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Via email to
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Our Ref: 20210125
Date: 25/01/21

FAO the Planning Inspectorate

Dear Sirs,

RE: Deadline 7 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's) requests for deadline 7 of the examination, please find responses on behalf of Portsmouth City Council (PCC or 'the council') in summary form set out below:

1. Comments on Deadline 6 and 6a

- 1.1 Some matters provided in response to deadline 6 and 6a have been overtaken by ongoing discussions between PCC and the applicant. The Statement of Common Ground will incorporate these where appropriate as it is finalised. Consequently the comments provided below represent the ongoing concerns of PCC or matters of significance that PCC would ask the ExA to take into account in addition to comments provided at previous deadlines.

Further comments in respect of Highways, Transport and Traffic issues

REP6 – 011 and 012 Revised Access & Rights of Way Plans

- 1.2 These plans are provided in both low and high resolution although do not include all of access points necessary to implement the works, for example the access required to Eastern Road immediately to the north of the A27 interchange required to access the Farlington Playing Field is not identified. The updated FCTMP (REP6-031 para 5.2.1.7) suggests that all accesses to Eastern Road will be left - in left out, although these drawings are not

sufficiently detailed to show the intended access arrangements which will need to be agreed through the CTMPs for each section. PCC considers that those details will need to be supported with independent safety audits although PCC would note the following where it does not seem possible to create accesses:

- AC/7/a given the now advised position of the joint bays (REP6-070) whilst retaining scope for a vehicle to turn on the site
- AC/8/b given the inadequate distance to merge to the outside land and so turn via Airport Service Road – requiring an agreed routing strategy for all movements
- AC/9/a given the absence of opportunity further to the south to turn – requiring an agreed routing strategy for all movements
- AC/9/d given the absence of opportunity further to the south to turn – requiring an agreed routing strategy for all movements

REP6 – 030 and 031 Revised Framework Traffic Management Strategy (FTMS)

- 1.3 It is explained at para 1.1.1.3 that the FTMS is informed by the predicted impacts established through the TA (APP-137) and STA (REP1-142) and at para 1.1.1.4 responds to mitigate those essentially through works programming, public information and a signing strategy. Whilst the council agrees that there is little benefit of further traffic modelling, recognising the limitations of the Solent Region Transport Model (SRTM) - for example it being a strategic model not including all of the minor roads which traffic may divert via - the impacts on these roads do need to be assessed and if necessary mitigated although this is not addressed nor provided for in either the FTMS or FCTMP.
- 1.4 Para 2.4.1.2 explains the need for detailed design of works and traffic management measures to be submitted to the LHA prior to the commencement of works. PCC suggest that this should additionally detail the requirement for LHA approval of the same prior to the commencement of work and in the case of works to form a new access to the highway the requirement for a S278 agreement.
- 1.5 Para 2.5.3.2 explains that vehicular access for vulnerable residents or those with mobility impairments will be maintained at all times although the term 'vulnerable' is not defined and this should be clarified to include those of school age.
- 1.6 Para 2.5.3.3 explains that traffic management will only be required to be in place at individual side roads for 1-2 weeks due to the way in which construction will progress in sections. Given the explanation that progress in carriageways will be at a minimum rate of 12m / day it is difficult to understand why this needs to be more than 1-2 days

- 1.7 Para 2.6.1.1 assumes that permit applications will be approved in 10 days on the basis that detailed designs and traffic management measures have been approved in advance. Despite the intention to seek provisional advanced notifications the issue of such permits irrespective of provisional advanced notice cannot be assumed where that would result in conflict with other committed works either in the same area or on diversionary routes. This needs to be recognised in the DCO provisions and in particular that it cannot be assumed that a permit securing the roadspace can necessarily be made available at the time of application.
- 1.8 Para 2.6.1.2 explains the information required to be submitted to the LHA as a part of a section specific CTMP, The need for a schedule of condition of any part of the highway affected by the works is required although the format and approach is not detailed. In line with current practice for such roadworks PCC suggest that this should include as a minimum a photographic record and scanner survey of the affected carriageway to be repeated upon completion of the reinstatement which will only be accepted once such surveys find the carriageway to be in an equivalent or better condition
- 1.9 Section 2.7.2 provides for the removal of all traffic management where that would conflict with increased traffic on days on football matches and this approach is welcomed.
- 1.10 Section 2.9 explains the approach to the signing strategy (reiterated in 2.13.1.1 in respect of the Responsive Traffic Management Protocol) which will seek to direct drivers to the most appropriate routes given the anticipated disruption. Those alternative routes are different to those predicted to be used by some drivers in the STRM and if effective will modify the traffic flows predicted in the STRM. It is not clear if or how those effects have been pick up and used to refine traffic level assumptions in the broader analysis of impact.
- 1.11 Para 2.14.1.1. introduces a 'where possible' caveat to the commitment to actively manage access by emergency vehicles. The facilitation of the timely passing of the work by emergency service vehicles is a fundamental requirement and this commitment should be secured in all eventualities.
- 1.12 Section 7.2 considers the programme and construction on Farlington Ave between Portsdown Hill Road and Seaview Road although has not been updated to reflect the now intended location of the joint bays (REP6-070) in the carriageway – contrary to the commitment made by the Applicant at ISH2. The location of these joint bays is such that they may practically require a road closure or if implemented independently seemingly cannot be delivered within the programme period. The effects of such a road closure in this location have not been considered in the context of diverted traffic movements nor is it clear if or how those effects have been picked up and used to refine traffic level assumptions in the broader analysis of impact. PCC consider that these are significant omissions from the Applicant's assessment and need to be addressed or examined and tested further in their absence.

- 1.13 Para 8.1.1.7 has been amended to remove the option of 24hr working on Fitzherbert Road which will extend the period of disruption caused by this work. Given the commercial nature of this environment the option for 24hr working to minimise disruption should be maintained.

REP6 – 032 and 033 Revised Framework Construction Traffic Management Plan (FCTMP)

- 1.14 In common with the FTMS the FCTMP does not make provision for mitigation works beyond programming, signing and communications and does not consider the need for mitigation on routes which do not feature in the SRTM.
- 1.15 Para 2.7.1.1 identifies sensitive receptors for which mitigations measures are to be developed in the detailed section CTMPS. These should include routes not assessed though the STRM which may prove attractive diversion routes for drivers
- 1.16 Para 5.2.1.7 explains that any temporary access created to Eastern Road will be required to operate on a left in left out basis. This requirement should apply to all access used by construction vehicles accessing Eastern Road except where they do so via a traffic signal controlled junction.
- 1.17 Para 5.2.1.8 require LHA approval of the final design of all highway accesses. This should also reference the need for S278 agreements to be in place prior to the formation of any such access, include the provision of turning spaces such that vehicles may enter and leave the highway in a forward gear and approach to reinstatement upon completion of the installation
- 1.18 Para 6.1.1.3 explains that the FCTMP only provides an overview of the interventions required and that individual section CTMPs will provide detailed design and safety audit. Whilst this is welcomed the feasibility of the proposals should be established prior to the approval of the DCO or alternative proposals identified in the event that proposed interventions when designed in detail cannot be approved.
- 1.19 Para 7.4.1.1 details the before and after pavement condition surveys. This is limited to a visual inspection and photographic record and, as noted above, should be expanded to require the use of scanner surveys for carriageway condition and drainage surveys where the proposed installation will cross lateral connections. PCC note that it is likely that full lane width resurfacing will be required to replicate pre condition survey findings following in carriageway trenching.

REP6-069 Applicant Response to Deadline 5 Submissions

- 1.20 In para 2.1 and 2.7 the applicant contends that the impacts of the construction on the road network have been fully assessed, although at ISH2 accepted the limitations of the SRTM, particularly with regard to the minor roads which were not included in the model. No further assessment has been undertaken with regard to the impact on those minor roads and as a consequence it is simply

not possible for the Applicant to assert that the impacts on the road network have been fully assessed.

- 1.21 The applicant has also accepted the need to produce a road safety technical note (now provided at REP6-071) to consider the road safety implications not addressed in either the Transport Assessment (APP-448) or Supplementary Transport Assessment (REP1-142). This does also not consider those roads which do not form part of the SRTM and to that degree the assessment remains incomplete. Simply adequate evidence has not been provided to allow the impacts to be understood and the DCO properly determined
- 1.22 At para 2.19 the applicant contends that the road safety technical note REP6-071 provides a full assessment of road safety implication of queuing traffic although this only actually considers those roads included in the SRTM and to that degree remains incomplete.
- 1.23 PCC must advise the ExA that that the applicant has failed to provide adequate evidence to allow the impacts to be understood and for the applicant's assertions to be accepted. In PCC's view the impact of the proposed works pursuant to the DCO cannot in effect be properly determined.

REP6-070 Joint Bay Technical Note ('JBTN')

- 1.24 The JBTN advises on the probable location of joint bays which the applicant had previously advised and confirmed in ISH2 could not be determined in advance of contractor input. Contrary to the advice given in ISH2 however a number of joint bays are proposed to be located within carriageway.
- 1.25 Within Portsmouth these are limited to:
 - a pair of Joint Bays (JB18 & JB19) proposed in Farlington Avenue. The location of these is such that they may practically require a road closure or if implemented independently and independent for the trenching work seemingly cannot be delivered within the programme period. The effects of such a road closure here have not been considered in the context of diverted traffic movements nor is it clear if or how those effects have been picked up and used to refine traffic level assumptions in the broader analysis of impact.
 - a pair of Joint Bays (JB21) in Eastern Road 70m south of the junction with Havant Road – whilst these can be accommodated using the same traffic management as would be required for the cable trenching, they will extend the period and hence disruption of the works. If implemented independently from each other and independent from the trenching work (as would be required to avoid the need for road closure), it would seem that they cannot therefore be delivered within the programme period.
- 1.26 Joint Bay 22 appears to obstruct the temporary construction access to Zetland Field. This will require relocation further to the south to allow access and turning to be achieved within the order limits or revision to those.

REP6-071 Road Safety Technical Note (RSTN)

- 1.27 The RSTN considers the road safety implications of increased congestion / queuing where that is predicted by the SRTM although critically does not reflect on the limitations of the STRM and consider those other routes which are not modelled yet may prove attractive alternative routes for drivers.
- 1.28 The RSTN considers strategic junctions on Eastern Road south of the A27, Copnor Road / Burrfields Road and the A3 / Church Street / Hope Street / Commercial Road junctions.
- 1.29 Section 2.2 considers the queue length estimates and increased queuing impacts at junctions. Generally the analysis finds that the increased predicted congestion and extended queue lengths experience will not in themselves introduce specific safety concerns although will block side roads and extend across pedestrian crossings. Where those side roads are included in the SRTM the approach to modelling reflects that congestion. However the effects of disruption to side roads not included in the SRTM has not been considered and is likely to cause significant local congestion with traffic diverting via minor roads. These effects have not been modelled nor has any mitigation been considered. This reflects the acknowledged limitations of the model and evidences the need for further intervention to mitigate impacts on routes not included within the model.
- 1.30 In the case of the A3 / Church Street / Hope Street / Commercial Road junction considered at para 2.2.8 an 'additional risk of collisions between vehicles queuing on Commercial Road with vehicles on the circulatory of the Marketway Roundabout' is found.
- 1.31 The general mitigations recommended at paras 2.2.8.2 and 2.2.8.9 are for temporary signs and markings to be provided at impacted junctions and crossings although the specific junctions where mitigation is required are not identified nor do the FTMS nor FCTMP make provision for such mitigations in the section specific CTMPs
- 1.32 Section 3 considers road safety implications on links and at para 3.3.2.1 reports proportionally very high traffic increases of up to 77% although considers the absolute increase in traffic number to be such that these will not give rise to driver frustration. PCC do not agree with that finding as on those roads which experience parking on either side where drives have to give way to each other when travelling in different directions, even very minor increases in absolute numbers of movements can lead to significant impacts. Mitigation measures should be provided for in the section specific CTMPs to discourage drivers from diverting via such routes.
- 1.33 Paras 3.3.3.12 to 3.3.3.24 identify roads where specific mitigations are found necessary. These should be reflected in the FTMS / FCTMP accordingly and provided for in the section specific CTMPs.

- 1.34 Section 4 considers the road safety implications of traffic management measures found necessary to accommodate diverted traffic and increased congestion at specific locations:
- A3 London Road between Lansdown Avenue and Bus Lane (South of the Brow);
 - Portsdown Hill Road between the Portsdown Hill Road car park access and Farlington Avenue;
 - Farlington Avenue between Portsdown Hill Road and Sea View Road;
 - Moorings Way;
 - Locksway Road / Longshore Way between Thatched House Public House and Portsmouth University playing fields; and
 - Henderson Road between Bransbury Road and Fort Cumberland Road.
- 1.35 Specific safety risks are reported at section 4.3.2. and 4.3.3 at the first two of these locations together with specific interventions proposed to mitigate those risks. PCC suggest that those measures should be reflected in the FTMS / FCTMP accordingly and provided for in the section specific CTMPs
- 1.36 Section 4.4 considers the safety implications of single lane closures on Eastern Road and generally finds that these do not raise specific highway safety concerns. Where blocking back across junctions or pedestrian crossings is predicted, signs are proposed to discourage drivers from so doing and to use both lanes to queue merging in turn. Whilst those measures should be reflected in the FTMS / FCTMP accordingly and provided for in the section specific CTMPs, additional consideration should be given for the potential for drivers to divert via minor roads not included in the SRTM and specific provision made to mitigate against the effects of that.

REP6-074 Highway Alterations to Facilitate Abnormal Load Deliveries

- 1.37 This note sets out the street furniture that is likely to need removal/alteration to facilitate the movement of Abnormal Load deliveries during the construction of the on-shore cable corridor and is relevant to two junctions in the Portsmouth City Council highway area, these are;
- Eastern Road/Fitzherbert Road - two poles will be removed and relocated to the back of the footway with new pole retention sockets placed in the existing pole locations, which will be used to permanently reinstate the posts once all abnormal deliveries have been carried out.
 - Fitzherbert Road/Sainsbury's access - two poles to be removed, however these are located on a central island and as such two new poles will need to be installed into new pole retention sockets (this will also represent the final reinstatement) and removed for each occasion an abnormal load requires access to the Sainsbury's car park.

Furthermore, a collapsible bollard located on the traffic island is also required to be removed/replaced on an ad-hoc basis.

- 1.38 Whilst the measures are acceptable, PCC note that in practice any alterations to traffic signals will need to be carried out by Colas ITS as the term contractor in Portsmouth. The extent of works will need to be agreed with and costs for works payable to Colas prior to any works being carried out as described in this document. It is envisaged that the need for such works would be established and agreed upon submission of a Provisional Advance Authorisation (PAA) under the Portsmouth Permit Scheme.

REP6-076 Portsbridge Roundabout Technical Note

- 1.39 This Technical Note assesses the changes in traffic flows through Portsbridge Roundabout during the construction of the on-shore cable corridor. The Technical Note has been produced in response to discussions held between the applicant and PCC as Highway Authority in relation to Question 3A.5 of Issue Specific Hearing 2 (Traffic, Highways and Air Quality).
- 1.40 The note details the answer as given by the applicant to the ExA question (3A.5) for ISH2 relating to Portsbridge Roundabout and goes on to compare traffic flows on the alternate routes and likely journey times on those routes that might explain the findings of the modelling undertaken to date.
- 1.41 The modelling produced by the applicant suggests that a maximum of an additional 34 vehicles would use Portsbridge Roundabout in modelling scenario 1 (DS1 - TM measures on A2030 SB) and 36 vehicles in modelling scenario 2 (DS2 - TM measures on A2030 NB). Both of these are for the PM peak period. The AM peak suggested a small flow increase in DS1 and a decrease in DS2. The stated figures are across the roundabout as a whole. Of particular concern to PCC is the existing queue that occurs in the AM peak on the A27 (WB) slip road, often extending so far as to interfere with traffic flow on the main carriageway. This queue is not replicated in the applicant's model as raised within PCC's response to Q3A.5 for ISH2. It is this fact that casts doubt over the accuracy of the local junction model produced to test capacity/queue lengths at the junction.
- 1.42 It is acknowledged that the flow changes are taken from the SRTM (strategic model) which reassigns traffic based upon the most equitable route available. Drivers are able to find the most equitable route over time through signing of routes but also trial and error. Clearly, this process has become easier through the development of more advanced satellite navigation and open-source traffic apps such as Waze; however, it is likely that when faced with an unexpected and/or temporary obstruction/delay, a driver may look to take the next nearest and/or available route. Therefore, for many drivers who would usually use Eastern Road, it will follow that, if Eastern Road is disrupted, Portsbridge Roundabout and then A3 London Road/A288 Copnor Road would be the logical diversion.

- 1.43 The Technical Note provides data for flow changes across the three routes onto/off of Portsea Island when traffic management ('TM') measures are in place on Eastern Road. As would be expected, a significant number of drivers re-distribute from Eastern Road (as shown in the below table) albeit this is considerably more noticeable in the PM peak than in the AM peak period. Given PCC's concern with regard the a27 Westbound off slip, the analysis will focus predominantly on the DS1 results.

Table 1: Change in traffic flow on road bridges to/from Portsea Island

Route	Change in Traffic Flows from the DM to the relevant DS (vehicles)			
	AM		PM	
	Northbound (DS2)	Southbound (DS1)	Northbound (DS2)	Southbound (DS1)
A2030 Eastern Road	-46	-90	-42	-238
A3 London Road south of Portsbridge Roundabout	2	37	8	80
M275 north of Junction 1	11	49	32	153

- 1.44 In DS1, the diverted trips are relatively low (compared to overall flow at A2030) and split approx. 60/40 between the M275 and Portsbridge Roundabout in the AM peak, suggesting these two routes are broadly comparable for journey time. In comparison, the PM peak sees far more vehicles divert away from A2030 Eastern Road with a larger proportion (approx. 2/3rds) favouring the M275 over Portsbridge roundabout as a means of accessing Portsea Island. This reflects other modelling undertaken that suggests greater levels of congestion at Eastern Road in the afternoon peak than in the morning - which will be exacerbated by the construction of the on-shore cable corridor.
- 1.45 The note provided then gives some example journey times for a route between A27 westbound and a point to the north of Southsea (and broadly central to the logical endpoints of both the western and eastern corridor routes). The first route uses the M275/A3/A2030 (Holbrook Road), and the second uses A3 (Via Portsbridge Roundabout)/A2047). Unsurprisingly, the motorway route is equal, or faster than, the non-motorway route in all scenarios/peak periods as the majority of the non-motorway route is along a 30mph single carriageway road
- 1.46 The applicant also makes the point that works further along the A3 (outside of the Portsmouth's Highway boundary) may influence route choice away from the A3 Portsbridge Roundabout (and beyond into Portsmouth) as a result of works that may be in place at the same time as those on A2030 Eastern Road. This is a fair assumption, however network plots showing diversion of traffic across the wider network have not been provided to corroborate this assumption.
- 1.47 Whilst the flow changes presented in the technical note across the three routes are a reasonable assumption from a strategic model, PCC would return to the temporary nature of works and the fact that many drivers when

confronted with a significant delay on their usual route will likely try the next nearest alternative in order to try and avoid the disruption which for many (presuming their destination is on the east of Portsea Island) is to travel via Portsbridge Roundabout. The fact that the strategic model is not suggesting this to be the case, indicates that the longer route (via A288 Copnor Road) is likely to suffer significant congestion over and above existing congestion in the peaks on this route; this is likely to be congestion significant enough to divert a majority of drivers onto a much longer (albeit faster) route. Clearly this will in part depend on the final destination however it is likely that when works are introduced, there will be an initial re-distribution of traffic to parallel routes, this may well then divert again upon finding this route to be equally congested. It is during this adjustment period that the biggest chance of the queues at Portsbridge Roundabout extending to an unsafe level exists.

- 1.48 For this reason PCC suggest that it is imperative that the signing and communications strategies are comprehensive enough to warn drivers well in advance of works; both in terms of time prior to works taking place but also far enough away on the network so as to give drivers a realistic choice of route/travel mode as without such direction the SRTM findings on which the ES is based are unlikely to be representative

Further Comments in respect of the Design and Access Statement

REP6-025 Design and Access Statement (DAS)

5.5 Design and Access Statement - Clean - Rev003

- 1.49 Section 4.2 of the DAS confirms that: "*The indicative design for the ORS is functional with limited opportunity to alter the aesthetics. The siting of the ORS has been selected to minimise the impact upon the area*"
That the building is 'functional' in character and appearance is neither surprising nor unexpected given its scale and industrial purpose. A case has not been articulated by the applicant, here or elsewhere in the document, that its functional appearance is in any way a deliberate aesthetic choice intended to enhance the quality of the structure in some way. Nor does that, in and of itself, lend any greater weight to the ORS' design acceptability. PCC suggest that it would be useful, constructive and, given the sensitivities of the site, good conservation practice, if the applicant could be clear about the parameters/ limitations of alterations to the aesthetic of the building.
- 1.50 Paragraph 5.5.1 3 of the DAS states that: "*Each ORS requires a small scale single storey structure located within the defined parameters.....The compound for an ORS will have a maximum size of 18 m x 35 m*". PCC maintains our previously expressed concerns that the proposed building and compound are not 'small' in their context and will be harmful to their setting and the character of the area.

- 1.51 Paragraph 5.7.4 of the DAS comments initially that there would *"no significant effects on the overall urban character area (UCA 10 – Eastney), given the size of this area"* it does however later concede that there would be *"Localised effects on landscape features, namely the sense of openness and tranquillity. The ORS buildings, surrounding compound and associated security fencing would be prominent features in an otherwise open landscape"* PCC concur with the latter part of this statement and whilst the DAS concedes this point, no convincing effort is made to provide a robust rationalization for the scale and justification for the consequential impact of the scheme in this sensitive location.
- 1.52 Paragraphs 6.3.3 and 7.5.3 of the DAS both suggest that the *"design and land take for the ORS and the Telecommunications Buildings will be minimised as much as possible"*. Whilst PCC welcomes that suggestion and considers seeing evidence and more detail regarding the maximum extent to which the height, footprint and scale of the structure can be minimized would be constructive. Nevertheless this assertion is not sufficient on its own to provide the ExA with any proper basis to conclude what the impact will be and in particular that it will be an acceptable impact.

Further comments in respect of the OOCEMP

REP6-037 OOCEMP

6.9 Onshore Outline Construction Environmental Management Plan - Tracked - Rev005

- 1.53 Para 5.2.1.1 of the OOCEMP (and elsewhere within document) show that there has been a change from 'will' (an expression a wish or intention) to 'must' (an obligation to do something). PCC supports this change but queries why 'must' is not used at 5.12.2.3: *'The appointed contractor ~~would~~ **will** **MUST** need to develop these measures so that communication methods are effective during construction.*
- 1.54 PCC note the change to Para 5.3.1.1 of the OOCEMP and support the commitment to retain highway trees wherever possible.
- 1.55 PCC welcome the change to Para 5.3.4.3 of the OOCEMP and support the applicant's undertaking to use the CAVAT compensation process¹
- 1.56 As noted above PCC believe Para 5.12.3 of the OOCEMP should be amended to provide a more directive commitment and refer rather to 'must' than 'should': ie Community Facilities 'must' be consulted ... etc. Similarly PCC suggest that alteration should be made to Para 6.9.1.1, 6.10.1.1, to state 'Works **MUST** avoid the footway ...'. PCC note that as this is a document to be approved pursuant to a 'requirement' it is recommended that it must contain legally binding language, i.e. 'must', rather than 'will'.

¹ Full article: [CAVAT \(Capital Asset Value for Amenity Trees\): valuing amenity trees as public assets \(tandfonline.com\)](https://www.tandfonline.com)

Further comments in respect of Deadline 4 submissions

REP6-067 7.9.23 Applicants Responses to Deadline 4 Submissions

1.57 With regard to Paragraph (Row 65) Fort Cumberland car park occupancy, little or no consideration appears to have been given to the fact that car-park occupancy fluctuates given that the car park serves a beach and open space area and is also heavily influenced by the weather pattern at the time. PCC retains its concerns that no mitigation is proposed for the temporary loss of parking provision and associated recreational impact and that there is a continued reliance on 'surrounding residential streets'. This is proposed without, to date an accurate understanding of the current provision and use of the car park, or the opportunity that the car park could provide should PCC wish to delineate parking to maximise the efficiency of the current space.

1.58 In respect of Row 99 - PCC is not satisfied with the applicant's response on the 18.92% net loss. This is an unacceptable loss, regardless of the distinctiveness of the habitats involved. The NPS for National Networks (December 2014) ie for national road and rail networks NSIPS includes the following guidance on biodiversity and ecological conservation (see Pages 51-55):

*"5.24 The Government's biodiversity strategy is set out in Biodiversity 2020: A Strategy for England's wildlife and ecosystem services. Its aim is to **halt overall biodiversity loss**, support healthy well-functioning ecosystems and establish coherent ecological networks, **with more and better places for nature** for the benefit of wildlife and people. This aim needs to be viewed in the context of the challenge of climate change: failure to address this challenge will result in significant impact on biodiversity.*

*5.25 As a general principle, and subject to the specific policies below, **development should avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives. The applicant may also wish to make use of biodiversity offsetting in devising compensation proposals to counteract any impacts on biodiversity which cannot be avoided or mitigated. Where significant harm cannot be avoided or mitigated, as a last resort, appropriate compensation measures should be sought.***

.....

Biodiversity within and around developments

*5.33 Development proposals potentially provide many opportunities for building in beneficial biodiversity or geological features as part of good design.⁸⁰ When considering proposals, the Secretary of State should consider **whether the applicant has maximised such opportunities in and around developments**. The Secretary of State may use requirements or planning obligations where appropriate in order to ensure that such beneficial features are delivered.*

....

5.36 Applicants should include **appropriate mitigation measures** as an integral part of their proposed development, including identifying where and how these will be secured. In particular, the applicant should demonstrate that:

- during construction, they will seek to ensure that activities will be confined to the minimum areas required for the works;
- during construction and operation, best practice will be followed to ensure that risk of disturbance or damage to species or habitats is minimised (including as a consequence of transport access arrangements);
- **habitats will, where practicable, be restored after construction works have finished;**
- **developments will be designed and landscaped to provide green corridors and minimise habitat fragmentation where reasonable;**
- opportunities will be taken to **enhance existing habitats and, where practicable, to create new habitats of value within the site landscaping proposals**, for example through techniques such as the 'greening' of existing network crossing points, the use of green bridges and the habitat improvement of the network verge.

- 1.59 PCC consider, based upon the advice of its own experts, that the parts of this NPS shown above **in bold** are clearly relevant to this DCO scheme just as they would be to any other such major project and have not been met.
- 1.60 PCC also has concluded based upon the advice of its own experts that the level of loss envisaged as a consequence of Aquind's proposal is not acceptable, as highlighted within our response at Deadline 4. We would therefore recommend that suitable mitigation is devised, or compensation if no other options are suitable.

Further Comments on Recreational Impact

REP6-061 Applicants Response to Submissions made at Open Floor Hearings

- 1.61 In REP6-061 in section 9 regarding Socio-Economics/Human health (on pages 1-7 to 1-8) the applicant state that reinstatement of grass areas for overwintering bird foraging (SWBGS) at Farlington would be carried out in October. However in the submitted Framework Management Plan for Recreational Impact [REP4-026] (FMPRI) reinstatement is scheduled for October for 8 weeks taking the work period through to the end of November. This is in direct conflict with the designation of the site as part of the Solent Waders and Brent Geese Strategy (SWBGS) which restricts work on this site between October and March, described in Chapter 16 of the ES Volume 1 (APP-131) and acknowledged within para 4.2.1.6 of the FMPRI
- 1.62 It is clear therefore that confirmation that all reinstatements will be completed prior to October in line with the Solent Waders and Brent Geese Strategy (SWBGS) is required and due amendments made to the FMPRI

- 1.63 On page 1-8 the applicant also state that:
"With the exception of the HDD-4 Compound, the playing fields would be cleared of temporary works for the duration of the Victorious camping festival. The Applicant is seeking to engage with PCC regarding impacts on the Victorious Festival and what mitigation could be applied"
The applicant does not however refer to the state of the ground that would be available for camping or the size or exact location of the HDD4 compound and its impact on the festival campsite. The applicant has inferred that the field would not be re-instated prior to the festival. PCC are in consultation with festival organiser to ascertain if layout could be revised whilst still complying with all health and safety requirements. Accurate plans of impacted areas, both areas of bare ground not suitable for camping, and size and location of HDD 4 compound are necessary for PCC and festival organisers to make a full assessment of the impact. PCC will provide this assessment to the examination when it is available but would urge the ExA to give due consideration to this omission at this late stage.

REP6-063 Applicant's Response to action points raised at ISH1, 2 and 3, and CAH 1 and 2

- 1.64 In REP6-063 para 4.1.20 to 4.1.33 the applicant state its reasons for not carrying out HDD drilling under Farlington sports, one of which is the timescales involved in HDD drilling. The applicant states in para 4.1.30 the open trenching between HDD 3 and HDD 4 across/around Farlington for a distance of approximately 600m, would take 24 days to complete. This is based on their conservative estimate of 50m per day. However in the FMPRI works are scheduled for 25 weeks in 2022 and 23 weeks in 2023. There appears to be a vast difference in timescales between that described in REP6-063 and the FMPRI which accepts that part of the 48 weeks in 2022 and 2023 are taken up with connections to the HDD. PCC is therefore concerned as to the accuracy of the assertions that connections that will take 312 days leaving 24 days for trenching works (total 48 weeks) have been properly compared to the timeframe for HDD works. PCC would therefore urge the ExA to test this evidence and in the absence of further clarity conclude the evidence lacks weight and cannot be relied upon.
- 1.65 Appended (**Appendix 1A**) to this submission PCC is also providing the 'as built' layout of the Farlington drainage system to allow the ExA to include it in the document register for their reference. This document has already been provided to the applicant and is re-provided in this format to assist the examination. Please also see **Appendix 1B** for Plan 2 which has mapped out as closely as possible the work areas as described in the Framework Management Plan for recreation and shows the potential effect of excavations on the integrity of the whole drainage system.

Further Comments in respect of compulsory acquisition

**REP6-069 7.9.25 Applicant's Responses to Deadline 5 Submissions;
REP6-021 Funding Statement;**

REP6-062 Applicant's Written Summaries of Oral Submissions at ISH1, 2 and 3, and CAH 1 and 2';
REP6-063 'Applicant's Response to action points raised as ISH1, 2, and 3, and CAH 1 and 2.

Funding

- 1.66 PCC has reviewed the 'Applicant's responses to Deadline 5 Submissions' **[REP6-069]** and the updated Funding Statement **[REP6-021]**. The applicant is incorrect in suggesting that a claimant is unable to request an advance payment on the DCO being made (paragraph 2.22-2.26 of **[REP6-069]**); an advance payment request can be made on the DCO being made, with payment to be made on notices being served. Further, the applicant has misinterpreted the CA Guidance² which states :

'Applicants should be able to demonstrate that adequate funding is likely to be available to enable the compulsory acquisition within the statutory period following the order being made, and that the resource implications of a possible acquisition resulting from a blight notice have been taken account of' (PCC underline).

- 1.67 The applicant sets out in paragraph 7.11 of the updated Funding Statement **[REP6-021]** that *'it is not anticipated any claims for blight will arise. Should any claims for blight arise in consequence of the Application the cost of meeting such claims will be met from the sources of funding described above at section 6 to this Statement.'*
- 1.68 The Applicant, it appears, seems to be considering claims that may arise for injurious affection (no land taken) under Section 10 of the Compulsory Purchase Act 1965 (during construction) or Part 1 of the Land Compensation Act (once the scheme is operational). The Guidance is concerned in respect of blight notices that can be served now, as the land within the Order limits is statutorily blighted pursuant to the provisions of the Town and Country Planning Act 1990. PCC has not undertaken an assessment to determine whether there would be any hereditaments whose owner-occupiers could potentially serve a blight notice, but it appears evident that land that could readily be identified as 'agricultural units' is included within the Order limits and the potential for a blight notice to be served by owner-occupiers should be provided for in any statement confirming the requisite funds are in place to service any blight notices.
- 1.69 Were a blight notice to arise, the updated Funding Statement **[REP6-021]** provides no assurance that the required funds are available at the time they are needed, which in the case of a blight notice, is the point the DCO application was made.

2

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/236454/Planning_Act_2008 - Guidance related to procedures for the compulsory acquisition of land.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/236454/Planning_Act_2008_-_Guidance_related_to_procedures_for_the_compulsory_acquisition_of_land.pdf)

- 1.70 The Funding Statement **[REP6-021]** provides no certainty on when funds will become available, and further, the sole stakeholder of the Applicant is an entity that is based in Luxembourg. This underlines the jeopardy that those affected by the project face, whereby land is sterilised for an extended period of time, with no reasonable expectation of compensation being paid when required. PCC considers it is perhaps for this reason that the applicant has resisted any proactive attempts to compensate those with subsoil interests in advance of the Application being submitted, and why the Applicant refuses to align its approach to compensating such owners as per equivalent (or larger) infrastructure projects.
- 1.71 PCC as set out before requests that a bond or security is put in place to ensure that funds for the compulsory acquisition powers being sought by the applicant are available and are secured. PCC notes that the ExA has requested responses to the Examining Authority's Further Written Questions (ExQ2) **[PD-031]**, which raises potential options within the dDCO in respect securing the funds are available to compensate for compulsory acquisition of land and interests sought as well as temporary possession, (question CA2.3.13) and PCC has responded separately to the ExA's question.

Compulsory acquisition of subsoil

- 1.72 PCC is disappointed that the applicant is continuing to pursue the negative approach to Affected Persons in respect of the provision of compensation (paragraph 2.33-2.25 'Applicant's responses to Deadline 5 Submissions' **[REP6-069]**). The Applicant is reminded that the CA Guidance sets out (paragraph 25) that:

'Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail. Where proposals would entail the compulsory acquisition of many separate plots of land (such as for long, linear schemes) it may not always be practicable to acquire by agreement each plot of land.' (PCC underline).'

- 1.73 The applicant asserted at the Compulsory Acquisition Hearing 2, and which is reflected in the 'Applicant's Written Summaries of Oral Submissions at ISH1, 2 and 3, and CAH 1 and 2' **[REP6-062]** that;

'It is not practicable to negotiate with all of the landowners of highway sub-soil and in the rare instances where it is necessary to go beneath the plane of the highway, compensation is available' (page 85).

- 1.74 PCC disagrees with this and reminds the applicant and the ExA that it has all the details of subsoil owners within the Book of Reference and that the applicant has relied upon HS2, Crossrail and Channel Tunnel Rail Link as precedents for their approach to subsoil land acquisition. The promoters of those schemes, however as well as the applicants for the Southampton to

London Pipeline DCO 2020, did not find it 'impracticable' to negotiate with affected landowners of subsoil. On the contrary, a proactive approach to provide an upfront figure to avoid landowners having to instruct a surveyor to negotiate a very low level of compensation was adopted by HS2, Crossrail and the Channel Tunnel Rail Link. The applicant is well aware of this but has maintained its contrary position based upon an unsubstantiated plea of it being more difficult than the same exercise across a far less complex series of interests than other developers who have clearly seen benefit in their approach. Whilst the proof and extent of the resources of the applicant are still opaque PCC would point out and ask the ExA to note that it cannot be beyond the resources of the Applicant to write to all such interests in the Book of Reference and offer equivalent compensation as these other projects provided.

- 1.75 PCC also requests that detail is provided to support the assertion by the applicant that intrusion into the subsoil will be 'rare.'
- 1.76 Having reviewed the Highway Subsoil Acquisition Position Statement [REP1-131] the applicant appears to be relying on the Supreme Court's judgment in *London Borough of Southwark and another v Transport for London*³ and in particular the SC's reference to the 'zone of ordinary use' to identify the vertical extent of the highway
- 1.77 The guidance provided in the Encyclopaedia of Highway Law and Practice [2-430.3] under s.263 of the Highways Act 1980 states as follows:
"It is the vertical extent of the interest of the highway authority which appears to be the most uncertain aspect of the legal interest held by the highway authority. Only that section of the highway (vertically) will vest in the highway authority as may be necessary to enable them to carry out their duties of maintenance and to enable the public to pass and repass. As was said by Lord Herschell in Tunbridge Wells Corporation v. Baird [1896] A.C. 434, at p.442, "the vesting of the streets vests in the urban authority such property and such property only as is necessary for the control, protection and maintenance of the street as a highway for public use". To this should be added the need to accommodate the apparatus of statutory undertakers below (and above) the surface: Wandsworth Board of Works v United Telephone Co. (1884) 13 Q.B.D. 904. As Denning LJ (as he then was) said, the depth below the surface that vests in the authority may be said to be "the top two spits" (Tithe Redemption Commission v. Runcorn Urban District Council [1954] 2 W.L.R. 518). See also Coverdale v. Charlton (1878) 4 Q.B.D. 104; Schweder v Worthing Gas Light and Coke Co. (No. 2) [1913] 1 Ch. 118; Battersea Vestry v County of London & Brush Provincial Electric Lighting Company [1899] 1 Ch. 474; London Borough of Southwark v Transport for London [2018] UKSC 63. The physical depth of the interest of the highway authority may also differ according to whether the way is a made up carriageway or an unmade footpath—the depth of the highway authority's interest in the latter case being governed perhaps by the depth required to

³ [2020] A.C. 914

maintain a relatively level path: see Sussex Investments Ltd v Cornell, The Times, 29 July 1993.

- 1.78 The Highways Encyclopedia goes on to highlight the passage thereafter of the SC's judgment in LB Southwark and the words of Lord Briggs at [10]:

"It is common ground that the zone of ordinary use is a flexible concept, the application of which may lead to different depths of subsoil and heights of airspace being vested in a highway authority, both as between different highways and even, over time, as affects a particular highway, according to differences or changes in the nature and intensity of its public use. A simple footpath or bridleway might only require shallow foundations, and airspace of up to about ten feet, to accommodate someone riding a horse. By contrast a busy London street might require deep foundations to support intensive use, and airspace sufficient to accommodate double-decker buses, and even the overhead electric power cables needed, in the past, by trolley buses and, now, by urban trams."

- 1.79 This is however not a subjective matter but a matter of law.
- 1.80 The applicant nevertheless seeks to apply its own interpretation as to what is or is not highway in any given instance.
- 1.81 In the circumstances it is clear that there needs to be explicit identification or means of identification and agreement with PCC as relevant highway authority as to the extent of the 'zone of ordinary use' to ensure that it can be readily identified where works are to be carried out in the 'zone of ordinary use' or subsoil.
- 1.82 The Statement of Reasons [APP-020] (paragraphs 7.5.1-7.5.2) identifies highway land as being *'The surface of a highway and the first metre or so required to maintain it.'* That is clearly insufficient properly to identify the extent of the highway nor does it reflect the law.
- 1.83 There are a number of existing services in PCC's highway within the Order limits, and based upon PCC's experience as highway authority it is considered highly likely that intrusion into subsoil below the highway/zone of ordinary use will occur in order to undertake works. If contrary to that conclusion, it is suggested that intrusion into the subsoil will not occur or occur infrequently and there is even less justification for the applicant's resistance to paying compensation in advance to subsoil owner.

Fibre optic cable as Associated Development ('AD')

- 1.84 PCC has been requested to respond to the ExA's specific question (DCO2.5.1) of the Examining Authority's Further Written Questions (ExQ2) [PD-031] relating to the interpretation that the ExA is minded to make that development comprising the use of the excess or 'spare' FOCs as well as the operational development required to allow for its use for commercial telecoms, rather than amounting to AD is to be treated as part of the 'proposed

development.’ PCC has responded separately to this question in legal submissions which conclude that this would as a matter of law be a flawed conclusion.

- 1.85 PCC in this section will continue to approach the matter as it has been addressed hitherto by the applicant ie that the commercial FOCs and the ORS as well as the telecoms buildings amount to AD and which PCC and others reject.
- 1.86 PCC has reviewed the statement made in paragraph 2.9.6 of the applicants response to action points raised in ISH1, 2 and 3, and CAH1 and 2 [REP6-063] which states that only 20% of the FOCs will be required for ‘the safe operation of the Project.’ In addition, paragraph 2.9.5 sets out that the ORS building, though still required in the opinion of the applicant, would be ‘on a smaller scale to house the facilities required for the fibres used for essential communication purposes only.’
- 1.87 PCC considers that the use of the ‘spare’ capacity within the FOC for a separate commercial use than the HVDC interconnector use does not and cannot form part of that (principal) development. In addition, the use and indeed the operational development required to enable that commercial FOC use also cannot be treated as ‘AD’ within the meaning of the PA 2008
- 1.88 This response from the Applicant set out in REP6-063 confirms that the excess capacity of the FOC is neither part of the principal development and there is no direct relationship between the principal development and FOCs providing excess capacity. The Associated Development Guidance⁴ makes it clear that (paragraph 5(iii)) that:
- ‘Development should not be treated as associated development if it is only necessary as a source of additional revenue for the applicant, in order to cross-subsidise the cost of the principal development.’
- 1.89 It is concerning that the Applicant is seeking to rely on the excess capacity to fund the project, as set out in paragraph 6.4 of the updated Funding Statement **[REP6-021]**:
- ‘In addition, the revenues from the commercial use of the FOC within the Project may contribute an additional 5% of total revenues.’
- 1.90 The reliance on the separate commercial use of the ‘spare’ FOC (which should not be consented as part of the Aquind Interconnector DCO) underlines further the precarious nature of the Applicant’s funding arrangements for the Project and critically, the uncertainty of which the Applicant is seeking to burden Affected Persons impacted by the Project.

4

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/192681/Planning_Act_2008 - Guidance on associated development applications for major infrastructure projects.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/192681/Planning_Act_2008_-_Guidance_on_associated_development_applications_for_major_infrastructure_projects.pdf)

- 1.91 As such, PCC submits not only that the commercial FOC use and the infrastructure required for that commercial use cannot be treated lawfully as the project to which the s35 direction applied but also that in the alternative (but in accordance with the applicant's position in evidence) it cannot in the alternative lawfully be treated as AD.
- 1.92 To that end, the SofS has no power to grant a DCO which includes that separate development and indeed grants powers to acquire land required for that unlawful development specifically the telecommunications and the ORS buildings. The only option in such circumstances is to refuse to grant the DCO or to recommend the DCO be subject to a formal amendments process which is now not possible within the examination timetable.

Impact on Fort Cumberland carpark and the ORS

- 1.93 In the 'Applicant's Responses to Deadline 5 Submissions **[REP6-069]**' the Applicant (paragraph 2.46) appears to have misinterpreted the issue raised by PCC in respect of the rights sought for the landscaping for the ORS building. The extent of the landscaping is not clearly defined but will be required for the lifetime of the ORS building (the land for which it is identified as being compulsorily acquired). The Applicant could install dense hedging displacing any users of the land, or a limited number of shrubs – the point is that the rights sought inaccurately reflect the sterilisation of land and only serve to limit the Applicant's compensation liability. This does not in anyway contradict the position that PCC does not wish to have the ORS building in the car park serving the adjacent open space. PCC is aware that it is a car park, (as identified by the Applicant in paragraph 2.44), but it serves the adjacent Open Space and in the consideration of Special Category Land applicants should take a conservative approach and consider the use of land in respect of 'fact and degree' and in this case recognise the proposals will displace users.

Impact on recreation/open space

- 1.94 PCC has reviewed the 'Applicant's responses to Deadline 5 Submissions' **[REP6-069]** and the 'Applicant's Post Hearing Notes – Appendix 3' **[REP6-066]**; as noted above regrettably the documents do not provide any further certainty or understanding over the use or duration of displacement from Special Category Land. Appendix 3 indicates that Farlington Playing Fields will be subject to works for a (non continuous) 52 weeks, but this timescale provides no certainty over specific anticipated programming of the works. Noting the apparent discrepancy of timescale in a variety of documents it can however only be assumed that the 52 weeks will be over the duration of the 5 years for which the Applicant has applied for powers; if not, powers should be limited to the extent that powers are expected to be used in this location.
- 1.95 A detailed programme for works must be agreed with an appropriate time limit for powers for each section of the route that impacts Special Category Land. Further, the Applicant has indicated (paragraph 3.3.2 of "Applicant's Written Summaries of Oral Submissions at ISH1, 2 and 3, and CAH 1 and 2' **[REP6-062]**) that reinstatement of land will take 8 to 10 weeks. This is considered by

PCC a 'best case' estimate and we refer to REP6-079 (paragraph 2.2.12) where we agree with the interpretation of the University of Portsmouth's specialist consultant (Sports Field Ltd.) who estimate reinstatement would be nearer 3 to 4 months. It is clear adequate reinstatement periods (or any reinstatement periods) have not been provided for in the phasing plans as set out in the Framework Management Plan for Recreational Impacts [REP4-026] and Appendix 3; as such, the reported displacement of 52 weeks at Farlington Playing Fields (and other durations at other sections of the route) is clearly misleading and inaccurate.

- 1.96 PCC maintains concerns over the Order limits (generally), and at Farlington Playing Fields there appears to be a lack of consistency in respect of the Order limits and the demonstration of why land is required (through the phasing plans). PCC requests that the Order limits are refined to reflect the phasing plans.
- 1.97 PCC notes that the Applicant wishes to work with PCC to agree a strategy for the mitigation on recreational land (in particular Farlington Playing Fields) – PCC will seek to engage with the Applicant to agree how works can be undertaken to limit the significant impacts that will result from the works, but notes that the impacts cannot be meaningfully mitigated. At present, the scale of the works are significant and set to last beyond five years.

Efforts to negotiate

- 1.98 At Deadline 5, the Applicant stated that revised Heads of Terms would be issued ahead of Deadline 6 (Statement of Reasons [REP5-012]). This was updated at Deadline 6 with the Applicant stating that revised Heads of Terms had been issued on 23rd December 2020 (Statement of Reasons [REP6-019]). However, PCC is yet to receive any revised Heads of Terms, and despite a productive meeting between agents on 21st January 2021, PCC is still waiting to be provided with any confirmation that the details discussed in various meetings have been taken into account in pursuing a private treaty agreement. PCC is concerned that the Applicant has no genuine intention to seek to secure a private treaty agreement and is relying on securing compulsory acquisition powers. Such an approach is contrary to Government guidance and is also inconsistent with previous statement made by the Applicant that is seeking to acquire land and rights by agreement.

French Project and Consents

- 1.99 PCC is aware of the process that has to be completed to obtain consent for the project to be developed in France but only to the limited extent that the applicant has provided. PCC remains very concerned about the assumptions the ExA and the SofS is being asked to make about the financial viability of the Aquind interconnector project and the support it has in France (as well as the likelihood of obtaining the regulatory exemptions sought). To that end it appears that it is now fundamental that the DCO have a requirement that

none of the DCO's provisions can be triggered until the French project has received the requisite consents.

2. Responses to ExQ2

- 2.1 PCC has provided responses to the ExQ2 questions directed towards us, and comments on limited other questions where we believe this will assist the ExA. These are provided in **Appendix 1 and Appendix 2** to this submission.

3. Statement of Common Ground (SoCG)

- 3.1 Following further extensive discussions with Aquind's agents (WSP), the version of the SoCG submitted by them at DL7 represents the latest version. Whilst agreement has been reached in certain areas, further discussions are required to progress others, notably:

- 4.4 Ecology (including Arboriculture)
- 4.5 Ground Conditions
- 4.7 Surface Water and Flood Risk
- 4.8 Heritage and Archaeology
- 4.9 Traffic and Transport
- 4.12 Socio Economics
- 4.13 Human Health
- 4.15 Cumulative Effects
- 4.16 Onshore Outline Construction Environmental Management Plan
- 4.17 Draft Development Consent Order, and
- 4.19 Community Fund

These will be progressed as far as is practicable between DL7 and DL8 with a view to submitting a signed and dated Statement of Common Ground highlight matters agree and matters not agreed at DL8.

4. S106 Obligations

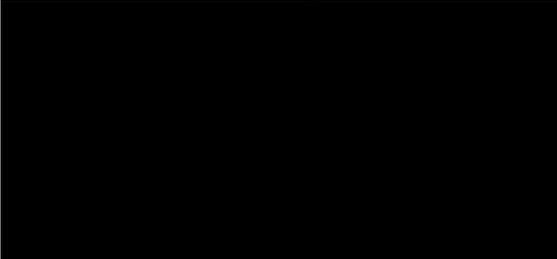
- 4.1 Mindful of the ExA's expectation of progress on s.106 matters, PCC has sent a memorandum of the s.106 obligations that it understands different local authorities to be seeking to Aquind's solicitors on 19 January 2021. That memo included PCC's own expectations for s.106 obligations. A response was received on the same day to expect a draft s.106 agreement and responses to the memo shortly. That response highlighted that Aquind intend to persist with payment of post-consent fees by way of a Planning Performance Agreement ("PPA"). That PPA was received 20 January 2021.
- 4.2 Aquind's solicitors provided a draft s.106 agreement on the evening of 21 January 2021, as well as a deed of undertaking to secure the relocation of playing pitches (because this cannot be secured within the Order limits). PCC is considering the s.106, deed of agreement and PPA documents as of Deadline 7.

Concluding comments

We reserve the right to expand on these comments and deadline 7 submissions at the appropriate time. We trust that the above and enclosed submissions meet your requirements.

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

Yours sincerely,



Ian Maguire
Assistant Director Planning & Economic Growth

Cc
David Williams, Chief Executive, Portsmouth City Council
Tristan Samuels, Director of Regeneration, Portsmouth City Council

Reference	Respondent	Question	Response
1 - Miscellaneous and General			
MG2.1.1	Applicant	<p>Whilst the ExA encourages ongoing negotiation on key points between parties outside the Examination, it remains important that all documents are eventually submitted into the Examination in time for other parties to review them and for the ExA to consider them.</p> <p>The ExA believes that it has been promised the following documents during the course of the Examination or has seen reference to them being discussed outside the Examination:</p> <ol style="list-style-type: none"> 1. Generic Method Statement for Construction Water Management (appendix to OOCEMP); 2. Review of Personal Injury Collision Data on A3(M) J2 and J3, and on A27/A2030 junctions; 3. Stage 1 Road Safety Technical Audit; 4. Results of infiltration testing; 5. Supplementary Note on Noise and Vibration arising from use of the eastern corridor for the Langstone University campus; 6. Review of the potential for injury to fish and aquatic mammals arising from underwater noise in accordance with NOAA guidance/ 26 November 2020 assessment of underwater cumulative noise exposure from vibro-hammering in accordance with NOAA 2018 guidance; 7. Geotechnical Risk Assessment regarding the easement under the A27. <p>Should the ExA expect to receive these documents, and, if so, when?</p>	
MG2.1.2	Applicant	<p>Please can the Applicant confirm how the scope and approval of a marine CEMP would be secured through the DML/ dDCO, including the requirement for periodic reviews and updates to be agreed by the relevant licensing authority.</p>	
MG2.1.3	Applicant	<p>The '<i>Applicant's Response to Submissions made at Open Floor Hearings</i>' ([REP6-061], page 1-36, point 5), concludes that a seasonal restriction on HDD under the Eastney and Milton Piece allotments is not necessary, and we have heard that there will be no impact on the surface of the allotments. Taking into account health and safety precautions, would allotment holders be able to work on their allotments whilst HDD is taking place beneath them? Please explain the detail, implementation and expected duration of any restrictions in this regard.</p>	
MG2.1.4	Applicant	<p>Bentonite will be used in the drilling fluids used to facilitate HDD under the allotments. At paragraph 6.2.11.3 of the Onshore Outline CEMP [REP6-036], there is reassurance that '<i>we can be sure of the products safety</i>' as it is listed on the CEFAS website and OSPAR Commission's PLONOR list. In both cases, the lists appear to relate to substances used and discharged offshore which are considered to pose little or no risk to the marine environment. Could</p>	

		<p>the Applicant explain how this is relevant to an onshore allotment situation on land where food is grown?</p> <p>Can any further reassurances be given that any bentonite break-out, however unlikely, can be safely remediated and that it would offer no risk or interruption to the use or productivity of an allotment garden?</p>	
MG2.1.5	Applicant	<p>The 'UK Joint Bay Locations Feasibility Report' submitted at Deadline 6 [REP6-070] appears to include most of the HDD launch and reception pits as joint bay locations, but not the one at the Thatched House (for the HDD under the Eastney and Milton Piece Allotments). Is this an omission or is it not necessarily the case that there will be an automatic requirement for a joint bay at the start and finish positions for each HDD?</p> <p>If not, how would access be gained for maintenance of the cable enclosed within the HDD section?</p>	

2. Air Quality

AQ2.2.1	Portsmouth City Council	<p>With reference to paragraphs 5.2.9 and 5.2.10 of NPS EN-1, please could Portsmouth City Council set out the relevant statutory air quality limits within the city and where, if any, concerns remain that exceedances may be caused or exacerbated by the Proposed Development.</p> <p>If any concerns are identified, please explain why the mitigations proposed by the Applicant would not alleviate those concerns.</p> <p>It would be beneficial if the written response included a summary table setting out:</p> <p>a) the present levels of air pollution at near-exceedance and exceedance locations;</p> <p>b) what the Ministerial Directions require in terms of reductions and over what timeframe;</p> <p>c) the Applicant's predicted levels at those locations;</p> <p>d) where the predicted levels would cause concern in achieving the Ministerial Direction's objectives.</p>	<p>a & b) The table below shows the current measured NO2 concentrations and modelled future concentrations at the exceedance and near exceedance locations. All locations must show readings below 40.49 µg/m³ by the end of 2022 in order to be considered compliant with the Ministerial Directions issued to PCC.</p> <p>c & d) The Applicant's predicted levels do not indicate that exceedances will be caused at any of the below locations, however, as noted in previous submissions the applicant has not considered the impact of the CAZ in their proposals and as such PCC remains concerns that a properly informed assessment of the impact of the proposals on future NO2 concentrations is not possible. Consequently PCC retains concerns that the proposal will impact on the ability of the Council to achieve the Ministerial Direction objectives.</p> <table border="1"> <thead> <tr> <th></th> <th>Current annual NO2 concentrations (µg/m³)</th> <th>Required annual concentration by 2022 (µg/m³)</th> <th>PCC predicted concentrations in 2022 baseline (µg/m³)</th> <th>PCC predicted concentrations in 2022 with CAZ (µg/m³)</th> </tr> </thead> <tbody> <tr> <td>A3 Alfred Road (Unicorn Rd to Queen St, s/b)</td> <td>52.52</td> <td>40.49</td> <td>41.7</td> <td>40.2</td> </tr> <tr> <td>A3 Commercial Road (south of Church St Rbt, s/b)</td> <td>41.50</td> <td>40.49</td> <td>41.1</td> <td>39.5</td> </tr> </tbody> </table>		Current annual NO2 concentrations (µg/m ³)	Required annual concentration by 2022 (µg/m ³)	PCC predicted concentrations in 2022 baseline (µg/m ³)	PCC predicted concentrations in 2022 with CAZ (µg/m ³)	A3 Alfred Road (Unicorn Rd to Queen St, s/b)	52.52	40.49	41.7	40.2	A3 Commercial Road (south of Church St Rbt, s/b)	41.50	40.49	41.1	39.5
	Current annual NO2 concentrations (µg/m ³)	Required annual concentration by 2022 (µg/m ³)	PCC predicted concentrations in 2022 baseline (µg/m ³)	PCC predicted concentrations in 2022 with CAZ (µg/m ³)														
A3 Alfred Road (Unicorn Rd to Queen St, s/b)	52.52	40.49	41.7	40.2														
A3 Commercial Road (south of Church St Rbt, s/b)	41.50	40.49	41.1	39.5														

			Church Street (east of Church St Rbt, n/b)	37.55	40.49	38.7	38.7
			A3 Hope Street (south of Church St Rbt, s/b)	38.77	40.49	38.9	37.8
			A2030 Eastern Road Water Bridge (s/b)	No monitored data available	40.49	38.8	38.5
			A2047 London Road (Stubbing ton Ave to Kingston Crescent, s/b)	40.42	40.49	38.5	37.9
			Mile End Road (north of Church St Rbt, s/b)	33.87	40.49	37.6	36.9
			A3 Marketway (Hope St Rbt to Unicorn Rd)	32.35	40.49	37.4	36.2
AQ2.2.2	Hampshire County Council	At Deadline 1, a document entitled ' <i>State of Hampshire's Natural Environment Report</i> ' was referenced as emerging and shortly to be published. Could Hampshire County Council please provide an update on the document and what bearing, if any, its findings and conclusions may or may not have on the Examination.					
AQ2.2.3	Applicant	In response to the most recent <i>Annual Status Report on Air Pollution</i> produced by Portsmouth City Council, please could the Applicant review the position with regards to Eastern Road, with particular focus on AQMA6, AQMA11 (outside Order limits) and AQMA9 (within Order limits), and: a) provide critical commentary on the relevance of the data set; b) state whether, where and how the results of the ASR affect the findings or assumptions of the Environmental Statement (and whether any predicted effects are increased or decreased accordingly); and					

		c) whether the mitigation measures already proposed are sufficient for minimising the duration, extent and nature of the effects, or if mitigation measures need to be amended.	
AQ2.2.4	Portsmouth City Council	<p>Can Portsmouth City Council confirm that issues arising from the most recent <i>Annual Status Report on Air Pollution</i> and the Proposed Development are limited to levels of nitrogen dioxide (NO₂) within AQMA6 and AQMA11 (outside the Order limits) and AQMA9 (within the Order limits)?</p> <p>Is the Council otherwise in agreement with the Applicant that there is 'substantial headroom' for PM_{2.5}, PM₁₀ and NO₂ between the predicted levels and target levels to the extent that they are not a concern and unlikely to suffer an exceedance?</p> <p>If not, why not?</p>	<p>PCC can confirm that issues are limited to those listed (AQMA 6, 11 and 9).</p> <p>It is not yet possible to reach agreement on the 'substantial headroom' for PM_{2.5}, PM₁₀ and NO₂ between the predicted levels and target levels until further analysis has been undertaken by the applicant to consider the impact of the development with the Clean Air Zone in place. An approach to this analysis has been agreed with the applicant through SOCG discussions and PCC hopes that the applicant will submit this analysis with sufficient time to be considered by the ExA.</p>
AQ2.2.5	Applicant	<p>In relation to paragraph 5.10.1.1 of the Onshore Outline CEMP [REP6-036], please clarify the qualifier 'where appropriate' in relation to the contractor implementing the measures in Table 5.1.</p> <p>Does this indicate a further sub-level of decision-making by the contractor outside the agreement of a dust management plan in an onshore CEMP?</p> <p>Should this be amended to read that the contractor will implement the IAQM guideline measures secured within the relevant dust management plan?</p> <p>Explain the apparent divergence between paragraph 5.10.1.1 of the updated Onshore Outline CEMP [REP6-036] from the ES in relation to:</p> <ul style="list-style-type: none"> • the roles of AQUIND and AQUIND's contractor, and who is bound by the draft DCO Requirement; • whether there will be consultation with a Council's EHO or whether the contractor will automatically implement, where appropriate, 'the highly desirable' mitigation measures without consultation; • 'highly recommended' and 'highly desirable' measures. <p>Whose discretion is involved in deciding where a measure is 'appropriate'?</p>	
3. Compulsory Acquisition			
CA2.3.1	Applicant	Please can an update be provided with regards to agreeing appropriate protective provisions for all affected statutory undertakers and utility companies?	
CA2.3.2	Applicant	<p>Beyond what is written in Revision 2 of the Funding Statement [REP6-021] and section 3.2 of the <i>'Applicant's Response to action points raised at ISH1, 2 and 3, and CAH 1 and 2'</i> [REP6-063], please can the Applicant supply any information, redacted or not, to the ExA to demonstrate that there is a 'reasonable prospect' of funds being available for this project.</p> <p>If no further information can be provided, how should the ExA approach the matter of funding in its recommendation?</p>	<p>PCC Response:</p> <p>Whilst this question is directed at the Applicant, PCC considers that in the absence of any further information from the Applicant as to requisite funds being available, the ExA cannot conclude that the relevant statutory test under s122 of the PA 08 can be met (see [17-18 of CA Guidance] and cannot therefore recommend to the SofS that compulsory acquisition can be lawfully justified.</p>
CA2.3.3	Applicant	<p>Could the Applicant, in comparing its prospective situation against that of the current landowners, explain what extra controls and powers of deterrence it would have at its disposal over the land proposed to be acquired for a security and surveillance buffer around the Converter Station, and why these controls amount to a compelling case for Compulsory Acquisition?</p> <p>What specific threats are these designed to deter, and how do these compare to existing threats and security buffers in relation to the existing Lovedean substation?</p>	

CA2.3.4	Applicant	<p>In terms of land identified for Compulsory Acquisition in the Book of Reference [REP6-062] please provide the total areas in each of the following categories:</p> <ul style="list-style-type: none"> • subsoil below the highway; • land owned by statutory authorities; • land owned by others. <p>This list of categories is not exhaustive, and the Applicant may add to it, or sub-divide further, if thought to be useful to the ExA. The total area should, however, equate to that identified in the Book of Reference.</p>	
CA2.3.5	Applicant	<p>In the Deadline 6 submission by Mr G and Mr P Carpenter relating to whether the Applicant's Compulsory Acquisition estimate covers the right land, is the understanding of Mr Jarvis' CAH2 position correct ([REP6-138], Section D paragraph 3)?</p> <p>If not, how is it not?</p>	
CA2.3.6	Applicant	<p>During CAH1, the ExA asked the Applicant '<i>what more can you give me on this</i>' when referring to funding availability and security for its estimated Compulsory Acquisition costs. The Applicant is now requested to list the additional information provided during the Examination and explain, against each item, why further information on this item cannot be provided to the Examination.</p>	
CA2.3.7	Applicant	<p>Has any evidence to support the Applicant's financial standing been provided to any relevant regulatory authorities?</p> <p>If so, what?</p> <p>What was the response, if any, from those authorities?</p>	
CA2.3.8	Applicant	<p>In view of the Deadline 6 submission by Mr G and Mr P Carpenter ([REP6-138], Section E paragraph 29), please clarify the rational basis upon which the Applicant thinks there is a genuine reasonable prospect of the requisite funds becoming available to enable Compulsory Acquisition within the statutory period following the DCO being made.</p>	
CA2.3.9	Applicant	<p>If the Deadline 6 submission by Mr G and Mr P Carpenter relating to Companies House records is correct ([REP6-138], Section E paragraph 35d), explain the reported contrast.</p> <p>If it is not correct, how is there no contrast?</p>	
CA2.3.10	Applicant	<p>Please provide the latest accounts for Aquind Energy SARL.</p>	
CA2.3.11	Applicant	<p>Who would a claim for Compulsory Acquisition compensation be enforced against should the envisaged funding arrangements for AQUIND not materialise, and is there anything in the dDCO to prevent Compulsory Acquisition or Temporary Possession powers being exercised where funding is not available to the undertaker? (Refer to [REP6-138], Section E paragraph 38.)</p>	
CA2.3.12	Applicant	<p>Should the ExA decide to include a provision in its recommended DCO along the lines suggested in the Deadline 6 submission by Mr G and Mr P Carpenter relating to the security of Compulsory Acquisition funding ([REP6-138], Section G paragraph 7), what would the Applicant's position on this be and why?</p>	
CA2.3.13	Applicant	<p>Should the ExA decide to include any of the following provisions in its recommended DCO along the lines suggested in the Deadline 6 submission by Mr G and Mr P Carpenter relating to the security of Compulsory Acquisition funding ([REP6-138], Schedule 1), what would be the Applicant's position on each of these provisions, and why?</p>	<p>PCC Response: Whilst this question is directed at the Applicant, PCC has called for the applicant to enter into a bond which has thus far been ignored.</p>

		<p>(i) Rookery South (Resource Recovery Facility) DCO - enforceable bonded funds located in Jersey ([REP6-138], Section G paragraph 4a).</p> <p>(ii) Able Marine Energy Park DCO - appropriate guarantees to the relevant planning authorities for the payment of compensation under the DCO Compulsory Acquisition provisions before their implementation with any compensation to be met from the Applicant's parent company's existing funds ([REP6-138], Section G paragraph 4e).</p> <p>(iii) Swansea Bay Tidal Generating Station DCO - a mechanism for the provision of security in respect of the payment of compensation under the DCO ([REP6-138], Schedule 1).</p> <p>(iv) Thorpe Marsh Gas Pipeline DCO - a guarantee agreement, Escrow arrangement, bond or other suitable alternative security to cover estimated Compulsory Acquisition costs ([REP6-138], Section B paragraph 21 and Section G paragraph 4b).</p> <p>(v) Manston Airport DCO – a section 120(3) PA 2008 provision that construction cannot commence, and Compulsory Acquisition powers cannot be exercised until a guarantee to pay compensation under the DCO or an alternative form of security is provided to the satisfaction of the Secretary of State ([REP6-138], Section G paragraph 4c).</p> <p>(vi) Wylfa Newydd (Nuclear Generating Station) dDCO - dDCO articles restricting the exercise of Compulsory Acquisition powers until certain compensation funding security requirements are met ([REP6-138], Section G paragraph 4d).</p>	
CA2.3.14	Applicant	<p>Would joint bay locations ([REP6-070], Table 2.1) have a wider Compulsory Acquisition width than 2m either side of the installed cable ([REP6-063] paragraph 2.6.1)?</p> <p>If so, what width would it be?</p>	
CA2.3.15	Applicant	<p>Is the Applicant intending to reduce further the area of land at Sainsbury's supermarket, Farlington included within the DCO, as suggested in the Deadline 6 submission on behalf of Sainsbury's [REP6-098]?</p>	
CA2.3.16	Applicant	<p>What is the Applicant's current position in respect of the Deadline 6 objection from Vodafone and any actions envisaged during the remainder of the Examination [REP6-102]?</p>	
CA2.3.17	Applicant	<p>What is the Applicant's current position in respect of the Deadline 6 objection from Southern Water and any actions envisaged during the remainder of the Examination [REP6-100]?</p>	
4. Cultural Heritage			
CH2.4.1	<p>Historic England Hampshire County Council Applicant</p>	<p>With reference to paragraph 5.6.12 of NPS EN-1, what elements of cultural, historical and functional significance for Fort Cumberland's setting are derived from the 'fields of fire'? How do these elements:</p> <p>a) apply to the land where the ORS facility is proposed to be located; and</p> <p>b) apply to the land where proposed landscape mitigation is to be planted?</p> <p>How would the Proposed Development affect such significance and the future value and understanding of the asset? Would mitigation planting itself affect the significance of the asset's setting?</p>	<p>The currently open nature of Fort Cumberland's northern aspect (free of buildings, structures or even significant tree planting) contribute to the cultural, historical and functional significance of the asset by sustaining uninterrupted views within the asset's historic field of fire (both from, and towards the fort).</p> <p>This attribute serves a similar function/ purpose for example to the open nature of the nearby 'Southsea Common' in relation to the scheduled Southsea Castle, or the northern aspect of the City's scheduled Hilsea Lines. It allows for ready interpretation, understanding and visual appreciation of a key component of the functionality of a rare artillery fort from this period. Historically the field of fire was critical to the military effectiveness of a</p>

			<p>fortification of this type, depriving an approaching enemy of shelter and allowing them to be sited and ranged more effectively.</p> <p>This interpretation of the asset and its relationship to setting is not an arcane expression of conservation sensitivity. It is essential to understanding the fort and its surviving context. A very important 'by product' of this historical military imperative, is also of course that the fort's setting is 'respected' by an absence of visual intrusion, 'clutter' and 'noise'.</p> <p>It is acknowledged that the original and 'full' field of fire of the fort has been impacted (eroded) by the introduction, prior to the scheduling of the fort in 1964, of former military research buildings to the South West, and later residential development across Fort Cumberland Road to the North. The fort itself also enjoys a deliberately 'low profile' in views towards the structure from the W. These factors do not however justify continuing the erosion of the setting of this significant heritage asset.</p> <p>PCC consider that from several points the proposed development would become an obvious and eye catching presence, either impeding the view completely, or forming a more peripheral but still visually intrusive, and incongruous feature certainly read in views directly South along the western end of Fort Cumberland Road, and in more oblique views incorporating the fort from the East to the West</p> <p>The openness of the car park makes a contribution to the openness of the setting overall, as does the land on which any screening landscaping would be sited. As it stands, the proposed structure is a very large and architecturally crude 'box' and its associated landscaping expressly seeking to provide screening in this area would also be a visually intrusive feature. The structure and the landscaping intended to screen it are contingent upon one another, and they would both erode and diminish the sense of openness which currently characterize the area</p> <p>These matters are echoed in the representations of HE in its DL1 representations which notes in particular that <i>"Sightlines, fields of fire, and connectivity with land and sea based approaches, are therefore integral to its significance, and relationships with other fortifications confer additional context and coherence which also contributes strongly to Fort Cumberland's significance"</i>. In terms of HE's final assessment of impact of the ORS it appears HE has as yet not been able to provide that in the absence of sufficient information.</p>
CH2.4.2	Winchester City Council Hampshire County Council	Please could the Applicant expand on the answer to question ExQ1 CH1.4.6 (in [REP1-091]), and particularly the part of its response that suggests, <i>'In the unlikely event that they are identified, there may be a requirement, where practicable, for their preservation in situ...'</i> . Could the Applicant explain how preservation <i>in situ</i> might be achieved given the cut and fill required to achieve the required formation level for the Converter Station. Could this result in a necessary change in design, elevation or location outside the parameters set in the relevant parameter plans and dDCO?	

		<p>If so, how would this be achieved?</p> <p>Do the relevant local authorities' archaeologists have confidence that any important archaeological remains found at the Converter Station site would be suitably protected through the Onshore Outline CEMP [REP6-036]?</p>	
CH2.4.3	Historic England	<p>In its Written Representation [REP1-209], Historic England raised issues in respect of A1 and A2 seabed anomalies. Is Historic England now content with the Applicant's proposed approach to dealing with these?</p> <p>If not, what are the implications that the ExA needs to take into account in respect of the Examination?</p>	
CH2.4.4	Historic England Applicant	<p>Has agreement been reached with regards to the geo-archaeological assessment approach to 'medium' status fine-grained deposit cores and the extent of their investigation?</p> <p>If not, what are the implications that the ExA needs to take into account in respect of the Examination?</p>	
CH2.4.5	Historic England Applicant	<p>Has agreement been reached with regards to the assessment, classification and approach to possible palaeo-landscape features set out in Chapter 14 of the ES [APP-129]?</p> <p>If not, what are the implications that the ExA needs to take into account in respect of the Examination?</p>	
5. Draft Development Consent Order			
DCO2.5.1	<p>Applicant All Local Authorities Representatives of Mr Geoffrey Carpenter and Mr Peter Carpenter</p>	<p>In relation to the proposed commercial use of the surplus capacity of the fibre optic cable, the Examining Authority notes that there are a number of opinions as to whether any associated works can be authorised by any DCO, and also which works would constitute the development and which would be Associated Development.</p> <p>The Applicant, the local planning authorities, and Mr Geoffrey and Mr Peter Carpenter are requested to comment on the following interpretation.</p> <p>For any project that was <u>not</u> the subject of a s35 direction, the development requiring consent would be listed in s14 of the Planning Act 2008 (PA2008) and described in one or more of the relevant subsequent sections (for example, s16 for an electric line), together with any Associated Development that falls within the definition set out in s115(2) of PA2008.</p> <p>This project does not fall within one of the s14 categories, but instead it is to be treated as a Nationally Significant Infrastructure Project by virtue of the Secretary of State's s35 Direction. Therefore, in this case, it is the s35 Direction that defines the Nationally Significant Infrastructure Project, the development requiring consent.</p> <p>Looking at the Direction, the wording is that '<i>THE SECRETARY OF STATE DIRECTS that <u>the proposed Development, together with any development associated with it, is to be treated as development for which development consent is required.</u></i>' (Our emphasis.)</p> <p>The 'proposed development' is defined as '<i>the proposed UK elements of the AQUIND Interconnector ("the proposed Development"), as set out in the Direction request</i>'.</p> <p>The Direction request is this document. Therefore, the project would appear to consist of the elements described in that document, including the offshore</p>	<p>PCC will provide a full response in answer to DCO2.5.1 and request the discretion of the ExA to allow a delayed submission to ensure we can provide a comprehensive comment on this significant matter</p>

		<p>data cables (paragraph 3.5.2(A)), the onshore data cables (paragraph 3.5.1(D)) and the 'construction of a converter station comprising a mix of buildings and outdoor electrical equipment' (para 3.5.1(C)). The project description also states that 'Signal enhancing and management equipment may also be required along the land cable route in connection with the fibre optic cables' (3.5.1(D)).</p> <p>Paragraph 3.12 refers to the use of 'the spare fibre optic cable capacity for the provision of commercial telecommunications services' as Associated Development. However, the s35 direction states that 'any development associated with' the Proposed Development is to be treated as development for which consent is required. Therefore, the Examining Authority is minded to consider that this use, although described as 'Associated Development', would actually be part of the proposed project, and not Associated Development for the purposes of s115 of PA2008.</p> <p>The Examining Authority also notes the effect of s157(2) of PA 2008, which means that consent is taken to 'authorise the use of the building for the purpose for which it is designed' where no purpose is specified.</p>	
DCO2.5.2	Applicant MMO	<p>Have the differences between the Applicant and the MMO in respect of: Schedule 15, Part 1 Condition 10; Schedule 15, Part 1, Paragraph 4; the MMO's request for clarification about their purpose; and concerns that these may allow certain activities to be undertaken which are either not within the scope of the EIA, or lie outside the scope of the DML been resolved? If so, how?</p>	
DCO2.5.3	Applicant	<p>With regards to the phrase 'reasonable time' in Article 13(1) of rev005 of the dDCO [REP6-015] and the Applicant's response at Deadline 1, please could the Applicant provide details of the precedent made DCOs where such wording is included?</p>	
DCO2.5.4	Applicant	<p>It is noted that most references to the term 'temporary stopping up' in the dDCO [REP6-015] have been changed to 'temporary closure'. However, Article 13(9) and Schedule 8 still retain the term 'stopping up'. Could the Applicant please review the dDCO to ensure consistency in this respect and provide an explanation where any such references are to remain?</p> <p>Also, please could the Applicant explain why Article 13(9) is required, the purpose that it serves, and whether it might cause unnecessary confusion?</p>	
DCO2.5.5	Applicant	<p>Could the Applicant confirm whether Requirement 10 in the dDCO [REP6-015] should reference the Access and Rights of Way Plans? If not, why not?</p>	
DCO2.5.6	Historic England	<p>In its Written Representation [REP1-209], Historic England raised a number of matters relating to mitigation in the marine environment and the Deemed Marine Licence (DML) that it wished to see addressed. For clarity, there are understood to be:</p> <ul style="list-style-type: none"> • Expand list of survey technologies. • Expand Condition 3(1)(a)(ii) to include archaeological features and/or the identification of AEZs as identified within the ES. • In Condition 3(2), a timeframe is required for the submission of the pre-construction survey plan to the MMO. • Expand Condition 4(1)(viii) to include 'archaeological construction exclusion zones'. 	

		<ul style="list-style-type: none"> • Revise Condition 4(2)l to expand on the delivery of mitigation • Check Condition 6 – the quoted condition (4(1)l(vi)) does not appear elsewhere in the draft DML. • Condition 10(1)(b) could reference ‘archaeological construction exclusion zones’. <p>These were added to the agenda for discussion during Issue Specific Hearing 1 on the dDCO, to which Historic England was invited. In Historic England’s absence, the Applicant explained its current position, following written submissions on the matters in [REP2-014] and [REP5-058], the latter being a transcript of the Applicant’s oral representation to ISH1. Historic England’s position on this remains unclear in the SOCG with the Applicant. Please could Historic England provide the Examining Authority with an update on its position and indicate which, if any, of these matters remain unresolved, along with any suggestions for progressing towards agreement.</p> <p>Furthermore, there appear to remain two further unresolved difference between the parties over whether the DML:</p> <p>i) includes adequate provision for the delivery of the project specific marine WSI.</p> <p>ii) provides appropriate timescales for the review and approval of the marine WSI before the commencement of construction activities.</p> <p>The Applicant provided a view on these in [REP2-014] and at ISH1. Please could the Examining Authority have an update and position explanation from Historic England.</p>	
DCO2.5.7	Applicant Hampshire County Council	Please could the ExA be updated on progress towards securing a s278 Agreement with regards to the highway works at the junction of Day Lane and Broadway Lane? Have the technical details been agreed and will the s278 agreement be in place prior to the end of the Examination?	
DCO2.5.8	Applicant	For clarity, should Schedule 2, Requirement 15(3) of the dDCO submitted at Deadline 6 [REP6-015] read ‘ <i>onshore outline construction environmental management plan</i> ’ rather than ‘ <i>outline construction environmental management plan</i> ’ in accordance with the definition in Schedule 2(1)? Could a check be made that all such references in the control chart and mitigation schedule are in full, including those to the WSIs?	
DCO2.5.9	Applicant NGET	<p>It is noted that the description of Work No.1 in Schedule 1 of the dDCO [REP6-015] has been amended to include works for the extension of the Lovedean substation.</p> <p>Can the Applicant explain the meaning of ‘<i>site establishment, earthworks, civil and building works</i>’?</p> <p>Does the amended definition meet the needs of NGET and is NGET satisfied that the Applicant’s ES covers all likely significant effects?</p> <p>Could the Applicant please highlight where these works are addressed in the ES.</p>	
DCO2.5.10	Applicant	The Framework Management Plan for Recreational Impacts (FMPRI) [REP1-144] is soon to be accompanied by a Reinstatement Method Statement as suggested in paragraph 6.5.1 of the <i>Applicant's Response to Action Points Raised at ISH1, 2 and 3, and CAH 1 and 2</i> [REP6-063]. Given the mitigation measures already in the FMPRI and the additional reinstatement method statement, should the FMPRI become a certified document? If not, why not?	PCC Response: PCC is concerned that the FMPRI is still incomplete at this late stage despite providing information regarding the nature of the sites at the earliest opportunity within the Examination. Once the applicant has considered the actual impacts on playing pitches, recreation, open space and habitat in Portsmouth PCC will need adequate time to consider and comment on any

		<p>If not, can the Applicant explain how the mitigation measures and recommendations in the FMPRI at paragraphs 4.1.2.4 and 4.2.1 to 4.2.7 are to be secured in any DCO?</p> <p>In respect of all playing fields and open spaces, does the Applicant consider that planning obligations may be appropriate with respect to enabling playing pitches to be realigned and relocated (even on a temporary basis during construction) outside the Order limits?</p>	<p>proposed avoidance or mitigation both in respect of their adequacy and the mechanisms proposed for their delivery within the DCO.</p>
DCO2.5.11	Applicant	<p>Should the ExA decide to include any of the following provisions in its recommended DCO, what would be the Applicant's position on each of them and why?</p> <ul style="list-style-type: none"> i. The incorporation of Articles relating to private rights of way similar to Articles 26(1) and (2) of the Riverside Energy Park Order 2020 to replace Article 24(1) together with any other consequential amendments. ii. The incorporation of Articles relating to private rights of way similar to Articles 19(1) and (2) of the Cleve Hill Solar Park Order 2020 to replace Article 24(1) together with any other consequential amendments. <p>The incorporation of Articles relating to private rights of way similar to Articles 25(1) and (3) of the Southampton to London Pipeline Development Consent Order 2020 to replace Article 24(1) together with any other consequential amendments.</p>	
6. Environmental Impact Assessment and Environmental Statement			
EIA2.6.1	NGESO	<p>The ExA notes the response from NGESO [REP5-101] to its Rule 17 information request. While this makes reference to generic environmental considerations that were taken into account during the review, it does not address the Examining Authority's specific question about if and how NGESO took into account the potential effect of the choice of Lovedean on the statutory purposes for which the South Downs National Park was designated (as required by Section 62 of the Environment Act, 1995). Please could NGESO elaborate further on this.</p> <p>In its Deadline 6 submission to the Examination [REP6-099], the South Downs National Park Authority requests clarification on why the seven other substation locations were not taken forward to the shortlist, and the sorts of commercial and environmental criteria that were applied to the decision not to do so. Could NGESO please provide this clarification.</p>	
EIA2.6.2	Applicant	<p>In its answer to ExQ1.6.11, the Applicant noted that the Mitigation Schedule would be updated to include the additional cumulative effects mitigation measures identified in Table 29.14 and to identify the means by which those controls and measures will be secured. The updated Mitigation Schedule [REP2-005] suggests that these are secured through:</p> <p><i>'Updated Onshore Outline CEMP [REP1-087] (Para 4.4.3.4- 4.4.3.9)</i> <i>Updated Outline Landscape and Biodiversity Strategy [REP1-034]</i></p> <p>Paragraphs 4.4.3.4 to 4.4.3.9 of the Updated Onshore Outline CEMP [REP6-036] do not seem to refer to this matter. Please clarify precisely where and how in the two quoted control documents or elsewhere these measures would be secured.</p>	
EIA2.6.3	Applicant	<p>Chapter 3 of the ES [APP-118] states that the marine trenches will be backfilled either naturally with dredged material or with a side cast backfill technique. Can the Applicant explain what a side cast backfill technique is, whether this influences the assessment of significant effects, and, if so, where and how this was taken into account in the EIA.</p>	

EIA2.6.4	Applicant	<p>The Applicant's response to EIA1.6.7 [REP2-016] appears to assume that the reference to the phrase '<i>in EIA terms, a moderate or major effect is considered significant</i>' was taken from Chapter 4 of the ES. For clarification, this and similar phrases were noted elsewhere in the ES, for example in the Cultural Heritage chapter at 21.4.2.17. Indeed, the phrase '<i>The assessment has concluded that the effect on BMV land is not significant in EIA terms</i>' is used in the same Applicant's responses document [REP2-016] in the answer to ExQ1 PP1.13.7.</p> <p>Please can the Applicant provide evidenced assurance that significance of effects and the need to apply mitigation was applied consistently across all EIA topics, even to those impacts identified as being 'slight' or considered 'not significant in EIA terms'.</p>	
EIA2.6.5	Applicant	<p>In its post-Hearing note, <i>Applicant's Response to action points raised at ISH1, 2 and 3, and CAH 1 and 2</i> [REP6-063], the Applicant explains the reasons for the various components of the Proposed Development in plot 1-32 (3.1.19 ff). Could the Applicant explain which parts of these Works are considered to be enhancement in visual, landscape or ecological terms, as opposed to being mitigation for an adverse effect identified through the EIA?</p> <p>For these enhancement measures, could the Applicant please explain how, notwithstanding the promotion of such enhancement through relevant policy, such measures comply with the tests in relation to the Compulsory Acquisition of land set out in s122 of the Planning Act 2008 and the associated Government guidance?</p>	
EIA2.6.6	Applicant	<p>The results of the ash die-back survey [AS-054] in the vicinity of the proposed Converter Station site have implications for the results of the EIA, in terms of a future baseline, LVIA and mitigation requirements. Could the Applicant please explain how this supplementary information has been, or will be, integrated into the ES?</p>	
7. Flood Risk			
FR2.7.1	Applicant	<p>Would the bunding of HDD sites, given their size and proportions, increase the risk of flooding elsewhere by displacing surface water to other areas at risk? If not, why? If so, how is this to be mitigated?</p> <p>In addition, is it proposed to protect other laydown areas and construction compounds with bunds as well? If so, how will this avoid increasing flood risk elsewhere? If not, what measures, if any, are proposed to manage surface water in the event of a flood?</p>	<p>PCC response:</p> <p>There is always a risk of displacing surface water with such bunding, however there are mitigation options, such as creating temporary storage areas, or creating dedicated pathways for overland flow to minimise impact on assets or buildings. PCC in its role as LLFA expects finer detail in the Full CEMP at Detailed Design stage, for review, comment and agreement.</p>
FR2.7.2	Applicant	<p>Please could the Applicant confirm areas where Flood Zone 3b overlaps the Order limits?</p> <p>What measures are in place to reassure the Environment Agency that there will not be any storage of materials within Flood Zone 3b?</p> <p>Would the locations of joint bays and their associated laydown areas be specified to contractors so as not to be within Flood Zone 3b?</p>	<p>PCC response:</p> <p>For the change in Flood Mapping in January 2020 and overlay of DCO area, PCC would refer the ExA to Plate 1 of Appendix 8 FRA Addendum. However PCC note that neither this map nor the SFRA (https://pcc.dynamicmaps.co.uk/MapThatPublic/Default.aspx) refer to Flood Zone 3b for Portsmouth. PCC would support a requirement that there should not be any stored materials or joint bays within FZ3b, and if there are that these be detailed and mitigated.</p>
8. Habitats and Ecology (Onshore)			

HAB2.8.1	Natural England Applicant	Please confirm whether agreement has been reached with regards to the approach and assessment of 'low use' sites defined by the Solent Waders and Brent Goose Strategy? If not, how are such 'low use' sites considered to be affected by the Proposed Development and to what magnitude?	
HAB2.8.2	Natural England Applicant	Please confirm whether Natural England's suggested amendment of Principle 7 of the winter working restriction principles [RR-181] has been incorporated. If not, why does Natural England consider this wording necessary and what would be the respective implications of the existing and proposed wordings?	
HAB2.8.3	Natural England South Downs National Parking Authority Winchester City Council	Are the proposed woodland management measures to deal with ash die-back in the two ancient woodland copses known as Stoneacre Copse and Mill Copse, as set out in the Applicant's updated Outline Biodiversity and Landscape Strategy submitted at Deadline 6 [REP6-038]: a) appropriate and proportionate; b) capable of being implemented without harming the integrity of the ancient woodland habitats; and c) sufficient to meet visual mitigation requirements against the updated future baseline?	
9. Landscape and Visual Amenity			
LV2.9.1	Applicant	The new viewpoint photography provided by the Applicant at Deadline 6 ([REP6-055] to [REP6-057]) is welcome. It is noted that new VP 1b and new VP 2 closely replicate VP 15 and VP 1 in terms of compass direction, but in both cases are from lower elevations. Please could the corresponding elevations (AOD) for the new viewpoint locations be provided so that they can be accurately compared with the elevations provided for VP 15 and VP 1. Please could the Applicant provide visualisations of the Proposed Development on the baseline photographs from new VP 1b and new VP 2, together with an assessment of effects, including any breaking of the skyline by the Converter Station building and structures. Could confirmation be provided that all three magnifications of new VP 2 are at a bearing of 211 degrees, noting that the higher magnification photographs (15.60B and 15.60C) are not centred on the broader, panoramic shot (15.60A).	
LV2.9.2	Applicant	In its answer to ExQ1.5.13 in relation to the restriction of approval under draft Requirement 7 of the dDCO to Works 2, 4 and part of Works 5 (and the exclusion of Works 1, 3 and the rest of 5), the Applicant states that ' <i>the flexibility required for design and construction meant that it was more appropriate to develop any necessary mitigation in detail once the final alignment and construction areas have been decided and actual impacts can be understood.</i> ' Please expand on the differentiation, and why some landscape mitigation measures are subject to a Requirement while others appear not to be so. If 'the actual impacts' are not yet understood for some areas, how was the LVIA carried out and reported? What reliance can the Examining Authority and Secretary of State place on the outcome?	
10. Marine Environment			
ME2.10.1	Applicant MMO	Have the MMO and the Applicant reached a final position on the inclusion of a DML condition restricting works in relation to herring spawning sensitivities,	

		and if so, what period and length of the marine cable route is affected, and how is this to be secured?	
ME2.10.2	Applicant MMO	In its Deadline 6 submission [REP6-096], MMO requested the Applicant to clarify which parts of conditions 4 and 11 of the DML would enable the MMO to approve the deployment of cable protection. Has this matter been finalised, and if so, how?	
ME2.10.3	Applicant MMO	In relation to the MMO's request that operational deployments of cable protection be supported by survey data no older than 5 years old and the Applicant's proposed consequential changes to the DML condition, has agreement been reached between the parties and the relevant parts of the draft DML finalised?	
ME2.10.4	Applicant MMO	We understand that the Applicant and MMO have reached agreement on the definition, detail and monitoring of the Atlantic cable crossing at Part 1 (4) (1) of the DML but that the MMO has some residual concerns regarding the details in Part 1 (4) more broadly. Have these concerns been overcome and, if so, how?	
ME2.10.5	Applicant MMO	Have the MMO and the Applicant reached agreement on the need for resampling of sediments for contamination at the offshore HDD entry/ exit point if these works do not occur within 5 years from the date of the latest contaminant analysis? If not, has an agreed form of wording for a DML condition been agreed, notwithstanding the Applicant's view that it should not be applied?	
11. Noise			
N2.11.1	Applicant	It is noted that Article 9 of the dDCO (defence against statutory nuisance) [REP6-015] has been amended. Why is it considered necessary to protect the Proposed Development from statutory noise complaints whilst it is in operation? Please provide details of any made DCO precedents for inclusion of the 'operational' phase of a development in this manner. Please provide details of any made DCO precedents for inclusion of Articles 9(1)(b), 9(2) and 9(3). What does the Applicant believe is specific to this Proposed Development to warrant what appears to be an exceptional approach to a ' <i>Defence to proceedings in respect of statutory nuisance</i> ' Article such as this?	PCC response: PCC are of the firm view that this requirement is not necessary as there should not be any statutory noise nuisance caused if Schedule 2 Requirement 15 and Schedule 2 Requirement 20 is followed. It is therefore recommended that this Requirement is removed from the DCO.
N2.11.2	Applicant	Could the Applicant please clarify two phrases used in relation to night-time works in the Onshore Outline CEMP [REP6-036]: i. ' <i>outside the Harbourside Caravan Park</i> ' (2.3.1.4); ii. ' <i>in the vicinity of sensitive receptors</i> ' (6.2.8.6). For the avoidance of the doubt, what constitutes 'outside' and 'in the vicinity of', and what method would be used to establish this with a future contractor?	
N2.11.3	Applicant	Please could the Applicant clarify the apparent inconsistency between ES paragraph 24.4.2.21 and Table 24.1 [APP-139]. The former states that night-time working is only anticipated at two of the HDD sites, while the table mentions only HDD-4. Also, Table 24.1 seems to contradict the mitigation schedule [REP2-005] by stating that weekend working at joint bays is limited to between 08.00 and 13.00. The mitigation schedule does not anticipate any weekend working at joint bays.	

		<p>On what basis was the noise assessment undertaken in relation to both of these?</p> <p>The mitigation schedule suggests that evening, weekend or night-time working is not anticipated at joint bays. Table 2.2 of the Outline Onshore CEMP [REP6-036] (working hours) does not seem to mention joint bays explicitly. Requirement 15 of the dDCO appears to allow all components of Work No. 4 to take place on a Saturday morning, which is assumed to include joint bays. Please explain how the submitted documentation secures this mitigation measure on which the noise assessment was apparently undertaken.</p> <p>Read together, draft Requirements 15 and 18 appear to allow operations to take place outside the core working hours controlled by Requirement 15, if this is agreed in an approved CEMP. How was this accounted for in the noise assessment and could it give rise to effects not anticipated in the ES?</p>	
N2.11.4	Applicant	<p>What does the word 'approximate' mean in paragraph 6.2.8.20 of the Outline Onshore CEMP [REP6-036] in relation to the noise fence at the Thatched House pub?</p> <p>What would be the implications for the noise assessment if the fence was less than 3.5m in height?</p> <p>Should this read '<i>at least 3.5m in height</i>'?</p>	
NV2.11.5	Applicant	<p>It is noted that a supplementary noise and vibration assessment was provided at Deadline 6 as Appendix F to the <i>Applicant's Response to Deadline 4 Submissions</i> [REP6-067] to consider the use of the access road for the Converter Station.</p> <p>For completeness, could the Applicant describe and evaluate the noise and vibration effects from the construction of this access road on residents of nearby properties and especially those situated within 300 metres?</p> <p>If this has already been evidenced in the ES, please highlight the relevant sections.</p>	
12. Onshore Water Environment			
OW2.12.1	Applicant	<p>It is understood that the trenchless technique to be used for HDD-4 will not be HDD, but an alternative trenchless solution known as micro-tunnelling. With respect to preventing groundwater seeping into the tunnel, can the Applicant indicate how this is accounted for and secured within the Onshore Outline CEMP [REP6-036]?</p>	
OW2.12.2	Environment Agency Portsmouth Water	<p>Are the Environment Agency and Portsmouth Water now satisfied that the measures to grout any surface karst features at the Converter Station site prior to any earthwork movements and to interrupt any pathway to the underlying Chalk aquifer are suitable and achievable?</p> <p>Does the surface water drainage and aquifer contamination mitigation strategy [APP-360] provide sufficient reassurances in this regard?</p>	
OW2.12.3	Environment Agency Portsmouth Water Winchester City Council	<p>In response to our first written question OW1.12.11 in respect of whether the baseline data in the proximity of Kings Pond Meadow are adequate to ensure a robust assessment, the Applicant indicated that samples taken from exploratory holes at Soake Farm and Hilcrest were suitable proxies. Do you agree?</p> <p>If not, why not?</p>	
OW2.12.4	Environment Agency Hampshire County Council	<p>Are there any outstanding areas of concern or disagreement regarding the safety and security of the public water supply in Source Protection Zone 1?</p>	

	Portsmouth Water	If so, why are the Applicant's mitigation measures considered not to alleviate the concern and what additional measures do you believe are required?	
OW2.12.5	Applicant Portsmouth City Council	<p>Please could Portsmouth City Council provide the ExA with details of the subsurface drainage system (field drains, mole drains, tile drains, etc) at Farlington Playing Fields, including any maps or diagrams that would assist our understanding?</p> <p>Could any of these systems be severed or otherwise interrupted by the installation of the Proposed Development and, if so, what would be the effects on drainage and playing surface quality?</p> <p>What mechanism would ensure their proper restoration through a CEMP and any DCO?</p> <p>Could any of these drains be compacted or damaged during construction works and, if so, what mechanism would ensure their investigation and restoration through a CEMP and any DCO?</p> <p>The Applicant's Deadline 6 post-Hearing note [REP6-063] refers to planned SI works at Farlington Playing Fields, and to the preparation of a Method Statement in relation to reinstatement that will be submitted '<i>at a future deadline</i>'. What certainty can the Applicant provide that the relevant information on this matter will be available prior to the close of the Examination and in sufficient time for Portsmouth City Council and other parties to read and comment on it?</p>	<p>An 'as built' final record plan of the drainage scheme at Farlington Playing fields has been provided with PCCs Deadline 7 response as an appendix (1a). These details have previously been shared with the applicant.</p> <p>On Plan 2 also attached (appendix 1b) with PCCs response PCC has mapped out as closely as possible the work areas as described in the indicative Frame work management plan for recreation and shows the potential effect of excavations on the integrity of the whole drainage system.</p> <p>Any pipes damaged in work areas A and E on attached plan would have a major effect on areas B, and D and until pipework is re-instated in work areas A and E areas B and D would affectively have reduced or no drainage.</p> <p>This would affect 6 senior pitches and the junior pitch plus the cricket outfield although the cricket is not so critical as this is a summer sport.</p> <p>If flow along the main 300mm collection and carry pipe marked X to Y is interrupted this would also affect area C as well as area B.</p> <p>The construction of the cable lines at approximately 750mm deep to the top of the cables (drawing number EN20022-APHN-2), which are then surrounded by 200mm of concrete may have long-lasting effects on the drainage system, presumably cable depths can be lowered where necessary to be below the drainage runs, which vary from 370mm to 930mm to top of pipes.</p> <p>PCC would request that cable runs be set at a minimum depth of not less than 1.5 m this is to allow free movement of goals and installation of goal sockets. This allows us to alter the layout of pitches as required and not be restricted by cable run locations. Whilst pitch locations can be moved to avoid drainage pipes with a width of 80mm adjusting location to avoid a 1m cable run could be problematical.</p> <p>The area marked G on attached plan should not be affected by works on this site as this runs to outfall at position J.</p> <p>With regard to the drainage reinstatement, due to the complicated nature of this reinstatement work PCC have spoken to 2 specialist drainage contractors that we have experience of, MJ Abbot Limited and John Pierson Ltd. Before they could provide any proposed method for re-instatement, both confirmed they required a lot more information such as width of trench, method of excavation, potential of any damage to drainage alongside excavations from compaction through vehicle movements, timing of works, and any allowance made for ground settlement.</p> <p>PCC are concerned that although the applicant was made aware of the existence of the drainage at Farlington prior to the application, within PCC's</p>

			Adequacy of Consultation [AoC-009] letter of response dated 29/04/2019, and in detail in our Relevant Representation [RR-185], LIR [REP1-173] and repeatedly at procedural and examination Deadlines throughout the Examination [PDA-003 para 20; Rep1-173 para 3.12.8; and again in Rep2-018] the applicant has made little or no progress on how to address this issue.
13. Planning Policy			
PP2.13.1	Applicant Local authorities	<p>In December 2020, a number of policy documents and Court decisions that might be considered relevant to this DCO application came into the public forum. These included the:</p> <p>i) Energy White Paper https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future</p> <p>ii) Impact of Interconnectors on Decarbonisation https://www.gov.uk/government/publications/impact-of-interconnectors-on-decarbonisation</p> <p>iii) Supreme Court judgment on the Airport National Policy Statements and Heathrow Airport Expansion https://www.supremecourt.uk/cases/docs/uksc-2020-0042-judgment.pdf</p> <p>iv) Defra policy paper, Changes to the Habitats Regulations 2017 https://www.gov.uk/government/publications/changes-to-the-habitats-regulations-2017/changes-to-the-habitats-regulations-2017</p> <p>In relation to each of these, and any other relevant, recently published policy or cases, please explain the relevance and significance for the current Proposed Development and what influence, if any, arises that the Examining Authority and Secretary of State should be aware of and take into consideration.</p>	<p>Introduction:</p> <p>In responding to this question the starting point is the test set out in sections 104 and 105 of the PA 08 which requires both state that the SofS “must have regard to... any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision” [emphasis added]. S.104 relates to circumstances where a NPS has effect but only where a NPS has effect not simply where there is Government policy in the wider sense.</p> <p>It is important in the context of this DCO application to refer to both ss104 and 105 as the only relevant NPS to the development as described in the application (and the section 35 direction) is EN -1 which gives limited support for to interconnectors (and of course no reference to fibre optic cables).</p> <p>In any event as noted by the Supreme Court in the R(oao FOE et ors) v HAL [2020] UKSC 52 (‘the Heathrow ANPS case’) at [31] a “relevant NPS” as per s104 and 105 “simply sets the policy framework within which any application for a DCO must be determined”.</p> <p>Energy White Paper</p> <p>With regard to the relevance and significance for the current Proposed Development and what influence, if any, arises on the ExA’s considerations from the Energy White Paper, PCC considers that there is in fact very little. This is not because the White Paper is not a significant document but because it addresses for the most part commitments to future actions by the Government in terms of energy generation not energy distribution.</p> <p>It does however refer have a chapter that deals with the energy system [pages 66 -87] which refers to interconnectors. It states the view that “[i]nterconnection increases the ability of the GB electricity market to trade with other markets, enhances the flexibility of our energy system and has been shown to have clear benefits for decarbonisation.” It then refers to the Aurora Report “into the impact of interconnectors on decarbonisation” which it says “demonstrates how a higher level of interconnector capacity could decrease cumulative emissions in Great Britain by up to 199MtCO₂e by 2050, as well as reducing total system costs” (see page 79 – 80). PCC considers the Aurora Report below.</p> <p>The White Paper asserts that the government “will work with Ofgem, developers and our European partners to realise at least 18GW of interconnector capacity by 2030”. The principal aim however for interconnectors is in respect of interconnecting directly from wind turbines so</p>

			<p>that they can keep “generating even when GB electricity demand has been met.” This is reflected in the commitments section at the end of the energy system chapter which refers to a commitment “implement a more efficient approach to connecting offshore generation to the mainland grid”.</p> <p>The Energy White Paper cannot be treated as making the case for the Aquind project in terms of the electricity cables any higher than NPS EN-1 which is to be reviewed but will not be suspended during that review (see page 55). The White Paper obviously makes no case to support the fibre optic commercial development which Aquind seeks to include in this the DCO (its review of digital infrastructure is only in relation to establishing data for the energy system).</p> <p>In the context however of the issue of the impact of installation of cables and infrastructure connecting offshore wind farms to the onshore grid, PCC asks the ExA to note this as comparable to the Aquind onshore infrastructure. The White Paper in particular recognises “the impact this is having on the coastal communities which host this infrastructure” and confirms that the government seeks to “minimise” this impact as the focus of its commitment set out above.</p> <p>ii) Impact of Interconnectors on Decarbonisation- Aurora Report</p> <p>The Aurora report is only available in a presentational format in slides. It seeks to explore “the impact of interconnection and associated cross border trading on carbon emissions at a regional level, considering different levels of interconnection and different decarbonisation pathways for Europe and GB”. Unfortunately it is somewhat opaque in terms of whether its assumptions include or exclude the Aquind interconnector and therefore it is difficult to be clear about the reports direct relevance to the ExA’s considerations. It is acknowledged that the diagram on slide 10 appears to show Aquind as a projected scheme.</p> <p>The White Paper does make reference to the report and its conclusions which suggest there is a correlation between an increase in interconnectors in helping the reduction of cumulative CO2 emissions and other emissions. The report itself however refers to this being a benefit across the GB and EU not just GB alone. It is not possible to identify GB emissions benefit alone because of the limitations on the exercise - Aurora notes that “[t]racking carbon emissions associated with interconnector flows is difficult; considering average intensity of the source is not exact”. The impact of interconnectors on emissions was therefore assessed by Aurora by “varying EU & GB decarbonisation level and interconnection capacity” In addition Aurora confirms that in respect of its methodology that it has used “a deterministic model, and not a statistical model, in short the output scenarios are dependent on the model inputs. The scenarios output are presented within a range of uncertainties, and are not forecasted results.”</p> <p>In terms of Net Zero scenario for GB (ie which accords with the Climate Change Act 2008 (2050 Target Amendment) Order 2019 target by 2050) the report concludes that the benefits of an increase in interconnection capacity</p>
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			<p>on decreasing emissions are evident in the short- to medium-term (up to 2030) but level out in the longer term.</p> <p>Taken at face value and without the ability to test this report, PCC would suggest that again as with the White Paper that whilst there is some relevance to the ExA's report and the SofS's deliberations with respect to Aquind, only very limited weight can properly be given to the Aurora report as being in favour of the DCO.</p> <p>iii) R(oao FOE et ors) v HAL [2020] UKSC 52 ('the Heathrow ANPS case')</p> <p>The case clearly involves a challenge to the designation of a NPS and not a decision to grant or refuse of DCO application and which ultimately failed on all grounds. In terms of any matters of relevance to the Aquind DCO application that arise out of this case therefore PCC considers there are a few but they are not of great weight and relatively tangential. It does however provide some notable comparators.</p> <p>With regard to the role of the NPS compared with EN-1 in this case, whilst both should serve as the framework for a decision for a relevant DCO project more specifically the ANPS clearly gives far greater specific guidance to the SofS in terms of the location of the Heathrow runway project and the principle of 'need' than the few sentences within EN-1 which refers obliquely to the benefits of interconnectors in general terms and emphasises the importance of generation projects.</p> <p>With regard to the issue of climate change and in particular the Paris Agreement, clearly the debate before the courts in Heathrow ANPS case centred upon whether the government in designating ANPS had properly accorded with duty under s10 of the PA 08 to do so "with the objective of contributing to the achievement of sustainable development" and "have regard to the desirability of -(a) mitigating, and adapting to, climate change; ..." and also whether it had given reasons as required to do under s5 to provide reasons for the NPS which "must (in particular) include an explanation of how the policy set out in the statement takes account of Government policy relating to the mitigation of, and adaptation to, climate change".</p> <p>The decision of the SC sets out in its view of what qualifies as "Government policy" in the above statutory context and confirmed not only that "a ratified international treaty which had not been implemented in domestic law" (ie the Paris Agreement at the relevant point or indeed once ratified) as well as once ratified does not fall "within the statutory phrase "Government policy"". In addition statements by ministers in the House of Commons as to how the commitment within the Paris Agreement (before it was finally ratified) might be taken forward and where policy is still inchoate also does not represent Government policy. Indeed the SC confirmed that the Government "is still in the process of developing its Aviation Strategy in response to the advice of the [Climate Change Committee]" In particular the SC disagreed with the Court of Appeal's approach that "the words "Government policy" were ordinary words which should be applied in their ordinary sense to the facts of a given situation", instead the SC concluded firmly that "the criteria for a</p>
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			<p>“policy” to which the doctrine of legitimate expectations could be applied” was the correct approach and which “would be the absolute minimum required to be satisfied for a statement to constitute “policy” for the purposes of section 5(8). Those criteria are that a statement qualifies as policy only if it is clear, unambiguous and devoid of relevant qualification”</p> <p>Whilst it was not an issue raised in the Heathrow ANPS case, White Papers are in an anomalous position comparable to the statements from ministers at issue in the SC’s judgment as they usually set out options for future policy or legislation but do not ultimately represent final firm policy. The Energy White Paper itself describes the Government’s “vision” [page 3] but also contains future commitments by the Government. It again cannot be said to represent final policy which meet the above criteria set out by the SC.</p> <p>There therefore does not appear to be any relevant Government policy statement in the context before the ExA and relevant to this DCO beyond that set out in NPS EN-1 (which was adopted well before the events considered in the ANPS case). The statutory commitments to net zero emissions by 2050, which reflect the Paris Agreement, are important and relevant to the State's decision in respect of this and indeed any DCO application but again they do not represent Government policy.</p> <p>To be clear, with regard to the Aquind DCO, Government policy in respect of climate change is contained in NPS EN-1. Neither the Energy White Paper nor indeed the Aurora Report reflect Government policy. Meeting Net Zero target by 2050 in respect of GHG emissions is a statutory commitment but again not ‘policy’.</p> <p>iv) Amendments to the Habitats Regulations 2017</p> <p>The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019/579 (‘the 2019 Habitat Reg Amendments’) were made in exercise of the powers conferred by section 8(1) and section 14(1) of, paragraph 1 of Schedule 4 and paragraph 21 of Schedule 7, to the European Union (Withdrawal) Act 2018 (c.16). They came into effect on 31 December 2020/1 January 2021.</p> <p>Their purpose was to address failures of retained EU law following Brexit to operate effectively and other deficiencies (in particular under section 8) arising from and following the withdrawal of the United Kingdom from the EU.</p> <p>The 2019 Habitat Reg Amendments make amendments to legislation in the field of biodiversity protection in relation to England, Wales and offshore waters. Part 2 makes a slight amendment to s27 of the Wildlife and Countryside Act 1981 and Parts 3, 4 and 5 amend secondary legislation, namely the Conservation of Habitats and Species Regulations 2017 (‘the 2017 Habitats Regulations’), the Conservation of Offshore Marine Habitats and Species Regulations 2017; and the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001.</p>
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			<p>While the 2019 amendment to the Habitats Regulations 2017 requires slight changes to the context and wording of the legislation sections of the relevant ES chapters, it does not appear to have any direct implications for the Aquind development in terms of the ecological assessment or mitigation. The annexes and schedules are unchanged and European Protected Species are still referred to as such, until such time as a new statutory instrument is implemented by parliament. Natura 2000 sites will now be called National Network Sites (SPAs and SACs, but not Ramsars). Conservation Objectives will now be called Network Objectives. As such the dDCO needs the new wording where relevant throughout the application.</p> <p>The Network Objectives are to :</p> <ul style="list-style-type: none"> • maintain or, where appropriate, restore habitats and species listed in Annexes I and II of the Habitats Directive to a favourable conservation status ('FCS') • contribute to ensuring, in their area of distribution, the survival and reproduction of wild birds and securing compliance with the overarching aims of the Wild Birds Directive <p>In addition the appropriate authority must also have regard to the:</p> <ul style="list-style-type: none"> • importance of protected sites • coherence of the national site network • threats of degradation or destruction (including deterioration and disturbance of protected features) on SPAs and SACs <p>The ExA will need to take into account that the duties of the relevant SofS for a project which remains the Competent Authority ('the CA') and should note in particular that the IROPI process has changed, ie where an Appropriate Assessment has been carried out and results in a negative assessment and the need to consider if there are no alternative solutions; there are Imperative Reasons of Overriding Public Interest (IROPI) for the development; and compensatory measures have been secured in order to grant consent for a DCO project. The responsibility for IROPI in short no longer lies with the European Commission and under the new arrangements when the need to establish IROPI arises the CA is expected to ask the Appropriate Authority ('the AA'), who is the Secretary of State for Environment, Food and Rural Affairs, for its opinion on whether a plan or project affecting priority habitats or species constitute IROPI for reasons other than human health, public safety or primary environmental benefits.</p> <p>The AA is required to consult with the devolved administrations, the Joint Nature Conservation Committee ('JNCC') and any other person the AA considers appropriate in developing its opinion. The appropriate authority will also take account of the broader national interest in developing their IROPI opinion. The AA will publish the IROPI opinion the give to the CA.</p> <p>Infrastructure Planning (Publication and Notification of Applications etc.) (Amendment) Regulations 2020 & Guidance</p>
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			<p>For completeness PCC would draw the ExA's attention to the changes made to certain publicity requirements introduced through the Infrastructure Planning (Publication and Notification of Applications etc.) (Amendment) Regulations 2020 (the 2020 Regulations). The 2020 Regulations came into force on 31 December 2020.</p> <p>The ExA will be aware of the new Guidance dated December 2020, published by PINs, which refers in particular to the service and publicity requirements.</p> <p>The amendments are described in the Guidance have been introduced to enable a more digital and efficient consenting regime for major infrastructure.</p>
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15. Socio-Economic Effects

SE2.15.1	Applicant Portsmouth City Council	<p>What progress has been made with regards to agreeing the reinstatement of the car park at Fort Cumberland?</p> <p>Would the car park be fully re-surfaced and marked out, and, if so, in what timeframe?</p> <p>What proportion of capacity would be lost, and how would the loss of car parking be compensated?</p> <p>If a reinstatement method statement is being prepared for Farlington Playing Fields, should a similar document be prepared for Fort Cumberland Car Park as opposed to using a s106 agreement as proposed by the Applicant?</p>	<p>The applicant has made no progress to date regarding the reinstatement of the car park.</p> <p>The applicant has proposed a possible re-instatement of the whole car park with tarmac with marked out parking bays. PCC's preferred option would be to have tarmac roadways with suitable open cell concrete (or similar) marked parking bays. PCC feel this is more in keeping with the natural surroundings of the area.</p> <p>While, immediately before Deadline 7 (19 January 2021), the applicant has provided a layout plan for the site PCC require a scaled version of this indicative layout plan (AQ-UK-DCO-TR-LAY-007) of the revised car park layout to fully assess the applicants proposal.</p> <p>Details of the construction and material specification are still awaited. PCC's preferred option would be to have tarmac roadways with suitable open cell concrete (or similar) marked parking bays. PCC feel this is more in keeping with the natural surroundings of the area.</p> <p>PCC note that the applicant's recent indicative layout plans, AQ-UK-DCO-TR-LAY-006; showing the existing car park, and AQ-UK-DCO-TR-LAY-007; showing the applicants illustrative new layout and their proposed ORS, seek to suggest a comparison of capacity. These plans assume an existing parking capacity of 106 spaces. PCC consider this to be a significant underestimate, as it has made pessimistic assumptions regarding the positioning of parking due to the informal, un-delineated nature of the car park. All spaces have been created with a 1.5m unused space between them and excessive space has been illustrated between parked areas. Peak demand, driven by season and weather as the car park serves an open space and beach, would encourage and support a higher capacity, as can be seen through simple critical review of the applicants submitted plan which would suggest well in excess of 120 spaces would be currently available without the need for lining or other signage. By contrast the applicant's illustrative layout for their reinstated car park maximises the efficiency of parking layout to seek to suggest that the reinstated car park would exceed the existing capacity.</p> <p>PCC reject this assertion and while recognising that the plans being offered are 'not to scale' appear to show the ORS and land unavailable for parking</p>
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			<p>would occupy between 25% and 30% of the existing car park, inevitably resulting in a loss of parking opportunity now and in the future at the site. PCC is also concerned that land shown as being lost for public benefit is underestimated as the land required for screening in line with the applicants stated intended parking has been underestimated. The plans would suggest planting and establishing of trees or hedge, large enough to fully screen the building to a height of 3.5m, on ground that is mostly maritime shingle comprising of sand and gravel. PCC consider that this would not allow the proposed hedge to establish into a healthy specimen large enough to fully screen this building (or at all) and question Aquind's apparent assumption that this landscaping can occur. It is clearly questionable that they have carried out soil sampling along the line of the planting areas to ensure planting is possible in all areas of the proposed screen.</p> <p>The Method Statement referenced in question OW2.12.5 will have generic provisions effective along the length of the route (for land owned by PCC), with Site Specific Requirements – Fort Cumberland car park will have site specific requirements included within the Method Statement. This will need to be agreed for any private treaty agreement to be concluded.</p>
SE2.15.2	Applicant	Could the Applicant explain and, as far as practicable, estimate the predicted social and economic benefits (from employment, local spending, support for community services, etc) that would arise from the Proposed Development for the rural settlements of Denmead and Anmore?	
SE2.15.3	Applicant	<p>Who will be responsible for confirming that the Applicant's reinstatement measures at the various playing fields and sports pitches affected by the Proposed Development have been completed satisfactorily?</p> <p>If any defects are claimed, what will be the mechanism for agreeing them and, if necessary, putting them right?</p>	<p>PCC response:</p> <p>PCC have been attempting to negotiate with the applicant regarding post consent work in the event that the DCO is made. PCC are of the firm view that post consent work under Requirements or otherwise should be the subject of a s106 planning obligation to ensure an enforceable mechanism is available to allow the Local Authorities to monitor and support the correct delivery of the scheme without an unreasonable and unfunded burden on local authority resources. The applicant remains resistant to this solution, proposing instead a PPA outwith the control of the ExA contrary to the recommendations of PCC.</p>
SE2.15.4	Applicant Portsmouth City Council University of Portsmouth	<p>Would playing fields and sports pitches outside but adjacent to the Order limits (for example, at Bransbury Park and the University of Portsmouth) will be able to operate at full capacity when construction works are underway nearby?</p> <p>Would noise, vibration and general disturbance disrupt users and the ability to use these areas fully?</p> <p>If so, are such effects evidenced in the ES?</p>	<p>The capacity for recreation outside of the work order limits whilst construction works are ongoing is as follows.</p> <p><u>Farlington</u> At Farlington there are 10 senior football 1 junior football and 2 cricket pitches. The Aquind order limits cover or affect 8 senior pitches the junior pitch, and 1 cricket pitch (outfield only). PCC considers that the remaining 2 football pitches and cricket pitch could be played during construction period as long as there is access to the car park and access road to sports field. Access is required for maintenance and emergency vehicles in case of injury during games. There would however be a limit to number of games that could be played on any 1 pitch in a week. In order to prevent excessive wear PCC would not recommend more than 2 or 3 games per week per pitch. The football season at Farlington runs from the first Saturday in Sept to mid-April.</p>

			<p>The cricket season runs from the first week of April to mid-August. The works are indicatively programmed for April to Sept both in 2022 and again in 2023 plus 8 weeks in Nov and Dec for renovations although PCC question whether the drainage could be reinstated in this time period. Any delay in these re-instatements including drainage would significantly affect the football season likely to an extent that the seasons could not be competitively played.</p> <p><u>Langstone</u> Langstone has 1 cricket pitch 1 PCC football pitch and 1 football leased to Baffins Milton FC. The work order limits affect all of these pitches. The football season at Langstone PCC pitch runs from mid Sept to mid-April. The Baffins Milton pitch season runs from Mid-July to Early may. The cricket season at Langstone runs from mid-April to mid-Sept. The works are indicatively programmed June-July with an additional 8 weeks / 2 months for re-instatement. No sport can be played at this ground during the construction or reinstatement period.</p> <p><u>Bransbury</u> Bransbury has 3 senior football pitches 2 of the 3 pitches should be available for play during works, as long as access can be maintained between the pavilion and all pitches, however car parking would be greatly affected due to the whole car park being within the works order limits. Games may have to be cancelled if we receive too many complaints from local residents about parking on residential side streets. The Football season at Bransbury runs from early August to end of April. Aquind have in the Framework Management Plan for Recreation not provided any indicative programme timing for works apart from estimating that works will take 4 to 8 weeks plus 8 weeks for re-instatement. Aquind have also submitted a proposal to move the pitch within the order limits to a new location, this has still to be assessed on site to ensure any new location is suitable. The current relocation plan supplied by Aquind shows the pitch on the path and fenceline of the model railway. If this pitch move is a viable option, all 3 pitches could be played subject to the access and parking conditions above.</p> <p><u>General Comment:</u> All of the above is based on Aquind's indicative timescales and work areas none of which have as yet been confirmed and could change depending on final confirmed timescales and working methods. In all areas noise and particularly dust pollution would need to be assessed during the works on an almost game by game basis, this is dependent on ground conditions, and working practices. All of the above issues with regard to loss of sports provision have previously been raised in REP1-173 Local Impact Report.</p>
16. Traffic and Transport			
TT2.16.1	Applicant	On page 5-93 of [REP2-013], the Applicant stated that a Road Safety Audit should be completed. The ExA has not seen this to date, only a Road Safety	

		<p>Technical Note [REP6-071]. When will such an Audit be produced and submitted to the Examination?</p> <p>Will the safety audit be prepared by independent consultants?</p> <p>At this time, can the Applicant set out, with reasons, why it appears that different methods have been applied with regard to assessing accidents and road safety along the onshore cable corridor and the wider study area?</p>	
TT2.16.2	Applicant	<p>The ES assesses a worst-case scenario of up to 86 two-way HGV movements during peak construction (APP-137 paragraph 22.4.6.3). Can the Applicant indicate where and how this is secured in the dDCO and other application documents?</p>	
TT2.16.3	Applicant	<p>The Applicant's report, <i>Temporary Highway Alterations to Facilitate Abnormal Load Deliveries</i> [REP6-074], (at page 2, Impacted Locations) states: 'Based on the preliminary assessment of Joint Bay locations it is estimated that 16 cable drums will be delivered to a Joint Bay located in Sainsbury's car park.'</p> <p>This appears to contradict the Supplementary Transport Assessment [REP1-142] (paragraph 3.9.4.1 ff): 'All cable drums will be delivered by sea to, and stored at the Cargo Terminal of Portsmouth International Port and transported directly to each Joint Bay from this location', and also paragraph 3.5.5.1 of the FCTMP.</p> <p>Could the Applicant confirm if there is an error in the technical note in this regard?</p> <p>If so, please amend with correct wording.</p> <p>If not, should cable drums be stored at Sainsbury's car park and further transported from there, can the Applicant explain how this influences the ES assessments and update any ES documents to reflect this.</p>	
TT2.16.4	Hampshire County Council First Group	<p>Is Hampshire County Council content, in light of the minutes of the meetings between the Applicant and the relevant bus companies, that adequate consideration, engagement and mitigation is in place to minimise the disruption to bus services across the onshore cable corridor?</p> <p>Is Hampshire County Council aware of any documented outstanding concerns that Stagecoach has with regards to the Proposed Development?</p> <p>Could First Group please provide details of any outstanding concerns regarding the Proposed Development's impacts on its services and what, if any, measures could be taken to alleviate any such concerns.</p>	
TT2.16.5	Applicant	<p>Hampshire County Council has suggested that the Applicant should monitor the proposed construction worker shuttle bus services to check the provisions are fit for purpose. How does the applicant intend to ensure that the provisions are fit for purpose and how are they secured through the dDCO?</p>	
TT2.16.6	Portsmouth City Council	<p>During ISH2, it was concluded that the additional data in the Supplementary Transport Assessment were largely agreed with the exception of figures for Portsbridge Roundabout. The Applicant has provided a Technical Note for this location at D6 [REP6-076]. Is Portsmouth City Council in agreement with the conclusions of the Technical Note, notwithstanding any perceived limitations in the modelling.</p> <p>If not, why not?</p>	<p>PCC remain concerned with the conclusions of the Technical Note [REP6-076]. Full details of those concerns are provided in PCCs separate response at Deadline 7 in respect of matters raised at Deadline 6 under the heading 'REP6-076 Portsbridge Roundabout Technical Note'</p>
TT2.16.7	Applicant	<p>The Joint Bay Technical Note [REP6-070] shows indicative locations for joint bays. Whilst it is acknowledged these are indicative and there are more shown than is permissible in the dDCO, the ExA notes that JB's 11, 12, 13, 14, 15, 16, 18 and 19 in particular appear to be within the highway (where the</p>	

		<p>definition of 'highway' incorporates the carriageway and footpath and cycle path margins). It says in APP-137 paragraph 22.4.7.15 that joint bay locations have been included, all of which provide adequate space for construction works to take place without blocking the carriageway.</p> <p>Can the Applicant therefore explain:</p> <p>1) Whether the single-lane closures or shuttle-system for traffic would constitute traffic management for which there should be no more than 6 occurrences on the network at any one time?</p> <p>2) What arrangements would be in place for the diversion of pedestrians or cyclists during the 20-day joint bay construction period?</p> <p>3) Have measurements been carried out along the Order limits to confirm that sufficient room (either 40m x 5m in the case of a single bay or 40m x 12.5m in the case of a double bay as shown in [REP6-064]) exists at all potential joint bay locations to confirm that the joint bay will not be in the carriageway?</p>	
TT2.16.8	Applicant Hampshire County Council	<p>It is proposed to use four passing bays in Day Lane to allow construction-related HGVs to pass non-project traffic and non-related HGVs, and images have been provided showing the locations in the <i>Day Lane Technical Note</i> [REP6-073]. These passing bays appear to be beyond the Order limits and the document does not describe how the bays would be secured or surfaced. Would this be this through a s278 agreement?</p> <p>What evidence exists that all the land for the passing bays is within the public highway?</p> <p>What baseline evidence is there regarding the use, availability and environmental effects arising from the use of these parcels of land for passing bays?</p> <p>What surfacing would be used and how would this impact trees, hedgerows and wildlife?</p>	
TT2.16.9	Highways England	<p>The Applicant proposes using lay-bys on the strategic road network to hold construction-related HGVs temporarily until such HGVs are given the authorisation by a traffic marshal to travel and approach the Converter Station construction site. Can Highways England confirm if the identified lay-bys shown in the applicant's <i>Day Lane Technical Note</i> [REP6-073] have capacity for such vehicles to park and wait and if there are any safety or capacity concerns with the use of the lay-bys in this way?</p>	
TT2.16.10	Hampshire County Council Portsmouth City Council	<p>During ISH2, reference was made to a figure of 200 metres being a reasonable walking distance for persons to travel in order to retrieve their displaced parked cars (as opposed to 400 metres suggested by the Applicant). The origin of this is not clear in the Deadline 6 submissions. Please could greater clarity be provided as to the source of this, and what effects, if any, the shorter distance might have on the Applicant's parking strategy where parking spaces are temporarily displaced due to construction.</p>	<p>The origin of the 200m walking distance as being reasonable for residents to walk to parked cars is drawn from the PCC approach to assessment of suitability of on street parking opportunities to substitute for residential parking shortfall at new developments and is the common standard applied by most highway authorities having been established as best practice by the work of Lambeth Council. This differs from the 400m walking distance found reasonable in the CIHT guidance for accessing employment, education, retail and passenger transport on foot.</p> <p>The applicant has not yet confirmed where alternative parking facilities may practically be found nor provided an explicit parking strategy so it is unclear what impact this reduced distance may have on their ability to provide alternative parking within a reasonable walking distance. This is of specific concern for those residents fronting sections where road closures are envisaged and consequently access to properties prevented for an extended period.</p>

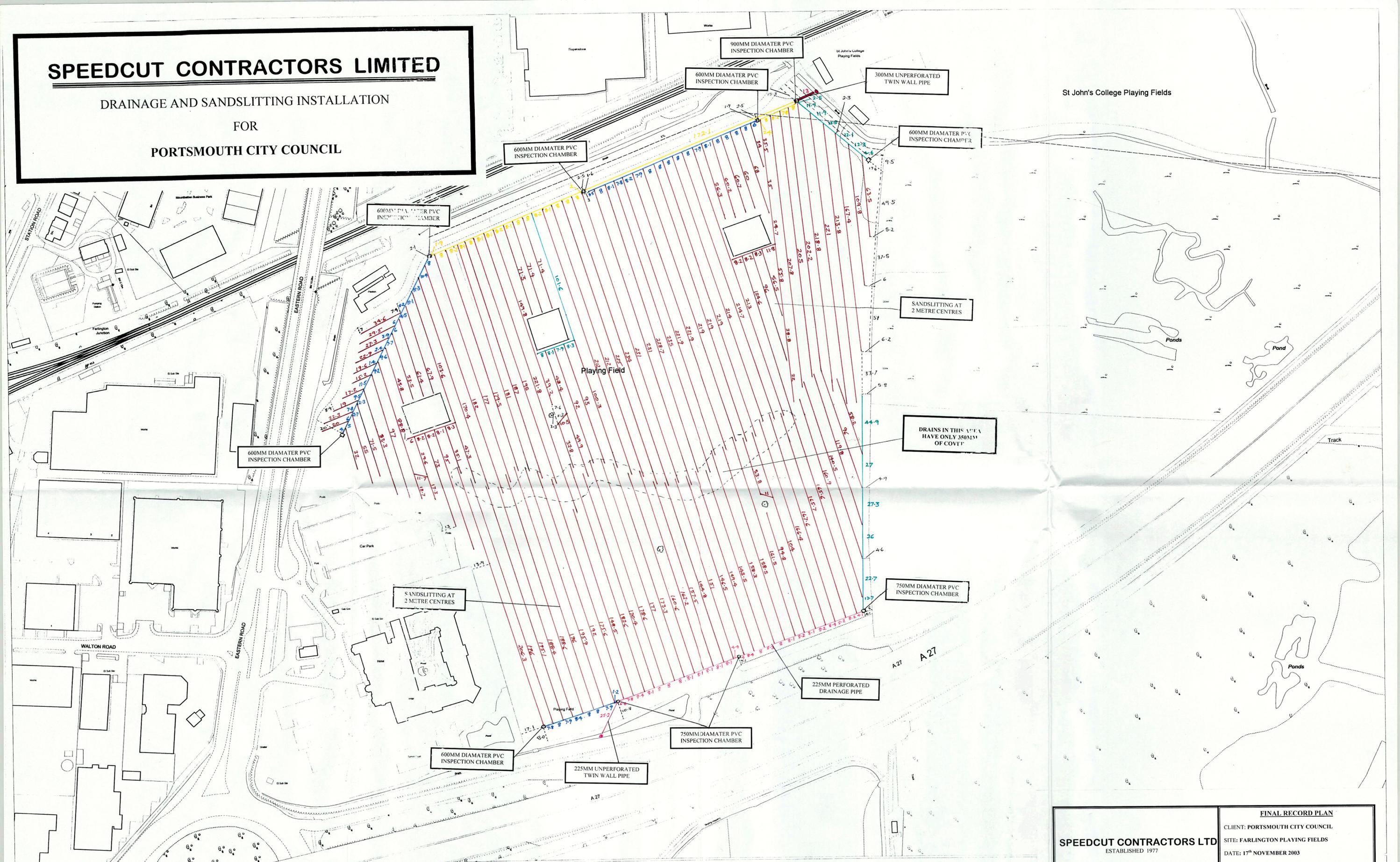
TT2.16.11	Applicant	<p>In terms of defining the vehicular route for construction traffic to the Converter Station, can the Applicant update the Mitigation Schedule [REP2-005] to separate HGVs from regular employee traffic and correctly identify the appropriate control documents and references?</p> <p>Can reassurance be given that the CTMP that will cover the 'phase' of Converter Station construction will be in accordance with the CWTP, and does that document need separate citing in the relevant dDCO Requirement?</p>	
TT2.16.12	Hampshire County Council	<p>Does Hampshire County Council have any concerns regarding the proposed traffic management measures on Anmore Road, as detailed in paragraph 6.2.2.17 of the Framework Construction Traffic Management Plan [REP6-032] in respect of either:</p> <p>a) the efficient operation of the highway in terms of traffic flows; or</p> <p>b) the safety of all road users?</p>	

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FOR

PORTSMOUTH CITY COUNCIL



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	<table border="0"> <tr> <td>60mm Pipe</td> <td>● Inspection Chamber</td> </tr> <tr> <td>80mm Pipe</td> <td>● Outfall</td> </tr> <tr> <td>100mm Pipe</td> <td></td> </tr> <tr> <td>160mm Pipe</td> <td></td> </tr> <tr> <td>200mm Pipe</td> <td></td> </tr> </table> <p>SCALE 1:1250</p> <p>This plan should be used for indicative purposes only and is not intended as an accurate layout drawing.</p>	60mm Pipe	● Inspection Chamber	80mm Pipe	● Outfall	100mm Pipe		160mm Pipe		200mm Pipe
60mm Pipe	● Inspection Chamber									
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Title: **FARLINGTON SPORTS FIELD**

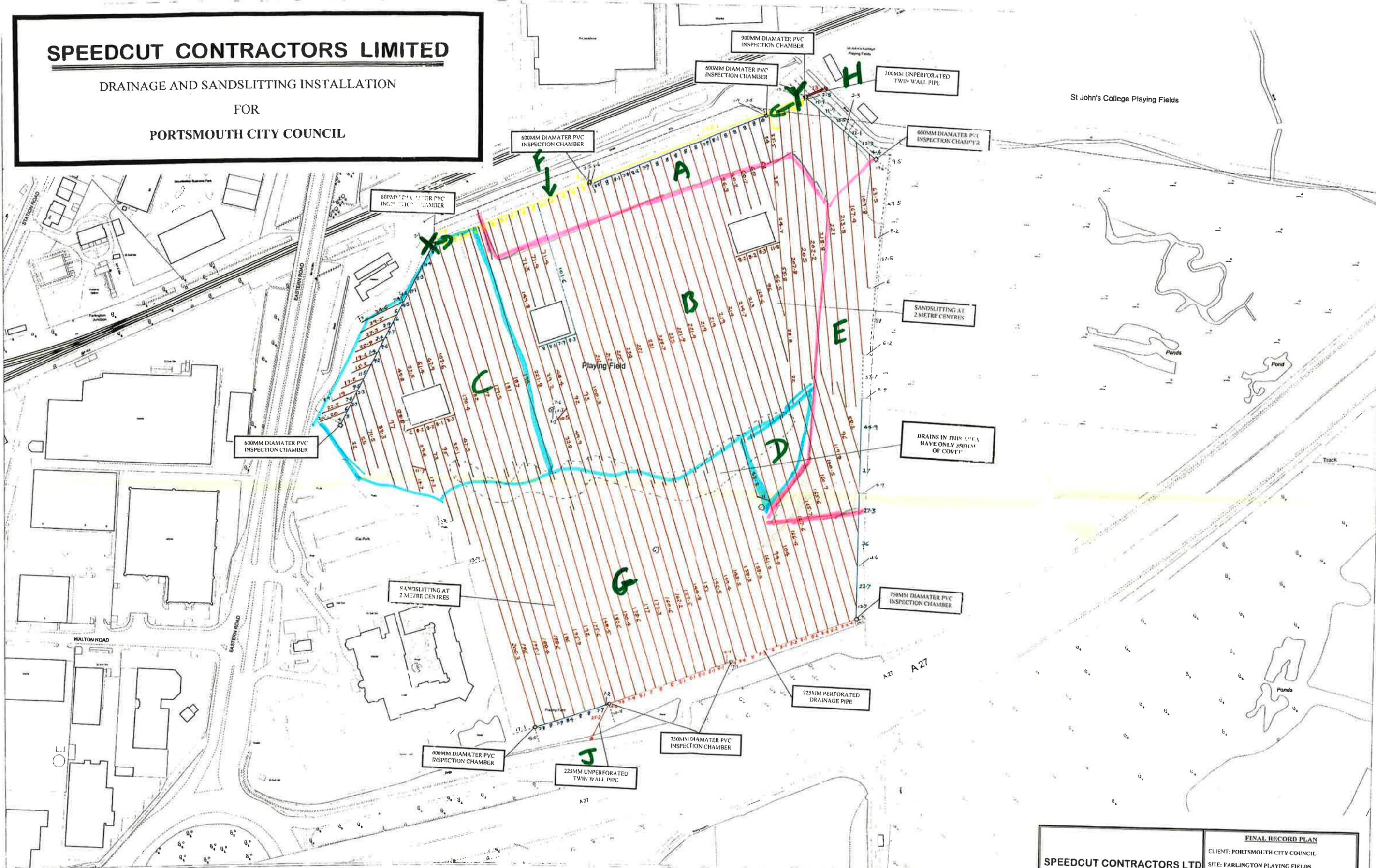
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DRAINAGE AND SANDSLITTING INSTALLATION

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FINAL RECORD PLAN	
CLIENT: PORTSMOUTH CITY COUNCIL	
SITE: FARLINGTON PLAYING FIELDS	
DATE: 17 th NOVEMBER 2003	
60mm Pipe	Inspection Chamber
80mm Pipe	Outfall
100mm Pipe	
160mm Pipe	
200mm Pipe	
Maple Croll, Marcott, Killingington, Oxon. OX5 2RF. Tel: Oxford 01865 331479 Fax: 01865 331828	
This plan should be used for indicative purposes only and is not intended as an accurate layout drawing.	



Title: **FARLINGTON SPORTS FIELD**

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RE: AQUIND INTERCONNECTOR- DCO APPLICATION UNDER THE PLANNING ACT 2008 – PORTSMOUTH CITY COUNCIL

EXAMINING AUTHORITY'S SECOND SET OF QUESTIONS – EXQ2 – DCO 2.5.1
APPENDIX 2

**SUBMISSION IN BEHALF OF
PORTSMOUTH CITY COUNCIL**

INTRODUCTION

1. The Examining Authority ('the ExA') has raised a specific and significant matter as part of its second set Further Written Questions ('EXQ 2') in respect of its examination of AQUIND Ltd.'s ('Aquind') application for a DCO under the Planning Act 2008 ("the PA 2008") for a High Voltage Direct Current (HVDC) marine and underground electric power transmission link between the south of England and Normandy in France with the capacity to transmit up to 2000 MW of electricity ('the AQUIND Interconnector' or 'the Interconnector Scheme').
2. EXQ 2 and the questions therein were published on 7 January 2021. Question ref **DCO 2.5.1** the subject of these submissions states as follows:
"In relation to the proposed commercial use of the surplus capacity of the fibre optic cable, the Examining Authority notes that there are a number of opinions as to whether any associated works [sic] can be authorised by any DCO, and also which works would constitute the development and which would be Associated Development.
The Applicant, the local planning authorities, and Mr Geoffrey and Mr Peter Carpenter are requested to comment on the following interpretation.

For any project that was not the subject of a s35 direction, the development requiring consent would be listed in s14 of the Planning Act 2008 (PA2008) and described in one or more of the relevant subsequent sections (for example, s16 for an electric line), together with any Associated Development that falls within the definition set out in s115(2) of PA2008.

This project does not fall within one of the s14 categories, but instead it is to be treated as a Nationally Significant Infrastructure Project by virtue of the Secretary of State's s35 Direction. Therefore, in this case, it is the s35 Direction that defines the Nationally Significant Infrastructure Project, the development requiring consent.

Looking at the Direction, the wording is that ‘THE SECRETARY OF STATE DIRECTS that the proposed Development, together with any development associated with it, is to be treated as development for which development consent is required.’ (Our emphasis.)

The ‘proposed development’ is defined as ‘the proposed UK elements of the AQUIND Interconnector (“the proposed Development”), as set out in the Direction request’.

The Direction request is this document. Therefore, the project would appear to consist of the elements described in that document, including the offshore data cables (paragraph 3.5.2(A)), the onshore data cables (paragraph 3.5.1(D)) and the ‘construction of a converter station comprising a mix of buildings and outdoor electrical equipment’ (para 3.5.1(C)). The project description also states that ‘Signal enhancing and management equipment may also be required along the land cable route in connection with the fibre optic cables’ (3.5.1(D)).

*Paragraph 3.12 [of the s35 Direction request] refers to the use of ‘the spare fibre optic cable capacity for the provision of commercial telecommunications services’ as Associated Development. However, the s35 direction states that ‘any development associated with’ the Proposed Development is to be treated as development for which consent is required. **Therefore, the Examining Authority is minded to consider that this use, although described as ‘Associated Development’, would actually be part of the proposed project, and not Associated Development for the purposes of s115 of PA2008.***

The Examining Authority also notes the effect of s157(2) of PA 2008, which means that consent is taken to ‘authorise the use of the building for the purpose for which it is designed’ where no purpose is specified.”[emphasis added]

3. Portsmouth City Council ("PCC") is both an Affected Person and Interested Party under the PA 08 and has set out in its representations in respect of the proposed DCO (both prior to and following the acceptance of the DCO application) its concerns about the approach adopted by Aquind to the promotion of its project but also in particular the basis upon which it has sought to append a wholly separate development to that of the electricity interconnector development and then seek to justify it as Associated Development within the meaning of s115 of the PA 08. That separate development is of course the commercial use of ‘spare’ Fibre Optic Cables (‘the Commercial FOC’) by an unidentified Third Party telecommunications operator together with 2 optical regeneration stations (ORS) within PCC’s land and indeed 2 telecommunications buildings at the northern end of the project at Lovedean.
4. The Commercial FOC use is also separate from the fewer FOCs which Aquind had confirmed are required exclusively for the interconnector itself

i.e. the electricity cables in order to monitor the operation of the electricity cables ('the Minimal FOC').

5. PCC notes the ExA's suggested interpretation of the law and relevant provisions of the PA 08 and that despite the fact that the use of the '*the spare fibre optic cable capacity for the provision of commercial telecommunications services*' is described by the Applicant in its own request as "*Associated Development*" ('AD')(as well as elsewhere by the Applicant PCC would note) that the ExA is nevertheless "*minded to consider*" that the use is not AD but "*part of the proposed project*".
6. As explained below PCC considers that this conclusion if it were to be finally drawn by the Secretary of State, based upon this ExA's recommendation or at all, would be fundamentally flawed and if the DCO were to be granted on that basis would mean that the Order would be vulnerable to challenge under s113 of the PA 08.
7. The first issue that arises out of this conclusion is that it is contrary to the evidence that has been presented to date by the Applicant when asked to address the question of how the Commercial FOC development amounts to AD. To be clear, if it is AD it cannot be part of the proposed project i.e. the principal project and vice versa. PCC will explain that it is neither.
8. The second issue that arises is that it is based upon a flawed understanding of the PA 08 and in particular the notion that because the project or development has been the subject of a s35 direction, s115 of the PA 08 does not apply to it. This also begs the question as to what any of the other development hitherto described as AD is including the ORS.
9. The third issue is that it is based upon a flawed interpretation of the SofS' s own s35 direction namely that the words "*'any development associated with' the Proposed Development*" is to be treated as development for which consent is required "and upon which basis the ExA has seemingly drawn the conclusion that what the SofS meant in that s35 Direction is something other than the language used within the s35 request and within the relevant legislation and statutory guidance.

LAW & GUIDANCE

10. S32 of the PA 08 provides that the meaning of "*development*" within the PA 08 *...has the same meaning as it has in TCPA 1990*". In other words as set out in s55 of the 1990 Act.

11. S.14 of the PA 08 sets out the general provisions as to the type of projects that can forms NSIPs and thereafter subsequent sections add to the limitations to be applied to these stated projects.

12. S.31 makes it clear where “*development consent*” is required under the PA 08 namely “*for development to the extent that the development is or forms part of a nationally significant infrastructure project*”.

13. The relevant part of s.35 of the PA 08 provides as follows:

“35 Directions in relation to projects of national significance

(1) The Secretary of State may give a direction for development to be treated as development for which development consent is required. This is subject to the following provisions of this section and section 35ZA.

(2) The Secretary of State may give a direction under subsection (1) only

if—

(a) the development is or forms part of—

(i) a project (or proposed project) in the field of energy, transport, water, waste water or waste, or

(ii) a business or commercial project (or proposed project) of a prescribed description.

(b)...

(c) the Secretary of State thinks the project (or proposed project) is of national significance, either by itself or when considered with—

(i) in a case within paragraph (a)(i), one or more other projects (or proposed projects) in the same field;

(ii) in a case within paragraph (a)(ii), one or more other business or commercial projects (or proposed projects) of a description prescribed under paragraph (a)(ii).” [emphasis added].

14. To that end therefore development which is neither a project in the field of energy, transport, water, waste water or waste, or business or commercial project (or proposed project) of a prescribed description, nor part of such a project, can be the subject of a s35 direction at all.

15. Lastly s.115 allows development consent to be granted for the development for which it is required and associated developments. The relevant parts of s115 are:

“(1) Development consent may be granted for development which is—

(a) development for which development consent is required, or

(b) associated development , or

(c) related housing development.

(2) “Associated development” means development which—

(a) is associated with the development within subsection (1)(a) (or any part of it),

- (b) does not consist of or include the construction or extension of one or more dwellings, and*
(c) is within subsection (3) , (4) or (4A)”

16. There is no Guidance in respect of s35 Directions but there is Guidance in relation to AD¹. The ExA’s attention is drawn to paras 2 and 3 of the AD Guidance which uses the following interpretation of s115:

“2. Section 115 of the Planning Act provides that, in addition to the development for which development consent is required under Part 3 of the Act (“the principal development”), consent may also be granted for associated development.

3. Associated development is defined in the Planning Act as development which is associated with the principal development”

17. In addition Para 5 of the AD Guidance confirms that *“5. It is for the Secretary of State to decide on a case by case basis whether or not development should be treated as associated development.”* It then goes on to provide certain criteria against which the SofS and the ExA can assess this matter. It is submitted it is tolerably clear that this process is to be carried out as part of the examination of a DCO and not prior to that application.

18. In addition, the AD Guidance notably provides the following advice to prospective applicants:

“8. It is for applicants to decide whether to include something that could be considered as associated development in an application for development consent or whether to apply for consent for it via other routes. However where an applicant does wish to apply for consent for associated development, it should be included in the application for the principal development. The Secretary of State can only consider associated development in conjunction with the principal development and has no power to consider a separate application unless the development requires development consent under the Planning Act in its own right.”

FACTS

19. It is agreed that the documents of principal relevance are the s35 request made by Aquind and the SofS’ s subsequent Direction.

20. The ExA is also asked to consider the evidence available as to Aquind’s position and what the scheme or project it was proposing at or around the time of the s35 request i.e. the PEIR and prior to that the Scoping Report which the ExA has available to it.

¹ Planning Act 2008: associated development applications for major infrastructure projects

21. When read in that context it is clear on the face of the s35 request that there is no suggestion that the principal development or the project should be comprised of anything other than the electricity interconnector. It makes no reference to this being any special kind of 'mixed use' project for energy and telecommunications and or that telecommunications use is somehow being sought together with the interconnector/ energy project.
22. This is for obvious reasons in PCC's view, namely that that is neither what Aquind intended nor would it have been allowed under s35.
23. The *only* reference to telecommunication development is at para 3.12 under the heading Associated Development as follows:
"3.12 It is also the intention of AQUIND when seeking development consent for AQUIND Interconnector to seek development consent to use the spare fibre optic cable capacity for the provision of commercial telecommunications services. Development consent for this commercial telecommunications use would be sought on the basis that it is associated development in accordance with Section 115 of the Act."
24. This could not be clearer and to the extent that the ExA seeks to suggest that what was actually intended was something that meant all of the Commercial FOC use and infrastructure should be the principal development, PCC submits in the strongest terms that this would be irrational.
25. In addition, the ExA draws attention to the "*UK onshore elements*" of the 3 main elements of the Interconnector project as described at para 3.5.1 of the s35 request. These include reference to "*Signal enhancing and management equipment*" which Aquind at this point say "*may also be required along the land cable route in connection with the fibre optic cables*". This follows on however from a reference to "*two pairs of underground high voltage direct current (DC) cables together with smaller diameter fibre optic cables for data transmission*". This reference is taken up by the ExA (as well as Aquind) to suggest that "data transmission" here is synonymous with the minimal FOC use as well as the Commercial FOC use.
26. However this conclusion is then deflated by the fact that reference to Commercial FOC use (ie the telecoms use) only appears within the s35 request under the clear and separate description of it as AD.
27. In addition the ExA also appears to conclude that the reference to "[s]*ignal enhancing and management equipment... in connection with*" the FOC not only encapsulates 'infrastructure' in the widest sense (to use the word Aquind uses later) ie by implication the ORS and telecomms buildings but

also that it either relates to both FOC uses but that even if this infrastructure does not, its size and extent is already somehow established.

28. This does not however sit once again with Aquind's clear approach which was to recognise the Commercial FOC use as something separate from the Interconnector use (which it had to). The evidence before the ExA is that the ORS and telecoms buildings would not be required but for the desire on Aquind's part to use the 'spare' FOC cables. Only 1/3 of the ORS are said to be needed for the minimal FOC use and there is clear evidence that before the ORS appeared as part of the proposal any signal enhancing and management equipment may have been more closely incorporated into the Converter Station. The entirety of the telecoms buildings are needed for the Commercial FOC use.
29. To that end, the ExA's suggestion at the end of its question that the effect of s157 of s157(2) of PA 2008, would somehow lead lawfully to consent for the ORS and telecoms buildings is upon a false premise that these buildings are required for the principal development and the minimal FOC use. This simply is not so.
30. The other part of the ExA's reasoning relies upon the wording of the s35 Direction.
31. A number of important things flow as a consequence of what is set out therein these are:
 - (i) Aquind's request is relevant to its interpretation as its terms are referred to and relied upon;
 - (ii) The SofS makes the s35 Direction as a result of concluding that the development falls within s35(2)(a)(i) ie he is "*satisfied that: The proposed Development is in the field of energy...*"
 - (iii) The SofS also records in accordance with s35(2)(c) that the "*proposed Development by itself is nationally significant for the reasons set out in the Annex below*"
 - (iv) None of those reasons make any reference to the development comprising any form of telecommunications use and indeed there is no reference at all to such as development within the Direction
 - (v) The formal Direction at the end records reference to "*the proposed Development, together with any development associated with it, is to be treated as development for which development consent is required*".

- (vi) These salient parts of this Direction is in the same form as other s35 Directions e.g. the Triton Knoll Wind Farm s35 Direction² (albeit it uses the words *“together with any matters associated with it”*) and more recently the Net Zero Teesside s35 Direction³ (which uses the words *“, together with any matters/development associated with them, are to be treated as development for which development consent is required”*)

32. It appears that it is point (v) together with a strained reading of Aquind’s request that is at the nub of the ExA’s current conclusion. In other words the ExA appears to have interpreted the reference to *“development associated”* with the *“proposed Development”* and thereafter to this being *“treated as development for which development consent is required”* means somehow that both aspects i.e. *“proposed Development”* and *“development associated”* are now to be considered as a single form of development.
33. This however ignores everything that has gone before that direction and also fails to take into account what the PA 08 allows the SofS to do under s35.
34. In simple terms, s115 clearly encompasses the power to grant consent for development that now is to be subject to a DCO consent process as a consequence of s35 this is because it refers not to s.14 but to *“development for which development consent is required”*. In short, s35 does not ‘turn’ something into an NSIP under s14 but into *“development for which development consent is required”* albeit on the basis that it the SofS concludes that it is a project of national significance. In addition, s115 makes it clear that AD can be the subject of a DCO which relates to development which has been the subject of a s35 direction and thence become *“development for which development consent is required”*.
35. It is helpful as well to note that the SofS has to date made reference to associated development or matters associated in past s35 Directions and that this has not given rise to any suggestion that AD either cannot be the subject of the subsequent DCO or the s35 Direction and its reference to associated matters or development means what the ExA considers this Direction means i.e. all of the development described in the request including AD is to be treated as *“the development”*.

2

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/261047/TritonKnollDirection.pdf;

3

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/864279/net-zero-teesside-section-35-direction.pdf

36. PCC acknowledges that there seems to have been some alteration in Aquind's view of the Commercial FOC at the time of the s35 Direction request no doubt because of the difficulties it saw in trying to justify the Commercial FOC as AD and as set out in its earlier submissions to the examination (see Statement in Relation to FOC [doc ref 7.7.1]). This submission began by alluding to some of the points reflected in the ExA's question ie it asserts that "*The Direction clearly confirms that any development associated with the Proposed Development is to be treated as development for which development consent is required*" but it goes on set out its "reasons why the commercial use of the FOC Infrastructure would constitute associated development".

37. This only serves however to weaken its position.

SUMMARY SUBMISSIONS:

38. As set out above the ExA's conclusion is contrary to the Applicant's own evidence and submission to the SofS at the time of the s35 Direction request and since. Aquind clearly argued that the Commercial FOC use should be treated somehow as AD within the meaning of s115 and not any other form of associated development. As AD it cannot be part of the principal development /proposed project and vice versa.

39. The ExA's contention is based upon a flawed understanding of the PA 08. The Commercial FOC use is a separate use and separate development from that of the Interconnector electricity use. As above it is not 'part of' that energy project and what is more cannot be made the subject of a s35 direction because it does not fall within relevant project descriptions as well as not being 'part of' the project.

40. It is also correct to conclude that the commercial use does not amount to AD either.

41. It would be a flawed interpretation of the SofS's own s35 direction to conclude that its reference to "*any development associated with' the Proposed Development*" means something other than AD within the meaning of s115 and not some other form of associated development.

42. PCC therefore submits that the ExA would be wrong to conclude that the Commercial FOC is somehow part of the principal development and as a consequence the issue of its suggested status as AD does not arise.

43. To be clear PCC submits that the law and the evidence supports the conclusion that the Commercial FOC development cannot lawfully be

consented as part of this DCO application – it is neither AD nor part of the principal development. The s35 Direction cannot be read in the way proposed as a matter of law and consistent with a common sense approach.