



AQUIND Limited

AQUIND INTERCONNECTOR

Schedule of Requested Changes to the dDCO and the Applicant's Position

The Planning Act 2008

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

Document Ref: 7.3.8

PINS Ref.: EN020022

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DOCUMENT: 7.3.8

DATE: 1 MARCH 2021

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AQUIND INTERCONNECTOR

**SCHEDULE OF CHANGES PROPOSED TO THE DRAFT DCO BY EXA AND AT DEADLINE 7C
BY INTERESTED PARTIES AND THE APPLICANT'S POSITION IN RELATION TO THOSE
PROPOSED CHANGES**

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 This document sets out the proposed changes to the dDCO submitted at deadline 7 of the Examination (REP7-013) requested by interested parties, including the host local planning authorities and highway authorities and the Applicant's response to those.
- 1.4 Responses are provided by reference to the individual submissions of the relevant interested parties, as this is considered to be the clearest manner in which to explain the position.
- 1.5 Where it is stated in response to the proposed changes that amendments will be made to the dDCO, those amendments are incorporated within the final draft DCO submitted by the Applicant at Deadline 8 on 1st March 2021.

2. **SCHEDULE OF CHANGES REQUESTED BY THE EXA (PD-034) AND THE APPLICANT'S POSITION**

Relevant provision of the dDCO	Change Requested	Applicant's Position
Preamble, Page 4, prior to Part 1	The Panel, having considered the application together with the documents that accompanied it and the representations made, in accordance with section 83 74 of the 2008 Act, has submitted a report to the Secretary of State setting out its findings, conclusions and recommendations in respect of the application	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. The amendment to refer to section 74 of the Planning Act 2008 will be made to the dDCO to be submitted at Deadline 8.
Article 7	(4) The Secretary of State must determine an application made under this article within a period of no more than 8 weeks commencing on the date the application is received by the Secretary of State, unless otherwise agreed in writing with the undertaker.	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.
Article 10(2)	(2) The undertaker must restore to the reasonable satisfaction of the street authority any street that has been temporarily altered pursuant to this article in accordance with Section 70 of the New Roads and Street Works Act 1991.	The amendment suggested is not agreed with for the following reasons: 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. a) This position is already applicable in relation to street works by virtue of Article 12(2)(i). b) 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. c) 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. d) Furthermore, section 70 of the New Roads and Street Works Act 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. 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.
Article 19(5)	(5) The undertaker must make good any damage done to the land when exercising any power conferred by this article and where any damage is caused to land which is not made good any person interested in the land may recover compensation for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.	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. 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. Paragraph 11(2) states:

Relevant provision of the dDCO	Change Requested	Applicant's Position
		<p><i>"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"</i></p> <p>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.</p> <p>Amendments are otherwise made to Article 19(5) of the draft Order to be submitted at Deadline 8 to confirm the undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article.</p>
Article 24(2)	(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the Order limits, is required for the purposes of this Order will be extinguished on the appropriation of the land by the undertaker for any of those purposes commencement of any activity authorised by this Order which interferes with or breaches such rights	This amendment is agreed with and will be made to the dDCO to be submitted at Deadline 8.
Article 26(3)	(b) for "the three-year period mentioned in section 4" substitute substitute "the 7 five-year period mentioned in article 22 (Time limit for exercise of authority to acquire land compulsorily) of the AQUIND Interconnector Order 202[]".	This amendment is agreed with and will be made to the dDCO to be submitted at Deadline 8.
Article 30(7)	(7) Any dispute as to the person's entitlement to compensation under paragraph (5) (6), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.	This amendment is agreed with and will be made to the dDCO to be submitted at Deadline 8.
Article 30(8)	(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the construction of the authorised development, other than loss or damage for which compensation is payable under paragraph (5) (6).	This amendment is agreed with and will be made to the dDCO to be submitted at Deadline 8.
Article 43	Certification of plans and documents , etc	This amendment is agreed with and will be made to the dDCO to be submitted at Deadline 8. Amendments have also been made to amend the cross-references in the dDCO.
Article 43(3)	Minor drafting corrections are requested.	The amendments are agreed with and will be made to the dDCO to be submitted at Deadline 8.
Article 45	Amendments are requested to this article to reference Arbitration Rules and to clarify that Arbitration Rules, requested to be included at Schedule 17 to dDCO, will apply in those circumstances. Amendments are also requested to clarify the application of the Article to the MMO.	The amendments are agreed with and will be made to the dDCO to be submitted at Deadline 8.
Article 46	Wholesale amendments are requested to address timescales for approvals, with the ExA amendments seeking to apply the Schedule to all provisions of the Order, rather than just the requirements.	<p>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.</p> <p>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:</p> <ul style="list-style-type: none"> a) The Southampton to London Pipeline Development Consent Order 2020; b) The Norfolk Vanguard Offshore Wind Farm Order 2020; c) The Hornsea Three Offshore Wind Farm Order 2020; d) The West Burton C (Gas Fired Generating Station) Order 2020; or e) The A1 Birtley to Coal House Development Consent Order 2021.

Relevant provision of the dDCO	Change Requested	Applicant's Position
		<p>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.</p> <p>The Applicant will make amendments to the dDCO to be submitted at Deadline 8 to clarify the position in relation to the MMO and to confirm that agreements or approvals must, if given, be given in writing and may not be unreasonably withheld.</p>
Article 47(2)	A correction of a typo is requested.	This correction will be made within the dDCO to be submitted at Deadline 8.
Schedule 2, Requirement 26 (now Article 51)	Amendments are requested to Requirement 26 to confirm when the guarantee/security must be provided by, to confirm the application of the Requirement to temporary use of land, to confirm any guarantee will be enforceable against the guarantor and to confirm Article 46 is not applicable to the requirements (noting the approval is to be obtained from the SoS to whom Article 46 is stated to not be applicable).	<p>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 46 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.</p> <p>The Applicant has also moved the provision to Article 51 of the dDCO to be submitted at Deadline 8.</p>
Schedule 3	Wholesale amendments are requested to Schedule 3 to apply this to all approvals.	<p>The proposed amendments to Schedule 3 are not agreed to and will not be included in the DCO to be submitted at Deadline 8.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>The Applicant has nonetheless reviewed the wording in detail and has made the amendments to the Schedule 3 that it considers to be appropriate in the dDCO to be submitted at Deadline 8.</p>
Schedule 9, paragraph 2(1)	Minor amendments are requested for consistency and accuracy.	The amendments are agreed with, save that paragraph 3 has otherwise been deleted and is therefore no longer referred to.
Schedule 17, Arbitration Rules	The ExA have suggested the inclusion of Arbitration Rules at Schedule 17 which are otherwise contained in Orders made by the Secretary of State.	This amendment is agreed with and will be made to the dDCO to be submitted at Deadline 8.

3. SCHEDULE OF CHANGES REQUESTED BY PORTSMOUTH CITY COUNCIL (AS-061) AND THE APPLICANT'S POSITION

Relevant provision of the dDCO	Change Requested	Applicant's Position
Article 2, definition of "authorised development".	<p>PCC objects to the words "<i>and any other development authorised by this Order</i>".</p> <p>At the very least, the applicant should be required to explain why the Southampton-London Esso Pipeline DCO definition would not be acceptable.</p>	<p>The definition of "authorised development" within the Southampton to London Pipeline Order 2020 referred to by PCC is as follows:</p> <p><i>"authorised development" means the development and associated development described in Schedule 1 (authorised development) or any part of it, which is development within the meaning of section 32 (meaning of development) of the 2008 Act;</i></p> <p>The definition in the dDCO (REP7-013) reads:</p>

Relevant provision of the dDCO	Change Requested	Applicant's Position
		<p><i>"authorised development" means the development and associated development described in Schedule 1 (Authorised Development) and any other development authorised by this Order which is development within the meaning of section 32 of the 2008 Act;</i></p> <p>The Applicant notes that the form of words used for the definition of "authorised development" does align with other made Orders, for example the Norfolk Vanguard Offshore Wind Farm Order 2020. The inclusion of the words <i>"and any other development authorised by this Order"</i> is in essence catch all drafting, and ensures that all development authorised by the Order is included within the definition of "authorised development".</p> <p>Taking into account that the form of words used in the dDCO reflects wording used in other made DCOs, and is therefore an appropriate form of words to be used for this definition, no amendments are proposed to be made to the definition in the dDCO. It is also considered that the form of words used are of the same effect.</p>
<p>Article 2, definition of "maintain"</p>	<p>Having had regard to the Southampton-London Esso Pipeline DCO, PCC would prefer the following words to be added between the words "environmental statement" and "and maintenance...": <i>"and for the avoidance of doubt must not include the renewal, re-laying, reconstruction or replacement of the entirety of Work No. 4, save where this can be done without excavating a trench"</i>.</p> <p>See also the Thames Tideway Tunnel Order's wording <i>"so that it is fit for the purpose for which it was originally constructed"</i></p>	<p>The definition of "authorised development" within the Southampton to London Pipeline Order 2020 referred to by PCC is as follows:</p> <p><i>"maintain" in relation to the authorised development includes to inspect, assess, repair, test, cleanse, adjust, alter, divert, renew, re-lay, improve, landscape, preserve, make safe, dismantle, remove, clear, reconstruct, refurbish, replace, demolish, abandon or decommission any part of the authorised development, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement and for the avoidance of doubt must not include the renewal, re-laying, reconstruction or replacement of the entirety of the pipeline works, and any derivative of "maintain" is to be construed accordingly;</i></p> <p>The definition of maintain the dDCO (REP7-013) reads:</p> <p><i>"maintain" includes inspect, upkeep, repair, adjust, alter, improve, preserve and further includes remove, reconstruct and replace any part of the authorised development, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement and "maintenance" must be construed accordingly;</i></p> <p>It is not considered that the definition of maintenance included would allow for the reconstruction of the whole of Work No.4, being the Onshore Cable Route, but where it assists to remove any doubt in this regard it is confirmed the definition of "maintain" in the dDCO will be revised to read as follows:</p> <p><i>"maintain" includes inspect, upkeep, repair, adjust, alter, improve, preserve and further includes remove, reconstruct and replace any part of the authorised development, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement and for the avoidance of doubt must not include the renewal, re-laying, reconstruction or replacement of the entirety of Work No.1, Work No.2, Work No.4, Work No.5, Work No.6 or Work No.7 and "maintenance" must be construed accordingly;</i></p> <p>Work No.1, Work No.2, Work No.4, Work No.5, Work No.6 and Work No.7 are detailed because they represent the permanent development which is to be authorised by and constructed pursuant to the DCO.</p>
<p>Article 2, definition of "onshore site preparation works"</p>	<p>(h) - insert "site" before "advertisements" to ensure that advertisements are strictly related to the development and are not for other purposes.</p>	<p>It is considered this is what the position as drafted already states, but in any event the word "site" will be inserted before "advertisements".</p>
<p>Article 2, definition of "operational period"</p>	<p>PCC does not understand why, if this is one linear electricity interconnector project, there is reference to "the relevant part of the authorised development" as either the whole of the authorised development or no part of it can operate.</p>	<p>The authorised development includes two independent cable circuits for the transmission of electricity. One may operate in the absence of the other. The Applicant is also intending to use the fibre optic cables for commercial telecommunications purposes. Taking both of these points into account, no amendments are proposed to the definition of "operational period".</p>
<p>Article 2, definition of "provisional advance authorisation"</p>	<p>This ought to refer directly to the Permit Schemes description. In addition, the Traffic Management Permit Scheme Regulations 2007 definition alone is too generic and this is why PAA is referred to i.e. relates to the Permit Schemes which are brought about through secondary legislation.</p>	<p>The reference to secondary legislation which the permit schemes must accord with is appropriate. It is also the case that two permit schemes are applicable, and taking this approach therefore ensures consistency. No amendments are proposed to be made to this definition.</p>

Relevant provision of the dDCO	Change Requested	Applicant's Position
Article 2, definition of "statutory undertaker"	PCC queries the inclusion of the reference to a public communications provider under section 151(1) Communications Act 2003 in light of its objections to the commercial use of fibre optic cables.	Public communications providers are statutory undertakers. They are afforded protections by the protective provisions (see Part 2 of Schedule 13 to dDCO). It is therefore necessary for them to be referred to in this definition. It is noted Southampton to London Pipeline Order 2020 includes a defined term of "statutory undertaker" which mirrors that included in the dDCO. No amendments will be made to this definition.
Article 2, definition of "trenchless installation techniques"	Typo, should be " <i>two points</i> ". Otherwise acceptable.	This is noted and the correction will be made.
Article 2, definition of "trenchless installation technique compound"	This definition doesn't appear to have actually been used anywhere in the DCO.	The defined term is at Requirement 6(3)(e) of the dDCO (REP7-013).
Article 2(2)	In light of plot 10-14 in particular, the words " <i>Except where the terms of this Order and the book of reference stipulate expressly to the contrary</i> " must be inserted before the opening words " <i>References in this Order...</i> "	This comment is made without taking into account the authorising powers in relation to compulsory acquisition. They determine the land and rights permissible to be acquired. There is not any need to include this amendment taking into account the land and rights to be acquired are already limited to be those stated in the Book of Reference, and Plot 10-14 and the temporary basis on which it may be accessed is also addressed directly through Article 30 and Schedule 10 to the dDCO (REP7-013). No amendment is required and none will be made.
Article 2(3)	Typo, omission of "development" after "authorised".	This is noted and the correction will be made.
Article 2(6)	Apparent typo: "constructed" should perhaps be "construed" as in Article 2(8).	This is noted and the correction will be made.
Article 3(1)	The Southampton-London ESSO Pipeline DCO wording is preferable in as far as it reads " <i>Subject to the provisions of this Order, including the requirements, the undertaker...</i> ". The word " <i>including</i> " under Article 2(8) is taken to connote no limitation, whereas the words " <i>this Order and Schedule 2</i> " in the current dDCO could be read as operating to exclude, for example, Schedule 1.	This amendment will be made for clarity.
Article 7(1), Article 7(6)(e) and Article 7(8)(a)(v)	PCC suggests that the DCO should be prescriptive of matters for the Secretary of State's consideration of consent to the same extent as the Thames Tideway Tunnel DCO in its Article 9.	<p>The Applicant has reviewed Article 9 of the Thames Tideway Tunnel DCO, however it is not considered following a review of recently made DCOs that this drafting sets a general precedent, and instead appears to be specific to the Thames Tideway Tunnel DCO.</p> <p>It is noted that the form of Article 7 in the dDCO (REP7-013) is in keeping with other recently made Orders, including the Norfolk Vanguard Offshore Wind Farm Order 2020 and the Hornsea Three Offshore Wind Farm Order 2020.</p> <p>It is also noted that Article 7(4) confirms the benefit transferred or granted includes any rights that are conferred and any obligations that are imposed, by virtue of the provisions to which the benefit relates, and Article 7(7) requires the notice to be given to the Secretary of State prior to any transfer to state the restrictions, liabilities and obligations that in accordance with paragraphs (4) will apply to the person exercising the powers transferred or granted (see sub-paragraph (iv)) and to require confirmation of the availability and adequacy of funds for compensation associated with the compulsory acquisition of the Order Land (see sub-paragraph (v)). Accordingly, the matters which the Secretary of State must have regard detailed in Article 9 of the Thames Tideway Tunnel DCO, being the restrictions, liabilities and obligations as would apply under the Order, are matters that the Secretary of State will in any event be required to have in mind because of the information to be provided where a notice of a proposed transfer is provided.</p> <p>Taking all of the above into account, the Applicant is content that Article 7 of the dDCO (REP7-013) is in an appropriate form and no amendments are proposed to be made.</p>
Article 7(6)(a)	Where the transferee is the holder of an interconnector licence under s.6(1)(e) the Electricity Act 1989. Aquind Limited holds such a licence, yet there are significant concerns about its ability to finance the project and in particular the liability for compensation vis. compulsory acquisition. It follows that it is unacceptable for the benefit to be assigned to another interconnector licence holder without scrutiny by the Secretary of State.	<p>It is noted that a guarantee in respect of the payment of compensation is provided for in the dDCO (at Requirement 26 though it is anticipated this will be moved to be an Article), and therefore irrespective of who the Undertaker is a guarantee for CPO liabilities will be in place before the authorised development commences.</p> <p>It is also noted that it is typical for transfers to licence holders to not be the subject of the need for Secretary of State consent, with the Norfolk Vanguard Offshore Wind Farm Order 2020 and the Hornsea Three</p>

Relevant provision of the dDCO	Change Requested	Applicant's Position
		Offshore Wind Farm Order 2020 both including the same exception for persons who holds a transmission licence under section 6 of the 1989 Act. Accordingly, no amendment will be made.
Article 8(2)	The numbered articles listed in this paragraph do not appear to correlate to the titles that follow them.	This is noted and the corrections will be made.
Article 8(4)	PCC notes Article 60 of the Thames Tideway Tunnel DCO that provides: " <i>The authorised development shall not commence unless and until the undertaker enters into the Unilateral undertaking for securing offsite mitigation and compensation policy and resources for local planning authorities (in accordance with document reference APP209.03).</i> "	A new Article is to be inserted into the dDCO to restrict the commencement of the authorised development until the relevant development consent obligations have been entered into.
Article 9(1)(c)	Article 9(1)(c) is objectionable in principle because there is no good reason why the development during its operational life should be supposed to produce a statutory nuisance if constructed competently, let alone to be forever excused from any statutory noise nuisance that might occur.	This is not agreed with, taking into account the operational noise levels to be achieved have been set. This is highly important and not recognised in the comments made. The noise management plan and moreover the maximum noise levels to be achieved have been confirmed as fit for purpose, which has been agreed with all relevant authorities.
Article 9(1)(d)	Article 9(1)(d) seeks to give the undertaker a final opportunity to avoid an order or fine from the Magistrates' Court where the construction or maintenance activity "cannot be reasonably avoided". This is unnecessary in light of section 82(9) EPA 1990's provision for a 'Best Practicable Means' defence, although it is acknowledged that section 82(10) curtails the availability of this defence in certain circumstances. The undertaker cannot justify seeking such a loosely defined defence to itself, being one that is not permitted under the primary legislation.	The authorised development will be nationally significant infrastructure. It is appropriate for the protection provided by Article 9(1)(d) to be included in the Order, much in the same way as it appears in many other made Orders, and no amendment will be made to the dDCO in this regard.
Article 9(2)	Article 9(2) seeks to entrench the problematic argument that an inadequate construction environmental management plan would oust the jurisdiction of the court where a statutory noise nuisance exists.	The scope of the construction management plans is clearly defined by Requirement 15, and these will be approved by the relevant discharging authority. There is no sound basis on which to state they will not be adequate taking this into account, and no amendments will be made in this regard.
Article 9	There is no justification for Article 9 to have any place in the DCO and pardon any occurring statutory noise nuisance inflicted upon an aggrieved person. There is a strong public interest in allowing private citizens to protect themselves against statutory nuisance.	The authorised development to be authorised by the DCO is nationally significant infrastructure, and where this is being undertaken in a responsible manner and in accordance with the relevant plans controlling matters relating to nuisance, it is entirely appropriate for the limited defence provided for by Article 9 to be included in the DCO.
Article 9	PCC objects especially to the attempt to secure effective immunity to section 82 EPA 1990 statutory noise nuisance complaints during the operational lifetime of the development. There is no justification for such an exceptional provision and a responsible undertaker would have nothing to fear from being subject to section 82 EPA 1990.	This is not agreed with, taking into account the operational noise levels to be achieved have been set. This is highly important and not recognised in the comments made. The noise management plan and moreover the maximum noise levels to be achieved have been confirmed as fit for purpose, which has been agreed with all relevant authorities. The Applicant has already provided precedent examples of where the same wording has been included in relation to projects of a similar nature.
Article 9A(2)(a)-(b)	Primacy of FTMS and other approvals (including relevant approved traffic management strategy for a given phase under Requirement 25) during construction. Without examples of conditions that might 'conflict' or a clear rationale for what might be considered 'conflict' as opposed to 'control', it seems that problems may not be realised until a permit is issued.	Permits will be issued following the approval of traffic management strategies, and where they are not the provisions regarding conflicts would not be relevant as there would be no strategy for the conditions to conflict with. There is no need for any amendment to these provisions and none will be made.
Article 9A(2)(c)	PCC objects to the blanket exclusion of section 58 and 58A New Roads and Street Works Act 1991 where Aquind wishes to undertake its works. Where such moratoria apply, PCC's permit scheme, at section 10.8.1, allows an application for a permit to be made "specifying the grounds on which consent is sought" and decided accordingly.	This is not agreed with. This imposition of a moratoria would be a potential impediment to delivery of the authorised development and it is therefore necessary to confirm this does not apply. The removal of Article 9A(2)(c) is not accepted by the Applicant. It is noted this position was accepted in the Southampton to London Pipeline Order 2020.
Article 9A(7)	This sub-clause relating to emergency works is copied from section 52(1) New Roads and Street Works Act 1991. "Emergency works" is not as broad as "urgent activities" under the Permit Scheme, which are concessions to commercial priorities such as service outage rather than preventing harm to property and people. PCC would prefer to	The Applicant notes that the Portsmouth Permit Scheme Order defines Immediate Activities as " <i>emergency works as defined in Section 52 of NRSWA or urgent works as defined in The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007</i> ".

Relevant provision of the dDCO	Change Requested	Applicant's Position
	maintain the flexibility to permit any arising "urgent activities" as well as the "emergency works" detailed.	<p>Emergency Works is defined in the New Roads and Street Works Act 1991 to mean <i>"works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property"</i>, and this wording is included in the dDCO.</p> <p>Urgent works is defined in the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 to mean:</p> <p><i>"(a) means street works, other than emergency works, whose execution at the time when they are executed is required (or which the person responsible for the works believes on reasonable grounds to be required)—</i></p> <p style="padding-left: 40px;"><i>(i) to prevent or put an end to an unplanned interruption of any supply or service provided by an undertaker;</i></p> <p style="padding-left: 40px;"><i>(ii) to avoid substantial loss to an undertaker in relation to an existing service; or</i></p> <p style="padding-left: 40px;"><i>(iii) to reconnect supplies or services where an undertaker would be under a civil or criminal liability if the reconnection is delayed until after the expiration of the appropriate notice period; and</i></p> <p><i>(b) includes works which cannot reasonably be severed from such works."</i></p> <p>The Applicant is agreeable to urgent works also being referred to, and will therefore amend Article 9(A)(7) to state as follows:</p> <p><i>"(7) Reference to immediate works in paragraph 2(d) means emergency works as that term is defined in section 52 of the 1991 Act and urgent works as that term is defined in regulation 3(1) of the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007."</i></p>
Article 10(1)	<p>Article 10(1) remains objectionable in principle for PCC because it allows works outside the Order limits subject to a bespoke approach to the Permit Scheme procedure under the DCO.</p> <p>Further, the ability to exercise Article 10 rights in aid of constructing and maintaining outside of the Order limits appears unnecessarily broad.</p>	It is not agreed that Article 10(1) is unnecessarily broad, it subject to a test of necessity by virtue of the wording <i>"for the purpose of"</i> and is a necessary and appropriate power to ensure the authorised development can be constructed and thereafter maintained.
Article 10(1)	It is not clear or justified why for post-construction maintenance and in relation to any area outside the Order limits the undertaker should not be treated as any other party by making an application under the general terms of the Permit Scheme.	This statement is not correct. The permit scheme is applied by Article 9A of the dDCO (REP7-013) and the general terms of the permit scheme apply, with the Article having been drafted with proviso's specifically in relation to construction only.
Article 10(1)	Part of (g) relating to "alteration of parking places [&] loading bays" does not appear to be grounded in Part V Highways Act 1980 (section 115, Part VII relates to these matters for heavy goods vehicles as opposed to all other forms of vehicles). The alteration of parking places is effected by orders under the Road Traffic Regulation Act 1984.	This is not correct. The suspension of the use parking places is a matter effected by orders under the Road Traffic Regulation Act 1984, whereas physical works to the highway, including the alteration of parking places, would be works to the highway to which the Article is relevant. Article 10(1) is an appropriate form for which precedent is provided by other made Orders (for example the Southampton to London Pipeline Order 2020).
Article 11(1)	PCC requires the words "without the consent of the relevant street authority" to be deleted. This is because the word "consent" is ambiguous and could be read to include an application under the Permit Scheme (contrary to the intention of Article 9A(1)).	This is not agreed. The need for consent referred to in Article 11(1) specifically relates to that Article only, and is contrasted by Article 11(2) where consent is required. It is not considered any confusion arises of the type suggested or otherwise. It is noted the same form of words is used at Article 11(1) of the Southampton to London Pipeline Order 2020.
Article 12	Section 56 - power to give direction to the timing of street works is omitted, meaning that Article 9A(3) would be the sole means of directing that conditions securing different timings are imposed. If there were any works to which the Permit Scheme did not apply, this would be necessary in order to allow the Highway Authority to meet its Network Management Duty under section 16 of Traffic Management Act 2004 to as well as to co-	Section 56 of the New Roads and Street Works Act 1991 is purposefully omitted. The works will be undertaken in accordance with the approved traffic management strategies, subject to any directions that may be given in accordance with Requirement 18 (working hours). There are not works on the highway to which the permit scheme does not apply.

Relevant provision of the dDCO	Change Requested	Applicant's Position
	ordinate works of all kinds on the highway under section 59 of New Roads and Street Works Act 1991.	
Article 12	Section 58 and 58A are omitted from the Article 12 list despite being envisaged by Article 9A. Read alongside Articles 9A(2)(c) and 9A(6) to mean that so-called 'moratoria' are not effective in any way upon Article 11 street works undertaken by Aquind, either in relation to pre-Aquind works or to works undertaken by Aquind that may require subsequent disturbance by other undertakers.	This non-application only applies to the works undertaken pursuant to the Order. Section 58 and 58A may apply in relation to any works not undertaken pursuant to the Order, as the Order would not apply to those. It is common for section 58 and 58A to be disapplied to ensure there is no impediment to the timely delivery of nationally significant infrastructure where part of those works is to be carried out in the highway.
Article 12	Section 66 - This section requires an undertaker to complete works as expeditiously as possible with only necessary obstructions of the highway (paraphrased). There is a criminal offence for failing to do so. This is an important motivation for any undertaker and should not be removed purely for Aquind's convenience.	The works are to be undertaken in accordance with the relevant traffic management strategies which are not a matter which would apply to general street works. It is appropriate to disapply section 66 of New Roads and Street Works Act 1991 where this is the case, and this ensures there is no conflict between the two.
Article 12	Section 74 - This section empowers the street authority to charge an undertaker for overrunning works, and to issue a Fixed Penalty Notice. Again, there is no justification for excluding this option, even if it is convenient to Aquind.	The works are to be undertaken in accordance with the relevant traffic management strategies which are not a matter which would apply to general street works and the working hours will be in accordance with Requirement 18 (working hours). The works will be undertaken as expeditiously as possible. It is therefore considered appropriate to not apply section 74 of New Roads and Street Works Act 1991.
Article 12	Section 75 - Note: the replacement for this section has not yet been enacted by section 58(2) and 99(1) Traffic Management Act 2004. In either case, the street authority would expect to be able to recover fees against Aquind in the same way as against any other undertaker.	Reference to section 75 of the New Roads and Street Works Act 1991 will be included in Article 12.
Article 12	Section 78 - There do not appear to be any of the referenced relevant regulations, so it seems for completeness this article should refer to "future relevant regulations" as in other DCOs. Many other DCOs have provisions with regard to modification of this section, rather than excluding it completely.	Article 12(1) includes the words " <i>and any regulations made or code of practice issued or approved under those provisions apply (with all necessary modifications)...</i> ". As such, regulations made under the applicable provisions do apply where relevant.
Article 16	Article 16(1)(a) - "revoke" seems heavy-handed; why would anything more than suspension for a fixed time be required for this scheme? Temporary TROs can override an extant permanent TRO for up to 18 months and then be renewed if necessary.	The power is tempered by the words " <i>in so far as it is inconsistent with any prohibition, restriction or other provision made by the undertaker under this article</i> " and therefore it is considered appropriate to follow the form of words used in many made Orders. It is noted that the consent of the relevant traffic authority is also required to be obtained.
Article 18(1)	Article 18(1) - This article is strictly limited to those buildings "lying within the Order limits". The Southampton-London ESSO pipeline DCO went further, providing also that buildings "which may be affected by the authorised development" are included. It is presumed, therefore, that Aquind would look to undertake any protective works for affected buildings outside the Order limits by private negotiation, or otherwise pay compensation for any damage caused in accordance with Article 18(9).	Whilst it is not anticipated protective works will be needed, so as to ensure any necessary protective works are able to be undertaken without impediment and subject to the relevant compensation provisions should they arise the words "which may be affected by the authorised development" will be added to Article 18(1).
Article 18(6)	PCC disagrees that 14 natural days is appropriate (as was held in the Southampton-London ESSO Pipeline DCO) in the context of this article and would suggest that 10 working days is reinstated to protect such persons against the loss of time against a relatively short deadline due to public holidays, notably during the Christmas period.	Reference to 10 working days will be reinstated.
Article 18(11)	This article is identical to the equivalent provision in the Southampton-London ESSO pipeline DCO. However, PCC prefers the drafting of Thames Tideway Tunnel Article 20 as the reliance upon section 13 CPA 1965 to enforce possession by means of a warrant is unjustified and draconian when this should be about agreeing with the owner/occupant protective works. It is clearly not akin to CA or temporary possession either. The Thames Tideway Tunnel Order in the equivalent Article 20 set out means of agreement.	The form of the Article included in the dDCO (REP7-013) is appropriate. The form of this provision in the Thames Tideway Tunnel Order is understood to be scheme specific, being a scheme with a high risk of the need to undertake protective works and enter into agreements in relation to those, unlike the AQUIND scheme.

Relevant provision of the dDCO	Change Requested	Applicant's Position
Article 19(5)	Article 19(5) - As alluded to in the comments to Article 19(1), this provision is in stark contrast to the position of the Southampton-London ESSO Pipeline DCO which compensates for "loss and damage" incurred by the survey activities at Article 20(7).	The Article will be updated to include the loss or damage wording provided for in the Southampton to London Pipeline Order 2020.
Article 19(4)(c) – (d) and (6)	This paragraph must defer to the Permit Scheme under Article 9A and Part 3.	There is nothing in the Order which disapplies the permit scheme, and therefore to the extent it is applicable it will apply. No amendments of the type requested are required
Article 28	The CPA provision is 28 days but here (the revised provision) is 21 days. PCC suggest this should be amended to 28 days.	This will be amended to refer to 28 days.
Article 29	This refers to "subsoil", which is defined in Article 2 as any part of the substrata below the surface of the ground. Highways subsoil as discussed in the December hearings is subsoil below the zone of ordinary use/top two spits. That subsoil is not in all cases owned by the highway authority. This provision however obviously makes specific reference to streets so needs to avoid confusion. Also, the same highways zone of ordinary use also applies to air space. This needs to be accounted for and clarified in order to avoid infringing on rights vested in the highway authority.	Whilst what constitutes highway subsoil has been a focus of this Examination, the concept of the land forming the highway is not in any way a new concept. The form of the Article, as included in many made Orders, is appropriate and there is not a need to seek to revise this to address a problem which does not exist. The position with regard to the acquisition of highway subsoil, being that it cannot be acquired, is very clearly provided for in the Book of Reference.
Article 30	This provision follows standard drafting but there is bespoke drafting in respect of Plot 10-14. This is expanded on in the ExM [REP6- 017] in paragraph 9.23. However, the intention as described in paragraph 9.23 is not evident or explicit in the dDCO.	Schedule 10 of the dDCO (REP7-013) should be referred to and confirms the purpose and duration for which temporary possession may be taken of land within Plot 10-14.
Article 32	This article appears largely redundant where New Connection Works Rights have been secured (i.e. along the length of the route).	In respect of this development the power is relevant in relation to the aftercare of biodiversity reinstatement. It is not, as stated, largely redundant.
Article 39	This article disapplies any common law or statutory rules relating to leases that the undertaker is party to as specified by Article 39(1)(a)-(b), meaning that any lease will be constrained to construction through its own wording only. PCC suggest that a sub-paragraph is included that obliges the Undertaker to disclose the existence of this article as a recital to any such lease to ensure that third parties are not taken advantage of by such an esoteric provision. PCC is mindful that some of its own tenants (for whom PCC is in no way responsible for negotiating on behalf of) could be affected, particularly Milton Baffins Rovers FC.	It is not understood how PCC consider this would capture their own tenants. The Applicant is not seeking the acquisition of land in Portsmouth aside from the ORS. Where it does not own an interest from which it can grant a lease, no lease will be granted. In reality one would expressly state in the relevant lease statutory protections are removed in reliance on Article 39. No amendment is necessary.
Article 41 and 42	PCC objects to this article in principle as it believes that it is best placed to undertake the balancing exercise on whether any particular tree should be felled.	This is an authorising power subject to the requirements. Arboriculture Method Statements will be agreed with PCC as per Requirement 15.
Article 41(6)	Article 41(6) - This article would need to be expressed as being "without prejudice to any alternative compensation mechanism pursuant to a development consent obligation" in recognition of the CAVAT method of compensation to be secured there.	Article 35 of the dDCO (REP7-013) confirms there can be no double recovery of compensation in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more provisions of this Order. Taking this into account there is no need for any amendment.
Schedule 2, definitions	"lead local flood authority" must refer to Portsmouth City Council as well as Hampshire County Council.	This is noted and this amendment has been made.
Schedule 2, requirement 5	Table WN5: PCC does not believe that these parameters have been adequately justified by the applicant.	The Applicant does not agree. Its position regarding the parameters is evidenced by the documents submitted in this regard, including the Design and Access Statement, Chapter 3 of the Environmental Statement being the Project description, and the DCO parameters index.
Schedule 2, Requirement 6(3)(c) and (7)	Detailed design approval prior to Works No.4 must include details of the location of the joint bays etc., not indicative locations. As in the above paragraph, "indicative" details to be "carried out substantially in accordance" with other approved details is unacceptably loose.	The reason why the joint bay details are indicative is because of the complexity of delivering where jointing two cable circuits. A reasonable level of tolerance therefore needs to be applied, and construction in accordance with that is required. The information could not in any event be so indicative as to not confirm the position with a reasonable level of accuracy, because as PCC highlight the traffic management strategies will need to provide the location of the traffic management in relation to their construction.

Relevant provision of the dDCO	Change Requested	Applicant's Position
Schedule 2, Requirement 8(3)	The landscaping at the ORS therefore needs to be within the land in permanent control of the undertaker ("Order land") - or this permanent requirement needs to be delivered by section 106. The ExA cannot guarantee or compel the delivery of private agreements to ensure this occurs otherwise.	The Requirement requires its provision. It is for the Undertaker to ensure it has the land rights necessary to comply with the Requirements. For this reason the necessary permanent rights to provide for the landscaping have been sought.
Schedule 2, Requirement 9(4)	Biodiversity management plan must also include direct and embedded mitigation for bats and other referenced species in accordance with ES chapter 16.	The Outline Landscape and Biodiversity clearly secures mitigations in relation to bats, for example see paragraphs 1.5.1.12 - 1.5.1.13 and the final bullet point in relation to section 7 at paragraph 1.5.4.1. Any Biodiversity Management Plan must be in accordance with the OLBS. The relevant construction requirements are clearly secured and it is not necessary to separately reference these in Requirement 9.
Schedule 2, Requirement 12(4)	After the word "notified" insert "at least 5 working days in advance". A specific update is proposed, and it is understood has been agreed with, PCC in relation to the SUDS strategy for the ORS.	The updates agreed in this regard are to be made to the draft DCO. Article 12(4) will state " <i>The construction of the optical regeneration stations within Works No. 5 must not commence until a sustainable drainage system operation and maintenance strategy relevant to those works has been submitted to and approved by the relevant local planning authority (in consultation with the lead local flood authority).</i> "
Requirement 13	As the judgement as to whether works within a phase are likely to cause significant harm is vesting with the undertaker, this requirement needs an obligation similar to Requirement 12(4) that the undertaker must notify the LPA if they believe the works in any phase will not include works which are likely to cause significant harm.	The Undertaker will be responsible for issues associated with any contamination. It will therefore act prudently to ensure the construction of the authorised development does not give rise to significant harm to persons or pollution of controlled waters or the environment. It is not necessary for this to be tested in respect of every element where there is no risk, doing so would be an overly and unnecessarily cumbersome approach. With this in mind, the necessary controls and protections are provided for and will be adhered to, with the knowledge that any contamination issues would be addressed through the applicable protection laws.
Requirement 18(3)	This should be deleted. As a final CEMP will have been approved prior to any works, and 18(1) allows a final CEMP to depart from the standard working hours there is no need to refer back to the OOCEMP which will have been superseded by a final CEMP (albeit the final CEMPs will be in broad accordance with the OOCEMP).	This is not agreed with. The construction working hours are clearly set out, as is appropriate. Any deviations will be recorded in CEMP's, in accordance with Requirement 18(3) being only those activities expressly stated to be permissible outside of the core working hours.
Requirement 18(4)(b)	"oversized deliveries" should be defined within Schedule 2.	It is not considered it is necessary to define this term, and it is noted the same term is not defined in other made orders, for example the Southampton to London Pipeline Order 2020.
Requirement 22	(1) The phased approach to commencing development is not deployed in relation to reinstatement. (2) Requirement 22's expectation that land will be "reinstated to its former condition" does not sit well with Article 30(4) providing that the undertaker is not required to, for example, "replace a building removed under this article". (3) It is also queried whether the reference to "MLWS" should be "MHWS".	(1) Reference to phases will be included, as per the comments provided to WCC in this regard in advance of Deadline 7c. (2) Both set out a clear position, it will not be necessary to replace buildings as the authorising power provides but the land must otherwise be restored to its former condition. (3) MLWS is referred to as this is the local planning boundary, albeit it makes no difference in relation to this scheme which is used as there are not above ground works to be authorised in the area between the two.
Requirement 26	PCC is content with options (a)-(e) but is not convinced that a parent company guarantee or "a person of sufficient financial standing" would be a suitably enduring form of security and so they should be deleted.	That will be a matter for the Secretary of State to determine.
N/A	PCC submits that a Grampian requirement is needed to prevent commencement of development unless and until Aquind can demonstrate to the Secretary of State that it holds all requisite French consents to construct the French half of the interconnector.	The Applicant has provided updates in relation to French consents and has confirmed its view that such a restriction if not appropriate for the reasons explained in the response to the Deadline 7 submissions of Winchester City Council in relation to the dDCO (REP7c-013).
N/A	PCC would also draw the ExA's attention to Requirement 26 of the Southampton-London ESSO Pipeline DCO with respect to the payment of fees for discharge applications.	A similar requirement will be included for in the event planning performance agreements are not entered into with the discharging authorities for any reason.

4. SCHEDULE OF CHANGES REQUESTED BY WINCHESTER CITY COUNCIL AT DEADLINE 7C (REP7C-026) AND THE APPLICANT'S POSITION

Relevant provision of the dDCO	Change Requested	Applicant's Position
Article 41 and 42	WCC commented that there is merit in discussing why replacement is not in there. The idea that a landowner may take a financial payment and accept or put in place a less valued feature like a post and wire fence is not acceptable to us.	The Applicant has explained that any removal of vegetation in connection with maintenance would only be in the event of cable failure, which is very rare, and furthermore would only be where necessary to address the issue of cable failure. Accordingly, in practice and taking into account that the powers are only exercisable where it is necessary to do so, there will not be more than very minor works to vegetation following the completion of the construction of the Development. It is correct that the Applicant will obtain the necessary rights to undertake any repair activities, and that where this could involve works to vegetation that will be provided for, but it is the case that rights are to be obtained only. It is the view of the Applicant that in those very rare circumstances, the position would be agreed with the relevant landowner and where they favour the provision of compensation that is what will be provided for. This position is one which is common in connection with Development Consent Orders, with the test of necessity in the first instance providing the necessary level of control.
Requirement 3	WCC have requested that they are notified of how the work programme for the construction of the authorised development will be approached, in essence confirming the stages of the construction.	For all works to be undertaken in Winchester WCC will be approving authority and will therefore be aware of when works are proposed to be undertaken. In respect of the Converter Station, the works will follow the natural construction sequence (i.e. earthworks, followed by piling and foundations, following the construction of buildings and installation of equipment. With regard to the Onshore Cable Route, the phases will be confirmed and the details discharged for the relevant phases, which will be constructed in accordance with those details. CEMP's for all works in Winchester will be approved by WCC also. Accordingly, WCC will be aware of when works are being undertaken and the manner in which they are to be undertaken. Taking this into account, it is not considered there is material benefit to including reference to 'stages' of construction. Accordingly, the Applicant does not intend to make any changes to otherwise report the 'stages' of construction.
Requirement 6	WCC request there is reference to the design of the foundations of the Converter Station being expressly included as details to be approved.	It is confirmed the Applicant will update Requirement 6(1) in the dDCO (REP7-013) to include in the list of written details required the "design of building foundations".
Requirement 6	With regard to the design of Work No.2 (bb), being the (bb) access junction and associated gated highway link in connection with the Converter Station, WCC have requested that a design requirement is re-inserted (and it is noted SDNPA and EHDC have also requested this).	The Applicant will add the following additional sub-paragraph to Requirement 6 to require the design to be approved: <i>"(2) The construction of any phase of Work No. 2 (bb) must not be commenced for the purposes of section 155(1) of the 2008 Act until written details of the–</i> <i>(a) siting;</i> <i>(b) design;</i> <i>(c) layout;</i> <i>(d) visibility splays; and</i> <i>(e) landscaping</i> <i>in so far as relevant to that phase of those works have been submitted to and approved in writing by the relevant planning authority (in consultation with the South Down National Park Authority and the relevant highway authority)."</i>
Requirement 6	WCC have requested that an express reference is made in the requirement to confirm that no lighting other than that which is approved will be installed at the Converter Station.	The Applicant has explained that the Order will only permit the construction of the works approved. Despite this, and in the interest of resolving WCC's concerns, the Applicant confirms the following will be added to Requirement 6: <i>"(10) Unless otherwise agreed with the relevant planning authority there shall be no lighting installed on any elevations of the converter hall buildings during the construction of the converter hall buildings or the operational period other than any such lighting which is approved in accordance with requirement 6(1)."</i>
Requirement 7	(1) WCC has requested amendment to Requirement 7 to confirm the trigger for the delivery of all replacement planting and new planting including enhancement planting at Work No.2.	(1) In accordance with Requirement 7 as contained in the dDCO (REP7-013) before any phase of Work No.2, including any onshore site preparation works, are commenced a detailed landscaping scheme must be approved. The landscaping scheme must include details of the (b) location, number, species, size, plant protection measures and planting density of any proposed planting and the cultivation, importing of materials

Relevant provision of the dDCO	Change Requested	Applicant's Position
	<p>(2) Also requested is a need to confirm details of any changes to ground levels (excluding the converter station area) together with seeding details.</p> <p>(3) Lastly, WCC have requested that before any cables are laid in trenches, details of all planting/seeding work in relation to those is confirmed.</p>	<p>and other operations to ensure plant establishment. The detailed landscaping scheme must also include the implementation timetables for all landscaping works.</p> <p>In accordance with Requirement 8 all landscaping and enhancement works must be carried out in accordance with any detailed landscaping scheme approved under Requirement 7 applicable to them and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards.</p> <p>Accordingly, all landscaping works will be required to be delivered in accordance with the implementation timetable approved. This sets the trigger for delivery, and it is appropriate to do so because the implementation of the landscaping works must be cognisant of the delivery of the Converter Station, with the wider area of Work No.2 to be used for the purposes of construction. It is considered the matters requested are already clearly provided for (albeit it is acknowledged are split over Requirement 7 and 8).</p> <p>(2) The existing and proposed site levels for Work No.2 must be approved in accordance with Requirement 6(1). This approval and the approval of the relevant landscaping scheme must both be approved before the works are commenced. As explained, details of the landscaping to be provided, including seeding details, will be included in the detailed landscaping scheme to be approved pursuant to Requirement 7. To confirm seeding is covered, the Applicant confirms it will add the words "<i>and the location of areas to be seeded</i>" to expressly confirm this information must be included in a detailed landscaping scheme where relevant.</p> <p>(3) Detailed landscaping schemes are also required for any phase of Work No.4. For the reasons explained above, all planting and seeding in connection with those must already be confirmed before the relevant works commence.</p>
Requirement 8	WCC request reference to Requirement 7 is removed so this becomes a general implementation requirement.	This is not agreed. It is imperative the detailed landscaping schemes are clearly referred to as these are the schemes which detail the planting to be delivered and the timetable for its delivery. Requirements 7 and 8 have been specifically drafted to dovetail with one another.
Requirement 9	<p>WCC request a trigger for delivery of a landscape feature and habitat management plan for the remaining part of the construction phase and all of the operational phase of the development at Work Area No.2 including review, monitoring, approval with LPA and implementation of approved management strategy before the Converter Station reaches ground floor level.</p> <p>As similar request is made in relation to works at Kings Pond Meadows.</p>	Requirement 9 is a pre-commencement requirement. The biodiversity management plan approved will include details of the measures to protect existing scrub and trees (i.e. habitats) that are to be retained as well as the biodiversity management and maintenance measures in relation to all relevant habitats. They will also include details of the scheme for reinstatement and an implementation timetable. The timetable approved will determine when actions are undertaken by, which will be based on ensuring appropriate protection and timely reinstatement in connection with the works being undertaken. The position is therefore clearly secured, and in so far as this relates to land within the administrative boundary of WCC they will approve and monitor compliance as necessary. No amendments are considered to be necessary to address the comment made.
Requirement 10	WCC queried which accesses this Requirement relates to and request they are the approving authority.	Requirement 10 relates to the temporary accesses required in connection with the construction of the authorised development. It is also confirmed, further to comments at ISH4, that the relevant planning authority will be responsible for discharging this requirement and updates will be made to the dDCO to reflect this.
Requirement 15	Consider the CEMP's need to be limited to the construction phase.	The construction environment management plans do only relate to the construction phase. Requirement 15(4) expressly states the construction of any phase of the authorised development landwards of MHWS must be carried out in accordance with the construction environmental management plan and all supplementary plans approved in relation to it. There is no reference in this requirement to maintenance or operation.
Requirement 22	The purpose of Requirement 22 is questioned, as is the need to refer to reinstatement not being to a level which beyond the existing condition.	Whilst other plans relate to specific reinstatements (e.g. biodiversity management plans and traffic management strategies) not all elements are covered by such plans. Accordingly, Requirement 22 is included to ensure where there is not otherwise a requirement to reinstate, there is a secured requirement to reinstate. Requirement 22 ensures that where any land is temporarily used in connection with the construction of the authorised development, such land is always reinstated to the former condition, or such condition as the relevant LPA may approve. Where any approval is sought otherwise, this will be submitted to the relevant LPA, however the position in the first instance is that reinstatement is to the former condition. It is not necessary for such reinstatement to be 'approved', as the works known to be required are those to return the land to the former condition. This requirement does not require betterment, as it would not be appropriate for this to be required, and it is for this reason the words " <i>but which may not be to a standard</i>

Relevant provision of the dDCO	Change Requested	Applicant's Position
		<i>which is higher than its former condition</i> " are included, ensuring the undertaker cannot be required to provide betterment.
Requirement 24	Amendments are requested to allow WCC to determine when decommissioning should occur.	For the reasons previously explained this is not agreed to, and it will not be agreed.
Decommissioning Bond	A decommissioning bond is requested.	For the reasons previously explained this is not agreed to, and it will not be agreed.
Requirement 27	Amendments are requested to the form of the requirement requiring an employment and skills plan to be produced, including the requirement that no onshore site preparation works may be undertaken until approved and to specifically reference the serving of the population of the host authorities to facilitate a greater understanding of renewable energy.	It is not necessary for this plan to be approved before any onshore site preparation works are undertaken taking into account the limited scale of those works in the context of the authorised development as a whole. Further, reference to the population of the host authorities is not accepted. The geographical scope of the strategy is explained in the strategy, and the plan will be in accordance with this. The employment and skills strategy has been drafted to allow the best reach to fulfil opportunities whilst providing meaningful benefits to local persons and economies.
Fees	WCC queried whether reference to the payment of fees will be included in the dDCO	It is confirmed that a paragraph 3 will be added to Schedule 3 to confirm fees will be payable unless otherwise agreed. Any planning performance agreement to be entered into will expressly state it constitutes an agreement for the purpose of paragraph 3 of Schedule 3. The Applicant will not accept a position where it pay fees and also covers all officer time, as this would be double recovery.

5. **SCHEDULE OF CHANGES REQUESTED BY WINCHESTER CITY COUNCIL PRIOR TO DEADLINE 8 (DRAFT SEEN IN ADVANCE OF SUBMISSION) AND THE APPLICANT'S POSITION**

Relevant provision of the dDCO	Change Requested	Applicant's Position
Requirements 7, 8 and 9	WCC highlight that they have made detailed comments on the requirements over a number of deadlines and that the Applicant has not made the changes requested. WCC also raise that they are concerned about the practical implementation of the requirements and their ability to ensure all necessary details are provided.	It is important to consider the underlying documentation when considering the requirements and in practice how they will be discharged. Those documents clearly detail all the information required to be submitted and will be referred to confirm all necessary information is included in the detailed plan/scheme. It is not possible, nor appropriate, to pick out all individual matters relating to all elements of a nationally significant infrastructure project spanning 13.5km in length. It is for this reason the underlying documents are broken down into sections, which in the future will be by reference to the relevant phases of the authorised development which details are discharged in relation to. The Applicant has considered all comments raised in relation to these requirements by WCC and has where appropriate incorporated amendments, but it is not in a position to materially re-draft conditions which have purposefully been drafted with the documents underlying those in mind.
Requirements 7, 8 and 9	WCC also raise that in their view the structure of the requirements is not conducive to making their assessment and implementation clear and precise. Requirement 6 detail will be submitted before any work is undertaken on site. However under Requirement 6(1)(c) full details of the changes to the ground level across the entire area of Work No.2 using the residual spoil from the cut and fill operation will be submitted. That is well in advance of the time when the contractor will know the amount of excess material left over from the cut and fill operation.	This is not agreed with, and is also not correct. Work No.2 is not a single phase. Individual elements/areas of Work No.2 may be broken down to an appropriate manner, with the approvals required being linked to the relevant phase. It is appreciated that until the phases are seen there is not absolute clarity, but that clarity will come once the phases are confirmed. It would not be appropriate to do so before the initial detailed design has been undertaken and the chosen contractor has identified the phasing approach.
Requirement 7	Requirement 7 will include the detail of what type of grassland will be established. However the submission of this detail is also before any development is commenced. The Council is concerned that the knowledge of what type of grassland to be formed (calcareous or species rich neutral grassland) will simply not be known at that stage in the process when the residual amount of overburden is unknown. If the available material is from the underlying chalk beds then it may be calcareous but if the material is original top soil and sub soil then it is more likely to be species rich grassland. The benefit of deferring submission of this detail until the completion of the cut and fill operation to no later than when the slab is formed was part of the suggestion in the Councils skeletal framework (REP7c-027).	The information will be submitted in relation to the relevant phase of the works. This ensures information is submitted in relation to the relevant phase at the appropriate time, when the relevant underlying details are known. With regard to the type of grassland to be provided, as confirmed by the Applicant the aim is to establish calcareous grassland, and the position with regard to species rich as a fall back where this cannot be established will be provided for in the relevant detailed landscaping scheme. The cut and fill operation may be a separate phase, and therefore the details of this would be known for in relation to later phases and detailed plans/schemes to be approved in relation to those. The form of requirements are appropriate to ensure the necessary plans are in place to deliver the landscaping at the appropriate, and must be drafted on a general basis given the breadth/scale of the scheme for which permission is sought. It is of no benefit for an undertaker to submit details for approval

Relevant provision of the dDCO	Change Requested	Applicant's Position
		where other relevant details are not known, because the undertaker will then need to deal with addressing any unforeseen issues by the submission of new plans/the authority will not approve because the necessary information is not included.
Article 9	WCC provide their position on Article 9.	The Applicant's position in this regard has been clearly set out over numerous written submissions and hearings and it is not considered necessary to repeat those here.
Article 41 and 42	Comments similar to those provided above are provided again, with the main thrust being that WCC wish to see a commitment to replanting where any vegetation is removed in connection with the operation and maintenance.	The replacement of vegetation during and in connection with construction is clearly provided for and secured through the requirements. The residual comments relate to operation and maintenance. As the Applicant has explained, any removal of vegetation in connection with maintenance would only be in the event of cable failure, which is very rare, and furthermore would only be where necessary to address the issue of cable failure. Accordingly, in practice and taking into account that the powers are only exercisable where it is necessary to do so, there will not be more than very minor works to vegetation following the completion of the construction of the Development. It is the view of the Applicant that in those very rare circumstances, the position would be agreed with the relevant landowner and where they favour the provision of compensation that is what will be provided for. This position is one which is common in connection with Development Consent Orders, with the test of necessity in the first instance providing the necessary level of control.
Requirement 3	WCC request the sequence of works is confirmed.	<p>The Applicant has set out previously why this is not necessary, taking into account the controls on the works in relation to how they are undertaken and the scale of them. In particular, the delivery of the onshore cable route will be driven by the controls in the FTMS, and the full sequence could not be confirmed in a single plan at the outset. This is why traffic management strategies for individual phases are required.</p> <p>In respect of the Converter Station, the works will follow the natural construction sequence (i.e. earthworks, followed by piling and foundations, following the construction of buildings and installation of equipment). Taking this into account it is not considered there is any genuine benefit to the sequence being confirmed and the authorised development being required to be undertaken in that sequence. This is also not a matter which a planning authority can determine, it is a detailed civil building exercise and the contractor will be the best person to determine this and will devise the phases of the works on this basis and undertake them in a sequence appropriate.</p> <p>The LPA will be aware of what works are being undertaken at all times as necessary in any event.</p> <p>Taking all of the above into account, it is not appropriate to secure the sequence at the outset and this will not be agreed to.</p>
Requirement 6	Request for reference to foundation design.	It is confirmed the Applicant will update Requirement 6(1) in the dDCO (REP7-013) to include in the list of written details required the " <i>design of building foundations</i> ".
Requirement 6	Request for flexibility on the understanding that all of Work No.2 needs to be approved at the same time.	The problems explained are noted however it is not correct that Work No.2 will be a single phase and this seems to be where the tension is between the comments made and the Applicant's position. The Applicant's position on phasing has otherwise been explained, and it is considered the requirements are drafted in an appropriately clear and precise form taking those into account.
Requirement 6	Sub-headings.	These will not be included because they are not defined terms and do not need to be. Reference to the Work No. is the clearest way to link back to the relevant works.
Requirement 6(10)	Request for an addition to confirm no additional lighting or lightning masts will be installed.	<p>As explained, the Order will not authorise anything other than the authorised development, and the authorised development must be carried out in accordance with the details approved and not otherwise. Nonetheless, noting the concerns raised regarding lighting and how lighting may otherwise be permitted (e.g. as permitted development), it is confirmed the following will be added to Requirement 6:</p> <p><i>"(10) Unless otherwise agreed with the relevant planning authority there shall be no lighting installed on any elevations of the converter hall buildings during the construction of the converter hall buildings or the operational period other than any such lighting which is approved in accordance with requirement 6(1)."</i></p>
Requirement 7	Similar comments are made regarding when works come forward, details being known, and future maintenance being secured.	The Applicant has confirmed how phases will be confirmed, and details discharged as necessary in relation to individual phases. The triggers for delivery will be those included in the approved implementation

Relevant provision of the dDCO	Change Requested	Applicant's Position
		timetable. The requirement to comply with the plans approved for the operational period is clearly secured in Requirement 8, which specifically relates to the implementation of the plans approved.
Requirement 8	WCC request reference to Requirement 7 is remove so this becomes a general implementation requirement.	<p>This is not agreed. It is imperative the detailed landscaping schemes are clearly referred to as these are the schemes which detail the planting to be delivered and the timetable for its delivery. Requirements 7 and 8 have been specifically drafted to dovetail with one another.</p> <p>In response to WCC's concerns regarding ongoing maintenance not being caught by Requirement 9, which it is understood was in part the rationale for this request, the Applicant has agreed to add a new Requirement 9(6) which states "<i>Where any approved written biodiversity management plan includes the undertaking of future management and maintenance measures those future management and maintenance measures must be undertaken as required in accordance with that approved written biodiversity management plan</i>".</p>
Requirement 10	Comments regarding the approving authority.	Further to comments at ISH4 it is agreed the relevant planning authority will be responsible for discharging this requirement and updates will be made to the dDCO to reflect this.
Requirement 15	Comments are again made the CEMP's should relate to the construction phase. It is also stated the full list of plans is not detailed, but it is not confirmed which plans it is considered are not detailed.	<p>The construction environment management plans do only relate to the construction phase. Requirement 15(4) expressly states the construction of any phase of the authorised development landwards of MHWS must be carried out in accordance with the construction environmental management plan and all supplementary plans approved in relation to it. There is no reference in this requirement to maintenance or operation.</p> <p>The Applicant has carefully considered the plans to list out in Requirement 15(3) and is content all necessary plans are clearly identified. Having discussed the matter further with WCC and explained how all plans were listed, it was agreed to swap (2) and (3) so that the plans are listed before the information on consultation. This amendment is made to the dDCO submitted at Deadline 8.</p>
Requirement 22	Further comments are made again seeking approval of reinstatement by the LPA.	The Applicant has confirmed the form of condition proposed which will clearly refer to phases and ensure reinstatement is linked to those and carried out in a timely manner. The Applicant has made appropriate amendments in relation to the comments raised and the position is clearly secured.
Requirement 24	Comments are again seeking to set a limited number of years of inactivity as dictating when the Converter Station must be decommissioned.	The Applicant has updated Requirement 24 within the dDCO to be submitted at Deadline 8 to require a decommissioning plan to be submitted within twenty four months of the parts of the authorised development landwards of MHWS used for the purposes of electricity transmission, ensuring security of supply and the provision of ancillary services to facilitate and support the continuous flows of electricity permanently ceasing operation for all of those purposes (either actively or on a standby basis), in addition to within 12 months of the date the undertaker decides to decommission any part of the authorised development. This amendment has been made directly as a result of comments received from and discussions with WCC.
Requirement 27	Amendments are requested to the form of the requirement requiring an employment and skills plan to be produced, including the requirement that no onshore site preparation works may be undertaken until approved and to specifically reference the serving of the population of the host authorities to facilitate a greater understanding of renewable energy.	It is not necessary for this plan to be approved before any onshore site preparation works are undertaken taking into account the limited scale of those works in the context of the authorised development as a whole. Further, reference to the population of the host authorities is not accepted. The geographical scope of the strategy is explained in the strategy, and the plan will be in accordance with this. The employment and skills strategy has been drafted to allow the best reach to fulfil opportunities whilst providing meaningful benefits to local persons and economies.
Decommissioning Bond	A decommissioning bond is requested.	For the reasons previously explained this is not agreed to, and it will not be agreed.
No start until whole scheme approved.	A no start until French consents are all approved requirement has been requested.	For the reasons previously explained this is not agreed to, and it will not be agreed. The Applicant has submitted further information on 23 February 2021 in relation to regulatory approvals and French consents.
Fees	WCC queried whether reference to the payment of fees will be included in the dDCO	It is confirmed that a paragraph 3 will be added to Schedule 3 to confirm fees will be payable unless otherwise agreed. Any planning performance agreement to be entered into will expressly state it constitutes an agreement for the purpose of paragraph 3 of Schedule 3. The Applicant will not accept a position where it pay fees and also covers all officer time, as this would be double recovery.

6. SCHEDULE OF CHANGES REQUESTED BY HAMPSHIRE COUNTY COUNCIL AT DEADLINE 7C (REP7C-018) AND THE APPLICANT'S POSITION

Relevant provision of the dDCO	Change Requested	Applicant's Position
Article 16	HCC would highlight that whilst Article 16 appears to provide for enforcement powers to the district and borough councils, the implementation and resourcing of this has yet to be resolved with the applicant.	The enforcement of traffic regulation orders is addressed pursuant to the statutory regime applicable to them, which dictates that it is for the relevant local authority to enforce traffic regulation orders.
Requirement 3	HCC seek an amendment to Requirement 3(1) to require that the phasing plan is submitted <u>and approved</u> by the LPA, in consultation with the highway authority. As currently drafted, there is no control over how the Applicant may choose to submit and phase the development, irrespective of size and scale.	<p>This requested amendment is not agreed to. There is no parameter for this approval, and furthermore it is not appropriate to provide those now as this is a matter for detailed design. The Applicant is fully aware of the need to submit details to discharge requirements in a manageable manner, and itself will be required to produce the information to do so in a timely manner to allow for the works to come forward in the shortest possible timeframe, taking into account the inherent complexities of a scheme of the type of the Proposed Development. The Applicant has offered all LPA's planning performance agreements to cover resourcing costs and is in discussions with HCC regarding future resourcing so as to ensure the authority are adequately resourced and that the authorised development comes forward in as timely and manageable a manner as is possible.</p> <p>It is noted that other made Orders do not include for the phasing plan to be approved, notably the Southampton to London Pipeline Order 2020, and it is considered the reason for this aligns with those set out above.</p>
Requirement 6(4)	HCC seeks amendments to reflect and require the list of additional, and more comprehensive, technical information for detailed approval which HCC have set out previously. This must include detailed design of joint bays at the location which they are to be located, not more generic indicative information. This requirement should also be amended to include the submission to and approval of the relevant highway authority where highway detailed design approval is being sought.	<p>A new Requirement 6(5) is inserted into the dDCO which requires the submission of the relevant design information requested by HCC and also provides for HCC to be the discharging authority for the detailed design of the Onshore Cable Route in so far as this is located on the highway. Requirement 6(5) reads as follows:</p> <p><i>(5) The construction of any phase of Works No.4 which is located on the public highway must not commence until written details of –</i></p> <ul style="list-style-type: none"> <i>(a) proposed horizontal alignment of cable ducts;</i> <i>(b) proposed vertical alignment of cable ducts detailing proposed cover from the top of the cable duct to existing ground level;</i> <i>(c) cross sections at intervals of not less than 100 metres and at all locations where the cable ducts cross apparatus;</i> <i>(d) proposed indicative location of and specification for joint bays;</i> <i>(e) proposed location of and specification for link boxes and link pillars;</i> <i>(f) existing drainage apparatus; and</i> <i>(g) where included in the relevant phase any existing bridge structures;</i> <p><i>relating to that phase of those works and confirming how those details accord with the design principles for the onshore cable corridor and the flood risk assessment (in so far as is relevant) have been submitted to and approved in writing by the relevant highway authority.</i></p> <p>Matters requested by HCC and not included within the list of details to be provided include information in relation to trees and root protection areas, which are otherwise addressed under Requirement 15, and requests for maintenance plans, on the basis routine maintenance will consist of site walkover surveys and any maintenance repair in the very rare event of a fault is subject to the permit scheme and as such maintenance plans are not necessary.</p>
Requirement 15	HCC requests that this requirement should also make reference to the need to consult with the Highway Authority.	The following words will be added to the end of Requirement 15(1) to confirm the need for consultation with the relevant highway authority " <i>(in consultation with the relevant highway authority in so far as such phase of the authorised development is located on the public highway)</i> ".

Relevant provision of the dDCO	Change Requested	Applicant's Position
Requirement 17	<p>HCC notes that the drafting now requires consultation of Highways England directly by the Highway Authority, but subject to a judgement on whether the Highway Authority consider the CTMP to relate to the SRN.</p> <p>HCC consider that it is not appropriate for HCC, as Highway Authority, to determine which elements Highways England, as a Highway Authority in their own right, wish to review and comment on.</p>	<p>The CTMP's to be produced will relate to the phases of the authorised development, and as no phases of the authorised development are located on highway for which highway England are the highway authority to ensure they are consulted and can provide their input into the CTMP's in so far as relevant reference must be made to them being consulted.</p> <p>The understanding of HCC explained across with regard to their role in the consultation is not agreed with. HCC will not determine which parts of the CTMP to consult Highways England on. They would provide the CTMP to Highways England, and the scope of Highways England consultation and what they may comment on is those elements of the relevant CTMP which relate to the strategic road network managed by them. Highways England will always make that judgment.</p>
Requirement 18	<p>The comments in relation to Requirement in essence relate to whether it is necessary to evidence whether the giving of a direction will not cause impacts which fall outside the scope of the residual likely significant environmental impacts reported in the environmental statement, or if this is to be ensured, with the latter being HCC's preference because of the evidential burden where the former is adopted.</p>	<p>As has been explained, the Applicant is accepting of HCC's request for directions to be provided and they will be accommodated, but only in so far as they do not cause impacts which fall outside the scope of the residual likely significant environmental impacts reported in the environmental statement. The Applicant does not consider it can be ensured environmental impacts outside the scope of those assessed will not occur unless this has been evidenced to be the case.</p> <p>The Applicant has very carefully considered if any further amendments may be made to the wording and particularly whether removing the words "by the relevant highway authority" after the word "evidenced" would assist, but the burden of proof will always be on the persons issuing the direction (the relevant highway authority and the relevant environmental health officer) so it is not considered it would do. This would also make the position less clear, which is not a benefit.</p> <p>As a general point, the Applicant did not consider the comments made on behalf of HCC at ISH5 in this regard were helpful or well founded. Clearly there are different considerations in relation to EIA development than there are for non-EIA development. The Applicant has undertaken appropriately detailed assessments to robustly identify the residual likely significant impacts, particularly in relation to traffic and amenity, and in setting the parameters of controls in the FTMS has balanced those against one another in a fair manner. This was a necessity for a scheme of the nature of the authorised development, particularly to avoid objections to the scheme on highways and amenity grounds. Having done so, the Applicant is not amenable to including provisions in the DCO which unpick that work and give rise to the risk of legal challenge.</p> <p>It is understood HCC may continue to put forward their position. The Applicant has sought very hard to meet HCC's request in a legally sound and appropriate manner.</p>
Requirement 25	<p>HCC seek amendment to provide for the submission and approval of detail in relation to overarching strategies before commencement of Works no. 4. This includes that relating to the Onshore Cable Route Construction Impacts on Access to Properties and Car Parking, the Communication Strategy, Signage Strategy, Traffic Demand Management Strategy.</p> <p>HCC seeks amended drafting to Requirement 25(1) to secure requirements to provide access to properties under a range of conditions by adding a subsection in the following terms after:</p> <p>h): "details of plans to provide access to properties and car parking in accordance with the Onshore Cable Route Construction Impacts on Access to Properties and Car Parking and Communication Strategy in the FTMS."</p>	<p>The Access to Properties and Car Parking and the Communication Strategy and the Framework Strategy are to be implemented and complied with through the individual traffic management strategies to be approved. They set out the principles and approach that must be incorporated in the individual traffic management strategies. Accordingly, they will not be subject to any further approval and no amendments are needed to the requirements in this regard.</p> <p>Amendments are proposed to Requirement 25 to confirm the need for a travel demand plan to be approved which accords with the travel demand strategy as follows:</p> <p><i>"(1) No phase of Works No.4 to be undertaken on the highway may commence until a travel demand plan (in accordance with the travel demand strategy) has been submitted to and approved by the relevant highway authority.</i></p> <p><i>(2) The travel demand plan must identify the measures which are to be undertaken to ensure persons are aware of the construction of Work No.4 on the highway and the travel options available to them to reduce potential impacts through changes to travel behaviour and how the effectiveness of the travel demand plan will be monitored and evaluated during its implementation.</i></p> <p><i>(3) The approved travel demand plan must be implemented as approved for the period of the construction of Work No.4 on the highway."</i></p> <p>Requirement 25 has also been updated to require the following details to be submitted for each traffic management strategy:</p> <p><i>"(e) the measures to be taken in relation to access to residences, businesses and community facilities (in accordance with the onshore cable route construction impacts on access to properties</i></p>

Relevant provision of the dDCO	Change Requested	Applicant's Position
		<i>and car parking and communication strategy contained at appendix 1 to the framework traffic management strategy);"</i>
Additional requirement	HCC seeks the inclusion of an additional requirement to limit the number of gangs on the route at one time.	A new sub-paragraph has been inserted into Requirement 25 as follows: <p style="text-align: center;"><i>"(6) No more than six construction gangs may carry out works comprised in Work No.4 on the highway at any one time."</i></p> Construction gang has been defined as <i>"means a group of up to 8 construction workers;"</i> . This aligns with the information contained in the Supplementary Transport Assessment which confirms construction gangs will include 6-8 workers (see paragraph 3.2.1.6).
Clarification	HCC understand that the proposed new vehicular access for the Converter Station site is now proposed to be provided for prior to formal commencement of the DCO. It is not clear whether the dDCO picks this up clearly and consistently in its present drafting.	It is confirmed that the reference to Work No.2 (bb) has been appropriately referenced as necessary within the requirements. In particular, it is specifically referred to where necessary, but instances where not necessary to explicitly refer to this it is comprised in the use of the term <i>"onshore site preparation works"</i> . For example, a CEMP will be required for the works because they form part of the onshore site preparation works, so it is not necessary to otherwise explicitly state a CEMP is required for Work No.2 (bb).
Clarification	The use of the existing Broadway Farm access should be subject to the 3.5 ton weight restriction as it hasn't been assessed. This needs to be included in the DCO as the CTMP isn't approved pre-commencement and that's when they are proposing to use it.	The information regarding the use of the existing Broadway Farm access is to be included in the final version of the FCTMP, and a new sub-paragraph has been inserted in respect of Requirement 17 as follows to ensure a CTMP for those works is submitted and approved before those works commence and is complied with whilst those works are undertaken: <p style="text-align: center;"><i>"(1) The construction of any phase of Work No. 2 (bb) must not be commenced for the purposes of section 155(1) of the 2008 Act until a construction traffic management plan (in accordance with the framework construction traffic management plan) relating to that phase has been submitted to and approved by the relevant highway authority."</i></p>
Schedule 3	HCC requests that Schedule 3(1) is amended to ensure that the information submitted under this schedule aligns with the agreed phasing plan	The phasing plan to be submitted will define the phases and the requirements are drafted to require the information relevant to the relevant phase as appropriate. As phases are not relevant in all circumstances Schedule 3 does not specifically refer to phases, but any submission in relation to a phase must include the particulars relevant to the requirement to be discharged, including where this relates to a phase the information in relation to that phase. Where it does not do so the requirements of paragraph 1 of Schedule 3 will not be satisfied by the Undertaker and the application will not be valid.

7. SCHEDULE OF CHANGES REQUESTED BY EAST HAMPSHIRE DISTRICT COUNCIL AT DEADLINE 7C (REP7C-017) AND THE APPLICANT'S POSITION

Relevant provision of the dDCO	Change Requested	Applicant's Position
Article 9	EHDC continues to object to the inclusion of this Article and requests that the ExA delete it. The area at the Converter Station is rural with a high level of tranquillity with a number of noise sensitive receptors in close proximity that may be affected by both the construction phase and the operational phase. EHDC (and Havant BC) endorse the comments from PCC on the matter in their commentary on the dDCO dated 11 February 2021. The use of such an Article on other nationally significant infrastructure projects cannot in itself be an argument to apply it here and similarly it is not agreed that the Article should be included simply because the project is a nationally significant project. The validity of the Noise Management Plan is questionable if a noise nuisance is occurring but there lacks appropriate means to redress any such nuisance.	The authorised development to be authorised by the DCO is nationally significant infrastructure, and where this is being undertaken in a responsible manner and in accordance with the relevant plans controlling matters relating to nuisance, it is entirely appropriate for the limited defence provided for by Article 9 to be included in the DCO. The noise levels to be achieved during operation and which provide the threshold for the defence are agreed.
Requirement 27	Whilst only a small part of the development is within the EHDC area, the Horndean area of East Hampshire is a very close community to the Converter Station and will be affected by the construction of the development. It is therefore requested that the Requirement includes 'and East Hampshire District Council' after in 'consultation with Portsmouth City Council'.	The Applicant will add <i>'and East Hampshire District Council'</i> after in <i>'consultation with Portsmouth City Council'</i> .

Relevant provision of the dDCO	Change Requested	Applicant's Position
Additional requirement	The recent French decision to not issue a permit for the part of the development in France highlights the need for a Grampian style Requirement to ensure no works in the UK commence until such time as all approvals for the French part of the development are obtained.	The Applicant has provided updates in relation to French consents and has confirmed its view that such a restriction if not appropriate for the reasons explained in the response to the Deadline 7 submissions of Winchester City Council in relation to the dDCO (REP7c-013). The Applicant has submitted further information on 23 February 2021 in relation to regulatory approvals and French consents.

8. SCHEDULE OF CHANGES REQUESTED BY THE MARINE MANAGEMENT ORGANISATION AFTER ISH4 (AS-070) AND THE APPLICANT'S POSITION

Relevant provision of the dDCO	Change Requested	Applicant's Position
Article 45	The MMO requests that Article 46(2) is amended to expressly exclude consents, agreements or approvals contemplated by the provisions of Schedule 15. The MMO's proposed wording is "Schedule 3 does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 15"	The Applicant has made amendments to Article 46(2) to confirm any matter for which the consent of the Marine Management Organisation is required is excluded from procedure provided at Schedule 3.

9. SCHEDULE OF CHANGES REQUESTED ON BEHALF OF MR GEOFFREY AND MR PETER CARPENTER (REP7-119) AND THE APPLICANT'S POSITION

Relevant provision of the dDCO	Change Requested	Applicant's Position
N/A	<p>Representatives on behalf of the Affected Party have requested protective provisions are included in the Order for their protection. The protective provisions relate to:</p> <ul style="list-style-type: none"> a) provision of continuous access over footpaths within the Order limits which will be temporarily closed in connection with the Construction of the Converter Station; b) the prohibition of the delivery of the permanent access road; c) restrictions in relation to the installation of fibre optic cables, including in relation to the depth of installation; d) amendments to the areas of land which may be compulsorily required, and reinstatement requirements in relation to the affected property; e) permissions for landscaping rights, further to the proposed disapplication of CPO powers for those; f) requirement for any decommissioning plan to be submitted to the Affected Party and to consult with them in relation to this; and g) the disapplication of the following Articles of the Order in relation to the affected property: <ul style="list-style-type: none"> a. Article 10 (power to alter layout of streets); b. Article 11 (street works); c. Article 14 (access to works); d. Article 29 (rights under and over streets); e. Article 17 (discharge of water); f. Article 19 (authority to survey and investigate land); g. Article 41 (felling or lopping or trees and removal of hedgerows); and h. Article 42 (trees subject to tree preservation orders) 	<p>The Affected Party objects to the compulsory acquisition of land in its ownership and on this basis has proposed protective provisions which seek the disapplication of relevant Order powers and also to amend the scheme for which development consent is sought. The Applicant has in various submissions provided responses to submissions of the Affected Party, in particular in relation to the reasons why the land included in the Order limits which is in their ownership is required for the development to which the development consent will relate and to facilitate the development to which the development consent will relate. The Applicant's case in this regard has been very clearly set out over the course of the Examination.</p> <p>With that in mind, it will be unsurprising to learn the Applicant does not agree to the protective provisions proposed on behalf of the Affected Party and these will not be included in the dDCO to be submitted at Deadline 8. The inclusion of the protective provisions requested by the Affected Party would create a position whereby the Proposed Development could not be delivered, because it could not be operated safely without the required permanent Access Road. Furthermore, by seeking to remove land which is required for landscaping and drainage in particular, all of which measures are essential in connection with the Proposed Development to provide necessary drainage measures and landscape mitigations, the Proposed Development could not be drained or landscaped as is necessary. The effect of the protective Provisions would therefore be to frustrate the Proposed Development coming forward. A DCO made with the protective provisions requested by the Affected Party would therefore not be capable of sound implementation.</p> <p>The Applicant is continuing to seek to acquire the land required for and to facilitate the Proposed Development from the Affected Party on a voluntary basis, though it is acknowledged the parties are far apart, with the Affected Party continuing to disagree on the extent of the land to be acquired and also requesting compensation which is significantly above the value of the land.</p>

Herbert Smith Freehills LLP

1 March 2021

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