

Date: 30 November 2020

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

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

**WRITTEN SUBMISSIONS IN RELATION TO ISSUE SPECIFIC HEARING 1
INTO THE DRAFT DEVELOPMENT CONSENT ORDER**

Submitted in relation to Deadline 5 of the Examination Timetable

EXECUTIVE SUMMARY – ORAL SUBMISSIONS FOR DEADLINE 5

1. The Carpenters' Written Representations, Document Ref: 200250030/Written Representations and subsequent documents set out their position in relation to their Land being taken against their will.
2. In respect of this Deadline 5, the DCO Issue Specific Hearing and the Compulsory Purchase Issue Specific Hearings, these are the oral submissions of the Carpenters.
3. The Legal Framework for the dDCO is in **Appendix A** hereto. The law provides: (Emphasis added)

“The taking of a person's land against his will is a serious invasion of his proprietary rights. The use of statutory authority for the destruction of those rights requires to be most carefully scrutinised.”

4. The Facts Framework is in **Appendix B** hereto.
5. In essence, upon that careful scrutiny, it becomes evident in relation to this Application that no more is justified than:
 - a) The presence of one unmanned Convertor Station within Parameter Volume Option B(ii), being also the least intrusive volumetric intervention within their Land;
 - b) The presence of two electricity bearing cable circuits in trenches aligned to Figure 24.2, Drawing Ref: EN020022-ES-24.2-Sheet1/Rev 01 and at a below ground level of more than 1m below the surface and with related individual fibre optic cables for supporting purposes;
 - c) The availability of an inspection and maintenance access to the unmanned Convertor Station for light vehicles about 3-4 times annually;
 - d) Emergency temporary access to the unmanned Convertor Station in line with such emergency recovery plan as Aquind may have;
 - e) The presence of the unmanned Convertor Station for more than 125 years in line with the usual period for infrastructure.
6. For the reasons given in Schedule 4 to the Deadline 4 Representations of the Carpenters and in **Appendix J** hereto relating to Landscape, the extent of permanent land take is unjustified.
7. Instead, the Carpenters propose Protective Provisions in a draft Schedule 13 hereto with related refinements to the scope of the draft DCO, Revision 2 as at Deadline 4.
8. **Appendix K** illustrates what is envisaged.
9. The Carpenters' set out herein below the more detailed basis of the foregoing but, because written representations are the primary vehicle for a DCO Examination, do not envisage reading out the remainder of this Transcript.

THE CARPENTERS' LAND, HM REGISTRY TITLE [REDACTED]

10. The Carpenters' freehold land is identified in HM Land Registry Title [REDACTED] and its geographical extent is shown on the filed plan ("the Land"). See Schedules 1, 2, and 3 to the Carpenters' Written Representations, Document Ref: 200250030/Written Representations. The land outlined in green in its Title's North-West corner was conveyed to National Grid in 2013 ("Green Land"). See below.
11. Except for the Farm buildings in its Southern part, the Land remains undeveloped agricultural land and categorised under the Agricultural Land Classification (ALC) as part: Grade 3a (Good Quality Agricultural Land) at its Southern Central part; Grade 3b (Moderate Quality) in its Northern and Southern parts; and Grade 4 (Poor Quality) in its Central part. See Figure 17.2 of Appendix 17.2 of ES Volume 3 (14th November 2019), Document Ref: 6.3.17.2. Grade 3a land is capable of consistently producing moderate to high yields of a narrow range of arable crops (e.g. cereals) or moderate yields of a wide range of crops (e.g. cereals, grass, oilseed rape, potatoes, sugar beet and less demanding horticultural crops). Grade 3b land is capable of producing moderate yields of a narrow range of crops (mainly cereals and grass) or lower yields of a wider range of crops, or high yields of grass (for grazing/harvesting). Grade 4 Land included within this grade suffers severe limitations that significantly restrict the range and/or yield of crops to be grown. This land is mainly suited to grass with occasional arable crops – the yields of which are variable. In moist climates grass yields are likely to be moderate to high but there are often difficulties in utilisation. Very droughty arable land is also included in this land grade. This explains also why the Land is able to be used for livestock and is used for paddocks, in part, as well as hay crops being taken. Grades 1, 2 and subgrade 3a are considered within the 'best and most versatile' land category in the current planning system. NPPF paragraph 170(a) requires planning decisions to protect and enhance soils; and (b) requires recognition of the wider benefits of the best and most versatile agricultural land (here, 3a).
12. The Land slopes upwards to the North from the Farm buildings. Two lines of pylons traverse the Land from West to East, bearing overhead lines from the Sub-Station east of the Green Land. See, e.g., Views 4, 4a and 6 of the Design and Access Statement, Sub-Station Extension, in **Appendix C** hereto. View
13. The Land is accessible from the highway by ways that include a "right of way" between the highway to its East and its South-Eastern corner. Access Westwards to the Farm buildings comes off that right of way. See Schedules 1 and 2 to the Carpenters' Written Representations, Document Ref: 200250030/Written Representations, and Property Register, paragraph 2. From that corner, within the Land, an existing track ("the Track") runs Northwards along its Eastern boundary to the North-East corner before turning South-Westwards. The Final Site Plan 13/SWA/5547006/PO attached to planning permission, ref. 13/01025/FUL, shows this corner situation in some detail, including that the Green Land abuts the North side of that Track outside of the Land. 1964 pylon construction used that Track.

THE EXISTING LAND INTEREST SITUATION AS AT DEADLINE 5 (30TH November 2020)

14. North-West of the Land lies an electricity sub-station (“the Sub-Station Land”). See Schedule 2 to the Carpenters’ Written Representations, Document Ref: 200250030/Written Representations. The Sub-station Land benefits from two planning permissions: a) permission reference 32642/003, 19th January 2019, for “Installation of 30m high Telecommunication Mast 0.6m dish and 0.6m antenna for network connections between electricity substations” (“Development No. 70”). (See paragraph 15.5.4.6 of Chapter 15 of the ES (14th November 2019), Document Ref: 6.1.1.5 where it is mis-described as an “application” only; and **Appendix D** hereto.
15. Planning permission for the Western Extension of the Sub-Station Land was granted on the 6th August 2013 in anticipation of an interconnector. Condition 2 requires adherence to landscaping and tree planting in accordance with Final Site Plan 13/SWA/5547006/P0. See planning permission, ref. 13/01025/FUL, in **Appendix E** hereto (and expired in August 2016 unless lawfully implemented. Table 1 of Planning History, Document Ref. 5.4.2 asserts that that permission has been implemented but it remains unclear what material operation has occurred). On the basis that it has been implemented, the Design and Access Statement for the Extension shows, in Figure 1, the location outlined in red of the Extension and a Final Site Plan 13/SWA/5547006/P0 shows the Extension Development (situated on the Green Land of the Land) comprised of 3 Phases. The Plan shows extensive Western perimeter landscaping around the Green Land Extension comprised of “Tall growing native tree planting”, removal of the hedge (the Green Land’s Northern boundary), and grassland planting within it. The Plan shows the Substation Southern boundary abutting the Land (and the presence of the Track within the Land as it moves North and then Westwards). See **Appendix F** hereto, Figures 1 and 2 of the Design and Access Statement.
16. Immediately south of the Sub-station Land, and abutting the Eastern boundary of the Land, lies an area of land (owned by Winchester College) in HM Land Registry Title HP 660 023 whose Charges Register, paragraphs 9 and 10, records an option in favour of the Applicant, Aquind Limited, dated 21st December 2018 (“the Option Land”). See **Appendix G a & b** hereto. The extent of the Option Land is shown in **Appendix G c** and includes a track within and along its Northern boundary that links the highway to the Track. (Prior to the Option, planning permission for two energy storage systems and associated infrastructure with a total capacity of 49.95MW relating to the Option Land had been granted but was since quashed. A Location Plan shows the extent of the area of that permission and the Option Land within the control of the landowner). A Landscape Plan shows the extent of landscape envisaged by that planning permission. See **Appendix H** hereto. The area of the Option Land is referred to as “Development No. 67” in paragraph 15.5.4.5 of Chapter 15 of the ES (14th November 2019), Document Ref: 6.1.1.5. The Option Land does not currently benefit from planning permission for development.

17. To the North of the Land lies land referred to in paragraph 15.5.4.4 of Chapter 15 of the ES (14th November 2019), Document Ref: 6.1.1.5, as “Pivot Power and Development No 68”. This application, reference PP-0782 7268, was envisaged to be developed for “a 49.9MW battery storage facility, fencing, landscaping and site access on land south of Old Mill Lane and north of the operational Lovedean 400kV substation” but was withdrawn (“the Pivot Power Proposal Land”). The Pivot Power Proposal Land is owned by Dawn and Peter Carpenter. See **Appendix I a - d** hereto. The Pivot Power Proposal Land does not currently benefit from planning permission for development.
18. There are, therefore, existing projects or approved “projects” (as defined by the EIA Directive) on land abutting the Land otherwise than the Western Extension (if implemented) and a Telecommunications Mast on the Sub-Station Land.

THE PROPOSALS

19. The Proposed development (“the Proposals”) for which development consent is sought are shown diagrammatically in Land Plans, Works Plans, Parameter Plans, and the Onshore component parameters, Document Refs: 2.2; 2.4; 2.6 (Sheets 2 and 3); paragraph 1.1.1.1 and Table 1 of Additional Supporting Information for Onshore Works, Appendix 3.5 of ES, Volume 3, Document Ref: 6.3.3.5 (14th November 2019) and described in terms of the draft DCO statutory instrument (Rev. 2).
20. The Proposals relies on the *Rochdale Envelope* approach. See **Appendix A** and **B** hereto. The Application comprises no certain details but instead relies on a series of “parameters” expressed in diagrams and terms. No content within the parameters or amplification of the terms is certain at this stage, and such theoretical situations as are shown or described cannot be certain or binding, and merely illustrate or indicate situations. The parameters assume particular importance as compulsory land acquisition powers are sought.
21. As described in dimensions of volume, height and area in Table 1 of Additional Supporting Information for Onshore Works, Appendix 3.5 of ES, Volume 3, Document Ref: 6.3.3.5 (14th November 2019), shown in the Parameter Plans, and described, the Parameters would encompass (but no more) within the Land:
- a) (Anywhere) Two below ground Volumes (not higher than 500mm below ground level, up to 3m deep, and 5m apart) each containing electricity bearing Onshore Cables leading to;
 - b) A certain Volume containing Convertor Station Proposal Option B(i) with a number of 30m masts and an attenuation pond; or
 - c) A certain Volume containing Convertor Station Proposal Option B(ii) with a number of 30m masts and an attenuation pond; and

- d) A certain Volume for two Telecommunications Buildings for commercial telecommunications purposes and with a related parking area; and
 - e) (as shown on Parameter Plan, Document Ref: 2.6, (1:1250th scale), a certain area (or zone) for an Access Road between the highway and the certain Option B(i) or (ii) Volume with an attenuation pond; and
 - f) The balance of the Land surface for subsequent landscaping of the whole of the remaining Land.
22. The geographical area of the Proposals' Order Limits has been drawn to align with the boundaries of:
- a) the Sub-Station Land to its East;
 - b) the Option Land to its East/North; and
 - c) the Pivot Power Proposal Land to its North.
23. If consented, the Proposals would appear to enable:
- a) *unified* landownership by the Applicant of both of the Proposals land extent with its Option Land enabling that enlarged area to abut the Sub-Station Land near a permitted 30m high Telecommunications Mast;
 - b) adjacency of the Proposals land extent to the Sub-Station Land immediately East, and to the Pivot Power Land to its North.
24. Thus, it appears that: the Proposals land *extent* relies not on existing or approved development but on abutment with *theoretical future* development of adjacent land in the vicinity of the Land or convenience. See Parameter Plans, Document Ref: 2.6, Sheets 1 and 2, and Land Plans, Document Ref: 2.2, Sheet 1 and compare with **Appendices Gc** and **Ib** hereto; and the ES landscape and visual effects evaluate too such a future hypothetical situation. See paragraphs 15.5.4.1 – 2 and 15.5.4.6 and 7, and 15.8 of Chapter 15, Landscape, ES Volume 1 (14th November 2019), Document Ref: 6.1.1.15.
25. By contrast, the Western Extension of the Sub-station, the 30m Telecommunications Mast, remain apparently “approved projects”. The Western Extension was permitted in anticipation of an interconnector and subject to Condition 2 requiring adherence to landscaping and tree planting in accordance with Final Site Plan 13/SWA/5547006/P0. See planning permission, ref. 13/01025/FUL. Figure 15.48 and Option B(ii), and Plate 3.4 of Chapter 3 of ES, Volume 1, Document Ref: 6.1.3 indicates that only Phase 1 of the Extension would be executed. It remains unclear how the landscape condition may be satisfied in the absence of 2 phases and the presence of Parameter Volume Option B(ii).

THE RESULT OF THE PROPOSALS IN RELATION TO THE LAND

26. If consent were to be granted, and compulsory purchase powers bestowed, comparison of the Parameters, Schedule 1 to the Carpenters' Written Representations, Document Ref: 200250030/Written Representations, and Figure 17.2 of Appendix 17.2 of ES Volume 3 (14th November 2019), Document Ref: 6.3.17.2, shows that the Proposals would result in:

- a) significantly reduced area of the Land and to fragment it by the interposition of "New Access Rights and "Permanent Acquisition of Land" between the Southern Part of the Land remaining and the Ancient Woodland and some land South of it that it outside the Order Limits;
- b) within the linear area shown hatched in Figure 24.2, two cable trenches below ground but not below the plough zone depth of 600mm above which agricultural ploughs may be damaged by the cables;
- c) within one of two Parameter Volumes:
 - i) Option B(i), a Convertor Station aligned on the Western side of the red line of the Final Site Plan of that Extension development but increase land take from the Land for the Station by being 40m farther West and in part over Grade 3b part of the Land; or
 - ii) Option B(ii), a Convertor Station in close proximity or overlap with perimeter landscaping and Phase 3 of the Extension development on the Green Land, preclusion of the required "tall tree planting" on the Western edge within the Green Land but would reduce by 40m width land take of Grade 3b land from the Land for that Station by 40m father East;
- d) permanent displacement of part of the Grade 3a part of the Land by the situation of an Access road partly on such land for 3-4 annual inspection visits and happenstance rare equipment replacement;
- e) permanent displacement of part of the Grade 3a part of the Land for two Telecommunications Buildings (and related parking) for commercial telecommunications;
- f) permanent displacement of Grade 3a and 3b agricultural land for differently appearing ground level landscaping;
- g) compelled transfer of private land for a different landscape and visual appearance at ground level between the Farm buildings and one of two envisaged Convertor Stations. i.e. acquisition of land to ensure a different view Northwards from those buildings in place of the existing view over open rolling fields traversed by two pylon lines.

THE MEANS OF DELIVERY OF THE PROPOSALS

27. A development consent order (“DCO”) – a statutory instrument - is proposed to be granted under section 115 of the Planning Act 2008 (“PA 2008”) as the means by which to effect the Proposals.
28. The Proposals include a request for inclusion of some fibre optic cables for the purpose of “commercial telecommunications” and two Telecommunications Buildings (with parking) required in relation to that particular purpose. The Carpenters’ have made representations, in line with the stated concerns of the ExA, in Deadline 4 that the development comprised of discrete fibre optic cables “for” commercial telecommunications, and use of spare capacity (in other fibre optic cables) also for such a discrete and non-statutory commercial purpose, would be outside of the scope of section 115(1)(b) of the PA 2008, and also that such unlawfulness is reinforced by a failure of that development to satisfy the Associated Development Principles by fact and degree. The same logic applies to the related Telecommunications Buildings that are expressly required in respect of that (unlawful) purpose. The Carpenters maintain their position that such telecoms development cannot be, and does not qualify as, “associated development”.
29. The Proposals also include proposed provisions for compulsory purchase powers under section 122 of the PA 2008.
30. Because compulsory acquisition of land is a draconian measure, the law requires that the Applicant, exclusively, justify, and lawfully so, the taking of any part of the Land whereas the Carpenters’ do not need to do or prove anything. In practice, that results to require the ExA and Secretary of State to interpret sections 115 and 122 of the PA 2008, and the draft DCO SI terms and those of Parameter frameworks, presumptively “against” the Applicant and to “carefully” scrutinize whether the land take is lawfully justified as “required” for “the development”.

NARROWING OF MATTERS FOR RECOMMENDATIONS AND DETERMINATION BY THE SECRETARY OF STATE

31. Five fundamental difficulties appear for Aquind in relation to *its* compelled development of *the Carpenters’ Land*:
 - a) It properly recognises the use “for commercial telecommunications” as both a discrete purpose from use for electricity transmission, and that the result of happenstance industry standard cables sizes means that it is “desirable” to utilise those happenstance available additional fibre optic cables. The logical outcome of its evidence is that such parts for such purposes, in law, cannot be “associated development” but cannot also satisfy the “requirement” test of section 122(2) of the PA 2008. Since That results to require exclude from the dDCO terms any development relating to “commercial telecommunications” purposes and also precludes the scope of compulsory acquisition powers being justified on any basis. This results to require the scope of the Proposals to be reduced to

exclude the Telecommunications Buildings (and parking) and commercial fibre optic cables from the Land;

- b) It is difficult to see how the *extent* of land envisaged to be taken against the will of third parties can lawfully rely on *hypothetical future* development of nearby land or of theoretical exercise of a choice to execute an Option as opposed to a certain and present situation lawfully able to sustain a “requirement”. This results to reduce the extent of land envisaged taken in so far as it relies on hypothetical future situations or of available choices because each is inherently uncertain. For example, by a reduction of land take North of one of the two Converter Station locations and width of the Access Zone, from about 25-30m shown on Sheet 1 of the Land Plans, Document Ref: 2.2, to no more than about the described width of 7.3m, in Parcels 1-51 and 1-48 on that Sheet where “New Access Rights” are sought to be taken against the will of others;
- c) The Proposal for a *choice* of Parameter Volumes (Options B(i) and (ii)) in two locations 40m different from each other evidences in itself that the Proposals remain premature because the siting of this key necessary element remains (at Deadline 5) uncertain: a Converter Station will be *either* in location B(i) or in location B(ii). The subsisting uncertainty appears based on unresolved subjective negotiations between the Applicant and National Grid in circumstances where third party compulsory acquisition powers *may or may not be* necessary. See Land Plans, Sheet 1, Document Ref: 2.2: Key “Permanent acquisition of land or New Connection Rights”. Put another way, the evidence in Sheet 1 of the Land Plans, Document Ref: 2.2, points to only Option B(i) being justified unambiguously;
- d) The *permanent continuous* presence of an Access road, 7.3m wide and 1.2km long designed for Heavy Goods Vehicles and Abnormal Loads, across the Land after the event of conclusion of the erection of one of two Converter Stations, remains unjustified by evidence of *periodic* occasional 3-4 days of actual use per year by light inspection vehicles or, hypothetically, by vehicles concerning theoretical happenstance rare equipment failure in relation to a Converter Station designed for a 40 year minimum period and a desire to upgrade electronic equipment;
- e) The taking of the Carpenters’ Land extent, to execute and maintain no more than a choice of difference on its greater part in the type of landscape vegetation (trees, hedges and different grass) and a visual change from the current open rolling arable fields traversed by pylons and reinstatement of open rolling arable fields (still traversed by pylons), appears problematic.

32. In relation to the Land, the Carpenters' accept:

- a) The footprint and volume alone of one (only) Convertor Station be erected on, and remain partly on, the Northern part of their Land within the limits of a Parameter Volume B(ii) (as it results in least take of their Land), as shown in Building Parameter Plans, Plan EN020022-2.6-PARA-Sheet3/Rev 01, Document Ref: 2.6;
- b) The situation (below ground in trenches at least 1m below the ground surface) of electricity bearing cables (and supporting fibre optic cables for monitoring and intra-Convertor Station communications purposes) within their Land to the West of the Farm buildings and continuing Northwards up its Western side to connect to (one of) the Station Parameter Volumes and as shown in Figure 24.2, Illustrative cable route, Drawing Ref: EN020022-ES-24.1-Sheet 1/Rev 01;
- c) (within the Parameter Zone 1 Access Road), provision of an access way for *temporary construction* purposes alone;
- d) Temporary possession of Plot 1-57 and 1-51;
- e) periodic annual inspection of the built Convertor Station by light vehicle 3-4 times a year, for the purpose of inspecting and maintain that Station, along the existing Track along the Eastern boundary of the Land ("the Operational Access Way" in the Proposed Schedule 13 Protective Provisions for Little Denmead Farm); and
- f) emergency access over Plot 1-32 for the purposes of emergency recovery planning during the Operational Period of the built Convertor Station.

33. The Carpenters do not accept:

- a) Provision on the Land or use of fibre optic cables in, on or under it, for commercial telecommunication purposes, nor of related Telecommunications Buildings and parking (envisaged immediately North of the Farm buildings), are lawful or justified as part of the development for which development consent can be lawfully granted nor that these elements can or do qualify as "associated development";
- b) On the basis of the expressed evidence of the Applicant's "desire", however privately and commercially desirable (see page 2-9, Applicant's Response to Para No. 17 of Applicant's Response to Deadline 2 Submissions, 3rd November 2020), Document Ref: 7.9.6), that the provision or use of any fibre optic cables for commercial telecommunications, and related Telecommunications Buildings and parking (north of the Farm buildings), can lawfully equate to a *public* interest nor can

such “desire” satisfy the need for Land to be “required” for “the development” under section 122(2)(a), PA 2008. It cannot be;

- c) maintenance, in perpetuity, of a (temporary construction) access way within the Parameter Zone 1 Access Road, together with a related attenuation pond, nor that these are, or can be, lawful nor can these be justified to be permanently situated on their Land;
- d) the provision of permanent landscaping proposals for localised effects otherwise than Northwards of the proposed bunds immediately adjacent to the built Converter Station of the Parameters Volumes (for either Volume B(i) or Volume B(ii)), nor that it is, or can be, lawful nor is it justified;
- e) Mere design desires for a permanently resulting different appearance of local landscaping to that of the existing open agricultural appearance of the Land are justified nor can such a desire for a different appearance of the existing Land lawfully satisfy section 122(2) of the PA 2008.

34. Lesser intrusive means to enable construction, and periodic and emergency access on notice, can be secured by Protective Provisions (and a planning obligation) whilst enabling the ongoing perpetual agricultural land use of the Land in the vicinity of the Interconnector and land surface restoration.

AQUIND’S EXAMPLE OF WHAT THE PROPOSALS *MIGHT* BE LIKE WITHIN THE PARAMETERS

35. An idea of what *might* be situated within the Order Limits parameter and the Building Parameter Plans parameters so far as they overlap with the Land appears as follows:

- a) (within the Order Limits) a pair of electricity bearing cables and supporting fibre optic cables that might run under the Western part of the Land in a trench (shown in Illustrative Cable Route in Figure 24.2, Sheet 1, (“Trenching - illustrative alignment”) as it traverses the Land within the Order Limits; and in a Typical Arrangement trench (see Plates 3.5 and 3.24, and paragraphs 3.6.2.10-11, 3.6.3.21, and 3.6.4.1 of Chapter 3, ES Volume 1, (14th November 2019), Document ref: 6.1.3); leading to
- b) (within either Volume B(i) or Volume B(ii)) an “unmanned” Converter Station shown in Figure 15.48, Indicative Landscape Mitigation Plan Option B(i) a Converter Station; in Plate 3.6 of, and described in paragraphs 3.6.3.2, .5-12 and 3.6.3.17 of Chapter 3, ES Volume 1, (14th November 2019), Document ref: 6.1.3;
- c) together with a construction Access Road envisaged to be 1.2km in length and “no wider than 7.3m”, being “suitable for transportation of Heavy Goods Vehicles and Abnormal Indivisible Loads” (see paragraph 3.6.3.27 of Chapter 3, ES Volume 1, (14th November 2019), Document ref: 6.1.3, together with an attenuation pond for rain water run off (see paragraph 3.6.3.19 of that Document). The surface of the construction Access “may include a distinction between normal access

requirements and temporary access for larger vehicles” (see paragraph 5.3.6.7 of the Design and Access Statement (Rev. 2) (6th October 2020), Document Ref: 5.5);

- d) a desired use of over-specified fibre optic cable for commercial telecommunications (see paragraph 3.6.3.22 of Chapter 3, ES Volume 1, (14th November 2019), Document ref: 6.1.3; paragraphs 5.1-5.2 of Statement in Relation to FOC (6th October 2020), Document Ref: 7.7.1; paragraph 5.4.1.1 of the Design and Access Statement (Rev. 2) (6th October 2020), Document Ref: 5.5);
- e) two “unmanned” Telecommunications Buildings relating to the desired use of additional fibre optic cables laid with the electricity bearing cables for commercial telecommunications; and, outside of the Parameter Volumes but overlapping with the Access Zone (see Plate 3.7 and paragraph 3.6.3.23-24 of Chapter 3, ES Volume 1, (14th November 2019), Document ref: 6.1.3; paragraphs 5.1-5.2 and 5.4 of Statement in Relation to FOC (6th October 2020), Document Ref: 7.7.1); and 5.3.6.7 of the Design and Access Statement (Rev. 2) (6th October 2020), Document Ref: 5.5);
- f) different landscape finishes, of a different visual appearance, to those presently on the Land precluding agricultural use by the Land owners of the land that has been taken for landscaping. See Figure 15.48, Indicative Landscape Mitigation Plan Option B(i) and B(ii).

EXTENT OF LAND AND NATURE OF RIGHTS ENVISAGED TO BE TAKEN FROM AND IMPOSED ON THE LAND

- 36. The Land Plans, Document Ref: 2.2, Sheet 1, shows the extent and nature of the Order Limits, the permanent and temporary land take envisaged, and the extent of rights, by reference to their geographical extent. Parcels 1-32, 1-37, 1-38, 1-43, 1-44, 1-51, 1-57, 1-60, 1-69, 1-70, 1-71 and 1-72 would be within the Land.
- 37. Comparison of Sheet 1 with Schedule 2 to the Carpenters’ Written Representations, Document Ref: 200250030/Written Representations shows that, for example, whereas only *temporary* use of land and only access *right* are envisaged in relation to the land abutting the Eastern side of the Land, no less than “Permanent Acquisition of Land” of Parcel 1-32 is envisaged. New connection rights are shown on Parcel 1-37, and “New Landscaping Rights” are shown on Parcels 1-43, 1-44, 1-70, 1-71 and 1-72. Parcel 1-32 extends to the whole of the extent of the Land, save for the Ancient Woodland in its East and a small extent to the South of the Land around the farm buildings. See Schedule 4 to the Carpenters’ Written Representations, Document Ref: 200250030/Written Representations.

SCOPE OF POWERS AND RIGHTS SOUGHT TO BE TAKEN

- 38. The Proposal envisages different categorises of powers and rights in relation to the Land:
 - a) Permanent Acquisition of the Land by contrast with the Temporary Use of part of the Land;
 - b) Temporary Use of the Land;

- c) New Access Rights in relation to the Land by contrast with Permanent Acquisition of Land covered by the Access Zone over which New Access Rights alone are sought on, and to the East, of the Land; and
- d) New Landscape Rights in relation to the Land by contrast with Permanent Acquisition of the other part of the Land that is envisaged to contain landscape.

39. It can be seen that there are no New Landscape Rights, no New Access Rights, and no Temporary Use rights of the area of Parcel 1-32. However, comparison of: Parcel 1-32 of Land Plans, Document Ref: 2.2; Schedules 1, 2 and 4 to the Carpenters' Written Representations, Document Ref: 200250030/Written Representations, and Plate 15.3 of Chapter 15 of the ES, Document Ref: 6.1.15: Land Plans, Sheet 1, Document Ref: 2.2, and Figure 15.48 Figure 15.48, Indicative Landscape Mitigation Plan Option B(i) and B(ii); discloses that the exclusive basis for the *extent* of *permanent* land take of the Land within Parcel 1-32 (for example) is the potential footprints of: one of two Converter Station Volumes and its bunding and attenuation pond; a temporary construction Access Way; two Telecommunications Buildings with parking; and a difference in the type of planting and visual appearance of the landscaping. The difference in landscaping does not derive from effects on the National Park but is exclusively local or theoretical. See paragraph 15.5.4.3 of ES Chapter 15, Document Ref: 6.1.15. See below.

DURATION OF POWERS AND RIGHTS ENVISAGED

40. Comparison of Sheet 1 with Schedule 2 to the Carpenters' Written Representations, Document Ref: 200250030/Written Representations shows that, whereas only *temporary* use of land and only access *right* are envisaged in relation to the land abutting the Eastern side of the Land, no less than "Permanent Acquisition of Land" of Parcel 1-32 is envisaged.

41. Within the Land where *permanent* land take is envisaged:

- a) The Converter Station is envisaged to be situated *permanently* upon part of the Northern area of the Land inside of one or other of two Parameter Volumes. The "Interconnector will be designed, manufactured and installed for a minimum service life of 40 years. Due to the dynamic nature of power electronics, the control system may be need to be replaced after 15-20 years. Some equipment may need to be replaced at 15-20 years. Some equipment may need to be refurbished/replaced one or more times during the service life of the Interconnector" (see paragraph 1.1.3.9 of Additional Supporting Information for Onshore Works, Appendix 3.5 of ES, Volume 3, Document Ref: 6.3.3.5 (14th November 2019);
- b) Two HVDC and AC electricity bearing cables (with supporting fibre optic cables) are envisaged to be situated *permanently* below ground level within trenches from the South-West corner of the Land, Northwards up its Western part, to the location of the Converter. "There are no operational

requirements associated with the Onshore Cable Route” whereas cable failures are possible, albeit rare, ... due to defect in the cable or due to 3rd party interference. An onshore cable fault can leave the interconnector out of service for approximately 2 weeks during repair” (see paragraphs 1.1.3.7 and 1.1.3.13 of Additional Supporting Information for Onshore Works, Appendix 3.5 of ES, Volume 3, Document Ref: 6.3.3.5 (14th November 2019);

- c) The Access Road is envisaged to be situated *permanently* upon the central and Eastern parts of the Land inside of the Access Zone. “[it] will be required during the construction stage and maintained during the Operational Stage This will allow the movement of vehicles to and around the station during the Construction Stage and the Operational Stage” (see paragraph 1.1.3.1 of Additional Supporting Information for Onshore Works, Appendix 3.5 of ES, Volume 3, Document Ref: 6.3.3.5 (14th November 2019);
- d) Two Telecommunications Buildings and a small parking area are envisaged to be situated *permanently* upon the Southern part of the Land within a Parameter Volume and Access Zone;
- e) Permanent Landscaping Rights and particular landscaping within confined areas of the Land would be situated permanently within the Land.

EXTENT OF POWERS AND RIGHTS APPARENTLY JUSTIFIED AND UNJUSTIFIED AT DEADLINE 5

42. The Carpenters consider that no more is justified than:

- f) The presence of one unmanned Converter Station within Parameter Volume Option B(ii), being also the least intrusive volumetric intervention within their Land;
- g) The presence of two electricity bearing cable circuits in trenches aligned to Figure 24.2, Drawing Ref: EN020022-ES-24.2-Sheet1/Rev 01 and at a below ground level of more than 1m below the surface and with related individual fibre optic cables for supporting purposes;
- h) The availability of an inspection and maintenance access to the unmanned Converter Station for light vehicles about 3-4 times annually;
- i) Emergency temporary access to the unmanned Converter Station in line with such emergency recovery plan as Aquind may have;
- j) The presence of the unmanned Converter Station for more than 125 years in line with the usual period for infrastructure.

43. For the reasons given in Schedule 4 to the Deadline 4 Representations of the Carpenters and in **Appendix J** hereto relating to Landscape, the extent of permanent land take is unjustified.

44. Instead, the Carpenters propose Protective Provisions in a draft Schedule 13 hereto.

APPENDIX A

LEGAL FRAMEWORK

Planning Act 2008

45. By section 31 of the PA 2008, consent is required for “development to the extent that it is *or forms part of*” a nationally significant infrastructure project. By section 14(1)(a), such a project must be within specified descriptions that include “the construction or extension of a generating station”. The Secretary of State (“SoS”) is empowered to add other descriptions but they must be within the scope of the specified fields of which section 14(6) includes “energy”. Parliament has not prescribed “commercial telecommunications” as an available “field” within section 14(6) of the PA 2008.
46. By section 35(1), the SoS is empowered to direct that “development” be treated as development for which development consent is required. Consistent with the scope of sections 31 and 14(6), the scope of that power is expressly restricted, including in subsection (2)(a) by which that the development is *or forms part of a project (or proposed project) in prescribed fields* that include “energy”. Parliament has not prescribed “commercial telecommunications” as an available “field” within section 35(2)(a)(i)).
47. However, Parliament has provided for a direction to potentially encompass “a business or commercial project (or proposed project) of a prescribed description”. In doing so, it continues to recognise that some such categories may be subject to the development consent regime but only if within the scope of a prescribed description. As at Deadline 4, the Applicant has not relied on a prescribed description notwithstanding that AQ dDCO: Article 2(1) defines “onshore HVDC cables” to include “(i) fibre optic data transmission cables ... for commercial telecommunications” and “telecommunications building” to include “for the commercial use of the fibre optic data transmission cables housed within the building”; Similarly, Article 7(6)(c) provides for the transfer benefit of the Order “so far as it relates to the commercial telecommunications use of the fibre optic data transmission cables”.
48. By section 115(1), the SoS is empowered to grant development consent for “development” which is: a) development for which development consent is required, or b) “associated development”. “Associated development” is a defined term in subsection (2) and must be “associated with the development in (1)(a) (or any part of it)”.
49. By section 120 of the PA 2008:
- 1) *An order granting development consent may impose requirements in connection with the development for which consent is granted.*
 - 2) *The requirements may in particular include –*

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

50. Part 1 of Schedule 5 includes, under paragraph 1: *The acquisition of land, compulsorily or by agreement.*

Paragraph 2 provides: *The creation, suspension or extinguishment of, or interference with, interests in or rights over land (including rights of navigation over water), compulsorily or by agreement.*

51. By section 122: (Emphasis added)

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

CASE LAW

52. In *Smith v Secretary of State for the Environment, Transport and the Regions* [2003] Env. LR 32, the Court of Appeal considered an outline planning permission, *Tew and Milne*, and the *Rochdale* Envelope approach. In order to comply with the Directive and Reg.4(2), a decision maker considering a development likely to involve a significant adverse effect on the environment had to ensure that prior to granting planning permission he had sufficient details of the proposed development, its potential impact on the environment and any mitigation measures and that these had been made available to the public. This required consideration of any likely "significant" effect on the environment rather than of every "possible" effect. In fulfilling this obligation it was permissible for the decision maker to contemplate the likely decisions that others would take in relation to details where those others had the interests of the environment as one of their aims. *However*, there could be no reassessment of the environmental impact by those others. It was the duty of the decision maker to set conditions to mitigate any significant adverse environmental effects of the proposed development. Whilst the conditions in the instant case might have been expressed with greater clarity, they did not allow the LPA to reassess the environmental impact or vary the conditions imposed by the plans. The inspector, having set the parameters of the planning permission, *including contours of the land and the provision of trees*, had been entitled to conclude that *the way* in which the LPA was likely to deal with the *details* would be likely to mitigate any adverse environmental impact.

53. It held: (Emphasis added)

32. *In addition, at para.128 of his judgment in Milne Sullivan J. said this:*

“Any major development project will be subject to a number of detailed controls, not all of them included within the planning permission. Emissions to air, discharges into water, disposal of the waste produced by the project, will all be subject to controls under legislation dealing with environmental protection. In assessing the likely significant environmental effects of a project the authors of the environmental statement and the local planning authority are entitled to rely on the operation of those controls with a reasonable degree of competence on the part of the responsible authority: see, for example, the assumptions made in respect of construction impacts, above. The same approach should be adopted to the local planning authority's power to approve reserved matters. Mistakes may occur in any system of detailed controls, but one is identifying and mitigating the ‘likely significant effects’, not every conceivable effect, however minor or unlikely, of a major project.”

33. *In my view it is a further important principle that when consideration is being given to the impact on the environment in the context of a planning decision, it is permissible for the decision maker to contemplate the likely decisions that others will take in relation to details where those others have the interests of the environment as one of their objectives. The decision maker is not however entitled to leave the assessment of likely impact to a future occasion simply because he contemplates that the future decision maker will act competently. Constraints must be placed on the planning permission within which future details can be worked out, and the decision maker must form a view about the likely details and their impact on the environment.*

54. In *R (Sainsburys Supermarkets Ltd) v Wolverhampton City Council* [2011] 1 AC 437, the Supreme Court held: (Emphasis added)

9. *Compulsory acquisition by public authorities for public purposes has always been in this country entirely a creature of statute: Rugby Joint Water Board v Shaw-Fox* [1973] AC 202, 214. The courts have been astute to impose a strict construction on statutes expropriating private property, and to ensure that rights of compulsory acquisition granted for a specified purpose may not be used for a different or collateral purpose: see Taggart, "Expropriation, Public Purpose and the Constitution", in *The Golden Metwand and the Crooked Cord: Essays on Public Law in Honour of Sir William Wade*, (1998) ed Forsyth & Hare, p 91.

10. In *Prest v Secretary of State for Wales* (1982) 81 LGR 193, 198 Lord Denning MR said:

"I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is expressly authorised by Parliament and the public interest decisively so demands ..."

and *Watkins LJ* said, at pp 211–212:

"The taking of a person's land against his will is a serious invasion of his proprietary rights. The use of statutory authority for the destruction of those rights requires to be most carefully scrutinised. The courts must be vigilant to see to it that that authority is not abused. It must not be used unless it is clear that the Secretary of State has allowed those rights to be violated by a decision based upon the right legal principles, adequate evidence and proper consideration of the factor which sways his mind into confirmation of the order sought.

11. Recently, in the High Court of Australia, French CJ said in *R & R Fazzolari Pty Ltd v Parramatta City Council* [2009] HCA 12, paras 40, 42, 43:

"40. Private property rights, although subject to compulsory acquisition by statute, have long been hedged about by the common law with protections. These protections are not absolute but take the form of interpretative approaches where statutes are said to affect such rights."

"42. The attribution by Blackstone, of caution to the legislature in exercising its power over private property, is reflected in what has been called a presumption, in the interpretation of statutes, against an intention to interfere with vested property rights ...

"43. The terminology of 'presumption' is linked to that of 'legislative intention'. As a practical matter it means that, where a statute is capable of more than one construction, that construction will be chosen which interferes least with private property rights."

APPENDIX B

FACTS

55. Advice Note 9 includes as follows: (Emphasis added)

2.1 The Rochdale Envelope arises from two cases: R. v Rochdale MBC ex parte Milne (No. 1) and R. v Rochdale MBC ex parte Tew [1999] and R. v Rochdale MBC ex parte Milne (No. 2) [2000]. These cases dealt with outline planning applications for a proposed business park in Rochdale...

2.3 To understand the implications arising from the comprehensive consideration of the issues by the Judge² in Milne (No. 2) ('the Judgment'), it is helpful to note some of the key propositions...:

- *the need for 'flexibility' should not be abused: "This does not give developers an excuse to provide inadequate descriptions of their projects. It will be for the authority responsible for issuing the development consent to decide whether it is satisfied, given the nature of the project in question, that it has 'full knowledge' of its likely significant effects on the environment. If it considers that an unnecessary degree of flexibility, and hence uncertainty as to the likely significant environmental effects, has been incorporated into the description of the development, then it can require more detail, or refuse consent" (para 95 of the Judgment);*

The Encyclopedia of Planning Law and Practice³ provides additional insight into the purpose and practical application of the Judgment and other relevant case law. Key principles from this analysis have been considered and summarised in context of the DCO application process below and should be taken into account:

- *the DCO application documents should explain the need for and the timescales associated with the flexibility sought and this should be established within clearly defined parameters;*
- *the clearly defined parameters established for the Proposed Development must be sufficiently detailed to enable a proper assessment of the likely significant environmental effects and to allow for the identification of necessary mitigation, if necessary within a range of possibilities;*
- *the assessments in the ES should be consistent with the clearly defined parameters and ensure a robust assessment of the likely significant effects;*
- *the DCO must not permit the Proposed Development to extend beyond the 'clearly defined parameters' which have been requested and assessed. The Secretary of State may choose to impose requirements to ensure that the Proposed Development is constrained in this way;*
- *the more detailed the DCO application is, the easier it will be to ensure compliance with the Regulations.*

2.5 it is ultimately for the decision maker to determine what degree of flexibility can be permitted in the particular case having regard to the specific facts of an application. The Applicant should ensure they have assessed the range of possible effects implicit in the flexibility provided by the DCO. In some cases, this may well prove difficult.

The Access Road

56. As well as an unmanned Converter Station (see paragraph 5.3.6.5 of the Design and Access Statement (6th October 2020), Document Ref: 5.5), the Application Development includes a road that is envisaged to be situated – permanently – upon land that includes the freehold land of the Carpenters. See Schedule 2 to the Carpenters’ “Written Representations” submitted for Deadline 1. The result of the envisaged development is shown in Schedule 4 of those Written Representations. The red coloured land shows the presence of the envisaged Access Road dividing the remaining freehold land into two parcels: one to the South (containing an existing access to the Carpenters’ farm running along the Southern boundary of their land); one to the North (containing Ancient Woodland and a track on its Easternmost boundary running north to south enabling access to the Carpenter’s Field immediately north of the Ancient Woodland).

Access Road – Temporary Construction Period

57. The Applicant’s (revised) Design and Access Statement, Document Ref: 5.5 (6th October 2020), describes the Access road as follows:

- a) An Access Road 1.2m long x 7.2m wide is envisaged to lie between Broadway Lane and the south face of the Parameter Volumes for Options B(i) and (ii). See paragraph 5.3.6.2 of the Design and Access Statement;
- b) The choice of a junction with Broadway Lane (instead of with Mill Lane to the West or North of the Parameter Volumes) has resulted in the Access Road falling to be orientated along the South side of the Ancient Woodland on the Carpenters’ freehold land and then turning Northwards along the Western edge of that Woodland towards the South side of the Parameter Volumes. See paragraph 5.3.6.2 of the Design and Access Statement, Document Ref: 5.5;
- c) No detailed design of the Access Road has been formulated at Deadline 5 and future approvals for it remain required. See paragraph 5.3.6.2 of the Design and Access Statement. But it is envisaged that the Access Road “surfacing materials” “which may include a distinction between normal access requirements and temporary access for larger vehicles”. See paragraph 5.3.6.6 of the Design and Access Statement, Document Ref: 5.5;
- d) Instead, an Access Road may be situated anywhere “within the zone indicated on the Parameter Plans”. See paragraph 5.3.6.2 of the Design and Access Statement, Document Ref: 5.5. The Parameter Plans are Document Ref: EN-020022-2.6-PARA Sheet2, for Option B(i), and Sheet3 for Option B(ii). Those Parameter Plans show a “Parameter Zone 1 Access Road”. Comparison of that Parameter Plan with Schedules 2 and 4 of the Carpenters’ Written Representations shows the

envisaged Zone within their freehold land. The “Zone” appears sufficiently widely drawn to encompass a range of other envisaged development. See paragraphs 5.3.6.4 and 5.3.6.7 of the Design and Access Statement, Document Ref: 5.5;

- e) The Access Road will be used for the construction of the Convertor Station. See paragraphs 5.3.6.3 – 4 of the Design and Access Statement, Document Ref: 5.5;
- f) “*Full-reinstatement* of landscaping will be implemented on completion of the works [of Construction of the Convertor Station]”. See paragraph 5.3.6.4 of the Design and Access Statement, Document Ref: 5.5. The “Final” landscape proposals indicated in Figure 15.48 Indicative Landscaping Mitigation Plan, Document Ref: EN02002-ES-15.48 for Option B(i) and for B(ii) show re-instatement *from* “existing semi-improved grassland” to “proposed calcareous grassland” and this is understood to be a distinction without a difference because the proposed grassland is merely a new version of the “existing grassland” not yet “improved”. Figure 15.48 shows extensive areas of such grassland between the edge of the Access Way indicated and the boundaries of the freehold land of the Carpenters’ shown in Schedule 2 to their Written Representations;
- g) Since it is envisaged that the Access Road “surfacing materials” “may include a distinction between normal access requirements and temporary access for larger vehicles” (see paragraph 5.3.6.6 of the Design and Access Statement, Document Ref: 5.5), the Applicant’s evidence is that “normal” (i.e. operational) access surfacing may be different to construction-related surfaces and that the construction-related access is no more than “temporary”. It can be reasonably inferred that the “full-reinstatement” of the landscape would result in the removal of temporary construction-related Access Road material and its –reinstatement of the Access Road Parameter Zone.

Access Road - Operation of the Convertor Station

- 58. After the “temporary” use of the Access Road for construction vehicles has ceased, and the Convertor Station being “unmanned”, the Access Road is envisaged to be used alone for: “Traffic during operation will be minimal and consist of light vehicles”, being “maintenance ... required on 3-4 days per year”, “with parking provided within the [Convertor Station] compound”. See paragraphs 5.3.6.3 and 5.3.6.5 of the Design and Access Statement, Document Ref: 5.5.
- 59. The design life of the Convertor Station appears to be at least 40 years. There would be a theoretical “rare occasions” or “occasional requirements for access by larger vehicles” “should the need arise to replace equipment”. See paragraph 5.3.6.3 and 5.3.6.5 of the Design and Access Statement, Document Ref: 5.5.

Extent of Land Take for Access Road

60. Land Plans, Sheet 1, Document Ref: 2.2 show that “*Permanent Acquisition of Land*” is sought for the whole of the Access Zone and of the areas around it indicated to be subject to “full-reinstatement” by paragraph 5.3.6.4 of the Design and Access Statement, Document Ref: 5.5.
61. But, the evidence of Applicant’s evidence of mere *temporary* use of the Access Zone for construction-related traffic, “full-reinstatement”, and subsequent access 3-4 times annually by light traffic alone before expiry of the design life of 40 years.
62. It is difficult to see how, even assuming provision of a light road way during operation for 3-4 visits a year for light vehicles, can lawfully justify *permanent* compulsory acquisition of *all* of the Parameter Access Zone within the Carpenters’ freehold land.
63. Further, the Applicant’s evidence indicates that the breadth of the Access Road could be comprised of surface materials able to be reduced in width by removal of heavier bearing ground following conclusion of construction. See paragraph 5.3.6.6 of the Design and Access Statement, Document Ref: 5.5.

The Electricity Bearing Cables and Support Cables

64. Figure 24.2, Illustrative cable route, Drawing Ref: EN-020022-ES-24.2-Sheet1/Rev 01, shows the alignment of the trench for the electricity bearing cables across the Land of the Carpenters.

The Fibre Optic Cables for commercial telecommunications

65. The fibre optic cables for commercial telecommunications purposes. See Schedule 4 to the Deadline 4 Representations of the Carpenters.

The Telecommunications Building

66. The Telecommunications Buildings are exclusively required in relation to the fibre optic cables for commercial telecommunications purposes. See Schedule 4 to the Deadline 4 Representations of the Carpenters.

Landscaping

67. As well as an unmanned Converter Station and Access Road, the Application Development includes proposals for landscaping around that development. Land Plans, Sheet 1, Document Ref: 2.2 show that “*Permanent Acquisition of Land*” is sought for the whole of the area on which the Converter Station would stand, the length of the Access Zone, and also an extent of land in and around that development indicated by paragraph 5.3.6.4 of the Design and Access Statement, Document Ref: 5.5, to be subject to “full-reinstatement”.
68. **Appendix J** hereto includes facts in relation the vicinity and the Landscape Proposals of Aquind.