th' associate band. S. JOHNSON They want some associate sounds to make them harmonious.

2 Sharing in responsibility, function, membership, etc., but with a secondary or subordinate status. E19.

H. F. PRINGLE The *Outlook* office where the ex-President was an associate editor.

associate professor in N. American universities, (a person of) the academic rank immediately below (full) professor.

▸ **B** *noun.* **1** A partner, a comrade; a companion; an ally, a confederate; a colleague. M16.

P. SIDNEY They persuade the king . . to make Plangus his associate in government. LD MACAULAY These men, more wretched than their associates who suffered death. W. IRVING His associates soon turned the tide of the battle. D. W. HARDING To her the first necessity was to keep on reasonably good terms with the associates of her everyday life.

2 A thing placed or found in conjunction with another. M17.

PAIRED associates.

3 A person who belongs to an association or institution in a secondary or subordinate degree of membership. E19.

▪ **associateship** *noun* the position or status of an associate E19.

associate /ə'səʊʃɪeɪt, -sɪ-/ *verb.* LME.

[ORIGIN Latin *associat-* pa. ppl stem of *associare*, from *ad* AS-¹ + *socius* sharing, allied: see -ATE².]

1 *verb trans.* Join, unite, ally, (persons; oneself or another with, (arch.) to another or others, in, †to a common purpose, action, or condition); declare (oneself) in agreement *with.* LME. ▸**b** Elect as an associate member. E19.

SWIFT None but papists are associated against him. D. HUME The troops . . associating to them all the disorderly people. E. A. FREEMAN Arnulf associated his son with him in his government. GLADSTONE It is for me . . to associate myself with the answer previously given by the Under-Secretary. ▸**b** SOUTHEY He . . was associated to the royal Academy there.

†**2** *verb trans.* Join oneself to (a person); accompany; keep company with. M16–M17.

J. MARBECK Therefore shal man leaue father and mother and associate his wife. SHAKES. *Rom. & Jul.* A barefoot brother . . to associate me, Here in this city visiting the sick.

3 *verb trans.* **a** *gen.* Join, combine, (things together; one thing *with*, to another or others). Chiefly *refl.* or in *pass.* arch. L16. ▸**b** *spec.* Connect as an idea (*with*, †to). M18.

A. BAIN The muscles . . act in groups, being associated together by the organization of the nervous centres. T. H. HUXLEY This vapour is intimately associated with the other constituents of the atmosphere. ▸**b** A. S. NEILL The children will leave electric lights on because they do not associate light with electricity bills. JENNIE MELVILLE She associated love and pain.

†**4** *verb trans.* Of things: accompany, join. L16–L17.

T. HEYWOOD Those torturing pangues That should associate death.

5 *verb intrans.* Combine for a common purpose; keep company, have frequent dealings, *with.* M17.

BURKE When bad men combine, good men must associate. D. RUNYON As a rule I do not care to associate with coppers, because it arouses criticism from other citizens.

▪ **associater** *noun* (*rare*) = ASSOCIATOR E17. **associator** *noun* a person who or thing which associates; an associate; a confederate: L17. **associatory** *adjective* having the quality of associating L19.

association /əsəʊsɪ'eɪʃ(ə)n, -ʃɪ-/ *noun.* M16.

[ORIGIN French, or medieval Latin *associatio(n-)*, formed as ASSOCIATE *verb*: see -ATION.]

1 The action of joining or uniting for a common purpose; the state of being so joined. M16.

R. COKE A solemn oath of association for the restoring of it. CONAN DOYLE The good Watson had at that time deserted me for a wife, the only selfish action which I can recall in our association.

articles of association, deed of association a document giving the regulations of a limited liability company. **memorandum of association** a document giving the name, status, purposes, and capital of a limited liability company.

2 A body of people organized for a common purpose; a society. L16.

F. O'BRIEN The people who attended the College had banded themselves into many private associations.

†**3** A document setting out the common purpose of a number of people and signed by them. L16–M19.

LD MACAULAY Dropping the Association into a flower pot.

4 Fellowship, companionship; social intercourse (esp. in prison). M17.

SMOLLETT The nobility would be profaned by my association. H. ALLEN To have so pleasant and bright a companion as young Anthony sitting before the fire sped their association mightily.

5 The conjoining or uniting of things or persons with another or others; the state of being so conjoined, conjunction. M17.

J. REYNOLDS The spark that without the association of more fuel would have died. T. CAHOTE A tendency not to experience anger or rage in association with violent aggressive action.

6 Mental connection between related ideas; an idea, recollection, or feeling mentally connected with another. L17.

J. LOCKE On the Association of Ideas. W. HAMILTON Our Cognitions, Feelings, and Desires are connected together by what are called the *Laws of Association*. B. RUBENS The theatre, the picnics, the concerts, separately and by association, they triggered off total recall. A. STORR The dreamer's associations to all the images in the dream. B. BETTELHEIM The replacement of a word that has deep emotional associations with one that evokes hardly any.

free association: see FREE *adjective*. *PAIRED association.*

7 *ECOLOGY.* A group of dominant plant species occurring together; a plant community characterized by such a group. E20.

– COMB.: **association book, association copy** a volume showing some mark of personal connection with the author or a notable former owner; **Association football** football played according to the rules of the Football Association, with a round ball which may not be handled during play except by a goalkeeper; soccer.

▪ **associational** *adjective* of or pertaining to (an) association E19. **associationism** *noun* (*a*) *rare* union in an association; (*b*) a theory accounting for mental phenomena by association of ideas: M19. **associationist** *noun & adjective* (*a*) *noun* a member of an association; an adherent of associationism; (*b*) *adjective* = ASSOCIATIONISTIC: M19. **associatio'nistic** *adjective* of or pertaining to associationism or associationists E20.

associative /ə'səʊʃɪətɪv, -sɪ-/ *adjective.* E19.

[ORIGIN from ASSOCIATE *verb* + -IVE.]

1 Of, pertaining to, or characterized by association (esp. of ideas). E19.

2 *MATH.* Governed by or stating the condition that where three or more quantities in a given order are connected together by operators, the result is independent of any grouping of the quantities, e.g. that $(a \times b) \times c = a \times (b \times c)$. M19.

B. RUSSELL The associative, commutative and distributive laws.

▪ **associatively** *adverb* L19. **associativeness** *noun* (*rare*) L19. **associa'tivity** *noun* [esp. MATH.] M20.

assoil /ə'sɔɪl/ *verb trans. arch.* exc. *SCOTS LAW* (see sense 4b). Also (*Scot.*) **assoilzie** /-l(j)i/. ME.

[ORIGIN Anglo-Norman *as(s)oil(e)r*, from Old French *assoil-* tonic stem of *asoldre* (mod. *absoudre*) from Latin *absolvere* ABSOLVE; the Scot. form derives from Middle English *-lȝ-*.]

▸ **I** With a person as obj.

1 Grant absolution to; absolve *of, from* a sin. ME. ▸**b** Release from purgatory. LME.

†**2** Release from excommunication or other ecclesiastical sentence. LME–L17.

†**3** Release *from, of* obligations or liabilities. LME–M17.

4 Acquit of a criminal charge. (Foll. by *of, from.*) LME. ▸**b** *SCOTS LAW* (as *assoilzie*). Hold not liable, in a civil action, by decision of court. E17.

5 *gen.* Release, set free, discharge, (*of, from*). LME.

▸ **II** With a thing as obj.

†**6** Clear up, solve, resolve. LME–L17.

†**7** Refute (an objection or argument). LME–E18.

8 Expiate, atone for. L16.

†**9** Get rid of, dispel. *rare* (Spenser). Only in L16.

▪ **assoilment** *noun* absolution from sin, guilt, censure, accusation, etc. E17.

†**assoin** *noun, verb* see ESSOIN *noun, verb.*

assonance /'as(ə)nəns/ *noun.* E18.

[ORIGIN French, from Latin *assonare* respond to, from *ad* AS-¹ + *sonare*, from *sonus* sound: see -ANCE.]

1 Resemblance or correspondence of sound between two syllables. E18.

2 The rhyming of one word with another in accented vowel and those that follow, but not in consonants, or (less usually) in consonants but not in vowels. E19.

3 *transf.* Correspondence more or less incomplete. M19.

▪ **assonant** *adjective & noun* (*a*) *adjective* exhibiting assonance; (*b*) *noun* in *pl.*, words exhibiting assonance: E18. **assonantal** /-'nant(ə)l/ *adjective* of or pertaining to assonance, exhibiting assonance M19.

assonate /'as(ə)neɪt/ *verb intrans.* E17.

[ORIGIN Latin *assonat-* pa. ppl stem of *assonare*: see ASSONANCE, -ATE³.]

†**1** Sound like a bell. *rare.* Only in E17.

2 Correspond in sound; *spec.* exhibit assonance. M17.

assort /ə'sɔːt/ *verb.* L15.

[ORIGIN Old French *assorter* (mod. *-ir*), from *à* A-⁵ (assim. to AS AS-¹) + *sorte* SORT *noun*².]

1 *verb trans.* Distribute into groups; arrange in sorts. L15. ▸**b** Classify, place in a group, *with.* M19.

Tait's Edinburgh Magazine Merchants . . employ woolsorters of their own to assort and repack it. ▸**b** DICKENS He would . . assort it with the fabulous dogs . . as a monstrous invention.

2 *verb trans.* Provide with an assortment. *arch.* M18.

OED We have sent orders for some white goods to assort our store.

3 *verb intrans.* Fall into a class *with*; correspond or suit (*well, ill*, etc.) *with.* E19.

W. HAMILTON Finding that it is harmonious,—that it dovetails and naturally assorts with other parts. E. LINKLATER Her cold hard voice that assorted so badly with his memory of her.

4 *verb intrans.* Keep company, associate, *with.* arch. E19.

C. LAMB I could abide to assort with fishermen-swains.

▪ **assorted** *adjective* (*a*) matched to; (*ill, well*, etc.) suited to one another; (*b*) of various sorts put together: L18.

assortative /ə'sɔːtətɪv/ *adjective.* L19.

[ORIGIN from ASSORT + -ATIVE.]

BIOLOGY. Designating mating which is not random, but correlated with the possession by the partners of certain similar (or dissimilar) characteristics.

assortment /ə'sɔːtm(ə)nt/ *noun.* E17.

[ORIGIN from ASSORT *verb* + -MENT, after French *assortiment*.]

1 The action of assorting; the state of being assorted. *arch.* E17.

OED She was engaged in the assortment of her crewels.

2 A set of various sorts put together. M18.

J. BRAINE A confusion of voices and an assortment of minor noises—glasses clinking, matches being struck, the central heating rumbling.

3 A group of things of the same sort. *rare.* M18.

ADAM SMITH Those classes and assortments, which . . are called genera and species.

assot /ə'sɒt/ *verb.* Long *arch. rare.* Infl. **-tt-.** ME.

[ORIGIN Old French & mod. French *assoter*, formed as A-⁵ + *sot* from medieval Latin *sottus*: see SOT *noun*.]

†**1** *verb intrans.* Behave foolishly; become infatuated. Only in ME.

2 *verb trans.* Make a fool of; infatuate. Chiefly as ***assotted*** *ppl adjective.* LME.

ASSR *abbreviation.*

hist. Autonomous Soviet Socialist Republic.

Asst *abbreviation.*

Assistant.

assuage /ə'swaɪdʒ/ *verb.* ME.

[ORIGIN Old French *as(s)ouagier* from Proto-Romance, from Latin *ad* AS-¹ + *suavis* sweet.]

▸ **I** *verb trans.* **1** Mitigate, appease, allay, alleviate, relieve, (feelings, pain, appetite, desire, etc.). ME.

BACON They need medicine . . to assuage the disease. J. LONDON He had once gone three days without water . . in order to experience the exquisite delight of such a thirst assuaged. N. ALGREN Assuaging her fears by day and her lusts by night.

†**2** Relax, moderate, (a harsh law etc.). ME–L15.

3 Pacify, soothe, (a person). LME.

ADDISON Kindling pity, kindling rage At once provoke me, and asswage.

4 *gen.* Abate, lessen, diminish. *arch.* LME.

W. OWEN Of a truth All death will he annul, all tears assuage? W. S. CHURCHILL But in the name of reason irrational forces had been let loose. These were not easily to be assuaged.

▸ **II** *verb intrans.* †**5** Of passion, pain, appetite, etc.: become less violent, abate. ME–E18.

DEFOE The plague being come to a crisis, its fury began to assuage.

6 *gen.* Diminish, fall off, abate, subside. Long *arch.* LME.

AV *Gen.* 8:1 And the waters asswaged.

▪ **assuagement** *noun* (*a*) the action of assuaging; the condition of being assuaged; (*b*) (now *rare*) an assuaging medicine or application: M16. **assuager** *noun* M16.

APPENDIX 2

APPENDIX 2

ANALYSIS OF INTERCONNECTOR PROJECTS LISTED IN DOCUMENT ENTITLED: "ELECLINK: SHEDDING SOME LIGHT ON A KEY EUROPEAN PROJECT" (DECEMBER 2019) LINK

AND ADDITIONAL PROJECTS LISTED AS PROJECT NUMBERS 15-17 IN THE TABLE BELOW

Note to reader: some of the links built into this Appendix 1 may only open using "Chrome" Browser.

PROJECT NO.	PROJECT INFO	NSIP? (Yes / No)	NATIONAL ORDER: E.G. DCO / SI / OTHER	PLANNING PERMISSION RELATING TO CABLES?	CABLE-TYPE	WHETHER, & PURPOSE OF, TELECOMMUNICATIONS	NOTES & RESTRICTIONS ON PURPOSE/USE
1.	**IFA** RTE (French Developer) National Grid (GB Developer)	No	No. IFA constructed in 1980s.	Not found.	HVDC. 2 sets of 2 cables	No technical information identified relating to telecommunications.	Cable laid in 1986. Charging Methodology for IFA and IFA 2 Interconnectors (1 Dec 2019) makes no mention commercial telecoms sales. See p.8 of Link.
2.	**Moyle** Mutual Energy (UK)	No	No	Outline planning permission for convertor stations (1998) Reserved matters approval (2000)	HVDC / Fibre Optic	Article indicates *"a fibre optics cable and communications has been integrated into the cables."* No technical information identified relating to telecommunications.	
3.	**Brit Ned** TenneT (Dutch Developer) National Grid (GB Developer)	No	No	Not found.	HVDC	No technical information identified relating to telecommunications.	
4.	**EWIC** EirGrid Interconnector Limited (EIL) part of the EirGrid Group (Irish Developer) UK is the other relevant jurisdiction. Completed in 2012.	No	No	**Flintshire County Council** **Decision Notice not found.** Link to status of planning in Quarter 4 of 2009. Planning Permission was granted in 2009. **An Board Pleanala (Irish equivalent to PINS)** Granted permission for location and construction of a converter station on 14 Sep 2009 following application by Fingal County Council and Meath County Council. Ref: PL17.VA0002. Link to Order itself and link to website (showing all docs).	HVDC & Fibre Optic	See East West Interconnector Revenue Requirement Public Information Note dated 7 September 2012: Link. Revenue appears generated from commercial fibre optic 'hosting'. See pages. 3, *"less revenue from received from other revenue streams such as ancillary services"*, 8 *"income from hosting fee from fibre optics laid on top of the EWIC"*, 27, para 9 – *"the operational costs of the fibre optic business is a matter for EirGrid and is not recovered through TUoS or under this submission. However, the fibre optic business is utilising the regulated asset."* Para 9.1. Note: TUoS stands for "Transmission Use of System". See Add Board Pleanala - Strategic Infrastructure Development Order (Link to Order).	Electricity can be traded between Ireland and GB through the interconnector. Traders can buy into supplies. Irish Order terms indicate the purpose of the fibre is "primarily" to control operation of the interconnector (see links in Planning Permission column).

PROJECT NO.	PROJECT INFO	NSIP? (Yes / No)	NATIONAL ORDER: E.G. DCO / SI / OTHER	PLANNING PERMISSION RELATING TO CABLES?	CABLE-TYPE	WHETHER, & PURPOSE OF, TELECOMMUNICATIONS	NOTES & RESTRICTIONS ON PURPOSE/USE
						"PROPOSED DEVELOPMENT….third duct containing a fibre optic cable primarily to control the operation of the interconnector."	
5.	**NEMO** National Grid (GB Developer) Elia (Belgian Developer)	No	No	**Thanet District Council** F/TH/13/0760 R/TH/16/0128 - Link **Dover District Council** DOV/13/00759 Link	HVDC / HVAC / Fibre Optic	ES Update Reserved Matters for R/TH/16/0128 at para 1.4 – *"National Grid Nemo Link Limited obtain consent on 19th December 2013 for a hybrid proposal comprising… HDVC, HVAC and fibre optic cables – all matters provided."* Ofgem Con report indicates fibre optic cables *"exclusively for the operation of the interconnector"* – para 10.1 Link.	No references to fibre optic cables in the Decision Notices. Addendum ES refers to Fibre Optic (see Telecommunications column). Ofgem report indicates fibre would be used to support the operation of the interconnector (see link in Telecommunications column), and fibre optic cables *"exclusively for the operation of the interconnector"* – para 10.1 Link.
6.	**ElecLink** ElecLink (Wholly owned subsidiary of GetLink company which owns the Channel Tunnel) EU Project of Common Interest	No	No	**Shepway District Council now known as Folkestone & Hythe District** Council granted Planning Permission for Converter Station alone: Link. **Planning Permission for Cable Route** Statutory undertakers Elec Link granted permitted development rights for cable route from National Grid to converter. And see notes re Wayleave. See Planning Section of Elec Link info sheet - p. 5&6. Link.	HVDC	No technical information identified relating to telecommunications.	**Wayleave** From Converter Station to France, Elec Link entered into Wayleave Agreement with Eurotunnel. No express terms permit use of fibre optic cables for commercial telecommunications.
7.	**IFA2** RTE (French Developer) National Grid (GB Developer)	No	No	**Fareham Borough Council:** Outline Planning Permission – P16/055/OA – granted 23 Jan 2017. Reserved Matters ("RM") – P/17/0835/RM – detailed designs of IFA2 converter. RM – P/17/0834/RM – area of public open space around converter. FPP – P/16/0557/DP/A granted 25 Sep 2017 subject to conditions (see notes).	Either Cross Linked Polyethylene (XLPE) or Mass Impregnated Non Draining (MIND) HVDC cables or XLPE HVAC cables. p. 11 of PDF – follow link IFA2.	HRA refers to Fibre Optic installation 1.4.12 & 1.4.13 (p.88 of PDF).	Decision Notices relevant to the specification of the cable are not identifiable on Fareham BC's website. Approved planning conditions not relate to fibre optic cables. See: P/16/0557/DP/A - Condition 10: Scheme of external lighting to the converter station - Condition 11: Audible and Noise Assessment - Condition 12: Audible and Noise Assessment

PROJECT NO.	PROJECT INFO	NSIP? (Yes / No)	NATIONAL ORDER: E.G. DCO / SI / OTHER	PLANNING PERMISSION RELATING TO CABLES?	CABLE-TYPE	WHETHER, & PURPOSE OF, TELECOMMUNICATIONS	NOTES & RESTRICTIONS ON PURPOSE/USE
				FPP – P/16/0557/DP/B granted 25 Sept 2017 subject to conditions (see notes).			- Condition 14: Radio and Telecoms Interference and Electro Magnetic Fields from the Converter Station plan - Condition 22: Construction Traffic Management Plan P/16/0557/DP/B - Condition 9a and 9b Converter Station Drainage - Condition 28a and 28b TV and Radio Reception HRA refers to Fibre Optic cable but unable to find any indication it's used for commercial purposes (see link in Telecommunications column).
8.	**NSL** Statnett (Norwegian Developer) National Grid North Sea Limited (UK Developer)	No	CPO authorised by Secretary of State: "The National Grid North Sea Link Limited (East Sleekburn) Compulsory Purchase Order 2016".	All docs consolidated on to one page with links: https://northsealink.com/en/documents/ **Northumberland County Council:** Non Material Amendments approval - 16/01588/NONMAT 13/03524/OUTES	HVDC subsea and onshore. HVAC underground from converter to Gas Insulated Switchgear (GIS).	**Environmental Statement** Link P5-5 on p39 of PDF – *"A fibre optic Distributed Temperature Sensing System may be installed in association with each marine cable for monitoring and control purposes."*	No express terms in Orders permitting use of fibre optic cabling for commercial telecommunications purposes (nor description of same in ES (see link to ES in Telecommunications column). CPO Link CPO terms: Para 3(a) gives "the acquiring authority" rights *"necessary to construct and place new electricity interconnector infrastructure…"* Para 3(h) gives the same authority the right to carry out any *"activities ancillary or incidental thereto"*.
9.	**Greenlink** Greenlink Interconnector Limited (Irish Developer) UK is the other jurisdiction we are concerned with.	No	CPO authorised by Secretary of State: "Greenlink Interconnector Limited (Greenlink, Pembroke) Compulsory Purchase Order 2020."	**Pembrokeshire County Council** Outline Planning Permission – Ref: 20/0041/PA: Link. Planning Permission - Ref: 20/0044/PA - Link– for fibre optic cables.	HVDC, HVAC and Fibre Optic	**Environment Summary – Non Technical Statement** Link p.5 - Para 1.2.3 of ES – ""*The ES, to which this NTS relates covers the Welsh Onshore components of Greenlink… to the connection with the National Grid substation, located within the Pembroke Power Station in Pembrokeshire. This is the defined as the Proposed Development and includes… underground electricity and fibre optic cables"* See para 2 on p10 of ES re Fibre Optic Cables *"for control and communication purposes, laid underground with the HVDC and HVAC cables*"	No express terms in Orders permitting use of fibre optic cabling for commercial telecommunications purposes (nor description of same in ES (see link to ES in Telecommunications column). CPO terms: S1 – *"the acquiring authority…. Authorised to purchase compulsorily the land and new rights over the land described in para 2 and 3 (the Order Land) for the purpose of the construction, use and maintenance of an electricity interconnector comprising underground cables, converter station and associated development to facilitate the*

PROJECT NO.	PROJECT INFO	NSIP? (Yes / No)	NATIONAL ORDER: E.G. DCO / SI / OTHER	PLANNING PERMISSION RELATING TO CABLES?	CABLE-TYPE	WHETHER, & PURPOSE OF, TELECOMMUNICATIONS	NOTES & RESTRICTIONS ON PURPOSE/USE
						Design Access Statement DAS Link. See p.55&56 particularly para 4.5.39 – *"the fibre optic cable system would be used for the following applications:* • *Communications and control; and* • *Monitoring temperatures of the cable system along the route"*	*transfer of electrical power between the UK and the ROI."* S3 – *"new rights authorised to be purchased compulsorily… are described in the Schedule"* The Schedule defines *"Electricity Interconnector Infrastructure"* as including "*fibre optic cables and other communication cables … and other underground or over ground works associated with or ancillary to such cables"* Para 1 of the Schedule gives the right to use the Electricity Interconnector Infrastructure Para 9 of the Schedule gives the right to carry out *"any activities ancillary or incidental hereto"*
10.	**FABLink** RTE (French Developer) FAB Link Limited (UK Developer) EU Project of Common Interest Construction due to begin 2021.	No	CPO authorised by Secretary of State: has been made – Link.	**East Devon District Council** An application for a Certificate of Lawful Development for a proposed use or development was made under S192 of TCPA 1990 (as amended), Town and Country Planning (Development Management Procedure)(England) Order 2015. No mention of Fibre Optic / Telecommunication on CLEUD application.	XLPE or MIND plus Fibre Optic Cables	**UK cable route environmental risk assessment report** Link 2-9 & 2-10 para 2.31 - *"Fibre Optic cables will also be laid for control signalling purposes associated with the operation of the interconnector."* A website link provides information at: https://www.fablink.net/faq/ *See question: "What are the benefits of the FAB Link Project for Alderney":* *"The electricity cables also utilise fibre optic cables for the control systems of the FAB Link Project – there will be significant spare capacity in the system which will be made available to the operators on the Island by ARE. This will provide existing and future generations with the opportunity to access significantly improved infrastructure necessary to attract e-commerce business in accordance with the aims of the Land Use Plan".*	No mention of commercial use in in the CPO or CLEUD terms. CPO terms restrict acquisition rights (and their purpose) of acquiring authority to: *"lay, construct, inspect, use, maintain, renew, replace, repair, remove, decommission, protect, test, improve and upgrade electric cables for transmitting electricity and fibre optic cables for the transmission of data associated with the transmission of electricity together with all ancillary equipment (including but not limited to access chambers, manholes and marker posts) associated works, connections to other electric cables and other conducting media and all the ducts, conduits, gutters or pipes for containing them to be laid (so far as not already in existence) (in this Schedule referred to as "the Works");"* Developer's website describes intention to sell excess capacity in fibre optics to operators on Island of Alderney (see link to FABLink website in Telecommunications column).
11.	**NeuConnect** NeuConnect (German Developer)	No	No	No. **Medway Council** Link to application docs MC/19/3015.	Offshore with be x 2 HVDC plus Fibre Optic Cables	**Public Information Leaflet "Proposals for NeuConnect Interconnector"** Link The offshore cable will comprise two high-voltage DC subsea cables, together with a fibre-optic	Fibre optics will be laid but not for commercial telecoms purposes (see link to Public Information Leaflet and ES in Telecommunications column).

PROJECT NO.	PROJECT INFO	NSIP? (Yes / No)	NATIONAL ORDER: E.G. DCO / SI / OTHER	PLANNING PERMISSION RELATING TO CABLES?	CABLE-TYPE	WHETHER, & PURPOSE OF, TELECOMMUNICATIONS	NOTES & RESTRICTIONS ON PURPOSE/USE
	UK is the other jurisdiction we are concerned with.			Planning application submitted 14 Nov 2019 (undetermined).		cable of a much smaller diameter and operational control. Para 3.60, p.3-10, of ES Main Report Link submitted to Medway Council – *"alongside the DC cables there will also be up to four fibre cables, a temperature sensor and an optic cable"*	
12.	**NorthConnect** JV between 4 publicly owned Scandinavian Companies. Jurisdictions we are concerned with are UK and Norway.	No	No	**Aberdeenshire Council** Full Planning Permission relating to landing of cables – APP/2018/1831 (no mention of fibre optic cables). Planning Permission relating to Converter Station and HVAC cable connecting to Peterhead Power station APP/2015/1121 & substation ENG/2014/2818. **Marine Scotland** Link to decision notice for marine licence where para 1.3 refers to fibre optic cable.	X 2 HVDC plus a fibre optic cable	**Non-technical summary** Link Para 2.4.1 – *"A fibre optic cable will be installed along with two HVDC cables, so there can be instant communication between the two converter stations in Scotland and Norway… The fibre optic cable… will connect into the wider Norwegian fibre optic network".* **Environment Impact Report** Link P24-4, Chapter 24: Resource Usage and Waste. Repeats the cable is for communication between converter stations.	Fibre optics will be laid but not for commercial telecoms purposes (see link to Non-Technical Summary and Marine Licence Decision in Telecommunications column) but please note this will connect into the wider Norwegian network.
13.	**Atlantic Super Connection** Relevant jurisdictions are Iceland and UK.	No	No	Not found/no.	HVDC	No technical information identified relating to telecommunications.	Atlantic Super Connection is currently undertaking an assessment of the ports in the NE of England to find the best potential sites for the facility. Appears the project remaining an intention. Technical information not identified.
14.	**IceLink** Relevant jurisdictions are Iceland and UK.	No	No	No. Still at feasibility stage.	HVDC.	No technical information identified relating to telecommunications.	Appears the project remaining an intention. Technical information not identified.
15.	**Nautilus** Relevant jurisdictions are Belgium and UK.	Yes – pre app stage	No. (Pre app stage. Application for DCO expected 2022).	No.	HVDC / HVAC	Preliminary Environmental Information Report not published. Environmental Statement to be published.	Technical information not identified.
16.	**COBRA**	N/A	N/A	Rasmus Helveg Petersen, Danish Minister for Climate Energy and	HVDC / HVAC / Fibre	According to Energinet, *"In addition to power transmission, the submarine cable also provides a brand new low latency and high capacity*	Technical information not identified. Energinet's Website describes that the excess capacity in the fibre optic cable is being used

PROJECT NO.	PROJECT INFO	NSIP? (Yes / No)	NATIONAL ORDER: E.G. DCO / SI / OTHER	PLANNING PERMISSION RELATING TO CABLES?	CABLE-TYPE	WHETHER, & PURPOSE OF, TELECOMMUNICATIONS	NOTES & RESTRICTIONS ON PURPOSE/USE
	TenneT (Dutch Developer) Energinet.dk (Danish Developer) EU Project of Common Interest Operational since 2019.			Building approved plans for the cable in 2014 Link.		*connection for data traffic between the Nordics and Western Europe"* *"The cable… has been primarily installed to control the interconnection with Danish company, Energinet, and Dutch company, Relined Fiver Network, being responsible for leasing out the extra capacity for commercial purposes."* *"Norwegian infrastructure company Tampnet, which owns and operates the world's largest offshore high capacity communication optical fibre network, is the first company to make use of this new connection."* *7 November 2019* Link *"In order to exchange the necessary data information about the COBRAcable, a fibre-optic data link will be installed alongside the interconnector itself. The purpose of this data cable is to facilitate communications between the two converter stations in the Netherlands and Denmark. It can also be used for a number of technical purposes, such as possible failure location and possible vessel identification (in case of damage to the cable) and registering the temperature of the COBRAcable. In future, this fibre-optic link can also be used to connect offshore wind farms to the telecommunications network. The data cable's remaining capacity will be made available to the market."* *23 September 2016* Link	by commercial customers (see links in Telecommunications column).
17.	**Celtic Interconnector** EIRGRID – Irish Developer (State Owned) Reseu de Transport (RTE) – French Developer	N/A	N/A	No. Planning process intended to begin at the end of 2020.	HVDC / Fibre	Project Website – *"The Celtic Interconnector will bring many benefits for France, Ireland and the EU if built. It will:* • *Allow 700MW (megawatts) of electricity to move between the countries…* • *Provide a direct telecommunications fibre optic link between Ireland and France"* Cable Brochure , diagrams on p6 show "Communication Cable Ducts"	Project remains an intention. Developer appears to be currently deciding where the Interconnector should be built. Planning process intended to begin at the end of 2020 and continue until 2022. Project Website indicates the interconnector will also provide telecoms (see link in Telecommunications column).
18.	**Viking**	No	CPO authorised by Secretary of State:	Yes.	HVDC / HVAC / Fibre	**UK Onshore ES** Link	Fibre optic cables will be laid but not for commercial telecoms purposes (see links to Planning Permissions (2) – (4) and the ES).

PROJECT NO.	PROJECT INFO	NSIP? (Yes / No)	NATIONAL ORDER: E.G. DCO / SI / OTHER	PLANNING PERMISSION RELATING TO CABLES?	CABLE-TYPE	WHETHER, & PURPOSE OF, TELECOMMUNICATIONS	NOTES & RESTRICTIONS ON PURPOSE/USE
	Energinet (Danish Developer) National Grid (GB Developer) Project of Common Interest		"National Grid Viking Link Limited (Viking Link Interconnector) Compulsory) Purchase Order 2019. Link to Order.	(1) Boston Borough Council (Ref: B/17/0340) Link (2) North Keveston DC (Ref: 17/1200/FUL) Link – permits *"installation of fibre-optic cable(s) with the high voltage AC and DC cables"* (3) Holland DC (Ref: H04-0823-17) - Link – permits *"installation of fibre-optic cable(s) with the high voltage AC and DC cables"* (4) East Lydney DC Planning Appeal Decision (Ref: APP/D2510/W/18/3208088) - Link – appeal allowed and development permitted for work including "*the installation of fibre-optic cables with DC cables"*		P.3 para 1.3.1 – *"installation of fibre-optic cable(s) with high voltage AC and DC cables for the purpose of monitoring cable performance."* P.7 para 2.3.2 – *"from TJP… up to three fibre optic cables (two for monitoring the performance of the DC cables and one for communications between the proposed converter stations in Great Britain and Denmark"* P.44 para 2.4.14 – *"two trenches within which AC and fibre optic cables will be installed."*	S.1 of the CPO terms entitle: *"carrying on the activities authorised by its licence under the 1989 Act, and more particularly for the purpose of a high voltage direct current electrical interconnector, including a converter station at North Ing Drove, and a high voltage alternating current connection to the National Grid Electricity Transmission Plc substation at Bicker Fen, and associated works, to facilitate the transfer of electrical power between the United Kingdom and Denmark."*
19.	**GridLink** Gridlink Interconnector Ltd (UK) France is the other relevant jurisdiction. Project of Common Interest	No	No	No. Non-Technical Summary of Environmental Statement refers to applications for Development Consents, para 1.4 (p.4) Link. Development Consent applications were to be submitted in October 2020. Applications appear not submitted as at November 2020. Article written 8 September 2020 suggests application for planning permission will be made to Medway Council (instead of for a DCO). Link.	HDVC / HVAC / Fibre	Non-Technical Summary – p.18 Link *"A smaller fibre-optic cable will be included with the bundled HVDC cables for monitoring and control purposes".* Marine Environment Appraisal Link p.8 para 2.4 *"A smaller fibre-optic cable will be included with the bundled HVDC cables for monitoring and control purposes".* Gridlink Website – Subsea and Onshore HVDC Cable Design Link – *"A smaller fibre-optic cable will be included with the bundled HVDC cables for monitoring and control purposes."* Onshore HVAC Cable Design – Drawing shows fibre optic cable - Link. No onshore available ES yet published.	From limited technical information available, fibre optic cables will be laid but not for commercial telecoms purposes (see link to Non-Technical Summary).

APPENDIX 3

ELECTRICITY ACT 1989
SECTION 6(1)(e)

ELECTRICITY INTERCONNECTOR LICENCE

FOR

Aquind Limited

PART I. TERMS OF THE LICENCE

1. This licence, granted under section 6(1)(e) of the Electricity Act 1989 ("the Act"), authorises Aquind Limited (a company registered in England and Wales under company number 06681477) ("the licensee") whose registered office is situated at Ogn House, Hadrian Way, Wallsend, NE28 6HL, United Kingdom to participate in the operation of the electricity interconnector specified in Schedule 1 during the period specified in paragraph 3 below, subject to -

   (a) the standard conditions of electricity interconnector licences referred to in –

      (i) paragraph 1 of Part II below, which shall have effect in the licence; and

      (ii) paragraph 2 of Part II below which shall only have effect in the licence if brought into effect or back into operation in accordance with the provisions of standard condition 12,

   subject to such amendments to those conditions, if any, as are set out in Part III below (together "the conditions");

   (b) the special conditions, if any, set out in Part IV below ("the special conditions"); and

   (c) such Schedules hereto as may be referenced in the conditions, the special conditions or the terms of the licence.

2. This licence is subject to transfer, modification or amendment in accordance with the provisions of the Act, the special conditions or the conditions.

3. This licence shall come into force on 9 September 2016 and unless revoked in accordance with the provisions of Schedule 2 shall continue until determined by not less than 25 years' notice in writing given by the Authority to the licensee. Such notice must not be served earlier than a date being ten years after the licence comes into force.

4. The provisions of section 109(1) of the Act (service of documents) shall have effect as if set out herein and as if for the words "this Act" there were substituted the words "this licence".

5. Without prejudice to sections 11 and 23(1) of the Interpretation Act 1978, Parts I to IV inclusive of, and the Schedules to this licence shall be

interpreted and construed in like manner as an Act of Parliament passed after the commencement of the Interpretation Act 1978.

6. References in this licence to a provision of any enactment, where after the date of this licence -

   (a) the enactment has been replaced or supplemented by another enactment, and

   (b) such enactment incorporates a corresponding provision in relation to fundamentally the same subject matter,

   shall be construed, so far as the context permits, as including a reference to the corresponding provision of that other enactment.

The Official Seal of the Gas and Electricity Markets Authority hereunto affixed is authenticated by:-

[redacted]

LS

.....

Lesley Nugent
Authorised in that behalf by the Gas and Electricity Markets Authority

9 September 2016

PART II. THE STANDARD CONDITIONS

1. Standard conditions in effect in this licence

Section A	Section B	Section C	Section D	Section E	Section F
Standard condition 1	Standard condition 3	Standard condition 9	Standard condition 10	Standard condition 15	Standard condition 19
	Standard condition 4		Standard condition 11	Standard condition 16	Standard condition 20
	Standard condition 5		Standard condition 11A	Standard condition 17	Standard condition 21
	Standard condition 6		Standard condition 12	Standard condition 18	Standard condition 22
	Standard condition 7		Standard condition 14		Standard condition 23
	Standard condition 8				

2. Standard conditions not in effect or suspended from operation in this licence

There are no standard conditions not in effect in this licence.

Note: A copy of the standard conditions of electricity interconnector licences as determined by the Secretary of State together with subsequent modifications can be inspected at the principal office of the Authority. The above lists are correct at the date of this licence but may be changed by subsequent modifications to the licence.

PART III. AMENDED STANDARD CONDITIONS PARTICULAR TO THIS LICENCE

There are no amendments to the standard conditions.

PART IV. SPECIAL CONDITIONS

There are no special conditions.

SCHEDULE 1

SPECIFIED AREA OF LICENCE

Aquind Limited interconnector between Great Britain (Lovedean Substation, Waterlooville) and France (Barnabos Substation).

SCHEDULE 2

REVOCATION

1. The Authority may at any time revoke the licence by giving no less than 30 days' notice (24 hours' notice, in the case of a revocation under sub-paragraph 1(f)) in writing to the licensee:

   (a) if the licensee agrees in writing with the Authority that the licence should be revoked;

   (b) if any amount payable under standard condition 2 (Payments by the Licensee to the Authority) is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Authority has given the licensee notice that the payment is overdue - provided that no such notice shall be given earlier than the sixteenth day after the day on which the amount payable became due;

   (c) if the licensee fails:

      (i) to comply with a final order (within the meaning of section 25 of the Act) or with a provisional order (within the meaning of that section) which has been confirmed under that section and (in either case) such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice in writing of such failure to the licensee - provided that no such notice shall be given by the Authority before the expiration of the period within which an application under section 27 of the Act could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined; or

      (ii) to pay any financial penalty (within the meaning of section 27A of the Act) by the due date for such payment and such payment is not made to the Authority within three months after the Authority has given notice in writing of such failure to the licensee - provided that no such notice shall be given by the Authority before the expiration of the period within which an application under section 27E of the Act could be made questioning the validity or effect of the financial penalty or before the proceedings relating to any such application are finally determined;

   (d) if the licensee fails to comply with:

      (i) an order made by the court under section 34 of the Competition Act 1998;

(ii) an order made by the Authority under sections 158 or 160 of the Enterprise Act 2002;

(iii) an order made by the Competition Commission under sections 76, 81, 83, 84 and 161 of the Enterprise Act 2002;

(iv) an order made by the Secretary of State under sections 66, 147, 160 or 161 of the Enterprise Act 2002;

(e) if the licensee:

(i) has not commenced participation in the operation of the interconnector to which this licence relates within 3 years of the date on which the licence comes into force;

(ii) has ceased to participate in the operation of the interconnector to which this licence relates;

(f) if the licensee:

(i) is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986, but subject to paragraphs 2 and 3 of this schedule) or has any voluntary arrangement proposed in relation to it under section 1 of that Act or enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);

(ii) has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed;

(iii) has entered administration under section 8 of and Schedule B1 to the Insolvency Act 1986;

(iv) passes any resolution for winding-up other than a resolution previously approved in writing by the Authority; or

(v) becomes subject to an order for winding-up by a court of competent jurisdiction;

(g) if the licensee is incorporated or has assets in a jurisdiction outside England and Wales and anything analogous to any of the events specified in sub-paragraph (f) occurs in relation to the licensee under the law of any such jurisdiction; or

2. For the purposes of sub-paragraph 1(f)(i), section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there was substituted "£100,000" or such higher figure as the Authority may from time to time determine by notice in writing to the licensee.

3. The licensee shall not be deemed to be unable to pay its debts for the purposes of sub-paragraph 1(f)(i) if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by the licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Authority under paragraph 1.

4. The Authority may at any time revoke the licence by giving no less than 7 days' notice in writing to the Licensee where the Authority is satisfied that there has been a material misstatement (of fact) by, or on behalf of the Licensee, in making its application for the Licence.

APPENDIX 4

ELECTRICITY INTERCONNECTOR LICENCE: STANDARD CONDITIONS

TABLE OF CONTENTS – ELECTRICITY INTERCONNECTOR LICENCE

Part II – THE STANDARD CONDITIONS

PART II - SECTION A: INTERPRETATION, APPLICATION AND PAYMENTS

Condition 1. Definitions and interpretation

1. In these licence conditions unless the context otherwise requires:

"Access Rules"	means methodologies used to establish terms and conditions for access to (including use of) the licensee's interconnector but not including those related to charges
the "Act"	means the Electricity Act 1989
the "Agency"	means the European Union Agency for the Cooperation of Energy Regulators established by Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (recast);
"ancillary service"	means a service necessary for the operation of the licensee's interconnector or an interconnected system
the "Authority"	means the Gas and Electricity Markets Authority established under section 1 of the Utilities Act 2000
"BSC"	means the balancing and settlement code provided for in paragraph 1 of standard

	condition C3 (Balancing and Settlement Code (BSC)) of the transmission licence, as from time to time modified in accordance with that condition
"CUSC"	means the Connection and Use of System Code provided for in paragraph 2 of standard condition C10 (Connection and Use of System Code (CUSC)) of the transmission licence, as from time to time modified in accordance with that condition
the "Directive"	means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC
"GB system operator"	means the holder for the time being of a transmission licence in relation to which licence the Authority or the Secretary of State, where appropriate, has issued a Section C (system operator standard conditions) Direction and where Section C remains in effect (whether or not subject to any terms included in a Section C (system operator standard conditions) Direction or to any subsequent variation of its terms to which the transmission licensee may be subject)
"Grid Code"	means the grid code required to be drawn up by the GB system operator pursuant to

	standard condition C14 (Grid Code) of the transmission licence, as from time to time revised with the approval of the Authority
"information"	includes (without limitation) any documents, accounts, estimates, returns, records or reports and data (whether in written, verbal or electronic form) and/or information in any form or medium whatsoever (whether or not prepared specifically at the request of the Authority) of any description specified by the Authority
"integrated transmission system"	means a system which includes both transmission and interconnection and which the regulatory authority, for the purpose of setting and/or approving system tariffs and/or a tariff or charging methodology, does not draw a distinction between usage of the transmission and the interconnection forming part of that system
"interconnected system"	means a system of a relevant system operator with which the licensee's interconnector is connected or with which the licensee interfaces
"interconnector capacity"	means all interconnector capacity, including new interconnector capacity, which is available over the licensee's interconnector

"licensee's interconnector"	means the electricity interconnector specified in Schedule 1 to this licence which the licensee is authorised to participate in the operation of by virtue of this licence
"new interconnector capacity"	means physical capacity, or new capacity product, which is made available over the licensee's interconnector on or after 3 March 2011
the "Regulation"	means Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast)
"regulatory authority"	means any body (other than the Authority) designated by a Member State whose responsibilities include the oversight or regulation of any of the activities or matters covered by this licence
"related undertaking"	has the meaning given to it in Article 2 of the Directive
"relevant system operator"	means a transmission system operator or distribution system operator where such phrases shall have the meaning given to them in Article 2 of the Directive
"Scottish grid code"	means any grid code which any transmission licensee other than the GB system operator is obliged to maintain pursuant to its licence
"transmission licence"	means a licence granted or treated as granted under section 6(1)(b) of the Act

"transmission licensee"	means a person who holds a transmission licence

2. Any words or expressions used in Part I of the Act, the Utilities Act 2000 or the Energy Act 2004 shall, unless the contrary intention appears, have the same meaning when used in these conditions.

3. Except where the context otherwise requires, any reference to a numbered condition (with or without a letter) or Schedule is a reference to the condition or Schedule (with or without a letter) bearing that number in this licence, and any reference to a numbered paragraph (with or without a letter) is a reference to the paragraph bearing that number in the condition or Schedule in which the reference occurs, and reference to a Section is a reference to that Section in these conditions.

4. These conditions shall have effect as if, in relation to a licensee who is a natural person, for the words "it", "its" and "which" there were substituted the words "he", "him", "his", and "whom", and similar expressions shall be construed accordingly.

5. Except where the context otherwise requires, a reference in a condition to a paragraph is a reference to a paragraph of that condition and a reference in a paragraph to a sub-paragraph is a reference to a sub-paragraph of that paragraph.

6. Any reference in these conditions to:

   (a) a provision thereof;

   (b) a provision of the standard conditions of electricity supply licences;

   (c) a provision of the standard conditions of electricity distribution licences;

   (d) a provision of the standard conditions of electricity transmission licences; or

   (e) a provision of the standard conditions of electricity generation licences,

   shall, if these conditions or the standard conditions in question come to be modified, be construed, so far as the context permits, as a reference to the

corresponding provision of these conditions or the other standard conditions in question as modified.

7. In construing these conditions, the heading or title of any condition or paragraph shall be disregarded.

8. Any reference in a condition to the purposes of that condition generally is a reference to the purposes of that condition as incorporated in this licence and as incorporated in each other licence under section 6(1)(e) of the Act (whenever granted) which incorporates it.

9. Where any obligation placed on the licensee under this licence is required to be performed by a specified date or time, or within a specified period, and where the licensee has failed so to perform by such date or time, or within such period, such obligation shall continue to be binding and enforceable after the specified date or time, or after the expiry of the specified period (but without prejudice to all rights and remedies available against the licensee by reason of the licensee's failure to perform by that date or time, or within that period).

10. Anything required by or under these conditions to be done in writing may be done by facsimile transmission of the instrument in question or by other electronic means and, in such case:

    (a) the original instrument or other confirmation in writing shall be delivered or sent by pre-paid post as soon as is reasonably practicable, and

    (b) where the means of transmission had been agreed in advance between the parties concerned, in the absence of and pending such confirmation, there shall be a rebuttable presumption that what was received duly represented the original instrument.

11. The definitions referred to in this condition may include some definitions which are not used or not used exclusively in Sections A, B, C, D, E, F, or G (which sections are incorporated in all electricity interconnector licences). Where:

    (a) any definition is not used in Sections A, B, C, D, E, F, or G that definition shall, for the purposes of this licence, be treated:

(i) as part of the condition or conditions (and the Section) in which it is used; and

(ii) as not having effect in the licence until such time as the condition in which the definition is used has effect within the licence in pursuance of that condition;

(b) any definition which is used in Sections A, B, C, D, E, F, or G and is also used in one or more other Sections:

(i) that definition shall only be modifiable in accordance with the modification process applicable to each of the conditions in which it is used; and

(ii) if any such condition is modified so as to omit that definition, then the reference to that definition in the condition shall automatically cease to have effect.

Condition 1A. Application of Section G

1) The standard conditions in Section G (in whole or in part) shall not have effect in this licence; and the licensee shall not be obliged to comply with the requirements of Section G (in whole or in part) of this licence until the Authority has issued to the licensee a direction in accordance with paragraph 2 of this condition.

2) The Authority may issue a direction (a "Section G (Cap and Floor Conditions) Direction") to the licensee specifying that the standard conditions in Section G (in whole or in part) shall have effect within this licence from the date and to the extent specified in the direction.

3) The Authority may issue a direction to the licensee to vary the terms (as set out in the Section G (Cap and Floor Conditions) Direction) under which Section G (or parts thereof) has effect in this licence or to provide for Section G (or parts thereof) to cease to have effect in this licence.

4) The variation or cessation provided for in paragraph 3 of this condition shall take effect from the date specified in the variation or cessation direction issued to the licensee by the Authority.

5) With effect from the cessation referred to in paragraph 4 of this condition, paragraphs 2 to 4 of this condition shall be suspended and shall cease to have effect in this licence, in respect of Section G to the extent specified in the cessation direction, but the Authority may at any time thereafter give to the licensee a notice ending the suspension and providing for those paragraphs again to have effect in the licence with effect from the date specified in the notice.

6) Before issuing a direction under paragraphs 2 and 3 of this condition, the Authority will:

   (a) give notice to the licensee that it proposes to issue a direction specifying:

      (i) the date on which it proposes the direction to take effect;

      (ii) the text of the direction and the Authority's reasons for proposing to issue the direction; and

(iii) the time (which will not be less than a period of 28 days from the date of the notice) within which representations in response to the Authority's proposal may be made; and

(b) consider any representations in response to the notice that are duly made and not withdrawn.

Condition 2. Not used.

PART II – SECTION B: GENERAL

Condition 3. Compliance with codes

1. The licensee shall become a party to the BSC and the CUSC and shall comply with the provisions of the same in so far as applicable to it.
2. The licensee shall comply with the requirements of the Grid Code, Scottish grid code and the Distribution Code in so far as applicable to it.
3. The Authority may (following consultation with the relevant transmission licensee or licensed distributor, as appropriate responsible for such code and such other persons as the Authority considers appropriate) issue directions relieving the licensee of its obligations under paragraph 1 and/or paragraph 2 in respect of such parts of the BSC, CUSC, Grid Code, relevant Scottish grid code and/or Distribution Code, to such extent and subject to such conditions as may be specified in those directions.
4. The licensee will cooperate with the Authority and/or any person(s) appointed by the Authority or appointed pursuant to a direction of the Authority, to undertake any reasonable requests in relation to planning, project assurance and/or coordination/systems integration in order to give full effect to the conclusions of a Significant Code Review.
5. Such cooperation may include but not be limited to:
    a) the sharing of such information as reasonable, and constructive participation in industry engagement in order to undertake appropriate planning of changes to IT systems or industry standard operational processes system changes pursuant to the conclusions of a Significant Code Review;
    b) the provision of such data as may be identified and reasonably requested in order to undertake testing and/or the population of any new central systems;
    c) the preparation and cleansing of such data as may reasonably be requested in order to facilitate live operation of the new central system;
    d) the provision of test scripts and results of any testing as may be requested by any person appointed to assure the success of any testing;

e) all reasonable steps to:

i) meet key programme milestones for the completion of any action(s) assigned to the licensee;

ii) adhere to any remedial plan put in place to address any issues, delays or slippage that may impact the licensees ability to meet programme milestones, to the extent that failure to do so may jeopardise the successful and timely implementation of the programme;

iii) identify any dependencies that the licensee may have upon agents or other third-parties and secure the necessary support from such parties; and,

iv) promptly escalate and/or resolve any disputes that if unresolved may jeopardise the fulfilment of these obligations.

6. In this condition:

"Distribution Code"	means any distribution code required to be prepared by a licensed distributor pursuant to standard condition 9 (Distribution Code) of a distribution licence and approved by the Authority and revised from time to time with the approval of the Authority
"distribution licence"	means a distribution licence as granted under section 6(1)(c) of the Act
"licensed distributor"	means a person who holds a distribution licence
"Significant Code Review"	means a review of matters in relation to its principal objective and/or general duties (under section 3A of the Electricity Act or section 4AA of the Gas Act), statutory functions and/or relevant obligations arising under EU law, which the Authority considers are likely to

relate to one or more of the documents referred to in this condition, or to which the licensee is required under this licence to be a party, and concerning which the Authority has consulted upon and issued a Notice to the parties stating that the review will constitute a Significant Code Review.

Condition 4. Provision of information to the Authority

1. Subject to paragraphs 2 and 4 below, the licensee shall furnish to the Authority, in such manner and at such times as the Authority may reasonably require, such information and shall procure and furnish to it such reports, as the Authority may reasonably require or as may be necessary for the purpose of performing**:**

   (a) the functions conferred on the Authority by or under the Act;

   (b) any functions transferred to or conferred on the Authority by or under the Utilities Act 2000;

   (c) any functions conferred on the Authority by or under the Energy Act 2004; and

   (d) any functions conferred on the Authority by or under the Regulation.

   The licensee shall not be required by the Authority to furnish it under this condition with information for the purpose of the exercise of the Authority's functions under section 47 of the Act.

2. The licensee shall, if so requested by the Authority, give reasoned comments on the accuracy and text of any information or advice (so far as relating to its activities as holder of an electricity interconnector licence) that the Authority proposes to publish pursuant to section 48 of the Act.

3. This condition shall not require the licensee to produce any documents or give any information which it could not be compelled to produce or give in evidence in civil proceedings before a court.

4. The power of the Authority to call for information under paragraph 1 is in addition to the power of the Authority to call for information under or pursuant to any other condition. There shall be a presumption that the provision of information in accordance with any other condition is sufficient for the purposes of that condition, but that presumption shall be rebutted, if the Authority states in writing that in its opinion such further information is, or is likely to be, necessary to enable it to exercise functions under the condition in question.

Condition 5. Information regarding technical rules, operation and co-ordinated development

1. In order to promote effective competition and the efficient functioning of the internal market, if so directed by the Authority the licensee shall:

   (a) define the technical safety criteria and technical rules establishing the minimum technical design and operational requirements for connection by users to the interconnector. The technical rules shall ensure the interoperability of systems and be objective and non-discriminatory; and

   (b) publish the technical safety criteria and technical rules described in sub-paragraph (a) above, at least on its website.

2. To the extent not already published pursuant to paragraph 1 above, the licensee shall furnish to any relevant transmission licensee, any relevant distribution licensee or any operator of an interconnected system, information concerning the operation and technical specifications of the licensee's interconnector in such manner and at such times as may reasonably:

   (a) be required by a relevant transmission licensee or relevant distribution licensee to enable it to comply with its obligations under its own licence or applicable industry codes;

   (b) be specified in directions issued from time to time by the Authority to the licensee for the purpose of sub-paragraph (a) above, having taken into consideration any representations made to the Authority by the licensee and any relevant transmission licensee or relevant distribution licensee, and in accordance with any conditions contained in such directions; or

   (c) be required by the operator of an interconnected system for the purposes of ensuring the secure and efficient operation of the interconnected system and its coordinated development and interoperability with the licensee's interconnector.

3. The licensee shall be entitled to refuse to disclose an item of information under paragraph 1, sub-paragraph 2(a) and/or sub-paragraph 2(c)on the grounds that its disclosure would seriously and prejudicially affect the commercial interests of the licensee unless and until the Authority, by notice in writing given to the licensee,

directs it to provide that item of information on the ground that provision thereof is necessary or expedient for the purpose mentioned in paragraph 1, sub-paragraph 2(a) and/or sub-paragraph 2(c).

4. This condition shall not require the licensee to produce any documents or give any information which it could not be compelled to produce or give in evidence in civil proceedings before the court.

5. Sub-paragraph 2(a) and 2(c) shall not apply in respect of any relevant transmission licensee, any relevant distribution licensee or any operator of an interconnected system which has not established, whether in pursuance of a licence condition or otherwise, effective arrangements designed to secure that information provided in pursuance of this condition is not communicated, directly or indirectly, to any electricity generator or electricity supplier.

6. In this condition:

"relevant distribution licensee"	means any distribution licensee to whose system the licensee's interconnector is connected
"relevant transmission licensee"	means any transmission licensee to whose system the licensee's interconnector is connected or with whom the licensee interfaces as a relevant system operator

Condition 6. Separation of accounts

1. The licensee shall, in their internal accounting, keep separate accounts for each of their electricity activities: interconnection; generation; transmission (in the instance of an integrated transmission system, this will also include interconnection activities); distribution; and supply activities as if such activities were carried out by separate undertakings, to avoid discrimination, cross-subsidisation and the distortion of competition between these activities.

Condition 7. Compulsory acquisition of land etc

1. The powers and rights conferred by or under the provisions of Schedule 3 to the Act (Compulsory Acquisition of Land etc. by Licence Holders) shall have effect in relation to the licensee to enable the licensee to carry on the activities authorised by this licence and which relate to:

    (a) the construction or extension of the licensee's interconnector; or

    (b) activities connected with the construction or extension of the licensee's interconnector or connected with the operation of the licensee's interconnector.

Condition 8. Other powers etc

1. The powers and rights conferred by or under the provisions of Schedule 4 to the Act (Other Powers etc. of Licence Holders) shall have effect in relation to the licensee to enable the licensee to carry on the activities authorised by this licence and which relate to:

   (a) the construction or extension of the licensee's interconnector; or

   (b) activities connected with the construction or extension of the licensee's interconnector or connected with the operation of the licensee's interconnector.

PART II – SECTION C: REVENUE

Condition 9. Use of revenues

Part A: Purpose

1. The purpose of this licence condition is to ensure appropriate use of revenues and to secure collection of specific accounting information to an appropriate degree of accuracy by the licensee to enable the Authority to review and approve the use of revenue resulting from the allocation of interconnector capacity.

Part B: Use of Revenues

2. The licensee shall use any revenues which it receives from the allocation of interconnector capacity in accordance with Article 19(2) and (3) of the Regulation.

Part C: Use of Revenues Statement

3. The licensee shall prepare and submit to the Authority a use of revenues statement, in such form as the Authority may from time to time direct.

    (a) guaranteeing the actual availability of the allocated capacity, either on a physical or contractual basis;

    (b) network investment in maintaining or increasing interconnection capacities at an efficient level;

    (c) an income to be taken into account by regulatory authorities when approving the methodology for calculating network tariffs, and/or in assessing whether tariffs should be modified.

4. The first use of revenues statement submitted under this licence condition shall be submitted no later than 15 July 2011 and thereafter annually by 15 July.

5. The use of revenues statement must set out, in respect of the year ending on 30 June:

    (a) the total amount of revenues the licensee has received from the allocation of interconnector capacity during that period;

    (b) the use made of those revenues during that period;

(c) a statement verifying that, in the licensee's view, the actual use of revenues is in accordance with Article 19(2) and (3) of the Regulation, and giving reasons for that view; and

(d) any changes in approach or categorisation since the last submitted use of revenues statement.

Part D: Approval of Use of Revenues Statement

6. The use of revenues statement shall not be approved for the purposes of paragraph 1 unless and until the Authority has issued a direction approving the use of revenues statement, such direction to be issued without undue delay and in any event within 3 months of receipt of the use of revenues statement from the licensee, unless, prior to the expiry of that period, the Authority directs that the use of revenues statement is not approved. In the absence of any direction within 3 months of receipt of the use of revenues statement from the licensee, the use of revenues shall be deemed to be approved.

PART II – SECTION D: THIRD PARTY ACCESS

Condition 10. Charging methodology to apply to third party access to the licensee's interconnector

1. Unless otherwise determined by the Authority, the licensee shall only enter into agreements for access to the licensee's interconnector on the basis of the charging methodology last approved by the Authority.

Initial approval of charging methodology

2. The licensee shall, sufficiently in advance of new interconnector capacity becoming operational, or by such date as the Authority may direct in writing, prepare and submit for approval by the Authority, a charging methodology for access to (including use of) the licensee's interconnector. The licensee may, subject to the approval of the Authority, submit a statement which includes both the Access Rules and the charging methodology.

3. The charging methodology shall set out the methodologies for the calculation of any charges imposed for access to (including use of) the interconnector and/or the provision of ancillary services, and any payments made for access to (including use of), the interconnector, including:

    (a) charges levied by the licensee for the allocation of interconnector capacity, including but not limited to:

        (i) any charges for congestion management purposes, such as the non-use of nominated interconnector capacity; and

        (ii) any charges for the provision (including the provision to any relevant system operator) of ancillary services, including but not limited to balancing services;

    (b) payments made by the licensee for the provision of ancillary services provided by users or relevant system operators; and

    (c) payments made by the licensee to users for the loss of capacity in the event of being unable to make available interconnector capacity.

4. The charges and the application of the underlying charging methodology shall be objective, transparent, non-discriminatory and compliant with the Regulation and

any relevant legally binding decision of the European Commission and/or the Agency (collectively, the 'relevant charging methodology objectives').

5. Prior to submitting the charging methodology to the Authority for approval the licensee shall:

   (a) take all reasonable steps to ensure that all persons including those in other Member States who may have a direct interest in the charging methodology are consulted and allow them a period of not less than 28 days within which to make written representations; and

   (b) furnish to the Authority a report setting out:

      (i) the terms originally proposed in the charging methodology;

      (ii) the representations, if any, made by interested persons; and

      (iii) any change in the terms of the methodology intended as a consequence of such representations.

6. The licensee shall comply with any direction from the Authority to amend its charging methodology for the purposes of meeting the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the charging methodology submitted by the licensee. Where the Authority directs changes to the charging methodology the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) it's charging methodology to the Authority for approval, and the provisions of paragraph 7 shall apply.

7. The charging methodology shall not be approved for the purposes of paragraph 1 unless and until the Authority has issued a direction approving the methodology on the basis that it meets the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the charging methodology from the licensee, unless, prior to the expiry of that period, the Authority directs that the charging methodology is not approved. In the absence of any direction within three months of receipt of the charging methodology from the licensee, the charging methodology shall be deemed to be approved.

Provisional Charging Methodology

8. If the Authority does not approve the charging methodology submitted by the licensee, or the licensee does not submit a charging methodology for approval, the licensee shall comply with any provisional charging methodology which the Authority may, after giving reasonable notice to the licensee, fix for an interim period and the licensee shall ensure that any compensatory measures set by the Authority are put in place to compensate the licensee and/or users as the case may be if the approved charging methodology deviates from the provisional charging methodology.

Review of the charging methodology by the licensee

9. The licensee shall review its charging methodology at least once in each calendar year and, subject to paragraphs 11 to 14, make such modifications to the charging methodology as may be requisite for the purpose of ensuring that the charging methodology better achieves the relevant charging methodology objectives.

10. The licensee shall also review its charging methodology where the Authority so requests. Such review must have regard to any suggestions or comments made by the Authority on the licensee's charging methodology. The licensee shall complete any such review and provide the Authority with a report on the review within three months of the Authority's request. The licensee shall then, subject to paragraphs 11 to 14, make such modifications to the charging methodology as may be requisite for the purpose of better achieving the relevant charging methodology objectives.

Modification of charging methodology

11. Subject to paragraphs 13 and 14, the licensee shall not make a modification to the charging methodology unless the licensee has:

    (a) taken all reasonable steps to ensure that all persons, including those in other Member States, who may have a direct interest in the charging methodology, including the Authority, are consulted on the proposed modification and has allowed such persons a period of not less than 28 days within which to make written representations; and

    (b) furnished the Authority with a report setting out:

(i) the terms originally proposed for the modification;

(ii) the representations, if any, made by interested persons to the licensee;

(iii) any change in the terms of the modification intended in consequence of such representations;

(iv) how the intended modification better achieves the relevant charging methodology objectives; and

(v) a timetable for the implementation of the modification and the date with effect from which the modification (if made) is to take effect, such date being not earlier than the date on which the period referred to in paragraph 14 expires.

12. The licensee shall not propose a modification to the charging methodology more than once a year unless the Authority consents otherwise.

13. The licensee shall comply with any direction from the Authority to amend its proposed modification charging methodology for the purposes of meeting the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified charging methodology submitted by the licensee. Where the Authority directs changes to the proposed modified charging methodology the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its proposed modified charging methodology to the Authority for approval and the provisions of paragraph 14 shall apply.

14. The proposed modified charging methodology shall not be approved for the purposes of paragraph 1 unless and until the Authority has issued a direction approving the proposed modified charging methodology on the basis that it meets the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified charging methodology from the licensee, unless prior to the expiry of that period, the Authority directs that the proposed modified charging methodology is not approved (in which case paragraph 8 shall apply). In the absence of any direction within three months of receipt of the proposed modified

charging methodology from the licensee, the proposed modified charging methodology shall be deemed to be approved.

Publication of charging methodology statement

15. The licensee shall publish (at least on its website) a charging methodology statement that sets out the prevailing charges for access to the licensee's interconnector and how the charges have been derived in accordance with its charging methodology, as soon as practicable after the charging methodology has been approved by the Authority, or, where the charging methodology has been modified, in accordance with any modified charging methodology. Unless the Authority directs otherwise, the charging methodology statement shall be published 28 days prior to it coming into effect.

Provision of charging methodology or charging methodology statement to any person

16. The licensee shall send a copy of its: charging methodology; charging methodology statement; and/or any proposed modification to the charging methodology proposed under paragraph 11, to any person who requests such charging methodology, charging methodology statement or proposed modification. The licensee may impose a reasonable charge upon a person who requests the sending of a charging methodology, charging methodology statement or any proposed modification. Such charge should be equivalent to the licensee's reasonable costs of meeting the request but shall not exceed the maximum amount specified in any directions that may be issued by the Authority for the purposes of this condition.

Where tariffs, and/or a tariff or charging methodology has been established or approved by a regulatory authority other than the Authority

17. Where the licensee's interconnector either:

    (a) forms part of an integrated transmission system and the tariffs and/or the tariff or charging methodology that applies to access to the licensee's interconnector have been established or approved by a regulatory authority and those tariffs and/or the tariff or charging methodology meet the relevant charging methodology objectives; or

(b) does not form part of an integrated transmission system and the tariffs and/or the tariff or charging methodology that applies to access to the licensee's interconnector have been established or approved by a regulatory authority and those tariffs and/or the tariff or charging methodology meet the relevant charging methodology objectives,

the Authority may issue a notice to the licensee that the establishment or approval by that regulatory authority meets the requirements of this licence condition. Such notice will constitute approval of a charging methodology for the purposes of this licence condition.

18. A notice issued under paragraph 17 will expire on the earlier of:

(a) the date, if any, provided for expiry in the notice, or

(b) the withdrawal of the notice by the Authority, such withdrawal being effective from the date specified by the Authority, such date being not less than four months after the Authority has informed the licensee that the notice will be withdrawn.

19. Where the Authority has issued a notice to the licensee under paragraph 17 and the tariffs, and/or tariff or charging methodology that have or has been established or approved by the regulatory authority have or has been modified, or is or are to be modified, the licensee shall furnish the Authority with a report setting out:

(a) the terms originally proposed for the modification;

(b) the representations, if any, made by any interested person to the licensee;

(c) any change in the terms of the modification intended in consequence of the representations;

(d) how the intended modification better achieves the relevant charging methodology objectives; and

(e) a timetable for the implementation of the modification and the date with effect from which the modification (if made) is to take effect.

20. Where the Authority has issued a notice to the licensee under paragraph 17, until that notice expires or is withdrawn by the Authority, paragraphs 2 and 5 to 15 of this condition do not apply to the licensee.

Agreements entered into before 1 July 2004 on the basis of a charging methodology that was approved by either the Authority or the European Commission

21. Paragraphs 2 and 5 to 15 of this licence condition do not apply to a contract for access to the licensee's interconnector that was entered into before 1 July 2004 and which:

    (a) was entered into on the basis of a charging methodology that had been approved by either the Authority or the European Commission; and

    (b) subject to paragraph 24, the Authority has given notice to the licensee that paragraphs 2 and 5 to 15 of this licence condition do not apply to such contract.

22. The licensee shall inform the Authority in writing of any proposed material changes to a contract which is the subject of a notice given under sub-paragraph 21(b). This information shall be furnished to the Authority at least 28 days before the proposed contractual variation becomes effective.

23. A notice given under sub-paragraph 21(b) may be given unconditionally or subject to such conditions as the Authority considers appropriate.

24. A notice given under sub-paragraph 21(b) may be withdrawn or revoked by the Authority in any of the following circumstances:

    (a) the Authority considers that such contract is operating in a manner which is detrimental to competition or the effective functioning of the internal electricity market, or the efficient functioning of the regulated system to which the licensee's interconnector is connected;

    (b) the licensee is found to be in breach of any national or European competition laws, such breach relating to the licensee's interconnector;

    (c) the European Commission requests that such contract is subject to approved tariffs and/or charging methodologies;

    (d) there is merger or acquisition activity in relation to or by the licensee that is detrimental to competition;

(e) there is a material change to the contract terms which has not be approved by the Authority;

(f) the contract is extended beyond its initial term;

(g) the licensee:

(i) has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed; or

(ii) has an administration order under section 8 of the Insolvency Act 1986 made in relation to it.

Provision of information to Authority in relation to the charging methodology

25. The licensee shall comply with any direction given by the Authority to furnish it with a statement showing, so far as is reasonably practicable, the methods by which, and the principles upon which, its charging methodology has been derived.

Condition 11. Requirement to offer terms for access to the licensee's interconnector

1. On the application of any person for access to the licensee's interconnector the licensee shall offer to enter into an agreement with such person for access to the licensee's interconnector.

2. The licensee shall not be in breach of this condition where there is a lack of capacity in respect of which to grant access to the licensee's interconnector.

3. Where the licensee refuses access on the grounds that it lacks the necessary capacity, duly substantiated reasons for such refusal, demonstrating that it is either not economic or not technically feasible to provide the capacity, must be given to both the person seeking access and to the Authority within 28 days of a refusal.

4. Where the licensee refuses access on the grounds that it lacks the necessary capacity and the person seeking access so requests, the licensee shall provide relevant information on measures that would be required to reinforce the network in order to provide that capacity. The licensee may impose a reasonable charge upon a person who requests such information. Such charge should be equivalent to the licensee's reasonable costs of meeting the request but shall not exceed the maximum amount specified in any direction issued by the Authority for the purposes of this condition.

5. Where the licensee considers that for reasons of confidentiality the licensee should not have to provide particular items of information to the person seeking access under paragraphs 3 or 4, the licensee may seek the consent of the Authority to limit the provision of information to that person.

6. A dispute arising from refusal of access on the grounds of lack of necessary capacity will be resolved in accordance with condition 14.

7. The licensee shall keep and maintain records for at least seven years, or the length of any concluded contract plus seven years (whichever is the longer in each case), detailing all access terms and conditions offered to any person (whether or not access is in fact granted or utilised) including details of the charges or tariffs and non-price terms and conditions of access offered.

Condition 11A. Approval of terms for access to the licensee's interconnector

initial approval of access rules

1. The licensee shall, sufficiently in advance of new interconnector capacity becoming operational, or by such date as the Authority may direct in writing, prepare and submit for approval by the Authority a statement setting out the Access Rules. The licensee may, subject to the approval of the Authority, submit a statement which includes both the charging methodology and Access Rules.
2. In respect of interconnector capacity which was operational prior to 3 March 2011, and which has not been included in Access Rules submitted pursuant to paragraph 1, the licensee shall, by such date as the Authority may direct in writing, prepare and submit for approval by the Authority the Access Rules.
3. The Access Rules shall comply with the Regulation and must include, in particular, but not be limited to:
    (a) arrangements for maximising the available interconnector capacity, including: the methodology for the calculation of interconnector capacity, the netting of capacity of any power flows in the opposite direction over the interconnector, the volume of capacity offered on a firm basis and any additional capacity offered on an interruptible basis to maximise corss-border trade;
    (b) arrangements for users to obtain interconnector capacity at appropriate timescales, including, where relevant, the auction rules and procedures for nominating power flows against the capacity;
    (c) arrangements for the management of congestion, including procedures for the licensee to resell or make available to other users unused interconnector capacity and for users to transfer or resell interconnector capacity;
    (d) arrangements in the event that the licensee curtails, withdraws or is unable to provide available capacity;
    (e) arrangements for any ancillary services, such as balancing arrangements, including where users may offer ancillary services to assist with relevant system operator balancing; and

(f) any general terms and conditions that a user must accept in order to obtain interconnector capacity.

4. The Access Rules shall be transparent, objective, non-discriminatory and compliant with the Regulation and any relevant legally binding decision of the European Commission and/or Agency (collectively 'the relevant access rules objectives').
5. Prior to submitting the Access Rules to the Authority for approval the licensee shall:
   (a) take all reasonable steps to ensure that all persons, including those in other Member States who may have a direct interest in the Access Rules, are consulted and allow them a period of not less than 28 days within which to make written representations; and
   (b) furnish to the Authority a report setting out:
      (i) the terms originally proposed in the Access Rules;
      (ii) the representations, if any, made by interested persons; and
      (iii) any change in the terms of the Access Rules intended as a consequence of such representations.
6. The licensee shall comply with any direction from the Authority to amend the Access Rules for the purposes of meeting the relevant access rules objectives, such direction to be issued without delay and in any event within three months of receipt of the Access Rules submitted by the licensee. Where the Authority directs changes to the Access Rules, the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its Access Rules to the Authority for approval and the provisions of paragraph 7 shall apply.
7. The Access Rules shall not be approved unless and until the Authority has issued a direction approving the Access Rules on the basis that they meet the relevant access rules objectives, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules for the licensee, unless, prior to the expiry of that period, the Authority directs that the Access Rules are not approved. In the absence of any direction within three months of receipt of the Access Rules from the licensee, the Access Rules shall be deemed to be approved.

Review of the Access Rules by the licensee

8. The licensee shall review its Access Rules at least once in each calendar year and, subject to paragraphs 10 to 13, make such modifications to the Access Rules as may be requisite for the purpose of ensuring that the Access Rules better achieve the relevant access rules objectives.
9. The licensee shall also review its Access Rules where the Authority so requests. Such review must have regard to any suggestions or comments made by the Authority on the licensee's Access Rules. The licensee shall complete any such review and provide the Authority with a report on the review within three months of the Authority's request. The licensee shall then, subject to paragraphs 10 to 13, make such modifications to the Access Rules as may be requisite for the purpose of better achieving the relevant access rules objectives.

Modification of Access Rules

10. Subject to paragraphs 12 and 13, the licensee shall not make a modification to the Access Rules unless the licensee has:
    (a) taken all reasonable steps to ensure that all persons who may have a direct interest in the Access Rules, including those in other Member States, are consulted on the proposed modification and has allowed such persons a period of not less than 28 days within which to make written representations; and
    (b) furnished the Authority with a report setting out:
        (i) the terms originally proposed for the modification;
        (ii) the representations, if any, made by interested persons to the licensee;
        (iii) any change in the terms of the modification intended in consequence of such representations;
        (iv) how the intended modification better achieves the relevant access rules objectives; and
        (v) a timetable for the implementation of the modification and the date with effect from which the modification (if made) is to take effect, such date being not earlier than the date on which the period referred to in paragraph 13 expires.

11. The licensee shall not propose a modification to the Access Rules more than once a year unless the Authority consents otherwise.
12. The licensee shall comply with any direction from the Authority to amend its proposed modified Access Rules for the purposes of meeting the relevant access rules objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified Access Rules submitted by the licensee. Where the Authority directs changes to the proposed modified Access Rules, the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its proposed modified Access Rules to the Authority for approval and the provisions of paragraph 13 shall apply.
13. The proposed modified Access Rules shall not be approved unless and until the Authority has issued a direction approving the proposed modified Access Rules on the basis that they meet the relevant access rules objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified Access Rules from the licensee unless, prior to the expiry of that period, the Authority directs that the proposed modified Access Rules are not approved. In the absence of any direction within three months of receipt of the proposed modified Access Rules from the licensee, the proposed modified Access Rules shall be deemed to be approved.

Publication of Access Rules

14. The licensee shall publish (at least on its website) the Access Rules as soon as practicable after the Access Rules have been approved by the Authority, or, where the Access Rules have been modified, the Access Rules as modified. Unless the Authority directs otherwise, the Access Rules shall be published 28 days prior to coming into effect.

Provision of Access Rules to any person

15. The licensee shall send a copy of its Access Rules and/or any proposed modification to the Access Rules proposed under paragraph 10, to any person who requests such Access Rules or proposed modification. The licensee may impose a reasonable charge upon a person who requests the sending of the Access Rules or any proposed modification. Such charge should be equivalent to the licensee's reasonable costs of meeting the request but shall not exceed the maximum amount

specified in any directions that may be issued by the Authority for the purposes of this condition.

Condition 12. Application of licence conditions 9, 10 and 11: Exemption orders

1. In accordance with this licence condition, licence conditions 9, 10 and 11 ('the relevant conditions') may:

    (a) not have effect in this licence;

    (b) be suspended from operation in this licence;

    (c) be brought into, (where the licence condition did not have effect) or back into operation (where the licence condition was suspended from operation), in this licence.

2. On the application of the licensee in accordance with paragraph 3, the Authority must (either before, at the same time, or after this licence has been granted to the licensee) issue an exemption order providing that any or all of the relevant conditions may not have effect or are suspended from operation, or (where the licence has not yet been granted) will not be in effect or will be suspended from operation, where the Authority is satisfied that it has complied with the requirements placed on the Authority by Article 63 of the Regulation and in the issuing of the exemption order is otherwise compliant with that Article.

3. A licensee may make a request in writing to the Authority for the Authority to issue an exemption order such that any or all of the relevant conditions do not have effect or are suspended from operation. The request shall specify the relevant conditions to which the request relates and must set out all relevant information that would allow the Authority to determine whether such an exemption order should be issued given the matters of which the Authority must be satisfied before issuing an exemption order, as set out in paragraph 1 of Article 63 of the Regulation. The request shall include the Access Rules for approval by the Authority in accordance with paragraph 9 below, which Access Rules shall comply with paragraphs 3 and 4 of licence condition 11A, and prior to submitting the Access Rules for approval, the licensee shall comply with paragraph 5 of licence condition 11A.

4. An exemption order shall be in writing and may be expressed:

    (a) so as to have effect or for a period specified in, or determined under the exemption;

(b) subject to such conditions as the Authority considers appropriate including any conditions regarding non-discriminatory access to the interconnector to which the exemption relates;

(c) so as to have effect in relation to the whole or any part of, as the case may be:

(i) the capacity of the new interconnector;

(ii) the significant increase in the capacity of the licensee's interconnector.

5. An exemption order issued under paragraph 2 may be revoked in accordance with its provisions, and must be revoked if the approval of the European Commission to the exemption expires in accordance with paragraph 8 of Article 63 of the Regulation.

6. An application made under paragraph 3 may relate to a new interconnector or to a part of an interconnector in so far as that part represents a significant increase of capacity to that interconnector.

7. An exemption order will not be made until the Authority has approved the Access Rules.

8. The licensee shall comply with any direction from the Authority to amend the Access Rules submitted pursuant to paragraph 3 above, for the purposes of meeting the relevant access rules objectives and the requirements of paragraph 10 below, such direction to be issued without undue delay and in any even within three months of receipt of the Access Rules submitted by the licensee. Where the Authority directs changes to the Access Rules, the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its Access Rules to the Authority for approval and the provisions of paragraph 9 shall apply.

9. The Access Rules shall not be approved for the purposes of paragraph 7 unless and until the Authority has issued a direction approving the Access Rules on the basis that they meet the relevant access rules objectives and the requirements of paragraph 10 below, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules from the licensee unless,

prior to the expiry of that period, the Authority directs that the Access Rules are not approved. In the absence of any direction within three months of receipt of the Access Rules from the licensee, the Access Rules shall be deemed to be approved.

10. The requirements of this paragraph are that the Authority considers that the Access Rules:

    (a) will require that any unused capacity in the exempt infrastructure is made available to other users or potential users;

    (b) will not restrict reselling of rights to have electricity transmitted through the exempt infrastructure.

11. In this licence condition:

"new interconnector"	means an interconnector not completed by 4 August 2003

Condition 13 - Not Used

Condition 14. Dispute resolution

1. Upon the application of any person who wishes to dispute the tariffs or Access Rules offered to that person in respect of access to the licensee's interconnector (including a refusal by the licensee to offer access on the grounds that insufficient capacity is available), the Authority may, pursuant to section 7(3)(c) of the Act, settle any terms of the agreement in dispute between the licensee and that person or persons (as the case may be) in such manner as it appears to the Authority to be reasonable.

PART II – SECTION E: BRITISH ELECTRICITY TRADING AND TRANSMISSION ARRANGEMENTS

Condition 15. Definitions

In this section:

"BETTA"	means the British electricity trading and transmission arrangements which are provided for in Chapter 1 of Part 3 of the Energy Act 2004
"BETTA go-live date"	means the date which the Secretary of State indicates in a direction shall be the BETTA go-live date
"British Grid Systems Agreement"	means the agreement known as the British Grid Systems agreement and made between The National Grid Company plc, Scottish Hydro-Electric Plc and Scottish Power Plc and dated 30 March 1990, as amended or modified from time to time
"Code"	means any or all of the CUSC, BSC, Grid Code, STC and any Scottish grid code as the context requires
"GB transmission system"	means the system consisting (wholly or mainly) of high voltage electric lines owned or operated by transmission licensees within Great Britain and used for the transmission of electricity from one generating station to a sub-station or to another generating station or between sub-stations or to or from any interconnector and includes any electrical

plant or meters owned or operated by any transmission licensee within Great Britain in connection with the transmission of electricity

"interconnection"	means:

the 275kV and 400kV circuits between and including the associated switchgear at Harker sub-station in Cumbria and the associated switchgear at Strathaven sub-station in Lanarkshire;

the 275kV transmission circuit between and including the associated switchgear at Cockenzie in East Lothian and the associated switchgear at Stella in Tyne and Wear; and

the 400kV transmission circuit between and including the associated switchgear at Torness in East Lothian and the associated switchgear at Stella in Tyne and Wear

all as existing at the date on which the transmission licence of each existing Scottish licensee comes into force as from time to time maintained, repaired or renewed, together with any alteration, modification or addition (other than maintenance, repair or renewal) which is primarily designed to effect a permanent increase in one or more particular interconnection capacities as they exist immediately prior to such alteration,

	modification or addition and as from time to time maintained, repaired or renewed; and the 132kV transmission circuit between and including (and directly connecting) the associated switchgear at Chapelcross and the associated switchgear at Harker sub-station in Cumbria, and the 132kV transmission circuit between and including (and connecting, via Junction V) the associated switchgear at Chapelcross and the associated switchgear at Harker sub-station in Cumbria, all as existing at the date on which the transmission licence of each existing Scottish licensee comes into force and as from time to time maintained, repaired or renewed
"interconnector"	means the electric lines and electrical plant and meters used solely for the transfer of electricity to or from the GB transmission system into or out of Great Britain
"licensee's transmission system"	means those parts of the GB transmission system which are owned or operated by a transmission licensee within its transmission area
"non-GB trading and transmission arrangements"	means those arrangements for, amongst other things, the separate trading or transmission of electricity in Scotland, the separate trading or transmission of electricity in England and Wales and the trading or

	transmission of electricity between England and Wales (taken as a whole) and Scotland which are defined and governed by, amongst other things, the relevant documents
"relevant documents"	means the documents which relate to the non-GB trading and transmission arrangements, including, without limitation: (a) the Settlement Agreement for Scotland; (b) the British Grid System Agreement; (c) the System Operation Agreement; and (d) any agreement relating to: (i) the establishment of, operation of, or trading of electricity across the Scottish interconnection; (ii) the use of or connection to the Scottish interconnection; and (iii) the use of, or connection to, a distribution or a licensee's transmission system in Scotland
"running-off"	means bringing to an end
"Scottish interconnection"	means such part of the interconnection as is situated in Scotland
"Scottish licensee"	means the holder of a transmission licence at the date that this condition takes effect in this licence but shall not include the GB system operator

"Section C (system operator standard conditions) Direction"	means a direction issued by the Authority or the Secretary of State, where appropriate, in accordance with standard condition A2 (Application of Section C) of the transmission licence granted to electricity transmission licensees, as from time to time modified
"Settlement Agreement for Scotland"	means the agreement of that title, as nominated by the Authority for the purposes of this condition, to be prepared in accordance with and comprise such matters as are set out in special condition I (The Settlement Agreement for Scotland) in each of the electricity distribution licences of SP Distribution Limited, and Scottish Hydro-Electric Power Distribution Limited (and any other name by which any of these companies come to be known)
"STC"	means the system operator – transmission owner code required to be in place pursuant to the transmission licence granted to the transmission licensees, as from time to time modified
"System Operation Agreement"	means the agreement known as the System Operation agreement and made between Scottish Hydro-Electric Plc and Scottish Power Plc and dated 1 June 1990, as amended or modified from time to time
"GB system operator"	means the holder for the time being of a transmission licence in relation to which

	licence the Authority or the Secretary of State, where appropriate, has issued a Section C (system operator standard conditions) Direction and where Section C of that transmission licence remains in effect (whether or not subject to any terms included in a Section C (system operator standard conditions) Direction or to any subsequent variation of its terms to which the licensee may be subject)
"transition period"	means the period commencing on 1 September 2004 and ending on the BETTA go-live date

Condition 16. BETTA implementation

1. The objective of this licence condition is to require the licensee to take certain steps and do certain things which are within its power and which are or may be necessary or expedient in order that BETTA can take effect on or around 1 April 2005 or such later date as the Secretary of State may designate as the BETTA go-live date.

2. Without prejudice to paragraph 1, the licensee shall take such steps and do such things as are within its power and as are or may be necessary or expedient in order to give full and timely effect:

   (a) to the modifications to this licence made by the Secretary of State pursuant to the powers vested in her under Chapter 1 of Part 3 of the Energy Act 2004 (Electricity trading and transmission) and which have effect in this licence;

   (b) to the extent that the licensee is obliged to comply with the same by virtue of being a party to such code or otherwise and to the extent that such changes have full effect in such code, to the modifications or amendments to:

      (i) the BSC, CUSC and the Grid Code which were designated by the Secretary of State on 1 September 2004 pursuant to the powers vested in her under Chapter 1 of Part 3 of the Energy Act 2004 (Electricity trading and transmission) or pursuant to any power under this or any other licence; and

      (ii) the BSC, CUSC, Grid Code or any Scottish grid code which are directed by the Authority pursuant to the provisions of the following paragraphs of the standard licence conditions for electricity transmission licences: paragraph 6 of standard condition C3 (Balancing and Settlement Code (BSC)), paragraph 8 of standard condition C10 (Connection and Use of System Code (CUSC)), paragraph 7 of standard condition C14 (Grid Code) and

paragraph 6 of standard condition D9 (Licensee's grid code), respectively;

and shall, in each case, take such reasonable steps and do such things as are reasonable and, in each case, as are within its power and as are or may be necessary or expedient to give full and timely effect to the matters envisaged by such modifications or amendments.

3. Without prejudice to paragraph 1, the licensee shall take all reasonable steps and do such things as are reasonable and, in each case, as are within its power and as are or may be necessary in order to give full and timely effect to:

(a) the modifications to this licence which either the Secretary of State has notified to the licensee are to be made to this licence pursuant to the powers vested in her under Chapter 1 of Part 3 of the Energy Act 2004 (Electricity trading and transmission) or which the licensee otherwise knows (or reasonably anticipates) are to be made to this licence, but which, at the relevant time, do not have effect in this licence; and

(b) the modifications or amendments:

(i) to the BSC, CUSC and the Grid Code which were designated by the Secretary of State on 1 September 2004 pursuant to the powers vested in her under Chapter 1 of Part 3 of the Energy Act 2004 (Electricity trading and transmission) or pursuant to any power under this or any other licence; and

(ii) to the BSC, CUSC, Grid Code or any Scottish grid code which are directed by the Authority pursuant to the provisions of the following paragraphs of the standard licence conditions for electricity transmission licences: paragraph 6 of standard condition C3 (Balancing and Settlement Code (BSC)), paragraph 8 of standard condition C10 (Connection and Use of System Code (CUSC)), paragraph 7 of standard condition C14 (Grid Code) and paragraph 6 of standard condition D9 (Licensee's grid code), respectively or which the licensee otherwise knows (or

reasonably anticipates) are to be directed by the Authority pursuant to such provisions,

but which, in either case, do not, at the relevant time, have full effect in the relevant code and shall, in each case, take such reasonable steps and do such things as are reasonable and, in each case, as are within its power and as are or may be necessary or expedient to give full and timely effect to the matters envisaged by such modifications or amendments.

4. Without prejudice to the other provisions of this condition, the licensee shall:

(a) cooperate with other electricity licensees and such other persons as the Authority may determine for these purposes and take such steps and do such things as are reasonable and within its power and as are or may be necessary or expedient to enable such electricity licensees to comply with their licence obligations to give full and timely effect to:

(i) the modifications made or to be made to their licence by the Secretary of State pursuant to the powers vested in her under Chapter 1 of Part 3 of the Energy Act 2004 (Electricity trading and transmission);

(ii) the modifications or amendments to the BSC, CUSC and the Grid Code designated by the Secretary of State on 1 September 2004 pursuant to the powers vested in her under Chapter 1 of Part 3 of the Energy Act 2004 (Electricity trading and transmission) or pursuant to any power under this or any other licence;

(iii) the modifications or amendments to the STC, BSC, CUSC, Grid Code or any Scottish grid code which are directed by the Authority pursuant to the following provisions of the standard conditions for electricity transmission licences: paragraph 7 of standard condition B12 (System Operator- Transmission Owner Code (STC)), paragraph 6 of standard condition C3 (Balancing and Settlement Code (BSC)), paragraph 8 of standard condition C10 (Connection and Use of System Code (CUSC)), paragraph 7 of standard

condition C14 (Grid Code) and paragraph 6 of standard condition D9 (Licensee's grid code), respectively; and

(iv) where that other licensee is a transmission licensee, the provisions of the STC, and

the matters envisaged by such modifications and the provisions of the STC, as appropriate, and

(b) if the licensee becomes aware of any conflict between its compliance with the provisions of this condition and its compliance with any other condition of this licence or any Code, document or agreement to which the licensee is obliged to be or become a party pursuant to this licence, the licensee shall forthwith give written notice of such conflict to the Authority and shall comply with any direction of the Authority in relation to the same (which direction may only be made following such consultation with the licensee (and such other persons as the Authority deems appropriate) in such manner as the Authority deems appropriate).

5. The licensee shall provide to the Authority, in such manner and at such times as the Authority may reasonably require, such information and shall procure and furnish to it such reports as the Authority may require or deem necessary or appropriate to enable the Authority to monitor the licensee's compliance with the requirements of this condition.

6. For the purposes of sub-paragraph 2(b) and paragraph 3 above, a modification or amendment shall have full effect in a code where that modification or amendment, as appropriate, has been implemented and is effective in that code and is not prevented from having effect or being implemented in that code, at the relevant time, by another provision of that code.

7. This condition shall cease to have effect on and from the BETTA go-live date.

Condition 17. BETTA run-off arrangements scheme

1. The licensee shall, to the extent applicable to it, comply with the BETTA run-off arrangements scheme ("the scheme") established and as modified from time to time in accordance with this condition.

2. For the purposes of this condition, the objective of the scheme shall be the running-off of the non-GB trading and transmission arrangements to the extent that the Authority considers it necessary or expedient to do so to ensure that those arrangements do not prevent or in any way hinder the successful and effective implementation of:

    (a) the modifications to this licence and each other licence made or to be made by the Secretary of State pursuant to the powers vested in her under Chapter 1 of Part 3 of the Energy Act 2004 (Electricity trading and transmission);

    (b) the modifications or amendments to:

        (i) the BSC, CUSC and the Grid Code which were designated by the Secretary of State on 1 September 2004 pursuant to the powers vested in her under Chapter 1 of Part 3 of the Energy Act 2004 (Electricity trading and transmission) or pursuant to any power under this or any other licence; and

        (ii) the STC, BSC, CUSC, Grid Code or any Scottish grid code which are directed by the Authority pursuant to the following provisions of the standard conditions for electricity transmission licences: paragraph 7 of standard condition B12 (System Operator – Transmission Owner Code (STC)) which applied during the transition period, paragraph 6 of standard condition C3 (Balancing and Settlement Code (BSC)) which applied during the transition period, paragraph 8 of standard condition C10 (Connection and Use of System Code (CUSC)) which applied during the transition period, paragraph 8 of standard condition C14 (Grid Code) which applied during the transition period and

paragraph 6 of standard condition D9 (Licensee's grid code) which applied during the transition period, respectively; and,

(c) the provisions of the STC which were designated by the Secretary of State on 1 September 2004 pursuant to the powers vested in her under Chapter 1 of Part 3 of the Energy Act 2004 (Electricity trading and transmission) or pursuant to any power under this or any other licence,

and the matters envisaged by such modifications or amendments or the STC, as appropriate.

3. The scheme shall be designated by the Secretary of State for the purposes of this condition, following such consultation as the Secretary of State deems appropriate with those persons that the Secretary of State considers are likely to be affected by the scheme and such other persons as the Secretary of State deems appropriate.

4. The scheme shall set out the steps to be taken (or procured) by the licensee or by any authorised electricity operator or by any other person who undertakes to comply with the scheme, which are, in the opinion of the Secretary of State or, in respect of any subsequent changes made to the scheme by the Authority pursuant to paragraph 6 below, in the opinion of the Authority, reasonably required in order to achieve the objective described in paragraph 2.

5. The scheme may provide, without limitation:

   (a) for all or some of its provisions to have contractual force;

   (b) for securing or facilitating the amendment of all or any of the relevant documents in a manner which is consistent with the objective described in paragraph 2; and

   (c) for the making by the Authority of determinations in respect of such matters affecting such persons, including the licensee, as may be specified in the scheme.

6. The Authority may (with the consent of the Secretary of State) direct that the scheme be amended (following such consultation as the Authority deems appropriate with those persons that the Authority considers are likely to be affected by such an amendment) where the Authority considers it necessary or

expedient to do so for the purposes of achieving the objective described in paragraph 2.

7. The Authority shall serve a copy of any such direction on the licensee, and thereupon, the licensee shall comply with the scheme as modified by the direction.

8. If the licensee becomes aware of any conflict between the requirements contained in the scheme and those imposed on the licensee by any other condition of this licence, the licensee shall forthwith give notice of such conflict to the Authority and shall comply with any direction of the Authority in relation to the same (which direction may only be made following such consultation with the licensee (and such other persons as the Authority deems appropriate) in such manner as the Authority deems appropriate).

9. The Authority may not make any direction under paragraph 6 of this condition after the BETTA go-live date.

Condition 18. Offers for connection to or use of the GB transmission system in the transition period

1. The licensee shall:

   (a) save where it disputes the terms of the same, accept any offer made to it in its capacity as an existing user:

      (i) to enter into an agreement for connection to or use of the GB transmission system made by the GB system operator in accordance with condition C18 (Requirement to offer terms for connection or use of the GB transmission system during the transition period) of the GB system operator's licence; or

      (ii) to amend any existing agreement between the licensee and the GB system operator for connection or use of system made by the GB system operator in accordance with condition C18 (Requirement to offer terms for connection or use of the GB transmission system during the transition period) of the GB system operator's licence

   in each case, within one month (or such longer period as the Authority may direct for these purposes) of its receipt of the same;

   (b) where the terms of an agreement between it and the GB system operator are settled pursuant to paragraph 11 of condition C18 (Requirement to offer terms for connection or use of the GB transmission system during the transition period) of the GB system operator's licence, the licensee shall forthwith enter into the agreement with the GB system operator on the basis of the terms so settled; and

   (c) where the terms of any offer made pursuant to condition C18 (Requirement to offer terms for connection or use of the GB transmission system during the transition period) of the GB system operator's licence are in dispute, and an application has been made to the Authority requesting that it settle the terms of the agreement which are in dispute, and where the terms of such agreement have not been settled by the date which falls two weeks prior to the BETTA go-live

date (or such later date as the Authority may direct for these purposes), forthwith enter into an agreement with the GB system operator for connection to or use of the GB transmission system, or amend an existing agreement, on the basis of the terms offered by the GB system operator pending resolution of the terms of that agreement by the Authority in accordance with paragraph 11 of condition C18 (Requirement to offer terms for connection or use of the GB transmission system during the transition period) of the GB system operator's licence. The Authority's determination of the terms of any such agreement may, where and to the extent appropriate, take account of and make appropriate adjustments to reflect the difference between the terms of that agreement as settled and the terms of that agreement which applied during the period from the BETTA go-live date to the date upon which the agreement as settled takes effect.

2. This condition shall cease to have effect on and from the BETTA go-live date.

PART II - SECTION F: OTHER PROVISIONS

Condition 19. Operation and development of the interconnector

1. The licensee shall at all times act in a manner calculated to secure that it has available to it such resources, including (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licenses, consents and facilities, on such terms and with all such rights, as shall ensure that it is at all times able:

    (a) to properly and efficiently participate in the operation of the interconnector; and

    (b) to comply in all respects with its obligations under this licence, the Act, the Regulation and any other legislation as the Authority may direct from time to time for the purposes of this licence condition.

2. The licensee shall operate, maintain and develop an economic, efficient, secure and reliable interconnector.

3. The licensee shall ensure adequate interconnector capacity and interconnector reliability to ensure the long-term ability of the interconnector to meet reasonable demands for capacity and contribute to security of supply.

4. The licensee shall manage electricity flows on the licensee's interconnector, taking into account exchanges with any interconnected system and shall ensure the availability of all ancillary services including those provided by demand response, insofar as such availability is independent from an interconnected system.

Condition 20. Prohibition of discrimination and cross-subsidies

1. The licensee shall not discriminate between users or classes of users particularly in favour of a related undertaking of the licensee.
2. The licensee shall not give any cross-subsidy to, or receive any cross subsidy from, any entity which is related undertaking of the licensee and which carries out one or more of the following electricity activities: supply and distribution.

Condition 21. General provisions on disclosure of information

1. Save to the extent otherwise provided in this or any other licence condition, or required by any other legal duty to disclose, the licensee shall not disclose commercially sensitive information which it has obtained in the course of carrying out its activities.
2. The licensee shall not disclose information about its own activities, which may be commercially advantageous in respect of supply or generation activities, in a discriminatory manner save where this is necessary for carrying out a business transaction.
3. Paragraph 1 above shall not prohibit disclosure by the licensee to any related undertaking which either holds a transmission licence or is the relevant system operator (being a transmission system operator) for an interconnected system.
4. Without limiting the generality of paragraphs 1 to 3 of this licence condition, the licensee shall not, in the context of sales or purchases of electricity by related undertakings, misuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the licensee's interconnector.

Condition 22. Notification of changes that may affect eligibility for certification

1. Where the licensee has made or makes an application for certification under section 10B of the Act, if at any time prior to the Authority notifying the licensee of its final certification decision under section 10D(7) of the Act the licensee knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the licensee shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.

2. Where the licensee has been certified, if at any time the licensee knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the licensee shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.

3. If at any time from 3 March 2013 the licensee knows or reasonably should know that any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee is or may become a person from a third country, or that a person from a third country has or may take control of the licensee, the licensee shall as soon as reasonably practicable notify the Authority in writing.

4. If at any time from the relevant date the licensee exercises or is likely to exercise any shareholder right or right of appointment in the circumstances described in section 10M of the Act, the licensee shall as soon as is reasonably practicable notify the Authority in writing of the right that has been or is likely to be exercised and the effect of exercising that right.

5. Where the licensee has been certified, by 31 July of each year flowing certification the licensee shall provide the Authority with a written declaration, approved by a resolution of the board of directors of t he licensee and signed by a director of the licensee pursuant to that resolution, setting out:

(a) Whether any event or circumstance has occurred in the previous 12 month period, or such part of that 12 month period since the licensee was certified, that may affect the licensee's eligibility for certification, and if so, the reasons it considers that the event or circumstance may affect its eligibility for certification;

(b) Whether any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee has become a person from a third country, or that a person from a third country has taken control of the licensee, in the previous 12 month period or such part of that 12 month period since the licensee was certified, providing that the licensee is only required to provide a written declaration under this paragraph (b) in relation to a period that occurs after 3 March 2013; and

(c) Whether the licensee has exercised any shareholder right or right of appointment in the circumstances described in section 10M of the Act in the previous 12 month period or such part of that 12 month period since the licensee was certified and if so the effect of exercising that right, providing that the licensee is only required to provide a written declaration under this paragraph (c) where it has been certified on the certification ground in section 10E(3) of the Act and in relation to a period that occurs after the relevant date.

6. In this condition:

"certified" has the same meaning as in section 10O of the Act

"control" has the same meaning as in section 10O of the Act

"person from a third country" has the same meaning as in section 10O of the Act

"relevant date" has the same meaning as in section 10M of the Act

"shareholder right" has the same meaning as in section 10O of t he Act

Condition 23. Regional Cooperation

1. If the licensee is a vertically integrated undertaking it may participate in a joint undertaking established for the purposes of facilitating regional co-operation pursuant to Article 6 of the Directive and Article 34 of the Regulation.
2. A compliance officer of the licensee shall monitor compliance with a compliance programme which must be established and implemented by the joint undertaking to ensure that discrimination and anti-competitive conduct is excluded.
3. In this condition:

   "vertically integrated undertaking" shall have the meaning given in Article 2 of the Directive.

PART II - SECTION G: CAP AND FLOOR CONDITIONS

Condition 24. Definitions

1. In this Section G unless the context otherwise requires:

"Relevant Year"	has the meaning given to that term in special condition 1 (Definitions and interpretation) of this licence.
"Relevant Year *t*"	has the meaning given to that term in special condition 1 (Definitions and interpretation) of this licence.

Condition 25. Cap and Floor Regulatory Instructions and Guidance

Introduction

1. The purpose of this condition is to set out the scope, contents, and common governance arrangements for the Cap and Floor Regulatory Instructions and Guidance ("Cap and Floor RIGs") issued by the Authority pursuant to this condition.

2. The Cap and Floor RIGs are the primary means by which the Authority directs the licensee to collect Specified Information to an appropriate degree of accuracy and provide this information to the Authority to enable it to effectively monitor the costs and revenue during the development, construction, operation, maintenance and decommissioning of the licensee's interconnector.

Part A: Licensee's obligations under this condition

3. Unless and so far as the Authority otherwise consents, the licensee must establish and maintain appropriate systems, processes, and procedures to enable it:

   (a) to estimate, measure, and record the Specified Information detailed in the Cap and Floor RIGs for the time being in force pursuant to this condition; and

   (b) to provide the Specified Information to the Authority in respect of such periods and within such timeframes as are specified in the Cap and Floor RIGs.

4. To facilitate compliance with paragraph 3 of this condition, the accounting records and other records kept by the licensee with respect to the Specified Information must be so arranged as to ensure that such information can be separately identified and reasonably attributed as between the licensee's business and the business of any affiliate or related undertaking of the licensee.

5. The licensee shall:

   (a) maintain all systems of control and other governance arrangements that ensure the information collected and reported to the Authority is in all material respects accurate and complete and is fairly presented and that all such systems of control and other governance arrangements are kept under

regular review by the directors of the licensee with a view to ensuring that they remain effective for this purpose; and

(b) provide all such assistance as may be reasonably required to permit the Authority to review such systems from time to time.

6. The licensee shall notify the Authority immediately if it discovers errors in the information or calculations used to derive the information submitted to the Authority under this licence condition.

Part B: Scope and content of the Cap and Floor RIGs

7. Subject to paragraphs 8 and 9 of this condition, the matters that may be included, or for which provision may be made, in the Cap and Floor RIGs are:

(a) instructions and guidance on the establishment and maintenance of systems, processes, procedures, and ways for recording and providing Specified Information;

(b) instructions and guidance on the standards of accuracy and reliability that are applicable to the recording of Specified Information (including different classes of such information);

(c) a timetable for the development of such systems, processes, and procedures as are required to achieve such standards;

(d) the methodology for calculating or deriving numbers comprising Specified Information;

(e) provision with respect to the meaning of words and phrases used in defining Specified Information;

(f) requirements as to the form and manner in which, or the frequency with which, Specified Information must be recorded;

(g) requirements as to the form and manner in which, or the frequency with which, Specified Information must be provided to the Authority;

(h) requirements as to which (if any) of the Specified Information is to be subject to audit, the terms on which an auditor is to be appointed by the

licensee for that purpose, and the nature of the audit to be carried out by that person;

(i) requirements as to the circumstances in which the Authority may appoint an Examiner to examine the recording of the Specified Information by the licensee;

(j) a statement on whether and to what extent each category of the Specified Information is required for the purposes of the Cap and Floor RIGs; and

(k) provision about how the Authority intends to monitor, assess, and enforce compliance with the Cap and Floor RIGs (as to which, see also Part E of this condition).

8. The provisions of the Cap and Floor RIGs will not exceed what is reasonably required to achieve the purposes of this condition, having regard to the materiality of the costs likely to be incurred by the licensee in complying with those provisions.

9. No Specified Information may exceed what could be requested from the licensee by the Authority under paragraph 1 of standard condition 4 (Provision of information to the Authority).

Part C: Development and modification of the Cap and Floor RIGs

10. The Authority may issue new Cap and Floor RIGs and may modify any existing Cap and Floor RIGs by issuing a direction for that purpose to all licensees in whose licence this condition has effect.

11. The Specified Information collected in relation to each Relevant Year must be reported, according to the relevant reporting requirements provided for in this condition and Cap and Floor RIGs, by no later than 3 months following the end of that Relevant Year, unless the Authority consents to alternative arrangements or unless the licensee is notified otherwise by the Authority.

12. Before issuing a direction under paragraph 10, the Authority will:

(a) give notice to all licensees in whose licence this condition has effect that it proposes to issue new Cap and Floor RIGs or to modify the existing Cap and Floor RIGs specifying:

(i) the date on which it proposes that the provisions of the Cap and Floor RIGs to be issued or modified should take effect;

(ii) the text of the Cap and Floor RIGs to be issued or modified and the Authority's reasons for proposing to issue or modify them; and

(iii) the time (which will not be less than a period of 28 days from the date of the notice) within which representations in response to the Authority's proposal may be made; and

(b) consider any representations in response to the notice that are duly made and not withdrawn.

13. The requirements for the issuing of new Cap and Floor RIGs or modification of existing Cap and Floor RIGs set out in paragraph 12 of this condition may be satisfied by actions taken by the Authority before as well as after the coming into effect of this condition.

Part D: Requirements for new or more detailed information

14. This Part D applies if any new Cap and Floor RIGs or modification of existing Cap and Floor RIGs have the effect of introducing a requirement to provide:

(a) a new category of Specified Information; or

(b) an existing category of Specified Information to a greater level of detail, which has not previously been collected by the licensee, whether under the provisions of the Cap and Floor RIGs or otherwise.

15. Where this Part D applies, the licensee may provide estimates to the Authority in respect of the relevant category of Specified Information for any Relevant Year specified by the Authority.

16. The estimates that are mentioned in paragraph 15 of this condition may be derived from such other information available to the licensee as may be appropriate for that purpose.

Part E: Compliance with the provisions of the Cap and Floor RIGs

17. The licensee must at all times comply with the provisions of the Cap and Floor RIGs for the time being in force pursuant to this condition.

18. Nothing in this condition requires the licensee to provide any documents or give any information that it could not be compelled to produce or give in evidence in civil proceedings before a court.

Part F: Interconnector-specific variations to the Cap and Floor RIGs

19. Where the Authority and the licensee agree on the need to modify the Cap and Floor RIGs, established under Part D of this condition, in order to:

    (a) reflect the specific circumstances of the licensee's interconnector; and
    (b) facilitate the effective monitoring of costs and revenue during the development, construction, operation, maintenance and decommissioning of the licensee's interconnector,

    such modifications may be made by the Authority, without following the process described in Part C of this condition, after bilateral consultation with the licensee.

20. Where the licensee and the Authority cannot reach agreement on the need for modifications under this Part F, such modifications may only be made by means of a direction, after the Authority has conducted a consultation with the licensee and such other interested parties as it considers appropriate (for a period of not less than 28 days) and considered any representations in response to that consultation that are duly made and not withdrawn.

21. Any modifications made pursuant to this Part F shall only apply to the Cap and Floor RIGs utilised by the relevant licensee.

Part G: Interpretation

22. For the purposes of this condition:

"Examiner"	means, in relation to the Cap and Floor RIGs, a person whose degree of knowledge and experience of the matters that are the subject of the Cap and Floor RIGs will enable him to properly carry out and complete the tasks required of him under the terms of his

	nomination by the Authority pursuant to the provisions of the Cap and Floor RIGs.
"Specified Information"	means information (or a category of information) that is so described or defined in the Cap and Floor RIGs.

Condition 26. Provision of information to the GB System Operator

1. The purpose of this condition is to set out when the licensee shall provide estimates of the value of the Interconnector Cap And Floor Revenue Adjustment term (ICF_t) to the GB System Operator and the Authority.

2. In the first TNUoS Reporting Relevant Year of the Regime Duration, the licensee shall as soon as reasonably practicable,

   (a) notify the GB System Operator of its best estimate for the value of ICF_t in respect of that TNUoS Reporting Relevant Year; and

   (b) notify the GB System Operator of its best estimate for the value of ICF_{t+1}; where:

   ICF_t is means the total payment in the TNUoS Reporting Relevant Year *t* to be made between the licensee and the GB System Operator, pursuant to and calculated in accordance with, the special conditions of the relevant licensee's electricity interconnector licence.

3. In each Relevant Year subsequent to the first TNUoS Reporting Relevant Year of the Regime Duration, the licensee shall, on or before the date specified in the CUSC:

   (a) notify the GB System Operator of its latest best estimate for the value of ICF_t; and

   (b) notify the GB System Operator of its latest best estimate for the value of ICF_{t+1}.

4. The licensee shall, at all times, keep under review the estimates notified to the GB System Operator pursuant to paragraphs 2 or 3. If at any time, the licensee

reasonably considers that the values of ICF_t and/or ICF_{t+1}, notified to the GB System Operator will be materially different from the estimates previously notified to the GB System Operator, the licensee shall notify the GB System Operator of the revised values for ICF_t and/or ICF_{t+1} as soon as reasonably practicable.

5. In each TNUoS Reporting Relevant Year subsequent to the first TNUoS Reporting Relevant Year of the Regime Duration, the licensee shall on or before the date specified in the CUSC (or such later date as the Authority may direct), provide a statement to the Authority specifying:

   (a) the values of ICF_t and ICF_{t+1} notified to the GB System Operator in the TNUoS Reporting Relevant Year *t-1* in accordance with paragraph 2 or paragraph 3 of this condition; and

   (b) any revised values of ICF_t and ICF_{t+1} notified to the GB System Operator in the TNUoS Reporting Relevant Year *t-1* in accordance with paragraph 4 of this condition.

6. For the purposes of this condition:

"Regime Duration"	has the meaning given to that term in Special Condition 1 (Definitions and Interpretation) of this licence
"TNUoS Reporting Relevant Year"	means a year beginning on 1 April of each calendar year and ending on 31 March of the following calendar year
"TNUoS Reporting Relevant Year *t*"	means that TNUoS Reporting Relevant Year for the purposes of which any calculation falls to be made
"TNUoS Reporting Relevant Year *t-1*"	means the TNUoS Reporting Relevant Year immediately preceding TNUoS Reporting Relevant Year *t* and similar expressions shall be construed accordingly.

APPENDIX 5

Direction under section 106(3) of the Communications Act 2003 applying the electronic communications code

Background

1. The Applicant has applied to Ofcom for a direction applying the Code to the Applicant.

2. The date on which Ofcom received a completed application that meets the statutory requirements with respect to the content of an application for a direction applying the Code and the manner in which such an application is to be made was 8 August 2019.

3. By virtue of regulation 3 of the Electronic Communications and Wireless Telegraphy Regulations 2011 (SI 2011 No. 1210), except in cases of expropriation, Ofcom must make its decision within 6 months of receiving the completed application.

4. Prior to giving a decision under section 106(3) of the Act to apply the Code to the Applicant, Ofcom must publish a notification of its proposal to give the direction and consider any representations about that proposal that are made to Ofcom within the period specified in the notification.

5. On 21 January 2020, Ofcom published, in accordance with section 107(6) of the Act, a notification of its proposal to give a direction applying the Code to the Applicant for the reasons set out in the consultation document accompanying that notification. That notification invited representations to Ofcom by no later than 5pm on 21 February 2020.

6. Ofcom received one response objecting to the proposal. The respondent was concerned that granting the Code powers would obviate the need for Aquind Limited to obtain relevant planning consents in connection with the installation of a power transmission link running from the south of England to Normandy in France (the Aquind Interconnector).

7. Having considered the objections raised, Ofcom has concluded that the conditions for granting Code powers have been met by the Applicant and it would be inappropriate to withdraw, withhold or delay the granting of it on the grounds stated by the respondent. Ofcom is only empowered to give a direction granting Code powers in relation to the provision of an electronic communications network. Ofcom has also set the scope of the Code powers to exclude the UK Aquind Interconnector Fibre which would be deployed in the Aquind Interconnector. The Applicant has indicated that it will seek development consent for this part of the electronic communication network under the Planning Act 2008.

8. For the reasons set out in the explanatory statement accompanying Ofcom's consultation, Ofcom has had regard, in particular, to each of the matters set out in section 107(4) of the Act. Furthermore, Ofcom has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.

Decision

9. Ofcom hereby directs, in accordance with section 106 of the Act, as follows—

(a) the Code shall apply to the Applicant for the purposes of the provision by the Applicant of part of an electronic communications network, namely, the

Applicant's electronic communications network excluding the UK Aquind Interconnector Fibre, as defined in this direction; and

(b) that application of the Code shall have effect throughout England.

10. This Direction shall take effect on the day it is published.

Interpretation

11. In this Direction—

(a) "**Act**" means the Communications Act 2003;

(b) "**Applicant**" means Aquind Limited, whose registered company number is 06681477;

(c) "**Code**" means the electronic communications code set out in Schedule 3A to the Communications Act 2003;

(d) "**Ofcom**" means the Office of Communications.

(e) "**UK Aquind Interconnector Fibre** " means the part of the Applicant's electronic communications network in England, which is deployed in the Applicant's marine and underground electric power transmission link that runs between the south of England and Normandy in France, and is subject to a Direction issued on 30 July 2018, by the Secretary of State for Business, Energy and Industrial Strategy, pursuant to section 35 of the planning Act 2008.

12. For the purpose of interpreting this Direction—

(a) headings and titles shall be disregarded;

(b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

Signed

[redacted]

Brian Potterill

Competition Policy Director

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

27 March 2020

SCHEDULE 5 TO COVERING LETTER

BLAKE MORGAN

Aquind Limited
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Wallsend
NE28 6HL

Copy to: The Planning Inspectorate
National Infrastructure Planning
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BS1 6PN

By email only: aquind@planninginspectorate.gov.uk

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Our ref: 00584927/000006

17 November 2020

Dear Sirs

Application by AQUIND Limited for an Order granting Development Consent for the AQUIND Interconnector Project (PINS reference: EN020022) ("Application")

Request for Further Technical Information and for AutoCAD drawings

Submitted in relation to Deadline 4 of the Examination Timetable

As you are aware, we act for Mr Geoffrey Carpenter and Mr Peter Carpenter (our "**Clients**"), who jointly own the freehold interest in land known as Little Denmead Farm, Broadway Lane, Denmead, Waterlooville, PO8 0SL.

Aquind propose to acquire a large part of our Clients' land and your Works Plans show the extent of land you hope to take outlined in red.

We refer to our Clients' representations submitted throughout the Examination to date, in relation to the Application.

Part of our Clients' representations relate to the powers of compulsory acquisition being sought through the Application, and specifically why you have not satisfied that there is a case for acquisition, nor a compelling case, to justify the extent of compulsory acquisition of our Clients' freehold interest in plot 1-32 of the Order Land.

To assist with explaining our Clients' representations to you and the Examining Authority in preparation for Compulsory Acquisition Hearing 2 on 11 December 2020, we request that Aquind makes available to us the following please:

1. The calculations for the fibre optic cable outer diameter;

2. The number of 192-fibre optic cables necessary for HV cable monitoring and support, & intra Convertor Station communications. The “192 “ figure derives from "Spare Capacity" section of the "Statement in Relation to FOC" (document reference Document Ref: 7.7.1); and

3. The AutoCAD drawings for the Works Plans and Land Plans. We would like to produce and submit plans showing the alternative reduced land take which we are proposing on behalf of our Clients.

We should be grateful if you would please make the AutoCAD drawings available to us within five working days of the date of this letter so that we have sufficient time to prepare alternative drawings in time for Deadline 5 of the Examination Timetable.

We have copied in the Examining Authority so that they can be aware of our request for your assistance to us and to the Examining Authority in its evaluation of the extent of land take hoped for by you.

Please feel free to contact Anita Kasseean (anita.kasseean@blakemorgan.co.uk) of Blake Morgan LLP for any clarification you require in order to facilitate our request.

We look forward to hearing from you.

Yours faithfully

Blake Morgan LLP