



**AQUIND Limited**

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# **AQUIND INTERCONNECTOR**

Applicant's Transcript of Oral Submissions - ISH1  
Development Consent Order

The Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010, Rule 8(c)

Document Ref: 7.9.20

PINS Ref.: EN020022

**AQUIND INTERCONNECTOR**

**APPLICANT'S STATEMENT FOR HEARING**

**ISSUE SPECIFIC HEARING 1 – DRAFT DEVELOPMENT CONSENT ORDER**

**WEDNESDAY 9 DECEMBER 2020**

## 1. INTRODUCTION

- 1.1 On 14 November 2019, AQUIND Limited (the '**Applicant**') submitted an application for the AQUIND Interconnector Order (the '**Order**') pursuant to section 37 of the Planning Act 2008 (as amended) (the '**Act**') to the Secretary of State ('**SoS**') (the '**Application**').
- 1.2 The Application was accepted by the Planning Inspectorate ('PINS') on 12 December 2019, with the examination of the Application commencing on 8 September 2020.
- 1.3 On 30 October 2020 the Examining Authority ('**ExA**') issued the agenda for Issue Specific Hearing 1 into the draft Development Consent Order ('**dDCO**') ('**ISH1**'). Within the agenda dated 30 October 2020 the ExA requested full transcripts of any oral submissions intended to be made at ISH1. This request in the agenda issued is understood to be a request for information by the ExA in accordance with the Rule 8 letter dated 15 September 2020, as updated on 20 November 2020.
- 1.4 In response to this request, this statement is submitted on behalf of the Applicant and provides a full written statement of the oral submissions intended to be made on behalf of the Applicant at ISH1 in relation to the specific questions raised by the ExA in the agenda for ISH1.
- 1.5 It is noted in the agenda that the ExA confirm the agenda is for guidance only, that it is not intended to be exclusive or exhaustive and that the ExA may add other issues for consideration and may alter the order in which issues are considered. Any additional detailed information requested by the Examiner or further information considered to be required to help address points not raised in the agenda for ISH1, or raised by others at ISH1 will be provided in the Applicant's post hearing submissions.

### **Format of this Statement**

- 1.6 This statement provides responses to the questions raised by the ExA, and it is confirmed any other questions raised at ISH1 will be responded to at ISH1 as necessary on behalf of the Applicant.
- 1.7 The Applicant has submitted a Core Bundle ('**CB**') index of common documents in relation to all hearings which are to take place during December 2020 in respect of the Application. This Core Bundle has been provided in an electronic format with links to the relevant Application documents as they are contained on the PINS webpage for the Application. The Applicant has not submitted these documents to PINS again. References to the CB index follow the format "**CB-document number**".
- 1.8 The Applicant has also submitted a hearing specific bundle index of Application documents relevant to ISH1, in an electronic format with links to the relevant Application documents as they are contained in the PINS webpage for the Application. References to the hearing specific bundle index follow the format "**ISH1 – document number**".
- 1.9 In addition, and further to the request by the ExA for supporting material, this statement is accompanied by exhibits, a list of which is included in **Appendix 1** to this statement, and which are referred to throughout this document by reference to "**ISH1 – Exhibit number**".

## 2. HEARING PARTICIPANTS

2.1 In attendance at ISH1 from the Applicant will be:

2.1.1 Kirill Glukhovskoy (LLM, MBA, ACMA), Managing Director of AQUIND Limited

2.1.2 Vladimir Temerko, Project Manager of AQUIND Limited

2.2 The Applicant will be represented at ISH1 by Simon Bird QC of Francis Taylor Building and Martyn Jarvis, Senior Associate of Herbert Smith Freehills LLP.

2.3 In addition, the following participants will be speaking on behalf of the Applicant on their relevant specialist topics during ISH1:

2.3.1 In respect of engineering matters:

- (A) Ian Robson of WSP: Ian is an Associate Director with WSP currently managing the OHL and HV Cable teams in the UK. Ian holds a First Class Honours Degree in Electrical / Mechanical Engineering and has been a chartered engineer since 2005. Ian has over 25 years' experience in the Power Transmission industry working as Project Manager and Senior Substation / HV Cable engineer in the design and specification of high voltage substations and high voltage cables. Ian has been responsible for the preparation of tenders and also review of tender documentation, compilation of technical specifications, design of various substation configurations and high voltage cable designs as well as the approval of all design documentation during the design review phase of projects and ultimately managing and delivering the projects through to final installation and commissioning through to client handover. Prior to joining WSP in 2019, Ian worked as Project Manager for the East Anglia One (EA1) Project which included onshore cabling from Bawdsey to Burstall/Bramford 400kV substations via 2 underground HV cable circuits each 37km in length as well as a number of shorter HV substation cable circuits.
- (B) Daniel Abbott of WSP: Daniel is a professional engineer at WSP with detailed knowledge of HVDC systems and power electronics. Daniel holds an MEng Honours engineering degree and has spent most of the last decade developing, constructing and commissioning electricity interconnectors in the United Kingdom. Having contributed to the preliminary feasibility study for AQUIND in 2014, Daniel partook in early discussions with key stakeholders such as National Grid, RTE and Ofgem and now oversees technical discussions with service and utilities companies.
- (C) Norman MacLeod of WSP: Norman is Director of the Interconnectors department at WSP and Norman holds both a BSc degree in Electrical and Electronic Engineering and a PhD in the same discipline. Norman is a Chartered Engineer in the UK, a Fellow of the Institution of Engineering and Technology (FIET) in the UK, a Member of the Institute of Electrical and Electronic Engineers (MIEEE) in the USA, and a Distinguished Member of the International Council on Large Electric Systems (DMCIGRE), based in Paris. Norman has worked in the field of HVDC transmission for 40 years and has published over 50 technical papers on HVDC and related technologies and co-authored two books on HVDC systems. Norman is a Visiting Professor at the University of Leeds, a post sponsored by the Royal Academy of Engineering, and a Visiting Professor at the University of Cardiff. Norman was a co-author of the initial techno-economic feasibility study report for the Application in 2014 and has been involved in the development of the Application since that time, as the lead expert on HVDC systems.

- (D) Hamid Mojtavavi of WSP: Hamid is an Associate Director in the Civil and Structural Engineering team at WSP. Hamid is a Chartered Engineer, having been a member of the Institution of Structural Engineers and Engineering Council since 2013 and a Member of the Association for Project Management since 2019. Hamid holds a BSc (Hons) in Civil Engineering and MSc in Structural Engineering and his responsibilities include the role of project manager and technical design lead in relation to large capital multi-disciplinary power, energy, industrial and commercial projects. Hamid has over 18 years' experience as a consulting engineer and has worked on the Application since October 2018 as the Civil and Structural technical lead focusing on the development of the Converter Station Area.

2.3.2 In respect of arboricultural matters:

- (A) Neil Davies: Neil is an Associate Director with WSP and has 24 years' experience in Arboriculture, specialising in Arboricultural Impact Assessment (AIA), Arboricultural Management and Arboricultural Risk Management. Neil has led Arboriculture and forestry inputs for twelve EIA DCOs in linear infrastructure and is an associate member of the Institute of Chartered Foresters and a Technician Member of the Arboriculture Association. Neil has acted as expert witness for the prosecution in a Tree Preservation Order case and on behalf of the local planning authority at many planning committee hearings and Planning Inspectorate appeal hearings.

2.3.3 In respect of marine matters:

- (A) Ross Hodson of Natural Power: Ross Hodson is a Principal Consultant at Natural Power, with over 10 years' experience in EIA and HRA for marine development. Ross holds a BSc (Hons) in Marine Biology and MSc in Clean Technology from Newcastle University and has been a Practitioner Member of the Institute of Environmental Management and Assessment since 2013. Ross has been the marine lead on AQUIND for over two years providing support and technical advice on marine elements of the Application and has also provided technical review for marine Environmental Statement chapters and supporting assessments such as HRA and WFD assessments.

2.3.4 In respect of landscape, visual impacts and tranquillity:

- (A) Maritta Boden: Maritta is an Associate Director at WSP in the Landscape and Urban Design team. Maritta has been a Chartered member of the Landscape Institute since 1994 and an Associate member of the RTPI since 2009. Maritta holds a BA (Hons) in Landscape Architecture and a MSc in Environmental Impact Assessment and has over 25 years' experience in environmental consultancy covering landscape planning and design as well as environmental planning. Maritta has been the landscape lead on the Application since September 2017, advising on both Onshore UK and Onshore France elements of work covering the Converter Station, Onshore Cable Route and Landfall and has attended many of the public consultation and engagement events with LPAs.

2.3.5 In respect of planning and environmental matters:

- (A) Greg Irvine of WSP: Greg is an Associate Environmental Consultant at WSP, with 8 years' experience in environmental impact assessment. Greg's first degree was a BSc in Geography obtained in 2011 and an MSc degree in Environmental Management (Integrated Environmental Studies) in 2012, both obtained from the University of Southampton. Greg has been a Practitioner member of the Institute of Environmental Management and Assessment since 2013. Greg's role in relation to the

Application has consisted of coordination and management of the onshore EIA team, from scoping through to the preparation and submission of the Environmental Statement.

- (B) Adam Coombs of Quod: Adam is an Associate at Quod with 10 years' experience in planning and infrastructure. Adam holds a BA in Town Planning, and a Masters of Science in International Town Planning. Adam is a Chartered Member of the Royal Town Planning Institute (RTPI). Adam has produced the Mitigation Schedule and the updated Mitigation Schedule for the Application.

### 3. DRAFT DCO DOCUMENTS

#### Question 3.1

***Please can the Applicant briefly explain the general structure of the draft Development Consent Order (dDCO), the purpose of each of the Parts 1 to 7 of the dDCO and the general thrust of the Articles within each?***

- 3.1 The dDCO is explained in detail in the Explanatory Memorandum (REP1-024) (**ISH1-1**). In summary, the dDCO if granted would authorise the construction, operation and maintenance of AQUIND Interconnector and associated development (as described in Schedule 1 of the dDCO). The powers in the dDCO articles are split into seven Parts. The primary powers and provisions in each Part are as follows:
- 3.1.1 Part 1 (General provisions), articles 1 and 2: This sets out the name of the Order, when it comes into force and the definitions of terms used;
  - 3.1.2 Part 2 (Principal powers), articles 3 to 9: This sets out the undertaker's authority to construct, operate and maintain the interconnector and associated development. It provides for circumstances where the undertaker wishes others to benefit from the Order powers;
  - 3.1.3 Part 3 (Streets), articles 9A to 16: This sets out the undertaker's rights to alter the layout of streets, carry out 'street works' (including the laying of the interconnector in streets and diversions of utilities where necessary), rights to stop up streets and to implement traffic regulation measures;
  - 3.1.4 Part 4 (Supplemental powers), articles 17 to 19: This makes provision in relation to the discharge of water, protective works to buildings if required and authority to survey and investigate land;
  - 3.1.5 Part 5 (Powers of acquisition), articles 20 to 36: This sets out the undertaker's powers to acquire land, temporarily or permanently, for the purpose of the project or to impose rights and restrictions over land. The provisions include time limits for the exercise of such powers;
  - 3.1.6 Part 6 (Operations), article 37: This provides that a deemed marine licence is granted as part of the Order, as set out in Schedule 15; and
  - 3.1.7 Part 7 (Miscellaneous and general): This makes provision for other matters necessary or expedient for the purpose of the project, including powers to fell or lop trees, and to deal with human remains if found. It makes provision in relation to the application of arbitration, service of notices and the certification of plans, and gives effect to protective provisions for statutory undertakers.
- 3.2 The Schedules to the dDCO make further provision in relation to a number of the articles. In particular, Schedule 2 sets out the 'Requirements', which are the conditions which will constrain the manner in which the project is implemented.

#### **Part 1**

#### **Question 3.2**

***Is the dDCO in the form of an SI?***

- 3.3 Yes, the dDCO is provided in the form of an SI.

#### **Question 3.3**

***Does the meaning of 'land' in Article 20 include 'any interest in land or right in, to or over land' as in Article 2?***

- 3.4 Yes, the definition of 'land' in article 2 applies throughout the dDCO, unless otherwise specified.

#### **Question 3.4**

##### **Could Highways England please explain why it is necessary to amend the definition of 'relevant highway authority'?**

- 3.5 The definition of "relevant highway authority" in article 2 of the dDCO (REP3-003) (CB-01) is as follows:
- 3.5.1 *"relevant highway authority" means, in any given provision of this Order, the highway authority for the highway that the provision relates to i.e. Hampshire County Council or Portsmouth City Council, as the case may be"*
- 3.6 The Applicant understand that Highways England would like to be included, expressly, as a relevant highway authority within this definition.
- 3.7 The definition of "relevant highway authority" as detailed above does not exclude Highways England. Where Highways England are the highway authority for the highway which any relevant provision of the dDCO (REP3-003) (CB-1) relates to, they would be the "relevant highway authority". However, it is the case that none of the authorised development is proposed to be undertaken on highway for which Highways England are the highway authority.
- 3.8 The Applicant therefore understand that Highways England are seeking the ability to approve matters related to highways for which Highways England are not the highway authority. The reason for this is understood to be because Highways England consider the authorised development has the potential to impact on Highways England highway. However, the impacts on Highways England highway have been identified and are being considered by Highways England at this time and any points which need to be addressed in that regard will be addressed during the Examination and prior to any grant of the Order. Furthermore, Highways England are being consulted on the control document which provide the mitigations in relation to impacts on the highway, being the Framework Traffic Management Strategy (REP1-068) (CB-22) and the Framework Construction Traffic Management Strategy (REP1-070) (CB-23). As such, Highways England is able to provide comments on and input to these documents now, which will in turn require the authorised development to be carried out in accordance with the documents containing input from Highways England.
- 3.9 It would not be appropriate and/or necessary for Highways England to also approve the detailed documents which are to be produced pursuant to and in accordance with the Framework Traffic Management Strategy (REP1-068) (CB-22) and the Framework Construction Traffic Management Strategy (REP1-070) (CB-23) in relation to highways for which Highways England are not the highway authority. To require any such dual approval would give rise to potential conflict of views between the approving persons, and ultimately may frustrate the Proposed Development coming forward in a timely manner. Such an approach is also, so far as the Applicant is aware, without precedent.
- 3.10 Noting the comments made above, the Applicant's position is that Highways England should not be expressly referred to as a relevant highway authority.

#### **Part 2**

##### **Question 3.5**

***In the description of the Authorised Development, there are six locations where HDD works are to take place. How are these locations secured within the DCO such that the Examining Authority can be sure that these lengths of the route can only be installed through trenchless methodologies? Are the entry/ exit points, launch and reception compounds fixed in terms of location and dimensions? Would Article 3, its reliance on the Requirements and the related powers and rights sought in respect of the areas where HDD is proposed allow for flexibility to pursue other means of trenched construction other than HDD if HDD were to fail or prove unfeasible?***



- 3.11 The Applicant has made updates to the dDCO (REP3-003) (**CB-1**) at Deadline 5 to confirm the locations where trenchless installation techniques are to be undertaken (see requirement 6 (10) and (11) contained within Schedule 2 to the dDCO (REP3-003) (**CB-1**). Further, the Applicant has made amendments to the Works Plans (REP2-003) (**CB-20**) to identify the trenchless crossing zones, being the areas within which the trenchless methods are to be employed, including the areas within which the entry and exit compounds required in connection with those installation methods are to be located. As such, the position is clearly secured by the requirements, and in turn required to be complied with in accordance with Article 3.
- 3.12 All Horizontal Directional Drilling ('HDD') entry and exit compounds have been reviewed in line with engineering requirements, in particular the length and profile of the drill which dictates the size of the compounds required, to ensure there is adequate space for all drilling and ancillary equipment at the entry point compound as well as providing sufficient space for pipe storage, welding, fabrication and stringing ahead of pipe installation at the exit compound.
- 3.13 The locations within which the entry/exit points are located are fixed, with the exception of HDD 5 (Kings Pond) where flexibility has been retained regarding the exit point (**ISH1 – Exhibit 1**) as discussions in this regard continue with Natural England (and which is discussed in the Applicant's Statement in relation to Compulsory Acquisition Hearing 1 in response to Question 11.5).
- 3.14 The footprints of both entry and exit compounds have been reduced as far as reasonably practicable to minimise impact on the land, whilst maintaining sufficient space to deliver the required construction activities.
- 3.15 The choice of HDD has been considered the most appropriate engineering solution in these areas as the trenched construction solution is not feasible or in circumstances not possible due to constraints and impacts associated with those. The Applicant is content that where HDD or other trenchless installation techniques are identified as the method of installation there are no issues relating to feasibility which would mean these methods of installation would fail. Consent is not therefore sought to allow flexibility to pursue other means of trenched construction.

### **Question 3.6**

***How would Article 7 work in practice when, for example, the Optical Regeneration Stations would accommodate equipment both for the monitoring and operation of the fibre-optic cables as well as for commercial telecommunications purposes?***

- 3.16 Article 7 (Consent to transfer the benefit of the Order) enables the undertaker to seek the Secretary of State's consent to 'transfer' or 'grant' the benefit of some or all of the provisions of the dDCO to another party. Sub-paragraph (6) provides a list of cases where the Secretary of State's consent will not be required (REP3-003) (**CB-1**).
- 3.17 One of the cases where Secretary of State consent is not required, is the transfer or grant of the benefit of the dDCO which relates to the commercial telecommunications use of the fibre optic data transmission cables to a body licensed under the Telecommunications Code (often known as a 'code operator').
- 3.18 In practice, where both the undertaker and a third party code operator require use of facilities or powers provided for in the dDCO, the undertaker would grant the operator the benefit of the right to use those facilities or powers for their commercial purposes, alongside concurrent use of those facilities and powers by the undertaker for the undertaker's purposes.
- 3.19 In reviewing the drafting of article 7, we have deleted sub-paragraph 5(b), which stated that: "*the transferred benefit shall reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit shall not be enforceable against the undertaker*", as we note that this may be interpreted as precluding the dual exercise of the relevant powers which we envisage. By virtue of sub-paragraph 5(a) and 5(c) (now 10(5)(b)) the

exercise of those powers by a code operator (as transferee or lessee) would be subject to all relevant restrictions and liabilities, just as it would when carried out by the undertaker.

### **Question 3.7**

***Explain why there are no provisions, Articles or Requirements relating to Decommissioning in the DCO. Would decommissioning, if not covered here, require a separate DCO to be granted? If the commercial use of the fibre optic cable is considered to be part of the Authorised Development or 'associated development', would its buildings and equipment also fall within the scope of decommissioning?***

- 3.20 The Applicant is not seeking consent to decommission the authorised development at this time. This is because whilst the authorised development is to be designed with a design life of 40 years, it is not the case that it will only be in operation for 40 years and then be required to be decommissioned. Furthermore, it is not considered to be a sound approach for decommissioning, which will be an act of development, to be consented at this time, as it is not possible to undertake a robust environmental assessment of the decommissioning activities where the baseline environment some 40 years or more in the future will be different to the baseline environment today, and the changes cannot be predicted with accuracy.
- 3.21 Accordingly, the necessary consents required for decommissioning would be obtained at the time in accordance with the applicable statutory regime.
- 3.22 We have inserted an article into the dDCO (REP3-003) **(CB-1)** to cover decommissioning, as follows:
- “Decommissioning***
- 24.—(1) In the event that, at some future date, the authorised development landwards of MHWS, or any part of it, is to be decommissioned, a written scheme of decommissioning must be submitted for approval by the relevant planning authority.*
- (2) Any approved written scheme of decommissioning must be implemented as approved, unless otherwise approved by the relevant planning authority.”*
- 3.23 This new requirement is included to provide assurance that where the operation of the authorised development, or a part of it, ceases and it is to be decommissioned, it will be necessary for a decommissioning plan to be submitted and approved. As such, this will require the necessary consents to be obtained. Precedent for this approach is provided for in other DCO's, for instance by requirement 34 of the National Grid (Hinkley Point C Connection Project) Order 2016.
- 3.24 We confirm that any buildings and infrastructure associated with the commercial use of the fibre optic cable would also be covered by this requirement, being part of the 'authorised development'.

## **Part 3**

### **Question 3.8**

***Please could the Applicant and highway authorities set out, possibly using a diagrammatic cross section, their respective positions in respect of powers in relation to the New Roads and Street Works Act 1991 (NRWSA) and their application to the Proposed Development in terms of highway land and subsoil? Is there a need, in relation to the NRSWA and its scope, to seek to acquire subsoil to a highway in order to facilitate the laying of the onshore cable?***

- 3.25 The Applicant has confirmed on several occasions that there is not, and never has been, an intention to acquire the subsoil forming part of the highway. The position with regard to highway subsoil is set out in the Highway Subsoil Acquisition Position Statement (REP1-131) **(ISH1-3)**, which is that where the authorised development is laid at a depth such that

it is in land that does not form the highway, because it is below the top strata forming part of the highway, the acquisition of the necessary rights over that subsoil land are sought.

- 3.26 The position has been further confirmed in updates which have been made to the Book of Reference (REP-003) (CB-10) at Deadline 4, which confirms in relation to each Plot identified therein which includes highway that all interests of the highway authority which are vested in them in that capacity are excluded. The Applicant will rely on the statutory authority to be provided by Article 11 of the dDCO (REP3-003) (CB-1) to install, operate and maintain the authorised development in land which forms part of the highway and which is vested in the highway authority in that capacity.

#### **Question 3.9**

***How do the dDCO and Book of Reference limit the rights that can be acquired in the highway ([REP1-131] paragraph 3.2)? In this context, please could the Applicant explain why the highway is identified for the Compulsory Acquisition of New Connection Works Rights on the Land Plans, such as for Plot 4-05, where the Proposed Development would be laid 'within the vertical plane of the highway' but 'No rights are sought in the Book of Reference [APP-024] in relation to the part of the land which is vested in the highway authority'?***

- 3.27 As explained above, the Applicant updated the Book of Reference (REP-003) (CB-10) at Deadline 4 to confirm in relation to each Plot identified therein that all interests of the highway authority which are vested in them in that capacity are excluded.

#### **Question 3.10**

***Could the Applicant explain why it is necessary to disapply the permit schemes of both Portsmouth City Council and Hampshire County Council to deliver the Proposed Development?***

- 3.28 The Applicant has identified the mitigations required to be provided to mitigate the impacts of constructing the authorised development in the highway, as it is required to do so in accordance with Regulation 14 of the Infrastructure Planning (Environmental Impact Assessment) Regulation 2017. Those mitigations are contained in the Framework Traffic Management Strategy (REP1-068) (CB-22). So as to ensure the authorised development is carried out in accordance with those required mitigations and that they would not be conflicted with and/or frustrated by the application of the permit schemes, the Applicant disapplied the permit schemes and provided for an alternative procedure.
- 3.29 However, the Applicant has discussed this matter further with the relevant highway authorities (Hampshire County Council and Portsmouth City Council) and has, subject to the agreement of appropriate wording so as to ensure no conflict arises with the relevant approvals to be provided in relation to the design of the authorised development in the highway and the mitigations to be provided in relation to its delivery in accordance with Framework Traffic Management Strategy (REP1-068) (CB-22), agreed to apply the permit scheme to the authorised development through the dDCO (REP3-003) (CB-1) at Article 9A. The article is numbered Article 9A so as not to amend the numbering of the articles generally, which it was not considered would be helpful for the persons involved in the Examination. It is confirmed the Article numbering will be updated and cross-references amended as necessary in the dDCO (REP3-003) (CB-1) at an appropriate time before the close of the Examination.
- 3.30 The caveats provided for, and the reasons why these are necessary in connection with the authorised development, are explained in the updates made to the Explanatory Memorandum (REP1-024) (ISH1-1).

### **Question 3.11**

***Please could the Applicant advise whether the dDCO applies 'the statutory process for agreeing compensation' to the acquisition of rights in highway subsoil ([REP1-131])***

- 3.31 Yes. In the event that the dDCO is granted and the Applicant exercises its ability to acquire rights in the subsoil of a highway pursuant to article 23 (Compulsory acquisition of rights and the imposition of restrictive covenants), Schedule 9 applies in relation to compensation. Paragraph 1 of Schedule 9 provides that enactments with respect to compensation for the compulsory acquisition of land apply in respect of the compulsory acquisition of rights and imposition of restriction. Nothing in the dDCO makes any exception for subsoil below a highway.
- 3.32 However, in practice there is unlikely to be any value attributable to subsoil below a highway given that it will have no value assessed on an open market basis as required by the Compensation Code.

### **Question 3.12**

***In relation to Articles 10, 11 and 41 (and the Applicant's answers to questions ExQ1.16.13 and ExQ1.5.34), how would street and tree works beyond the Order limits be enacted or controlled? Would this involve powers from any DCO? If so, are there any made DCOs from which precedent can be derived for the powers sought? Specifically in relation to Article 41, how would this work in practice both within and outside the Order limits in respect of replacement landscaping and/ or compensation?***

#### **3.33 Precedent for powers sought**

- 3.34 In terms of available precedent for the application of the powers provided for by Articles 10, 11 and 41, the Applicant identifies the following:

#### **3.35 Article 10 - Power to alter layout etc. of streets**

- 3.36 Article 10(2) of the Southampton to London Pipeline Development Consent Order 2020 provides the same powers to permanently or temporarily alter the layout of any street (and carry out works ancillary to such alterations) whether or not within the Order limits.

#### **3.37 Article 11 – Street Works**

- 3.38 Article 11(2) of the Southampton to London Pipeline Development Consent Order 2020 provides the same powers to enter on so much of any other street whether or not within the Order limits, for the purposes of carrying out the works for the purposes of the authorised development, or for purposes ancillary to it.

#### **3.39 Article 41 - Felling or lopping of trees and removal of hedgerows**

- 3.40 Article 42 of the Southampton to London Pipeline Development Consent Order 2020 provides the same powers to fell, lop, prune, coppice, pollard or reduce in height or width, any tree or shrub within or overhanging land within the Order limits.

#### **3.41 Controls over street and tree works**

- 3.42 With regard to Article 10, Article 10(3) provides that the powers conferred by Article 10(1) must not be exercised without the approval of the relevant street authority. Furthermore, Article 10(1) by virtue of its formulation contains a test of necessity, providing that the undertaker may only exercise that power for the purpose of constructing and maintaining the authorised development. Where any such works are not for the purpose of constructing and maintaining the authorised development, they would not be permissible and approval for them would not be capable of being given.
- 3.43 With regard to Article 11, Article 11(2) expressly provides that the exercise of the power to enter on so much of any other street whether or not within the Order limits is subject to the consent of the relevant street authority. Furthermore, as with Article 10 a test of necessity

is provided for by virtue of the formulation of the article, providing that the undertaker may only exercise that power for the purpose of constructing and maintaining the authorised development. Where any such works are not for the purpose of constructing and maintaining the authorised development, they would not be permissible and approval for them would not be capable of being given.

- 3.44 With regard to Article 41 and the felling and lopping of trees, the felling and lopping of any tree and removal of any hedgerow is subject to the controls provided for by requirement 15, which requires the production of arboricultural method statements in relation to any works on trees or hedgerows, to be approved by the relevant local authority as part of the approval of the construction environmental management plan for the works to be undertaken. Furthermore, Article 41, much like Articles 10 and 11 is subject to a test of necessity by virtue of its formulation, only being exercisable where it is necessary for the activities to be undertaken. The necessity of those works will be confirmed by virtue of the process provided for obtaining approval for the arboricultural method statements discussed above.
- 3.45 Replacement of lost trees will also be confirmed in consultation with the local authority and is secured within Requirement 15 of the dDCO (REP3-003) (**CB-1**). Priority will be given to planting close to the area of loss and then alternative solutions explored with the local authority where land is not available within 5m of the onshore route. Where replacement planting is not possible, a Capital Asset Valuation of Amenity Trees ('CAVAT') assessment may be made and appropriate sum paid to the local authority to be ring fenced for planting schemes within their holdings. The Applicant is currently in discussions with Hampshire County Council regarding the appropriate mechanism and approach to securing such CAVAT payments for lost trees.
- 3.46 In accordance with the requirements of the Onshore Outline Construction Environmental Management Plan (REP4-005) (**CB-24**), trees will only be lost where such loss is unavoidable. Unavoidable tree loss is where the tree is impacted to such an extent that the physiological viability and structural integrity of the tree is significantly diminished such that the long term retention of the tree is not in keeping with arboricultural best practice. The retention or loss of trees will be decided by a suitably trained and experienced arboriculture professional without prejudice to cost implications. These will be confirmed in the detailed Arboriculture method statement and tree protection plans secured through the discharge of Requirement 15 of the DCO (REP3-003) (**CB-1**).

### **Question 3.13**

**With reference to the answers received to ExQ1.5.35, please could the Applicant explain the scope and level of rights sought, why they are necessary and why some of the powers sought (Article 10 for example) offer unsanctioned ability to affect streets outside of the Order limits? Reference should be made to precedents in recently made Orders where appropriate.**

- 3.47 Hampshire County Council and Portsmouth City Council stated (respectively) in response to ExQ1.3.35, as follows:

*"The Highway Authority are not content with the proposed arrangement within the DCO and are yet to see evidence to why alternative approaches are beneficial to the public. In the continued absence of such justification the Applicant is encouraged to sign up to the full S278, S171, TRO and permit scheme processes which are well established and provide the Highway Authority with the appropriate powers to protect the Highway asset and public interest. This preferred approach is set out within HCC's LIR response and comments on the dDCO within Appendix 1.*

*Article 10 gives powers for permanent or temporary amendments to the street whether within the order limits or not. It is considered that changes permitted within the DCO should only apply to the order limits and separate processes would need to be followed to make any further amendments to the street outside of the order limits. The powers for amendments are also not relevant to the type of works being undertaken. The relevance of the powers set out within points A to I require review and only powers relevant to the works required should be included within the DCO. The*

*Article refers to clause 24 relevant to the traffic management strategy and this should be we believe clause 19. Approval for changes to the street must be sought separately and cannot be considered approved through the traffic management strategy. Clause 19 refers to the information required to permit works on the highway under NRSWA requirements and not for assessments of the proposals in engineering terms. As set out in HCC's LIR response, this will require a separate approval process with a requirement for all details for the cable laying works to be submitted to the Highway Authority for appropriate engineering assessment and approval.*

*Article 11 relates to permissions for street works and HCC have no comments on this drafting at this stage however should the permit scheme be adopted appropriate reference will need to be made.*

*Article 13 is regarding the temporary stopping up of the street and public rights of way. It is unclear why temporary stopping up is required and the Highway Authority have requested clarity on this matter. It is considered that all works can be undertaken through temporary closures (either full or part) and therefore there is no benefit to stopping up of the street."*

*"PCC is not content that the appropriate level of rights is empowered to the applicant by the dDCO nor that this is the appropriate mechanism to authorise and manage the works within the highway. The LHA requires that all works are carried out fully in-line with the NRSWA '91 Administering roadspace bookings and control of the permit scheme is undertaken by COLAs on behalf of the council to deliver the LHA obligations under the terms of NRSWA. The LHA require that this scheme, if approved, is delivered entirely in accord with the NRSWA and operational permit scheme.*

*Article 10 of the dDCO giving the undertaker power to permanently or temporarily alter the layout is of particular concern and this power should not be exercised without the explicit approval of the LHA and provide for "restoration as per SRoH (Specification of Reinstatements and Openings of Highways).*

*Article 11 gives the impression Aquind will be acting as a statutory undertaker following NRSWA and TMA specifications and SIs on their occupancy, standards and permitting, they will be required to pay permitting fee's, are liable to FPNs and responsible for guarantee periods on their reinstatements, they would not be utilising Section 50 licenses to access and open the highway.*

*Article 13 of dDCO does not include any provision for vehicle access to property, only pedestrians, this will impact Farlington Ave residents especially and potentially Yeo Court/Kingsley Road and should be amended accordingly."*

- 3.48 In response to these concerns, it is important to remember that the Government's intention in bringing in the Planning Act 2008 regime was to create a 'one-stop-shop' for nationally significant infrastructure projects, which streamlined the consenting process and ensured no unnecessarily impediments to their delivery. It is for this reason that most granted DCOs which affect highways or streets in any way have powers similar or identical to the articles which the Applicant is seeking in the dDCO. Examples include Southampton to London Pipeline Development Consent Order 2020, as explained above. There is precedent for articles of this sort not just in DCOs, but in Transport and Works Act Orders and Hybrid Acts authorising the delivery of infrastructure of all varieties.
- 3.49 As explained below, we consider that the relevant articles are suitably constrained by reference to what is required for the purpose of the authorised development, and subject to consultation with or consent of the relevant street authorities. It is also perhaps worth noting that the Applicant would also in practice have no reason to carry out works which are unnecessary for the project.

3.50 **Article 10: Power to alter the layout etc of streets**

3.51 Article 10 (Power to alter the layout etc of streets) limits the ability of the undertaker to carry out alterations to streets by reference to what is necessary 'for the purpose of constructing and maintaining the authorised development' (article 10(1)). In theory therefore such alterations could be outside the Order limits, but only to the extent that they met this test. Furthermore, the consent of the relevant street authority must be obtained before this article 10 power may be exercised (article 10(3)).

3.52 In addition, the updated dDCO now includes provision that the undertaker must use the County Council's permit scheme (new article 9A). We are hopeful that the use of this permit scheme by the Applicant, subject to the overarching controls of the Framework Traffic Management Strategy, strikes the appropriate balance between the need of the undertaker to have certainty over its ability to implement the project without undue delay and the level of control and safeguards the authorities are used to under the permit scheme.

3.53 **Article 11: Street Works**

3.54 The NRSWA 1991 applies to the exercise of the DCO powers in relation to streets, save that article 11 (street works) obviates the need for the undertaker to seek a street works licence under the NRSWA 1991, for carrying out of street works within the Order limits, where they are required 'for the purposes of the authorised development'. Outside the Order limits the undertaker must seek the consent of the street authority for any street works (but still pursuant to the statutory authority provided by article 11 rather than separately through the NRSWA 1991 regime), and may only avail itself of the ability to seek this consent via the DCO where it is necessary 'for the purposes of the authorised development.'

3.55 **Article 13: Temporary closure/temporary stopping up**

3.56 Article 13 (Temporary stopping up of street and public rights of way) is discussed further in relation to the response to question 3.14 below. However, we believe that Hampshire County Council may be confused in relation to the meaning of article 13. While the article is entitled and worded in terms of 'temporary stopping up', the effect of the power is in fact identical to a 'temporary road closure'. The term 'temporary stopping up' is simply the terminology used for such powers in statutory instruments. As explained below, the power in article 13 is constrained in a number of ways, including the need for the exercise of such powers to be required in order to carry out the authorised development, and duties to consult with or seek the consent of the relevant street authority.

**Question 3.14**

***Could the Applicant explain the meaning and extent of 'stopping up' and whether the works would meet the definition of such in the 1991 Act? Could the applicant clarify the approval process for any temporary closures (including where this is secured in the dDCO) and what consultation with the relevant street authority includes?***

3.57 We are not aware of any statutory definition of 'stopping up'. The intended meaning of 'stopping up' is the common law meaning, being the cessation of a road's status as a 'highway'. When a highway is 'stopped up' the public no longer has the right to use it. Ordinarily, stopping up is authorised by way of an order under s116 Highway Act 1980 or s247 Town and Country Planning Act 1990.

3.58 When a section of highway is stopped up, there is no ability for the public to use any part of its width to pass and repass<sup>1</sup>.

3.59 No permanent stopping up of highways is authorised by the dDCO, only temporary stopping up while works are carried out.

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<sup>1</sup> If only one lane of a highway is prevented from being used by the public, the highway has not been 'stopped up' since the public can still pass and repass over the remaining lane.

- 3.60 Temporary stopping up is authorised by article 13 of the dDCO. This articles provides that the undertaker may temporarily stop up, alter or divert any street or public right of way within the Order limits where required in order to carry out the authorised development. This includes, specifically, the street listed in Schedule 8 of the dDCO to the extent shown on the Access and Rights of Way Plans. Outside of the DCO regime, such closures would ordinarily be dealt with by way of traffic regulation orders, authorising temporary road closures.
- 3.61 In respect of any streets or public rights of way specified in Schedule 8, the street authority's consent will not be required, but they must be consulted before the power is exercised by the undertaker (article 10(5)(b)). Such consultation would take the form of meaningful engagement between the undertaker and the County Council as appropriate in each circumstance

#### **Part 4**

##### **Question 3.15**

***Issues may be raised by the ExA in respect of Part 4 after its review of information submitted for the Deadlines leading up to the Hearing.***

3.62 N/A

#### **Part 5**

##### **Question 3.16**

***In respect of Article 22, can the Applicant justify the unique circumstances relating to the Proposed Development that make it different from any other 'linear' infrastructure project that warrants a 7-year time limit as opposed to 5 years? Are there any recently made DCOs serving as precedent for this Article?***

3.63 We recognise that there are few precedents for a time limit of more than 5 years, and that those DCOs with longer time limits are generally for projects of a larger scale (Thames Tideway Tunnel, for example). The applicant is therefore willing to accept a period of 5 years, and has updated the drafting of the dDCO accordingly.

##### **Question 3.17**

***Is there intended to be a difference between installation/ construction, operation and maintenance rights under Articles 23 and possibly 20, or would the corridor rights, of approximately 6 and 23m in width, shown in ES Vol 2, Fig 3.12 [APP-157] remain in perpetuity for each category?***

***Is the corridor rights width restricted by anything in the dDCO apart from the Order limits?***

***Would the dDCO prevent the undertaker installing further cables or ducts, either at the time of the initial installation or subsequently, under the description provided in the dDCO for Work No 4?***

- 3.64 Article 20 (Compulsory acquisition of land) and 23 (Compulsory acquisition of rights and the imposition of restrictive covenants) together authorise the compulsory acquisition of rights in land for the purpose of the project. Article 20 applies to all compulsory acquisition authorised by the DCO (including rights in land), and by virtue of article 20(2) it is subject to article 23. Article 20 provides that the undertaker may acquire '*so much of the Order land within the permanent limits and described in the book of reference as is required for the construction, operation and maintenance of the authorised development [..]*'.
- 3.65 Within the Order limits, therefore, this wording operates to further constrain the area of land over which the undertaker may exercise its powers to acquire rights. It would be ultra vires for the undertaker to seek to exercise the article 20/23 powers to acquire rights over the



whole of the cable corridor shown on the land plans where this was not required due to the specific siting of Work 4 (the HVDC cable).

- 3.66 This approach strikes a balance between the needs of the undertaker for some flexibility to accommodate technical and engineering issues relating to routing when the scheme comes to be implemented, and the duty not to take rights over more land than is required.
- 3.67 Once the Onshore HVDC Cables (as defined in Article 2) (Work No. 4) have been installed in a particular location (and rights in land acquired authorising the installation and maintenance of the cable in that location) it would not be lawful for the undertaker to seek to exercise the article 20/23 powers to acquire rights over further land (which would not be required to lay the HVDC cable). That would be outside the scope of the article 20/23 powers as explained above, which authorises acquisition of rights solely as necessary for the HVDC cable.
- 3.68 Further, the definition of Onshore HVDC Cables provided in Article 2 makes clear that this consists of two 320 kilovolt HVDC cable circuits for the transmission of electricity together with: (i) fibre optic data transmission cables accompanying each HVDC cable circuit for the purpose of control, monitoring and protection of the HVDC cable circuits and the converter station, and for commercial telecommunications. This defined term is used when describing Work No.4, and therefore suitably limits what is authorised to be constructed pursuant to the Order.

#### **Question 3.18**

***What is the difference between the use of the term 'carrying out' in Articles 30 and 31 and 'construction' in the Statement of Reasons (SoR) [APP-022], paragraph 6.2.1?***

- 3.69 Paragraph 6.2.1 of the SoR states: "Temporary use of land by the Applicant and all persons authorised on its behalf is also required during the construction, operation and maintenance of the Proposed Development (Articles 30 to 32 of the Order)."
- 3.70 We confirm no difference is intended between the meaning of 'carrying out' in articles 30 and 31, and the term 'construction' in the SoR.

#### **Question 3.19**

***What is the difference between the temporary use of land and the temporary possession of land in terms of the dDCO?***

- 3.71 We believe that the use of both terms is necessary and preceded by other DCOs. The term 'temporary possession' is used to connote the action and point in time that the undertaker legally takes control of the relevant land. This is important in terms of the calculation of compensation as well as the undertaker's wider legal responsibilities for the land.
- 3.72 The term 'temporary use' connotes the ongoing use of the land for the purpose of the project, as authorised by the dDCO and in particular those uses authorised by Schedule 10.

#### **Question 3.20**

***Would Article 32 allow the Undertaker to take possession of any part of the Order land at any time in the future whilst the Proposed Development is operational for the purpose of its maintenance?***

- 3.73 No, the power to use land for maintenance purposes is limited to the 'maintenance period' (see art 32(1)). This period is defined in art 32(12) as '5 years beginning with the date on which that part of the authorised development is brought into operational use', except where the authorised development is replacement or landscape planting where it is defined

by art 32(12) as meaning 5 years beginning with the date on which that part of the replacement or landscape planting is completed.

- 3.74 The use of this power is therefore limited by reference to when the relevant part of the authorised development was completed or began to operate.

#### **Question 3.21**

**Article 32 of the dDCO [APP-019] appears to allow temporary use ‘during the maintenance period’ which is said to be five years. The application Explanatory Memorandum [APP-020], paragraph 9.27, advises that maintenance possession under Article 32 is allowed during the period that the Proposed Development is operational. This advice is repeated in the SoR, paragraph 6.2.3. Is the advice correct? If so, how does this accord with Article 32?**

- 3.75 This advice is not correct. Amendments were made to the Explanatory Memorandum (REP1-024) (ISH1-1) at Deadline 1 to amend this statement. Amendments were made to the Statement of Reasons at Deadline 1 in this respect also (REP1-025) (CB-12).
- 3.76 As per Article 32 (12), the maintenance period for the purpose of Article 32 is limited to 5 years beginning with the date on which the relevant part of the authorised development is brought into use, except where the authorised development is replacement or landscape planting where “the maintenance period” means the period of 5 years beginning with the date on which that part of the replacement or landscape planting is completed.

#### **Question 3.22**

**If the above advice in the Explanatory Memorandum and SoR is correct, why can’t all future maintenance be carried out under Article 32 where the necessary rights have not been acquired? Would this reduce the extent of acquisition for maintenance purposes under Article 20?**

- 3.77 As explained above, the power of maintenance in art 32 is limited to a 5 year period.

#### **Question 3.23**

**Could the Applicant explain the reference to classes (h), (f) & (c) in the response to ExQ1 CA1.3.38?**

- 3.78 The EXA asked (CA1.3.38): “Over what corridor width would restrictions be sought within land coloured blue, purple and green in the Book of Reference [APP-024]?”
- 3.79 As part of the applicant’s response, the applicant stated: “Appendix A of the Statement of Reasons (APP-022) sets out the restrictions that are being sought within the New Connection Works Rights (blue), New Access Rights (purple) and New Landscaping Rights (green) categories. The updated Book of Reference (APP-024 Rev-002) identifies the specific rights and restrictions that are being sought within these categories on a plot by plot basis. Therefore, it can now be seen that restrictions are sought over all plots that are listed as required for New Connection Works Rights class (h), or New Access Rights class (f), or New Landscaping Rights class (c).”
- 3.80 These classes are references to sub-classes of rights within the general categories of rights, as set out in Appendix A of the Statement of Reasons. Specifically:
- 3.80.1 **New Connection Works Rights, class (h):** restrictions on constructing and erecting buildings, works or structures, excavation, altering ground cover or soil levels, planting or growing trees or shrubs or carrying out operations or actions which may obstruct, interrupt, or interfere with the exercise of the rights or damage the Proposed Development.
- 3.80.2 **New Access Rights, class (f):** restrictions on constructing and erecting buildings, works or structures, altering ground cover or soil levels, planting trees

or shrubs or carrying out operations or actions which may obstruct, interrupt, or interfere with the exercise of the rights

- 3.80.3 **New Landscaping Rights, class (c):** restrictions on constructing and erecting buildings, works, structures, excavation, altering ground cover or soil levels, or growing or planting trees or shrubs or carrying out operations or actions which may obstruct, interrupt, or interfere with the exercise of the rights.

#### **Question 3.24**

***Please can the Applicant explain, using practical examples, the rights and temporary use powers sought over each area of allotments, open space and sports pitches within the Order land?***

***The explanation should differentiate between rights and temporary use powers sought for surface construction and maintenance and those sought for land beneath the surface.***

***The explanation should also include reference to the response to ExQ1 CA1.3.33, which states that, during construction, 'the Special Category Land will be affected for that temporary period and in so far as areas are required for construction will not be able to be used.' and that 'Article 30(3) is also relevant, noting that the rights which may be acquired over the Special Category Land will relate to land beneath the surface only, and therefore no acquisition of the surface of the land would be authorised by the Order and in turn the period of surface occupation for this purpose is finite.'***

***Furthermore, the explanation should include whether the dDCO contains powers to occupy or disturb the surface of any of the Special Category Land identified on the Land Plans and, if so, to what extent and why.***

- 3.81 It has been confirmed in written submissions made by the Applicant during the course of the Examination and now by way of updates to the dDCO (REP3-003) (**CB-1**) and the Works Plans (REP2-003) (**CB-20**) that the authorised development will be installed by HDD beneath the Allotments. No works will take place on the Allotments.
- 3.82 It has also been confirmed through updates to the Land Plans (REP1-011a) (**CB-18**) and the Book of Reference (REP4-003) (**CB-10**) that the rights sought over the Allotments are a right of access on foot over the existing paths only for the undertaking of visual inspections during construction to allow for checks to be made for any bentonite (a CEFAS approved non-toxic clay lubricant) breakout associated with the HDD works, and rights to temporarily access the Allotment plots for the purpose of clearing any such bentonite breakout (in the unlikely event that occurs). The right of access over the existing paths on foot and the right to enter onto the Allotment plots temporarily to action any clean-up required apply to the surface of the Allotments. The rights to install the authorised development beneath the Allotments does not apply above 2.5m bgl (as is confirmed in the updates made to the Book of Reference (REP4-003) (**CB-10**)).
- 3.83 In respect of the areas of special category land, the position with regard to the installation methodology on those areas is confirmed by the Works Plans (REP2-003) (**CB-20**), specifically the areas where trenched installation will take place and the areas where trenchless installation techniques are to be used. This is also confirmed by the insertion of requirements 6 (10) and (11) in the Schedule 2 to the dDCO (REP3-003) (**CB-1**).
- 3.84 When construction works are being undertaken, the area within the Order limits in which they are being undertaken will not be accessible for the period of construction.
- 3.85 As is explained in the response to question 4.3 in respect of Compulsory Acquisition Hearing 1, taking into account the manner in which the authorised development is proposed to be constructed and the necessary level of flexibility required to allow for this within the Order limits and the reasons why the ability to acquire permanent rights over the land not identified solely for temporary use is necessary and proportionate, it is not possible to de-couple all of the temporary working areas without constraining the delivery of the authorised development and further impeding its delivery overall.

- 3.86 Nonetheless, powers of temporary possession are sought in respect of the Plots which are shaded yellow on the Land Plans (REP1-011a) (**CB-18**) and detailed in Schedule 10 of the dDCO (REP3-003) (**CB-1**), and in respect of all other land over which the Applicant is seeking the power to compulsorily acquire all interests or acquire new rights.
- 3.87 Where the Applicant has not exercised a right to acquire in accordance with Article 23, it will instead be relying on Article 30 for the purpose of taking possession of the relevant land for the period of construction. The Applicant cannot exercise Article 23 to acquire rights and impose restrictions which are not required for the construction, operation or maintenance of the authorised development. Accordingly, where permanent rights are not required to be acquired, temporary possession powers will be relied upon. It is relevant that the detailed design approvals required to be obtained in accordance with requirement 6 contained at Schedule 2 to the dDCO (**CB-01**) will identify the areas over which the acquisition of permanent rights and restrictions are required, and until that detailed design is confirmed the undertaker would not be in a position to confirm the precise land areas within the Order limits over which the requirement for the permanent rights and restrictions is to apply.
- 3.88 Article 30(3) provides restrictions on the period of time which the undertaker may remain in temporary possession of any land within the Order limits. It is therefore relevant that this requires such period to be temporary unless powers of permanent acquisition are exercised. As explained above, such rights and restrictions could only be exercised where evidenced as being required in connection with the authorised development.
- 3.89 It is the case that the surface of special category land may be disturbed, for instance as a result of trenched cable installation in Zetland Field or as a result of the HDD compound works being located in Farlington Playing Fields. Requirement 22 at Schedule 2 to the dDCO (REP3-003) (**CB-1**) requires the land to be reinstated to its former condition, or to such condition as the relevant local planning authority may approve but which may not be to a standard which is higher than its former condition, within not more than twelve months of the date of the completion of the construction of the authorised development.
- 3.90 In addition, in relation to open space land the Applicant is discussing with the relevant persons the Framework Management Plan for Recreational Impacts (REP4-026) (**CB-33**), which it is anticipated will be used to more clearly secure the reinstatement requirements in relation to open space land once the position in relation to reinstatement is agreed.
- 3.91 With regard to rights required over such land during operation, cable systems are reliable and require very little maintenance. The maintenance that is required in respect of the HVDC cables along the route is only in relation to the link box positions and the need for access at these locations (located approximately every 6km adjacent to a joint bay). Maintenance inspections and tests will be carried out every two years, or before re-energisation of the interconnector after an outage period, and comprise:
- 3.91.1 Periodic testing of the outer cable (i.e. sheath-testing). This testing is carried out from each link box position and takes approximately two hours per location. Typically it is carried out by a team of four engineers with two engineers at each link box location.
- 3.91.2 Visual inspection to check for corrosion of the link box internal components. This is carried out at the same time as the HV testing.
- 3.92 The cables and joints themselves do not require any maintenance. However, cable failures, albeit rare in occurrence, do occur, and the usual cause of this is third party damage. Therefore, the maintenance process also includes regular visual inspections of the cable route and joint bays to check for anything that could result in damage to the cable system infrastructure. This would include the open space land being accessed for visual inspections as necessary, in the manner required.
- 3.93 In the event of a cable failure the entire section of cable containing the fault will be removed and a replacement cable installed in the ducts and jointed into the cable circuit at the existing joint bays.

### **Question 3.25**

**Can the Applicant advise the expected typical width over which restrictions would be sought where HDD or micro-tunnelling is used?**

- 3.94 HDD and micro tunnelling are restricted in terms of width for the following reasons:
  - 3.94.1 thermal constraints - the need for separation to allow to dissipate the heat generated by the cables
  - 3.94.2 mechanical constraints - the need to avoid damage to the HDD pipes.
- 3.95 As the HDD drill goes deeper, the separation between cables increases due to the requirement to maintain circuit thermal ratings. As such, it is not possible to provide a typical width, as this is dictated by the length of the drill undertaken. This is why for the longer drills the Order limits are wider than for the shorter drills.
- 3.96 The Order limits have been drawn so as to include the maximum area of the span of the cables in the subsoil in which they are to be located.

### **Question 3.26**

**Please can the Applicant advise whether the powers sought in the dDCO would prevent the future erection or maintenance of buildings or structures relating to the use of the Milton Piece Allotments by allotment holders?**

- 3.97 The Onshore HVDC Cables are to be installed via HDD beneath the Allotments.
- 3.98 Installation by HDD will drill beneath the surface of the relevant area in an arc between the entry/exit locations. The depth and span of the drill is dependent on various factors, including for instance the length of the HDD and the ground conditions in proximity to where the installation is undertaken. In respect of the Eastney and Milton Allotments, the anticipated minimum depth of the drill is circa 2.5m beneath the surface. For the majority of the route beneath the allotments the depth will be more significant, with approximately 85% anticipated to be at not less than 5mbgl and approximately 70% anticipated to be at not less than 10mbgl. Accordingly, it is the land at that depth which Article 23(1) would authorise the acquisition of rights and imposition of restrictions over only.
- 3.99 It is not anticipated that any buildings or structures to be erected at the Allotments by allotment holders in the future will have foundations which go beyond 2.5m bgl., or in fact get anywhere close to this depth. As such, the powers sought in the dDCO (REP3-003) (CB-1) would not prevent the future erection or maintenance of buildings or structures relating to the use of the Milton Piece Allotments by allotment holders.

### **Question 3.27**

**Please could Portsmouth City Council explain its 'New Connection Rights' position in respect of Milton Piece Allotments as set out in its LIR [REP1-1173]?**

- 3.100 N/A

### **Question 3.28**

**In the context of its response to ExQ1 CA1.3.19, please could the Applicant explain the relevant Hinkley detail in terms of the mechanism by, and time at which the option to progress would be chosen?**

- 3.101 On further consideration, the Hinkley Connection project example is not relevant to the proposals as before the Examination,
- 3.102 In the case of the Hinkley connection project, two alternative routes for the overhead electric line were assessed and considered throughout the examination (Option A and Option B). The applicant for the Hinkley connection project made clear to the Examination that it could accept a DCO which consented either option (both having pros and cons). In

the event the Secretary of State chose Option B, and the DCO authorised only Option B (and not Option A).

- 3.103 At no point had the applicant for the Hinkley Connection project asked for both Options to be consented in the DCO as granted.
- 3.104 In respect of the AQUIND project, following the reduction of the Order limits pursuant to the applicant's recent change request, the only remaining optionality which the Applicant is requesting is that which it considers fundamental to be provided for within the DCO as granted, in order to safeguard sufficient design flexibility to ensure that the project can be delivered. This flexibility relates now to only three areas: (1) Farlington Avenue, (2) Milton Common and (3) Moorings Way and Eastern Avenue.
- 3.105 The need to retain some optionality in the granted DCO in respect of these three areas was explained in the Applicant's Position Statement in Relation to the Refinement of the Order Limits (REP1-133) (**ISH1-5**). For ease of reference we repeat that explanation below:
- 3.106 **Farlington Avenue**
- 3.107 Section 5.3.9 of the Statement of Reasons (REP1-025) (**CB-12**) set out that the onshore cable corridor provides the Applicant with the flexibility to pursue one of two options as the cable approaches the southern end of Farlington Avenue.
- 3.108 Option (i): the cable runs south down the full length of Farlington Avenue to Havant Road, turning east along Havant Road before continuing south via Eastern Road; or
- 3.109 Option (ii): the cable turns east off Farlington Avenue along Eveleigh Road before turning south via the area of open land between Eveleigh Road and Havant Road, and then turning west to join Eastern Road at the junction with Havant Road.
- 3.110 Option (i) would remain entirely within the highway which, based on assessments undertaken, is heavily constrained by the presence of existing utilities. Option (ii) would require installation both in the highway and also in the Portsmouth Water owned land (Plot 6-22), both of which are heavily constrained by the presence of utilities. Both options would be installed by trenching.
- 3.111 Section 5.2 of the Statement of Reasons (REP1-025) (**CB-12**) sets out the reasons why the Applicant needs to retain an element of flexibility for the Onshore Cable Route. Input from the chosen contractor will be required to determine the preferred option, taking into account the existing constraints in this location.
- 3.112 Installation for both options in this area would be via trenching. The detailed design would be undertaken by the chosen contractor once they are appointed.
- 3.113 The Applicant's preference would be Option (i) as set out above as it would result in a shorter cable route and would also result in less bends in the cable route. However, the Applicant would need input from the chosen contractor before selecting the option to be progressed, and therefore requires the dDCO to be granted with both options provided for.
- 3.114 To be clear, there is no mutual exclusivity in relation to these alternatives, as there is a need to retain the ability to route one cable circuit along Option (i) and the other along Option (ii) where necessary taking into account the existing constraints in this location.
- 3.115 **Milton Common**
- 3.116 Sections 5.3.2 to 5.3.5 (on page 15) of the Statement of Reasons (REP1-025) (**CB-12**) set out that:
- 3.117 The cable will run south within the carriageway of Eastern Road between Airport Service Road and Burrfields Road (opposite Great Salterns Harvester). South of this point it will run in the highway and/or the verge of the highway of Eastern Road to the northern end of Milton Common. It is anticipated that the cable would progress through the corridor adjacent to the path which runs from north to south through the Common, parts of which form the coastal flood defences. At the northern part of the coastal defences a short HDD will be required below the bund of the coastal defences. The cable would then continue south, adjacent to the path to the south-east corner of Milton Common.

- 3.118 Whilst it is considered that there is a potentially viable route through Milton Common, given the nature of the ground conditions associated with its former landfill use, flexibility is sought should further ground investigations find the conditions unsuitable for the development with two alternative routes also included within the Onshore Cable Corridor.
- 3.119 Both alternative routes continue along Eastern Road and then either: (i) run along Eastern Road and along the western edge of Milton Common to Moorings Way or (ii) continue further south along Eastern Road to the junction with Eastern Avenue, where it would continue south-east along Eastern Avenue to Moorings Way. Both alternative routes would then continue along the southern edge of Milton Common or within Moorings Way to the south-east corner of Milton Common adjacent to Moorings Way, before continuing south as described in the next section. If one of these two alternative routes were used, the verge and cycle path east of Eastern Road would be used where possible, rather than the carriageway.
- 3.120 As explained in paragraph 5.3.3 of the Statement of Reasons (REP1-025) (**CB-12**) the option from north to south through the Common runs adjacent to an existing path, parts of which form the coastal flood defences. This alignment across Milton Common has been chosen given there is made ground adjacent to the path in this location, which should improve technical feasibility.
- 3.121 However, it is acknowledged that Milton Common is a former landfill, and the installation of the Onshore Cables within the capping layer is not without challenges. Whilst this option is the Applicant's preference, having taken into account feedback received during consultation and also in light of the unavoidable traffic impacts for the duration of any installation along Eastern Road, the technical feasibility of this route cannot be confirmed without further investigations, which are not suitable to be carried out at this time and would be carried out once a contractor is appointed.
- 3.122 Both alternative routes continue along Eastern Road and then either: (i) run along Eastern Road and along the western edge of Milton Common to Moorings Way or (ii) continue further south along Eastern Road to the junction with Eastern Avenue, where it would continue south-east along Eastern Avenue to Moorings Way. Eastern Road is highway land, and in that sense provides more technical certainty with regards to the feasibility of installation, with the position in relation to the western edge of Milton Common being the same as outlined above with respect to challenging ground conditions.
- 3.123 Please refer to the Applicant's answer to Written Question with reference CA 1.3.18 which deals with the remaining 'uncertainty' as to the suitability of the preferred cable route through Milton Common for cable installation.
- 3.124 Whilst the north to south route across Milton Common is preferable, the chosen contractor would have to balance the risk and cost (mostly of safely handling and disposing of contaminated material) of crossing Milton Common. For this reason, the option of installing in Eastern Road in case the contractor cannot establish a solution for crossing Milton Common is retained. The alternative option, part along Eastern Road and part along Milton Common, is second in terms of preference, though as outlined above the position in relation to crossing Milton Common is subject to the same considerations.
- 3.125 Whilst the route along Eastern Road only is third in terms of preference, it is still a viable route and the impacts of the installation of the Onshore Cables along Eastern Road can be adequately managed.
- 3.126 Whilst it is the Applicant's view that it can evidence a clear justification for the retention of all of the options including identifying how each could be required in connection with the Proposed Development and considered in order of preference to ultimately lessen the impacts as a consequence of installation, should it be determined that the level of optionality sought is not acceptable, the Applicant would, in light of the uncertainty of being able to route the Onshore Cables across Milton Common given the historic nature of the landfill site and the known results of the ground investigations carried out to date, need to remove the two options across Milton Common and proceed with the route along Eastern Road only.

- 3.127 The preference is for only one of the options across Milton Common to be utilised, however for the reasons explained above this cannot be confirmed at this time, and it will not be confirmed before the grant of the DCO. It is also the case that it may be preferable, where it is feasible to route one cable circuit over Milton Common only, to lay one cable circuit over Milton Common and the other cable circuit along Eastern Road. The detailed design will be confirmed in accordance with Requirement 6 to the dDCO.
- 3.128 **Moorings Way and Eastern Avenue**
- 3.129 Sections 5.3.5 (on page 15) of the Statement of Reasons (REP1-025) (**CB-12**) sets out that:
- 3.130 Both alternative routes continue along Eastern Road and then either:
- 3.130.1 Option (i) run along Eastern Road and along the western edge of Milton Common to Moorings Way or
- 3.130.2 Option (ii) continue further south along Eastern Road to the junction with Eastern Avenue, where it would continue south-east along Eastern Avenue to Moorings Way.
- 3.131 Both alternative routes would then continue along the southern edge of Milton Common or within Moorings Way to the south-east corner of Milton Common adjacent to Moorings Way, before continuing south as described in the next section. If one of these two alternative routes was used, the verge and cycle path east of Eastern Road would be used where possible, rather than the carriageway.
- 3.132 Option (i) along Eastern Road and the western edge of Milton Common to Moorings Way would have the same characteristics as set out above in relation to the options via Eastern Road and Milton Common.
- 3.133 Option (ii) would be in the highway and would have the same characteristics as set out above in relation to Eastern Road.
- 3.134 Please refer to the Applicant's answer to WQ CA 1.3.18 which deals with the remaining 'uncertainty' as to the suitability of the preferred cable route through Milton Common for cable installation
- 3.135 The route chosen will reflect the choice of route in relation to Milton Common, discussed above.
- 3.136 The option to be selected will reflect the route chosen across Milton Common, the considerations in relation to which are discussed above. The detailed design will be confirmed in accordance with Requirement 6 to the dDCO.

**Question 3.29**

***Can the Applicant explain potential nature of dDCO amendments required to remove an option from the dDCO?***

- 3.137 Having proposed, and had accepted into the Examination changes to the Order limits which remove options where possible following further technical consideration, there are no further options which could be removed without jeopardising the deliverability of the project. As explained in response to Question 3.28 above, any remaining optionality is essential to be maintained in the DCO as granted in order to ensure there is no impediment to the project's implementation.

**Question 3.30**

***Please could the Applicant provide further details of the suggested new Requirement akin to Thanet Requirement 12?***

- 3.138 Requirement 12 of the draft Thanet Extension Offshore Wind Farm Order required an option confirmation before works to construct the relevant part of that development were



able to commence. The option confirmation related to the method of construction, particularly whether installation would be via HDD or trenched installation. Therefore, the options were mutually exclusive to one another.

- 3.139 As explained above there is not mutual exclusivity of the options to be selected in relation to Farlington Avenue and Milton Common. Further, the method of installation for each is secured.
- 3.140 Despite the Applicant's previous statement to the contrary, on reflection it is not considered there is any need for a requirement akin to Thanet Requirement 12. Particularly, it is not considered there is any genuine need for such a requirement as the position with regard to the option(s) to be followed will be confirmed through detailed design and approved in accordance with Requirement 6 at Schedule 2 to the dDCO (REP3-003) (**CB-1**), and no works may commence until detailed design approval has been obtained for them. The works must also be undertaken in accordance with the approved detailed design, which includes the layout of the cables.

### **Question 3.31**

***Please could the Applicant and Portsmouth City Council explain their current positions on 'Thanet' matters?***

- 3.141 As explained above, it is not considered there is a need for an option confirmation requirement similar to that contained at Requirement 12 to the dDCO for the Thanet Offshore Windfarm Extension.
- 3.142 Moreover, it is not considered the application for the Thanet Extension Offshore Wind Farm Order is of any particular relevance to the Application for the AQUIND Interconnector DCO following the refinement of the Order limits and taking into account that there is no mutual exclusivity in relation to the options which remain.

## **Part 7**

### **Question 3.33**

***Can the Applicant clarify the scope of powers authorised under Articles 41 and 42?***

***Please explain the approach towards replacing lost trees and what sequential approach will be taken for determining the location of replacement trees if no land is available 'within 5 metres' of the onshore cable route.***

***How is this secured in the dDCO?***

***How does Article 41(2) account for compensation for those trees lost or damaged, in both urban and rural character areas where such trees are considered important?***

- 3.143 Article 41 provides the undertaker with the power to fell or lop any tree within or overhanging the Order limits landwards of mean low water springs ('**MLWS**') or shrub near any part of the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from:
- 3.143.1 obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
  - 3.143.2 constituting a danger to persons using the authorised development
- 3.144 Article 41 also provides the undertaker with the powers for the purposes of, and in so far as it reasonably believes is necessary in connection with, the authorised development to:
- 3.144.1 remove any hedgerows within the Order limits landwards of MLWS that may be required for the purposes of carrying out the authorised development; and
  - 3.144.2 remove important hedgerows as are within the Order limits landwards of MLWS and identified in Schedule 12 of the dDCO (REP3-003) (**CB-1**).

- 3.145 Article 42 provides the undertaker with the power to fell or lop any tree described in column (1) of Schedule 11, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.
- 3.146 The felling and lopping of any tree and removal of any hedgerow is subject to the controls provided for by requirement 15, which requires the production of arboricultural method statements in relation to any works on trees or hedgerows, to be approved by the relevant local authority as part of the approval of the construction environmental management plan for the works to be undertaken.
- 3.147 Furthermore, Articles 41 and 42 are subject to a test of necessity by virtue of their formulation, only being exercisable where it is necessary for the activities to be undertaken. The necessity of those works will be confirmed by virtue of the process provided for obtaining approval for the arboricultural method statements discussed above.
- 3.148 The undertaker must not do any unnecessary damage to any tree or shrub when exercising those powers, and must pay compensation to any person for any loss or damage arising from such activity for that loss or damage.
- 3.149 Replacement of lost trees will be confirmed in consultation with the local planning authority and is secured within Requirement 15 of the DCO (REP3-003) (CB-1). Priority will be given to planting close to the area of loss and then alternative solutions explored with the local planning authority where land is not available within 5m of the onshore route.
- 3.150 Where replacement planting is not possible for highway trees, a Capital Asset Valuation of Amenity Trees ('CAVAT') assessment may be made and appropriate sum paid to the local authority to be ring fenced for planting schemes within their holdings. The Applicant is currently in discussions with Hampshire County Council regarding the appropriate mechanism and approach to securing such CAVAT payments for lost trees.
- 3.151 Compensation for any loss of trees or hedgerows not within the Order limits would be agreed directly with the owner of the relevant tree or hedgerow, and in the event of any dispute, determined under Part 1 (determination of questions of disputed compensation) of the Land Compensation Act 1961.
- 3.152 Trees will only be lost where such loss is unavoidable. Unavoidable tree loss is where the tree is impacted to such an extent that the physiological viability and structural integrity of the tree is significantly diminished such that the long term retention of the tree is not in keeping with arboricultural best practice. The retention or loss of trees will be decided by a suitably trained and experienced arboriculture professional without prejudice to cost implications. These will be confirmed in the detailed arboriculture method statement and tree protection plans secured through the discharge of Requirement 15 of the DCO (REP3-003) (CB-1).

**Question 3.34**

***Please could the Applicant provide an update on the position in relation to impacts on, and dealing with TPO trees outside Portsmouth City Council's administrative remit?***

***Also, can the Applicant provide an update on the position in relation to those trees on land owned and maintained by Portsmouth City Council that could potentially be subject to TPOs, but have not been?***

- 3.153 A revised Schedule 11 which details the trees subject to Tree Preservation Orders (TPO) that may be impacted within the onshore cable route has been provided in the updated dDCO submitted at Deadline 3 (REP3-003) (CB-01).
- 3.154 Within the onshore cable route, trees will only be lost where such loss is unavoidable (see previous response). It would not be appropriate to assume which trees may be made the subject of TPO in the future.

### **Question 3.35**

#### **How are works to remove and replace hedgerows secured within the dDCO?**

- 3.155 The dDCO (REP3-003) (**CB-1**) refers under Schedule 2 Requirement 15 to the Onshore Outline Construction Environmental Management Plan (OOCEMP) (REP4-005) (**CB-24**). Paragraph 6.2.4 of the OOCEMP states that following completion of construction works mitigation planting will take place to replace hedgerows and trees lost. All planting lost shall be replaced with like for like species of a similar size and in agreement with the relevant discharging authority. Where reinstated hedgerows cross the onshore cable route, a concrete duct block will be provided underground to protect the cables from roots and the drying out of the duct surround. New mitigation tree planting (including hedgerow trees) will be offset at least 5m away from the Onshore Cable Route.
- 3.156 The dDCO refers under Schedule 2 Requirement 7 to a detailed landscaping scheme which accords with the Outline Landscape and Biodiversity Strategy (OLBS) (REP1-034) (**CB-26**). The requirement states that no phase of Works No.2, Works No.4, or the construction of the optical regeneration stations within Works No.5 may commence until a detailed landscaping scheme is submitted and approved by the relevant planning authority and where related to any phase of Works No.2 in consultation with the South Downs National Park. Mitigation measures outlined above in the OOCEMP are also reflected in the OLBS under paragraphs 1.5.1.4, 1.5.2.4, 1.5.3.2 and section 1.5.4 and 1.6.4.
- 3.157 As such, no hedgerows may be removed until the controls in relation to their removal have been satisfied.

### **Question 3.36**

#### **Could the Applicant clarify the purposes of Article 48 and if it is necessary in this instance? Are there recently made DCOs serving as precedent for the inclusion of such an Article when there is no known (evidential) need for it? Does the Applicant believe that the Secretary of State's decisions on the recently made West Burton C Power Station Order is relevant in this respect?**

- 3.158 We note that the Secretary of State in granting the West Burton C Power Station DCO decided to grant it without an article equivalent to the proposed article 48 (Removal of human remains), on the grounds that there were no known burial grounds within the Order limits.
- 3.159 So far as the Applicant is aware, there are no human remains or known burial grounds along the cable route or at the converter station location. Nevertheless, given the length of the cable route, it does not seem beyond the realms of possibility that human remains could be uncovered in areas of land where they had not been expected. It therefore seems to the Applicant worthwhile to include within the DCO a process for dealing with such a scenario, in place of the statutory regimes which would otherwise apply under the Burial Act 1857, the Town and Country Planning Act 1990 and the Town and Country Planning Act (Churches, Places of Worship and Burial Grounds) Regulations 1950.
- 3.160 We see no possible prejudice to any party through the inclusion of this provision, which is precedented in a number of other DCOs. In keeping with the Government's objective of streamlining the consenting regime for nationally significant infrastructure projects through a one-stop-shop approach, it therefore seems sensible to retain this drafting.
- 3.161 Since the West Burton C site was located within the boundary of the existing power station, it may be that in that case the Secretary of State could be more confident that an article relating to the removal of human remains would have no utility.

4. SCHEDULE 1, AUTHORISED DEVELOPMENT

Question 4.1

**Please could the Applicant confirm the approach to the identification and definition of 'significant effects' and demonstrate the adequacy of the Mitigation Schedule in ensuring that all necessary mitigation measures that are relied upon in the EIA will be readily auditable at the discharge of Requirements? Are any parties aware of instances where this may not be the case?**

- 4.1 The approach to determining the significance of effects is outlined in section 4.4.3 of Chapter 4 (EIA Methodology) of the Environmental Statement ('ES') (APP-119) (ISH1-7). Several criteria are used to determine the significance of the potential effects of the authorised development and whether or not they are 'significant'. The effects are assessed quantitatively wherever possible. In determining the significance of a potential effect, the magnitude of impact arising from the authorised development is correlated with the sensitivity/value of the particular receptor under consideration. Any deviations from these criteria, for example due to application of topic-specific industry guidance, have been included in the technical assessment chapters, where relevant.
- 4.2 Generally, effects deemed to be significant, for the purposes of assessment, are those which are described as 'moderate', 'moderate to major' or 'major'.

**Table 4.2 - Matrix for classifying the significance of effects**

		Sensitivity of receptor/receiving environment to change			
		High	Medium	Low	Negligible
Magnitude of Impact	High	Major	Major to Moderate	Moderate	Negligible
	Medium	Major to Moderate	Moderate	Minor to Moderate	Negligible
	Low	Moderate	Minor to Moderate	Minor	Negligible
	Negligible	Negligible	Negligible	Negligible	Negligible

- 4.3 However, there are instances where an assessment may differ to this approach and professional judgement has been applied based on an experts' knowledge and experience of similar projects. Where this occurs in the ES, clear justification on how significance has been determined is detailed within the respective technical assessment of the ES, as appropriate. (e.g. where topic chapters in the ES have used the nationally recognised Chartered Institute of Ecology and Environmental Management (CIEEM) 2019 Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine methods that do not result in 'levels' of significance. CIEEM do not advocate the use of the matrix-based approach and instead, effects are determined as either 'significant' or 'not significant').

**Marine Chapters**

4.4 **Chapter 6 (Physical Process) (APP-121)**

- 4.5 In determining the significance of a potential effect, the magnitude of impact arising from the Proposed Development is correlated with the sensitivity of the environmental attribute or process under consideration. As described within Chapter 4 (EIA methodology) (APP-119), sensitivity is a means to measure how affected receptors/processes and/or the receiving environment is to change. The sensitivity is assigned at the receptor/process

level. This may be defined in terms of quality, value, rarity or importance, and be classed as negligible, low, medium, or high. The overall significance has been assessed using the matrix shown in Table 4.2 in Chapter 4 (EIA Methodology) (APP-119) (ISH1-7). Effects deemed to be significant for the purpose of assessment are those which are described as 'major' and 'moderate/major'. In addition, 'moderate' effects can also be deemed as significant. Whether they do so has been determined by a qualitative analysis of the specific impact to the environment and is based on professional judgement. Where this is the case, the basis for the judgement has been described (Paragraphs 6.4.2.2 and 6.4.2.3).

#### 4.6 **Chapter 7 (Marine Water and Sediment Quality) (APP-122)**

4.7 The assessment methodology used in this chapter is based on the CIEEM (2019) guidelines for ecological impact assessment. Non-ecological impacts are also assessed here in so far as they relate to the Water Framework Directive (WFD) protected areas Bathing Waters and Shellfish Waters. With regards to the transitional and coastal water bodies within the study area, a significant effect in the EIA is considered to be one that results in a deterioration of a water body's status, or prevention of a water body reaching 'good' status as a result of the Proposed Development. The potential for the deterioration of status or prevention of reaching good status was determined following the completion of the Marine WFD Assessment (Appendix 7.1) in line with EA guidelines: Clearing the waters for all: Guidance for the Water Framework Directive Assessment: estuarine and coastal waters (Environment Agency, 2017). Ecological Status is classified by the EA in all water bodies, expressed in terms of five classes (high, good, moderate, poor or bad). These classes are established on the basis of specific criteria and boundaries defined against biological, physio-chemical and hydromorphological elements. The three stages of the WFD assessment process (namely screening, scoping and assessment) allow a comprehensive evaluation of the potential for deterioration of status or prevention of status improvement.

4.8 Beyond the jurisdiction of the WFD, significant effects have been defined as those which are likely to result in a change in the ecosystem structure and function. (Paragraphs 7.4.2.1 to 7.4.2.2)

#### 4.9 **Chapter 8 (Intertidal and Benthic Habitats) (APP-123)**

4.10 The evaluation of whether an effect is ecologically significant has been undertaken in line with CIEEM (2019) guidance. In determining whether an effect is of ecological significance, the following shall be considered:

4.10.1 Any removal or change of any process or key characteristic;

4.10.2 Any effect on the nature, extent, structure, and function of the component habitats; and

4.10.3 Any effect on the average population size or viability of component species.

4.11 Assessment has been undertaken in the context of the wider conservation status of that receptor, and where uncertainty exists this has been acknowledged, and professional judgement has been applied throughout.

4.12 In general, a significant effect has been considered to be one which changes the structure and function of an ecosystem within the study area, or one which undermines the conservation objectives of a designated site, the conservation status of qualifying features or habitats; and/or affects the condition of the site or its interest/qualifying features. (Paragraphs 8.4.3.1 to 8.4.3.3).

#### 4.13 **Chapter 9 (Fish and Shellfish) (APP-124)**

4.14 The evaluation of whether an effect is ecologically significant is undertaken in line with CIEEM (2019) guidance. In determining whether an effect is of ecological significance, the following was considered:

4.14.1 Any removal or change of any process or key characteristic;

- 4.14.2 Any effect on the nature, extent, structure, and function of the component habitats; and
- 4.14.3 Any effect on the average population size or viability of component species.
- 4.15 Assessments were undertaken in the context of the wider conservation status of that receptor, and where uncertainty exists this has been acknowledged, and professional judgement applied.
- 4.16 In general, significance is assessed on a population level for receptor species, rather than impacts to individual animals, whereby a significant effect is only concluded should the impact affect the viability of the population within the study area. For example, a significant effect is considered to be one which changes the structure and function of an ecosystem within the study area, or one which undermines the conservation objectives of a designated site, the conservation status of qualifying features or habitats; and/or affects the condition of the site or its interest/qualifying features.
- 4.17 It should be noted that as per CIEEM (2019) guidance, not all receptors are assessed for all impacts, rather, only those receptors that are potentially vulnerable to an impact, or where a significant effect may arise, have been assessed (Paragraphs 9.4.3.1 to 9.4.3.4).
- 4.18 **Chapter 10 (Marine Mammals and Basking Sharks) (APP-125)**
- 4.19 The evaluation of whether an effect is ecologically significant is undertaken in line with CIEEM (2019) guidance. In determining whether an effect is of ecological significance, the following shall be considered:
  - 4.19.1 Any removal or change of any process or key characteristic;
  - 4.19.2 Any effect on the nature, extent, structure, and function of the component habitats; and
  - 4.19.3 Any effect on the average population size or viability of component species.
- 4.20 Assessment has been undertaken in the context of the wider conservation status of that receptor, and where uncertainty exists this has been acknowledged.
- 4.21 In general, a significant effect is considered to be one which changes the structure and function of an ecosystem within the study area, undermines the conservation objectives of a designated site or the conservation status of its qualifying features, or affects the condition of a designated site and/or its qualifying features (Paragraphs 10.4.3.1 to 10.4.3.4).
- 4.22 **Chapter 11 (Marine Ornithology) (APP-126)**
- 4.23 Having followed the process of attributing an importance to an ornithological feature, determining its sensitivity, and characterising potential effects, the significance of the effect is then determined. The CIEEM guidelines (2019) use only two categories to classify effects: "significant" or "not significant". The significance of an effect is determined by considering the importance of the ornithological feature and the magnitude of the effect and applying professional judgement as to whether the integrity of the feature will be affected. This concept can be applied to both designated sites (for example, an SPA) and to defined populations (for example, a breeding herring gull (*Larus argentatus*) population). (Paragraph 11.4.4.1)
- 4.24 Effects are more likely to be considered significant where they affect ornithological features of higher conservation importance or where the magnitude of the effect is high. Effects not considered to be significant would be those where the integrity of the feature is not threatened, effects on features of lower conservation importance or where the magnitude of the impact is low. Alongside the criteria described above, professional judgement is applied in determining the significance of a potential effect. Note that a matrix system has not been used in determining significance. CIEEM (2019) avoid and discourage the use of this approach. This guidance seeks to determine whether an effect is either significant or not significant by looking at the integrity of the wider population. The CIEEM guidance does not advocate the allocation of degrees of significance, but instead concentrates upon the

effect that any impact may have upon the integrity of an affected population (Paragraphs 11.4.4.3 to 11.4.4.7).

- 4.25 **Chapter 12 (Commercial Fisheries) (APP-127)**
- 4.26 The overall determination of the significance of an effect is assessed using the matrix shown in Table 4.2 in Chapter 4 (EIA Methodology) (APP-119) (**ISH1-7**), by reference to the sensitivity of the receptor and the magnitude of impact.
- 4.27 Effects deemed to be significant for the purpose of assessment are those which are described as 'major' and 'major to moderate/'. In addition, 'moderate' effects can also be deemed as significant, all other impacts are not significant. Whether they do so is determined by a qualitative analysis of the specific impact and has been based on professional judgement. Where this is the case, the basis for the judgement has been outlined (Paragraphs 12.4.4.1 and 12.4.4.2).
- 4.28 In addition to assessing the potential impacts on commercial fisheries using the methodology outlined above, there is overlap with the assessments in Chapter 13 (Shipping, Navigation and Other Marine Users) (APP-128) regarding;
- 4.28.1 potential construction (and decommissioning) impacts on navigational safety of fishing vessels and obstacles on the seabed (exposed cables); and
- 4.28.2 the potential operational (including repair and maintenance) impacts on navigational safety of fishing vessels and obstacles on the seabed after maintenance/repair.
- 4.29 For these matters, the assessment methodology follows standard practice (International Maritime Organisation (IMO) Formal Safety Assessment (FSA) guidelines, 2002) and is described in more detail in Chapter 13 (Shipping, Navigation and Other Marine Users) and Appendix 13.1 (Navigation Risk Assessment) of the ES Volume 3 (APP-323).
- 4.30 The IMO FSA methodology assigns the impact a 'severity of consequence' and a 'frequency of occurrence' to evaluate the level of significance. The overall significance of the effect is then assessed as 'Unacceptable', 'Tolerable' or 'Broadly Acceptable' (Paragraphs 12.4.4.3 to 12.4.4.5) and are defined in terms of significance in Table 13.6 of Chapter 13 (Shipping, Navigation and Other Marine Users) (APP-128).
- 4.31 **Chapter 13 (Commercial Fisheries) (APP-128)**
- 4.32 The assessment methodology used in this chapter is based on the International Maritime Organisation (IMO) Formal Safety Assessment (FSA) guidelines, (IMO, 2002) process, which is recognised as industry best practice for navigational risk assessment.
- 4.33 The FSA assigns each impact a "severity of consequence" and a "frequency of occurrence" to evaluate the significance of each impact, during the construction, operation (including repair and maintenance), and decommissioning stages of the Proposed Development (Paragraphs 13.4.1.1. and 13.4.1.3).
- 4.34 The severity of consequence and frequency of occurrence rankings are then used to determine the level of significance for each impact during each of the three stages of the Proposed Development, being construction, operation (including repair and maintenance) and decommissioning. The overall significance of impacts will be assessed as "Unacceptable", "Tolerable", or "Broadly Acceptable" using the matrix shown in Table 13.5.

**Table 13.5 - Risk Matrix**

<b>Frequency</b>	Frequent	Tolerable	Tolerable	Unacceptable	Unacceptable	Unacceptable
	Reasonably Probable	Broadly Acceptable	Tolerable	Tolerable	Unacceptable	Unacceptable
	Remote	Broadly Acceptable	Broadly Acceptable	Tolerable	Tolerable	Unacceptable
	Extremely Unlikely	Broadly Acceptable	Broadly Acceptable	Broadly Acceptable	Tolerable	Tolerable
	Negligible	Broadly Acceptable	Broadly Acceptable	Broadly Acceptable	Broadly Acceptable	Tolerable
	Negligible	Minor	Moderate	Serious	Catastrophic	
<b>Severity</b>						

- 4.35 The definitions of significance are provided in Table 13.6 (Paragraphs 13.4.2.1 and 13.4.2.2):

**Table 13.6 - Significance definitions**

Significance	Definition
<b>Unacceptable (High Risk)</b>	Generally regarded as unacceptable whatever the level of benefit associated with the activity. The term 'unacceptable' is considered to be 'significant' and would require risk mitigation or design modification to reduce to tolerable ('ALARP').
<b>Tolerable (Moderate Risk)</b>	The term 'tolerable' is considered to be 'not significant', however there is an expectation that such risks are properly assessed, appropriate control measures are in place, residual risks are ALARP and that risks are periodically reviewed to monitor if further controls are appropriate
<b>Broadly Acceptable (Low Risk)</b>	The term 'broadly acceptable' is considered to be 'not significant' and impacts are regarded as acceptable and adequately controlled.

4.36 **Chapter 14 (Marine Archaeology) (APP-129)**

- 4.37 The assessment methodology used is described below and is based on the best practice professional guidance outlined by the Chartered Institute for Archaeologists (CIfA) Standard and Guidance for Historic Environment Desk-Based Assessment (2014, updated 2017). Further detail on the methodology and surveys undertaken to inform the assessment are presented in Appendix 14.1 Marine Archaeology Technical Report (APP-396)

- 4.38 The significance of effect has been assessed by comparing the sensitivity of the receptor against the magnitude of impact. Residual effects (i.e. those remaining after mitigation measures) have been taken into consideration and have been assessed. The overall significance has been assessed using the matrix shown in Table 4.2 of Chapter 4 (EIA Methodology) (APP-119) (**ISH1-7**). Effects deemed to be significant for the purpose of assessment are those which are described as 'major' and 'moderate/major'. In addition, 'moderate' effects can also be deemed as significant. Whether they do so is determined by a qualitative analysis of the specific impact and is based on professional judgement. Where this is the case, the basis for the judgement has been outlined (Paragraphs 14.4.4.1, 14.4.5.1 and 14.4.5.2).



## **Onshore Chapters**

### **4.39 Chapter 15 (Landscape and Visual Amenity) (APP-130)**

4.40 The predicted landscape and visual effects (and whether they are significant) are determined in line with Guidelines for Landscape and Visual Impact Assessment (GLVIA3) (Landscape Institute, IEMA, 3rd Edition, 2013) through consideration of the 'sensitivity' (a combination of value and susceptibility to change) of: (a) the landscape element, assemblage of elements, key characteristics or character type or character area under consideration bearing in mind quality and value; or (b) visual receptor; and the 'magnitude of change' posed by the Proposed Development. The sensitivity of the particular landscape or visual receptor is ranked high, medium, low or negligible and the magnitude of change is similarly ranked as large, medium, small or negligible. (Paragraph 15.4.4.25)

4.41 The assessment methodology used is described in Section 15.4. Significant landscape and visual effects, in the assessor's opinion, resulting from the Proposed Development are those effects identified as 'major', 'moderate - major', or 'moderate', with any exceptions being clearly explained. There may, for example, be exceptions in the case of lower magnitudes of change affecting receptors of higher landscape and or visual sensitivity and leading to a minor-moderate effect that in some circumstances are considered to be significant (Paragraph 15.4.4.29). Further details are provided in Appendix 15.3 Landscape and Visual Assessment Methodology (APP-401).

### **4.42 Chapter 16 (Onshore Ecology) (APP-131) (CB-32)**

4.43 After attributing importance to an ecological features, determining their sensitivity, and characterising potential effects, the significance of the effect is then determined. The CIEEM guidelines (2019) use only two categories to classify effects: "significant" or "not significant". The assessment methodology used is described in Section 16.4. The significance of an effect is determined by considering the importance of the ecological feature and the magnitude of the effect and applying professional judgement as to whether the integrity of the feature will be affected. This concept can be applied to both designated sites (e.g. SSSIs, SINCS), habitats (e.g. Priority Habitats, Ancient Woodland) and to populations of important species (dormouse reptiles) (Paragraph 16.4.5.1).

### **4.44 Chapter 17 (Soils and Agricultural Land Use) (APP-132)**

4.45 The assessment methodology used is described in Section 17.4. The overall significance has been assessed using the matrix shown in Table 17.5. Effects deemed to be significant for the purpose of assessment are those which are described as 'major' and 'major to moderate'. In addition, 'moderate' effects can also be deemed as significant. Whether they are has been determined by a qualitative analysis of the specific impact to the environment and is based on professional judgement. Where this is the case, the basis for the judgement has been outlined (Paragraph 17.4.4.7)

### **4.46 Chapter 18 (Ground Conditions) (APP-133)**

4.47 The assessment methodology used is described in Section 18.4. The overall significance has been assessed using the matrix in Table 18.4. Further details on significance can be found within Chapter 4 (EIA Methodology) of the ES Volume 1 (APP-119) (Paragraph 18.4.3.5).

4.48 Generally, 'negligible', 'minor' and 'minor to moderate' effects are considered 'not significant'. 'Moderate', 'major to moderate' and 'major' effects are considered 'significant'. However, in all instances professional judgment is applied. (Paragraph 18.4.3.6)

### **4.49 Chapter 19 (Groundwater) (APP-134)**

4.50 The assessment methodology used is described in Section 19.4 and is based on and adapts the classification contained in the DMRB Volume 11, Section 3, Part 10 (HD 45/09) and the TAG Unit A3 Environmental Impact Appraisal – Impacts on the Water Environment (Paragraph 19.4.1.1).

- 4.51 The overall significance is assessed using the matrix shown in Table 19.4. Effects deemed to be significant for the purpose of assessment are those which are described as 'major' and 'moderate/major'. In addition, 'moderate' effects can also be deemed as significant. Whether they do so is determined by a qualitative analysis of the specific impact to the environment and is based on professional judgement. If and where this is the case, the basis the judgement is outlined.
- 4.52 **Chapter 20 (Surface Water Resources and Flood Risk) (APP-135)**
- 4.53 The assessment methodology as described in Section 20.4 is predominantly qualitative and builds on and adapts the classification contained in LA 113 Road Drainage and the Water Environment and the TAG Unit A3 Environmental Impact Appraisal – Impacts on the Water Environment. The above guidance was developed for assessing potential impacts that road projects may have on the water environment; however, provides a suitable framework and basis to develop a consistent classification of both magnitude of impact (Table 20.2) and sensitivity (Table 20.3) of potential water receptors and generally considered as industry best practice (Paragraphs 20.4.3.2 and 20.4.3.3).
- 4.54 The overall significance has been assessed using the matrix shown in Table 20.4. Effects deemed to be significant for the purpose of assessment are those which are described as 'Major' and 'Moderate/Major'. In addition, 'Moderate' impacts can also be deemed as significant. Whether they do so has been determined by a qualitative analysis of the specific impact to the environment and is based on professional judgement (Paragraph 20.4.3.10).
- 4.55 **Chapter 21 (Heritage and Archaeology) (APP-136)**
- 4.56 The assessment methodology used is described in Section 21.4. The determination of the baseline significance is based on statutory designation and/or professional judgement, identified in Historic England's Conservation Principles (revised consultation draft Nov 2017) (Paragraph 21.4.2.2).
- 4.57 In relation to heritage assets, the assessment considers the contribution that setting makes to the overall significance of the asset. Guidance produced by Historic England (Historic England, 2017) and the Landscape Institute and Institute of Environmental Management and Assessment (2013) has been used to adopt a stepped approach for settings assessment.
- 4.58 The matrix used to determine the significance of environmental effects within this Chapter is outlined in Table 21.5. Effects may be either adverse or positive and are defined initially without additional mitigation measures. Whilst the matrix was originally derived from the Design Manual for Roads and Bridges ('DMRB') assessment table produced in 1993, it has been modified to allow a greater scope for professional judgement and is a guide only, so that the process is transparent, and the rationale for the effect scores is provided in the relevant sections. Where the resulting effect comprises two levels (i.e. 'moderate or minor'), professional judgement has been applied to select the most appropriate significance of effect (Paragraph 21.4.2.14).
- 4.59 Where information is insufficient to be able to quantify either the resource significance or magnitude of change with any degree of certainty, the effect is given as 'uncertain' (Paragraph 21.4.2.15). In EIA terms, a moderate or major effect is considered 'significant' (Paragraph 21.4.2.17).
- 4.60 **Chapter 22 (Traffic and Transport) (APP-137)**
- 4.61 The assessment methodology used is described in Section 22.4. The overall significance of effects is assessed using the matrix shown in Table 22.6. Effects deemed to be significant are those which are described as 'major' and 'moderate/major'. In addition, 'moderate' effects can also be deemed as significant. Whether they are is determined by a qualitative analysis of the specific impact to the environment and is based on professional judgement (Paragraph 22.4.9.12).

- 4.62 **Chapter 23 (Air Quality) (Rev002) (REP1-033)**
- 4.63 The assessment methodology used is described in Section 23.4. For the assessment of temporary effects from construction site activities, the Guidance on the assessment of dust from demolition and construction from the Institute of Air Quality Management (2016) recommends that significance is only assigned to the effect after considering the construction activity with mitigation. With the implementation of effective mitigation commensurate to the risk, the guidance states that residual effects are normally insignificant (Paragraph 23.4.7.9).
- 4.64 Effects deemed to be significant for the purpose of assessment are those which are described as 'major' and 'moderate/major'. In addition, 'moderate', 'slight' and 'negligible' effects can also be deemed as significant. Whether they do so is determined by a qualitative analysis of the specific impact to the environment and the specific sensitivities of the receiving environment. This decision is based on professional judgement and the basis for the judgement is outlined (Paragraph 23.4.7.10).
- 4.65 **Chapter 24 (Noise and Vibration) (APP-139)**
- 4.66 The methodology for the identification of significant effects is described in Section 23.4 and has followed the appropriate guidance document (e.g. British Standard) applicable to the specific assessment element. Further detail is provided in the Applicant's Statement for Question 6L in ISH3. The overall significance has been assessed using the matrix shown in Table 24.14. Effects deemed to be significant for the purpose of this assessment are those which are described as 'major' and 'moderate to major'. In addition, 'moderate' effects can also be deemed as significant, depending on the context. Whether they do so has been determined by a qualitative analysis of the specific impact to the environment and has been based on professional judgement. Where this is the case, the basis for any judgement has been outlined (Paragraph 24.4.7.5).
- 4.67 **Chapter 25 (Socio-economics) (APP-140)**
- 4.68 The assessment methodology used is described in Section 25.4. Significance of effects will be assessed using the matrix shown in Table 25.4. Effects deemed to be significant, for the purposes of assessment, are those which are described as 'moderate', 'moderate to major' or 'major'. Whether they are is determined by a qualitative analysis of the specific impact to the environment based on professional judgement. If and where this is the case, the basis for any judgement is outlined.
- 4.69 **Chapter 26 (Human Health) (APP-141)**
- 4.70 The assessment methodology used is described in Section 26.4. In the absence of guidance or universal applications of terminology for defining significance of health effects in EIA, this assessment has adopted an existing scale to define significance. The approach in this assessment has been adapted from that used by the IOM for the North Staffordshire 'Streetcar' Bus Rapid Transport Scheme Health Impact Assessment (HIA), IOM, 2009, which is often applied in the practise of HIA. While the practice of HIA is not equivalent to the assessment of health in EIA, in the absence of formal guidance on assessing human health in EIA, there are aspects from HIA that can be drawn upon to inform the assessment, such as this approach to determining significance. Significance incorporates the intensity of the impact and its potential duration to determine the 'magnitude' of impact on human health receptors, as illustrated in Table 26.3 (Paragraph 26.4.2.1).
- 4.71 The human health assessment assumed that all human receptors are sensitive. However, this assessment assumes that the population will include vulnerable groups that are more sensitive to change. These vulnerable groups were identified during the EIA Scoping stage through a review of the population baseline, and comprising:
- 4.71.1 Older people;
  - 4.71.2 People with existing health conditions;
  - 4.71.3 Unemployed and low-income groups; and

- 4.71.4 Socially excluded or isolated groups. (Paragraph 26.4.2.2)
- 4.72 Since the EIA scoping stage, additional vulnerable groups have been judged to be present within the study area, comprising children and young people, and those with mobility impairment (Paragraph 26.4.2.3).
- 4.73 The assessment methodology and the assigning of sensitivity, magnitude (intensity and duration of impact) and significance has been developed using professional judgement. This professional judgement has been based on experience, a deskbased analysis of the public health baseline of the study area, and scientific literatures on health effects (Paragraph 26.4.2.4).
- 4.74 As identified within Chapter 4 (EIA Methodology), effects deemed to be significant for the purpose of assessment are those which are described as 'major' and 'moderate'. The effects predicted to be 'minor' or 'negligible' are considered to be 'not significant' (Paragraph 26.4.2.5).
- 4.75 **Chapter 27 (Waste and Material Resources) (APP-142)**
- 4.76 The assessment methodology used is described in Section 27.4. Significance is derived from Highways England's guidance in the (2019) Design Manual for Roads and Bridges, LA104 Environmental assessment and monitoring, Revision 1, which assigns the most significant effects as 'Very large' Large' and 'Moderate' (see Paragraph 27.4.4.4, and Tables 27.4 and 27.5).
- 4.77 **Chapter 28 (Carbon and Climate Change) (APP-143)**
- 4.78 The significance of impacts has been assigned in the ES in-line with best practice, as described in Section 28.4. Current best practice assesses significance with reference to the magnitude of emissions, their context – including this UK Carbon Budgets (Table 28.2), IEMA's EIA Guide to Assessing GHG Emissions and Evaluating Their Significance (Institute of Environmental Management and Assessment, 2017) , and professional judgement. As climate change impacts are global in nature, and it is not possible to link a specific project with a specific environmental impact, the sensitivity of receptors is not used to assess significance (Paragraph 28.4.3.1)

#### **Mitigation Schedule**

- 4.79 The Mitigation Schedule (REP2-005) (**CB-25**) identifies the means by which the controls and measures will be secured. Appendix 1 (Mitigation and Control Chart) sets out the Requirements as per the dDCO (REP3-003) (**CB-1**), illustrating the securing mechanisms and hierarchy of the various control documents for the onshore and marine elements of the Proposed Development. The Mitigation and Control Chart (**ISH1 – Exhibit 2**) shows how the outline documents prepared correlate to subsequent detailed submissions to be submitted to, and approved by, the relevant planning authority.
- 4.80 With regards to the adequacy of the Mitigation Schedule, the Applicant considers it to be a comprehensive and robust document. The Mitigation Schedule sets out a clear audit trail from the mitigation measures identified in the ES, to the Control Documents or Licence within which the mitigation is established, to the means by which relevant Control Documents or Licence will be secured by the DCO.
- 4.81 The Applicant undertook a detailed review of the Mitigation Schedule, following the ExA's First Written Questions and the submission of the ES Addendum (REP1-139) (**CB-13**) and updated Control Documents. An updated Mitigation Schedule was submitted at Deadline 2 which sought to address the ExA's questions and concerns and, in particular, provided paragraph references to explain where each mitigation measure identified in the ES could be found within the relevant Control Document or Licence. As suggested by the ExA, this was done in order to provide a clearer audit trail for the ExA, the Secretary of State and the authorities that would have the responsibility for approving the final versions of any such documents.

- 4.82 On this basis, the Applicant is confident that all necessary mitigation measures that are relied upon in the ES will be readily auditable at the discharge of DCO Requirements and Licence Conditions.

#### **Question 4.2**

***Are all of the necessary parameters of the Proposed Development that require a 'Rochdale envelope' for the purposes of the EIA included in, and thus assured in the draft DCO?***

***Are any parties aware of instances where this may not be the case?***

***Are there two height options for the Converter Station as indicated in paragraph 5.2.4.3 of the Design and Access Statement and, if so, would there be any loss/ benefit of having the lower height secured in the dDCO?***

- 4.83 The Applicant submitted the DCO Parameters Index Document (REP1-134) at Deadline 1. This document addressed queries raised in relation to the parameters set out in the draft DCO ('dDCO') and assessed in the Environmental Statement ('ES'), identifying how all parameters used for the purpose of the ES are secured in the dDCO (REP3-003) (CB-1).
- 4.84 The Applicant is content that all of the necessary parameters used for the purpose of undertaking the EIA and for the purpose of reporting the likely significant environmental effects in the ES are secured in the dDCO (REP3-003) (CB-1).
- 4.85 In the Design and Access Statement (REP1-034) (CB-15) the Applicant has indicated that the building height of the Converter Station Halls could be between 22m and 26m. The ultimate height of these buildings is critically dependent upon the design of the internal high voltage equipment. This equipment is of a modular nature, but each potential supplier will have their own optimised solution in terms of the length, width and height of their equipment. In addition, all suppliers will need to respect the electrical clearance, of about 3m, between their equipment and the floor, roof and walls of the building. The span of the building, about 50m, will also represent a challenge to the suppliers in terms of the design of the roof of the building, which in turn impacts on the height of the building. During the development stages of the project, the Applicant has sought information from potential suppliers on the building dimensions which they would require. This information has been used to inform the Design and Access Statement. To ensure that no supplier is disadvantaged from offering their optimum solution the Applicant has sought to retain a range of potential building heights to accommodate suppliers' optimum equipment designs and roof designs. If only the lower height was secured in the dDCO (REP3-003) (CB-1), this may adversely affect the ability of some suppliers to deliver the scheme with their optimum solution.

#### **Question 4.3**

***In light of the s35 Direction from the Secretary of State, could Portsmouth City Council and any other local authority that considers that the commercial use of the spare capacity within the fibre optic cables and the associated infrastructure cannot be covered and authorised by the powers within the dDCO please explain why they believe this to be the case. What would prevent the surplus capacity from being considered part of the Proposed Development?***

- 4.86 N/A.

#### **Question 4.4**

***Is it an oversight that the remainder of the specified Works make no reference to laying of fibre-optic cables whilst each time specifying the length etc. of HVDC cables?***

- 4.87 No, the definition of Onshore HVDC Cables at Article 2 of the dDCO (REP3-003) (CB-1) provides:

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

4.88 A materially similar definition is provided for the Marine HVDC Cables.

4.89 Each time those terms are used, the fibre optic cable is therefore also referred to.

**Question 4.5**

**With regards to Work No.3, what is the actual size of the car park sought? The Supplementary Transport Assessment infers a 150-space car park (Table 10 and paragraph 3.2.1.5) but the answer to ExQ1.16.20 states capacity for 227 parking spaces. Where are the parameters set and how is the size and location controlled through the dDCO?**

4.90 Work No.3 clearly states that Work No.3 includes a car park for 206 vehicles. This car park is for use by construction workers, and therefore accommodates for those vehicles. The parameters for this car park are set by the clear reference to 206 vehicles.

4.91 The area within which Work No.3 may be located is shown on the Works Plans (REP2-003) (CB-20), shown with orange shading. The car park for 206 vehicles may be located anywhere in those areas, albeit as is shown on the Indicative Converter Station Area Layout Plans (REP1-018) (CAH-5), it is anticipated this will be located to the west of the access road in the location where the Telecommunications Buildings will be permanently located.

4.92 Table 10 of the Supplementary Transport Assessment (REP1-142) (ISH1-8) (copied below) provides the reference to the 206 construction workers (made up of 150 for the converter station, 48 for the cable route and 8 for landfall) for which the car park is to be provided. It also lists the parking requirement for 14 LGV’s and 7 HGV’s associated with the onshore cable route and landfall which makes a total requirement of 227 spaces.

**Table 10: Estimated construction related traffic using Broadway Lane junction per day at peak construction**

Construction Activity	Estimated HGVs	Estimated LGVs / Cars
Converter Station Area	43 two-way movements (86 in total)	150 car two-way movements (300 in total)
Cable Route (for 6 gangs all using Converter Station Area as main compound)	24 two-way movements (48 in total)	12 LGV two-way movements (24 in total) 48 car two-way movements (96 in total)
Landfall (using Converter Station Area as main compound)	4 two-way movements (8 in total)	2 LGV two-way movements (4 in total) 8 car two-way movements (16 in total)

4.93 However, it is not considered to be necessary to add the construction vehicles to the maximum number of car parking spaces to be provided for construction workers, as those vehicles will be either be in use on the site or otherwise located in and around the construction works as necessary for the purpose of carrying out the construction works. It is expected non-worker construction vehicles will be located in the temporary car park overnight, as there will be no construction worker vehicles within this area at this time as no works are permissible outside of the secured working hours (see requirement 18 at Schedule 2 to the dDCO (REP3-003) (CB-1)).

#### **Question 4.6**

**In Work No.4, are the maximum upper limits in numbers of joint bays, link boxes and link pillars sufficient given that their usage depends on contractor experience, capability and discretion?**

- 4.94 The numbers of joint bays have been calculated based on 1km cable section lengths. The numbers of joint bays may be reduced if the final cable contractor opts for a design of longer section lengths. The numbers of link boxes/link pillars are calculated based on a requirement of one every five or six cable sections which again is adequate and may be reduced.
- 4.95 The number of joint bays to be used does not depend on contractor experience or capability.

#### **Question 4.7**

**Does work No.4 (f) need to be specific about the technology and means of trenchless crossing being utilised?**

- 4.96 Work No. 4(f) has been amended in the most recent draft of the DCO submitted at Deadline 5 to refer to 1 trenchless installation technique crossing (as that term is defined in Article 2 of the dDCO (REP3-003) (CB-1)). Furthermore, the use of a trenchless installation technique crossing has been secured through the additional requirement 6(11) at Schedule 2 to the dDCO (REP3-003) (CB-1), by reference to the trenchless crossing zone identified at the Brighton to Southampton Railway Line shown on Sheet 7 of the Works Plans (REP2-003) (CB-20). It is considered this work is adequately defined and secured.

#### **Question 4.8**

**In relation to Part 2(k) of Schedule 1, what other works are anticipated to be necessary for the construction or use of the Authorised Development and why are such works considered not to have materially new or materially different environmental effects? Are any of these works likely to be related to the status the Applicant has obtained as a Code Operator under the Communications Act 2003?**

**In any case, has the worst case in relation to visual impacts of the Converter Station development site been presented?**

- 4.97 **Paragraph 2(k) of Schedule 1**
- 4.98 Paragraph 2(k) of Schedule 1 of the dDCO states: *"In connection with Work Nos. 1 to 5 and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including but not limited to – [...] (k) such other works as may be necessary or expedient for the purpose of or in connection with the construction or use of the authorised development and which do not give rise to any materially new or materially different environmental effects from those assessed as set out in the environmental statement"*.
- 4.99 It is not possible for any promoter of a large infrastructure project to anticipate and list all minor or temporary elements of 'development' which might need to be implemented in carrying out the works. It is for this reason that most recently granted DCOs include a provision similar to paragraph 2(k). An example of the sorts of works it might cover would be, say, scaffolding or hoardings. Neither has been listed in the dDCO as part of the specified works, yet as part of constructing the defined works it is likely these will be required. The use of such standard equipment was assumed in the environmental assessment without being expressly listed, and the wording of paragraph 2(k) ensures that no works may be lawfully carried out (regardless of how 'necessary or expedient' they may be) unless their environmental effects are within those set out in the environmental

statement. In other words, by definition, paragraph 2(k) does not authorise works which would have 'materially new or materially different environmental effects'.

**4.100 Relationship to Code Operator status**

4.101 The applicant is not seeking consent via paragraph 2(k) of Schedule 1 to carry out works which relate solely to its status as a code operator. Consent has not been sought for such works, and would not be capable of being authorised by paragraph 2(k). They would very clearly be development which is outside the scope of the work assessed by the environmental statement, and paragraph 2(k) cannot permit works which are outside of the scope of the work assessed by the environmental statement.

**4.102 Visual impacts of the converter station**

4.103 The Applicant confirms that the worst case in relation to visual impacts of the Converter Station development has been presented and this is reflected in the indicative photomontages (Viewpoint A, B and C) Figures 15.35, 15.36 and 15.37 (APP-268, App-269 and APP-270 respectively). ES Chapter 15 Landscape and Visual Amenity (APP-130) paragraph 15.4.6.5 states "*To inform the assessment, Zone of Theoretical Visibility (ZTV) and wirelines of the parameter envelope were prepared for both Option B(i) and B(ii). Indicative photomontages of Local Viewpoints were also prepared, based on Option B(i) which is considered to represent the worst-case scenario in terms of landscape character and the indicative landscape mitigation plans.*"

4.104 Figures 15.18 to 15-34 (APP-251 to APP-267) present the agreed representative verified views of the Converter Station Area. Wirelines based on Option B(i) and Option B(ii) were presented to give a clear picture of the anticipated effects. The wirelines show a building at 26m in height and as a block (i.e. with no pitched roof).

4.105 The Landscape and Visual Impact Assessment ('LVIA') assessed the landscape and visual impacts of the Converter Station based on the Parameter Plans as referred to in paragraph 15.7.1.4. of ES Chapter 15 (APP-130). The Converter Station and Telecommunication Buildings Parameter Plans (APP-012) demonstrate the height of the Converter Station as up to 26m and presented the two Options; Option B(i) and Option B(ii).

4.106 ES Chapter 15 Landscape and Visual Amenity (APP-130) paragraph 15.8.2.5 states "In all cases below, the assessment is based on a worst-case scenario for the Converter Station considering whichever of Options B(i) and B(ii) have the greater effect at a specific receptor area or location in the case of visual receptors. It should also be noted that as both options would have the same effect on landscape character, except very locally where Option B(ii) would avoid the removal of the existing hedgerow an important landscape feature. This is not repeated in the summary of assessment of effects."

4.107 As referred to in Ex A Question EIA 1.6.2, the Applicant's Comments on Responses to Ex A first Written Questions (REP2-008) (CB-6) the Applicant concluded that Option B(i) represented the worst case scenario in terms of landscape and visual effects, and therefore on landscape and visual grounds Option B(ii) is the more favourable option.

4.108 The LVIA recognises that visually there are subtle differences between Option B(i) and Option B(ii) depending on the relative position of the receptor to the Converter Station, however overall it is considered that Option B(i) would be worst case given its proximity to immediate visual receptors and its "weaker" visual relationship with Lovedean Substation. From some angles Option B(ii) appears more visually integrated within surrounding vegetation including woodland edging Lovedean Substation.



## 5. SCHEDULE 2, REQUIREMENTS

### **Question 5.1**

#### ***What is the background to, and purpose of each of the draft Requirements?***

- 5.1 Requirement 1 (interpretation) provides definitions for key terms used in the requirements but not otherwise used in the order and also provides general provisions relating to the interpretation of the requirements.
- 5.2 Requirement 2 (time limits) specifies the period within which the Authorised Development must be commenced and also provides for the service of written notice by the Undertaker on each local planning authority not less than 5 working days prior to the proposed date on which the Authorised Development is to be commenced.
- 5.3 Requirement 3 (phases of the authorised development) provides for the production and submission of a written scheme setting out all the phases of the Authorised Development landwards of MHWS before the Authorised Development landwards of MHWS including the onshore site preparation works may commence. The requirement also provides that the Authorised Development landwards of MHWS must be carried out in accordance with the written scheme submitted (as may be updated from time to time following the further approval by the relevant planning authority). Essentially, Requirement 3 allows for the Authorised Development to be broken down into phases, ensuring approvals required can be obtained in a manageable and co-ordinated manner.
- 5.4 Requirement 4 (Converter station option confirmation) requires the Undertaker to confirm which converter station perimeter option shown on the Converter Station Parameter Plan the converter station will be constructed within prior to the commencement of any works within Work No.2. This is to ensure there is certainty regarding the siting of the converter station before the works to be carried out in relation to it are commenced.
- 5.5 Requirement 5 (Converter station and optical regeneration statement parameters) provides limitations on the location and size of buildings which form part of the converter station and the optical regeneration stations. In relation to the converter station, table WN2 confirms the parameter zones within which the individual buildings must be located, which are by reference to the converter station and telecommunications buildings parameter plan. In relation to the optical regeneration stations, table WN6 provides details of the maximum building envelope parameters for the buildings and the associated compound, with the location for those confirmed on the optical regeneration station parameter plan. The effect of this requirement is to ensure the buildings are constructed in a manner which is within the parameters of the Authorised Development as environmentally assessed.
- 5.6 Requirement 6 (Detailed design approval) provides that the Undertaker must obtain approval for certain design related matters in relation to the phases of Works No.2, Works No.3, Works No.4 and Works No.5 from the relevant planning authority in consultation with any relevant third parties prior to the commencement of the construction of that relevant phase of the works. By virtue of requirement 5, the details must be in accordance with the parameter plans where relevant and they also must be in accordance with the limits of deviation provided for on the works plans. The required matters to be approved are specific to the works which they relate to and the works must be carried out in accordance with the details approved (save for where the details are indicative, in which case the works must be substantially in accordance with those indicative details). This is to ensure comprehensive design information is provided in advance of works commencing and that the works are carried out as approved.
- 5.7 Requirement 7 (Provision of landscaping) provides that no phase of Works No. 2, Works No.4 or the construction of the optical regeneration stations within Works No. 5 shall commence until a detailed landscaping scheme in relation to that phase (which accords with the outline landscaping and biodiversity plan) has been submitted to and approved by the relevant planning authority and, where related to any phase of Works No. 2, in consultation with the South Downs National Park Authority. This is to ensure the landscaping required to mitigate impacts associated with the Authorised Development are

confirmed before those works are commenced. Certain details are required to be included within the detailed landscaping schemes.

- 5.8 Requirement 8 (Implementation and maintenance of landscaping) provides that all landscaping works must be carried out in accordance with any detailed landscaping scheme approved under requirement 7 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards. Paragraph (2) requires that in the event within a period of five years after planting, any tree or shrub planted as part of an approved landscaping scheme is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, it must be replaced in the first available planting season. This is to ensure that the landscaping is carried out and adequately maintained so as to provide the required visual mitigation in relation to the relevant parts of the Authorised Development. Paragraph (3) confirms that all landscaping provided in connection with Work No.2 and the optical regeneration stations in Work No.5 must be retained, managed and maintained during the operational period, ensuring adequate visual screening is provided for the life of the Authorised Development as necessary.
- 5.9 Requirement 9 (Biodiversity management plan) provides that the onshore site preparation works or a phase of Works No. 2, Works No.4 or Works No. 5 may not commence until a written biodiversity management plan in relation to that phase (which accords with the outline landscaping and biodiversity strategy and the relevant recommendations of appropriate British Standards) has been submitted to and approved by the relevant local planning authority in consultation with the relevant statutory nature conservation bodies and (where works have the potential to have an impact on wetland habitats) the Environment Agency. Any approved written biodiversity management plan must include the information set out in paragraph (4), including an implementation timetable and must be carried out as approved. This requirement is included to ensure the appropriate measures described in the Environmental Statement relating to biodiversity in connection with the Authorised Development are carried out.
- 5.10 Requirement 10 (Highway accesses) provides that the construction of any permanent or temporary means of access or use of an existing access, shall not be commenced until the undertaker has obtained the written approval from the relevant highway authority (in consultation with the relevant planning authority) of the of the siting, design, layout, visibility splays, access management measures and a maintenance programme for any new permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway used by vehicular traffic, relevant to that phase. The highway accesses (including visibility splays) where constructed must be constructed and maintained in accordance with the approved details.
- 5.11 Requirement 11 (Construction fencing and other means of enclosure) requires the undertaker to ensure that all construction sites remain securely fenced at all times during the construction of the Authorised Development landwards of MHWS. Further, it requires any temporary fencing is removed on completion of the construction of the phase of the authorised development landwards of MHWS it was erected in connection with. Lastly, the requirement provides that any permanent fencing in connection with the converter station or the optical regeneration stations must be completed before they are brought into use and maintained for their operation lifetime (respectively).
- 5.12 Requirement 12 (Surface and foul water drainage) requires the undertaker to obtain the written approval of the relevant planning authority in consultation with the lead local flood authority (in relation to surface water drainage) and the sewerage and drainage authority (in relation to foul water drainage)(including means of pollution control) for each phase of the Authorised Development prior to that phase commencing. The surface and foul water drainage system for each phase must be constructed and maintained in accordance with the approved details.
- 5.13 Requirement 13 (Contaminated land and groundwater) provides that no phase of the Authorised Development landwards of MHWS may be commenced until a written scheme applicable to that phase in accordance with the onshore outline construction environmental

management plan and surface water drainage and aquifer contamination mitigation strategy (in so far as relevant), to deal with the contamination of any land, including groundwater which is likely to cause significant harm to persons or pollution of controlled waters or the environment has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency and, to the extent it relates to the intertidal area, the MMO.

- 5.14 A scheme to be submitted to discharge this requirement must include an investigation and assessment report, prepared by a specialist consultant approved by the relevant planning authority, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site. The requirement also provides for the submission of a verification report demonstrating completion of the works set out in the approved scheme and the effectiveness of the remediation to the relevant planning authority, and that a long-term monitoring and maintenance plan shall be implemented as approved.
- 5.15 Requirement 14 (Archaeology) provides that no phase of the authorised development landwards of MHWS shall commence until a written scheme for the investigation of areas of archaeological interest has been submitted to and approved by the relevant planning authority. The term “commence” for the purpose of this requirement includes the onshore site preparation works. Any scheme shall identify areas where field work and/or a watching brief are required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.
- 5.16 Requirement 15 (Construction environment management plan) provides that no phase of the authorised development landwards of MHWS, including the onshore site preparation works, shall commence until a construction environmental management plan relating to that phase has been submitted to and approved by the relevant planning authority. Any construction environment management plan must be in substantially in accordance with the onshore outline construction environment management plan submitted as part of the Application and contain other pertinent plans and information. The construction of any phase of the authorised development landwards of MHWS must be carried out in accordance with the construction environmental management plan approved in relation to it.
- 5.17 Requirement 16 (External construction lighting) provides that no phase of Works No. 2, shall commence until written details of any external lighting to be installed at any of the construction sites within that phase or in relation to that phase in accordance with the onshore outline construction environmental management plan (in so far as relevant) have been submitted to and approved by the relevant local planning authority after consultation with the South Downs National Park Authority. Any approved means of lighting must subsequently be installed and retained for the duration of the construction period.
- 5.18 Requirement 17 (Construction traffic management plan) requires a construction traffic management plan to be submitted to and approved by the relevant highway authority which shall be required to be in accordance with the construction traffic management plan (as defined and submitted as part of the Application). The construction of any phase of the Authorised Development landwards of MHWS must be carried out in accordance with the construction traffic management plan approved in relation to it.
- 5.19 Requirement 18 (Construction hours) details the hours within which works of construction of the Authorised Development are to be carried out. The requirement is imposed to avoid adverse impacts on the amenity of surrounding receptors as a consequence of carrying out the construction of the Authorised Development. For this reason, start up and shut down activities may happen up to an hour either side of the core working hours or the receipt of oversize deliveries to the site, the arrival and departure of personnel to and from the site, on-site meetings or briefings, and the use of welfare facilities and non-intrusive activities. Certain operations stated in the outline construction environmental management plan may be carried out outside of the core working hours.

- 5.20 Requirement 19 (Converter station operational access strategy) requires an access strategy for the access and egress of vehicles associated with the operation and maintenance of the converter station to be submitted and approved before the operation of the converter station.
- 5.21 Requirement 20 (Control of noise during the operational period) provides that prior to the use of that relevant part of the authorised development landwards of MHWS, a noise management plan in relation to Works No.2 and the optical regeneration stations must be submitted to and approved by the relevant planning authority. The noise management plan must set out required particulars and be implemented as approved and maintained for the duration of the use of those parts of the authorised development, which are to accord with the broadband and octave band noise criteria detailed within the operational broadband and octave band noise criteria document.
- 5.22 Requirement 21 (Travel plan) provides that no phase of the authorised development shall be begun until, after consultation with the relevant planning authority and the relevant highway authority, a travel plan for the contractor's workforce which accords with the framework construction worker travel plan, which must include details of the expected means of travel to and from Works No. 2 (including in connection with Works No.4) and Works No.5 and any parking to be provided, has been submitted to and approved by the relevant planning authority.
- 5.23 Requirement 22 (Restoration of land used temporarily for construction) requires that any land within the Order limits landwards of MLWS which is used temporarily for construction must be reinstated to its former condition, or such condition as the relevant local planning authority may approve but which may not be to a standard which is higher than its former condition, within twelve months of the completion of the authorised development.
- 5.24 Requirement 23 (Control of lighting during operational period) provides that there will be no external lighting of Works No.2 during the hours of darkness during the operational period save for in exceptional circumstances, including in the case of emergency and where urgent maintenance is required.
- 5.25 Requirement 24 (Decommissioning) requires that where, at some future date, the Authorised Development landwards of MHWS, or any part of it, is to be decommissioned, a written scheme of decommissioning must be submitted for approval by the relevant planning authority, and that any approved written scheme of decommissioning must be implemented, unless otherwise approved by the relevant planning authority. It is relevant in this regard to note that consent is not sought for decommissioning, and that this Requirement therefore requires appropriate consents to be sought in the future once the period of operation has ceased.
- 5.26 Requirement 25 (Requirement for written approval) provides that where the approval or agreement of the relevant planning authority or another person is required in connection with any requirement, that approval or agreement must be given in writing.
- 5.27 Requirement 26 (Amendments to approved details) provides that where required the approved details must be carried out in accordance with the details so approved, unless an amendment or variation is previously agreed in writing by the relevant planning authority or the relevant highway authority (as appropriate), and such amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the Environmental Statement.
- 5.28 Agreement to an amendment or variation may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the relevant planning authority or the relevant highway authority that the subject matter of the agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the Environmental Statement.

## **Question 5.2**

***A number of the management plans (for example, the Outline Onshore CEMP) are said to be 'live' documents that the appointed contractor(s) will review and update regularly.***

***How are the changes to the management plans proposed to be regulated and by what process?***

***Would there be potential for the management plans to diverge from each other in respect of different contractors and different 'phases' and, if so, how should such conflict be resolved?***

***How would the overall position be managed when up to six contractors are appointed at any one time?***

- 5.29 The detailed management plans, such as the detailed phase CEMP's, will be live documents as they will be produced and refined by the contractor at the detailed design and the construction phase.
- 5.30 The outline plans set out the approaches and principles the contractors must adopt and have been referred to as 'Outline' or 'Framework' for the Application. The contractor will refine the outline design to develop a detailed design which will include the specific details of the design including components and method statements. The detailed design documents are therefore live so that the detailed management plans can be further developed as the scheme and methodology detail develops, within the scope of the controls provided by the outline/framework documents, which are not themselves live documents.
- 5.31 No phase of the works may commence until the relevant detailed management plans relating to that phase has been approved by the contractor's project manager and submitted to and approved by the relevant local authority or regulatory authority.
- 5.32 The Mitigation Schedule (REP2-005) (**CB-25**) identifies the means by which the management plans are secured. Appendix 1 (Mitigation and Control Chart) sets out the Requirements as per the dDCO (REP3-003) (**CB-1**), illustrating the securing mechanisms and hierarchy of the various control documents for the onshore and marine elements of the Proposed Development. The Mitigation and Control Chart (**ISH1 – Exhibit 2**) shows how the outline documents prepared correlate to subsequent detailed submissions to be submitted to, and approved by, the relevant planning authority.
- 5.33 Detailed management plans for individual phases will be different from one another as they cover different works in specific locations. These management plans will however still need to comply with the outline and framework management plans submitted with the Application, ensuring that despite the details within plans being work specific the overall approach to management/control is harmonised across the Proposed Development. The contractor's Project Manager and the relevant specialist would review and approve each management plan to maintain oversight. In addition each plan would be approved by the relevant local planning authority.
- 5.34 The reference to up to six contractors in the question appears to be a misunderstanding. There may be six gangs working on the highway at any one time in accordance with the Framework Traffic Management Strategy (REP1-070) (**CB-23**), which is a measure imposed to prevent cumulative effects arising. It is not the case that they would all necessarily be employed by a different lead contractor. In any event, all detailed control documents will be need to be in accordance with the framework / outline document relevant to them, ensuring consistency across them as necessary in connection with the undertaking of the works.

### **Question 5.3**

**Can the Applicant confirm the definition of ‘commencement’ and the full scope of works that would be allowed to be undertaken ‘pre-commencement’?**

**What benefit is there to the Applicant or the public by having certain works being deemed not to fall within the definition of ‘commencement’?**

- 5.35 The definition of “commencement” in Article 2 of the dDCO (REP3-003) (**CB-1**) references to section 155 of the 2008 Act, which details when development is taken to be begun, which is the date on which a material operation comprised in, or carried out for the purposes of, the development begins to be carried out. This statutory definition is purposefully broad to capture any works of development.
- 5.36 The full scope of the works that would be able to be undertaken ‘pre-commencement’, albeit not without satisfying relevant requirements to control those works (discussed further below), are those detailed in the definition of “onshore site preparation works”. In essence these are various preparatory works which an undertaker may wish to undertake to ultimately deliver the development in a more timely manner, for its own benefit and for that of the public. Those works are purposefully restricted to works which would not give rise to environmental impacts for which mitigations/controls are required, or otherwise it is provided that mitigations/controls in relation to them must be confirmed before they can be carried out.
- 5.37 It will take the undertaker a period of time to obtain all relevant discharges required to “commence” works. Were it not possible to commence any works until all such details have been approved, the beginning of the delivery of the development would be delayed. It is therefore appropriate, subject to any necessary controls being provided for, for certain works to be able to be undertaken at an earlier point in time.
- 5.38 As can be seen from the response above, it is important to note that whilst some works can be undertaken pre-commencement, the undertaking of those works is not without relevant and sufficient oversight and control. In this regard, the Applicant highlights that the following requirements must be satisfied in relation to the onshore site preparation works to be undertaken before they may be undertaken ‘pre-commencement’:
- 5.38.1 Notification of works being undertaken in accordance with requirement 2;
  - 5.38.2 Requirement for confirmation of phases of the works to be undertaken in accordance with requirement 3;
  - 5.38.3 Converter station option is required to be confirmed prior to the carrying out of any onshore site preparation works in respect of the area where the converter station is to be located in accordance with requirement 4;
  - 5.38.4 Detailed design for the converter station and the temporary laydown/compound are to be confirmed before any onshore site preparation works are carried out in accordance with requirement 6;
  - 5.38.5 No onshore site preparation works may be undertaken in relation to any phase of Works No. 2, Works No.4 or the construction of the optical regeneration stations within Works No. 5 until a detailed landscaping scheme in relation to that phase has been submitted to and approved by the relevant planning authority in accordance with requirement 7;
  - 5.38.6 No part of the onshore site preparation works may commence until a written biodiversity management plan relating to those works has been submitted to and approved by the relevant local planning authority in accordance with requirement 9;
  - 5.38.7 No phase of the authorised development, including the onshore site preparation works, may commence until a written scheme applicable to that phase to deal with the contamination of any land, including groundwater which is likely to cause significant harm to persons or pollution of controlled waters or the environment

has been submitted to and approved by the relevant planning authority in accordance with requirement 13;

- 5.38.8 No phase of the authorised development, including the onshore site preparation works, may commence until a written scheme for the investigation of areas of archaeological interest as identified in the environmental statement has been submitted to and approved by the relevant planning authority in accordance with requirement 14; and
- 5.38.9 No phase of the authorised development landwards of MHWS may commence and no onshore site preparation works in relation to any such phase may be carried out until a construction environmental management plan relating to that phase has been submitted to and approved by the relevant planning authority in accordance with requirement 15.

#### **Question 5.4**

##### ***In requirement 1(6), what is meant by 'ground level'?***

- 5.39 The reference to ground level in requirement 1(6)(b) has been amended to finished floor level in the updated draft of the DCO submitted at Deadline 5 to more clearly confirm the position.

#### **Question 5.5**

##### ***In relation to Requirement 22, can the Applicant define the scope and extent of reinstatement powers within the dDCO at present and how they relate to highway related works?***

##### ***Would the roads be restored in accordance with the 'Specification for Reinstatement of Openings in Highways' document? If not, why not? If so, where is this secured in the dDCO?***

##### ***What views does the Applicant have in respect of Hampshire County Council's request for 'indemnity' for undertaking any works that may result in the diversion of otherwise of the cables to facilitate highway works?***

- 5.40 The reinstatement powers applicable to highway are provided by Articles 11 and 12, not requirement 22. Article 11 provides a statutory right for the undertaker to carry out street works for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the NRSWA 1991. Article 11 is subject to Article 12, which sets out the provisions of the NRSWA 1991 which are to apply in relation to the carrying out of street works pursuant the exercise of the powers provided by Article 11.
- 5.41 Article 12(2) confirms that sections 70, 71, 72 and 73 of the NRSWA 1991 apply, all of which relate to reinstatement requirements for persons undertaking street works and which the undertaker would be required to comply with.
- 5.42 Section 71 of NRSWA 1991 relates to materials, workmanship and standard or reinstatement. Article 71(1) provides that an undertaker executing street works shall in reinstating the street comply with such requirements as may be prescribed as to the specification of materials to be used and the standards of workmanship to be observed.
- 5.43 Section 71(4) of the NRSWA 1991 provides that the Secretary of State may issue or approve for the purposes of this section, codes of practice giving practical guidance as to reinstatement. Any undertaker who fails to comply with the requirement for reinstatement under section 71 commits an offence.
- 5.44 The Street Works (Reinstatement) Regulations 1992 are made subordinate to section 70(4) and 71 of the NRSWA 1991. Regulation 4 of those regulations confirms that an undertaker executing street works shall in reinstating any street, comply with the requirements stated in that regulation, which are by reference to the Code. The Code for

the purposes of those regulations means the code of practice entitled "Specification for the Reinstatement of Openings in Highways" dated June 2002, and approved by the Secretary of State on 29th May 2002 as revised and reissued from time to time.

- 5.45 Accordingly, all highway reinstatement works are required to be undertaken in accordance with the Specification for the Reinstatement of Openings in Highways. Where the undertaker does not do so, they would be committing an offence.
- 5.46 The Applicant understands that the request for an indemnity is based on concerns regarding the burial depth of the cables in the highway and a concern that the depth might not comply with applicable codes of practice and guidance in this regard. However, the Applicant confirms that the burial depths specified comply with what has been industry practice for Extra High Voltage (EHV) cables installations for many years and are as specified in NGTS 357, ENA TS 09-02 and most utility's specifications for EHV cable installations, and that these will be complied with. The dimension of 750mm is not the depth of burial of the cables but is the minimum dimension to the top of the protective tiles. The actual depth of burial for the ducts and hence cables, is lower than this and will vary along the route as required to cross existing services, obstacles or specific features (bridges for example), but will not be shallower than this. On this basis, the Applicant understands an indemnity is not necessary.
- 5.47 Further, the Applicant maintains its position that an indemnity is not appropriate. The works the Applicant is to undertake are not of a different character to those undertaken by other utilities undertakers in the highway and do not give rise to any potential issues in relation to future connections to the highway that would not otherwise exist in respect of any such utilities.
- 5.48 It is noted that the A3 and the B2150 are both classified roads which take a considerable amount of traffic and play any important role within the network as highlighted by HCC, and that alterations or additional access points may be required to them at some point above those already committed to, but no explanation has been provided as to how the authorised development might give rise to the need for it to be diverted in the future or how the authorised development could prejudice any future schemes.
- 5.49 HCC have also not addressed the fact that if they were to divert other utilities apparatus to facilitate road improvements, this would not be paid for by the owner of that apparatus. There is no reason why the position should be any different in respect of the authorised development. Albeit, this point is only of academic interest as the authorised development will not prejudice any future highways schemes by being located beneath the surface of the highway alongside other similar utility infrastructure.
- 5.50 The Applicant highlights that the reason HCC, or any other highway authority, does not benefit from a power to move such apparatus and to be indemnified for the costs of doing so is because it is simply not appropriate. The level of uncertainty created for undertakers with apparatus in the highway would be untenable, and the potential open ended costs associated with such an indemnity, including the costs of the loss of service for the period of any works, would be unsustainable for any undertaker.
- 5.51 Seeking to include any such provision would be without precedent and would place the Applicant at a significant disadvantage. This ultimately would impact on the feasibility of the scheme as an operating asset. The uncertainties created by any such indemnity would have the very real potential to prevent the authorised development being delivered, as it is not considered any prudent financial investor would consider the risks posed by any such indemnity to be quantifiable and/or acceptable.

#### **Question 5.6**

***Can Winchester City Council please set out the rationale for requiring an Employment and Skills Plan given the split of local/ non-local workers suggested in the ES?***

- 5.52 N/A



## 6. SCHEDULE 3, PROCEDURE FOR APPROVALS, CONSENTS AND APPEALS

### Question 6.1

**What are the various documents that will require approval and the means/ method/ timescales involved in obtaining them? What is the rationale behind the time period allowed of 20 days for authorities to respond to requirement discharge requests?**

6.1 The table below summarises the consents and approvals which may be required and the timescales, methods etc. provided for achieving them:

Document for approval	Method and timescale for approval
Article 7 – Consent to transfer the benefit of the Order	The Secretary of State has 8 weeks to determine an application to consent to a transfer the benefit of the Order (Article 7(4)). If not granted within this timescale, or if refused, the undertaker may seek arbitration (Article 7(5))
Article 10 - Power to alter layout etc. of streets	If a street authority which receives an application for approval under paragraph (3) fails to notify the undertaker of its decision before the end of the period of 20 working days beginning with the date on which the application was made, it is deemed to have granted consent.
Article 11 – Streetworks	Outside of the Order limits, the street authority's consent will be required.  If a relevant street authority that receives an application for consent and fails to notify the undertaker of its decision within 20 working days beginning with the date on which the application was made, that authority will be deemed to have granted consent.
Article 14 – Access to works	An application for approval by the relevant highway authority is to be determined in accordance with the mechanism set out in Schedule 3 of the dDCO.  If a highway authority that receives an application for approval under Article 14(b) fails to notify the undertaker of its decision within 20 working days of receiving the application, that authority will be deemed to have granted approval.
Article 16 – Traffic regulation measures	The undertaker must consult the chief officer of police and the relevant highway authority in whose area the street is situated (Article 16(2)).  The undertaker is required (a) to give not less than 20 working days' notice in writing of its intention to exercise its powers to the chief officer and to the relevant highway authority and (b) to advertise its intention in such a matter as the relevant highway authority may

	<p>specify in writing within 5 working days of its receipt of notice of the undertaker's intention.</p> <p>If the relevant highway authority fails to notify the undertaker of its decision within 20 working days of receiving an application for consent under paragraph (2) the relevant highway authority is deemed to have granted consent.</p>
Article 17 – Discharge of water	Where the person receives an application for consent under paragraphs (3) or approval under paragraph (4)(a) and fails to notify the undertaker of its decision within 20 working days of receiving an application, that person will be deemed to have granted consent or given approval, as the case may be.
Article 18 – Protective works to buildings	<p>The undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 10 working days' notice of its intention to exercise its right (Article 18(5)).</p> <p>Where a notice is served under paragraph (5) the owner or occupier of the building or land concerned may by serving a counter-notice within the period of 10 working days beginning with the day on which the notice was served require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration (Article 45).</p>
Article 19 - Authority to survey and investigate the land	<p>Article 19(4) requires that no trial holes are to be made without the consent (not to be unreasonably withheld or delayed) of:</p> <p>(a) in land forming a railway without the consent of Network Rail;</p> <p>(b) in land by or in right of the Crown without the consent of the Crown;</p> <p>(c) in land located within the highway boundary without the consent of the relevant highway authority; or</p> <p>(d) in a private street without the consent of the relevant street authority.</p> <p>If either a relevant highway authority or a relevant street authority which has received an application for consent under paragraph (4) of this article fails to notify the undertaker of its decision within 20 working days of receiving the application, that authority is deemed to have granted the consent.</p>
Requirement 6 – Detailed design approval	The decision period from the relevant planning authority or the relevant highway authority is –
Requirement 7 – Provision of landscaping	

Requirement 9 – Biodiversity management plan	<p>(a) where no further information is requested, 40 working days from the day immediately following that on which the application is received by the authority;</p> <p>(b) where further information is requested, 40 working days from the day immediately following that on which further information has been supplied by the undertaker; or</p> <p>(c) such longer period as may be agreed by the undertaker and the discharging authority in writing before the end of the period in sub-paragraph (a) or (b).</p> <p>The relevant planning authority is required to consult with other bodies in some cases including the South Downs National Park Authority, statutory nature conservation bodies, the Environment Agency, the lead local flood authority and the sewerage and drainage authority.</p>
Requirement 10 – Highway accesses	
Requirement 12 – Surface and foul water drainage	
Requirement 13 - Contaminated land and groundwater	
Requirement 14 - Archaeology	
Requirement 15 – Construction environmental management plan	
Requirement 16 - External construction lighting	
Requirement 17 - Construction traffic management plan	
Requirement 19 - Converter station operational access strategy	
Requirement 20 - Control of noise during the operational period	
Requirement 21 – Travel Plan	
Requirement 22 - Restoration of land used temporarily for construction	
Requirement 24 – Decommissioning	
DML condition 3 - Pre-construction surveys	<p>The MMO must determine an application for approval made under sub-paragraph (2) within a period of 8 weeks commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.</p> <p>Where the MMO is minded to refuse an application for consent made under sub-paragraph (2) and notifies the undertaker accordingly, or fails to determine the application for approval under this article within the period prescribed in sub-paragraph (2), the undertaker may appeal to the Secretary of State in accordance with the procedure in Part 3 of this licence.</p>
DML condition 4 and 5 - Pre-construction plans and documentation	<p>The MMO must determine an application for approval made under condition 4 within a period of four months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.</p>

	Where the MMO is minded to refuse an application for approval made under condition 4 and notifies the undertaker accordingly, or the MMO fails to determine the application for consent under this article within the period prescribed in sub-paragraph (2), the undertaker may appeal to the Secretary of State in accordance with the procedure in Part 3 of this licence.
DML condition 10 - Post-construction surveys	The MMO must determine any application for approval made under condition 10 or 11 within a period of four months commencing on the date the application is received by the MMO unless otherwise agreed in writing with the undertaker.  Where the MMO is minded to refuse an application for approval made under condition 10 and 11 and notifies the undertaker accordingly, or the MMO fails to determine the application for consent under this article within the period prescribed in sub-paragraph (1), the undertaker may appeal to the Secretary of State in accordance with the procedure in Part 3 of this licence.
DML condition 11 - Cable burial management plan	
DML condition 12 - Post-construction approvals	
DML condition 13 - Maintenance of the authorised development	The MMO must determine any application for approval made under this condition 13 within a period of 8 weeks commencing on the date the application is received by the MMO unless otherwise agreed in writing with the undertaker.

- 6.3 Where a timescale of 20 **working days** has been provided it is on the basis that this should be sufficient time for the relevant bodies to provide their consent, and from the Applicant's perspective provides the certainty required in order for it to implement the project.

### **Question 6.2**

#### **What are the roles of the MMO, Natural England, Environment Agency and local planning authorities in the seeking the discharge of Requirements?**

- 6.4 The MMO has no role in discharging Requirements as its role is limited to offshore and the discharge of deemed marine licence conditions. The Requirements are purposefully drafted to relate to Work No. 1 – 5, all of which are landwards of mean high water springs, being the onshore extent of the MMO's jurisdiction.
- 6.5 Natural England has no role in discharging requirements.
- 6.6 The Environment Agency has a role as a consultee in relation to the discharging of requirements 6 (Detailed design approval), 9 (Biodiversity management plan), 13 (Contaminated land and groundwater) and 15 (construction environmental management plan).
- 6.7 The local planning authority has the role of approving submissions made for approval by the undertaker pursuant to requirements 6,7,9,10,12,13,14,15,16,17,18,19,20,21,22 and 24, as set out in response to question 6.1 above.

**7. SCHEDULE 9, MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE CREATION OF NEW RIGHTS AND RESTRICTIVE COVENANTS**

***Question 7.1***

***Any matters parties wish to raise.***

7.1 N/A.

8. **SCHEDULE 13, PROTECTIVE PROVISIONS**

**Question 8.1**

***Please could the Applicant provide an update on progress of negotiations on protective provision wording and the likelihood of resolution?***

- 8.1 The Applicant has provided a full update in relation to the position on protective provisions within its response to the same question posed for Compulsory Acquisition Hearing 1 (question 11.3). These matters are not repeated here, but the Applicant will refer to that statement as necessary for the purpose of explaining the position at ISH-1.

## 9. SCHEDULE 14, CERTIFIED DOCUMENTS

### Question 9.1

***With regards to the amount of refreshed, new, modified and additional information to the Environmental Statement, please could the Applicant explain what now constitutes the certified Environmental Statement for the purposes of the dDCO, and how this will be managed going forwards?***

- 9.1 At Deadline 3 the Applicant submitted a schedule of documents forming the Environmental Statement (REP3-017) **(ISH1-14)**. This document provides a list of all documentation associated with the ES and other associated documentation, and the appropriate document references as per the Planning Inspectorate's Examination Library (Updated – 22 October 2020).
- 9.2 A further update to this document has been submitted at Deadline 5.
- 9.3 This document will continue to be updated as necessary throughout the course of the Examination when any new ES material is submitted. The Applicant will at the end of the Examination update the reference to the Environmental Statement within Schedule 1 to the dDCO **(CB-1)** to ensure this sufficiently captures all relevant documents, including all updates.
- 9.4 Should the ExA have any other views on the approach to be taken from an administrative perspective, the Applicant confirms it would be grateful to receive those views so as to ensure the process can be managed as efficiently as possible.

## 10. SCHEDULE 15, DEEMED MARINE LICENCE UNDER 2009 ACT

### **Question 10.1**

***Could the Applicant advise on the construct and content of the draft Deemed Marine Licence (DML) and how it relates to the dDCO?***

- 10.1 The DML, contained at Schedule 15 to the dDCO (REP3-003) (**CB-1**), takes the form of deemed marine licences in other made DCOs.
- 10.2 Part 1 of the DML details the licensed marine activities, being those activities which are authorised by the licence to be undertaken in the marine environment (Work No. 6 and 7). This includes providing the defined terms for the DML (paragraph 1 of Part 1), details of the licensed marine activities (paragraphs 2 to 6 of Part 1), and other relevant matters relating to the effect and interpretation of the DML (paragraphs 7 to 10 of Part 1).
- 10.3 Part 2 sets out the conditions which are applicable to the DML and which must be discharged and as necessary complied with in connection with the construction, operation of the authorised development.
- 10.4 Part 3 of the DML sets out a procedure for appeals to ensure that any refusal or non-approval by the MMO can be subject to appropriate scrutiny and/or to ensure that any matters which are not progressed in good time do not give rise to any impediment to the authorised development being delivered, and in a timely manner.

### **Question 10.2**

***What is the status of negotiations between the Applicant and the Marine Management Organisation in relation to the DML?***

- 10.5 The only outstanding areas of discussion in regard to conditions of the Deemed Marine Licence between the Applicant and the MMO are those matters identified in the SoCG in Table 4.1, which the Applicant is engaging with the MMO in order to resolve. The items cover aspects in relation to the DML. A meeting was held on 19 November 2020 between the MMO and the Applicant, and the MMO has very recently provided feedback on matters under discussion within the SoCG which is under review.

### **Question 10.3**

***Please could the Applicant clarify the position regarding the Outline Marine Archaeological WSI not being in the list of certified documents but appearing in Schedule 15 relating to the DML?***

- 10.6 The Marine Archaeology Outline Written Scheme of Investigation (WSI) (APP-397) (**ISH1-13**) is included in Schedule 14 to the dDCO (REP3-003) (**CB-1**). This inclusion was made at Deadline 1 following it being noted it had not been included.

### **Question 10.4**

***With reference to Historic England's Written Representation, could the Applicant comment on the suggested additions and recommendations for content within Part 2 of the DML, and whether amendments are to be made in any respect?***

- 10.7 The Applicant responded at Deadline 2 ((REP2-014) (**CB-5**), Section 3.4) to the suggested additions and recommendations for content within Part 2 of the DML provided by Historic England's Written Representation (WR).
- 10.8 The recommendations in references 6.3, 6.4, 6.5, 6.7, 6.9 and 8.1 of the WR recommending additions of text to DML conditions have not been implemented as it is the Applicant's position that the certified Outline Written Scheme of Investigation (WSI) already accommodates these matters. Further, the WSI controlling document will be developed in accordance with the Outline WSI as stated within Condition 4 (2).



- 10.9 Therefore, it is considered that the certified document Outline WSI (APP-397) (**ISH1-13**) and provision of the WSI controlling document in Condition 4(2) are sufficient and are the most appropriate mechanism to secure the provision of archaeological advice and input into pre- and post-construction survey plans and timeframes thereof, archaeological features and/or the identification of AEZs and potential monitoring requirements. The Applicant wishes to avoid having duplicate information / requirements across multiple pre-construction documents and plans as this can lead to duplication of effort in developing plans and to potential errors or confusion. As the WSI is the key controlling document it follows that this is the source of truth in regard to archaeological mitigation which Contractors will be obliged to adhere to.
- 10.10 The recommendations in references 6.2, 6.6, and 6.8, of the WR recommending amendments to DML conditions have already been implemented.
- 10.11 Consultation with Historic England is still ongoing, and the Applicant anticipates Historic England will respond to the information in REP2-014 (**CB-5**) in due course.

## 11. PLANNING OBLIGATIONS AND ANY OTHER AGREEMENTS

### **Question 11.1**

***Taking account of all Written Submissions at Deadline 1 and any subsequent negotiations, could the Applicant provide an update on the progress of any obligations with regards to S106 of the Town and County Planning Act or S278 of the Highways Act?***

#### 11.1 Hampshire County Council (HCC)

11.2 The Applicant and HCC are currently in discussion over the need for planning obligations.

11.3 HCC considers that a planning obligation is required to mitigate the impact of the Proposed Development on trees within the Highway. The Applicant acknowledges that there will be some adverse impact on trees within highway land and has accepted that a monetary contribution through HCC's Capital Asset Value for Amenity Trees (CAVAT) scheme will be required. Discussions between the Applicant and HCC are ongoing with regard to quantifying contributions and the mechanism to secure this, which may be by way of a planning obligation.

11.4 HCC has also requested monetary contributions towards mitigating the impacts of the Proposed Development on bus services within the County. Discussions between the parties are ongoing and HCC is yet to provide any evidence to the Applicant to justify the request.

11.5 The Supplementary Transport Assessment (REP1-142) (**ISH1-8**) Section 6 comprises a detailed bus journey times assessment, which analyses the difference between bus journey times across the study area by using a comparison of Do Minimum and the two Do Something scenarios contained within the SRTM. Overall, this assessment concludes that the works will generally have a minor impact on bus routes across the study area and where this is more pronounced, the impact will be limited to a short-time period.

11.6 The Applicant met with First Group (First Hampshire & Dorset) on the 22nd August 2019 and 8 October 2020 to discuss the Proposed Development and the potential impact to local bus services in the Portsmouth and South Hampshire area. The Applicant also met with Stagecoach on 21 October 2020. During these meetings, no bus operator expressed any significant concerns regarding the proposals and welcomed the engagement. No request was made to the Applicant regarding requirements for additional services to mitigate the impacts of construction.

11.7 The Applicant's position in relation to impacts on bus journey times is based on the assessment work undertaken to identify the impacts discussed above, which identifies that the works will generally have a minor impact on bus routes across the study area and where this is more pronounced, the impact will be limited to a short-time period. On the basis of this assessment, the Applicant's position is that a planning obligation in relation to impacts on bus journey times is not justified.

11.8 Furthermore, taking into account the conclusions of the assessment, it is not understood what any potential planning obligation, which would be a monetary contribution, would be utilised for so as to address the impact it would be paid in relation to. There is not currently a clear justification of the need for any such planning contribution in relation to the impacts on bus journey times, nor is there a clear understanding of how those monies would be spent to address the impacts which the monies are paid in relation to.

11.9 Initial discussions between the Applicant and HCC have taken place with regard to works for road purposes in the highway for which an agreement pursuant to section 278 of the Highways Act 1980 would usually be required. The Applicant has confirmed that such

matters are to be dealt with in the Order, not outside of it, and that necessary processes and controls are already provided for in the dDCO (REP3-003) **(CB-1)**.

11.10 It is acknowledged this does not align with HCC's usual process where a section 278 agreement (or other similar highways agreement/licence) would be required, but this is not unusual for a DCO which is to provide a single consent in accordance with the underlying purposes of the statutory scheme. To require separate highways agreements or a full approval process mirroring that process in addition to this as part of the DCO would be inappropriate, disproportionate and without precedent when taking into account the extent of the works for road purposes (which excludes streets works) to be undertaken in the highway (i.e. works to be undertaken through the exercise of the powers conferred by Article 10 of the dDCO (REP3-003) **(CB-1)**).

11.11 The Applicant's position is that alterations to the highway are adequately provided for and controlled through the dDCO (REP3-003) **(CB-1)**, and it is not necessary for further approvals and/or agreements to be entered into in this regard.

**11.12 Highways England**

11.13 No discussions between the Applicant and Highways England have occurred with regard to s106 of the Town and Country Planning Act or s278 of the Highways Act as the works proposed do not warrant a s106 agreement or fall under s278 works. No works are to be undertaken on highways for which Highways England are the highway authority and there are no impacts on such highways for which any planning obligations would be required.

**11.14 South Downs National Park Authority (SDNPA)**

11.15 The Applicant and the SDNPA are currently in discussion over the appropriateness of securing planning obligations. The SDNPA considers that an appropriate section 106 planning obligation is required to mitigate and offset the harm the Proposed Development would cause to landscape character by delivering agreed and significant landscape enhancements within the local area. The Applicant acknowledges that there is harm to the landscape remaining, but considers that this has been mitigated as far as practicable through careful design, siting and landscaping, and therefore in accordance with the relevant policies provided for by EN-1.

11.16 The Applicant is open to further discussing the necessity of planning obligations, however any obligations must be in accordance with the legal tests in regulation 122 of the Community Infrastructure Levy Regulations 2010. The SDNPA is currently exploring whether there are any existing projects within the SDNPA that the Applicant may be able to contribute to which satisfy the relevant legal tests, and the quantum of any fairly and reasonably related contribution.

**11.17 Havant Borough Council (HBC)**

11.18 No further discussions with HBC have occurred with regard to planning obligations. The Applicant does not consider there are impacts for which planning obligations would be justified.

**11.19 East Hampshire District Council (EHDC)**

11.20 No further discussions with EHDC have occurred with regard to planning obligations. The Applicant does not consider there are impacts for which planning obligations would be justified.

**11.21 Portsmouth City Council (PCC)**

11.22 PCC is yet to engage with regard to the need for any planning obligations. PCC's RR stated that:

11.22.1 *"PCC consider that a fund for community benefits to secure localised improvements for road users should at least be required from Aquind to assist project mitigation. Biodiversity enhancement measures and a delivery programme*

*for such improvements at Eastney after completion of works for the landfall underground connection bay should also form part of essential mitigation works.”*

- 11.23 PCCs position is noted. The Applicant does not consider that a fund for community benefits would be a valid planning obligation. The Applicant has been clear throughout its discussions that it does not consider it to be necessary to provide a community fund, and in any event this is not a relevant planning matter for the purpose of determining the Application. The temporary impacts on highways, with reinstatement to follow, do not necessitate any need for planning obligations in relation to road improvements.
- 11.24 Biodiversity measures are secured via the OLBS (REP1-031) (**CB-15**) and the relevant Requirements in this regard. No specific request has been made in relation to any other measures to be provided at Eastney.
- 11.25 The Applicant remains willing to re-surface the car park in a better condition following the works and would be amenable to entering into a planning obligation to secure this where necessary, however PCC is yet to engage on this issue, despite numerous requests by the Applicant.
- 11.26 **Winchester City Council**
- 11.27 WCC considers that the proposal offers no legacy benefits to the local or wider community and have suggested that monetary contributions from the Applicant would be appropriate. The Applicant notes that the benefits at the national level will also provide benefits at the local level.
- 11.28 Furthermore, the Applicant does not consider that a fund for community/legacy benefits would be a valid planning obligation. The Applicant has been clear throughout its discussions that it does not consider it to be necessary to provide a community fund, and in any event this is not a relevant planning matter for the purpose of determining the Application.
- 11.29 WCC are also seeking local employment and training benefits to be provided in connection with the Proposed Development. The Applicant is continuing to consider this request, and is seeking further information and engagement with WCC to confirm what may be able to be provided that is realistically achievable (noting that much of the works to be undertaken will be undertaken by specialist contractors familiar with the construction of high voltage electrical apparatus).
- 11.30 This is a matter which, if agreed, may be addressed by way of a planning obligation, if that is determined to be the most appropriate mechanism.

### **Question 11.2**

***With reference to the Hampshire County Council Local Impact Report, could the Applicant explain whether progress is intended towards an agreement under S278 of the Highways Act?***

- 11.31 It is important to remember that the Government's intention in bringing in the Planning Act 2008 regime was to create a 'one-stop-shop' for nationally significant infrastructure projects, which streamlined the consenting process and ensured no unnecessarily impediments to their delivery. It is for this reason that most granted DCOs which affect highways or streets in any way have powers similar or identical to the articles which the Applicant is seeking in the dDCO.
- 11.32 The Applicant has confirmed to HCC that the undertaking of works for road purposes in the highway are to be dealt with in the Order, not outside of it, and that it is considered necessary processes and controls are provide for already in the dDCO (REP3-003) (**CB-1**). It is acknowledged this does not align with HCC's usual process where a section 278 agreement would be required, but this is not unusual for a DCO which is to provide a single consent in accordance with the underlying purposes of the statutory scheme.

- 11.33 To require a full approval process in addition to this, or as part of the DCO, would be inappropriate, disproportionate and without precedent when taking into account the extent of the works for road purposes (which excludes streets works) to be undertaken in the highway (i.e. works to be undertaken through the exercise of the powers conferred by Article 10 of the dDCO (REP3-003) **(CB-1)**).
- 11.34 As has been set out in the Applicant's response to question 3.13 already at ISH-1, the relevant articles are suitably constrained by reference to what is required for the purpose of the authorised development, and subject to consultation with or consent of the relevant street authorities.
- 11.35 It is also relevant in relation to this question to identify that works for which a Section 278 Agreement would be required but for the DCO in the context of the authorised development would be in respect of new or altered accesses. Requirement 10 is included within the dDCO to confirm the details that must be provided and complied with in relation to any such new permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration or improvement to an existing means of access to a highway used by vehicular traffic. This again ensures the necessary level of consent and control for the LHA.

### **Question 11.3**

***Please could the Applicant explain the progression, if any, on Planning Performance Agreements (PPAs)? Could the Applicant set out the content of any PPAs and with which authorities they are intended. How are these secured through the dDCO or its Requirements?***

- 11.36 The Applicant continues to liaise with the relevant planning authorities and Hampshire County Council in relation to post-consent PPAs. All parties have been focused on the Examination process to date, and as such it has not been possible to devote significant amounts of time to the production of PPAs, however the basic principles that these will apply to approval activities and fees will be charged accordingly have been agreed (although fees have not).
- 11.37 It is considered that once the requirements are more settled, which ISH-1 is expected to assist with, the parties will be in a better position to confirm the approvals needed and the costs to be charged in relation to those, always based on the principle that not for profit costs incurred in providing discharges of requirements etc. should be repaid by the undertaker.
- 11.38 The Applicant confirms that a form of post-consent PPA has been drafted and will be issued in due course to the relevant discharging authorities to ensure the matter is concluded before the end of the Examination.
- 11.39 PPAs are not intended to be secured through the dDCO or its requirements. They are private agreements which are enforceable as such.

**APPENDIX 1**  
**ISH1 EXHIBITS**

<b>Document description</b>	<b>Exhibit</b>
Location of HDD entry/exit points	ISH1 - Exhibit 1
Mitigation and Control Chart	ISH1 – Exhibit 2