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Our ref: AMK/00584927/000006

7 September 2021

Your ref: EN020022

Dear Mr Leigh

Application by AQUIND Limited for an Order granting Development Consent for the AQUIND Interconnector Project (PINS reference: EN020022)

Mr. Geoffrey Carpenter and Mr Peter Carpenter (Registration Identification Number: 20025030)

As you are aware, we act for Mr Geoffrey Carpenter and Mr Peter Carpenter ("our **Clients**") who are the freehold interest owners of Little Denmead Farm (and are Interested Parties).

We refer to the Secretary of State for the Department for Business, Energy & Industrial Strategy ("the **SoS**") letter to the Applicant dated 2 September 2021 and specifically the second bullet point of paragraph 6, which asks the Applicant to provide:

"Justification for the extent of compulsory acquisition powers sought at the plots of land associated with the commercial telecommunications buildings on the site of the converter station. The Secretary of State notes that the Applicant has advised that these buildings would not be required should the equipment required for commercial telecommunications be removed. The Applicant should confirm the reasons as to why the full extent of land will still be required if those telecommunications buildings are removed from the development consent order."

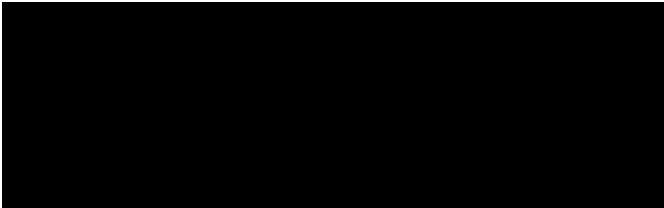
Relevant background information to the SoS' request was submitted to the ExA, and we enclose a copy of the Applicant's Statement in Relation to FOC **[REP1-127]** (document reference: 7.7.1) and refer the SoS to para 5.4 which says: *"The Telecommunications Buildings are required solely in connection with the commercial use and the reasoning behind their location is explained in section 6 below."* We trust this will assist the SoS.

We also refer to section 98 of the Planning Act 2008, which sets out the Examining Authority's ("the **ExA**") timetable for examining, and reporting on applications. The section requires the ExA completes the examination by the end of the period of six months and gives the SoS power to extend examination and reporting deadlines. In this application, the SoS did not extend the ExA's examination. As the SoS will be aware, it is the ExA that has the fact-finding and evaluation role. It is therefore implicit that new information should therefore not be considered by the SoS alone without any other form of public scrutiny after the six month examination period has closed.

We would remind the SoS the compulsory purchase of private land raises constitutional matters and therefore if the SoS requires the Applicant to submit new information it would only be appropriate that the SoS gives our Clients the opportunity to respond to the new information the Applicant submits.

We should be grateful if the SoS would kindly confirm our Clients will be permitted to respond to the Applicant's new information and afforded reasonable time in which to make such response. If that is the case, please would the SoS also confirm by when our Clients will be permitted to respond.

Yours sincerely



Blake Morgan LLP

Enc.

Statement in Relation to FOC



AQUIND Limited

AQUIND INTERCONNECTOR

Statement in Relation to FOC

The Infrastructure Planning (Examination Procedure) Rules 2010, Rule 8(1)(b)
The Planning Act 2008

Document Ref: 7.7.1

PINS Ref.: EN020022

AQUIND Limited

AQUIND INTERCONNECTOR

Statement in Relation to FOC

PINS REF.: EN020022

DOCUMENT: 7.7.1

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HERBERT
SMITH
FREEHILLS

**Statement in relation to development
associated with AQUIND Interconnector**

Herbert Smith Freehills LLP



1. INTRODUCTION

- 1.1 This statement is made by Herbert Smith Freehills LLP on behalf of AQUIND Limited (the '**Applicant**') in relation to the application for development consent to authorise the elements of AQUIND Interconnector (the '**Project**') within England and the waters adjacent to England up to seaward limits of the territorial sea (the '**Proposed Development**')
- 1.2 The application for development consent in relation to the Proposed Development was made on 14 November 2019 (the '**Application**'). The Application was accepted for examination by the Planning Inspectorate ('**PINS**') on behalf of the Secretary of State on 12 December 2019.
- 1.3 The Examining Authority ('**ExA**') has issued a number of written questions in relation to the Proposed Development. This statement has been prepared in response to the ExA written question with reference DCO1.5.2 in relation to the proposed commercial use of the spare capacity in the fibre optic infrastructure required to be provided as part of the Proposed Development.
- 1.4 For ease of reference, the ExA written question with reference DCO 1.5.2 states as follows:

- 1.4.1 *"The application Planning Statement [APP-108 para 1.3.6.2] suggests that the fibre optic cable and associated infrastructure constitutes Associated Development, including the spare capacity that would be used for commercial telecommunications purposes. Please provide a more detailed explanation as to why the Applicant thinks that this would be the case.*

Please detail the envisaged degree of spare capacity in the cables and the corresponding proportion of associated buildings, cubicles and other infrastructure related to the surplus that would be used for commercial telecommunications purposes.

Would the separate Telecommunications Building at the Converter Station site be necessary if there were no commercial usage of the surplus fibre optic cable capacity, and thus no requirement for access by third parties? (i.e. could the interconnector monitoring functions be accommodated within the main Converter Station buildings?)

Is the ORS at the landfall needed if the fibre optic cable is required only for interconnector monitoring and not commercial data usage?

If the Optical Regeneration Station is required nevertheless, what difference to building dimensions would the removal of commercial surplus capacity make?

The more detailed explanation must include reference to;

- (A) *the guidance that Associated Development should be subordinate to the NSIP, but necessary for the Proposed Development to operate effectively to its design capacity, in paragraph 2.9 of The Planning Inspectorate's Advice Note 13: Preparation of a draft order granting development consent and explanatory memorandum, February 2019, Version 3;*
- (B) *s115 of the Planning Act 2008 together with paragraph 199 of the Explanatory Notes;*
- (C) *the Department for Communities and Local Government Guidance on associated development applications for major infrastructure projects April 2013, particularly paragraph 5;*
- (D) *any case law that the Applicant wishes to reply upon in support of its position."*

2. OVERVIEW OF FOC INFRASTRUCTURE

- 2.1 The fibre optic cable infrastructure consists of:



- 2.1.1 two smaller diameter fibre optic cables one of which will be installed with each of the HVDC and HVAC Cable Circuits for data transmission;
- 2.1.2 up to two Optical Regeneration Stations ('**ORS**') to be located at the Landfall at Eastney (within the triangular car park); and
- 2.1.3 up to two Telecommunications Buildings to be located within the Converter Station Area.¹
- the ('**FOC Infrastructure**').
- 2.2 The FOC Infrastructure is required in connection with the Proposed Development for cable protection, control, monitoring using Distributed Temperature Sensing ('**DTS**') and communication purposes, as is confirmed at paragraph 1.3.6.2 of the Planning Statement [APP-108]. The ORS will house the equipment used for optical signal amplification purposes and the Telecommunications Buildings will house the necessary telecommunications equipment.
3. **SECTION 35 DIRECTION**
- 3.1 As the ExA will be aware, on 19 June 2018 the Applicant submitted a request to the Secretary of State to issue a direction pursuant to section 35 of the Planning Act 2008 (the '**Act**'), requesting that the Proposed Development be treated as development for which development consent is required (the '**Request**').²
- 3.2 When describing the development which the Proposed Development is comprised, paragraph 3.5.1 (D) of the Request stated as follows:
- 3.2.1 *"two pairs of underground high voltage direct current (DC) cables together with smaller diameter fibre optic cables for data transmission from the proposed landfall site in Eastney (near Portsmouth) to the converter station at Lovedean, approximately 20km in length. The intention is to locate the cables within existing highway or road verges where practicable. Signal enhancing and management equipment may also be required along the land cable route in connection with the fibre optic cables" (our emphasis).*
- 3.3 The Request also stated as follows at paragraph 3.12:
- "Associated Development**
- It is also the intention of AQUIND when seeking development consent for AQUIND Interconnector to seek development consent to use the spare fibre optic cable capacity for the provision of commercial telecommunications services. Development consent for this commercial telecommunications use would be sought on the basis that it is associated development in accordance with Section 115 of the Act."*
- 3.4 On 30 July 2018, the following direction was issued by the Secretary of State pursuant to section 35 of the Act (the '**Direction**'):
- "THE SECRETARY OF STATE DIRECTS that the proposed Development, together with any development associated with it, is to be treated as development for which development consent is required..."* (our emphasis)³
- 3.5 The Direction clearly confirms that any development associated with the Proposed Development is to be treated as development for which development consent is required.
- 3.6 Accordingly, irrespective of whether the commercial use of the FOC Infrastructure constitutes 'associated development' as defined in Section 115 of the Act, it has already been confirmed that such development is to be treated as development for which

¹ Planning Statement, paragraph 1.3.1.4 (Examination Library ref: APP-108).

² Statement in support of an application for a direction pursuant to Section 35 of the Planning Act 2008, paragraph 3.12 (Examination Library ref: AS-040).

³ Section 35 Direction in relation to AQUIND Interconnector (30 July 2018) (Examination Library ref: AS-039).



development consent is required (rather than for which development consent may be granted).

- 3.7 That direction was provided by the Secretary of State who would, by virtue of the clear statements made in the Request regarding the development which the Proposed Development is to be comprised and the Applicant's stated intention "*to use the spare fibre optic cable capacity for the provision of commercial telecommunications services*", have had knowledge of the effect of direction to be provided.

4. ASSOCIATED DEVELOPMENT

- 4.1 Irrespective of the above position by virtue of the Direction, it is still considered relevant and important to explain to the ExA the reasons why the commercial use of the FOC Infrastructure would constitute associated development in response to the written question posed.

- 4.2 With relevance to the Proposed Development, associated development is defined in Section 115 of the Act as development which:

4.2.1 is associated with development for which development consent is required⁴; and

4.2.2 is to be carried out wholly in England and the waters adjacent to England up to the seaward limits of the territorial sea⁵.

- 4.3 For clarity, the Applicant confirms that the Proposed Development, including the FOC Infrastructure, is to be carried out wholly in England and the water adjacent to the England up to the seaward limits of the territorial sea.

- 4.4 It is noted that paragraph 199 of explanatory notes to the Act with relevance to determining what is associated development provides that the Secretary of State must have regard to any statutory guidance given in relation to such matters.

- 4.5 Guidance issued by the Department for Communities and Local Government ("**the Guidance**"), which the Secretary of State must have regard to when determining what is associated development, confirms that it is for the Secretary of State to decide on a case by case basis whether or not development should be treated as associated development.⁶ Paragraph 5 to the Guidance sets out the core principles that the Secretary of State will take into account when making this decision.⁷

- 4.6 In addition, the Planning Inspectorate's Advice Note Thirteen states at paragraph 2.9 that "*associated development is subordinate to the NSIP, but necessary for the development to operate effectively to its design capacity.*"⁸ In this regard it should be noted that the proposed Development is not an NSIP (though has been confirmed to be of national significance), and the advice note is read on the basis that the use of the Proposed Development for the transfer and conversion of electricity is taken to be the primary use which any associated development would need to be subordinate to.

⁴ Section 115 (2)(a) of the Planning Act 2008.

⁵ Section 115 (3) (a) and (b) of the Planning Act 2008.

⁶ Department for Communities and Local Government Guidance on associated development applications for major infrastructure projects (April 2013) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/192681/Planning_Act_2008_-_Guidance_on_associated_development_applications_for_major_infrastructure_projects.pdf

⁷ Paragraph 119 of the Explanatory Notes to the Act also states the "*In determining what is associated development, the Panel or Council must have regard to any statutory guidance given to it by the Secretary of State.*"

⁸ Advice Note Thirteen: Preparing the draft order and explanatory memorandum, February 2019, Version 3, paragraph 2.9: https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2014/12/Advice_note_13v2_1.pdf



4.7 The table presented at **Annex 1** to this statement demonstrates how these core principles and the statement within Advice Note Thirteen are met in relation to the commercial use of the FOC Infrastructure.⁹

5. SPARE CAPACITY

5.1 As there will be spare capacity within the fibre optic cables, so as to realise the full benefit of the Proposed Development and to ensure it operates effectively to its design capacity the intention is for the spare capacity to be used for commercial telecommunications purposes. Further information regarding the need for and benefits of the proposed commercial use of the spare capacity within the fibre optic cables, to assist the understanding of how the carrying on of this use will ensure the Proposed Development operates effectively to its design capacity, is provided at section 5 to the Needs and Benefits Report Addendum (Document Reference: 7.7.7)

5.2 To withstand the various physical impacts which the fibre optic cables are likely to be subject to associated with transportation, installation and operation in the marine and underground environment and protect the glass fibres located within it, the fibre optic cables are required to be of an adequate outer diameter. Within the required outer diameter for the fibre optic cables, 192 glass fibres may be installed. Each fibre optic cables is required to include a sufficient amount of glass fibres for its use in connection with the primary use of the interconnector and as redundancy for this purpose in the event of individual glass fibre failures. The number of glass fibres required in connection with the primary use of the interconnector and as redundancy for this purpose is less than 192, though this is a multiple of fibres that is commonly produced by manufacturers of such cables. Noting that the outer diameter must be of sufficient size to withstand the impacts to which it is likely to be subject, and the use of standard size cable components for this purpose, the size of the cable itself would not change if the number of glass fibres within it was reduced from 192 to a lesser multiple. Therefore, whilst it would be possible to install a cable with fewer glass fibres (and thus less spare capacity), this would not reduce the impacts to any degree. Accordingly, there is no benefit to such an approach being taken, and it is considered this would limit the overall benefits to be provided by the Proposed Development.

5.3 There is a direct connection between the proposed commercial use of the FOC Infrastructure and the size of the ORS. Whilst it is not possible to state with absolute certainty the extent to which the size of the ORS is dictated by the proposed commercial use, it is anticipated that approximately two thirds of the cabinets within the ORS will be available for commercial use.¹⁰ The remaining cabinets in the ORS will house key control equipment that are required to support the primary function of the fibre optic cable (i.e. control and monitoring).

5.4 The Telecommunications Buildings are required solely in connection with the commercial use and the reasoning behind their location is explained in section 6 below.

5.5 To assist with the understanding of the Proposed Development, the Design and Access Statement (APP-114 Rev 002) has been updated to explain the key components of the ORS and Telecommunications Buildings and to help illustrate how these dictate the overall size. In summary:

5.5.1 the overall size of the Telecommunications Buildings is based on the size of the Heating, Ventilation and Air Conditioning ('HVA/C') units; the Low Voltage Alternating Current ('LVAC') intake and distribution boards; the LVAC consumer units; the Uninterruptible Power Supply ('UPS') battery charger unit and battery racks; the floor space for the cabinets that accommodate the telecommunications equipment and the optical amplifier; and¹¹

⁹ The comments in Annexure A in response to paragraphs 5(i) and 5(ii) of the Guidance are relevant to paragraph 2.9 of Advice Note Thirteen.

¹⁰ Design and Access Statement, paragraph 5.5.2.6 (APP-114 Rev 002).

¹¹ Paragraph 5.4.1.4 of the Design and Access Statement (APP-114 Rev 002)



- 5.5.2 the overall size of the ORS buildings and compound is driven by the need for parking bays, fuel storage, diesel generator enclosures, HVA/C units, power supply and battery racks, the cabinet layout and flood risk protection measures.¹²

6. TELECOMMUNICATIONS BUILDINGS

- 6.1 Two Telecommunications Buildings (one for each of the fibre optic cables to be installed with each of the HVDC Cable Circuits) are to be located within a small compound to the south west of the main Converter Station compound. The separate location of the Telecommunications Buildings is necessary due to the strict access requirements at the Converter Station which restrict third party access for security and health and safety reasons. It also enables the equipment to be more easily accessible for maintenance and management purposes.
- 6.2 If the Telecommunications Buildings were to be located in the Converter Station buildings, or in a building closer to this within the main compound,, the size of these buildings would have needed to be increased to accommodate the equipment to be located within them. However, the provision of access for third parties to the Telecommunications Buildings is required, and therefore the separate location outside of the Converter Station is necessary to avoid the need for access into the main secure compound for this purpose, which would create health and safety and operational risks. Therefore the Telecommunications Buildings, or more so the equipment within them, cannot be provided within the Converter Station buildings.
- 6.3 The two Telecommunications Buildings will be located 10 metres apart within the same compound. This separation is required to maintain the independence of the fibre optic cables in each HVDC circuit, providing greater resilience in the event of equipment failure, fire, adverse weather, vandalism and/or accidents.
- 6.4 For these reasons, the separate location of the Telecommunications Buildings is considered to be necessary and appropriate.

7. OPTICAL REGENERATION STATION (“ORS”)

- 7.1 The ORS are required to maintain the signal strength across the entire route and to ensure the signal strength is adequate between the UK and France Converter Stations.¹³
- 7.2 Based on the design of the Proposed Development and the distance between the Converter Stations in France and the UK, an ORS in some form would be required to support the primary function of the Proposed Development were the commercial use not proposed.
- 7.3 Although there could be an opportunity to use technology that would not require amplification, this would limit the final technology choice and there would be uncertainties regarding the effectiveness of the FOC Infrastructure in those circumstances, particularly whether it could adequately and reliably perform its support function in connection with the primary use of the Converter Station.
- 7.4 As stated above, it is not possible to state precisely what proportion of the size of the ORS is solely attributable to the use of surplus capacity for telecommunication purposes, however it is anticipated that approximately two thirds of the cabinets within the ORS will be available for commercial use. The illustrations in section 5.5 of the updated Design and Access Statement (APP-114 Rev 002) have been provided to assist in understanding the key components that drive the size and design of the ORS.

8. CONCLUSION

- 8.1 By virtue of the wording of the Direction, provided with full knowledge of the matters relevant to the components of the Proposed Development and the intention for the FOC Infrastructure to be used for commercial telecommunications purposes, the proposed

¹² Paragraph 5.5.2.6 of the Design and Access Statement (APP-114 Rev 002).

¹³ Paragraph 5.5.1.1 of the Design and Access Statement (APP-114 Rev 002).



- commercial use of the FOC Infrastructure has been directed to be development for which development is required.
- 8.2 Irrespective of that, this statement sets out how the proposed commercial use of the spare capacity in the FOC Infrastructure meets:
- 8.2.1 the requirements of Section 115 of the Act so as to be capable of constituting associated development for the purpose of the Act;
 - 8.2.2 the core principles provided for at paragraph 5 of the Guidance which the Secretary of State must have regard to when determining what is associated development; and
 - 8.2.3 the statement provided at paragraph 2.9 of Advice Note Thirteen that “*associated development is subordinate to the NSIP, but necessary for the development to operate effectively to its design capacity*”.
- 8.3 Further, this statement has directly addressed the questions posed by the ExA in relation to:
- 8.3.1 the envisaged degree of spare capacity in the cables and the corresponding proportion of associated buildings, cubicles and other infrastructure related to the surplus that would be used for commercial telecommunications purposes, at paragraph 5;
 - 8.3.2 whether the separate Telecommunications Building at the Converter Station site would be necessary if there were no commercial usage of the surplus fibre optic cable capacity, and thus no requirement for access by third parties, at paragraph 6;
 - 8.3.3 whether the ORS at the landfall is needed if the fibre optic cable is required only for interconnector monitoring and not commercial use, at paragraph 7; and
 - 8.3.4 what difference the removal of commercial surplus capacity would make to the building dimensions for the ORS, at paragraphs 5.2, 5.3 and 7.4.
- 8.4 Taking into account the information provided within this statement and the Annex to it, the Applicant is of the view that the commercial use of the FOC Infrastructure is development for which development consent is required, but in any event is development of a type which satisfies the legal requirements for associated development in accordance with Section 115 Act, in addition to also meeting the relevant guidance and advice provided by the Secretary of State and the Planning Inspectorate in relation to associated development.
- 8.5 Should the ExA have any further questions so as to confirm there is no impediment to the commercial use of the FOC Infrastructure being granted development consent, we politely request they make the Applicant aware of these at the earliest opportunity so that this matter may be satisfactorily resolved as early as possible in the examination process.

Herbert Smith Freehills LLP on behalf of the Applicant

6 October 2020



ANNEX 1

ASSOCIATED DEVELOPMENT - CORE PRINCIPLES

1.1 Paragraph 5 of the Guidance confirms that it is for the Secretary of State to decide on a case by case basis whether or not development should be treated as associated development.¹⁴ In making his decision the Secretary of State will take into account the core principles stated below, which we provide our comments against below in relation to the FOC Infrastructure.

Para	Associated Development Principle	How does the FOC Infrastructure meet these guidelines?
5 (i)	The definition of associated development, as set out in paragraph 3 above, requires a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development, or help address its impacts.	<p>The FOC Infrastructure consists of:</p> <ul style="list-style-type: none"> (a) two smaller diameter fibre optic cables which will be installed with each of the HVDC and HVAC Cable Circuit for data transmission. (b) up to two Optical Regeneration Stations ('ORS') to be located at the Landfall at Eastney (within the triangular car park). The ORS will house telecommunication equipment used for optical signal amplification purposes; and (c) up to two Telecommunications Buildings (housing telecommunication equipment) to be located within the Converter Station Area.¹⁵ <p>Whilst the Telecommunications Buildings are required solely in connection with the commercial use, the fibre optic cables and ORS are directly linked to the principal development as they are required for cable control, protection and monitoring purposes.¹⁶ In that respect, they support the primary operation of the Proposed Development. Further, by providing much needed additional fibre optic services the impacts of laying equivalent infrastructure in the future, and the impacts associated with doing so, are avoided. The commercial use of the spare capacity (and thus the Telecommunications Buildings) is ancillary to the</p>

¹⁴ Planning Act 2008: associated development applications for major infrastructure projects (April 2013) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/192681/Planning_Act_2008_-_Guidance_on_associated_development_applications_for_major_infrastructure_projects.pdf

¹⁵ Planning Statement, paragraph 1.3.1.4 (Examination Library ref: APP-108).

¹⁶ See for example: Planning Statement, paragraph 1.3.6.2 (Examination Library ref: APP-108) and Environmental Statement, Volume 1, Chapter 3, Description of the Proposed Development, paragraphs 3.6.3.21, 3.5.3.7 and 3.5.9.6 (Examination Library ref: APP-118).



		primary use of the Proposed Development, being the transfer and conversion of electricity.
5 (ii)	Associated development should not be an aim in itself but should be subordinate to the principal development.	As stated above, the primary purpose of the fibre optic cables is for cable control, protection and monitoring purposes in connection the primary use of the Proposed Development, being the transfer and conversion of electricity. The Proposed Development could not operate reliably without the fibre optic cables and the ORS. Whilst the Telecommunications Buildings are required in connection with the commercial use only, these buildings are subordinate to the principal development. Considering the FOC Infrastructure as a whole, the proposed commercial use of the spare capacity is therefore subordinate to the principal development.
5 (iii)	Development should not be treated as associated development if it is only necessary as a source of additional revenue for the applicant, in order to cross-subsidise the cost of the principal development. This does not mean that the applicant cannot cross-subsidise, but if part of a proposal is only necessary as a means of cross-subsidising the principal development then that part should not be treated as associated development.	From an economic perspective, the Applicant confirms that the Project could proceed and would be viable without the commercial use of the FOC Infrastructure, however AQUIND Interconnector has been designed to operate effectively to its design capacity and to realise fully the benefits which it can provide in the public interest. The revenues associated with the commercial use of the FOC Infrastructure are not necessary as a source of additional revenue in order to cross-subsidise the cost of the Proposed Development and its primary function
5 (iv)	Associated development should be proportionate to the nature and scale of the principal development. However, this core principle should not be read as excluding associated infrastructure development (such as a network connection) that is on a larger scale than is necessary to serve the principal development if that associated infrastructure provides capacity that is likely to be required for another proposed major infrastructure project. When deciding whether it is appropriate for infrastructure which is on a larger scale than is necessary to serve a project to be treated as	Illustrative plans have been submitted as part of the Application showing the layout of the compounds. ¹⁷ The Design and Access Statement has also been updated to explain the key drivers behind the size and layout of the ORS and Telecommunications Buildings. <ul style="list-style-type: none"> Although it is not possible to state precisely the extent to which the commercial use dictates the size of the ORS, it is anticipated that approximately two thirds of the cabinets within the ORS will be available for commercial use meaning the building is larger than would be required were the commercial use not carried on. However as explained in the updated Design and Access Statement, the ORS also

¹⁷ Plan 2.9: Indicative Telecommunications Buildings Elevations and Floor Plans (APP-015) and Plan 2.10: Indicative Optical Regeneration Station(s) Elevations and Floor Plans (APP-016).



<p>associated development, each application will have to be assessed on its own merits. For example, the Secretary of State will have regard to all relevant matters including whether a future application is proposed to be made by the same or related developer as the current application, the degree of physical proximity of the proposed application to the current application, and the time period in which a future application is proposed to be submitted.</p> <p>Footnote to these paragraphs contained in the Guidance provides as follows:</p> <p><i>For example, in the case of an application for an offshore generating station, the Secretary of State may consider it appropriate for a degree of overcapacity to be provided in respect of the associated transmission infrastructure, so that the impacts of one or more other planned future projects which could make use of that infrastructure would be reduced by taking advantage of it. Applications that include elements designed for the basis of overcapacity would be expected to demonstrate the need for the overcapacity as well as fully assessing the environmental effects.</i></p>	<p>contains essential equipment to ensure signal strength is maintained across the cable route.</p> <ul style="list-style-type: none">• The Telecommunications Buildings are required solely in connection with the commercial use, with the management of the spare capacity by third parties requiring appropriate equipment to be installed in the separate Telecommunications Buildings to avoid health and safety and operational risks. <p>Taking all factors into account, these buildings are considered proportionate to the nature and scale of the primary use of the Proposed Development. In the case of the fibre optic cables, overcapacity is in fact unavoidable due to industry standard sizing of fibre optic cables.</p> <p>It is important to recognise that the footnote to this part of the Guidance expressly recognises that overcapacity is appropriate for certain types of infrastructure Projects.</p> <p>In addition, when deciding whether it is appropriate for infrastructure which is on a larger scale than is necessary to serve a project to be treated as associated development, each application must be assessed on its own merits and the Secretary of State must have regard to all relevant matters. Such matters include:</p> <p>(a) Although there is a direct connection between the proposed commercial use and the size of the ORS/Telecommunications Buildings, the need and size can be justified as follows:</p> <ul style="list-style-type: none">○ There is an essential need for fibre optic cables to be installed from the point of view of operation and management of the Proposed Development and they will be installed as part of it in any event.○ The ORS is required in connection with the primary use of the Proposed Development, irrespective of whether the commercial use is proposed (albeit as acknowledged the size may vary).○ The overall size of the Telecommunications Buildings is based on the size of the HVA/C units; the LVAC intake and distribution boards; the LVAC consumer units; the UPS battery charger unit and battery racks;
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		<p>the floor space for the cabinets that accommodate the telecommunications and control equipment and the optical amplifier.¹⁸</p> <ul style="list-style-type: none">o Similarly, the overall size of the ORS compound is driven by the need for parking bays, fuel storage, diesel generator enclosures, HVA/C units, power supply and battery racks, the cabinet layout and flood risk protection measures.¹⁹ <p>(b) The commercial use will assist in the delivery of improved services such as broadband speeds.</p> <p>(c) Fibre connections are becoming increasingly desirable due to their high speeds.</p> <p>(d) Global demand for international bandwidth is increasing as businesses, governments, organisations, and the public continue to rely on more interconnectivity, particularly in the wake of COVID-19 where more distributed working arrangements are expected.</p> <p>(e) Since the capacity for commercial use already exists within the industry standard cables that the Applicant is proposing to install, the FOC Infrastructure has been designed to maximise the future potential now, in order to reduce the need for future development to provide that same infrastructure.</p> <p>(f) Maximising the potential of the fibre optic cable capacity as part of the Proposed Development will therefore avoid the need to install additional fibre optic cables at a later date (thereby reducing the environmental effects, for example by avoiding the need to reopen surfaces and taking advantage of the infrastructure and construction work that is already proposed to take place as part of the HVDC cable installation).</p> <p>(g) The proposed commercial use will provide a benefit in the public interest and the Proposed Development has been designed to be as efficient as possible with this in mind. The need for and benefits of and the national policy support for this are addressed in Section 5 to the Needs and Benefits Report Addendum (Document Reference: 7.7.7).</p>
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¹⁸ Paragraph 5.4.1.4 of the Design and Access Statement (APP-114 Rev 002).

¹⁹ Paragraph 5.5.2.6 of the Design and Access Statement (APP-114 Rev 002).



		<p>(h) The Applicant has obtained code powers for telecommunications infrastructure to branch off from the fibre optic cable proposed as part of the Proposed Development, supporting the position that the commercial use capacity is likely to be required in connection with other telecommunications infrastructure projects in the future. The Ofcom consultation in relation to AQUIND's application for Code powers states:²⁰</p> <ul style="list-style-type: none">○ <i>"As noted above, the Applicant seeks Code powers to facilitate the deployment of the UK Transmission Links, which in conjunction with the Aquind Interconnector Fibre, would be used to supply wholesale products and services to telecoms providers in the UK."</i>○ <i>"We consider that the proposed wholesale services would be used by telecoms providers to provide connections between electronic communications networks in the UK and France. Those connections could be used to support a wide range of retail services which require international connectivity, including broadband internet access, corporate networks and telephony."</i>○ <i>"We expect the proposed full fibre network, facilitated by the deployment of the UK Transmission Links in conjunction with the Aquind Interconnector Fibre, to improve the quality of services available and help meet the growing needs of consumers and businesses for connectivity. As the Applicant is a new provider, we expect the provision of its proposed network to improve competition and customer choice."</i>○ <i>"We consider that the network planned by the Applicant would benefit the public."</i>○ <i>"Network sharing will help to minimise the unnecessary proliferation of electronic communications apparatus, bringing environmental benefits aligned with long standing Government objectives in the public interest. We consider that sharing of the use of apparatus would be encouraged by granting the Applicant Code powers."</i>
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²⁰ Ofcom: Proposal to apply Code powers to Aquind Limited (21 January 2020), paragraphs 3.11 to 3.14 and 3.18 – 3.19 https://www.ofcom.org.uk/data/assets/pdf_file/0040/189787/code-powers-aquind-limited.pdf.



- 1.2 In addition to the above stated principles, paragraph 6 of the Guidance also states that it is expected that associated development will, in most cases, be **typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project**, for example (where consistent with the core principles above), a grid connection for a commercial power station. Our comments in relation to this paragraph and the FOC Infrastructure are as follows:
 - 1.2.1 As stated above, the fibre optic cables and ORS play an integral role and are an essential component of the Project, required for cable control, protection, monitoring and communication purposes. These components of the FOC Infrastructure are typical components for a project of the nature of the Project, being relevant and necessary to support the delivery of the Proposed Development and the Project.
 - 1.2.2 The Telecommunications Buildings, whilst not necessary to support the operation of the primary function of the Project, are considered to be typical development to be brought forward alongside the relevant type of principal development, being the Interconnector, so as to realise the full benefits which the infrastructure of which it must be comprised may provide.
- 1.3 Annexes A and B to the Guidance also list out examples of the type of development that may qualify as associated development. The Guidance specifically recognises that the examples listed in Annex A and B are not intended to be exhaustive and states that technological progress may mean that some types of associated development could not have been foreseen when the Guidance was written in 2008. The examples listed in Annex A and B that could be seen to be relevant to the FOC Infrastructure include:
 - 1.3.1 Connections to telecommunications networks; and
 - 1.3.2 Control buildings.

