



AQUIND Limited

AQUIND INTERCONNECTOR

Development Consent Obligations - Explanatory Note

The Planning Act 2008

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

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AQUIND INTERCONNECTOR ORDER 202[X]

SECTION 106 AGREEMENT EXPLANATORY NOTE

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 This 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 The Applicant submitted an explanatory note in relation to development consent obligations at Deadline 7 (REP7-058) and its ongoing discussions with Hampshire County Council ('**HCC**'), Portsmouth City Council ('**PCC**') and the South Downs National Park Authority ('**SDNPA**') in that regard.
- 1.4 This note is submitted on behalf of the Applicant at Deadline 8 to:
 - 1.4.1 confirm the approach to be taken to securing the entering into of development consent obligations in connection with the proposed development to which the Order relates ('**Proposed Development**');
 - 1.4.2 provide the ExA with an update on the status of discussions between the parties; and
 - 1.4.3 provide a summary of the development consent obligations which the Applicant is to commit to and the rationale for those.

- 1.5 Separately to this note the Applicant has submitted forms of development consent obligation with each of HCC, PCC and SDNPA, which are documents to be certified by the Secretary of State pursuant to the Order (discussed further below).

2. APPROACH TO DEVELOPMENT CONSENT OBLIGATIONS

- 2.1 At the hearing of 18 February (ISH4 – matters relating to the draft DCO) a question was raised by Interested Parties as to how the Applicant could enter into development consent obligations pursuant to section 106 Town and Country Planning Act 1990 ('**1990 Act**') in relation to the Proposed Development when the Applicant does not currently own interests in land within the Order limits.
- 2.2 The concern raised was that the Applicant would be unable to enter into valid development consent obligations, because such agreements (by virtue of s106(1)) may only be entered into by persons with an interest in the land. For ease of reference, a full copy of section 106 of 1990 Act is set out in the Appendix to this note. Section 106(1) of 1990 Act states:

“(1) Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation (referred to in this section and sections 106A to 106C as “a planning obligation”), enforceable to the extent mentioned in subsection (3)–“

- 2.3 This note explains how this matter is addressed, which draws upon the Thames Tideway Tunnel DCO precedent.
- 2.4 **The approach in Thames Tideway Tunnel**
- 2.5 The Thames Tideway Tunnel DCO was, as the ExA will be aware, a long linear project stretching across multiple planning authority jurisdictions. At the time of the close of the Examination the applicant did not hold an interest in most of the land within the Order limits. It therefore provides a relevant precedent for this Application.

- 2.6 The approach which Thames Water took to binding all of the land within the Order limits is explained in the following extract, taken from an explanatory note submitted to the TTT examination by their solicitors (Application document: APP209.01):
- "1.3 Thames Water has offered offer to enter the Legal Agreement with all relevant local planning authorities who are willing and able to enter the Legal Agreement. Thames Water has provided letters to all 15 local planning authorities listed on the Legal Agreement confirming that it will undertake in to observe the terms of the Legal Agreement even where the local planning authority has been unable or unwilling to enter into it. Copies of these letters are submitted under Application Document APP209.06.*
- 1.4 Article 60 of the draft DCO and the Legal Agreement requires that upon the grant of the Development Consent Order the Undertaker will enter the section 106 unilateral undertaking (the form of which is included at Appendix 5 of the Legal Agreement) that will bind the land within the Order Limits of the DCO (the DCO Land).*
- 1.5 Under the terms of the unilateral undertaking the obligations in the Legal Agreement will become section 106 obligations. At the present time Thames Water does not have sufficient land interest to bind the land within the proposed order limits in the DCO across all the local planning authorities."*
- 2.7 TTT put forward the following drafting in Schedule 19 the TTT DCO which stated that for the purpose of s106(1) TCPA 1990, the TTT undertaker was deemed to be a person interested in the Order Land. The drafting also made clear that any party to whom the DCO was transferred in future with the consent of the Secretary of State under the relevant article of the DCO would also be bound:
- "(3) For the purposes only of Section 106 (1) of that Act the undertaker shall be deemed to be a person interested in the Order Land or any part of it and for the avoidance of doubt Section 106(3)(a) shall include any transferee under Article 9 of this Order."*
- 2.8 An article was then included in the TTT DCO to provide that the authorised development may not commence unless and until the development consent obligation was entered into. The entering into of the development consent obligation being after the Order was made would be at a point in time where Thames Water would be deemed to be a person interested in all of the Order land. Further, no development was able to be undertaken until the development consent obligations had been secured.
- "60. 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)"*
- 2.9 In summary, therefore, Thames Water was required to enter into a legal agreement which contained all of the obligations necessary to mitigate the impacts of the project, but this was not entered into pursuant to section 106 of the Town and Country Planning Act 1990 at the time of the close of the examination because the formalities of section 106 of 1990 Act could not be satisfied at that time.
- 2.10 The effect of the grant of the DCO was to bring into effect the Schedule 19 DCO provisions. Those provisions provided that Thames Water was deemed to have an interest in all of the Order land for the purpose of s106(1). This then enabled Thames Water (post grant of the DCO) to enter into unilateral development consent obligations with all 15 of the relevant authorities. Article 60 of the TTT DCO required such unilateral undertakings to be entered into before the authorised development could be commenced, therefore adequately securing the development consent obligations.
- 2.11 A similar mechanism is to be utilised for the purposes of this Application, as set out below.

Approach for AQUIND Interconnector

- 2.12 The Applicant has submitted at the same time as this note three development consent obligations pursuant to section 106 of 1990 Act:
- 2.12.1 Bilateral development consent obligation between HCC and the Applicant (Document reference: 7.5.25);
 - 2.12.2 Unilateral undertaking development consent obligation in favour of PCC (Document reference: 7.5.27); and
 - 2.12.3 Bilateral development consent obligation between SDNPA and the Applicant (Document reference 7.5.26).
- 2.13 The above agreements contain the development consent obligations which are to be secured in connection with the Proposed Development
- 2.14 Definitions of the ‘Portsmouth City Council development consent obligation’, the ‘South Downs National Park Authority development consent obligation, and the ‘Hampshire County Council development consent obligation’ have been added to article 2 of the draft DCO submitted at Deadline 8, each cross-referring to the certified copies of these agreements which are now listed in Schedule 14 to the dDCO (Certified Documents).
- 2.15 A new article has also been inserted into the Deadline 8 draft DCO (article 50), similar to article 60 of the TTT DCO, which states that:

“Development consent obligations”

50. (1) The authorised development must not begin for the purposes of section 155(1) of the 2008 Act unless and until the undertaker completes the following development consent obligations pursuant to section 106 of the 1990 Act—

- (a) the Hampshire County Council development consent obligation;***
- (b) the Portsmouth City Council development consent obligation; and***
- (c) the South Downs National Park Authority development consent obligation,***

- 2.16 Sub-paragraph (4)(a) of article 8 of the draft DCO (Application, exclusion and modification of legislative provisions), provides that:

“(4) For the purposes only of Section 106 (1) of the Act –

- (a) the undertaker shall be deemed to be a person interested in the Order land or any part of it and for the avoidance of doubt Section 106(3)(a) shall include any transferee under Article 7 of this Order.”***

- 2.17 These provisions taken together enable the Applicant to enter into development consent obligations immediately following any grant of the DCO so as to bind the Order land pursuant to section 106 of 1990 Act and ensure that the Applicant is not authorised to commence development until all three have been completed.

- 2.18 In addition, the SDNPA is not a local planning authority for the purposes of the Order land and therefore an additional provision is inserted at sub-paragraph (4)(b) of Article 8 of the draft DCO which provides that:

“(4) For the purposes only of Section 106 (1) of the Act –

...

- (b) the South Downs National Park Authority shall be deemed to be a local planning authority in respect of the Order land for the purposes of the South Downs National Park Authority development consent obligation only.”***

- 2.19 By providing that the SDNPA will be deemed to be a local planning authority for the purposes of section 106 of 1990 Act, at the time the development consent obligation is entered into with SDNPA the formalities of section 106(1) will be complied with by both the Applicant and SDNPA and the development consent obligation will be valid.
- 2.20 The extent to which SDNPA are deemed to a local planning authority is limited to be in respect of the South Downs National Park Authority Development Consent Obligation only to ensure SDNPA are not deemed to be a local planning authority for the purposes of section 106 of 1990 Act in respect of any other planning obligation or provision in the Order.
- 2.21 In order to give the Applicant and the ExA legal certainty that HCC and SDNPA will execute the bilateral development consent obligations in the form certified upon request by the Applicant post-DCO grant, short legal agreements are to be completed between each of HCC and SDNPA and the Applicant (respectively). These will commit the relevant authorities to executing the development consent obligations in the certified form upon request by the Applicant post-grant of the DCO.
- 2.22 These legal agreements are in the process of being executed and completed and the Applicant will provide executed copies of these to the ExA before the close of the Examination.
- 2.23 The approach of entering into legal agreements to secure the entering into of planning obligations is one which is often taken where an applicant at the time of the grant of a planning permission does not hold the necessary land interest to satisfy the formalities of section 106 of the 1990 Act, for example where the land to which the application relates is in the ownership of the relevant local authority and is to be acquired by the developer post the grant of planning permission pursuant to a development agreement.
- 2.24 Taking this approach therefore allows for a planning permission to be issued subject to a negative planning condition requiring the planning obligations to be secured, and secures the entering into of the relevant planning obligation following the grant of planning permission by all relevant parties.

Justification

- 2.25 The proposed provisions are justified pursuant to s120(5) of the Planning Act 2008, which authorises the inclusion of provisions within DCOs which '*apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order*' and '*any provision that appears to the Secretary of State to be necessary or expedient for giving full effect to any other provision of the order*'.
- 2.26 Clearly, it would not be appropriate for the consenting of nationally significant infrastructure projects to be thwarted by the fact that an applicant does not at the time of the examination hold the necessary interests within the Order limits to enter into a development consent obligation when the power to acquire all necessary land required is one of the powers sought in the Order.
- 2.27 The solution proposed is lawful and effective in securing mitigation, without any prejudice to land owners. Unlike a planning permission, a DCO is personal to the 'undertaker' or any person to whom the benefit of the Order to be transferred, and the development consent obligations are enforceable against the person befitting from the Order.
- 2.28 To address the position in relation to other owners of land within the Order limits and so as to confirm they are not bound by the development consent obligations, Clause 3 (Land Bound) of the development consent obligations provides that: '*The parties agree that the planning obligations contained in this Deed will not be enforceable against any other owner of any land interest in the DCO Land who is not a party to this Deed nor against any successors in title to any person claiming through or under the other such owner's interest in the DCO Land (save for the Undertaker) unless that person itself undertakes any part of the Development.*'

3. HAMPSHIRE COUNTY COUNCIL DEVELOPMENT CONSENT OBLIGATION

- 3.1 Further to the previous explanatory note (REP7-058) the Applicant has continued discussions with HCC regarding the development consent obligations to be secured in connection with the Proposed Development. As the ExA will be aware, the most significant item that remained in discussion was in relation to the provision of mitigations for in the event impacts on buses are worse than those assessed.
- 3.2 The Applicant and HCC, in collaboration with the relevant Bus Operators, have agreed to the provisions for a 'Bus Mitigation Delay Fund', which may be drawn down in the event it is evidenced certain measures of delay linked to traffic management associated with the works to deliver the onshore cables on the highway trigger the need for additional buses to be provided. This ensures any mitigations provided are directly related to the impacts of the construction of the Proposed Development.
- 3.3 The quantum of the fund has been determined on a worst case basis, identifying the cost for the provision of additional buses on the routes which have the potential to be directly impacted based on the number of weeks that works will be undertaken on the roads which coincide with the specified bus routes. A contingency fund is also provided for, for in the event of the works over-running beyond the reasonable worst case timescales reported in the Framework Traffic Management Strategy (AS-073).
- 3.4 Taking into account the triggers that need to be met for this fund to be drawn down from, it is the view of the Applicant that the fund is fairly and reasonably related in scale and kind to the Proposed Development.
- 3.5 The Applicant also understands that HCC consider the 'Bus Mitigation Delay Fund' is necessary to make the development acceptable.
- 3.6 In addition to the 'Bus Mitigation Delay Fund', a 'Patronage Marketing Contribution' is also provided for. This may be drawn down where it is evidenced the increase in bus patronage for the specified routes which may be directly impacted by the works is a defined percentage less than analogous routes of the Bus Operators. By using analogous 'control' routes, it is possible to reasonably determine whether any lower level of increase in bus patronage over the duration of the works being constructed is directly related to the construction of the Proposed Development.
- 3.7 The quantum of the 'Patronage Marketing Contribution' has been negotiated by the Applicant, HCC and the Bus Operators, and is reasonably considered to represent an amount that would be required for a 6-12 month bus marketing campaign to increase bus patronage, which is what that contribution if drawn down must be spent on. It is therefore considered to be reasonably related in scale and kind to the potential impacts of the Proposed Development.
- 3.8 As with the 'Bus Mitigation Delay Fund', the Applicant understands that HCC consider the 'Patronage Marketing Contribution' is necessary to make the development acceptable.
- 3.9 With this matter now resolved between the parties, a summary of the development consent obligations contained in the Hampshire County Council Development Consent Obligation (Document reference: 7.5.25) is as follows:
- 3.10 **Converter Station Access Works Highways Agreement**
- 3.10.1 An agreement pursuant to sections 38 and 278 of the Highways Act 1980 will be entered into in connection with the delivery of the Converter Station Access Works;
- 3.10.2 To ensure that agreement (the 'Converter Station Access Works Highway Agreement') is entered into in connection with those works and so as to ensure the necessary land ownerships are confirmed for dedication of a visibility splay, paragraph 1 of Schedule 1 requires the land ownership position to be confirmed and the Converter Station Access Works Highways Agreement to be entered into before the Proposed Development is Commenced.

3.10.3 Further, the Commencement of the Proposed Development is restricted until the Converter Station Access Works have been certified as complete. This ensures those works are undertaken first, which is necessary to ensure an acceptable traffic situation once construction of the remainder of the Proposed Development commences.

3.10.4 The agreed form of the Converter Station Access Works Highways Agreement is appended to the development consent obligation to provide certainty of its terms for when entered into.

3.11 Temporary Construction Access Highways Agreements

3.11.1 Agreements pursuant to section 278 of the Highways Act 1980 will be entered into in connection with the delivery of Temporary Construction Accesses (the 'Temporary Construction Access Highways Agreements').

3.11.2 The Temporary Construction Access Highways Agreements are required to be entered into prior to the works to construct any relevant Temporary Construction Access commencing.

3.11.3 Further, the use of any Temporary Construction Access for the purposes of constructing the Proposed Development is not to be permitted unless and until the Temporary Construction Access has been certified as complete. This ensures the Temporary Construction Access Highways Agreements are entered into and those works undertaken in a manner acceptable to the highway authority prior to their use.

3.11.4 The agreed form of the Temporary Construction Access Highways Agreement is appended to the development consent obligation to provide certainty of its terms

3.12 Highway Works Design Consultation

3.12.1 It is agreed that the Applicant and HCC will consult with one another in relation to the delivery of the onshore cables where they overlap with works proposed to be undertaken by HCC at Ladybridge Roundabout. This is to ensure the parties may amend their respective works to accommodate one another. A process for that design consultation and reciprocal covenants in this regard are provided for.

3.12.2 Following the approval of the onshore cable works the Applicant and HCC will use reasonable endeavours to agree the estimated amount of any additional costs to HCC in undertaking the delivery and the future maintenance of the works it is to carry out at Ladybridge Roundabout solely as a consequence of the approved design of the onshore cables comprised in the Proposed Development, and the Applicant will thereafter pay those additional costs to HCC.

3.13 CAVAT Payment for Highway Trees

3.13.1 It has been agreed between the Applicant and HCC, in line with HCC policy in relation to this matter, that where it is determined any Highways Tree needs to be removed in connection with the Proposed Development, a CAVAT Compensation Amount will be paid to HCC, which HCC must use towards the provision of replacement trees.

3.13.2 A process is secured for determining the CAVAT Compensation Amount and payment by the Undertaker in connection with the removal of any Highways Tree is also secured.

3.14 Travel Plan and Travel Demand Plan Monitoring Annual Fees

3.14.1 In accordance with Requirement 21 of the draft Order a travel plan for the contractor's workforce in accordance with the framework construction worker travel plan is to be submitted and approved. HCC will, in so far as the plan relates to highways for which they are the highway authority, have responsibility for monitoring the implementation of the approved travel plan.

- 3.14.2 In accordance with Requirement 25 of the draft Order a travel demand plan (in accordance with the travel demand strategy) to identify the measures which are to be undertaken to ensure persons are aware of the construction of the Proposed Development on the highway and the travel options available to them to reduce potential impacts through changes to travel behaviour is to be submitted and approved. HCC will also have responsibility for monitoring the implementation of the approved travel demand plan.
- 3.14.3 An annual monitoring fee of £3,000 per annum in respect of each plan is secured in the Agreement, which is to be paid until such time as the works to which the respective plans relate are completed.

3.15 AIL Street Works

- 3.15.1 Prior to undertaking any temporary works to streets and street furniture for which HCC is responsible to facilitate the movement of abnormal indivisible loads in connection with the construction of the Proposed Development the Applicant must enter into a minor works agreement pursuant to section 278 of the Highways Act 1980 in relation to those, so as to ensure the manner in which those works are undertaken and the costs for doing so are clearly secured at the time required.

3.16 Bus Mitigation

- 3.16.1 As explained above at paragraphs 3.2 – 3.4 a ‘Bus Delay Mitigation Fund’ is provided for in the event the traffic management associated with the works reduces bus punctuality beyond the required targets set by the Traffic Commissioner, by comparison to levels of punctuality achieved prior to the works.
- 3.16.2 Having taken into account the Covid-19 pandemic, the baseline year for comparison to determine whether the traffic management associated with the construction of the Proposed Development is the reason for delays experienced is January 2019 – January 2020 (i.e. the most recent baseline conditions not affected by the Covid-19 pandemic).
- 3.16.3 HCC will be responsible for administering requests from the Bus Operators to verify when monies may be drawn down, who as the highway authority already have access to the necessary bus performance data. Should any request be disputed, a swift resolution process is provided for.
- 3.16.4 Should the amount of the ‘Bus Delay Mitigation Fund’ drop to 10% or less than the total amount, a contingency fund amount is payable.
- 3.16.5 Where monies remain following the completion of the construction of the onshore cables on the highway they will be returned to the Applicant (together with any accrued interest).
- 3.16.6 As explained above at paragraphs 3.5 – 3.7, a ‘Patronage Marketing Contribution’ is also provided for, for in the event it is evidenced the increase in bus patronage for the specified routes which may be directly impacted by the works is a defined percentage less than analogous routes of the Bus Operators.
- 3.16.7 Confidentiality provisions are included to ensure the protection of information provided by the bus operator, with such information being of a commercially sensitive nature.

4. PORTSMOUTH CITY COUNCIL DEVELOPMENT CONSENT OBLIGATION

- 4.1 Since the issue of the explanatory note in relation to development consent obligations at Deadline 7 (REP7-058) the Applicant has sought to progress discussions with PCC.
- 4.2 Following receipt of heads of terms from PCC on 19 January 2021, the Applicant's solicitor provided a copy of the draft development consent obligation to PCC on 21 February 2021.

- 4.3 The Applicant sent further emails to PCC's solicitor in relation to the development consent obligation agreement on 2 February 2021, 10 February 2021 and 11 February 2021 but did not receive any engagement until 12 February 2021, at which point PCC only provided a high level response in relation to the heads of terms.
- 4.4 A revised draft agreement was issued to PCC on 15 February 2021 taking into account the high level comments in their email of 12 February 2021 and further requests for engagement and offers to hold a call were sent on 17 February 2021, 19 February 2021, and 21 February 2021. The Applicant also offered to discuss the draft agreement during the Keeping in Touch call on 23 February 2021 but nothing further was received from PCC until 24 February 2021, when PCC's solicitor returned comments on the draft agreement and explained PCC's position that there were fundamental points of principle disagreed between the parties.
- 4.5 At that point it had become clear to the Applicant that it would not be realistically possible to reach a bilateral agreement with PCC within the time remaining in the Examination, and therefore the Applicant was left with no other option than to proceed with a unilateral undertaking.
- 4.6 The Portsmouth City Council Development Consent Obligation (Document reference: 7.9.27) unilateral undertaking submitted at Deadline 8 secures the same mitigation as the original bilateral route, with the exception of realignment of pitches outside the order limits. Reinstatement and realignment of sports pitches within the Order limits is now secured via paragraphs 6.2.9.10 to 6.2.9.16 of the OOCEMP (Document reference 6.9, Rev 007).
- 4.7 A summary of the development consent obligations contained in the Portsmouth City Council Development Consent Obligation is as follows:
- 4.8 Car park resurfacing**
- 4.8.1 The Applicant will undertake the Car Park Resurfacing Works in respect of the car park at Fort Cumberland. Paragraph 1 of Schedule 1 to the Portsmouth City Council Development Consent Obligation provides for the submission and approval of a Car Park Resurfacing Specification, and once approved the undertaking of the Car Park Resurfacing Works by the Applicant (with all costs to be borne by it).
- 4.8.2 The outline specification located at Appendix 2 of the Portsmouth City Council Development Consent Obligation provides that the minimum number of car parking spaces to be provided following resurfacing is 121 car parking spaces.
- 4.9 Trees**
- 4.9.1 Similar to the position with HCC, where it is determined that any tree in the ownership of PCC is to be removed a CAVAT Compensation Amount shall be paid to PCC, which must be used towards the provision of replacement trees.
- 4.9.2 Paragraph 2 of Schedule 1 Portsmouth City Council Development Consent Obligation secures the required process for determining the CAVAT Compensation Amount, and also secures its payment by the Undertaker in connection with the removal of any tree in the ownership of PCC.
- 4.10 Temporary Construction Access Highways Agreements**
- 4.10.1 Similar to the position agreed between the Applicant and HCC that an agreement pursuant to section 278 of the Highways Act 1980 will be entered into in connection with the delivery of Temporary Construction Accesses, the same obligation is offered to PCC.
- 4.10.2 The Temporary Construction Access Highways Agreements are, in accordance paragraph 3 of Schedule 1 to the Portsmouth City Council Development Consent Obligation, required to be entered into prior to the works to construct any relevant Temporary Construction Access Commencing.

- 4.10.3 Further, the use of any Temporary Construction Access for the purposes of constructing the Proposed Development is not to be permitted unless and until the Temporary Construction Access has been certified as complete.
- 4.10.4 This ensures the Temporary Construction Access Highways Agreements are entered into and those works undertaken in a manner acceptable to the highway authority prior to their use.
- 4.10.5 The draft form of the Temporary Construction Access Highways Agreement is appended to the Portsmouth City Council Development Consent Obligation to provide certainty of its terms now. The Applicant received comments from PCC on the draft form on 24 February 2021 and has taken these into account in the final form, in addition to more generally aligning with the position provided for in the form appended to the Hampshire County Council Development Consent Obligation.

4.11 Sports and recreation contribution

- 4.11.1 The Applicant has following further discussions with PCC agreed to provide a contribution for the amount of £100,000 to be distributed to sports clubs within the Council's administrative area who will be directly affected by the Development as a result of the temporary loss of available sports pitches.
- 4.11.2 PCC confirmed in correspondence to the Applicant on 25 February 2021 that it is satisfied the sports and recreation contribution satisfies the tests provided for at paragraph 4.1.8 of NPS EN-1.
- 4.11.3 In particular, PCC identified that protecting playing pitches, community infrastructure capacity, community cohesion and health and wellbeing are well established planning purposes, and therefore solutions to manage impacts on those are relevant to planning, and that given the inevitable residual impacts of the works on such facilities further mitigation is necessary to make the development acceptable in planning terms.
- 4.11.4 The quantum of the contribution was confirmed by PCC to have been determined taking into account PCC's review of the Framework Management Plan for Recreational Impacts (AS-062), to ensure this is fairly and reasonably related in scale and kind to the Proposed Development.
- 4.11.5 The sports and recreation contribution will enable PCC to administer support for community sports clubs, teams and groups while infrastructure capacity is reduced and to deliver alternative programmes in the affected areas to mitigate the residual impacts of the Proposed Development.

4.12 AIL Street Works

- 4.12.1 Prior to undertaking any temporary works to streets and street furniture for which PCC is responsible to facilitate the movement of abnormal indivisible loads in connection with the construction of the Proposed Development the Applicant is to enter into a minor works agreement pursuant to section 278 of the Highways Act 1980 in relation to those, so as to ensure the manner in which those works are undertaken and the costs for doing so are clearly secured at the time required.

5. SOUTH DOWNS NATIONAL PARK AUTHORITY DEVELOPMENT CONSENT OBLIGATION

- 5.1 Since the issue of the explanatory note in relation to development consent obligations at Deadline 7 (REP7-058) the Applicant has continued discussions with SDNPA in relation to the heads of terms issued on 21 January 2021, with a particular focus on determining how the contributions requested satisfied the relevant tests provided for by paragraph 4.1.8 of NPS EN-1.
- 5.2 As noted previously, the Applicant acknowledges that there is harm to the landscape remaining following the implementation of the necessary landscape mitigation measures

proposed in connection with the Converter Station. Whilst this has been mitigated as far as practicable through careful design, siting and landscaping, it is inevitable that there is residual harm on landscape as a consequence of the Proposed Development. Accordingly, the Applicant and SDNPA have agreed to development consent obligations to further mitigate that residual harm.

- 5.3 A summary of the development consent obligations contained in the South Downs National Park Authority Development Consent Obligation (Document reference: 7.5.26) is as follows:

5.4 **Woodland improvements contribution**

- 5.4.1 The payment of a woodland improvements contribution in the sum of £250,000 has been agreed, which is to be applied towards the provision of woodlands improvements within a five kilometre radius to the Converter Station.
- 5.4.2 The woodland improvements that may be delivered with the woodland improvements contribution are:
- (A) the creation of new woodland planting;
 - (B) the enhancement of existing areas of woodland, including through new planting;
 - (C) measures to address the effects of Ash Dieback; and
 - (D) gapping up of hedgerows.
- 5.4.3 The radius of where the woodland improvements contribution may be spent was determined taking into account the views of SDNPA that additional planting at a greater distance from the Converter Station would be beneficial and also the areas where impacts have been identified. Accordingly, the contribution, and moreover what is to be provided with that, is directly related to the Proposed Development.
- 5.4.4 The quantum of the contribution has been devised taking into account the whole costs of delivery of woodland improvements, including land agreements that may be needed to facilitate this, and the scale of improvements that it is considered would be beneficial within the identified area for the woodland improvements to be delivered. Having considered the SDNPA explanations in this regard the Applicant is satisfied the quantum of this contribution is fairly and reasonably related in scale and kind to the Proposed Development.
- 5.4.5 The Applicant understands that SDNPA consider the woodland improvements contribution is necessary to make the development acceptable in planning terms.

5.5 **Public rights of way contribution**

- 5.5.1 The payment of a contribution for the amount of £20,000 which is to be applied towards improvements to the public rights of way network within 2km of the Converter Station has also been agreed and is secured.
- 5.5.2 With regard to the public rights of way contribution, it is recognised by the Applicant that there will be residual adverse effects on Monarch's Way, a long-distance public right of way, which will be experienced by users of the public rights of way network. Taking into account that users of the public rights of way network who will experience such adverse visual effects are transient, it is considered that a 2 km distance from the Converter Station is a reasonable distance such that persons that benefit from the improvements will also be the persons who experience the impacts. Consequently, the public rights of way contribution is directly related to the impacts of the Proposed Development.
- 5.5.3 The Applicant has also discussed the types of improvements that may be delivered with public rights of way contribution within the 2km radius of the Converter Station, which include for example the removal of gates and

improvement of surfaces along public rights of way to improve their accessibility, and is satisfied that the amount of £20,000 is fairly and reasonably in scale and kind to the Proposed Development.

- 5.5.4 The Applicant understands that SDNPA consider the public rights of way contribution is necessary to make the development acceptable in planning terms.

5.6 Monitoring fee

- 5.6.1 A monitoring fee for the amount of £5,000 has also been agreed to and is secured, which it has been confirmed is an appropriate fee taking into account the phased approach to the payment of the woodland improvements contribution and the administration of the development consent obligations over the period within which they are to be spent (being within 10 years of the date of payment).

Herbert Smith Freehills LLP

1 March 2021

2461/18857/30985781

APPENDIX 1
Section 106 of 1990 Act

(1) Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation (referred to in this section and sections 106A to 106C as “a planning obligation”), enforceable to the extent mentioned in subsection (3)—

- (a) restricting the development or use of the land in any specified way;
- (b) requiring specified operations or activities to be carried out in, on, under or over the land;
- (c) requiring the land to be used in any specified way; or
- (d) requiring a sum or sums to be paid to the authority (or, in a case where section 2E applies, to the Greater London Authority) on a specified date or dates or periodically.

(1A) In the case of a development consent obligation, the reference to development in subsection (1)(a) includes anything that constitutes development for the purposes of the Planning Act 2008.

(2) A planning obligation may—

- (a) be unconditional or subject to conditions;
- (b) impose any restriction or requirement mentioned in subsection (1)(a) to (c) either indefinitely or for such period or periods as may be specified; and
- (c) if it requires a sum or sums to be paid, require the payment of a specified amount or an amount determined in accordance with the instrument by which the obligation is entered into and, if it requires the payment of periodical sums, require them to be paid indefinitely or for a specified period.

(3) Subject to subsection (4) a planning obligation is enforceable by the authority identified in accordance with subsection (9)(d)—

- (a) against the person entering into the obligation; and
- (b) against any person deriving title from that person.

(4) The instrument by which a planning obligation is entered into may provide that a person shall not be bound by the obligation in respect of any period during which he no longer has an interest in the land.

(5) A restriction or requirement imposed under a planning obligation is enforceable by injunction.

(6) Without prejudice to subsection (5), if there is a breach of a requirement in a planning obligation to carry out any operations in, on, under or over the land to which the obligation relates, the authority by whom the obligation is enforceable may—

- (a) enter the land and carry out the operations; and
- (b) recover from the person or persons against whom the obligation is enforceable any expenses reasonably incurred by them in doing so.

(7) Before an authority exercise their power under subsection (6)(a) they shall give not less than twenty-one days' notice of their intention to do so to any person against whom the planning obligation is enforceable.

(8) Any person who wilfully obstructs a person acting in the exercise of a power under subsection (6)(a) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) A planning obligation may not be entered into except by an instrument executed as a deed which—

- (a) states that the obligation is a planning obligation for the purposes of this section;
- (aa) if the obligation is a development consent obligation, contains a statement to that effect;

- (b) identifies the land in which the person entering into the obligation is interested;
- (c) identifies the person entering into the obligation and states what his interest in the land is; and
- (d) identifies the local planning authority by whom the obligation is enforceable and, in a case where section 2E applies, identifies the Mayor of London as an authority by whom the obligation is also enforceable.

(10) A copy of any such instrument shall be given to the local planning authority so identified and, in a case where section 2E applies, to the Mayor of London.

(11) A planning obligation shall be a local land charge and for the purposes of the Local Land Charges Act 1975 the authority by whom the obligation is enforceable shall be treated as the originating authority as respects such a charge.

(12) Regulations may provide for the charging on the land of—

- (a) any sum or sums required to be paid under a planning obligation; and
- (b) any expenses recoverable by a local planning authority or the Mayor of London under subsection (6)(b),

and this section and sections 106A to 106BC shall have effect subject to any such regulations.

(13) In this section “specified” means specified in the instrument by which the planning obligation is entered into and in this section and section 106A “land” has the same meaning as in the Local Land Charges Act 1975.

(14) In this section and section 106A “development consent obligation” means a planning obligation entered into in connection with an application (or a proposed application) for an order granting development consent.

