AQUIND Limited

AQUIND INTERCONNECTOR

Applicant's Written Summary of the Oral Case at Issue Specific Hearing 4 (ISH4)

The Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010, Rule 8(c)

Document Ref: 7.9.40

PINS Ref.: EN020022

AQUIND Limited

AQUIND INTERCONNECTOR

Applicant's Written Summary of the Oral Case at Issue Specific Hearing 4 (ISH4)

PINS REF.: EN020022

DOCUMENT: 7.9.40

DATE: 19 FEBRUARY 2021

WSP

WSP House

70 Chancery Lane

London

WC2A 1AF

+44 20 7314 5000

www.wsp.com

AQUIND INTERCONNECTOR

APPLICANT'S WRITTEN SUMMARY OF ORAL SUBMISSIONS

ISSUE SPECIFIC HEARING 4 – DRAFT DEVELOPMENT CONSENT ORDER

WEDNESDAY 17 FEBRUARY 2021

1. INTRODUCTION

1.1 On 14 November 2019, AQUIND Limited (the '**Applicant'**) submitted an application for the AQUIND Interconnector Order (the '**Order'**) pursuant to section 37 of the Planning Act 2008 (as amended) (the '**Act'**) to the Secretary of State ('**SoS'**) (the '**Application'**).

1.2 The Application was accepted by the Planning Inspectorate ('**PINS'**) on 12 December 2019, with the examination of the Application commencing on 8 September 2020.

1.3 Issue Specific Hearing 4 ('**ISH4'**) on the draft Development Consent Order took place on Wednesday 17 February 2021.

1.4 This document contains the Applicant's written summaries of the oral submissions made at ISH4. During ISH4 representatives of the Applicant provided responses in summary form, and where this is the case this document contains the fuller responses of the Applicant in relation to the points raised.

1.5 Where further information was requested by the Examining Authority at the hearings, this information will be provided as post hearing notes. Additional matters relating to the drafting of the Order which are not covered in this transcript will be addressed in the schedule of responses to be submitted at Deadline 8.

2. HEARING PARTICIPANTS ON BEHALF OF THE APPLICANT

2.1 In attendance at ISH4 on behalf of the Applicant was Mr Richard Glasspool.

2.2 The Applicant was represented at ISH4 by Simon Bird QC of Francis Taylor Building and Martyn Jarvis, Senior Associate of Herbert Smith Freehills LLP.

2.3 In addition, the Applicant was represented by the following specialists during ISH4:

2.3.1 Maritta Boden of WSP: Maritta is an Associate Director at WSP in the Landscape and Urban Design team.

(A) Maritta has been a Chartered member of the Landscape Institute since 1994 and an Associate member of the RTPI since 2009. Maritta holds a BA (Hons) in Landscape Architecture and a MSc in Environmental Impact Assessment (EIA) and has over 25 years' experience in environmental consultancy covering landscape planning and design as well as environmental planning. Maritta has been the landscape lead on the Project since September 2017, advising on both Onshore UK and Onshore France elements of work covering the Converter Station, Onshore Cable Route and Landfall and has attended many of the public consultation and engagement events with local planning authorities.

2.3.2 Chris Williams of WSP: Chris is an Associate Transport Planner with 17 years' experience in highways and transport planning.

(A) Chris hold a BSc (Hons) in Human Geography and an MSC in Transport Planning and Engineering and is the Transport Lead in relation to the Application. Chris is a Member of the Chartered Institute of Highways and Transportation.

2.3.3 Jo Welbourn of WSP: Jo is a Principal Engineer at WSP with 6 years' experience in flood risk and water resources management and the civil engineering sector.

(A) Jo holds an Meng (Hons) in Civil and Coastal Engineering and has been the Flood Risk and Water Environment Lead since August 2018, responsible for the development and submission of the Flood Risk Assessment, Surface Water Resources and Flood Risk Environmental Statement Chapter and other associated submissions.

2.3.4 Alan O'Sullivan of Avison Young: Alan is a Director in the Energy & Natural Resources team at Avison Young and holds a BSc (Hons) in Finance and a Post-Graduate Diploma in Surveying.

(A) Alan has over 12 years of experience advising on a wide range of property matters (land acquisition, disposals, easements, wayleaves, mineral rights, business rates, strategic advice, estates rationalisation, estate management, property management, due diligence) in relation to the energy and utilities industries for both public and private sector clients and is leading the acquisition of land and land rights for the Proposed Development.

2.3.5 Ross Hodson of Natural Power: Ross Hodson is a Principal Consultant at Natural Power, with over 10 years' experience in EIA and HRA for marine development. Ross holds a BSc (Hons) in Marine Biology and MSc in Clean Technology from Newcastle University and has been a Practitioner Member of the Institute of Environmental Management and Assessment since 2013.

(A) Ross has been the marine lead on AQUIND for over two years providing support and technical advice on marine elements of the Application and has also provided technical review for marine Environmental Statement chapters and supporting assessments such as HRA and WFD assessments.

2.3.6 Paul Hudson of WSP: Paul is a Principal Cable Engineer with WSP and holds an BSC (Hons) in Electrical / Electronic Engineering.

(A) Paul has worked in the power cable industry for over 35 years, in manufacturing, system design and installation design in the UK, working for

the world’s largest cable company and now as a consultant with WSP and has worked on several major HV cable contracts. Paul has experience in the HVDC and HVAC tendering processes and subsequently for HVDC and HVAC contracts for the IFA2 project in the UK and France and was responsible for the development of the NSN Interconnector project through to FID and EPC contract award. During his career Paul has been responsible for the delivery of the 600kV HVDC Western Link project and Projects Business Manager for HV Systems for cable systems from 66kV to 400kV, fluid filled and XLPE.

3. DRAFT DCO PREAMBLE AND ARTICLES

Question 3.1

The Examining Authority's schedule of changes to the draft Development Consent Order in relation to the Preamble.

Speaker: Martyn Jarvis

3.1 Section 83 of the Planning Act 2008 refers to the appointment of a single person to examine and report on an application, whereas section 74 refers to a panel being appointed to examine the application.

3.2 The amendment to refer to section 74 of the Planning Act 2008 will be made to the dDCO to be submitted at Deadline 8.

Part 1 General provisions

Question 3.2

Article 1, definitions, states: '"the permit schemes" means the following schemes made under part 3 of the Traffic Management Act 2004(a) as in force at the date on which this Order is made– (a) The Traffic Management (Hampshire County Council) Permit Scheme Order; and (b) The Portsmouth City Council Permit Scheme Order 2020.' Should the phrase 'at the date' be removed or modified as to allow for any revisions or future iterations of these permit scheme Orders?

Speaker: Martyn Jarvis

3.3 It is noted that the same wording as is included in the dDCO is included in the definition of "permit schemes" within the Southampton to London Pipeline Order 2020.

3.4 Article 9A of the dDCO confirms the permit schemes are to apply to the construction and maintenance of the Authorised Development. Whilst the Applicant requires certainty of the processes which are applicable, in light of the provisions of Article 9A which confirm how the permit scheme is to be applied to the construction of the Authorised Development, it is considered there is sufficient certainty for the Applicant of the applicable processes where any amendments to the permit schemes are made in the future.

3.5 It is also not considered that there is sufficient justification for the Undertaker to not be subject to the requirements of the permit schemes as they may be amended in the future in relation to maintenance, taking into account such schemes are made and will only be varied as is appropriate in accordance with the relevant primary legislation which relates to them.

3.6 Taking this into account, it is agreed that the words "as in force at the date on which this Order is made" may be removed, and this amendment will be made to the dDCO to be submitted at Deadline 8.

3.7 It was also noted by the Applicant that the reference to the Traffic Management (Hampshire County Council) Permit Scheme Order does not currently include the year in which that Order was made, and the Applicant will therefore also add in reference to 2019 in the dDCO to be submitted at Deadline 8.

Question 3.3

Article 2 provides the definition of 'commence', which excludes any works falling within the definition of 'onshore site preparation works.' Do any local authorities have any outstanding concerns with either the definition of commence as currently in the dDCO or the scope of works excluded from that definition, principally contained in the definition of onshore site preparation works (a) – (i) inclusive?

Is Hampshire County Council content that (j) Work No.2 (bb) is within the list of onshore site preparation works given it is being pursued under a separate s278 agreement?

Speaker: Martyn Jarvis

3.8 It was confirmed on behalf of the Applicant that a design requirement will be re-inserted in relation to these works.

3.9 It was also confirmed on behalf of the Applicant that the Applicant is content Work No. 2 (BB) has correctly referenced throughout the Requirements to the dDCO.

Question 3.4

Winchester City Council to explain proposed changes in Part 1.

Speaker: Martyn Jarvis

3.10 As detailed in the Applicant's response to the Deadline 7 submissions on behalf of Winchester City Council in relation to the draft DCO submitted at Deadline 7c on Monday 15th February, the Applicant does not agree that a definition of "commissioning" does need to be included in the dDCO.

3.11 The definition of "operational period", which from later comments by WCC it would appear has been overlooked, is sufficient to confirm when commissioning will have taken place, and to otherwise address this through an additional definition will not add clarity to the DCO.

3.12 This requested amendment will not be made by the Applicant in the dDCO to be submitted at Deadline 8.

3.13 The Applicant intends on addressing the remainder of the changes discussed in relation to this agenda item in the schedule of responses to the dDCO to be submitted at Deadline 8.

Question 3.5

Any other matters that parties wish to raise.

Speaker: Martyn Jarvis

3.14 N/A

Part 2 Principal powers

Question 3.6

The Examining Authority's schedule of changes to the draft Development Consent Order in relation to Article 7(4).

Speaker: Martyn Jarvis

3.15 The Applicant notes the reason for the suggested amendment provided by the ExA, and it is confirmed that Article 7(4) will be deleted and the paragraphs of the Article renumbered to reflect that amendment in the dDCO to be submitted at Deadline 8.

Question 3.7

Winchester City Council to explain proposed changes in Part 2.

Speaker: Martyn Jarvis

3.16 Amendments are suggested to Article 9 (defence to proceedings in respect of statutory nuisance). The first amendment made appears to delete reference to "vehicles, machinery or equipment" in Article 9(1)(a). The stated reason for this is that the wording is not clear.

3.17 As detailed in the Applicant's response to the Deadline 7 submissions on behalf of Winchester City Council in relation to the draft DCO submitted at Deadline 7c on Monday 15th February, the Applicant notes that the wording "*vehicles, machinery or equipment*"

specifically mirrors the wording in Section 79(1)(ga) of the Environmental Protection Act 1990. It is the Applicant's view that reflecting the wording used in primary legislation is the most clear way to refer to the matters which that primary legislation relates to. For this reason it is not agreed the wording used is not clear and the amendment will not be accepted.

3.18 The Applicant also notes Article 9(1)(c) has been deleted, though this is not referred to in the submission made. For the reasons previously set out, at length, by the Applicant, the Applicant's position is Article 9(1)(c) is appropriate to be included in the DCO and its removal is not agreed to. The noise levels that the undertaker will have to comply have been assessed and are contained in the noise management plan. There is no dispute over the noise management plan and it would be unfair to require the undertaker to achieve noise levels in the future the surrounding environment changes outside of the Applicant's control.

3.19 The Applicant intends on addressing the remainder of the changes discussed in relation to this agenda item in the schedule of responses to be submitted at Deadline 8.

Question 3.8

Any other matters that parties wish to raise.

3.20 The Applicant intends on addressing the remainder of the changes discussed in relation to this agenda item in the schedule of responses to be submitted at Deadline 8.

Part 3 Streets

Question 3.9

In relation to Article 9A, and with reference to paragraphs 4.2.7 to 4.2.14 of Portsmouth City Council's submission at Deadline 6 [REP6-079], can the Applicant explain the scope and extent of the application of the highway permit schemes as they relate to the Framework Traffic Management Strategy. The roles of the FTMS, the permit schemes and the relevant (retained) parts of the New Roads and Street Works Act (NRSWA) in the Proposed Development should be explained, as well as how each one would be applied and secured through any DCO.

Speaker: Martyn Jarvis

3.21 As provided for at Section 32 of the Traffic Management Act 2004, a permit scheme is a scheme which is designed to control the carrying out of specified works in specified streets in a specified area.

3.22 A permit scheme does not authorise the carrying out of works in a street. The carrying out of street works is authorised by the New Roads and Street Works Act 1991, and the provisions of the NRSWA 1991 are applicable in relation to how such works are undertaken. A permit scheme then provides further process in relation to how street works, for which authority is provided by the New Roads and Street Works Act 1991, are undertaken.

3.23 The position advanced by Portsmouth City Council, that the permit scheme somehow replaces provisions of the New Roads and Street Works Act 1991, is clearly wrong. The permit scheme does not provide statutory authority for undertaking works in streets, and further does not override the primary legislative provisions of the NRSWA. The permit scheme **applies** to works which are undertaken pursuant to, and in accordance with, the NRSWA. That is the relationship between the two.

3.24 This is evidenced by PCC's own Report dated 16 July 2020 and produced by Stacey Grant (who is advising PCC on the Application)[1] seeking approval to implement the permit scheme

1 https://democracy.portsmouth.gov.uk/documents/s27301/PCC%20Permit%20Scheme%20Streetworks%20and%20Roadworkds%20Purposes.pdf

for street works and road works to replace the then existing notices system, which at paragraph 4.2 states "*All current New Roads and Street Works Act (NRSWA) and Traffic Management Act legislation, codes of practice and any future amendments to that legislation, apply to this Permit Scheme*". It is noted that this same wording also appears at paragraph 2.3.3 of the Portsmouth City Council Permit Scheme[2].

3.25 In the case of the Application, it has been necessary to produce the Framework Traffic Management Strategy to detail the parameters of the traffic management measures which are to be undertaken in connection with the construction of the Authorised Development, so as to outline how the impacts of the works in the highway will be reduced. This is necessary because, in accordance with Regulation 14 and Schedule 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017, an environmental statement must include a description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements.

3.26 Having identified these mitigation measures, it is important that they are properly secured by the DCO. It is also the case that the nature of the measures, which provide constraints in relation to when works may be undertaken in specific locations along the route so as to ameliorate the impacts of construction, means the Applicant requires certainty that it will be permissible to undertake the works in accordance with them. Were this not the case, and were other constraints potentially applicable, there would be no certainty and it would be very difficult to plan and deliver the works in a co-ordinated manner.

3.27 Turning to how these matters are addressed in the DCO:

3.27.1 Article 11 provides statutory authority for the undertaker to undertake street works within the Order limits without the need to obtain any other consent from the highway authority in this respect. Consent is required for the undertaking of street works outside of the Order limits, which consent must not be unreasonably withheld or delayed, where necessary for the purposes of carrying out the works.

3.27.2 Requirement 25 provides that no phase of Work No.4 (the Onshore Cable Route) on the highway may be undertaken until a traffic management strategy in relation to those works has been approved by the relevant highway authority. Traffic managements strategies must be in accordance with the FTMS. As such, the traffic management strategy will detail how the carrying out of the works will be controlled from a traffic management perspective, ensuring this is done in accordance with the mitigations which the residual effects detailed within the ES are derived taking into account (and therefore that the works are within the scope of the ES). The approval of traffic management strategies is to be undertaken in accordance with the process provided for at Schedule 3 to the dDCO.

3.27.3 As the traffic management strategy will have been approved, there is not a need for a permit to replicate those controls, and it would also not be appropriate for controls to be imposed on the works by a permit which are different to those secured in the traffic management strategy approved in relation to them. This would have the effect of frustrating the works, which is not acceptable.

3.27.4 Taking this into account, Article 9A applies the permit schemes at the request of the highway authorities so that the works are permitted through the same permitting system as other works in the highway. The reason for this is to ensure the highway authority is able to more easily document and co-ordinate all works on the highways for which it is responsible through a single system.

3.27.5 Article 9A has therefore been drafted to confirm the relationship between permits and the traffic management strategies, with the traffic management strategies approved taking precedence in relation to how the works are undertaken. In short, the approved traffic management strategies must be complied with, and the Applicant requires certainty that it will be undertaking works in accordance with the traffic management strategy approved.

---

2 https://democracy.portsmouth.gov.uk/documents/s27302/PCC%20Permit%20Scheme%20Streetworks%20and%20Roadwors%20Purposes%20-%20Appendix%201%20-%20Permit%20Scheme.pdf

3.27.6 It is the case that because the permit scheme is applicable, the Undertaker will need to co-ordinate with other permitted works (i.e. it will not be able to obtain a permit to work in a location where someone else is working at that time). Taking into account the controls secured through the FTMS which detail when works may be undertaken in locations along the cable corridor, it is imperative the Undertaker is able to appropriately forward plan when works are undertaken and to reserve road space for this purpose (and it is considered this is also beneficial for the highway authorities who also need to co-ordinate when works are undertaken).

3.27.7 For this reason, Article 9A (2)(d) provides "*where a provisional advance authorisation has been granted to the undertaker in advance of the grant of a permit in relation to the construction of the authorised development the relevant street authority may not grant a permit for any other works in the location during the time period to which that provisional advance authorisation relates save that nothing will restrict the ability of the local highway authority to grant a permit for emergency works*".

3.27.8 As such, all persons can have certainty regarding when works in the highway are to be undertaken, and how they are to be undertaken. It is not correct to characterise the Undertaker as seeking to keep open the potential to undertake works in specified locations for its exclusive use over a long period, as is suggested by PCC. The PAA's obtained will relate to works at specific times at specific locations, and that they are in place and document when works are to be undertaken in advance of them being undertaken is of benefit to all parties.

3.28 The Applicant intends on addressing requested changes to the definition of emergency works in the schedule of responses to be submitted at Deadline 8.

Question 3.10

The Examining Authority's schedule of changes to the draft Development Consent Order in relation to Article 10(2).

Speaker: Martyn Jarvis

3.29 The amendment suggested is not agreed with for the following reasons:

3.29.1 It is correct that the level of reinstatement to be undertaken where the Undertaker carries out street works is to be in accordance with the Specification for the Reinstatement of Openings in Highways.

3.29.2 This position is already applicable in relation to street works by virtue of Article 12 (2)(i).

3.29.3 Article 10 however relates to alterations to streets that are required for the purpose of constructing and maintaining the authorised development. Where any temporary alteration is made, the street must be reinstated following this. Article 10 does not authorise street works in the same manner as Article 11.

3.29.4 Accordingly, the measures which may be required to reinstate a street following works authorised to be undertaken by Article 10 may encompass different matters to those where street works are undertaken and a street needs to be reinstated in accordance with the Specification for the Reinstatement of Openings in Highways.

3.29.5 Furthermore, Section 70 of the NRSWA 1991 provides for more than just requiring the reinstatement to be undertaken in accordance with the Specification for the Reinstatement of Openings in Highways. It is not necessary for all of those processes to apply to works undertaken pursuant to the authority provided by Article 10.

3.30 The Applicant would note that it has not been necessary for the proposed wording to be included in any other DCO that it is aware of to date.

3.31 The Applicant expects the highway authorities may also have a view on this wording and the amendments proposed and it would be grateful to understand their position on this matter also.

Question 3.11

Article 13 (3) uses the phrase 'reasonable access' twice in its wording. Who determines what is meant by reasonable access and how would this be objectively assessed? Should the phrases be reworded for clarity?

Speaker: Martyn Jarvis

3.32 As a starting point, the Applicant would like to highlight that the placing of traffic management in a street does not constitute a temporary closure of that street. A temporary closure would occur only when the whole width of the street is closed (and therefore when persons may no longer pass as of right across it). Article 13 is therefore not necessarily relevant to how access is provided to properties for residents when the works are being undertaken in accordance with the traffic management strategies (albeit in circumstances where there is a closure it will be).

3.33 The position regarding the measures to be taken in relation to access to residences, businesses and community facilities where traffic management measures are in situ is to be confirmed in the traffic management strategies to be approved in accordance with Requirement 25 (see Requirement 25(1)(d) which requires this information to be included in a traffic management strategy).

3.34 The DCO is law and therefore the ultimate arbiter of what is 'reasonable access' would be the Courts.

3.35 Noting this, the Undertaker will liaise with any persons going to or from premises abutting a street or public right of way affected by the temporary closure, alteration, diversion or restriction if there would otherwise be no reasonable access to confirm the arrangements to be provided and will determine what it considers to be reasonable in the circumstances.

3.36 Should any person not consider this legal requirement is being met by the Undertaker, they may raise this matter with the Undertaker and where they are still not satisfied may seek to address the matter through other channels, for example referring the matter to the Courts.

3.37 It is not considered that the wording could be amended in a manner which provides more clarity on what is required. The wording cannot be amended to cater for all specific circumstances on an objective basis as the circumstances of when reasonable access needs to be provided and how is fact specific.

3.38 The phrase "reasonable access" is used in the equivalent provisions of a number of other recently made DCOs including:

3.38.1 The A1 Birtley to Coal House Development Consent Order 2021 – article 15(3)

3.38.2 The A38 Derby Junctions Development Consent Order 2021 – article 15(3)

3.38.3 Riverside Energy Park Order 2020 – article 13(3)

3.38.4 The Cleve Hill Solar Park Order 2020 – article 13(3)

3.38.5 The Great Yarmouth Third River Crossing Development Consent Order 2020 – article 15(3)

3.38.6 The Norfolk Vanguard Offshore Wind Farm Order 2020 – article 11(3)

3.38.7 The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 – article 15(2)

3.39 Taking this into account, it is not considered the wording is not sufficiently clear and no amendments will be made to it in the dDCO to be submitted at Deadline 8 in this regard.

Question 3.12

Any other matters that parties wish to raise.

3.40 N/A

Part 4 Supplemental powers

Question 3.13

The Examining Authority's schedule of changes to the draft Development Consent Order in relation to Article 19(5).

Speaker: Martyn Jarvis

3.41 The proposed amendment to Article 19(5) is not agreed with. Compensation would only be payable in relation to damage not made good. Where damage is made good, there will be no need for compensation. Deleting the wording suggested would require damage to be made good, and for compensation in relation to the damage made good to be paid. This is illogical.

3.42 The position provided for in the dDCO mirrors the position in equivalent primary legislation, for example paragraphs 10 and 11 of Schedule 4 to the Electricity Act 1989 which provides powers to licence holders to enter on land for the purposes of ascertaining whether the land would be suitable for use for any purpose connected with the carrying on of the activities which the licence holder is authorised by his licence to carry on.

3.43 Paragraph 11(2) states:

3.43.1 "*Where in the exercise of any power conferred by or under paragraph 9 or 10 above any damage is caused to land or to moveables, any person interested in the land or moveables may recover compensation in respect of that damage from the licence holder on whose behalf the power is exercised*".

3.44 It therefore logically follows that where damage is made good, and therefore there is no damage, compensation will not be payable in relation to it.

3.45 Additional points raised under this agenda item will be dealt with in the Applicant's post hearing notes.

Question 3.14

Any other matters that parties wish to raise.

3.46 The Applicant intends on addressing the changes discussed in relation to this agenda item in the schedule of responses to be submitted at Deadline 8.

Part 5 Powers of Acquisition

Question 3.15

The Examining Authority's schedule of changes to the draft Development Consent Order in relation to Articles 24(2), 26(3), 30(7) and 30(8).

Speaker: Martyn Jarvis

3.47 All of these amendments are agreed with and will be made to the dDCO to be submitted at Deadline 8.

Question 3.16

The Applicant to explain the actions that it and others have taken which have resulted in additions made during the Examination to the entries in the Book of Reference referred to in Article 20 for Plots 10-12 to 10-14b.

Speaker: Martyn Jarvis

3.48 Following the issue of the Rule 17 letter, the Applicant drafted and provided an RFI questionnaire and plan identifying the relevant areas of land over which rights are sought to PCC, who reviewed and agreed its wording.

3.49 PCC then inputted allotment holder contact information and circulated the letters to the allotment holders. PCC did not provide this information directly to the Applicant because of concerns regarding data protection.

3.50 Many of the allotment holders have responded to the letter and have provided their information to the Applicant, and all those who have responded have been included within the Book of Reference.

3.51 Where allotment holders have an interest within Plot 10-14, they have been listed as tenant occupiers as a Category 1 interest in Part 1 of the Book of Reference. Allotment holders across the whole of the allotments have been recorded within Plots 10-12, 10-13, 10-14a and 10-14b as holding rights listed as Category 2 parties within Part 1, Category 3 parties within Part 2 and also listed in Part 3 of the Book of Reference.

3.52 For reference, the plots and the rights sought in relation to these are as follows:

3.52.1 Plot 10-12: Access from Locksway Road only: New Access Rights Classes (a) and (d)

3.52.2 Plot 10-13: Internal Paths, no works beneath: New Access Rights Class (h)

3.52.3 Plot 10-14: Allotment Plots: Temporary use of land over the surface only and New Connection Works Rights Classes (a), (d), (h) and (i) in respect of the subsoil below 2.5 metres from the surface.

3.52.4 Plot 10-14a: Internal paths: New Access Rights Class (h) over the surface only and New Connection Works Classes (a), (d), (h) and (i) in respect of the subsoil below 2.5 metres from the surface.

3.52.5 Plot 10-14b: Internal Paths: New Access Rights Class (h) over the surface only and New Connection Works Classes (a), (d), (h) and (i) in respect of the subsoil below 2.5 metres from the surface.

3.53 The correspondence with the allotment holders that was requested by the Examining Authority under this agenda item will be provided as part of the post hearing notes.

Question 3.17

The Applicant to explain why an article similar to Article 22(4) of the Hornsea Three Offshore Wind Farm Order 2020 has not been included in its dDCO.

Speaker: Martyn Jarvis

3.54 Article 22 of the Hornsea Three Offshore Wind Farm Order 2020 is entitled the Application of the 1981 Act and confirms how the Compulsory Purchase (Vesting Declarations) Act 1981 applies to that Order.

3.55 Article 25 is the like provision included in the dDCO.

3.56 Article 22(4) of the Hornsea Three Offshore Wind Farm Order 2020 states:

3.56.1 *In section 5(2) (earliest date for execution of declaration) omit the words from ", and this subsection" to the end*

3.57 The wording that is deleted from Section 5(2) of the 1981 Act is as follows:

3.57.1 *A declaration under section 4 above shall not be executed before the compulsory purchase order has come into operation,* ***and this subsection applies in particular where the compulsory purchase order is subject to special parliamentary procedure and therefore does not come into operation in accordance with section 26(1) of the Acquisition of Land Act 1981 or any corresponding provision of the relevant enactments***

3.58 Should the Order be subject to special parliamentary procedure, which it is not anticipated it will be, the Order would not come into operation until that has occurred. Therefore, deleting the wording from Section 5(2) makes no difference to how Section 5 of the 1981 Act will be effective in relation to the DCO in reality.

3.59 Given this is the case, so as to avoid any confusion in relation to the earliest point at which a vesting declaration may be executed in respect of land which the which the DCO authorises the acquisition of in the event the DCO is subject to special parliamentary procedure, an article equivalent to Article 22(4) of the Hornsea Three Offshore Wind Farm Order 2020 will be included in the dDCO to be submitted at Deadline 8.

Question 3.18

The Applicant to explain whether any changes would need to be made to the dDCO if Crown consent is not received prior to the end of the Examination.

Speaker: Simon Bird QC

3.60 Letters of consent under s135 Planning Act 2008 are being sought from the Crown Estate in respect of plots 7-22, 7-24 and 10-38; and the Ministry of Defence in respect of plots 6-08, 6-09, 6-14, 6-16, 6-17, 10-25, 10-26, 10-28, 10-31, 10-33, 10-34, 10-35 and 10-36. These are the only two Crown entities who own interests in land which might be affected by the dDCO.

3.61 We are confident that letters of consent will be obtained before the end of the Examination, or in a worst case soon after the close of the Examination. If they were to be obtained after the close of the Examination, we would provide copies to the ExA or (if later than 3 months after the close of the Examination) to the Secretary of State.

3.62 In the unlikely event that we are unable to obtain s135 consents from the two Crown bodies, we acknowledge that it may not be possible for the DCO to be granted with powers authorising the compulsory acquisition of any third party interests in these plots of land[3] (though note the MoD interests are subsoil beneath the highway and therefore it may never actually be necessary to require rights over those plots). We acknowledge that it would also not be possible for any other provisions in the DCO to be included in a form which would apply to these plots of land.

3.63 The DCO could therefore only be granted in a form which excluded all powers over such plots. This could be achieved by making the following changes to article 47 (Crown rights). Article 47 would then act as a limitation to the application of all of the Order powers, such that the powers would not apply to Crown land:

Crown rights 47

(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any lessee or licensee—

(a) to take, use enter upon, carry out the authorised development on or in any manner interfere with any land or rights of any description (including a portion of the shore or bed of the sea or any river, channel, creek, bay or estuary) —

(i) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate ~~without the consent in writing of the Crown Estate Commissioners~~;

(ii) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate ~~without the consent in writing of the Government Department having the management of that land~~; or

(iii) belonging to a Government Department or held in trust for Her Majesty for the purposes of a Government Department ~~without the consent in writing of that Government Department~~; or

[3] Crown interests in such land may not in any event be acquired as a matter of law (s135(1)(a), so do not require express exclusion from the DCO via drafting in the Order

(b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown ~~without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).~~

~~(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and will be deemed to have been given in writing where it is sent electronically.~~

3.64 Plot 3-21 is bona vacantia, and we are in discussions with Burges Salmon in relation to it. We note that during the Southampton to London Pipeline examination, Burges Salmon made a representation to the ExA in relation to 'escheat' property, in which they stated that while such properties are dealt with by the Crown, the Crown does not consider itself to be the owner of such Property, and that therefore the Crown was not in a position to give s135 consent in respect of such property. We hope that the ExA will not, therefore, require s135 consent to be obtained in relation to plot 3-21, given that Burges Salmon's position was accepted at the above examination.

Question 3.19

The Applicant to explain whether any changes would need to be made to the dDCO if Ministry of Defence consent is not received prior to the end of the Examination.

Speaker: Simon Bird QC

3.65 As explained in response to question 3.19, even if the Ministry of Defence's consent has not been obtained by the end of the Examination, we are confident such consent will be obtained shortly thereafter as the Ministry of Defence has no in principle objection to the DCO. The Applicant is close to agreeing Heads of Terms for the rights required in relation to the plots in which the Ministry of Defence's has an interest.

3.66 In the event that the Crown Estate's consent has been obtained, but not the Ministry of Defence's consent, by the time the Secretary of State wished to grant the DCO, the existing drafting of article 47 would need to be modified as set out below. Such modification would provide a limitation to the powers in the DCO, such that the powers would not apply in relation to land in which the Ministry of Defence holds an interest:

(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any lessee or licensee—

(a) to take, use enter upon, carry out the authorised development on or in any manner interfere with any land or rights of any description (including a portion of the shore or bed of the sea or any river, channel, creek, bay or estuary) —

(i) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;

(ii) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the Government Department having the management of that land; or

(iii) belonging to the Ministry of Defence ~~a Government Department~~ or held in trust for Her Majesty for the purposes of the Ministry of Defence ~~a Government Department without the consent in writing of that Government Department~~; or

(b) to exercise any right under this Order compulsorily to acquire an interest in any land belonging to the Ministry of Defence which is for the time being held otherwise than by or on behalf of the Ministry of Defence.

(c) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act, other than land belonging to the Ministry of Defence) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and will be deemed to have been given in writing where it is sent electronically.

3.67 We note that the Southampton to London Pipeline Order was not granted with limitations to the Crown rights article of this sort. However, we believe that, strictly, such limitations are necessary, since section 135 requires that consent is obtained for the inclusion of provisions in the DCO affecting Crown land. It seems to us that this requirement under s135 cannot be met by DCO drafting which simply requires consent to be obtained after the DCO is granted but before such powers are exercised.

3.68 The requirement to seek consent from the Crown before exercising such powers is common to most DCOs. This gives the Crown an additional level of control over the exercise of DCO powers, which they have come to expect before giving s135 consent. However, it cannot circumvent the need to obtain Crown consent under s135 before the DCO is granted (or otherwise to grant the DCO in a form which does not give powers over Crown land).

Question 3.20

The Applicant to explain whether, if Ministry of Defence consent is not received prior to the end of the Examination, the exclusion of the Ministry of Defence land would be necessary in various Articles, as was the case with Ministry of Justice land in the made Southampton to London Pipeline Order?

Speaker: Simon Bird QC

3.69 In the event that the Ministry of Defence has not provided its consent under s135 before the end of the Examination, we remain confident that such consent would be obtained shortly thereafter, as the Ministry of Defence has no in principle objection to the project or the DCO. The consent would accordingly be provided to the ExA or the Secretary of State as soon as possible after the close of the Examination.

3.70 In the unlikely event that no such consent were obtained before the Secretary of State came to determine the application, it would be open to the Secretary of State to grant the DCO with the limitations to article 47 (Crown rights) proposed in our response to Question 3.19.

Question 3.21

Any other matters that parties wish to raise.

3.71 The Applicant intends on addressing the remainder of the changes discussed in relation to this agenda item in the schedule of responses to be submitted at Deadline 8.

Part 6 Operations

Question 3.22

Any matters that parties wish to raise.

3.72 The Applicant intends on addressing the remainder of the changes discussed in relation to this agenda item in the schedule of responses to be submitted at Deadline 8.

Part 7 Miscellaneous and general

Question 3.23

The Examining Authority's schedule of changes to the draft Development Consent Order in relation to Articles 43, 45, 46 and 47(2).

Speaker: Martyn Jarvis

3.73 Both amendments requested in relation to Article 43 will be included in the DCO to be submitted at Deadline 8.

3.74 The amendments to Article 45 will be included in the DCO to be submitted at Deadline 8.

3.75 The amendments to Article 46 are not acceptable. Schedule 3 relates to the requirements, not all approvals as stated by the amendment. The timescales for decisions included in the DCO, including where included in the DCO Powers, have been included taking into account the appropriate timeframe for the decisions to be made. It is considered the amendments suggested by the ExA to Article 46 would create confusion throughout the dDCO, in addition to not being necessary amendments. These amendments will not be made.

3.76 The Applicant also does not agree that the amendments put forward by the ExA do reflect a general precedent approach seen in recently made orders. The Applicant would highlight in this regard that provisions of the type suggested are not included in any of the following:

- 3.76.1 The Southampton to London Pipeline Development Consent Order 2020;
- 3.76.2 The Norfolk Vanguard Offshore Wind Farm Order 2020;
- 3.76.3 The Hornsea Three Offshore Wind Farm Order 2020;
- 3.76.4 The West Burton C (Gas Fired Generating Station) Order 2020; or
- 3.76.5 The A1 Birtley to Coal House Development Consent Order 2021.

3.77 All of the above recently made Orders have a procedure in relation to requirements, and otherwise include timescales for decisions to be taken where required in connection with the exercise of DCO Powers, as is the general precedent approach seen in made Orders. The Applicant will continue to follow this tried and tested precedent approach, however it will otherwise review the wording in the dDCO and confirm if further changes are required to align with precedent in the schedule of changes to be submitted at Deadline 8.

3.78 The correction identified in respect of Article 47(2) will be included in the DCO to be submitted at Deadline 8.

3.79 Other amendments discussed under this agenda item will be addressed in the schedule of responses to be submitted at Deadline 8.

Question 3.24

Winchester City Council to explain proposed changes in Part 7.

Speaker: Martyn Jarvis

3.80 As detailed in the Applicant's response to the Deadline 7 submissions on behalf of Winchester City Council in relation to the draft DCO submitted at Deadline 7c on Monday 15th February:

3.80.1 Comments are made in relation to Article 41, the first of which relates to Article 41(1)(b) and the use of the word "using".

3.80.2 The Applicant notes the term "using" is used for the same purpose in like Articles in recently made DCOs (for example Article 42 of the Southampton to London Pipeline Order 2020), where the manner in which the Authorised Development will be used is not dissimilar.

3.80.3 Notwithstanding this, the Applicant would be agreeable to amending the term "using" to "involved in the construction, maintenance and operation of". The Applicant expects this matter will be discussed at ISH4 and a position will be confirmed at that time.

3.80.4 WCC also make a comment in relation to replacement trees, requesting that a requirement be included requiring replacements. The Applicant notes that the Articles are authorising powers and requirements are requirements. The two are not to be confused as they serve different purposes.

3.80.5 With regard to the removal of trees and hedgerows, Article 41(1) and (3) provides the power to remove trees and hedgerows. The requirements with regard to the removal and replacement of trees and hedgerows in connection with construction are addressed in the OOCEMP and Requirement 15, which requires the production of Arboriculture Method Statements in relation to any such removals. The Section 106 Agreements with PCC and HCC relate to the replacement of highway trees.

3.80.6 It is not envisaged that it will be necessary to remove trees and hedgerows in connection with maintenance and in the very rare event of any repair. In any event, this will only be where it is necessary to do so in relation to the operation of nationally significant infrastructure.

3.80.7 In the event trees are removed in the future, compensation is provided for at Article 41(2) and (6). It will be for the relevant landowner to determine whether such compensation is to be spent on the replacement of any trees or hedgerows removed. This is an entirely appropriate position to address this situation and is reflected by many made DCOs (as evidenced in previous submissions by the Applicant on this Article).

3.80.8 WCC have commented in relation to Article 42 that Section 206(1) of the 1990 Act should apply.

3.80.9 Section 206(1) of the 1990 Act provides that if any tree which is the subject of a Tree Preservation Order is removed it shall be the duty of the owner of the land to plant another tree of an appropriate species or size.

3.80.10 As is explained above, the position with regard to the removal and replacement of trees, including trees subject to tree preservation orders, is to be determined via the agreement of arboriculture method statements. Where this confirms a replacement is to be provided, this will be provided.

3.80.11 Further, Article 42(2) provides that the undertaker must pay compensation to the owner, and therefore the landowner, in relation to any loss or damage of a tree. It will be for the relevant landowner to determine how those monies are spent, for instance whether they are spent on a replacement tree.

3.80.12 For these reasons, section 206(1) of the 1990 Act is stated not to be applicable. This is an entirely appropriate position reflected by many made DCOs (as

evidenced in previous submissions by the Applicant on this Article and Article 41). Accordingly, the amendment suggested is not agreed to.

3.81 The Applicant intends on addressing the other items discussed in relation to this agenda item in the schedule of responses to be submitted at Deadline 8.

Question 3.25

Any other matters that parties wish to raise.

3.82 The Applicant intends on addressing the items discussed in relation to this agenda item in the schedule of responses to be submitted at Deadline 8.

4. SCHEDULE 1, THE AUTHORISED DEVELOPMENT

Question 4.1

Any matters that parties wish to raise

4.1 Mr Jarvis confirmed on behalf of the Applicant that all external structures for the Converter Station had been clearly assessed.

4.2 The Applicant intends on responding to the points raised under this agenda item in the post hearing notes and/or schedule of responses to be submitted at Deadline 8.

5. **SCHEDULE 2, REQUIREMENTS**

Question 5.1

In relation to the updated Design and Access Statement at Deadline 7 [REP7-021] and draft Requirement 6(1)(f), it would appear that each of the relevant local planning authorities and the South Downs National Park Authority has now had the chance to input its views into the design process for the Converter Station.

What certainty does each of the local authorities have that its views will be incorporated into the final design, and what would the process be if there were differences between the authorities on any aspects of the building designs?

Speakers: Martyn Jarvis and Maritta Boden

5.1 The final design is subject to approval by WCC in consultation with SDNPA.

5.2 The design principles have been agreed with all parties.

5.2.1 (Post hearing: It is acknowledged that SDNPA has requested at Deadline 7c (REP7c-024) the inclusion of an additional design principle which relates to ash dieback and which the Applicant has requested proposed wording for. The Applicant will consider and discuss this with the relevant authorities in due course).

5.3 Building Design Principle 3 does not mandate that all colours in the palette shall be used, nor does it state what proportions of lighter and darker shades shall be used. It simply gives a suitable range of colours as the basis for a more focussed colour study as part of the detailed design for approval. The Applicant reiterates that WCC will be the deciding authority and thus control the final colour choice, in consultation with SDNPA.

5.4 In response to LPAs comments the latest DAS (REP7-021) has been revised to reflect discussions emerging from the recent LPA design meetings. With regard to the design principles and colour range:

5.4.1 Section 4.3.9 of updated DAS reflects a record of the continued LPA design meetings and correspondence in August, October and November last year; and

5.4.2 Section 6.2 reflects all the current design principles.

(A) (Post hearing: It is acknowledged that SDNPA has requested at Deadline 7c (REP7c-024) an amendment to paragraph 4.3.9.6 to refer to "*flexibility in choosing a suitable colour treatment where the build form is set against the sky, incorporating the pale colours, if deemed to be appropriate, identified in the previous iteration (24.11.20*)". The Applicant is considering whether to revise the DAS with the suggested amendments).

5.5 The Applicant has also added a suitable form of words at Section 5.7 - Planning and Landscaping - paragraph 5.7.2.3 in the DAS to cover concerns expressed by WCC regarding the use of a broader colour range. The revised text states:

> *"Cladding typically consists of narrow vertical elements of varied contextual colours (primarily dark recessive colours). The colour palette focuses primarily on darker recessive colours with some additional lighter colours included should these be required where the building cuts the skyline. This approach to include a broader range of colours will provide a degree of flexibility when undertaking the contextual study at detailed design. The clause to undertake a further contextual study included in design principle 3 will test each elevation from different viewpoints and angles to determine the colour ratios and whether overall such elevations should have a greater transition of darker to lighter colours. This does not imply that the lighter colours will be used, but rather that they may be included subject to the study's findings and agreed in discussion with the relevant discharging authority in consultation with the SDNPA. The roof of each building will be a dark recessive non reflective colour to minimise visual impact."*

5.6 Building Design Principle 3 at section 6.2.2 in the DAS now reads: *Colours will be selected from a palette of contextual colours (which are primarily dark recessive colours) within the ranges below chosen to complement the surrounding landscape. A contextual study will be*

undertaken to review the colour ratios for each elevation from the below colour range. The roofing will be in a dark recessive non-reflective colour to minimise visual impact.

5.6.1 *RAL 8022; 6009; 8019; 6015; 6020; 6014; 7022; 7013; 8025; 6003; 1020;*

5.6.2 *RAL 8015; 8012; 7008; 6011; 7040; 1002; 1014; 7035.*

Question 5.2

Winchester City Council to explain proposed changes to, or commentary on Requirements 2, 3, 4, 6, 7, 8, 9, 10, 15, 16, 22, 24 and 27 (numbering as in the Applicant's Deadline 6 dDCO).

Speaker: Martyn Jarvis

Requirement 2

5.7 A new paragraph (4) is proposed in respect of Requirement 2 requiring the confirmation of when the Authorised Development has been commissioned. As stated above the Applicant considers the term "operational period" is sufficient for confirming once commissioning has occurred so is not agreeable to an additional definition which covers the same matters.

5.8 The Applicant is however agreeable to the following being added as paragraph (4) to the Requirement 2:

5.9 The undertaker must provide to each relevant planning authority written notice of the Authorised Development becoming operational within not more than 14 days following the date on which the Authorised Development first becomes operational.

No start requirement

5.10 A "no start until whole scheme is approved" condition has been proposed which seeks to require that the Authorised Development cannot be commenced until all consents required for the Project in France have been obtained.

5.11 The Applicant does not agree that this is a necessary requirement or that such a requirement would be sufficiently clear/would not lead to unintended consequences. This is for the following reasons:

5.11.1 A DCO requirement relating to the need for French consents to have been obtained would be a crude mechanism that would likely give rise to unintended consequences, given this is a matter which relates to French law and regulation.

5.11.2 As an example, in France where an environmental authorisation subject to public enquiry is required, the building permit would be submitted after the public enquiry has taken place. As such, a building permit follows the environmental authorisation, with the content of the building permit reflecting the findings of the environmental authorisation and the conclusions of the public enquiry. It would be unnecessary to prevent the Authorised Development commencing until the Building Permit in France is obtained.

5.11.3 The Applicant has confirmed to fully secure funding for the construction of the Project necessary regulatory approvals and consents in France and in the UK must first be obtained.

5.11.4 A requirement for security/guarantee for CPO costs is now included at Requirement 26 of the draft DCO to provide assurances that the powers of compulsory acquisition will not be capable of exercise until it has been evidenced that the funds required for compensation are satisfactorily secured. Such funds are to be derived from the funding for the Project, and therefore the CPO powers in the DCO will not be capable of exercise until funding is secured. Whilst in theory a guarantee could be provided earlier than full funding being secured, there would be no rational basis for an undertaker to exercise CPO powers and incur the costs of doing so until all necessary regulatory approvals and consents in France and in the UK are obtained.

5.12 As such, the works will in any event not be implemented until the necessary consents for the French elements of the Project for funding to be secured are also secured.

5.13 Regulatory approvals and French consents must be obtained in connection with the Project, there is a reasonable prospect of all such approvals and consents being obtained and the obtainment of those is being properly managed, and therefore the need for these to be obtained cannot be properly said to be an impediment to the delivery of the Authorised Development.

Requirement 3

5.14 An amendment is proposed to Requirement 3 to require phases to be undertaken in accordance with a sequence set out when the phases are confirmed.

5.15 This amendment shows a misunderstanding of the Requirement by WCC, the purpose of which is to divide the works such that the 'phases' can be discharged in an appropriately manageable manner.

5.16 To explain the misunderstanding with a practical example, the works on the highway will be reactive to programme and constraints in the FTMS. It will not be realistic to confirm a phasing sequence for all such phases forming part of Work No.4.

5.17 In addition, there is no necessity for this provision to be included. None is offered by WCC in their comments.

5.18 Whilst the Applicant appreciates WCC are concerned with the requirements in so far as they will be the relevant discharging authority for them, the comments made do not take into account the remainder of the Authorised Development i.e. extending beyond WCC's administrative area, which the Requirements apply to.

5.19 For these reasons, the suggested amendment to Requirement 3 is not accepted by the Applicant.

Requirement 4

5.20 WCC propose an addition to Requirement 4 in relation to the compound option for HDD-5. As it has now been confirmed the southern option is selected it is not considered necessary to comment on this suggested addition further.

Requirement 6

5.21 In relation to Requirement 6(1), WCC have suggested reference to "foundation design" is included. At Deadline 7, the Applicant's draft DCO included reference to "proposed piling". It is considered these additions cover the same matter and therefore appropriate provision has been made. It is also relevant that Requirement 15 will require the submission and approval of a piling works risk assessment, which will be a risk assessment of the "proposed piling". Noting this, the controls included in relation to piling are appropriate.

5.22 In relation to Requirement 6(1)(i) WCC have queried why access is referred to, taking into account Requirement 10. The Applicant updated the draft DCO at Deadline 7 to remove reference to the vehicular access on the basis this is to be addressed through a Section 278 Agreement with Hampshire County Council. This matter is therefore considered to have been addressed.

5.23 The Applicant also notes that WCC are not the relevant planning authority for the area where the access junction is located, East Hampshire District Council perform that function.

5.24 A new Requirement 6(10) is proposed to confirm additional lighting masts cannot be installed beyond those approved. Requirement 6(6) already confirms Work No.2 must be carried out in accordance with the approved details. It would be unlawful to do otherwise. As such, Requirement 6(10) as suggested is not necessary and therefore will not be accepted and included in the draft DCO.

5.25 A comment is made in relation Requirement 6(11). The Applicant confirms the Works Plans show one compound in this location, and therefore despite the comments of WCC not being agreed with this matter has been addressed.

Requirements 7 and 8

5.26 The comments in relation to Requirement 7 are noted, but not agreed with. Put simply, it is appropriate to confirm the management, maintenance and monitoring plans and prescriptions and management responsibilities for the landscaping to be provided at the

same time as the landscaping proposals which such plans, prescriptions and responsibilities relate to are approved.

5.27 It is not agreed Requirement 9 is more appropriate for this, as this would separate such plans, prescriptions and responsibilities for the landscaping from the requirement requiring approval of the landscaping, and into a separate plan which has a primary focus on fauna and associated habitat. In the view of the Applicant this would be confusing and a detrimental amendment.

5.28 The Applicant confirms ground level details are not approved pursuant to Requirement 7, they are approved pursuant to Requirement 6(1)(c) (Work No.2 existing and proposed site levels).

5.29 The comment on biodiversity enhancements are noted. These are in effect works of landscaping to enhance biodiversity, the detail of which is confirmed in the OLBS. It is therefore considered appropriate to refer to landscaping and for this to need to be in compliance with the OLBS, therefore ensuring all necessary measures are delivered. Nonetheless, the Applicant is content to refer to enhancement works also and will include this in the DCO submitted at Deadline 8.

5.30 The comment regarding embedded mitigation and enhancement works being more specifically referred to is noted. The embedded mitigation and enhancements are in effect the landscaping works, so it is appropriate to refer to landscaping works (and, as stated above, the enhancement works), particularly where compliance with the OLBS, which details their delivery is secured. It is not agreed that by not expressly referring to embedded mitigation and enhancement works in the requirement, compliance with these elements of the OLBS is negated.

Requirement 9

5.31 The comment is made that it is still not known what Requirement 9 relates to.

5.32 The Applicant confirms Requirement 9 relates to the measures to be put in place during the works to protect existing ecological features, confirm the scheme for reinstatement of land used as a temporary compound and any replacement planting to replace removed sections of hedgerows or removed trees, and how those measures will be implemented and managed and maintained. This is different to the landscaping scheme, because the landscaping is new planting, whereas the biodiversity measures are protection, reinstatement and replacement of existing biodiversity features.

5.33 Save for the need to produce arboriculture method statements, all information in relation to biodiversity management is included in Requirement 9. Given a CEMP and Biodiversity Management Plan need to be approved before works commence, this does not create any inconsistency.

5.34 It is noted that Requirement 9(4)(a) relates to measures to protect existing scrub and trees that are to be retained. It is also noted that Requirement 9(3) very clearly states "no part of the onshore site preparation works may commence until a written biodiversity management plan (which accords with the outline landscape and biodiversity strategy in so far as relevant and the relevant recommendations of appropriate British Standards) relating to those works has been submitted to and approved by the relevant local planning authority in consultation with the relevant statutory nature conservation bodies". It is clearly not correct that onshore site preparation works are not covered by Requirement 9.

5.35 The comments in relation to Section 1.8.4 of the OLBS are noted. The Applicant confirms that paragraph 1.8.4.1 states "*The areas under landscape management shall be inspected at least every five years and the management plan updated as necessary to reflect the outcome of the inspections".* This clearly refers to the landscaping scheme, not the biodiversity management plan, the areas subject to which are not subject to "landscape management".

5.36 Paragraph 1.8.4.4. states "*The detailed landscaping scheme and written biodiversity management plan and associated management, maintenance and monitoring plans shall be reviewed annually and appropriate amendments made to the detailed landscaping scheme and written biodiversity management plan or associated plans*".

5.37 The review of the detailed landscaping scheme and the written biodiversity management plans is not the same as the inspection of the "areas subject to landscape management".

The review of the schemes/plans shall be annual for their duration, and following inspection of the areas under landscape management, the management plan shall be updated also. This ensures a robust and reactive process for the management, and inspection of landscaping areas at appropriate intervals (noting the landscaping schemes extend for the duration of operation of Work No. 2 and 5).

5.38 The Applicant does not agree it is necessary to specifically refer to Denmead Meadows in the Requirement. This is very clearly addressed in the OLBS and works at Denmead Meadows may not commence until the written biodiversity management plan for those works are approved.

5.39 There is also not a need for the biodiversity management plan, noting the extent of its content, to apply for the operational period of the Converter Station. The landscaping scheme applies for this purpose and ensures management of the biodiversity enhancements (which as explained above are in effect landscaping).

5.40 It is not agreed that Requirement 9(4)(b) is the same as Requirement 22. Article 9(4)(b) is constrained to land used as temporary compounds during construction and any replacement planting to replace removed sections of hedgerow or removed trees. Requirement 22 relates to any land within the Order limits landwards of MLWS which is used temporarily for construction of the authorised development (i.e. this has a wider application). WCC comments do not take into account the wider scheme and the need for the requirements to apply to the whole, not just the WCC based elements, of the Authorised Development.

5.41 The written biodiversity management plans will include monitoring and maintenance over a 5 year period (in year 1, 3 and 5). The Undertaker will benefit from rights to temporarily use land for maintenance for a period of 5 years in accordance with Article 32. This ensures planting can be replaced if it dies. Five years is a common standard accepted for confirming whether replacement planting has become established, and at which point aftercare provisions may properly cease.

Requirement 10

5.42 The Applicant notes WCC's comments in relation to Requirement 10 (highway accesses). The Applicant does not agree with them. All discussions relating to highway access have been with HCC for the area which WCC are local planning authority. Further, the accesses will be delivered pursuant to minor works agreements with WCC. In the circumstances, it is therefore entirely appropriate the relevant planning authority are consulted and do not approve in the circumstances.

5.43 Also, given the relevant planning authority has no highway function, it is not understood on what basis they would approve matters such as siting, design, layout and visibility splays, which are all matters relevant to highways safety. It also not understood what the 'range of issues that could arise' referred to in relation to temporary highway accesses are, or further how such matters are not otherwise to be addressed by the relevant planning authority.

Requirement 15

5.44 The Applicant notes the comments on Requirement 15. It does not agree with them. All plans required to be approved as part of a CEMP are detailed and careful thought has been applied to drafting. It is also not agreed the CEMP's go beyond construction matters as suggested.

Requirement 16

5.45 At Requirement 16 WCC query whether "operational period" is clearly defined. The Applicant refers WCC to the definition in Article 2 of "operational period". This is very clearly defined.

Requirement 22

5.46 The Applicant notes the comments in relation to Requirement 22. The Applicant does not agree to the wholesale amendment suggested, but does consider the following amendment (shown underlined and emboldened) would be appropriate to address the point raised regarding reinstatement being undertaken in an appropriate timescale following the completion of works:

5.47 The undertaker must confirm to the relevant planning authorities the date of the completion of the construction of any phase of the authorised development and any land within the Order limits landwards of MLWS which is used temporarily for construction of a relevant

phase of authorised development and which is not required for such use in connection with any other phase of the authorised development must be reinstated to its former condition, or such condition as the relevant local planning authority may approve but which may not be to a standard which is higher than its former condition, within not more than twelve months of the date of the completion of the construction of the relevant phase of authorised development.

5.48 The Applicant anticipates the above amendments will be discussed at ISH4.

Requirement 24

5.49 The comments in relation to Requirement 24 are noted. They are not agreed with. The Applicant has explained the form of the Article in previous submissions and how it aligns with precedent requirements in DCOs for similar. It is for the Undertaker to confirm when operation of nationally significant energy infrastructure has ceased, not the local planning authority, and the time periods of non-operation suggested by the local planning authority would not indicate the operation has permanently ceased.

Requirement 27

5.50 It is noted that it is acknowledged Requirement 27 (Employment and Skills Plan) is new. No further comment is provided by WCC in their submissions.

Decommissioning Bond

5.51 The Applicant is not agreeable to a decommissioning bond being provided as this is not considered necessary to mitigate the effects of the Proposed Development and therefore this has not been included.

5.52 In reaching this conclusion the Applicant has considered other projects of similar scale and complexity for which a DCO has been made and notes that, so far as it is aware, none are subject to the need to provide a decommissioning bond.

5.53 So far as the Applicant is aware, the types of projects which are usually subject to such requirements are nuclear power stations and landfills, reflecting the long term contamination liabilities associated with those. These are not a matter relevant to the Proposed Development, or indeed a matter which falls within the remit of the Planning Act 2008 regime

5.54 **Other**

5.55 The Applicant intends on addressing the items raised by WCC and other parties in relation to this agenda item, including in responses provided at Deadline 7C, in the schedule of responses to be submitted at Deadline 8.

Question 5.3

The Examining Authority's schedule of changes to the draft Development Consent Order in relation to Requirement 26.

Speaker: Martyn Jarvis

5.56 The amendments proposed to Requirement 26 are acceptable to the Applicant and will be included in the dDCO submitted at Deadline 8, save that sub-paragraph 5 will not be included. It is already expressly confirmed at Article 45 of the DCO that any matter for which the consent or approval of the Secretary of State is required under any provision of the Order shall not be subject to arbitration. There is no need to repeat this position in the Requirement.

5.57 The Applicant will address the comments in relation to whether requirement 26 should be an article rather than a requirement in the post hearing notes to be submitted at Deadline 8. It is expected the provisions will be moved to be an Article to the dDCO.

Question 5.4

Winchester City Council to provide an update on the commentary provided at Deadline 7 [REP7-102] in relation to a new Requirement for an Employment and Skills Plan in the light of the Applicant's new proposed Requirement 27 in its Deadline 7 dDCO [REP7-013].

Speaker: Martyn Jarvis

5.58 The Applicant will consider whether requirement 27 needs to include a time limit and this will be addressed in the schedule of responses to be submitted at Deadline 8.

Question 5.5

Portsmouth City Council to set out its issues with the use of language within the Onshore Outline Construction Environmental Management Plan in respect of 'must' and 'will' (paragraphs 1.53 to 1.56 in [REP7-088]).

Applicant to respond.

Speaker: Martyn Jarvis

5.59 As is explained in Table 2-9 of the Applicant's Responses to Deadline 7 Submissions submitted on Monday 15 February, the Applicant will revise the OOCEMP to be submitted at Deadline 8 to address the points raised by PCC in those paragraphs.

Question 5.6

How does the Applicant respond to Portsmouth City Council's suggestion [REP7-088] that a Requirement should be written into the DCO to ensure that 'there should not be any stored materials or joint bays within FZ3b, and if there are that these be detailed and mitigated'?

Speaker: Martyn Jarvis

5.60 In relation to stored materials during construction:

5.60.1 OOCEMP (REP7-032) paragraph 5.7.1.4 lists a number of construction principles and states that "*The appointed contractor (and any sub-contractors) must ensure that works within flood zone 2 or 3 do not introduce significant structures (i.e. temporary site compounds) or spoil storage in the fluvial flood plain".*

5.60.2 Furthermore, all works within Flood Zone 2 or 3 would be subject to a Flood Risk Activities Permit.

5.60.3 These principles are agreed with the Environment Agency as reflected in the Onshore SoCG between the Environment Agency and the Applicant.

5.61 According, the Applicant considers necessary controls in this regard are already provided for.

5.62 In relation to the location of Joint Bays:

5.62.1 OOCEMP paragraph 5.7.1.4 lists a number of construction principles, including a statement that: "*where practicable locations for joint bays and link pillars/link boxes are to be located outside of flood zones 2 and 3 or areas at risk of surface water flooding. Where this is not practicable any works in the Flood Zone 2 or 3 will be subject to approval of a flood risk activities permit or an exemption, and works within areas at risk of surface water flooding may be subject to approval of an ordinary watercourse consent or an exemption. No impediments are foreseen to any such approvals or exemptions being obtained, taking into account the nature of the works and infrastructure proposed*".

5.62.2 These principles are agreed with the Environment Agency as reflected in the final Onshore SoCG between the Environment Agency and the Applicant submitted at Deadline 7. It should be noted that as this is a design principle, this statement has now been moved to Section 6.4.3 of the Design and Access Statement (to be submitted at Deadline 8).

5.62.3 As this statement will be located within the Design and Access Statement (to be submitted at Deadline 8) this requirement is secured through DAS and Requirement 6. Furthermore, should any infrastructure (e.g. joint bay/ link box) be

required within Flood -Zone 3, the embedded mitigation of the infrastructure being constructed underground, and watertight construction, ensures no obstructions are being introduced above ground during operation and are therefore not expected to have any significant impact on the flood risk environment.

Question 5.7

With regards to the total numbers of HGV movements on Day Lane, the Applicant is presumed to have a very high level of confidence that these numbers are reliable and would not need to be increased in practice following their assessments.

As such, and to provide confidence to all parties affected by the HGV movements, the Examining Authority and the Secretary of State, could the Applicant propose a suitable Requirement to introduce a cap on the numbers such that the real effects could not exceed the worst-case parameters assumed in the assessment?

Speaker: Martyn Jarvis

5.63 The Applicant agrees to secure the number of HGVs shown within the Day Lane Technical Note (REP7-046a) as the maximum number of HGV movements that can access the Converter Station per day.

5.64 An amendment will be made to Requirement 17 (Construction Traffic Management Plan) to clearly secure this. It is proposed that a new sub-paragraph 3 shall state:

5.64.1 *Notwithstanding anything contained in any approved construction traffic management plan, Work No.2 (bb) (access junction and associated gated highway link) shall not be used for more than 71 two-way HGV movements (142 in total) per day in connection with the construction of the authorised development landwards of MHWS.*

Question 5.8

Any other matters that parties wish to raise.

5.65 The Applicant reiterated that the request from Winchester City Council for a decommissioning bond is not agreed. As set out in previous submissions this is not considered necessary to mitigate the effects of proposed development. The Applicant has considered projects of similar nature and scale and has not identified any being subject to a requirement for a decommissioning bond.

6. SCHEDULE 3, PROCEDURE FOR APPROVALS, CONSENTS AND APPEALS

Question 6.1

The Examining Authority's schedule of changes to the draft Development Consent Order in relation to Schedule 3.

Speaker: Martyn Jarvis

6.1 The proposed amendments to Schedule 3 are not agreed to and will not be included in the DCO to be submitted at Deadline 8.

6.2 A nine week period for approvals to be provided, or indeed longer where further information is requested, is too long a period and would delay the delivery of the scheme. 42 days, plus an allowance of additional time where further information is requested is an entirely appropriate time period to allow for approvals to be provided whilst ensuring the scheme is delivered in a timely manner.

6.3 It is noted that the period of 42 days for the discharge of requirements is provided for in the Southampton to London Pipeline Order 2020, thereby evidencing the appropriateness of this time period being included in a development consent order.

6.4 Having reviewed various recently made Orders, the Applicant would identify that there is no general precedent for a 9 week period being included for the discharge of requirements.

6.5 The Applicant has nonetheless reviewed the proposed amendment wording in detail and will incorporate amendments as it is considered to be appropriate.

Question 6.2

Any other matters that parties wish to raise.

6.6 N/A

7. SCHEDULE 4, LAND PLANS

Question 7.1

Any matters that parties wish to raise.

7.1 N/A

8. SCHEDULE 5, WORKS PLANS

Question 8.1

Any matters that parties wish to raise.

8.1 Mr Jarvis referred Mr Zwart to the DCO parameters index submitted at Deadline 1 (REP1-134) in response to the comments raised in relation to the parameters of the scheme.

9. SCHEDULE 6, ACCESS AND RIGHTS OF WAY PLANS

Question 9.1

Any matters that parties wish to raise.

9.1 N/A

10. SCHEDULE 7, PARAMETER PLANS

Question 10.1

Any matters that parties wish to raise.

10.1 N/A

11. SCHEDULE 8, STREETS, PUBLIC RIGHTS OF WAY AND PERMISSIVE PATHS TO BE TEMPORARILY CLOSED, ALTERED, DIVERTED OR RESTRICTED

Question 11.1

Any matters that parties wish to raise.

11.1 N/A

12. SCHEDULE 9, MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE CREATION OF NEW RIGHTS AND RESTRICTIVE COVENANTS

Question 12.1

The Examining Authority's schedule of changes to the draft Development Consent Order in relation to Schedule 9 paragraph 2(1).

Speakers: Martyn Jarvis

12.1 These amendments will be included in the dDCO to submitted at Deadline 8, save that it is determined paragraphs 3 and 7 are not necessary and these will be deleted, and therefore not referred to.

12.2 The Applicant intends on dealing with the comments raised by other parties in the schedule of responses to be submitted at Deadline 8.

Question 12.2

Any other matters that parties wish to raise.

12.3 All square brackets will be removed from the final DCO to be submitted at Deadline 8.

13. SCHEDULE 10, LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Question 13.1

Any matters that parties wish to raise.

13.1 N/A

14. SCHEDULE 11, TREES SUBJECT TO TREE PRESERVATION ORDERS

Question 14.1

Any matters that parties wish to raise.

14.1 N/A

15. SCHEDULE 12, REMOVAL OF IMPORTANT HEDGEROWS

Question 15.1

Any matters that parties wish to raise.

15.1 N/A

16. SCHEDULE 13, PROTECTIVE PROVISIONS

Question 16.1

At Deadline 7, Mr Geoffrey and Mr Peter Carpenter submitted a 'Statement in relation to the Carpenters' Proposal for Alternative Accesses and Protective Provisions in relation to Little Denmead Farm', dated 25 January 2021 [REP7-119]. This includes a suggested 'Protective Provision for the Protection of Little Denmead Farm' (numbered therein as Schedule 13 Part 8). Could the Carpenters' representatives briefly explain any precedent in a similar made Order that suggests that the Secretary of State might find it, or a variant, acceptable for inclusion in any DCO.

Speaker: Martyn Jarvis

16.1 Please refer to the Applicant's Deadline 7c submission responding to the submissions made on behalf of Mr G Carpenter and Mr P Carpenter (REP7c-014).

16.2 The protective provisions proposed in relation to the Affected Party's land would make the scheme inoperable as they would have the effect of removing land that is required in connection with the Proposed Development. They are not acceptable and the Applicant provides no further comment in relation to them.

16.3 It was also noted that the section 106 planning obligation proposed on behalf of the Affected Party would not be lawful as it is a planning obligation given to no one, and therefore entirely unenforceable.

Question 16.2

Could the Applicant summarise the positions reached with all respective parties subject to Protective Provisions proposed in the dDCO. In each case, conclude with whether there is 'agreement' or 'dispute' and, if there are disputes, what they are.

Speaker: Martyn Jarvis

16.4 **ESP Utilities Group Ltd**

16.4.1 Noting earlier difficulties contacting representatives at ESP, the Applicant has sought to re-establish contact. Despite repeated best efforts by the Applicant, meaningful engagement on the protective provisions with ESP Utilities Group Ltd has not been forthcoming.

16.4.2 The Applicant is content the protective provisions for the benefit of electricity and gas undertakers apparatus (included at Part 1 of Schedule 13 to the DCO (REP5-015)) provide adequate protections. It is relevant in this regard that the protective provisions align with the form included in many made DCO's.

16.5 **GTC Infrastructure Ltd – Gas and Electricity ('GTC')**

16.5.1 A private agreement is being progressed with GTC Infrastructure Limited in relation to the application of the protective provisions, with a draft issued by the Applicant on 9 February 2021 for agreement.

16.5.2 The private agreement being progressed reflects discussions with GTC in relation to amendments required by GTC and agreed to by the Applicant. It is anticipated this agreement will shortly be agreed. There are no matters in dispute between the parties.

16.6 **National Grid Electricity Transmission plc**

16.6.1 A private agreement has been agreed with NGET and its execution is being progressed. There is therefore an agreed position. Updated Protective provisions agreed between the parties will be included in the DCO to be submitted at Deadline 8.

16.7 **Southern Water Services Ltd – Sewers ('SWS')**

16.7.1 The Applicant has been continually seeking engagement with Southern Water on the protective provisions which are applicable to them since 29th September 2020. This has continued following the Deadline 6 submission submitted by Southern Water, with its submission not being cognisant of the Applicant's engagement with Southern Water to date.

16.7.2 Despite repeated efforts by the Applicant, meaningful engagement on the protective provisions with Southern Water has not been forthcoming. There is not anything in dispute as far as the Applicant is aware, but there has been no engagement from Southern Water so it cannot be stated matters are agreed either.

16.7.3 The Applicant is content the protective provisions for the benefit of water and sewerage undertakers apparatus (included at Part 1 of Schedule 13 to the DCO (REP6-015)) provide adequate protections. It is relevant in this regard that the protective provisions align with the form included in many made DCO's.

16.8 **Indigo Pipelines**

16.8.1 The Applicant has continued to seek engagement from Indigo Pipelines who instructed solicitors in relation to this matter on 26 January 2021. The Applicant's solicitor issued a private agreement in draft on 1 February 2021. No response has been received on behalf of Indigo Pipelines, and no comments have been provided on the protective provisions.

16.8.2 There are not any matters in dispute, but equally it cannot be stated at this time there is agreement, as a response remains awaited.

16.8.3 Protective provisions for the protection of Electricity, Gas, Water and Sewerage Undertakers are included at Part 1 of Schedule 13 to the dDCO, which are in a standard from common across many made DCOs. The Applicant's position is that appropriate protective provisions are provided within the dDCO for the protection of the apparatus.

16.9 **Network Rail Infrastructure Ltd**

16.9.1 The Applicant understands the parties are close to reaching agreement on all matters, with a few finer points to be agreed in the private agreement. Heads of terms have been agreed regarding the acquisition of the necessary interests to install the cables beneath the railway, and a lease option is now being progressed in this regard.

16.9.2 It is anticipated that an agreed position will be reached in advance of Deadline 8, which will allow for the inclusion of Network Rail's preferred form of protective provisions in the Order.

16.10 **Portsmouth Water Ltd**

16.10.1 The Applicant has continued to seek engagement from Portsmouth Water on the protective provisions. Portsmouth Water provided comments on the protective provisions on 20 January 2020 and the Applicant responded on 10 February 2021.

16.10.2 The only comment made on the protective provisions was a query with regard to Portsmouth Waters status in accordance with the new Roads and Street Works Act 1991 and the position in relation to compensation where that Act applies. The Applicant's solicitor has confirmed the compensation provisions in the protective provisions should apply where the NRSWA provisions would provide for a lesser position, and has offered to address this matter by private agreement to provide clarity for the future (albeit the protective provisions would provide for compensation in any event).

16.10.3 The Applicant has received a response from Portsmouth Water confirming its agreement to the terms for a protective provisions agreement. The Applicant will now proceed to progress that Agreement and update the ExA in this regard in due course.

16.11 **Southern Gas Network PLC ('SGN')**

16.11.1 The form of protective provisions included within the DCO submitted at Deadline 5 are agreed between the Applicant and SGN. SGN removed its objection to the Order on 13th January 2021, further to the completion of a private agreement between the Applicant and SGN.

16.12 **SSE PLC (High Voltage) and SSE PLC (Low Voltage)**

16.12.1 The Applicant has continued to seek to engage with the solicitors instructed on behalf of SSE. Following a call to discuss matters on Friday 29th January, the Applicant provided a draft private agreement on 3 February 2021. No response has been received on this to date, and no comments have been provided on the protective provisions.

16.12.2 There is not any dispute between the parties. But equally it is not the case that there is yet agreement.

16.12.3 In any event, protective provisions for the protection of Electricity, Gas, Water and Sewerage Undertakers are included at Part 1 of Schedule 13 to the dDCO, which are in a standard from common across many made DCOs. The Applicant's position is that appropriate protective provisions are provided within the dDCO for the protection of the SSE apparatus within the Order limits.

16.13 **CityFibre Holdings Ltd**

16.13.1 Noting difficulties contacting representatives at CityFibre since the last meeting on 29th September 2020, the Applicant has made repeated unsuccessful efforts to re-establish contact.

16.13.2 Meaningful engagement on the protective provisions with ESP Utilities Group Ltd has not been forthcoming.

16.13.3 The Applicant is content the protective provisions for the benefit of operators of electronic communications networks (included at Part 2 of Schedule 13 to the DCO (REP6-015)) provide adequate protections. It is relevant in this regard that the protective provisions align with the form included in many made DCO's.

16.14 **Openreach Ltd**

16.14.1 Having provided draft protective provisions on 20th October 2020, Openreach informed the Applicant on 9th January 2021 that "the legal team and Network Regulations are still in conversation regarding this".

16.14.2 To date the Applicant has not received any comments from Openreach.

16.14.3 In any event, protective provisions for the benefit of operators of electronic communications networks are included in Part 2 of Schedule 13 to the dDCO (REP6-015), which are in a standard from common across many made DCOs.

16.15 **Virgin Media Ltd**

16.15.1 The Applicant has continued to seek to engage with Virgin Media in relation to the protective provisions, most recently by phone and by e-mail on 10 February 2020.

16.15.2 There is no dispute between the parties, but Virgin Media's representatives have not fully understood the DCO process despite repeated attempts to explain this to them and have therefore not commented on the protective provisions.

16.15.3 The Applicant confirms it is content the protective provisions in included at Part 2 of Schedule13 to the Order, provide adequate protections for Virgin Media's apparatus within the Order limits.

16.16 **Vodafone Ltd**

16.16.1 The Applicant's solicitor is now engaged in discussions with Osbourne Clark in relation to entering into a protective provisions agreement for the protection of Vodafone assets, following engagement from Osbourne Clark on 21 December

2020. OC most recently contacted the Applicant's solicitors on 11 February 2021 seeking clarifications on the terms of the proposed private agreement.

16.16.2 The Applicant confirms it is not aware of any reason why this agreement will not be capable of being completed, there are not matters in dispute between the parties, but given progress to date it is not anticipated that agreement will be entered into before the end of the examination (though it is anticipated it will be before a decision is made on the Application).

16.16.3 Should that agreement not be completed for any reasons, the Applicant confirms it is content the protective provisions in included at Part 2 of Schedule 13 to the Order (REP6-015), provide adequate protections for Vodafone's apparatus within the Order limits.

16.17 **Highways England**

16.17.1 The Applicant and Highways England have agreed the form of protective provisions to be included in the Order and these will be included in the dDCO to be submitted at Deadline 8.

Question 16.3

The Applicant to explain whether, if agreement is not reached with the parties listed in its response to ExQ2 CA2.3.1 [REP7-038], any changes would need to be made to be dDCO to satisfy the requirements of the PA2008.

Speaker: Martyn Jarvis

16.18 The parties who have issued representations in relation to the Application pursuant to Section 127 of the Planning Act 2008 are as follows:

16.18.1 Network Rail Infrastructure Limited;

16.18.2 National Grid Electricity Transmission Plc;

16.18.3 Portsmouth Water limited;

16.18.4 Southern Gas Networks Plc

16.18.5 Southern Water Services Ltd (Sewer)

16.18.6 Highways England

16.19 All matters are agreed with Southern Gas Networks and their representation has now been withdrawn.

16.20 All matters, save for the land agreement, are agreed with Highways England. It is anticipated Highways England will remove their representation given all matters in relation to their assets integrity are confirmed as agreed.

16.21 Engrossments of a private agreement with National Grid are in circulation for execution, and therefore it is anticipated NGET will withdraw their representation shortly.

16.22 It is also anticipated an agreement will be entered into with Network Rail shortly, and their representation withdrawn.

16.23 The Applicant is continuing to seek to agree a position with Portsmouth Water, having been provided with comments on the protective provisions at a very late stage despite otherwise strong engagement. As explained above, terms for a protective provisions agreement are agreed and it is anticipated this will be entered into in due course, following which Portsmouth Waters objection will be withdrawn.

16.24 Southern Water are non-responsive, having not meaningfully engaged since the Application was submitted.

16.25 The acquisition of rights only is sought in relation to plots of land in which Portsmouth Water and Southern Water have an interest. Therefore Section 127(5) of the Planning Act 2008 is relevant. Section 127(5) of the Planning Act 2008 provides that an order granting development consent may include provision authorising the compulsory acquisition of a right over a statutory undertakers' land by the creation of a new right over land only to the extent that the Secretary of State is satisfied that:

16.25.1 the right can be purchased without serious detriment to the carrying on of the undertaking; or

16.25.2 any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.

16.26 The protective provisions included in the dDCO for the benefit of Portsmouth Water and Southern Water ensure that no serious detriment may be caused to the carrying on of their undertaking as a consequence of the acquisition of any right over land which they own/have an interest in, and therefore it is not considered any amendments would be needed to the dDCO to satisfy the requirements of the Planning Act 2008.

Question 16.4

The Applicant to briefly explain how each of its Deadline 7 dDCO Protective Provisions 'align with the form included in many made DCOs' as reported in ExQ2 CA2.3.1 [REP7-038] using some recent examples of relevant made Orders.

Speaker: Martyn Jarvis

16.27 Examples of other recently made DCOs which include the same or materially similar form protective provisions are listed below:

16.27.1 **Part 1 - Protection for electricity, gas, water and sewerage undertakers**

(A) The A1 Birtley to Coal House Development Consent Order 2021 – schedule 11, part 1

(B) The A38 Derby Junctions Development Consent Order 2021 – schedule 9, part 1

(C) The Southampton to London Pipeline Development Consent Order 2020 – Schedule 9, part 1

(D) Riverside Energy Park Order 2020 – schedule 10, part 2

(E) The Cleve Hill Solar Park Order 2020 – schedule 7, part 1

(F) The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 – schedule 16, parts 1 and 3

(G) The Great Yarmouth Third River Crossing Development Consent Order 2020 – schedule 14, part 1

(H) The Norfolk Vanguard Offshore Wind Farm Order 2020 – schedule 16, part 1

16.27.2 **Part 2 - Protection for operators of electronic communications networks**

(A) The A38 Derby Junctions Development Consent Order 2021 – schedule 9, part 2

(B) The Southampton to London Pipeline Development Consent Order 2020 - Schedule 9, part 2

(C) Riverside Energy Park Order 2020 – schedule 10, part 3

(D) The Cleve Hill Solar Park Order 2020 –schedule 7, part 3

(E) The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 – schedule 16, part 6

(F) The Great Yarmouth Third River Crossing Development Consent Order 2020 – schedule 14, part 2

(G) The Norfolk Vanguard Offshore Wind Farm Order 2020 – schedule 16, part 4

16.27.3 **Part 3 - For the protection of Southern Gas Networks Plc as gas undertaker**

(A) The Southampton to London Pipeline Development Consent Order 2020 – schedule 9, part 9

(B) Riverside Energy Park Order 2020 – schedule 10, part 9

16.27.4 **Part 4 - For protection of railway interests**

(A) The A38 Derby Junctions Development Consent Order 2021 – schedule 9, part 4

(B) The A1 Birtley to Coal House Development Consent Order 2021 – schedule 11, part 3

(C) The Southampton to London Pipeline Development Consent Order 2020 – schedule 9, part 3

(D) Riverside Energy Park Order 2020 – schedule 10, part 5

(E) The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 – schedule 16, part 5

(F) The Norfolk Vanguard Offshore Wind Farm Order 2020 – schedule 16, part 5

16.27.5 **Part 5 - For the protection of National Grid as electricity undertaker**

(A) The Southampton to London Pipeline Development Consent Order 2020 – schedule 9, part 7

(B) Riverside Energy Park Order 2020 – schedule 10, part 6

(C) The Cleve Hill Solar Park Order 2020 – schedule 7, part 2

(D) The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 – schedule 16, part 1

(E) The Norfolk Vanguard Offshore Wind Farm Order 2020 – schedule 16, part 2

16.27.6 **Part 6 - For the protection of Highways England**

(A) The Southampton to London Pipeline Development Consent Order 2020 – schedule 9, part 6

Question 16.5

The Applicant to confirm whether it is aware of any requests for protective provisions from the Environment Agency [REP7-018 Appendix B].

Speaker: Martyn Jarvis

16.28 No protective provisions have been requested from the Environment Agency during the ongoing engagement between the Applicant and the Environment Agency.

16.29 The Environment Agency confirmed by email on 08 February 2020 that "*the Environment Agency has not requested any protective provisions and does not require any. As the Applicant is applying for all relevant permits that will be needed from us and not seeking disapplication of any such permits, and are not purchasing or affecting any of our land or assets, we have no need for any protective provisions to be included in the Development Consent Order*".

Question 16.6

The Applicant to confirm whether it is aware of any British Gas Limited, Leep Networks (Water) Limited or Arqiva Services Ltd utilities or assets within the Order limits ([REP7-018] Appendices B and C).

Speaker: Martyn Jarvis

16.30 Arqiva Services Limited is listed in the Book of Reference in respect of rights granted by a Deed dated 06 March 2015 in relation to Plot 1-03. The Applicant has undertaken further assessment and has determined that Arqiva's asset, whilst located on land registered under the same title with Her Majesty's Land Registry as Plot 1-03, is located approximately 800m east of the Lovedean Substation and outside of the Order Limits. As such, Arqiva will be been removed from the Book of Reference at Deadline 8.

16.31 Leep Networks (Water) Limited is listed in the Book of Reference in respect of rights granted in a Deed of Grant dated 16 March 2015 in relation to Plots 4-11, 4-13 and 4-36. Whilst the Applicant believes Leep's apparatus is located outside of the Order Limits in land west of the A3, we have retained Leep's Category 2 interest within the Book of Reference as they hold rights granted over the Grantor's property, some of which lies within the Order Limits (i.e. potentially in the subsoil of the highway). The Applicant is continuing to seek further information in relation to this apparatus from Leep but will take the prudent approach of retaining Leep's interests in the Book of Reference until confirmation is received otherwise. A further update will be provided at Deadline 8.

16.32 British Gas Limited is included within the Book of Reference in respect of rights granted by a Grant of Easement dated 30 December 1964 in relation to Plot 6-20 and in respect of rights granted by a Deed dated 24 December 1981 in relation to Plots 7-23, 7-25 and 8-02.

16.33 In relation to Plot 6-20, further due diligence has shown that the infrastructure benefiting from the rights granted in 1964 are now owned by Southern Gas Networks. The Applicant understands British Gas assets in the area were transferred to Southern Gas Networks under a statutory transfer scheme in the past. The Applicant and Southern Gas Networks have agreed protective provisions. Plot 6-20 will be added to the list of Plots within which Southern Gas Networks have an interest at Deadline 8. In relation to Plots 7-23, 7-25 and 8-02, further due diligence has confirmed that the rights listed above relate to land located to the west of the A3 outside of the Order Limits. As such, these interests will be removed from the Book of Reference.

16.34 As such, British Gas will be removed from the Book of Reference at Deadline 8.

Question 16.7

The Applicant to explain 'All measures set out within the Framework Traffic Management Strategy (REP6-030) are secured via part 5 of the protective provisions set out in the draft Development Consent Order' in respect of the relationship between the strategy, part 5 of the provisions and the Sainsbury's car park ([REP7-074] page 3-27).

Speakers: Martyn Jarvis and Chris Williams

16.35 This is an error as the FTMS is now secured by Requirement 25 to the dDCO.

16.36 Section 8 of the updated FTMS (REP6-030) references access to Sainsbury's car park in relation to the A2030 Eastern Road / Fitzherbert Road / access to Sainsbury's traffic signal junction. Within Fitzherbert Road, construction is to be accommodated with the use of single lane closures. Furthermore, as stated in paragraph 8.1.1.7 temporary three-way signals will need to be implemented at the junction of Fitzherbert Road and the access to Sainsbury's Car Park. The temporary signals will ensure that access to Sainsbury's Car Park is maintained at all times throughout construction. These works may be completed on a 24hr working basis to minimise disruption to Sainsbury's and B&M Home Store. Where this occurs, the noisiest activities (road cutting / breaking and resurfacing) will be avoided between 22:00 and 07:00.

16.37 Based upon the programme restrictions contained within the FTMS, these works will also be prohibited during the Easter period and in the month of December to mitigate the impact of the works on trade. Compliance with all measures contained within the FTMS are secured by Requirement 25 of the dDCO.

Question 6.18

Any other matters that parties wish to raise.

16.38 N/A

17. SCHEDULE 14, CERTIFIED DOCUMENTS

Question 17.1

Any matters that parties wish to raise.

17.1 The Applicant will include a definition of the environmental statement in the interpretation provisions of the dDCO. This will in turn be defined by reference to the schedule of documents forming the environmental statement which will be updated and finalised at Deadline 8.

18. SCHEDULE 15, DEEMED MARINE LICENCE UNDER THE 2009 ACT

Question 18.1

Are Historic England, the Marine Management Organisation and Natural England content with the addition of the crossing of the proposed 'CrossChannel Fibre' fibre optic cable to the Deemed Marine Licence and the additional environmental assessment work set out in ES Addendum 2 [REP7-067]?

Speakers: Martyn Jarvis and Ross Hodson

18.1 The Applicant has engaged with the MMO, NE and HE on ES Addendum update and can provide a brief update on the status of these discussions.

18.2 The Applicant discussed the need for the additional cable crossing and the approach to the ES Addendum with the **MMO** in advance of the production and submission of ES Addendum 2, with the need being necessitated by evolving proposals for a proposed communications cable which crosses the UK Marine Cable Corridor.

18.3 The **MMO** provided feedback on 11 February 2021. The MMO has advised that for benthic, fish and shellfish topics, they are content with the information contained and conclusions made within the ES Addendum 2. However, they requested clarification in relation to physical processes and confirmation of the potential cumulative impacts with the closest aggregate projects (Areas 461 and 478) to the Proposed Development and whether those impacts are likely to be minor or negligible. The Applicant provided additional clarifications to the MMO on 17 February 2021 which will be appended to the SoCG submitted at Deadline 8. The Applicant is content that this matter can be resolved by the end of Examination.

18.4 **Natural England** provided written confirmation on 17 February 2021 that they are content with the inclusion of the cable crossing in the Deemed Marine Licence and the additional detail set out in the ES Addendum 2. This will be reflected in the updated SoCG to be submitted at Deadline 8

18.5 **Historic England** provided feedback on the documentation on 04 February 2021 asking for clarification on potential impacts to marine archaeological receptors and cumulative effects. Further clarification was provided by The Applicant on 14 February 2021 and confirmation was provided by Historic England on 16 February 2021 that they consider these matters resolved. This will be reflected in the updated SoCG to be submitted at Deadline 8.

Question 18.2

Any other matters that parties wish to raise.

18.6 The Applicant has agreed with the MMO to refer to the term "licenced activity" in the deemed marine licence Condition 14 and this will be reflected in the dDCO submitted at Deadline 8.

19. SCHEDULE 16, DEEMED MARINE LICENCE PROCEDURE FOR APPEALS

Question 19.1

The Examining Authority's schedule of changes to the draft Development Consent Order in relation to Schedule 16.

Speaker: Martyn Jarvis

19.1 No changes to schedule 16 proposed in ExA's schedule of changes and the Case Team confirmed this item is included in error prior to ISH4.

Question 19.2

Any other matters that parties wish to raise.

19.2 The Applicant maintains its position with regards to the concerns raised by the MMO as set out in the Statement of Common Ground with the MMO.

20. SCHEDULE 17, ARBITRATION RULES

Question 20.1

The Examining Authority's schedule of changes to the draft Development Consent Order in relation to the proposed new Schedule 17.

Speaker: Martyn Jarvis

20.1 The Applicant is content to include Arbitration Rules and will include these as Schedule 17 to the dDCO to be submitted at Deadline 8. The form of these is subject to review and any amendments to the form proposed by the ExA will be confirmed in due course.

21. PLANNING OBLIGATIONS AND ANY OTHER AGREEMENTS AND CONSENTS

Question 21.1

Can the Applicant report on positions regarding any open, live or finalised planning obligations that the ExA should be aware of?

Speaker: Martyn Jarvis

21.1 There are three planning obligations agreements being progressed as follows:

21.1.1 Agreement with HCC:

(A) The outstanding matters relate to obligations in relation to design where planned highway works and AQUIND works will overlap, and subject to ongoing discussions in relation to bus mitigation.

(B) Whilst there does remain some work to do to before an agreement can be entered into, the Applicant is confident the Agreement with HCC will be entered into before the close of the Examination.

(C) Bus Mitigation measures are now also being discussed following proposals being first provided by HCC and the Bus Operators on 16 February 2021.

21.1.2 Agreement with PCC:

(A) The Applicant awaits comments back from PCC on the draft Section 106 Agreement, however it continues to try and reach agreement on the outstanding points and an updated draft addressing some of PCC's concerns was issued on 15 February 2021.

(B) The Applicant understands the obligations that relate to (i) Fort Cumberland car park resurfacing (ii) sports pitch reinstatement and realignment (iii) highway trees and (iv) temporary construction access highway agreements are agreed to in principle by PCC.

(C) The Applicant understands that PCC are still seeking section 106 obligations relating to an employment and skills plan, a decommissioning bond, a community fund for recreational impact mitigation and mitigation for bus impacts but PCC has stated that it intends on updating the Examining Authority on these matters at this hearing.

(D) The Applicant's position on these matters remains as set out in the s106 Explanatory Memorandum submitted at Deadline 7 (REP7-058).

(E) It is hoped the Agreement will be entered into before the close of the examination. If it becomes apparent that will not be possible, the Applicant will look to commit to the obligations by way of a unilateral undertaking.

(F) The Applicant is also seeking to address the PPA, having confirmed to PCC why it is not the case that PPA resourcing fees are lawful planning obligations in accordance with the Town and Country Planning Act 1990 and the Community Infrastructure Levy Regulations 2010, and that including these in a Section 106 Agreement could in fact lead to them being invalid and unenforceable.

21.1.3 Agreement with SDNPA

(A) The Applicant has agreed terms with the SDNPA in respect of contributions towards additional woodland planting within 5km of the Converter Station and improvements to PRoW within 2km of the Converter Station.

(B) A draft of the Agreement has been provided to SDNPA for review, and it is anticipated this will be entered into before the close of the examination.

21.2 The Applicant will address the additional comments raised in the schedule of responses to be submitted at Deadline 8.

Question 21.2

Can the Applicant report on the position with regard all 'Other Consents' since publication of [REP6-024]?

Speaker: Martyn Jarvis

21.1 There are no updates in respect of any of the UK 'other consents and licences'.

21.2 With regard to the consents required in France, as the ExA will likely be aware the French environmental authorisation application was refused on 18 January 2021. The reason for this refusal was that the Applicant is not the owner of the land and does not have the right to carry out its project in all plots of land required for it, taking into account that the council of the municipality of Hautot-sur-Mer objected the Applicant's request to occupy public property which would have secured those rights. There were no other grounds of refusal. The Applicant is appealing the refusal in the French Courts on grounds of a failure to provide reasons in relation to the decisions taken and other non-compliance with French and EU law.

21.3 To address the sole reason for refusal the Applicant will take further steps to acquire the relevant land rights by the following means:

21.3.1 The Applicant will continue to seek to acquire the rights voluntarily. The Applicant's discussions in relation to voluntary acquisition were affected by travel restrictions due to the Covid-19 pandemic, which has meant it has not been possible for them to travel to France to discuss matters as they would like to. It is hoped once the situation eases and more meaningful engagement can be undertaken a more positive outcome can be achieved.

21.3.2 Further, the Applicant is continuing in its efforts to obtain the relevant regulatory approvals. Whilst those approvals would not render the Applicant as a public utility, such approvals would allow the French central government to declare the project to be in the public interest, which would then allow for the prefect (the state's representative) to take a decision to confirm the rights required for the project may be provided to the Applicant.

21.4 By either of these routes the sole reason for refusal can be addressed and the required environmental authorisation secured.

21.5 Whilst not a matter addressed in the 'other consents and licences document', it is also relevant to explain the current position in relation to regulatory status.

21.6 As discussed at the previous hearings, ACER's Board of Appeal are now re-considering the previous exemption application following the Applicant's success in the General Court of the European Union. It is anticipated a decision on this will be provided by 5 June 2021. In this regard our view remains that ACER need to take their decision as if it is 2018 so that if a decision is made it will apply as though issued prior to the Trade and Cooperation Agreements being agreed on 24 December 2020

21.7 In parallel ACER has lodged an appeal with the Court of Justice of the European Union, but this does not suspend the judgement of the General Court and no request to do so has been lodged.

21.8 In addition, as explained in the Applicant's response to ExA FWQ with reference CA 2.3.6, the Trade and Cooperation Agreements (TCA) agreed on 24 December 2020 dedicates specific attention to the cooperation between the UK and the EU on efforts to combat climate change. As part of this cooperation, the TCA established a new regulatory framework for energy infrastructure linking the member states of the European Union and the United Kingdom, including an exemption regime similar to that in Regulation 2019/943 under which AQUIND submitted the previous Exemption Request.

21.9 Following discussions with the Energy Regulatory Commission (CRE) and its British counterpart Ofgem, the ongoing request for an exemption in France under the previous regulation applicable has been discontinued, and an application will be made in line with the new regulatory arrangements provided for by the Trade Co-Operation Agreement shortly.

21.10 In response to comments that there should be a Grampian style condition included in the dDCO, Mr Jarvis on behalf of the Applicant confirmed that the French decisions are only

temporary setbacks and that it is not necessary to include a requirement in the dDCO restricting the development commencing until all French consents have been obtained, nor would it be appropriate to do so given the subject matter relates to French law and therefore outside the jurisdiction of the UK.

Question 21.3

Any other matters that parties wish to raise.

21.11 N/A

22. ANY OTHER ISSUES RELATING TO THE DRAFT DCO

Question 22.1

Has progress been made towards formalising Heads of Terms with NGET with regards to Converter Station siting options? Given the stated preference for option B(ii) from various parties, will there be a commitment before the end of the Examination to seeing that option implemented? If B(ii) is pursued, will there be any consequential changes to the scope of compulsory acquisition or access and landscape management rights in the locality?

Speaker: Alan O'Sullivan

22.1 The Applicant continues to engage with NGET to secure an Option Agreement over Plot 1-27 to enable the siting of the Converter Station for Option B(ii). Heads of Terms are at an advanced stage and the Applicant is awaiting feedback from NGET on a revised set of Heads of Terms recently submitted to address further feedback received from National Grid. It is however noted that National Grid have recently changed who is instructed to act on their behalf in relation to the lease option, which has inevitably caused delay to the option agreement being agreed.

22.2 In the event the Applicant is able to secure an Option Agreement from NGET, the Applicant would be able to commit to siting the Converter Station in the Option B(ii) location. However, taking into account that the option agreement is not yet agreed, at this time the Applicant cannot commit to option B(ii) being the option which is implemented. The Applicant would be content to provide further updates as requested by the ExA and the Secretary of State in due course.

22.3 In relation to landscaping rights, in the event the Applicant is successful in securing an Option Agreement from National Grid in relation to Plot 1-27 which would enable the siting of the Converter Station in the Option B(ii) location, the Applicant would not need to acquire the freehold of or any rights in relation to plots 1-23a and 1-29a. The Applicant would also not seek to acquire the freehold of plots 1-23b, 1-29b and 1-29c but would still need to have the ability to secure New Landscaping Rights over these plots in the event it will not be possible to secure a voluntary agreement over these plots from their respective owners. Securing an Option Agreement from NGET will not have any impact on rights required in relation to access.

Question 22.2

Information has been requested and submissions put forward in relation to the consideration of the statutory purposes for which the South Downs National Park was designated during the selection of the Lovedean substation as the grid connection for the Proposed Development.

Which party had the statutory responsibility for considering this?

In the event, which party, if any, undertook this consideration?

What weight was given to it, and where can the Examining Authority and Secretary of State see evidence of it?

Speaker: Martyn Jarvis

22.4 Section 11A of the National Parks and Access to the Countryside Act 1949 provides the duty of certain bodies and persons to have regard to the purposes for which National Parks are designated.

22.5 Sub-section 2 of Section 11A which sets out this duty provides as follows:

22.5.1 *In exercising or performing any functions in relation to, or so as to affect, land in any National Park, a relevant authority shall have regard to the purposes specified in subsection (1) of section five of this Act and if it appears that there is a conflict between those purposes, shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park.*

22.6 The Applicant considers it helpful to highlight that there are two elements to this duty. Firstly, there is the duty to have regard to the purposes specified in section 5(1) of the 1949 Act. Secondly, and separately, *where there is a conflict between the two specified purposes,* greater weight must be given to the first purpose that the second. Therefore, it is only where there is a conflict between the purposes of the national park that any question of weighting applies. Where this is not the case, that part of the duty is not engaged and instead the test is that a relevant body must have regard to the purposes specified in subsection (1) of section five of this Act.

22.7 The Application, and the optioneering exercise in relation to it, has not identified any conflict between the two purposes, and therefore the duty to have regard to those purposes is what is applicable in the circumstances.

22.8 For reference, the purposes of the National Park are detailed at Section 5(1) of the 1949 Act as follows:

22.8.1 conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas specified in the next following subsection; and

22.8.2 promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public.

22.9 The duty provided by Section 11A applies to:

22.9.1 any Minister of the Crown,

22.9.2 any public body,

22.9.3 any statutory undertaker, or

22.9.4 any person holding public office.

22.10 The Applicant is a statutory undertaker, being the holder of a licence to operate an electricity interconnector, and NGESO is also a statutory undertaker. Accordingly, the duty applies to both, and both must discharge this duty when making decisions in relation to, or so as to affect, land in any National Park.

22.11 The Applicant has seen both responses issued by NGESO in respect of the questions posed by the ExA. NGESO response at Deadline 5 is considered to be of most relevance to this question (REP5-101). Within this response, NGESO confirm as follows:

> *Contributing factors to the CION were discussed between NGESO, NGET, and Aquind, **this included the South Downs designation as a National Park**. The CION process identified the preferred option as being a connection to the existing Lovedean substation. Among the other environmental considerations taken into account in reaching this conclusion are:*
>
> - *Connection to any of the shortlisted options triggered similar network-wide reinforcement works. However, it was identified that a connection to Lovedean substation required less network reinforcements.*
> - *The forecast connection date at Lovedean substation is 2 years earlier than the forecast connection date for at Bramley substation; the next preferred option.*
> - *The Lovedean connection point is the nearest to the identified landfall locations, resulting is shorter onshore cable routes and consequently less overall disruption to locals and environments.*
> - ***The Lovedean Substation is located south of the National Park, hence avoiding the need to pass through it, other options may have required a connection through the National Park.***

22.12 This response confirms that NGESO had regard to the purposes of the National Park and the impacts that the alternatives may have had on the National Park when identifying the most economic and efficient point of connection through the CION process. NGESO have therefore evidently discharged their duty under Section 11A of the of the National Parks and Access to the Countryside Act 1949 at the appropriate time (i.e. when taking their decisions which may affect the National Park).

22.13 It is also necessary for the Applicant to discharge the duty by having regard to the potential impacts on the National Park. The consideration of alternatives by the Applicant is documents in Chapter 2 of the (Consideration of Alternatives) (APP-117) and the Supplementary Alternatives Chapter (REP1-152).

22.14 The Supplementary Alternatives Chapter, in particular, provides further clarity with regard to the considerations that the Applicant has taken into account in respect of the South Downs National Park in relation to reasonable alternatives studied by them. This is evident, for example, from the commentary provided in relation to the consideration of Lovedean and Bramley Substations, and the conclusion stated at paragraph 5.5.1.4 of that document:

> *The additional length of the onshore cable route required to facilitate a connection to Bramley substation was considered to represent much more than an incremental increase in the likely environmental impacts and* ***included impacts on the South Down National Park****, ancient woodland, designated heritage and ecological assets and various water based receptors. The general consensus of the project team was that those additional impacts could not be mitigated entirely, and to do so would add more cost and technical complexity to the proposals, presenting an unacceptable level of risk.*

22.15 It is very evident from the Supplementary Alternatives Chapter that the Applicant has had regard to the impacts that the alternatives may have had on the National Park, and these have, in part, informed its decisions.

22.16 It is also the case the visual mitigation at the Converter Station has been designed to ameliorate impacts on the National Park, showing the Applicant has continued to discharge this duty throughout its taking of decisions in relation to the National Park.

22.17 Therefore, the Applicant has also clearly discharged its duty under Section 11A of the National Parks and Access to the Countryside Act 1949.

Question 22.3

Have Hampshire County Council and Portsmouth City Council come to an agreement with the Applicant on securing CAVAT payment methods in the dDCO or through a separate legal obligation? If obligations are to be used, will signed copies be available by the end of the Examination?

Speaker: Martyn Jarvis

22.18 The Applicant has reached an agreed position with HCC, with the payment of CAVAT Compensation to be secured through the Section 106 Agreement. As stated earlier, whilst there does remain some work to do to before an agreement can be entered into, the Applicant is confident the Agreement with HCC will be entered into before the close of the Examination.

22.19 The Applicant also intends on securing the payment of CAVAT Compensation to PCC through the Section 106 Agreement which it anticipates entering into before the close of the Examination.

22.19.1 Although the Applicant has not yet received comments on the Section 106 Agreement, PCC has recently indicated that it would also like trees to be recognised for i-TREE Eco Value in addition to CAVAT value. The Applicant's position on this is set out below:

22.19.2 i-Tree is a separate tool/approach to estimating the amenity value of trees and we do agree that both CAVAT and i-Tree should be recognised in the s106. Whilst CAVAT and i-Tree each seek to place a financial value on trees, the purpose of the valuation is distinctly different as is the methodology and referring to the two approaches would result in double recovery, which is not appropriate and will not be acceptable.

22.19.3 CAVAT is a system whose aim is to value trees for compensatory purposes. Compensation is expressed as the financial cost of planting and maintaining a tree in order to obtain an equivalent replacement.

22.19.4 i-Tree seeks to value the ecosystem services provided both as an overall (lifetime) value and on an annual basis. Although CAVAT does not account for the value of ecosystem services, i-Tree may also undervalue trees as it does not reference amenity value.

22.19.5 In addition, CAVAT is considered more appropriate to use for the following reasons:

(A) CAVAT is widely used within the United Kingdom and utilises UK data. It is designed to value individual trees such as those which may be impacted during construction. Outputs are expressed in pounds sterling and utilise a system which is updated annually to reflect real date costs.

(B) i-Tree is aimed at a global geographical range with UK specific functionality primarily aimed at the valuation of tree populations rather than individual specimens. Whilst the opportunity to value individual trees does exist this has been (at present) developed for the American market and therefore relies on metrics which may be unrepresentative of the UK situation.

22.20 The Applicant therefore maintains that it is appropriate to continue to seek to rely on CAVAT as a means of assessing compensation. CAVAT payments will address those matters associated with the loss of a public asset (including its visual value) and the cost of replacement. This will occur in a transparent manner and will provide for an approach which is consistent with other similar scenarios.

Question 22.4

The letter from Blake Morgan submitted for Deadline 7 on behalf of the Carpenters and dated 25 January 2021 [REP7-115] notes that, 'the Applicant has not yet formally requested an amendment to the Application to include the extension of the existing Lovedean Substation. Ordinarily, such a significant change to the nature of the proposed authorised development that increases the Rochdale Envelope would necessitate formal additional consultation.' Please could the Carpenters or their agent explain what is meant by this, and what actions they would expect the Applicant to have undertaken.

Speaker: Martyn Jarvis

22.21 N/A.

Question 22.5

Could the Applicant explain the purpose of the '[]' used at various parts of the draft Order including, for example, Schedule 9(3) and several parts of Schedule 13 (e.g. Part 5)?

Speaker: Martyn Jarvis

22.22 Square brackets signify where content is not finalised. All square brackets of this nature will be removed in the version of the DCO to be submitted at Deadline 8.

Question 22.6

Any final comments from any parties relating to the dDCO?

22.23 The Applicant notes the request from the ExA to submit the National Grid ESO Network Options Assessment referred to in the Examining Authority's Further Written Question PP2.13.1 into the Examination. The Network Options Agreement for Interconnectors 2020/2021 is Chapter 6 of the National Grid ESO's Network Optioneering Assessment 2020/2021 which has been submitted as Appendix 1 to this document.

23. CLOSE OF HEARING

23.1 N/A