



AQUIND Limited

AQUIND INTERCONNECTOR

Applicant's Comments on Other Parties'
Responses to the Examining Authority's
Second Written Questions – Appendix A
Applicant's Response to Portsmouth City
Council Submission DCO2.5.1

The Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 8(1)(b)

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**APPLICANT'S RESPONSE TO THE DEADLINE 7 SUBMISSION ON BEHALF OF
PORTSMOUTH CITY COUNCIL IN RELATION TO THE EXAMINING AUTHORITY'S WRITTEN
QUESTION DCO 2.5.1 (REP7-088)**

1. INTRODUCTION

- 1.1 The Applicant has responded to the Examining Authority's ('ExA') written question with reference DCO 2.5.1 contained within the second set of Written Questions ('EXQ2') (see document REP7-038).
- 1.2 It is apparent that the Applicant and Portsmouth City Council have differences in their positions regarding what development forms part of the 'Proposed Development' for the purposes of the Section 35 Direction (AS-039), and further whether parts of operational development which may be considered to not be part of the 'Proposed Development' can properly be considered as associated development. Noting this, the Applicant does not seek to respond to all of the points made in the submission of Portsmouth City Council in response to EXQ2 at pages 53 – 62 of REP7-088 (the '**PCC Submission**') where to do so would only be to repeat submissions already made.
- 1.3 The Applicant does however consider that points are raised within the submission of Portsmouth City Council where it may be helpful for the ExA for the Applicant to provide a response.

2. WHETHER THE FOC AND RELATED ELEMENTS FORM PART OF THE 'PROPOSED DEVELOPMENT'

- 2.1 At paragraph 20 of the PCC Submission the ExA is asked to consider the evidence available of the scheme proposed when the Section 35 Direction Request (AS-040) was submitted (19 June 2018) for the purpose of ascertaining whether the signal enhancing and management equipment required in connection with the fibre optic cables referred to therein included the ORS and Telecommunications Buildings. In this regard the PCC Submission makes reference to the Scoping Report and the PIER as being documents submitted around the time of the Section 35 Direction Request (AS-040).
- 2.2 The purpose of this request appears to be to seek to suggest that the fibre optic cables and signal enhancing and management equipment referred to in the Section 35 Direction Request are not of the type proposed in the Application (being the ORS and the Telecommunications Buildings), and that therefore the ORS and Telecommunications Buildings do not form part of the 'Proposed Development' which the Section 35 Direction was issued in relation to and for which development consent is required.
- 2.3 Below is an explanation of the information contained in those documents of relevance to the ORS and Telecommunications Buildings.
- 2.4 The Scoping Report (dated October 2018) is document reference APP-365 and Section 2 of the Scoping Report is the project description. Paragraphs 2.2.81 – 2.2.83 are of most relevance and provide as follows:

"Two FOC will be installed, one for each circuit. The FOC is used for inter-station communications, which are needed for control and protection systems hence the FOC are required in both the AC and DC trenches. Additionally, it also allows for condition monitoring of the cables, using Distributed Temperature Sensing (DTS). Spare strands of fibre may be leased to third parties for commercial telecoms purposes.

For the onshore cable route, the FOC will be installed in a 35-45mm diameter duct. For the marine cable route, the FOC will be bundled with the DC marine cables.

A suitable building (approximately 20m x 20m footprint) will be required within 1km of landfall to house amplification equipment associated with the FOC. This ensures the signal is strong enough to reach the remote converter station. This may be a new or existing structure.

The converter station will act as the FOC termination point. This will require telecommunications equipment to be housed at the converter station. Some equipment may belong to third party providers who lease additional FOC capacity. This third party equipment may be segregated within the proposed converter station buildings or housed separately in a building that is adjacent to the main converter station compound. In both cases, separate access will be provided to this equipment to allow 24hr third party access without the need to access the converter station itself."

- 2.5 The Scoping Report (APP-365) was therefore very clear that signal enhancing and management equipment required in connection with the fibre optic cables of the type included in the Application, specifically a suitable building with an approximate 20m x 20m footprint at the Landfall (i.e. the ORS) and a separate building adjacent to the Converter Station (i.e. Telecommunications Building), would form part of the Proposed Development.
- 2.6 The Preliminary Environmental Information Report (dated February 2019) is not a document in the Examination, however the project description chapter can be viewed here - https://aquindconsultation.co.uk/wp-content/uploads/sites/13/2019/02/AQUIND-PEIR-Ch_3_Description_of_PD.pdf.
- 2.7 Paragraph 3.3.6 provides the description of the fibre optic cables and the requirements for the ORS and Telecommunications Buildings. Nothing included in this section of the PIER is contradictory to what has been applied for, and indeed more precise detail is included in relation to the Telecommunication Buildings at paragraph 3.3.6.7, which states:
- "It is anticipated that up to two Telecommunications buildings (potentially one for each circuit) would be located adjacent to the Converter Station to house equipment for telecommunications purposes. Telecommunications equipment is also potentially required at this location to enable the spare capacity in each FOC to be used for commercial telecommunications purposes. The Telecommunication infrastructure associated with the FOC is anticipated to be located outside the main Converter Station security fence, so that it can be accessed by third parties who may lease the spare fibres within the FOC for commercial purposes."*
- 2.8 The consideration of these documents therefore only serves to evidence that the Applicant very clearly had the signal enhancing and management equipment of the type proposed in the Application in mind when submitting the Section 35 Direction Request.
- 2.9 Paragraph 26 of the PCC Submission seeks to suggest that reference to data transmission in the description of the 'Proposed Development' only refers to the data transmission associated with the operation of the interconnector and not the commercial purposes, and therefore any operational development associated with the commercial use does not form part of the 'Proposed Development'. The basis for this submission is the fact that the Section 35 Direction Request stated an intention to seek development consent for commercial use of the spare fibres as associated development.
- 2.10 In making this point PCC seek to put forward an argument that the statements made in relation to the intention for the commercial use of the fibre optic cables to be authorised as associated development mean the operational development that will perform that function is "wholly separate to", outwith or different from the operational development included in the description of the 'Proposed Development'. This position is not tenable, as very clearly the fibre optic cables and signal enhancing and management equipment required in connection with those referred to in the description of the 'Proposed Development' is the same operational development that will perform both functions (i.e. monitoring of the interconnector and commercial telecommunication data transmission). For the reasons already set out by the Applicant there is a direct relationship between the two elements of the Proposed Development.

3. **WHETHER THE SECTION 35 DIRECTION COULD HAVE LAWFULLY INCLUDED THE ORS AND TELECOMMUNICATIONS BUILDINGS AS PART OF THE PROPOSED DEVELOPMENT**

- 3.1 Paragraph 22 of the PCC Submission provides that the ORS and Telecommunications Buildings are not what was intended by the Applicant when referring to signal enhancing and management equipment in the description of the Proposed Development in the Section 35 Direction Request, and further that it would not have been lawful for the Section 35 Direction to include such operational development as part of the 'Proposed Development'.
- 3.2 The Applicant has explained its position in its response to EXQ2 DCO 2.5.1 that the signal enhancing and management equipment referred to in the description of the 'Proposed Development' in the Section 35 Direction Request does form part of the *operational* development which the Section 35 Direction (AS-039) confirms is development for which development consent is required. The information provided above in relation to the Scoping Report and the PIER evidence how the ORS and Telecommunications Buildings are such signal enhancing and management equipment that the Applicant had in mind when referring to this in the Section 35 Direction Request (AS-040).
- 3.3 With regard to the latter point, being that it would not have been lawful for the Section 35 Direction to include the signal enhancing and management equipment, it is understood from the PCC submission that this is on the basis that the signal enhancing equipment is not part of the electricity interconnector, being the development in the field of energy for which a Section 35 Direction may be issued.
- 3.4 This contention is rejected and is not consistent with the wording of section 35 of the Planning Act 2008 or the Section 35 Direction (AS-039). The signal enhancing and management equipment is clearly included in the description of the 'Proposed Development', which it has been confirmed is development in the field of energy (being an electricity interconnector). Accordingly, it was entirely lawful for the SoS to issue a Section 35 Direction for development including the signal enhancing and management equipment where this forms part of the electricity interconnector. That the signal enhancing and management equipment is also to be used for commercial telecommunications purposes does not mean that it does not form part of a project in the field of energy for which a Section 35 Direction may be issued.

4. **DISTINCTION BETWEEN OPERATIONAL DEVELOPMENT AND ITS USE**

- 4.1 Paragraphs 23 and 26 of the PCC Submission identify that reference to commercial use in the Section 35 Direction Request (AS-040) is under a separate description of associated development, which is correct.
- 4.2 Having focused on how the commercial telecommunications use is described separately from operational development required for that use to be carried on, paragraph 29 of the PCC Submission contends that the ExA have suggested that the effect of Section 157(2) of the Planning Act 2008 is to authorise operational development. In so doing , PCC have failed to make the distinction between operational development and the use of such development and to fully understand the question posed.
- 4.3 As is explained by the Applicant in its response to EXQ2 DCO 2.5.1, use of new operational development alone is not development in accordance with the definition of the term "development" for the purposes of the Planning Act 2008. Therefore the correct question to consider is whether the operational development to be used to support the carrying on of that use is part of the 'Proposed Development' for which development consent is required, or if it is not, whether development consent may lawfully be granted for such operational development on the basis that it is associated development.

5. **CONCLUDING REMARKS**

- 5.1 Using PCC's own suggested approach of considering the Scoping Report and the PIER to establish whether the signal enhancing and management equipment referred to in the

description of the 'Proposed Development' in the Section 35 Direction Request (AS-040) included the ORS and Telecommunications Buildings, it has been evidenced above that this is very clearly what the Applicant was referring to. It is also the case that as a matter of fact the ORS and Telecommunications Buildings are comprised within the scope of signal enhancing and management equipment required in connection with fibre optic cables.

- 5.2 Despite PCC's assertion to the contrary, the fibre optic cables and signal enhancing and management equipment described in the description of the 'Proposed Development' are the fibre optic cables and signal enhancing and management equipment that would be used for commercial telecommunications purposes in addition to monitoring the operation of the electricity interconnector.
- 5.3 Whilst PCC state that it was not open to the SoS to issue a Section 35 Direction which included the signal enhancing and management equipment required in connection with the fibre optic cables because such equipment does not form part of a project in the field of energy, this is wrong. That the signal enhancing and management equipment is also to be used for commercial telecommunications purposes does not mean that it does not form part of the electricity interconnector, being the project in the field of energy for which the Section 35 Direction was issued. The Section 35 Direction was lawfully issued, and it is noted is now in any event beyond the period within which it could be challenged.
- 5.4 The PCC Submission and analysis of it has therefore served to add support to the Applicant's response to EXQ2 DCO 2.5.1 and moreover the position advanced by the ExA in that question, in that it has further outlined how the fibre optic cables and signal enhancing management equipment required in connection with the fibre optic cables, being the ORS and Telecommunications Buildings, are part of the 'Proposed Development' for which the Section 35 Direction (AS-039) has directed development consent is required.
- 5.5 The PCC Submission has also failed to make the distinction that use of development alone is not development, and therefore the conclusions of the PCC Submission that the commercial FOC use is separate development from the electricity interconnector is flawed.
- 5.6 This is important because in identifying the need for this distinction it has been clearly established that:
 - 5.6.1 where the operational development applied for is wholly comprised within the 'Proposed Development' for which the Section 35 Direction has directed development consent is required, it is not necessary to consider whether this is associated development for which development consent may be granted; and
 - 5.6.2 in the alternative where it is considered that not all operational development applied for is comprised within the 'Proposed Development', the question with regard to associated development and this Application will be whether such parts of the operational development applied for which do not form part of the 'Proposed Development' for which development consent is required may be granted development consent as associated development (i.e. are they development associated with the 'Proposed Development').
- 5.7 The Applicant submits, as detailed in its response to EXQ2 DCO 2.5.1, that the signal enhancing and management equipment, being the ORS and Telecommunications Buildings, form part of the 'Proposed Development' for which development consent is required in accordance with the Section 35 Direction (AS-039).
- 5.8 Should that submission by the Applicant not be agreed with, the Applicant submits that in any event those buildings which are required solely in connection with the commercial use of the fibre optic cables (the Telecommunications Buildings) and those parts of others which are associated with the commercial use only (so the parts of the ORS not provided solely in connection with the operation of the interconnector) also constitute development associated with the 'Proposed Development' for which development consent may be granted.

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