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Via email to
aquind@planninginspectorate.gov.uk

FAO the Planning Inspectorate

Dear Sirs,

RE: Responses to Deadline 7 Submission in respect of the Application by AQUIND Limited for an Order granting Development Consent for the AQUIND Interconnector Project (Deadline 7c).

In line with the Examining Authority's requests for Deadline 7c of the examination, please find responses on behalf of Portsmouth City Council in summary form set out below:

1. **Comments on Deadline 7**

- 1.1 PCC provides the following comments on the further submissions made at deadline 7. Some matters have progressed through ongoing discussions between PCC and the Applicant and other matters are to be examined in line with the ExA's published agenda for the upcoming Hearings whereat PCC reserves the right to provide further contributions on the relevant issues.

2. **Further comments in respect of Highways, Transport and Traffic issues**

REP7-033 Onshore Outline Construction Environmental Management Plan

- 2.1 Section 5.9 – this section summarises the FTMS [REP6-030 / 031] and FCTMP [REP6-032 /033] and explains that the construction of the proposed development will need to comply with the TMS and CTMP to be developed for each section. The construction will similarly need to comply with the Communication Strategy [Appx 1 to FTMS]; travel plan [Appx 6 to FCTMP]

and Traffic Demand Management Strategy [REP7-079] (TDMS) each of which should equally be so referenced in this section to ensure the obligations suggested within them are placed upon the undertaker.

REP7-039 Technical Note providing review of collision data at Strategic Network Junctions

- 2.2 PCC is satisfied that this note is technically correct although is limited to an analysis of collision data at strategic network junctions rather than also considering the collision data at the minor road junctions. These are not included in the strategic traffic model but can reasonably be expected to accommodate diverted traffic movements, and will be required to inform the development of the section specific TMS / CTMPs
- 2.3 The Technical Note finds at para 3.3.3.3 that the proposed development will increase the queue length on the A3(M) north off slip to Hulbert Road by 60m in the DS1 scenario and 72m in the DS2 scenario into the A3(M) mainline. In that light the finding that this is “not expected to materially change the collision risk at this junction” does not appear to have been justified and is more an unsubstantiated assertion. While Highways England are the relevant highway authority for the A3(M). PCC as the relevant local highway authority retains concerns that the increase in queue length will result in increased risk that the Applicant has neither properly assessed nor sought to mitigate as a potential impact.
- 2.4 The findings that traffic flows using the Eastern Road junction with the A27 will reduce in section 4 of the Technical Note are accepted and consequently the proposal will not increase the risk of collisions at that junction
- 2.5 The consideration of Portsbridge roundabout replicates the information provided in REP6-076 Portsbridge Roundabout Technical Note and consequently the PCC response thereon has not been addressed. At section 5.3 the Technical Note reports a cluster of collisions at the slip road connection to the circulatory carriageway and a significant increase in circulating traffic in the pm peak period, yet concludes at para 5.3.1.7 that the traffic and collision risk impact of the proposed development will be “negligible”. This finding is faulty. There is no reason not to expect the cluster of collisions to increase proportionally with the increase in circulating traffic and there is no practical intervention available to mitigate that. Consequently PCC considers the risk is far greater than negligible and recommend that the ExA does not accept Aquind’s assessment.

REP7-065 Supplementary Transport Assessment Addendum (STA Addendum)

- 2.6 The STA Addendum largely replicates REP6-071 Road Safety Technical Note (RSTN); REP6-074 Highway Alterations to Facilitate Abnormal Load Deliveries; and REP6-076 Portsbridge Roundabout Technical on which commentary was provided by PCC at deadline 6 but has not been addressed in this addendum and consequently remain valid. It also replicates REP7-039

Technical Note providing a review of collision data at Strategic Network Junctions in an appendix, commentary on which is provided above.

- 2.7 The STA Addendum also seems to address some new matters at Para 2.4.1.2. In this section the Applicant identifies significant lengths of on street parking which will need to be suspended (20-30 spaces Locksway Road and 70 spaces Kingsley Road). This is in order to provide adequate width for construction vehicles. To establish scope to accommodate displaced vehicles elsewhere on street parking surveys have been undertaken using the Lambeth methodology. This methodology is not approved for use in Portsmouth where it has been found to significantly over estimate on street parking capacity and does not take account of indiscriminate or inconsiderate parking by residents. The finding by the Applicant that there is overnight capacity on street for a further 200 vehicles within a reasonable walking distance of the displaced vehicles is not supported with what can physically be observed nor is it otherwise demonstrated in evidence such as photographs to demonstrate the practical availability of such capacity (which is what PCC would expect) rather than relying on a formula to determine such capacity. PCC, based upon its own local highway authority experience do not have confidence that this quantum of spare parking capacity is practically available as is suggested and would ask that the ExA look at this matter specifically at their site inspection. In light of these observations PCC considers that the ExA should consider there is an absence of alternative parking provision and that the fact that there is no practical alternative option undermines Aquind's assessment and means that the impact here will be far greater than suggested.

REP7-073 Joint Bay Feasibility Report

- 2.8 This updates REP6-070 Joint Bay Technical Note and addresses the PCC concerns raised that the then proposed location of the joint bay at Zetland Field would obstruct the planned access to the highway and not allow space for a vehicle to turn on site

REP7-079 Traffic Demand Management Strategy(TDMS)

- 2.9 The TDMS is an expansion of the Communications Strategy [Appx 1 to FTMS REP6-030 / 031] intended to influence mode choice and journey timing. Whilst proposing helpful stakeholder engagement strategies / protocols it does not include any practical incentives for people to make the travel choice options which may be put forward. PCC considers this strategy is unlikely to have a significant effect in managing traffic demand which will more practically be influenced by the impacts of the cable / joint bay installation works and associated traffic management.
- 2.10 It does rely on HE VMS signs to communicate messages to drivers on the trunk road network although there is no certainty that the HE will be able to make those signs available. As a consequence PCC recommend that the strategy should provide for mobile VMS signs to be deployed on this network

3. Further Comments on Framework Management Plan for Recreational Impact (FMPRI)

- 3.1 In response to the ExA's Further Written Questions (ExQ2) DCO2.5.10 in relation to the progress of the FMPRI, the Applicant in its response in REP7-038 informed the Examination that it is now "proposing to secure the measures in the FMPRI through a Section 106 Planning [sic] Obligation" which will require the submission to and approval by PCC of such a plan prior to commencement as well as a separate agreement as to suggested works on land outside the Order Limits owned by PCC. The scheme is required to accord with a (final) FMRPI which PCC understands will be submitted to the examination.
- 3.2 PCC has been in discussion with the Applicant as shown in an exchange of correspondence between PCC and the Applicant dated 22 January 2021 (which is appended [**Appendix 2**]) and 27 January 2021 (REP7-081a). Those discussions as reflected in the letters focussed in particular on the as yet undetermined approach the Applicant is intending to address the drainage system beneath Farlington Playing fields which the Applicant confirmed at the hearing [REP6-062] it had not hitherto surveyed.
- 3.3 PCC has been provided with a copy of an updated FMPRI which it received late on 12 February 2021. This document seeks to provide the necessary updates that PCC have been seeking from the Applicant throughout the Examination to recognise and address the drainage system at Farlington playing fields and ensure a robust assessment of impacts on recreation in the City. At the time of writing the Applicant has not submitted this updated FMPRI but on the presumption that the Applicant will submit it before the end of the examination, PCC will provide its response as soon as practicable thereafter.
- 3.4 The Council at this stage however would draw attention to the Applicant's extraordinary implications in its letter of 27 January that the fact that this evidence, which is clearly critical to understanding all the impacts of the project on the Farlington playing fields is only being produced at stage of the examination is somehow PCC's 'fault'.
- 3.5 PCC has made repeated requests throughout the examination (and beforehand) for the information contained in this update. These requests are highlighted through queries in respect of the irregularities of the Order Limits and their presumptions in respect of the periods of reinstatement.
- 3.6 To be clear not only has PCC raised these matters but also it is self-evident that in the absence of a full and robust assessment PCC has had nothing to comment on in the submitted documents. PCC notes the use of the term in the Applicant's letter to 'confirmatory surveys' however it is clear that this is the first time the Applicant has carried out surveys of the drainage system here.
- 3.7 The comments therefore in the Applicant's letter which imply that PCC did not raise this matter beforehand are disingenuous if not misleading.

- 3.8 Notwithstanding the Applicant's comments in REP7-081a, the fact remains that the Applicant eventually only recognised the need to commission appropriate specialist contractors to consider the drainage system in early 2021 some 2 months before the end of the examination
- 3.9 It is clearly extraordinarily disappointing and concerning that this essential information is only being provided so late in the Examination process. It also adds to PCC's case throughout that this DCO application was submitted prematurely and further underlines that the approach adopted by the Applicant as evidenced for example by the high number of material and non-material changes is contrary to the spirit if not the letter of the Planning Act 2008 which requires these sorts of matters to be addressed prior to an application being submitted not during the examination.

REP7-058 Explanatory Memorandum supporting S106 Agreement with Portsmouth City Council

- 3.10 In correspondence from the Applicant's solicitors (and in their commentary (section 4.19) to the ongoing Statement of Common Ground (REP7-048a) it was confirmed that the Applicant was not willing to consider providing a Community Fund to assist in mitigating the severe impacts on recreational and open space which will occur for the duration of the works. The Applicant's advisors have suggested that the recreational impacts can be mitigated by realigning pitches during the period of construction.
- 3.11 While PCC will now review the Applicant's updated FMPRI, it is quite clear to PCC that the suggested pitch realignment scheme will not achieve the mitigation suggested.
- 3.12 This is because even if some pitches can be realigned there will be a large number which will still be directly impacted for a period of time (during and after the works are being carried out or completed).
- 3.13 The drainage arrangements at Farlington Playing Fields have only, in recent weeks, been subject to any proper consideration, and the FMPRI and assessment not yet formally submitted to the Examination. As PCC has not had an adequate opportunity to assess the applicant's further submission it has not been confirmed to what extent, if any, the impact on the system can be mitigated. This must as a matter of common sense have an impact upon how and whether realignment and/or intermittent use of the land can occur in between works being carried out seasonally as suggested.
- 3.14 Finally, the proposed realignment of pitches as noted above involves moving pitches outside of land within the Order Limits and in relation to land over which the Applicant has not sought powers or control. The realignments proposed will also result in sub-optimal solutions (including reduced pitches sizes and smaller 'run off' areas between pitches).
- 3.15 For the Applicant to suggest that the impact on recreation and on this open land is mitigated is wholly misleading. While PCC will review the recently

provided FMPRI even in the best case scenario it is clear that there will be considerable disturbance to the recreational use of this well used facility and open space. To that end a Community Fund to assist in addressing the impacts is clearly warranted and should be included in any s.106 agreement or otherwise secured through the DCO.

4. Further Comments in respect of the Draft DCO

- 4.1 The ExA have utilised their discretion to accept and publish PCC's – 'Comments on the draft DCO ahead of Issue Specific Hearing 4'. This provides detailed comments on the most recent version of the dDCO submitted at Deadline 7. PCC has provided these to the ExA and the Applicant in advance of the relevant Hearing ISH 4 due to take place on 17 February 2021 to assist in those discussions, and PCC continues to discuss these comments with the applicant in advance of the Hearing to ensure the Hearing time can be used as effectively as possible.

5. Further Comments in respect of Compulsory Acquisition

REP7-045 Fort Cumberland Road Car Park Drawings

- 5.1 The two car park layouts within the below referenced drawing are in PCC's opinion misleading; drawing number AQ-UK-DCO-TR-LAY-006 indicates that, at present, the car park (which is not marked up) can accommodate 106 car parking spaces. Drawing number AQ-UK-DCO-TR-LAY-007 indicates that, despite a significant area of land being taken from the car park for the ORS building (and associated screening), the number of car parking spaces increases to 109 (due to the assumption that spaces are marked out).
- 5.2 PCC considers that this is quite clearly a nonsense; the simple act of marking up of bays does not increase the capacity of the car park. The assumption regarding the area required per car parking space should be the same to assess the loss of spaces with and without the ORS building/screening. No attempt has been made by the Applicant to consider the lost opportunity cost arising from the loss of this land. PCC note that should the Council have chosen to surface and mark the car park this is likely to have provided circa 150 spaces (circa 40 more than the applicants are suggesting in their proposed mitigation) and further consideration could have reasonably been given to future opportunities such as the introduction of parking charging in peak periods due to the location and accessibility to the seafront or to the installation of electric charging points for a significant number of the spaces on this site, as being rolled out elsewhere within the city, to meet the future demand for residential car charging as a preference to providing those on street. That would provide an opportunity to both meet an emerging demand and develop an income stream. As such the presentation of a net gain of car parking spaces and a subsequent positive residual implication of the works is totally misleading and inaccurate.

REP7-014 Draft DCO – Tracked – Proposed Guarantees Requirement 26

- 5.3 Acknowledging that PCC has provided detailed comments on the wider dDCO in a separate submission, PCC would highlight that within that submission the requirement for a bond in the proposed new Requirement 26 – ‘Guarantees in respect of the payment of compensation etc is seen as a positive move on the Applicant’ part. As noted in its submission, PCC welcomes the Applicant’s change of position and the progress made in the willingness now to provide a bond/security but has concerns over timing and approval for the implementation of the security/guarantee.
- 5.4 PCC is unable to comment on the validity of the costs and valuations put forward however setting that aside the Applicant is seeking to secure Compulsory Acquisition powers now. The evidence only demonstrates it has the resources at a time when it wants to implement the powers leaving those affected by the DCO application for powers in ‘limbo.’ It should be noted that if a blight notice was served now, the Applicant, if it did not have grounds to counter the blight notice, would have to service the acquisition subject to the blight notice. This point is merely to demonstrate the point that statutory blight exists now, and it is therefore PCC’s position that the Applicant should demonstrate that it would have the funds for the compulsory acquisition of land/rights within a prescribed timescale of the DCO being made. Further, the arrangement for confirming the bond/security is satisfactory should be subject to local authorities’ approval.

Update on Exemption Applications (Ofgem and CRE) and Progress of French Consents

- 5.5 The Applicant gave evidence to the ExA in CAH 1 in respect of Funding and the implications of its application(s) for exemptions pursuant to *Regulation (EC) No 714/2009* in respect of “*conditions for access to the network for cross-border exchanges in electricity*” replaced now by *Regulation (EU) 2019/943 on the internal market for electricity*. This evidence was in answer to ExA’s questions 5.1 to 5.5 of the Agenda and are reflected in Written Summaries of Oral Submissions (REP REP6-062) as well as its earlier Transcript Submissions (REP5-034).
- 5.6 PCC had previously raised the issue of the importance to Aquind of these exemptions in the context of Aquind’s case on appeal to the CJEU following the previous refusal by ACER to its first exemption application. In that appeal which Aquind won, Aquind had stated in terms that ACER had failed to take into account “*the legal impossibility for the applicant to operate the proposed interconnector in France without an exemption*”. PCC also pointed to the fact that as Aquind is no longer a Project of Common Interest (PCI) the TEN-E Regulations are no longer relevant.
- 5.7 The Applicant in its oral evidence to the examination confirmed the latter but has failed to address in terms or indeed deny the above position with regard to the French project.

- 5.8 The Applicant confirmed that following the success of its appeal to the CJEU the first exemption case is now back before to ACER's Board of Appeal "*who will need to take into account the General Court's findings and reconsider their previous rejection*". It is noted that Aquind is "*liaising with ACER In this regard and it is therefore possible that an exemption may be granted pursuant to the application made in 2018*" (REP5-034 para 5.16). PCC has assumed however that any such exemption could only be sought under the new Electricity Regulation (EU) 2019/943.
- 5.9 The Applicant also referred to a further or alternative approach it has taken which was to request a partial exemption under the new Electricity Regulation (EU) 2019/943 as opposed to a full exemption. This had to be agreed by Ofgem and the Commission de Regulation de l'Energie (CRE) as the (then) National Regulatory Authorities of the Member States concerned.
- 5.10 This request, submitted on 2nd June 2020, in line with its earlier position before ACER and the CJEU confirmed that "*Without an exemption the AQUIND Interconnector cannot and will not progress through construction and to commercial operation*" (ref para 1 Executive Summary of Request)¹.
- 5.11 As set out by Ofgem in the decision on their website² :
"On 2nd June 2020, Aquind submitted to Ofgem and CRE (together, the "NRAs") a request for partial exemption from Articles 19(2) and 19(3) of Regulation (EU) 2019/943 (the "Regulation"), concerning Use of Revenues obligations, for a period of 25 years from the start of commercial operations (the "Exemption Request").

On 18th December 2020, the NRAs published a joint consultation document outlining the scope and rationale of the Exemption Request, as well as the supporting evidence provided by Aquind. The consultation was originally planned to close on 29th January 2021. The NRAs issued this consultation in line with our obligations under the applicable legal framework at the time, and with uncertainty as to the future trade and cooperation arrangements between the UK and the EU beyond the end of the transition period.

*In light of the new Trade and Cooperation Agreement (the "TCA") agreed between the UK and the EU on 24th December 2020, following the UK's departure from the EU, **the NRAs consider that the exemption request process defined under the Regulation is only available to interconnector projects developed between EU Member States. As the UK is no longer a Member State and the transition period has ended, Aquind can no longer access that process and the NRAs no longer have the necessary legal powers to assess, and decide upon, the Exemption Request.***

¹ <https://www.ofgem.gov.uk/publications-and-updates/joint-consultation-aquind-s-exemption-request>

² <https://www.ofgem.gov.uk/publications-and-updates/cre-and-ofgem-discontinue-public-consultation-aquinds-exemption-request>

Consequently, the NRAs have decided to discontinue the ongoing consultation and assessment process.

Ofgem and CRE will continue to cooperate closely in regards to the functioning and the development of interconnections between the UK and France and the implementation of the arrangements envisaged in the TCA.”

- 5.12 In accordance with this ruling the same must follow for the first exemption which Aquind was seeking from ACER.
- 5.13 Whilst the TCA sets out aims and makes commitments to cooperation between European States and the UK as Third Party and in particular addresses Energy in part 3 title VIII (ENER) arrangements have yet to be made in respect of future exemptions (whereas existing exemptions remain in force Art ENER11).
- 5.14 It is also clear that the UK is no longer part of the Internal Energy Market (IEM).
- 5.15 In light of all the above, it cannot be Aquind’s position any longer that it has “a clear pathway to a regulatory status in 2021” (see answer to Q5.5 REP6-062).
- 5.16 The above raises fundamental questions as to viability of the project and indeed the likelihood of its progress further in terms of the European side of this project.
- 5.17 In addition, prior to the above dismissal by Ofgem and CRE of the partial exemption request, it should also be noted that on 18 January the Prefet de Seine Maritime issued a direction rejecting Aquind’s application for an “*autorisation environnementale*” (as appended in **Appendix 3**)
- 5.18 This also puts into even further doubt Aquind’s progress with its French part of the interconnector project and the legal or financial feasibility of the project overall.
- 5.19 Setting that aside, as the ExA will note from PCC’s submission, as a minimum PCC has suggested that there must be provision made within any DCO if such can be lawfully granted to Aquind, to prevent any works progressing in the absence of all relevant consents in France.

6. Response in Respects of Air Quality

REP7-072 Environmental Statement Addendum 2- Clean Air Zone Sensitivity Testing

- 6.1 The Applicant's Environmental Statement Addendum 2- Clean Air Zone Sensitivity Testing has been prepared in response to concerns raised at ISH2 with regards to the impacts of the proposed development on the Clean Air Zone (CAZ). The methodology developed by WSP to consider such impacts was agreed with PCC, with the parameters set out in 1.2.1.1 agreed so that the modelling work undertaken by WSP could be compared to the Portsmouth Local Air Quality Plan as closely as possible. It is however noted that the sensitivity tests provided cannot be used as a direct comparison to the

Portsmouth Local Air Quality Plan due to the limitations set out in paragraphs 1.3.3.4 to 1.3.9.8. These limitations are considered reasonable by PCC in that they provide an indication of the scale of impact of the proposed development in relation to the CAZ.

- 6.2 The differences in methodology used in WSP's sensitivity tests and the methodology used in the Portsmouth Local Air Quality Plan have led to the WSP tests suggesting that the majority of receptor locations would show exceedance of EU limits in 2022 with the CAZ in place. This is contrary to the modelling undertaken for the Portsmouth Local Air Quality Plan which demonstrates all receptors are likely to be compliant in 2022 with a CAZ in place. This means therefore that the WSP sensitivity tests are overestimating concentrations compared to the PCC modelling. Therefore the total decrease or increase in concentrations of NO₂ provide a more useful indicator than the particular concentrations given for each location.
- 6.3 It is therefore of concern that the sensitivity test demonstrates a 0.5µg/m³ and 0.3µg/m³ increase in NO₂ at receptor 573 under Do-Something Scenario 1 and 2 respectively. The modelling undertaken for the Portsmouth Local Air Quality Plan suggests that in 2022 with the CAZ in place the concentration of NO₂ at receptor 573 will be 40.2µg/m³. Therefore based on PCC's modelling, site 573 could tolerate an increase in NO₂ concentrations of ~0.3µg/m³ before being considered in breach of the EU limit. Based on these values the Do Something 1 and 2 scenarios could lead to an exceedance at receptor 573.
- 6.4 Paragraph 1.6.1.7 concludes "it is judged that the proposed development will not inhibit compliance with EU Directive 2008/50/EC on the local road network and SRN in Portsmouth". Whilst the sensitivity test demonstrates generally minor positive impacts on the SRN (see tables 5 and 6), the test also demonstrates the likely negative impact of the proposed development on all 'exceedance' and 'near-exceedance' sites identified in the Portsmouth Local Air Quality Plan. Therefore PCC does not agree with the conclusion drawn in 1.6.1.7. and notes that the Applicants modelling demonstrates a worsening of air quality at all sites with at least one (receptor 573) likely to lead to an exceedance of the EU limit value and thus the ability of PCC to meet the Directive. The ExA is invited to give this significant consideration in their assessment of the Applicant's proposal.
- 6.5 With regard to the Covid-19 sensitivity test undertaken PCC agree with the methodology used and agree with the conclusion in 1.6.1.8.

7. Responses to ExQ2

- 7.1 PCC has provided commentary to responses provided to the to the ExQ2 questions to assist the Examination. These are provided in **Appendix 1**.

Concluding comments

We reserve the right to expand on these comments and to make any further comments following deadline 7c submissions at the appropriate time. We trust that the above and enclosed submissions meet the ExA's requirements.

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

Yours sincerely,



Ian Maguire
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Cc
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Tristan Samuels, Director of Regeneration, Portsmouth City Council