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Via email to
aquind@planninginspectorate.gov.uk

FAO the Planning Inspectorate

Dear Sirs,

RE: Deadline 6 Submission in respect of the Application by AQUIND Limited for an Order granting Development Consent for the AQUIND Interconnector Project.

In line with the Examining Authority's (ExA) requests for deadline 6 of the examination into the above referenced application, please find the responses on behalf of Portsmouth City Council ('PCC' or 'the City Council') in summary form set out below.

As the ExA will be aware the Applicant has submitted significant changes to the application and provided a series of updates to documents at both deadline 4 and deadline 5. The Applicant further expressed an intention to further amend their application during oral hearings this month. PCC has therefore focussed on key matters raised in the submissions made that remain of significant importance and concern for the City and its residents to assist the ExA but must of course reserve its position in respect of any additional evidence and amendments to the application arising out of further evidence provided by the Applicant provided subsequent to deadline 5

1.0 Comments on Applicant's submissions at Deadline 4, Deadline 5, and through Transcripts of Oral Submissions

- 1.1 The City Council sets out below comments on some key documents that have been submitted or updated to reflect the Applicant's amended stated intentions in respect of the proposed development with particular relevance to this City and its residents. PCC have undertaken parallel discussion with the Applicant throughout the examination and the applicant has provided assurance of their intention to amend and update these key document. The

following commentary therefore reflects the concerns and solutions that PCC have raised in discussion with the Applicant or otherwise are provided in response to the latest amended versions of their submissions. PCC as part of those discussions confirmed with the Applicant that in light of the level of detail provided PCC has been unable to give a full and reasonable response to some matters at earlier deadlines. The Applicant has therefore been fully aware of PCC's position and asks the ExA to reject any criticism or any suggestion that PCC has failed to raise matter before now. Comments on the Framework Traffic Management Strategy in particular were not possible until additional Safety Technical Notes were provided. The Applicant provided the necessary Safety Technical Note on 17th November 2020 to PCC and this enabled PCC to provide comments and which are reflected in the highways and traffic related sections below.

2.0 Response on Framework Management Plan for Recreational Impacts ('FMPRI') REP4-026 [Doc ref 7.8.1.13] (and relevant items of concern in Rep 5-021 and Rep 5-056)

2.1 PCC has consistently expressed and maintained concerns regarding the impact of the Aquind proposal on recreation and open space in the city of Portsmouth since pre-application stage. The Applicant did not however provide details of the actual or likely impact on the affected playing fields and open spaces in a format that reflects the order limits and information to the ExA until deadline 4. PCC therefore take this first opportunity to provide a detailed response to the impacts as described. PCC however notes in paragraph 1.1.1.3 of the FMPRI that the information reported is indicative including that related to both construction and reinstatement dates and timescales and gives no confirmed timescales or work areas. The City Council has significant concerns that the Applicant, even at this late stage of the examination remains unable to provide greater clarity of the impact of their proposal on recreation and open space. The Applicant's lack of proper consideration at the pre-application stage has led them to choose order limits at a 'worst case scenario' scale that are clearly too wide and result in such a degree of adverse impact to local recreation that makes practical mitigation impossible, where as a more refined application would have enable a scheme of mitigation to be designed to support the amenity and wellbeing of residents in Portsmouth.

2.2 Farlington

- 2.2.1 The order limits noted over Farlington Playing Fields cover 8 senior football 1 junior football and cricket outfield on pitch 2 access roads and car park. These order limits are consistent across all phases of construction.
- 2.2.2 PCC note with concern that the Applicant is unable to confirm if pitches within the order limits but outside of the indicative work areas are available for use. Without this information PCC are unable to assess the full impact of the works on recreation facilities. Therefore the following is based on works areas listed in the indicative framework management plan phases 1 to 10.

- 2.2.3 PCC note that the impact on football provision in Phase 1 and 2 is limited as these are intended to occur in April-June when Football is not played, it is also noted that only a small area of the car park is required during phase 1. PCC considers it is important that the remainder of the car park will be available for use by sports field users and ask that this be ensured.
- 2.2.4 During Phase 3 works are scheduled over an area covers 3 pitches (pitches 4, 8 and 10) and is adjacent to pitches 3, 7, and 9 depending how close works are to these pitches (plan shows right up to touchlines) this will impact 6 pitches and 9v9 pitch.
- 2.2.5 These Works are described as scheduled from June 2022 to Mid-August 2022 after which an 8 week re-instatement time is needed. This would mean potentially 6 pitches plus 9v9 will be out of play until mid Oct 2022. However the indicative phasing plan shows re-instatement in Oct to Nov therefore these pitches would not available until Dec 2022. This is considered to be an unacceptable loss of amenity and recreation as it results in a loss of a significant part of the playing season.
- 2.2.6 During Phase 4 works an area is shown as needed in the North West corner in late August for 2 weeks. The Order Limits encroach onto cricket square 2 outfield meaning the loss of that cricket pitch for 2 weeks until the end of the season. It must also be noted that the whole field and car park is required for the campsite for the annual Victorious festival at the end of August (a site plan of 2019 site layout can be provided if required) any failure to have the field reinstatements completed or suitable surface by this time would result in significant impact on this Victorious festival with both significant financial implications for the city but also significant community and social implications for our communities. The Framework Plan [at Appendix A] shows a large area of the field within work areas for phases 1 to 3 meaning potentially the campsite being reduced by 30 to 40% as no re-instatement scheduled to commence according to the phasing plan until Oct 2022.
- 2.2.7 During Phase 5 a similar area to phase 2 would again be lost to public benefit with works carried out in September 2022 for 4 weeks. The Pitches affected would be 4, 8, 10, and 9v9 and again 8 weeks for re-instatement are listed, in Oct to Nov 2022. These would mean pitches 4,8,10 and 9v9 plus potentially 3, 7, and 9 would be unavailable for use until December 2022. PCC notes the Applicant's proposal to move pitches 8, 10 and 9v9 pitch as a form of mitigation, however this would place them on the cricket outfields, the suitability of this proposal needs to be considered and assessed against the ground and conditions to avoid any drain covers, water points etc.
- 2.2.8 During Phase 6 no works are scheduled to be carried out from Oct 2022 to March 2023 in order to avoid overwintering birds. PCC have assumed that there will be complete grass cover over the whole field with phases 1 to 5 re-instated however, as re-instatement is not due to commence until October for 8 weeks and with no mention of drainage re-instatement at this stage, it is noted that this results in a reduced capacity by potentially 6 pitches plus 9v9. This would be lost from the start of football season in early Sept until at least

Dec 2022, amounting to a period of at least 3 months lost due to reinstatement works.

- 2.2.9 Phases 7 and 8 have been timed (mid-June - mid August 2023) to avoid the football season, but again would greatly reduce available suitable ground for the Victorious Camping Festival. It is noted that the Applicant's works programme, due to the essential facility provided by these spaces to residents and overwintering birds, requires the re-excavation of an area that would only have been re-instated in Oct -Nov 22.
- 2.2.10 During Phase 9 no works are scheduled due to the Victorious Festival in late August 2023 for 2 weeks with re-instatement of phases 7-8 following in Oct - Nov 2023. As with the previous year, PCC is concerned as the whole field and car park is required for the campsite for the Victorious Festival and the reduction in the available area as a result of the field reinstatements, which will not have been completed, would result in significant impact on the Victorious festival.
- 2.2.11 Phase 10 works are noted to impact upon pitches 4 and 8 but close to pitch 10, which, due to the necessary reinstatement works, even by the Applicant's assessment would potentially affect 6 pitches plus 9v9. This is because of work limits adjacent to pitches which may be affected and would be out of play until at least Dec 2023.
- 2.2.12 As has been acknowledged by the Applicant in their oral submissions during the hearing of ISH 3 on 15 December 2020, Farlington has an extensive drainage system covering the whole field. PCC consider that any damage, either due to the trenching works or heavy vehicles tracking across the ground, would lead to the need for the complete relaying of the drains over the whole of the damaged area. This would take significantly longer than the 8 weeks reinstatement time quoted in the document. PCC agree with the University of Portsmouth consultant (Sports field Design ltd) who estimate reinstatement time would be nearer to 3-4 months rather than the 8 weeks quoted by the applicant.
- 2.2.13 PCC is extremely concerned that the Applicant until this stage of the examination has not properly investigated and considered the nature of the drainage at Farlington despite PCC making it clear to the Applicant that there is an existing land drainage scheme that will require specific remediation. PCC asks the ExA to note that this consideration was raised in its Relevant Representation [RR-185 para 9.4;] in PCC's response to the draft FMPRI at Procedural Deadline A [PDA-003 para 20]; and again in PCC's Local Impact Report [REP1-173 para 3.12.8]. PCC also raised the issue at site meetings on 7th October 2020 with the Applicant's representatives during the Examination.
- 2.2.14 No mention of the complication of the land drainage system is however made in the FMPRI. It is noted that the Applicant has acknowledged this oversight before the examination and now the Applicant states it needs to take further advice. In advance of them receiving such advice and sharing it with PCC and the ExA PCC remains however extremely concerned that the Applicant

has not properly considered the impact on recreation at Farlington. Consequently it is clear that the FMPRI will require significant revision to enable an informed conclusion by the ExA. As the overall timescale will need to be revisited once the Applicant considers its further advice, PCC is also concerned that this will have implications for the Habitats Regulation Assessment in respect of the use of this land by over-wintering birds.

2.2.15 Notwithstanding that the Applicant has given insufficient consideration to the recreational impacts at Farlington, PCC have considered their proposed mitigation. This is limited to a suggestion that pitch 8 could be moved next to cricket squares 1 and 2 and, while this is an option due to the wear that would be caused to the cricket outfield, it is far from ideal. PCC's normal operation is to close any football pitch located on cricket outfields at least a month before cricket season commences; this is to allow for reinstatement of cricket outfields. As there are no works scheduled for October to March this could be considered for 3- 4 weeks in September, assuming the rest of the field will be reinstated however if re-in statements are not completed until December, PCC considers this may be an option worth investigating with the Applicant. Overall PCC do not consider this small degree of avoidance to be adequate mitigation for the substantial disruption being caused, even by the Applicant's own current unrealistic estimates of likely disturbance.

2.2.16 It is noted that the ExA have asked the Applicant's, through a post hearing note, for details of the feasibility of carrying out HDD under Farlington Sports fields rather than the current trenching proposal. While PCC awaits this note to consider the Applicant's position it is suggested that an area at pitch 5 or 8 is a plausible location for a drill rig and another area north of the cricket for riser and drill rig to go under railway etc. This would have the benefit of only disturbing 1 football pitch and only damaging the drainage scheme in this much smaller area. This would leave the majority of field 9 pitches plus 9v9 and cricket unaffected, plus only minimal disturbance to victorious festival campsite.

2.3 Langstone Harbour Sports Ground

2.3.1 Works in the indicative plan at Langstone [Described indicatively in appendix C of the FMPRI] appear to be in June to July 2023 for between 3 to 8 weeks plus 8 weeks for reinstatement scheduled for August 2023 in the time line plan, we assume this means August - Sept. Para 4.2.2.7 of the FMPRI states works will be undertaken over a period of 8 weeks (not continuous) but could be reduced to 3 weeks , the variation in these timescales makes assessing the impact on sports provision very difficult.

2.3.2 These proposed works are at the height of the Cricket season. This would mean Portsmouth would be losing 20 to 25% of its cricket availability for this 3 to 4 month period. (note: PCC only have 5 cricket squares for general usage in Portsmouth and 1 of these is used almost exclusively by one club at Drayton Park). There is no mitigation offered as to how these games can still be played.

- 2.3.3 PCC would also question whether turfing could be achieved ready for use in 8 weeks, especially during August, a potentially hot and dry period. This would therefore lead possibly to an extension of the period of disruption until re-instatements have completely established which could be into September or October. PCC would again agree with the University of Portsmouth consultant (Sports field Design Ltd) who estimate reinstatement time would be nearer to 3-4 months rather than the 8 weeks quoted by the applicant and also agree with the recommendation to use thick turf.
- 2.3.4 No mitigation has been considered for the significant impact on cricket with this cricket venue out of play for 3 to 4 months in the height of the season affecting many clubs and matches. PCC considers that this is unacceptable and would seek a more effective avoidance strategy, such as the consideration of HDD drilling under Langstone and Baffins Milton pitches which would mean no effect on sport provision at all. In the absence of this as a proposal, or greater consideration of mitigation to the harm that would be caused needs to be given.

2.4 Bransbury park

- 2.4.1 There appear to be indicative timescales for the works across Bransbury of 8 weeks, but not continuously, plus 8 weeks for re-instatement but no indication of timing of the works. If works are carried out in the Summer there would be little or no effect on sports provision. However if the works were carried out in the Winter there would be an impact on 1 football pitch for a period of around 4 months.
- 2.4.2 We note AQUIND's proposal to move the pitches to the west, this will need to be measured on site to ensure there is sufficient space. The indicative drawing 4.2.4.7 in the FMP shows the pitch repositioned onto the footpath and crossing the fence line of the model railway. It is not clear as to the exact areas required for the Order Limits or work area to achieve this proposed avoidance and PCC considers this an important omission that needs to be addressed. PCC would recommend that the ExA require this to be accurately measured on site to establish if this proposal is possible or practical as part of the examination.
- 2.4.3 PCC note that the Applicant's mitigation for the loss of the car park here is to state that parking can take place on the road. This does not however allow for re-provision of disabled parking spaces that are currently allocated within the car park and is of course not mitigation at all but in PCC's submission simply amounts to trivialisation of the harm being caused.

2.5 Zetland Field

- 2.5.1 PCC note the limited timescales on this site, although indicative of 1-2 weeks construction plus 8 weeks for re-instatement and that access to the field would be maintained for the duration of the works.

2.5.2 PCC also note the offer by the Applicant to move the recreational football goal towards the eastern boundary, this however may cause problems near the gardens backing onto the field.

2.6 Fort Cumberland Car Park

2.6.1 PCC note the loss of this car park for a period totalling 66 weeks with no mitigation being offered, other than in PCC's a response by the Applicant which again in PCC's view trivialises the matter by suggesting that users could park on the surrounding residential roads (see para 4.2.8.5 of the FMPRI). The inclusion of the ORS building which PCC considers is not Associated Development and not justified as part of the DCO application would of course also result in a permanent loss of space. This would have a severe impact on the local residents of the area during works and permanently.

2.6.2 Currently there appears to be no confirmation of the number of lost spaces post works to accommodate the ORS and, while the Applicant has suggested surface treatment and lining in this car park could increase parking efficiency, PCC is concerned that this would be achieved only through permanent detrimental urbanising alteration to the character of this open space.

2.7 Milton Common

2.7.1 The latest FMPRI offers no firm indication of which route will be taken making the impact of the works difficult to quantify.

2.7.2 The Applicant states works at Milton Common will be undertaken over a period of 23 weeks (but could be reduced) for a length of 830Lm or 920Lm. PCC question whether this timescale is correct when the Applicant's evidence is that a run of around 500 to 600Lm at Farlington is due to take over 50 weeks.

2.8 PCC note AQUIND's request for PCC's required mitigation for recreational areas affected by the Aquind proposal. In Rep 4-027 Section 5

para 5.3 Bransbury
para 5.7 Langstone
para 5.11 Farlington
para 5.17 Victorious camping
para 5.19 Farlington Drainage

2.8.1 In Section 3 of the FMPRI the Applicant's suggested mitigation appears to be:

1. To inform users of the nature, timing and duration of works, communicate alternative routes or spaces required.
2. To review construction programme to see if there are opportunities to reduce effects
3. To restore open space as far as practical to the condition prior to construction.
4. To discuss with PCC and University opportunities to provide mitigation during works such as relocating pitches

None of the above however gives any assurances to PCC or users of Milton Common that they will be unaffected by the works.

- 2.8.2 Due to the previously expressed necessity to support public health and wellbeing and preserve community benefit, PCC would encourage Applicant to propose and/or the ExA to ensure the objective of a comprehensive mitigation strategy is for the users of the sports pitches not to be affected by the works either through lost games, or the reduction in available facilities. However, due to the extent of the works PCC do not see any mitigation that the Applicant could offer that would not affect or limit sports provision, or the Victorious Festival camping.
- 2.8.3 To assist the ExA PCC would suggest that possible improved mitigation solutions that the Applicant should consider making are:
1. **Langstone:** HDD drilling under Langstone Harbour sports ground starting south of the pavilion and rising north of Baffins Milton pitch (Kendal's stadium). If this were carried out there would be no effect on Cricket or Football at this venue.
 2. **Farlington:** At Farlington, HDD drilling could also be undertaken using pitch 4 or pitch 8 as the starting point and rising just south of the railway line, if required before commencing HDD drilling under the railway line. This would have the effect of only losing 1 football pitch, with no impact on the drainage system apart from the area of 1 pitch. This would also only effect the Victorious Festival campsite by the area required to set up a drilling rig possibly only half a pitch 50m x 70m rather than the area shown in the framework management plan of around 30% of the field. As stated previously Victorious Festival camping use the whole of Farlington Sports field, any loss of suitable ground would have significant impacts on this annual event. In the FMPRI there appears to be no mention of when the drainage will be re-instated albeit it is acceptable that this is a matter still to be explored. PCC are therefore unable to comment on any mitigation as yet. PCC also question the 52 weeks work programme that appears to lay one cable each year doubling the impact on the sports field. PCC question whether both cables could be laid at the same time thereby halving the impact.
 3. **Bransbury:** PCC have assessed the mitigation proposal at Bransbury to move pitches to the west, however the plan in FMPRI at 4.2.4.7, plate 7 shows the pitch relocated onto the path and model railway fence line. This will need to be measured onsite once the scope of the works can be accurately plotted to see if this is a viable solution.

Wider Mitigation: As an alternative to the above, mitigation could be made through the provision of a community support fund that could be set up by Aquind to compensate teams that have lost games or been effected. While this is something PCC feel is not ideal and still does not get games played if the Applicant has been unable to adequately mitigate impact, such a fund

would be able to fund alternatives to support clubs to address the adverse impacts themselves. The failure to play games could have long-term effects on teams that could either be removed from the league or relegated due to not being able to play their games, or possibly even going out of existence completely due to lack of available provision and frustrated players leaving.

3.0 Response in respect of matters of Noise and Vibration **REP5-019 & REP5-020 Onshore Outline Construction Environmental** **Management Plan - Clean - Rev004 (OOCEMP)**

- 3.1 PCC remains concerned that insufficient clarity has been provided regarding noise and its management. This includes suggestions that unacceptable works such as road cutting and breaking would occur out of hours in certain areas where there are sensitive receptors (see para 5.12.2.5, 6.2.8.6 and 6.2.8.7). The drafting of the OOCEMP appears to conflict with the position of the Applicant as articulated in their oral submission transcripts [see 6.17 of REP5-069 7.9.22 Applicant's Transcript of Oral Submissions for Issue Specific Hearing 3 on Environmental Matters]. PCC continues to work with other Local Authorities and with the Applicant to address these concerns as part of ongoing positive progress to common ground in these areas.

4.0 Response in respect of Highway Matters

4.1 Framework Construction Traffic Management Plan (FCTMP) [REP1-070]

- 4.1.1 The FCTMP provides an overarching plan as to how the construction traffic and site operations will be managed across the extent of the Onshore Components of the development. It provides for individual Construction Traffic Management Plans (CTMPs) to be prepared and agreed / approved by the relevant Local Highway Authority (LHA) for the area in which the works to which they relate are located, ahead of the relevant works commencing.
- 4.1.2 The FCTMP sets out the parameters at para 1.4.1.1 and 1.5.1.1 within which contractors will be required to develop the detailed CTMP's to be approved post grant of the DCO to include hours of operation, traffic routing, safe vehicular access and manoeuvring and minimising traffic impacts. The FCTMP briefly explains the cable routing and sets out the detailed measures that can be implemented to provide mitigation for the construction traffic.
- 4.1.3 With regard to the ORS Compound, the FCTMP makes provision for one permanent access within the PCC boundary located on the southern side of the ORS compound and directly from the public car park accessed via Fort Cumberland Road. No works are required on the public highway to create that access arrangement.
- 4.1.4 With regard to facilitating the construction, laydown areas for the Joint Bays and Joint Bay compounds are proposed to be created at Joint Bay locations (which are to be confirmed as part of the detailed design approvals). It is the LHA's established position however that these should not be created within the public highway at all (i.e. not just out with the carriageway). Although the

FCTMP makes no reference to likely locations it explains that access to these will be required *from* the highway. In the absence of detailed evidence of locations for the joint bays it is therefore not possible to establish whether or not such access can be achieved safely or the laydown areas / joint bay compound accommodated.

- 4.1.5 The indicative construction programme is anticipated to extend over three years (Q3 2021-Q4 2023)
- 4.1.6 The FCTMP identifies public activities and events that the Applicant has been aware of at para 2.6.1.6 and which are likely to be planned in proximity to the Converter Station Area and Onshore Cable Corridor although makes no reference to these as constraints or mitigation which may be required to minimise disruption of these events rather this is sought to be addressed in the Framework Traffic Management Strategy (FTMS) [APP-449]. Only works scheduling, to avoid conflict between events, is proposed to mitigate the impacts of the construction works on the highway network. Whilst Traffic Management Strategies for the works are to be prepared in accordance with the FTMS and approved by the relevant local highway authorities separately to the approval of the individual CTMP's, the FTMS does not provide for mitigation, other than through programming, as may be required particularly on diversion routes. There is therefore an unhelpful circularity between the FTMS and individual section CTMPs which may well need to include mitigation not provided for in the FTMS, which has no detail as to what these controls might be or how and whether these controls will be effective.
- 4.1.7 It is noted that the cable drum delivery routes necessary to accommodate proposed abnormal loads will be provided to PCC for the Joint Bay locations when detailed design approvals are obtained and confirmed in the individual CTMPs.
- 4.1.8 The FCTMP explains both horizontal drilling (HDD) and open cut trench methods to install ducts through which the cables will be drawn in section 2.9. The open cut trench method is intended to be used in the cable routes that fall within the highway and envisages a trench width of 700mm and depth of 1250mm. The Applicant's intention is to open and reinstate one trench before commencing another in any section with an installation rate of 12m -30m per shift (10hrs / day 6 days a week). The FCTMP is not specific however about the reinstatement requirement for the trenching although it is the LHA's position that where this is undertaken in carriageway the reinstatement provides for the resurfacing of the lane width.
- 4.1.9 The vehicle routing strategy within the FCTMP (section 3.2) only considers access to the converter station rather than the wider onshore cable route. HGV and abnormal routes are considered in sections 3.4 and 3.5. Although these are generally acceptable they may require suspension of on street parking in particular locations. This will need to be further developed in the individual CTMPs together with details of proposed temporary junction modifications.

- 4.1.10 The description of access to section 6 (Zetland Field) implies that marshalling may allow a right turn access from Eastern Road; that is not acceptable and PCC would suggest that all movements will have to be left in / left out to prevent an unreasonable impact on congestion and network management.
- 4.1.11 On weekdays the FCTMP confirms that general HGV movements associated with construction will not be permitted during the AM and PM peaks of 08:00-09:00 and 17:00-18:00 with no peak hour restrictions at weekends although will be restricted between 1900 and 0700 [paras 3.3.3 - 3.3.6]
- 4.1.12 For each individual HDD location, a delivery plan will be formulated which will provide a management strategy for the offloading of materials arriving on-site. The delivery plan will also include details of the anticipated frequency of deliveries and time restrictions as set-out in this FCTMP.
- 4.1.14 The FCTMP identifies a number of common issues / constraints and proposes generic mitigations to alleviate those. However the issues will be specific to individual locations and it is not possible based upon the plan to date to establish whether or not these generic mitigations will be sufficient to resolve the issues in each specific circumstance.
- 4.1.15 The FCTMP explains that a targeted strategy will be developed to inform the community and road users of upcoming works with further details in the FTMS and signage agreed in the CTMPs [Para 3.7.1.1].
- 4.1.16 It is explained at para 4.2.1.1 that up to 6 construction worker gangs will be deployed at any one time travelling to the works site from the converter station in minibuses. Only construction workers with a typical shift patterns are proposed to be permitted to park on site with a range of sustainable travel options provided to the converter station.
- 4.1.17 The FCTMP explains at para 5.2.1.4 that *'The design of all highway accesses is to be required to be agreed with the relevant highway authority before the commencement of works in relation to the relevant phase of works which the access is required in connection with'*. In the absence of detailed designs for those accesses the LHA is unable to confirm whether or not these can be achieved safely and will require all such accesses to be approved and implemented through a S278 agreement process.
- 4.1.18 The FTMS details the requirements for proposed future traffic management in connection with the construction on the Onshore Cable Route.
- 4.1.19 It is proposed in para 7.4.1.1 that before and after construction, pavement condition surveys are to be undertaken to assess whether construction activities have resulted in worsening road conditions. Weekly conditions surveys will also be produced during the works programme to identify areas that are worsening and will become a hazard to other road users that require immediate action.
- 4.1.20 The FCTMP explains in section 8.6 that its contents will form the basis for individual CTMPs to be produced by the contractors once they are appointed.

These will then be submitted for approval by the relevant Highway Authority. The individual CTMPs will provide details of;

- Construction vehicle routing;
- A highway condition survey of all routes proposed and accesses;
- Road Details of road closures / traffic management measures;
- Specific details regarding abnormal loads if any;
- Details of the interventions to the highway that are required to enable construction works (permanent or temporary) and reinstatements;
- Specific details regarding traffic management and construction management of vehicle movements such as temporary signage, requirements for a banksman or escort vehicles, wheel washing, shuttle buses etc.; and etc.;
- Details of monitoring and enforcement measures, including contact details for the member of staff responsible for these tasks; and
- Details of construction staff travel arrangements/ / travel plan.
- Details of the monitoring process and who is responsible with contact details.

4.1.21 whilst the aims and intentions of this document can be accepted, that is in essence what the FCTMP provides. It is not a detailed binding plan but more a statement of intention nor is it possible to understand whether those aims or intentions can be achieved. PCC in general considers it is not reasonable to leave all of these potentially significant issues to be resolved after the DCO has been consented and also to be addressed via CTMPs.

4.1.22 The FCTMP does not in fact address the final reinstatement of trenching at all. PCC as the LHA suggests that where trenching is located in carriageway that a full lane width resurfacing is required to be undertaken as a part of the final reinstatement to preserve the structural integrity of the carriageway. This needs to be reflected in the FCTMP.

4.2 Framework Traffic Management Strategy (FTMS) [REP1-069]

4.2.1 The FTMS largely replicates the FCTMP and these comments only address variations / additions to the FCTMP.

4.2.2 The FTMS aims in general terms to mitigate the impacts of the Onshore Cable works by taking account of key constraints and sensitive locations along the route. In relation to this, the FTMS provides an indicative programme for construction that considers environmental constraints, major events likely to be planned during the Construction Stage, school terms term times and the interaction between adjacent or nearby locations to minimise the impact where possible of the construction of the Onshore Cable Route in the highway.

4.2.3 The focus of this strategy is largely on programming to avoid conflict with sensitive receptors.

4.2.4 The FTMS explains in para 2.3.1.2 that construction progress within highways will be in the 12-24m/day range with the location of existing utilities dictating the depth of duct installation in each location. It further explains in para 2.3.1.6 that '*Joint Bays will be positioned off of the highway (in highway verges, fields or other land) where possible, to limit the need for road closures associated with their installation*' but makes no commitment to achieve that with the final

location being left to selection by the contractor(s) which then is to be confirmed as part of the detailed design approvals.

- 4.2.5 This of course is all post the grant of the DCO for the Proposed Development.
- 4.2.6 Typically, it is understood it would take approximately 20 working days to complete one joint bay location with consequent impact for traffic management if these are located within the highway. It is not reasonable again in the LHA's view to leave these location issues to be resolved post the grant of the DCO.
- 4.2.7 The FTMS explains in section 2.4 that 'All works in the highway to be carried out as part of the construction of the *Proposed Development will observe requirements of the New Roads and Street Works Act ('NRSWA') (HM Government, 1991).*' However the dDCO currently provides for the application of only certain sections of the NRSWA as well as in the latest draft the application of PCC's and Hampshire County Council's Permit Schemes and even then subject to a number of constraints on the conditions (they must be what the undertaker seeks) which the LHA would normally have the discretion to impose and on the effect of PAAs over the sections of the highway the undertaker wishes to keep the potential open for its exclusive use over a long period..
- 4.2.8 To be clear, the Permit Schemes themselves replace certain provisions of Part 3 NRSWA excluding s 50 in respect of "street works" as defined under s48 of NRSWA as well as HA works for road purposes under s86 and 'major highways works'. PCC in its role as LHA considers there needs to be clarity as to operation of the Permit Scheme as reflected in the Southampton to London Pipeline DCO or the Thames Tideway Tunnel DCO (applying the London Permit Scheme).
- 4.2.9 The FTMS explains at para 2.4.1.2 that '*Prior to commencement of works in the highway, detailed designs for the works and the traffic management measures will be submitted for approval to the relevant Highway Authority.*' This should as PCC understands include measures to mitigate the impact of diverted traffic remote from the works site.
- 4.2.10 The FTMS explains that the works will be undertaken in sections providing for reinstatement such that each section is only open for a week. Two-way traffic flow should be maintained wherever possible, albeit this may need to be facilitated by shuttle working, temporary traffic signals and lane closures.
- 4.2.11 The FTMS at para 2.5.1.3 and section 2.5.2 considers different types of traffic management:
- Two way shuttle working with signals
 - Lane closures without shuttle working – possible where there are 2 or more lanes in each direction
- 4.2.12 Whilst PCC considers that these are acceptable aims in principle it should be noted that current practice is that no construction activities are permitted on traffic sensitive routes during peak periods when traffic management are

required to be pulled in close to excavations to maintain two way flow without shuttle working wherever possible unless expressly authorised.

- 4.2.13 The FTMS states at para 2.5.3.3 that residential and business access will be maintained wherever possible, albeit with different traffic management approaches applied depending upon the circumstances. The type of traffic management however is dependent on the location of the construction zone within the carriageway, which cannot yet be defined as detailed design of the traffic management will only be completed once a contractor is appointed. The FTMS is not specific about maintaining access overnight or as to the arrangements to be deployed at individual side road junctions (para 2.5.3.5). It is not reasonable again in PCC's view to leave these location issues to be resolved until after the grant of the DCO.
- 4.2.14 It is explained in para 2.6.1.1 that submission of detailed designs and traffic management measures for approval will be submitted not less than three months before the intended commencement of works on the relevant art of the highway, with notice of the date on which the works are to start being provided not less than 14 days before those works commence. There is no reference to the provisions of Portsmouth City's Permit Scheme which as noted above is now at least to some extent applied through the dDCO (see Article 9A) within the FTMS as drafted and therefore these passages address assessment by way of the requirements and approvals procedure set out in Sch 3 to the dDCO. PCC notes the proposed timescales for approvals (i.e. 40 working days subject to agreement and/or a request for further information) and would add that the LHA will need to take into account network availability demands at the time of application and judged accordingly potentially requiring rescheduling or amended traffic management arrangements as circumstances at the time require .
- 4.2.15 The communication strategy explained in section 2.8 of the FTMS includes further details regarding the high level timeline and nature of communications activities to be undertaken at all stages of the construction of the Onshore Cable Route. The communication strategy includes details of identified stakeholders, any challenges which may face communications that have been identified and a working plan of actions to be undertaken prior to and during the works, as well as an evaluation strategy for after works have been completed.
- 4.2.16 A signage strategy is proposed to communicate proposals to road users who may otherwise be unaware of the construction works and associated traffic management with Variable Message Signs ('VMS') provided at key locations along the Onshore Cable Corridor.
- 4.2.17 Pedestrian and cycle routes along the Onshore Cable Corridor are considered in section 2.9 and will be maintained wherever possible. Where construction works do obstruct a footway a minimum unobstructed width of 1.0 m will be provided alongside the construction corridor and where this is not possible a safe alternative route will be provided. It is the view of PCC as the LHA that this should be a minimum of 1.2m.

- 4.2.18 Similarly where full closure of cycle route is necessary and diversion routes are unsuitable temporary cycle facilities will be provided past the construction corridor where possible. This could be completed as part of a full lane closure or through provision of a temporary off-road route. The width of these temporary routes will be 2.5 m where possible, with a minimum of 1.5 m.
- 4.2.19 Construction of the Onshore Cable Route will take place during school holidays on links that contain schools or where they are located directly adjacent to the Onshore Cable Corridor.
- 4.2.20 The FTMS explains in section 2.13 the intention that it is implemented as a 'live' and responsive strategy. This as PCC understands it means that, in continuous liaison with HCC / PCC (as appropriate), an approved TMS can be amended where required to reflect traffic conditions and events that may impact upon the construction works or capacity of the highway network surrounding the Onshore Cable Corridor.
- 4.2.21 The FTMS provides for response to events away from the Onshore Cable Corridor itself in para 2.13.1.2. This is particularly important for the A3 London Road and A2030 Eastern Road, both of which experience a significant increase in traffic flow when there are road traffic accidents on either the A3(M) or M275.
- 4.2.22 It is noted that the FTMS asserts that the dDCO (APP-019) contains a number of Protective Provisions to address such issues however that is not the case.
- 4.2.23 In section 3 the FTMS considers the implementation of the project in sections and identifies specific calendar restrictions to working periods for each specific section and sub section together with the anticipated traffic management arrangements, including where works on individual sections or subsections should not take place simultaneously. It does not though as currently drafted recognise the application of the Permit Scheme as shown in Art 9A of the latest draft of the DCO to authorise these works.
- 4.2.24 Whilst the suggested construction works window periods and specific traffic management measures on the cable route are considered by PCC to be acceptable, despite the Applicant's attempts to seek to constrain the operation of the Permit Scheme, it should not be assumed that permit applications to undertake specific works during those time period will necessarily be granted. The details of any applications will need to be compared with network availability demands at the time of that application and assessed accordingly as an important part of the management of the LHAs network and its statutory duties. There is therefore the necessary potential to require rescheduling or amended traffic management arrangements as circumstances at the time require.
- 4.2.25 The impact analysis provided to date does not consider traffic safety issues on routes which may be used by diverting traffic. As a consequence the FTMS does not consider interventions which may be required on alternative traffic routes to mitigate the effects of traffic diversions. Such interventions may include temporary traffic calming, measures to discourage the use of

particular route or limit the use of those formally through traffic regulation order. Again, it is not reasonable in the LHAs view to leave this to be resolved post the grant of the DCO either through the CTMPs.

4.3 Supplementary Transport Assessment ('STA') [REP1-142]

4.3.1 The STA seeks to address several areas related to the construction of the on-shore cable corridor including;

- Construction Traffic access (predominantly to joint bay locations)
- Collision analysis
- Traffic assessments (2 junctions)
- Bus journey time analysis

Construction Traffic Access

4.3.2 Para 3.6.7 sets out the enforcement of agreed HGV movements and "corrective measures" but does not detail what the "corrective measures" might be. It is assumed that these will be detailed within the detailed CTMPs submitted for each phase of works, whilst this is acceptable to PCC, there should be a mechanism to ensure that adequate and effective enforcement is carried out.

4.3.3 Para 3.7.1.2 of the STA confirms the intention to provide separate CTMPs for each section of works, however there is no indication how works will be apportioned and, therefore, how many separate plans might be received and require review and sign off by the LHA/LPA. In order to appropriately respond to this work PCC as the LHA would seek some comfort over the number of plans to be expected to enable proper consideration of the deliverability of this process.

4.3.4 Para 3.8.4.3 Gives details of parking bays that would need to be suspended to facilitate access for cable drum deliveries and provides evidence of space within the surrounding area to accommodate parking displaced by these suspensions. An overnight parking survey has been carried out in roads around the area requiring parking suspensions identifying circa 200 spaces available for the approx. 90 spaces expected to be displaced. It is not clear where these spaces are located in relation to the displaced bays nor whether all those displaced would be eligible to parking in bays identified within a Controlled Parking Zone (CPZ). It is acknowledged however that these suspensions are likely only to be in place for single evenings and, provided a robust consultation exercise is put in place to warn residents of the restrictions, it should be possible to manage the suspensions. The approach Colas use when undertaking works in residential areas with leaflets delivered to residents detailing the works taking place, when, and where the works will take place is a good approach to follow and which PCC would expect here.

4.3.5 Para 3.9 of the STA provides further detail on the movement of Abnormal Indivisible Loads (AILs). It is noted this is now supplemented by a separate Technical Note on AILs submitted to Portsmouth City Council on 17th November 2020 a review of this note is provided below.

- 4.3.6 Para 3.9.4.30 of the STA details alterations that will be required to the entrance of the Portsdown Hill viewpoint car park to facilitate access for the cable drum delivery vehicle. It should be noted that this car park is not highway and therefore separate discussion would need to be sought at the time from the relevant council department and it is therefore important that such discussions are well coordinated.
- 4.3.7 Para 3.9.4.33 details the arrangements needed for access to Zetland Field (adjacent to Eastern Road) for the cable drum deliveries. It is proposed to turn the lorry across from the northbound carriageway, over the southbound carriageway with the aid of a banksman, and onto Zetland Field with a temporary vehicle access. It does not consider that the median island is raised and will likely require works to level this in order to turn across it. Of greater concern is the intention to use a banksman to manoeuvre the AIL(s) across a 40mph dual carriageway; this is not a recognised approach for this type of road. Further, a banksman would need to hold the relevant qualifications/permissions in order to stop/direct live traffic (or be a police officer) without use of traffic signals or Stop/Go boards.
- 4.3.8 Whilst the LHA notes that the dDCO seeks powers to alter highways within the Order limits subject to the LHA's approval, it is PCC's view that agreements with the LHA to alter the highway to facilitate this access should be the subject of agreement with the LHA. In addition, sufficient protection for the existing trees lining the edge of Zetland Field will need to be factored in taking into account the required root protection areas which extend into the Highway.
- 4.3.9 Para 3.9.4.41/42 of the STA covers AIL access to Farlington playing fields. It is suggested that vehicles will be guided into the site with the aid of a banksman, as per the previous point, the use of a banksman on a 40mph dual carriageway is not recommended. Control of this access is key to the operation of the A27/A2030 roundabout, should AILs not be able to access the site, traffic attempting to access the playing fields/hotel/fuel station could quickly back up and interfere with traffic at the roundabout.
- 4.3.10 Para 3.9.4.48 provides details of cable drum deliveries navigating Anchorage Road to Kendall's Wharf; this involves the delivery vehicle using the junction exit arm (as opposed to usual entry arm) due to width constraints caused by presence of signal poles. Whilst the route is appropriate for such a movement, the need to stop all traffic at this junction will cause significant disruption if undertaken during the day. Therefore, consideration should be given to undertaking this delivery either at night or very early in the morning to avoid significant disruption.
- 4.3.11 Para 3.9.4.64 provides a description of how access to Bransbury Park field will be achieved for the cable drum deliveries. It will be necessary to remove fencing and height barriers, while this is understandable, these are not highway assets and therefore the appropriate permissions will be needed before alterations are undertaken.

Collision analysis

4.3.12 Section 4.0 of the STA provides an updated collision analysis with the most recently available casualty data. The analysis covers the Onshore Cable Corridor and adjacent routes predicted to receive the majority of trips diverting away from the works. PCC is content that the analysis covers the areas most likely either to be affected directly by the works or as a result of diverted trips; however, the analysis does not consider the resultant impacts of queuing associated with works for example. However PCC would not agree that the safety impacts can properly be determined as neutral (which is the overall assessment for the study area) because traffic levels may not be increased, just redistributed. Users of the roads that receive these additional movement would not necessarily be used to the increased levels of traffic and therefore greater risks could be experienced by vulnerable road users and for drivers at junctions as a result of increased numbers of vehicles and congestion. It is noted that a further Highway Safety technical note has been produced to address potential issues resulting from temporary works and a review of this will be provided at Deadline 7.

Traffic Assessments

4.3.13 Section 5.1-5.3 of the STA details two junction assessments in respect of junctions on part of the road network where Hampshire CC are the relevant Highway Authority. It would therefore not be appropriate for PCC to make comment on the findings of these models.

4.3.14 Para 5.4 refers to further analysis of traffic impacts at Eastern Road in the form of a technical note (ERTN01), a review of this has already been provided with no further comment required.

4.3.15 Para 5.5 details some sensitivity testing for locations where shuttle working signals will be required during the cable installation. Flows have been aggregated using Do Minimum (DM) and a combination of Do Something (DS) 1/2 flows to stress test the installations.

4.3.16 Para 5.5.9 gives the results of the installation that will be required for Portsdown Hill Road. PCC note however that at 5.5.9.1 the Applicant incorrectly states that this junction would operate within theoretical capacity, only approaching capacity in the PM peak, whereas the table accompanying this section describing the outcomes shows the junction operating at 107% and 105.9% in PM peak. This shows that the route would need to operate well in excess of capacity and therefore result in significant queuing extending to up to 400m in the westbound direction, as acknowledged in para 7.1.1.10. PCC are of the view that this level of delay will result in many instances of drivers choosing another route, however this is a favoured diversion route for when incidents occur on the strategic network and as such in this situation, drivers would not have that option to choose another route. It is acknowledged by PCC that this is a temporary impact however mitigations are required in the FTMS/CTMP to ensure such impacts are managed at peak times, as a minimum the temporary signals will need to be manually controlled at peak times (particularly evenings).

Bus journey time impacts

- 4.3.17 Section 6.0 of the STA deals with the potential impacts upon bus journey times because of the traffic management measures required to construct the Onshore Cable corridor (both direct and indirect impacts).
- 4.3.18 All of the routes reviewed in this section are forecast to be subject to delays. Whilst many of the delays are expected to be relatively moderate, some bus routes are likely to see significant delays of around 20%. There are additional services (especially through Cosham and the central routes on Portsea Island), that also follow parts of the routes reviewed although these have not been assessed. It is expected that these will also suffer some delay although the amount of time spent on affected roads (either directly or indirectly impacted by TM measures) would be less and as such, delays are likely to be moderate for these other services. No mitigation is suggested to address the projected impacts nor has any detail been given of what if any engagement with bus operators has been conducted.

4.4 AQUIND Abnormal Indivisible Loads Technical Note - Provided to PCC on 17th November 2020

- 4.4.1 This technical note does not appear to have been submitted to the examination and PCC assume that this will be done at deadline 6. Having reviewed the Note PCC retains a number of concerns, but will reserve our position until it is formally submitted to the examination to ensure we can provide the ExA with a consistent comment.

5.0 Compulsory Acquisition

5.1 PCC Comments on the Applicant's Cover Letter [REP5-001]

- 5.1.1 PCC notes reference in the Applicant's letter of 30 November sent on the Applicant's behalf by WSP to '*Updated versions of the Works Plans and Land Plans are enclosed to identify the areas where installation is required to be undertaken by trenchless methods, which includes Eastney and Milton Allotments, is submitted. The Land Plans also include additional plots to identify the allotment holders which are linked to the Book of Reference.*'
- 5.1.2 Although the updated Works Plans [REP5-005] (and the updated Book of Reference [REP5-014]) show the areas where trenchless methods are to be adopted, the updated Land Plans [REP5-003] do not and clearly therefore should be updated accordingly to reflect the Book of Reference and Works Plans.
- 5.1.3 Further, PCC in its capacity as freehold owner and local authority asks the Examining Authority ('the ExA'), now that the Affected Persons impacted by the Proposed Development at the Eastney and Milton Allotments have been identified and notified of the rights being sought by the Applicant, to ensure a further Compulsory Acquisition Hearing is held before the Examination is

completed. It is of course acknowledged by PCC that a request for such a hearing should come from the Affected Persons themselves however PCC, in light of the oversight and then failure of adequate communication shown by the Applicant with the allotment holders PCC is anxious to ensure that the rights of these members of the public and residents of Portsmouth (let alone tenants of PCC) are protected. As such enabling these Affected Persons (allotment holders) so recently identified, to present any concerns they have over the compulsory acquisition of land and/or to understand fully the nature of any temporary rights over their interests can be expressed and responded to at an oral hearing.

- 5.1.4 In addition, in light of the progressive changes to the Order limits proposed by the Applicant (the subject now of two applications which the ExA has ruled lead to material amendments to the DCO) which include the proposed compulsory acquisition of additional land outside of the original Order Limits identified at the time the application was submitted, there is a clear need to address these changes by way of a further compulsory acquisition hearing in any event.

5.2 PCC Comments on the Applicant's Transcript of Oral Submissions for Compulsory Acquisition Hearing 1 [REP5-034]. PCC comments on impacts of proposed powers (in particular Special Category and Open Space Land)

- 5.2.1 PCC would draw attention to the Applicant's responses to the ExA's Questions 4.2 and 6.1 in the transcript submitted by the Applicant [ref REP5-034] at Deadline 5:

1"Question 4.2

The Applicant to set out briefly whether and how the purposes for which the Compulsory Acquisition powers are sought comply with section 122(2) of the PA2008.

4.4 The rights sought would authorise the laying and operation of the HVDC onshore cable circuits in the special category land, beneath its surface only. The Applicant therefore considers that this special category land if burdened with the rights sought in the Order would be no less advantageous to any person or the public than it was before, and therefore the test provided for at section 132(3) of the Act is satisfied, meaning no replacement land is required. It is acknowledged that for the duration of the period of construction activities on them access to parts of the Special Category Land will not be available, however this is for a temporary period only and it is considered that it is not necessary to provide, and that it would be disproportionate to require, replacement land during this temporary period."

"Question 6.1

The Applicant to explain the application of s132 of the PA2008 to the dDCO, particularly in relation to s132 (3), (4A) and (5).

6.4 The rights over the open space land sought would authorise the laying and operation of the HVDC onshore cable circuits in the special category land, beneath its surface only. The Applicant therefore considers that this special category land if burdened with the rights sought in the Order would be no less advantageous to any person or the public than it was before, and therefore the test provided for at section 132(3) of the Act is satisfied.

6.5 *It is acknowledged that for the duration of the period of construction activities on the open space land, access to parts of this will not be available, however this is for a temporary period only and it is considered that it is not necessary to provide, and that it would be disproportionate to require, replacement land during this temporary period.*”

PCC comment:

5.2.2 The Applicant has consistently failed to identify and acknowledge the long term impacts of the Proposed Development and the exercise, in particular, of Temporary Acquisition powers upon Special Category Land as well as the long term displacement of users of Special Category Land as a consequence of permanent compulsory acquisition rights. The statement that *‘it would be disproportionate to require replacement land during this temporary period’* is also contradictory to the Applicant’s statement at Compulsory Acquisition Hearing 2 (CAH2) (by Mr Jarvis, Herbert Smith Freehills on the Applicant’s behalf) that *‘there was no replacement land available.’*

5.2.3 If it is the Applicant’s case that no replacement land is available, the Applicant should be using all efforts (including modifications to the scheme) to avoid Special Category (and Open Space) Land.

Question 4.3

The Applicant to explain whether and how the rights to be acquired, including those for Temporary Possession, are necessary and proportionate.

4.70 It is for this reason that the approach of seeking to authorise the temporary possession of all land within the Order limits, being a lesser class of right, is sought across all land within the Order limits. This is an inherently a proportionate approach to the acquisition of land in connection with the authorised development.

4.71 The approach being taken in this respect is not novel, and can for example be seen in the approach taken to the Southampton to London Pipeline Order 2020 where all land in the Order limits was also subject to temporary possession powers.

5.2.4 PCC comment:

PCC does not challenge the principle of the Applicant being able to occupy all land in the Order Limits temporarily prior to securing only the land identified as being required for permanent acquisition (or acquisition of rights). However, PCC remains deeply concerned that the Applicant fails to recognise the potential long-lasting impacts that will result as a consequence of being able to exercise occupation rights of relevant land within the Order limits for up to 5 years.

5.2.5 Whilst the Applicant is correct that the same approach (to temporary occupation) was adopted for the Southampton to London Pipeline Order 2020 (‘the Southampton Pipeline DCO’), Esso (as Applicant and now undertaker) also undertook to take specific mitigation in respect of the impacts on Special Category Land (and Open Space Land). The provisions of the Southampton Pipeline DCO required application of ‘Narrow Working Widths’ through the Special Category Land sections of the pipeline route and also committed the undertaker to constrained timescales of occupation of land on a temporary basis, in accordance with construction requirements, rather than exposing owners and occupiers of land to the potential displacement from land for the duration of the DCO construction related powers (with the exception of the permanent acquisition of the Cumberland Fort Car Park about which the

Applicant and PCC disagree with regard to its status as Open Space and hence Special Category Land status)

- 5.2.6 A similar or an equivalent approach should be adopted in the Aquind DCO to that in the Southampton Pipeline DCO if impacts on Special Category Land and Open Space land cannot be avoided.

5.3 PCC comments on Funding

- 5.3.1 The Applicant responded as follows in the transcript submitted at Deadline 5

‘Question 5.2

The Applicant to advise on whether the residual cost of completing the pre-construction stage of the project, which is forecasted at £7m, excludes Compulsory Acquisition costs [REP1-091] CA1.3.1 and 103). If this is the case, explain how the Compulsory Acquisition costs are to be funded.

5.7 Specifically the response to CA 1.3.1 confirmed “it is not unusual for the securing of funding in connection with the delivery of a project to be dependent on the securing of a development consent order, it is considered the Applicant has demonstrated that funding for the Project is likely to be available to enable the compulsory acquisition within AQUIND the 7-year period provided for in the dDCO (APP-019) for the exercise of such powers following the Order being made”.

5.3.2 **PCC comment:**

PCC maintains its concerns about the funding arrangements for the project and considers that the evidence in respect of such funds is unclear, unsure and shows that their availability is precarious. In particular, the Applicant has failed to demonstrate at this fundamentally important stage that it has access to funds to secure compensation for the land and rights in respect of which it seeks draconian powers of compulsory acquisition.

- 5.3.3 PCC supports the issues raised by Counsel for Geoffrey and Peter Carpenter. Christian Zwart, in his oral representation at Compulsory Acquisition Hearing 2 CAH 2 following the investigations carried out into the financial status of the Applicant. PCC notes in particular the lack of any meaningful financial presence in the United Kingdom.

- 5.3.4 The issues raised by Mr and Mrs Carpenter in respect of the proposed infringement on their property rights underline PCC’s continued concern over the financial status of the Applicant and the lack of certainty over the ability to demonstrate funds commensurate with the compensation payable arising from the application of powers.

- 5.3.5 PCC considers that in such circumstances the only appropriate solution is that a bond be required of the Applicant as a condition of the exercise of any powers being confirmed in recognition of the liability that has been incurred by the Applicant and the blight suffered by the Affected Persons.

- 5.3.6 In addition, as raised in the CAH1 hearing, Art 7 of the dDCO allows for the transfer of the benefit of the Order prior to the commencement and/or

completion of the implementation of the CA powers and or the completion of any compensation payments due. This is as noted by the Applicant subject to the Secretary of State's approval however the fact that such a transfer is possible provides no comfort to or seeming compulsion upon Aquind which has taken the position that it does not need to show that it has the funding available prior to the grant of CA powers (when it is clear it does). PCC considers that this combination of factors means that the approach referred to and taken in the Thames Tideway Tunnel Order at Art9 should be adopted which states as follows:

“9.—(1) The undertaker may transfer to an infrastructure provider any or all of the benefit of the provisions of this Order (save for the powers of compulsory acquisition in articles 28 (compulsory acquisition of land), 29 (compulsory acquisition of rights), 30 (acquisition of subsoil only), 31 (acquisition of land limited to subsoil lying more than 9 metres beneath surface) and 41 (acquisition of part of certain properties)) and such related rights for such period as may be necessary for the construction, operation or maintenance of the authorised project as may be agreed between the undertaker and the infrastructure provider.”

PCC comments on Alternatives

5.3.7 The Applicant responded as follows in the transcript submitted at Deadline 5

‘Question 9.2

The Applicant to explain briefly the detail of the consideration which is summarised in the 'Alternative Countryside Routes Comparison' in the Environmental Statement (ES) ([APP-117], table 2.6) and any subsequent updates.

9.8 It was also noted that it was evidently possible for the Proposed Development to proceed without needing to be located along the Countryside Route. Therefore, it was not considered that it would necessarily be possible to justify any potential compulsory acquisition of the rights required over the land where the Countryside Route is located, as the Applicant had already identified a viable alternative without the need to do so.

9.9 For those reasons set out in Chapter 2 of the Environmental Statement (APP-117) (**CAH-6**) and in the Supplementary Alternatives Chapter (REP1-152) (**CAH-7**), the Applicant reasonably concluded that a route across the countryside in this location should not be pursued.’

5.3.8 **PCC comment:**

The approach taken to route selection by Esso in respect of the proposed Southampton to London pipeline was set out in Chapter 4 Design Evolution of the Environmental Statement [APP-044] for the Southampton to London Pipeline DCO (which was granted by the Secretary of State on 7th October 2020).

5.3.9 PCC has extracted the table from that document and set it out below. This set the criteria for route selection which resulted in the route being selected (and subsequently consented) resulting primarily in a rural route (where possible).

Table 4.1: Corridor Creation Criteria

Topic Area	Criteria
Engineering/ constructability	<ul style="list-style-type: none"> • major infrastructure, such as motorways, roads and railways; • waterlogged areas; • steep slopes; • historic extraction/landfill areas; • ground stability; and • major urban areas.
Environmental and social	<ul style="list-style-type: none"> • designated sites including SPAs, SACs, SSSIs and NNRs; • classified Ancient Woodland; • National Parks and Areas of Outstanding Natural Beauty; • Scheduled Monuments, Listed Buildings and Registered Parks and Gardens; • Groundwater Source Protection Zones 1 and 2; • land used by the community, including recreational areas; • authorised and historic landfills; • proximity of populated areas, residential properties, schools, hospitals, cemeteries; and • potential for disruption to communities.
Planning	<ul style="list-style-type: none"> • Common Land; • Crown Land; • National Trust Land; • Ministry of Defence Land; and • Allocated Land and Committed Development.
Cost/schedule	<ul style="list-style-type: none"> • corridor length; and • economic viability.

5.3.10 From the above, it is noted that the key elements which Esso specifically sought to avoid included:

- Major infrastructure, such as motorways, roads and railways;
- Historic landfill sites;
- Major urban areas;
- Land used by the community, including recreational areas;
- Proximity of populated areas, residential properties (etc.)
- Potential for disruption to communities.

5.3.11 The Secretary of State concluded that there was merit in Esso’s approach, and consequently confirmed the powers of compulsory acquisition over the Order land for the Southampton to London Pipeline DCO. AQUIND’s approach is clearly contrary to this approach and has not in PCC’s view been justified. To that end the Applicant cannot meet the requisite legal tests for justification of the exercise and confirmation of compulsory acquisition powers.

6.0 Post-Hearing Requests and Matters Outstanding

6.1 ISH1 – Draft DCO

6.1.1 There were a number of issues raised during Issue Specific Hearing 1 in relation to the provisions of the draft DCO version APP-019/ Doc ref 3.1 dated 30 November 2020 which PCC has been asked by the ExA to address more fully in writing at this deadline (i.e. Deadline 6) or which PCC considers requires

further clarification and information as well as other more general issues in respect of the provisions of any future DCO.

- 6.1.2 The first matter relates to the issue of the protection of Council owned trees in the highway and whether an agreement under s278 of the Highways Act 1980 would address the concerns expressed both by PCC and Hampshire County Council.
- 6.1.3 PCC are of the view that the current provisions and requirements of the dDCO fail to adequately deal with the necessity of access, both temporary and permanent, to the highway. It is recommended that provision is made to require the Applicant to enter into a s278 agreement for any access to the highway and to secure the relevant bonds to ensure that any works are completed to the relevant standard and/or restored to the previous condition.
- 6.1.4 With regard to the LHAs powers in respect of trees in the highway s.96 of the Highway Act 1980 (the HA 1980) provides powers to *“(1)... plant trees and shrubs and lay out grass verges, and may erect and maintain guards or fences and otherwise do anything expedient for the maintenance or protection of trees, shrubs and grass verges planted or laid out, whether or not by them, in such a highway”*.
- 6.1.5 In addition it was held in R (Dillner) v Sheffield City Council and Amey Hallam Highways Ltd. [2016] EWHC 945 (Admin), that the felling of trees in the highway does not require planning permission as the felling of trees generally did not amount to development within s.55 of the Town and Country Planning Act 1990. In certain circumstances however such an act could amount to pursuance of the duty of the highway authority to maintain the highway, keep it in repair, and free of sources of danger or causes of obstruction" [para.170] .
- 6.1.6 s278 allows highway authorities to enter into agreements with developers for the execution of highway works at the developer's expense. The preconditions for an agreement under this section are, first, that the highway authority should be satisfied that it will be of benefit to the public to enter into an agreement for the execution of works by the authority, or for the incorporation of particular modifications, additions or features into such works, or for the execution of these works at a particular time or in a particular manner, on terms that the other party to the agreement pays the whole or a determined part of the cost of the works. The other pre-condition is that the works must be such that the authority are authorised or may be authorised to execute—i.e. they must fall within the highway authority's powers of road building, improvement or maintenance.
- 6.1.7 The issue therefore is whether a s.278 agreement between the undertakers can lawfully incorporate provisions which would ensure the protection of such trees and/or allow for the lopping of the trees subject to the LHA's approval. Given the powers under s96 such acts would appear to meet the test under s278 that the subject matter be "works which the authority are or may be authorised to execute" (s278(1)).

- 6.1.8 The second relates to how and whether the proposed DCO might address the issues related to the options and/or breadth of the Rochdale Envelope the Applicant is seeking and how this might be resolved through an option approval process involving the Secretary of State.
- 6.1.9 The ExA asked at Q3.31 for PCC and Aquind to explain their current positions on 'Thanet' matters which PCC understood to refer to an earlier suggestion that requirements akin to requirement 12 and/or Article 19 of the Thanet DCO (i.e. the Vattenfall Thanet Extension Offshore Wind Farm DCO) might address concerns about lack of determination of HDD trenching as an option at various stages along the route (Req 12) and lack of clarity as to the precise route of the cabling at various points.
- 6.1.10 Both Aquind and PCC have concluded that this would not be a suitable response to these options. PCC's view is based upon the difficulty of drafting a suitably worded provision in the circumstances compared with the relatively straightforward options in respect of the Thanet DCO as well as PCC's concerns with regard to CA powers and the satisfaction of the relevant legal tests.
- 6.1.11 However PCC did make the suggestion that the exercise of compulsory acquisition powers might be made contingent on approval of a detailed-design informed route by the Secretary of State based upon Art 17 of the Thanet DCO. This was made contingent on the Thanet Applicant securing an interest in the seabed and also required certain land to be offered back following the exercise of acquisition rights
- 6.1.12 The principal issue presented by the Applicant is that it does not have sufficient information available as a consequence of the level of investigations it has chosen to carry out and therefore it is unable to conclude which of the various route and HDD options is the optimal one.
- 6.1.13 The Thanet DCO did not of course receive the support of the ExA nor the Secretary of State and whilst PCC is willing to assist the examination as far as reasonably possible to identify potential solutions, it appears to PCC that whilst this device might give more certainty it does not overcome the more fundamental concerns.
- 6.1.14 In addition, PCC is not clear how such a provision could effectively be framed albeit it would be happy of course to comment upon any draft article that sought to reflect this provision should the ExA ask it of the Applicant.
- 6.1.15 With regard to the scope of the powers generally PCC welcomes the addition of reference to its Permit Scheme under Art 9A as well as the Applicant's attempts to narrow to some extent the Order Limits and the extent of proposed rights to interfere with the allotment land, however as noted above, the extent of the powers sought including the breadth of the Order limits are clearly still too wide and wide ranging and it considers that the Permit Scheme should not be constrained in the way proposed .

6.2 CA 1 and 2 Compulsory Acquisition

- 6.2.1 The ExA asked for PCC's views on the importance and relevance of Human Rights impacts in relation to compulsory acquisition powers and temporary possession and use.
- 6.2.2 As readily agreed by Mr Cunliffe on behalf of PCC at the CAH1 hearing it is clearly necessary for the ExA and the Secretary of State to take into account the impacts of the proposed DCO on any human rights as provided by the European Convention of Human Rights and as incorporated into UK law by the Human Rights Act 1998.
- 6.2.3 The relevant Human Rights which are engaged by the powers sought by the Applicant are as follows:
- Article 8: Respect for your private and family life, home and correspondence
 - Article 1 of Protocol 1 - Right to peaceful enjoyment of your property
- 6.2.4 The CA Guidance at para 10 confirms that *the "Secretary of State must ultimately be persuaded that the purposes for which an order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected"* and goes on to refer in particular to the above referenced rights to which regard must be had.
- 6.2.5 PCC considers that the Applicant has to date failed to demonstrate that its purposes are either legitimate or sufficient to justify the said interference nor is that interference proportionate.
- 6.2.6 This is in particular the case in respect of PCC's land said to be required for the ORS building which cannot be defined as associated development either in toto or to any extent that it relates to commercial fibre optic cables (recognised as at least 2/3 of the ORS by the Applicant in its Design and Access Statement [APP-114]). The same must also be true of the Telecommunications Building and land said to be required for that which the Applicant accepts is wholly required for the commercial FOC.
- 6.2.7 To be clear however the ECHR does not simply apply to the proposed interference through CA powers but also in respect of interference with the same rights as a consequence of the temporary use and possession powers (see Art 10, 13 and 14 of the dDCO) and also the proposed powers to carry out works outside of the Order Limits on unidentified streets which may either be temporary or permanent (see Art 10).
- 6.2.8 To that end the exercise of these proposed rights would not be proportionate under the HRA 1998.

- 6.2.9 PCC had omitted in its CAH1 response to address the ExA's Q 8.2 which asks the LHAs as well as the Applicant to explain what consents would be required to install and maintain the cable in the highway if DCO powers were not available to undertake these operations.
- 6.2.10 PCC as LHA notes first the question relates solely to the installing the cable in the highway and thereafter maintaining it and will address that part of the scheme however for completeness PCC goes on to address the wider proposed development as well.
- 6.2.11 As noted by the Applicant in its response at section 8 of its_ Transcript of Oral Submissions for Compulsory Acquisition Hearing 1 (Doc ref 7.9.18) has an interconnector licence granted pursuant to section 6(1)(e) of the Electricity Act 1989 ('the EA 1989').
- 6.2.12 As such, it is able to exercise wide powers under Sch 4 to EA 1989 which include in particular the power to carry out street works (sch 4 para 1) namely—
“(1)(a)... installing under, over, in, on, along or across any street and from time to time inspecting, maintaining, adjusting, repairing, altering, replacing or removing—
(i) any electric lines or electrical plant; and
(ii) any structures for housing or covering any such lines or plant; and
(b) any works requisite for or incidental to the purposes of any works falling within paragraph (a) above, including for those purposes—
(i) opening or breaking up any street or any sewers, drains or tunnels within or under any street;
(ii) tunnelling or boring under any street; and
(iii) removing or using all earth and materials in or under any street;
but nothing in this sub-paragraph shall empower a licence holder to lay down or place any electric line or electrical plant into, through or against any building, or in any land not dedicated to the public use.”
- 6.2.13 In addition Sch 4 EA1989 para 3 allows an interconnector licence holder to make *“temporary or permanent alteration of ... (a) any electric line or electrical plant under the control of another licence holder; b) any gas pipe operated by a gas transporter;*
(c) any relevant pipe (within the meaning of [section 159 of the Water Resources Act 1991 or section 158 of the Water Industry Act 1991... (d) any electronic communications apparatus used for the purposes of an electronic communications code network which is operated by a person to whom the [electronic communications code]7 applies; or
(e) any system apparatus (within the meaning of Part II of the Road Traffic (Driver Licensing and Information Systems) Act 1989) of an operator of a driver information system who is licensed under Part II of that Act.”
- 6.2.14 With regard to laying electricity cables over or within land as opposed to a highway or street para 6 Sch4 EA 1989 sets out the relevant powers a licence holder has in respect of the acquisition of wayleaves.

- 6.2.15 Para 9 Sch 4 EA 1989 also confers power on a licence holder to fell and lop *"any tree [which] is or will be in such close proximity to an electric line or electrical plant which is kept installed or is being or is to be installed by a licence holder"*.¹
- 6.2.16 In respect of the Town and Country Planning Act 1990 ('the 1990 Act') regime by virtue of s262, licence holders under the EA 1989 are deemed to be statutory undertakers and their undertakings to be statutory undertakings, for various specific sections of the 1990 Act and other legislation.
- 6.2.17 Licence holders also have permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 (SI 2015/596) (the GPDO) Class B "*electricity undertakings*" Part 15 "*Power related development*" Sch.2 These rights permit development for the purposes of the licence holder's undertaking, including laying pipes and cables, installing service lines transforming or switching stations, and the erection or alteration of buildings on operational land.
- 6.2.18 As noted by the Applicant Para B.1(a)(ii) acts to limit the size chambers for housing apparatus in relation to such permitted to 29 cubic metres in capacity.
- 6.2.19 With specific relevance to the power to lay electricity cables within the street, Sch 4 of the EA 1989 makes reference to the New Roads and Street Works Act 1991 (NRSWA) under which as an interconnector licence holder the Applicant qualifies as an undertaker and therefore has a right to carry out relevant works as set out above.
- 6.2.20 NRSWA is supported by relevant Regulations and Codes of Practice and provides a legislative framework for the procedure whereby undertakers may exercise their powers to carry out street works and works for road purposes. The aim is to balance the statutory rights and duties of highway authorities to use its best endeavours to co-ordinate works with the undertakers' right to carry out works and with the right of road users to expect the minimum disruption from works. The Secretary of State for Transport has approved this code under the powers to approve or issue codes of practice in the following sections of NRSWA:
- Section 56(4) – the power of authorities to give directions as to the timing of street works
 - Section 56A(8) – the power of authorities to give directions as to the placing of apparatus
 - Section 59(3) – the duty of street authorities to co-ordinate works
 - Section 60(2) – the duty of undertakers to co-operate with street authorities and with other undertakers
- 6.2.21 A Permit Scheme brought about through the provisions of the Traffic Management Act 2004 (TMA) and are regulated in England by the Traffic

¹ Note also Sch 3 to EA 1989 which sets out enabling provisions subject to the Secretary of State's authority to "purchase compulsorily any land required for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, the compulsory acquisition of land by a licence holder".

Management Permit Scheme (England) Regulations 2007 acts to disapply certain provisions of NRSWA and in effect replaces the NRSWA notice system². The NRSWA notice system requires undertakers to give notice to the relevant authority where as a Permit requires undertakers to make specific applications for a permit to carry out street works including here the right to install or maintain the cable in the highway.

- 6.2.22 In answer to the ExAs question therefore if DCO powers were not available to Aquind in respect of works to install and maintain the cable in the highway, it would as an interconnector licence holder and hence statutory undertaker, be entitled to carry out all electricity cable installation works within PCC's streets subject to seeking a permit principally as to the timing of such works and any conditions on such works imposed under the Permit Scheme.
- 6.2.23 With regard to works to lay electric cables outside of the highway or "*land not dedicated to the public use*" as well as through a building, Aquind would be able to rely upon its rights as an interconnector licence holder to acquire wayleaves.
- 6.2.24 The Applicant in its response to ExAQ8.1 and 8.2 identifies certain works which dDCO Art 11 seeks to provide power to carry out but which it assert would not be available but for the DCO. These powers are the execution and maintenance of any works to provide hard and soft landscaping; the re-lining and placement of road markings; removal and installation of temporary and permanent signage; and removal, replacement and relocation of any street furniture.
- 6.2.25 In addition the Applicant refers to the need for the powers under Art 10 of the dDCO which seek to grant the undertaker the right to alter the layout of any street or junction with such a street (and carry out works ancillary to such alterations) for the purpose of constructing and maintaining the authorised development.
- 6.2.26 The Applicant nevertheless acknowledges at para 8.15 of its response that there are sufficient powers available to allow provide the installation and maintenance of the cables the highway but for the Joint Bays which are currently intended to have a capacity of 33 cubic metres as opposed to the 29 cubic metres in capacity permitted development limit.
- 6.2.27 The Applicant also seeks to pray in aid for the justification for the DCO powers those that do not relate to installation and maintenance but to other powers under Pt 3 of the dDCO such as TROs. These powers are subject to the approval of the LHA albeit by means of a bespoke approval process including provision for deemed approval.
- 6.2.28 PCC consider that rather than provide support for the justification for the grant of compulsory acquisition powers, the conclusion must be that there are clear alternatives to such powers and that there is no justification (let alone compelling case) to grant them to the Applicant.

² I.e. sections 54 (advance notice of certain works); 55 (notice of starting date of works); 56 (power to give directions as to timing of street works); 57 (notice of emergency works); and 66 (avoidance of unnecessary delay or obstruction) – Reg 36 of the 2007 Regulations

6.2.29 PCC would in addition point out that the further powers sought in terms of temporary use and/or possession together with the rights to carry out works to and alter permanently unidentified streets outside the Order limits are also excessive and unjustified.

6.3 ISH 2 Traffic and Air Quality

6.3.1 PCC noted AQUIND's assertion in the context of the compulsory acquisition hearings that PCC had not stated that the traffic impacts from the DCO proposal amounted to 'severe' impacts.

6.3.2 It appears to PCC that this comment is meant to be a reference to the test in the NPPF at para [109] which states that "*development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe*". The NPPF makes it clear though at para 5 that it "*does not contain specific policies for nationally significant infrastructure projects*" but that its policies may be relevant in reaching decisions under the PA 08.

6.3.3 To the extent therefore that the ExA and the Secretary of State consider the guidance in the NPPF important and relevant in accordance with s.104 or s105 of the PA 08 it is a moot point that the greatest impact in traffic terms from the proposed development is during the construction of the scheme not once it is operational.

6.3.4 To that end, PCC has made it plain most recently in oral submissions [see Transcript for ISH2 REP5-088] that despite the absence of sufficient details at this stage it is clear that there will be significant impacts in traffic terms during the construction of the development.

6.3.5 In addition, PCC as LHA is concerned separately about the safety implications of the scheme as discussed above.

7.0 Post-Hearing Transcripts and Notes

7.1 In addition to the above comments please find appended (**Appendix 1**) to this letter transcripts or summary notes from each of the hearing attend by PCC to be read in addition to the transcripts provided at Deadline 5.

7.2 The CV's of all those that represented PCC at those hearings is appended at **Appendix 2**.

8.0 Statement of Common Ground (SoCG)

8.1 Portsmouth City Council continues to progress the Statement of Common ground with the Applicant with ongoing exchanges of correspondence outside the examination process and meetings on specific technical areas. There are, and it is likely will remain areas where there are differences between the

Applicant and the City Council, but the Applicant has started to provide clarifications and amendments in other areas which will allow some limited common ground to be agreed.

- 8.2 Appended to this letter (**Appendix 3**) is a draft SoCG detailing the current position as Portsmouth City Council considers to it to be and, following discussion with the Applicant they intend to similarly submit a version with their position. The City Council continue to work with the Applicant to progress common ground and resolve an inconsistency between the two versions submitted at this deadline.

9.0 Summary of PCC'S Position

- 9.1 PCC recognises that it is in the nature of a DCO proposal that Applicants will more often than not seek to use to their advantage as much as possible the PA 08 process and the potential to seek quite wide ranging powers ordinarily available to local authorities and statutory bodies as well as CA powers. PCC also recognises that it is in the nature of the examination of such DCOs that changes will be made to the Order itself and the details of the powers sought some of which will be quite considerable. It is nevertheless notable in the instance of this Applicant's approach, given the nature of the proposed development with its specific features i.e. linear and largely subsoil and/or directly affecting the highway within a constricted urban area, when the impact from construction is clearly paramount the Applicant has rather than carry out more detailed assessment prior to making the application instead decided to use the DCO process to try to acquire considerable rights and control over other people's land and interests and leave quite fundamental elements of the development, its construction and indeed final route of the scheme until later. In addition, it seeks then to control the decision making process.
- 9.2 Whilst the extent of the Order limits has been pared back in places and there has been refinement of the rights sought and duration in particular with regard to the Eastney Allotments and Plot 10-14, it remains the case that the temporary right is in respect of a very large area (still some 30,000m²) when the evidence is that the cable route will be of course far narrower. The DCO contains no limits of deviation as with other schemes involving tunnelling (e.g. Thames Tideway Tunnel DCO) this is it seems because it cannot commit to such limits. This is a failing.
- 9.3 PCC understands that the Applicant may suggest that there are suitable checks and balances available within the dDCO through the involvement of the relevant planning and highways authorities in the final approval procedure provided in the Order and therefore PCC's concerns about the breadth of the Order limits should not arise. That involvement however is curtailed and circumscribed – for example Art 9A as currently drafted means that rather than submit the undertaker to the Permit Scheme seeks to dictate the conditions to be imposed on any permit and to allow for extensive and exclusive provisional authorisation over a long period. This thereby clearly limits the effect of the Permit Scheme which is to protect road users as well

as the rights of other undertakers and ensure a coordinated approach to works skewing it suit the interests of the Aquind DCO undertaker. Not only this but it curtails the performance of the LHA's duties to the network.

- 9.4 Thereafter it nevertheless remains the case that the onus of enforcing the requirements and policing any breaches of the terms of the Order falls to those authorities.
- 9.5 Overall in light of the absence of greater clarity and evidence at this stage for a scheme such as this, it is PCC's view that this is an unacceptable approach under the PA 08. It is not an approach that would be tolerated of an acquiring authority or promoter of Orders under other regimes.
- 9.6 Another aspect of this application which PCC is highly concerned about and which the Applicant has to date failed to provide clear justification for is that of the telecommunications development which it proposes and AQUIND's insistence that this is somehow Associated Development (AD) under the PA 08.
- 9.7 To be clear, this telecommunications development does not meet any of the tests set out in the AD Guidance or using the language of the 1990 Act is clearly not ancillary to the electricity cable scheme but is a separate scheme in itself. Aquind has seemingly sought to 'hide' this additional development in its description of the principal development by including all the FOC cabling (i.e. the minimal FOC which Aquind argues is for monitoring of the electric cables together with the separate commercial FOC) notably within the definition of "*onshore HVDC cable*" in Art 2 of the dDCO when it is clear that an FOC is clearly **not** an HVDC cable (there is no definition of FOC). This approach i.e. trying to make something what it is not or avoid drawing attention to its difference in PCC's view speaks for itself.
- 9.8 The fundamental issue remains the fact that whilst the commercial FOC cables can 'fit' within the capacity Aquind say is available within the electric cabling as proposed, the infrastructure necessary for the operation of the commercial FOC is **only** necessary for that purpose i.e. the ORS (of which even Aquind accepts is largely for the commercial FOC use) and the Telecommunications buildings in Hampshire which are wholly for the FOC.
- 9.9 Aquind have still not to date provided any example of another interconnector project that requires an ORS and there are many that are as long as this proposal. Nevertheless the evidence to the ExA was that this facility would somehow still be required in respect of the minimal FOC in the event that it is accepted that the commercial FOC is indeed AD, given the length of this interconnector (the same cannot clearly be said of the Telecommunications buildings in Hampshire).
- 9.10 PCC again asks the ExA to challenge and explore this matter but submits that the logic of the evidence or absence thereof to date must lead to the conclusion that the commercial FOC; the ORS as well as the

Telecommunications building cannot be AD and should not be approved as part of this DCO scheme and must be removed.

- 9.11 The consequence of removing the buildings (i.e. the ORS and the Telecommunications buildings) alone would quite evidently lead to the need for a material amendment to the DCO and the attendant legal procedures required to address such a change. If this interconnector scheme is to proceed at all that change will lead to inevitable and likely lengthy delay.
- 9.12 PCC has also raised the issue of the downgraded status of AQUIND's project in the EU. The Applicant notably suggested that its PCI status within the TEN-E Regulations ³was a 'nice to have' and nothing more. PCC considers this a surprising submission given the importance given to the recognition as PCI by Aquind in the past and by other PCI's but it is at least acknowledged by Aquind that the TEN-E Regulations no longer apply. The ExA or the Planning Inspectorate will no doubt act to remove that information from the project details on the website.
- 9.13 The Applicant following the submissions and evidence provided during the hearing of CAH1 is to produce more information on the progress of the consents and licences in France required for the French part of the project. It has also said it will provide details of the exemptions Aquind is seeking in order to operate in France and by reference no doubt to *Regulation No 714/2009 on conditions for access to the network for cross-border exchanges in electricity*. PCC will therefore reserve its position as to what this shows however again PCC urges the ExA to seek clarity as to the progress of the French consents as well as the case being presented by Aquind to justify the scheme there given their self-evident significance to the Aquind interconnector project, let alone any justification for the grant of CA powers based upon impediments to the future project.

10.0 Concluding comments

- 10.1 We reserve the right to expand on these comments and to make any further comments following deadline 6 submissions at the appropriate time. We trust that the above and enclosed submissions meet the ExA's requirements.
- 10.2 Should you require any additional information or clarification, please do not hesitate to contact me.

Yours sincerely,



³ I.e. Regulation (EU) No 347/2013 - guidelines for trans-European energy infrastructure known as the TEN-E Regulations

Ian Maguire
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Cc

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Tristan Samuels, Director of Regeneration, Portsmouth City Council