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Our Ref: EN020022

20 January 2022

Dear Ms Rich,

PLANNING ACT 2008

APPLICATION FOR THE AQUIND INTERCONNECTOR ORDER

1. Introduction

- 1.1. I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to advise you that consideration has been given to the report dated 8 June 2021 of the Examining Authority (“the ExA”), comprising three examining Inspectors, Andrew Mahon, Stephen Roscoe, and David Wallis, who conducted an examination into the application (“the Application”) submitted on 14 November 2019 by AQUIND Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 for the AQUIND Interconnector project. The AQUIND Interconnector project as a whole, is a bi-directional subsea electrical power transmission link (an interconnector) between the UK and France. The proposed development for which development consent is sought lies wholly within England, waters adjacent to England out to the seaward limits of the territorial sea, and the UK Exclusive Economic Zone (“EEZ”).
- 1.2. The Application was accepted for examination on 12 December 2019. The examination began on 8 September 2020 and concluded on 8 March 2021. The Secretary of State received the report containing the ExA’s conclusions and recommendation on 8 June 2021.

- 1.3. A total of 199 Relevant Representations (as defined in the Planning Act 2008) were received from statutory and non-statutory authorities, local councils, local MPs, local organisations and local residents. In addition, the Secretary of State notes that following Deadline 1, a further 779 letters were exceptionally accepted by the ExA to enable their views to be heard during the examination.
- 1.4. The Secretary of State notes that the examination has been conducted by the ExA in the challenging times of the COVID-19 pandemic when the Government introduced public health measures including a ban on large public meetings and a direction for people to stay at home as much as possible. He notes that the Planning Inspectorate and the ExA made best endeavours to ensure that no person or party was disadvantaged in participating in the examination process that was held virtually through videoconferencing and teleconferencing, and that the ExA's case team had run support and familiarisation sessions to ensure participation would be manageable, useful, fair and inclusive for all participants.
- 1.5. The principal matters considered by the ExA, as set out in its Report are:
- the principle of and need for the proposed development (including the fibre-optic cables);
 - consideration of alternatives;
 - traffic, highways, and onshore transport;
 - air quality;
 - noise, vibration, and electromagnetic fields ("EMF");
 - the local community and socio-economic matters;
 - the marine environment;
 - shipping and navigation;
 - onshore biodiversity and nature conservation;
 - design;
 - landscape and views (including tranquillity);
 - trees;
 - cultural heritage and the historic environment;
 - the onshore water environment;
 - soils and land use;
 - ground conditions and contamination; and
 - findings and conclusions in relation to Habitats Regulations Assessment
- 1.6. Following receipt of the ExA's Report, the Secretary of State requested further information from the Applicant on 13 July 2021 in respect of: mitigation and financial contribution proposals for sports grounds, playing pitches and recreational facilities in Portsmouth and the Victorious Festival, the commercial use of the surplus capacity in the fibre optic cable, micro-siting of the converter station at Lovedean and protective provisions. A response was requested by 27 July 2021 and was subsequently published on the Planning Inspectorate website on 28 July 2021. Interested Parties were invited to provide their comments on the responses received by 12 August 2021. The Secretary of State decided to issue a second request to the Applicant for further information on 2 September 2021 which requested clarification and justification for the

compulsory purchase powers sought for the plots of land associated with the proposed optical regeneration site and land associated with the commercial telecommunications buildings should those elements of the Application related to commercial telecommunications use be excluded from the Order. A response was requested by 16 September 2021. The response was subsequently published on the Planning Inspectorate website on 17 September 2021 and Interested Parties were invited to provide their comments on the responses received by 1 October 2021. In light of this second request for further information, the Secretary of State made the decision to extend the statutory deadline for taking the decision by six weeks, from 8 September 2021 to 21 October 2021. A statement confirming the new deadline for a decision was made to the House of Commons and House of Lords on 14 September 2021 in accordance with section 107(7) of the Planning Act 2008.

- 1.7. The decision deadline was further extended from 21 October 2021 to 21 January 2022 to ensure that the Secretary of State had sufficient time to consider all information relevant to the Application, and to allow time for a further request for information. The third request for information was issued on 4 November 2021 which sought information on the Applicant's consideration of alternatives, with reference to the substation at Mannington. The request also sought information related to the North Portsea Island Coastal Defence Scheme, the updates to the National Planning Policy Framework related to flood risk, and the location of the converter station at Lovedean. The Applicant provided its response on 18 November 2021 and the Secretary of State invited comments on 1 December 2021 from Interested Parties on this response and on certain topics from Portsmouth City Council, Coastal Partners, and National Grid Electricity Transmission with a deadline for response of 15 December 2021.
- 1.8. The Order as applied for, would grant development consent for the construction, operation, maintenance and decommissioning of a linear 2,000 megawatt ("MW") bi-directional subsea interconnector from the boundary of the EEZ in the English Channel to Lovedean in Hampshire, via a landfall at Eastney on Portsea Island, Portsmouth, together with a connection to an existing substation and associated infrastructure ("the proposed development"). The onshore route passes through the administrative areas of Portsmouth City Council, Havant Borough Council, East Hampshire District Council and Winchester City Council. The northern end of the route and the proposed converter station are adjacent to, but outside, the southern administrative boundary of the South Downs National Park Authority. From the UK EEZ boundary to Normandy, France, the remainder of the proposed development is subject to equivalent French planning consents. At the acceptance stage of the Planning Act process, the proposed development was a 'project of common interest' under the European Union TEN-E Regulation. After the UK exited the European Union the project lost its project of common interest status and would therefore no longer need to be assessed against the TEN-E Regulation.
- 1.9. As applied for, the AQUIND Interconnector would comprise:

- high voltage direct current (“HVDC”) marine cables from the boundary of the UK EEZ to a landfall in the UK at Eastney in Portsmouth;
- jointing of the HVDC marine cables and HVDC onshore cables at the landfall;
- HVDC onshore cables from the landfall to Lovedean;
- a converter station at Lovedean, with a new access road of up to 1.2km;
- an extension to the existing substation at Lovedean;
- high voltage alternating current (“HVAC”) onshore cables and associated infrastructure connecting the Converter Station to the UK grid at the Lovedean Substation;
- fibre-optic cables installed with the HVDC and HVAC cables;
- two optical regeneration stations for signal amplification at the landfall and two telecommunications buildings at the proposed converter station site;
- various landscape and temporary construction and access works.

1.10. Powers of compulsory acquisition over land and new rights over land, are also sought by the Applicant to support the delivery of the proposed development. Subsequent to the Application being made, the Applicant made three changes to the proposed development relating to the inclusion of additional land within the Order limits and further compulsory acquisition matters. Two changes were treated by the ExA as ‘material’ and the third as ‘non-material’. In addition, other changes were made to respond to matters as they emerged during the examination, however the ExA was satisfied that the proposed changes to the Application would not be materially different from the proposed development that was applied for.

1.11. Published alongside this letter on the Planning Inspectorate’s National Infrastructure website is a copy of the ExA’s Report of Findings, Conclusions and Recommendation to the Secretary of State (“the ExA Report”). The main features of the development proposals, as applied for, and site are set out in section 2 of the ExA’s Report. The ExA’s findings are set out in sections 5 - 8 of the ExA Report, and the case for development consent and the ExA’s conclusions on the terms of the Order are set out at sections 9 and 11 respectively.

2. Summary of the ExA Report and Recommendation

2.1. The ExA’s recommendation in section 12.3 (page 367 of the ExA Report) is as follows:

“12.3.1 For all of the above reasons and in light of its conclusions on all important and relevant matters set out in this Report, the ExA recommends that the Secretary of State should make the Order in the form attached at Appendix C to this Report, subject to the recommendations in section 10.10 and modified in accordance with the recommended changes at section 11.9 of this Report.”

3. Summary of the Secretary of State's Decision

- 3.1. Section 104(3) of the Planning Act 2008 requires the Secretary of State to decide the Application in accordance with any relevant National Policy Statement ("NPS"). **The Secretary of State has carefully considered the ExA's Report and all other material considerations, including further representations received after the close of the ExA's examination ("the post-examination representations"), and has decided, in accordance with Section 104(3), to refuse development consent.** All numbered references, unless otherwise stated, are to paragraphs of the ExA's Report ["ER *.*.*"].
- 3.2. This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116(1)(b) of the Planning Act 2008 and the decision notice for the purposes of regulation 30 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the 2017 EIA Regulations").
- 3.3. Section 104(2) requires the Secretary of State, in deciding an application, to have regard to the any relevant NPS. Subsection (3) requires that the Secretary of State must decide the application in accordance with the relevant NPS except to the extent that one or more of subsections (4) to (8) applies.
- 3.4. In relation to the Application, the Secretary of State has had regard to the Overarching National Policy Statement for Energy ("NPS EN-1"). The Secretary of State has made his decision on the basis that making the Order would not be in accordance with his obligations under the Planning Act 2008.
- 3.5. The Secretary of State notes that the ExA also considered at length the question of the planning balance under section 104(7) of the Planning Act 2008 i.e. whether the need for the proposed Development outweighed the planning harms inherent in the scheme and concluded that this was the case. The Secretary of State notes that the ExA identified planning harms associated with the scheme, which include less than substantial harm to the Fort Cumberland Scheduled Monument and the Grade II listed cottage known as Scotland, as well as impacts on tourism receptors, sports pitches, and the Victorious Festival. The compulsory purchase powers sought by the Applicant would also result in private losses and could cause delay to the North Portsea Island Coastal Defence Scheme due to the overlapping of construction compound areas between this scheme and the proposed Development. The proposed development also has other potential adverse effects which are summarised in the ExA's report in the consideration of the planning balance [ER 9.3]. The Secretary of State agrees these adverse effects weigh against the proposed development.
- 3.6. The Secretary of State has had regard to the case law in relation to the consideration of alternatives and is of the view that the alternatives, and in particular the Mannington substation initially considered by the Applicant, is an important and relevant consideration under s104(2)(d) of the Planning Act

2008. Given the adverse effects arising from the project and which have been noted above, and in particular the combination of impacts that result from the proposed landfall in an urban location, the Secretary of State considers that in the circumstances of this particular application it is exceptionally necessary to consider whether sufficient consideration has been given to whether there are more appropriate alternatives to the proposed route. In particular, consideration needs to be given to the alternative substations initially identified by the Applicant (and therefore alternative onshore routes avoiding the above harms) and whether these were adequately considered to determine whether the potential harms caused by the development from the selected route could have been avoided or reduced. In this regard the Secretary of State disagrees with the ExA's conclusion in relation to the consideration of alternatives and, as set out below, considers that there was a failure to adequately consider the original alternatives identified by the Applicant, such that it is not possible to conclude that the need for and benefits of the proposed Development would outweigh its impacts.

4. The Secretary of State's Consideration of the Application

- 4.1. The Secretary of State has considered the ExA's Report and relevant representations received after the Examination in response to his consultation. The Secretary of State disagrees with the conclusions and recommendations of the ExA's report regarding the consideration of alternatives, and the reasons for the Secretary of State's decision are set out below.

Consideration of Alternatives

- 4.2. The policy relating to the consideration of alternatives is set out in section 4.4 of EN-1. Paragraph 4.4.3 states that the Secretary of State *'should be guided in considering alternative proposals by whether there is a realistic prospect of the alternative delivering the same infrastructure capacity (including energy security and climate change benefits) in the same timescale as the proposed development.'* Paragraph 4.4.3 goes on to state that *'it is intended that potential alternatives to a proposed development should, wherever possible, be identified before an application is made to the [Secretary of State] in respect of it (so as to allow appropriate consultation and the development of a suitable evidence base in relation to any alternatives which are particularly relevant).'*
- 4.3. The ExA notes that several matters arose during the examination relating to pre-application alternatives for locating the converter station, the choice of landfall and the cable routing between these two points. There also remained at the close of the examination, two alternatives for the micro-siting of the converter station. The ExA also notes that [ER 5.4.6] the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 require the Environmental Statement to include a description of the reasonable alternatives studied by an applicant.
- 4.4. The Applicant considered the question of alternatives in Chapter 2 of the Environmental Statement that was submitted to the Planning Inspectorate as

part of its application (the “Environmental Statement”). With regard to the substation, the Applicant’s position was that ten substations were initially identified on the 400kV transmission network as possible sites but seven discounted because of limited thermal capacity, technical capability to extend them or difficulties with onshore and offshore cable routing. Of the three remaining options that were considered further, the Lovedean Substation was selected on the basis that it was the most efficient, coordinated and economical. The Applicant considered that the converter station for the interconnector should also be close to the substation. The ExA notes [ER 5.4.10] that, at the close of examination, two options for the micro-siting of the converter station remained. In terms of the location for the landfall site, twenty-nine potential sites were identified and six within 35km of the Lovedean substation were considered in greater detail. The Applicant’s view was that the beach at Eastney was the most appropriate, but that East Wittering and Hayling Island remained feasible options. In terms of the cable route, the Applicant decided to underground the onshore cable at an early stage, and consequently East Wittering and Hayling Island were discounted due to technical difficulties and environmental effects. Of the routes to Eastney following studies and feedback from Portsmouth City Council, route ‘3D’ was deemed feasible, and was the shortest and most economical, although it was recognised that the potential environmental constraints required careful consideration.

- 4.5. The ExA notes [ER 5.4.15] that several Relevant Representations were received from statutory consultees and members of the public, raising the Applicant’s assessment of alternatives. In response to those Relevant Representations, the Applicant provided a supplementary alternatives chapter to its Environmental Statement, in which it set out the further detail regarding reasoning on the technical, physical and environmental constraints that informed the selection of the grid connection point and the onshore cable corridor route, as well as the discounting of a Hayling Island option [ER 5.4.16]. With regard to the location of the substation at Lovedean, the Secretary of State notes that National Grid Electricity System Operator’s (“NG ESO”) submitted a representation to the examination confirming the reasons behind discounting the other substations [ER 5.4.24].
- 4.6. The Local Impact Reports submitted by the relevant local authorities were also considered by the ExA [ER 5.4.17 et seq]. Havant Borough Council, Hampshire County Council, and Winchester Council expressed similar concerns regarding the availability of a countryside route rather than one along the public highway, and the potential impact on local features, developments and planned road improvement schemes. Portsmouth City Council also suggested that alternative routes had been given inadequate consideration. However, the ExA was satisfied that [ER 5.4.29], in the context of the requirement for the consideration of alternatives set out in NPS EN-1, that the Applicant has demonstrated a considered approach to the location of the converter station, onshore cable corridor and landfall and provided sufficient detail as to routing options.
- 4.7. The ExA concluded [ER 5.4.33] that the Applicant’s consideration of alternatives had provided adequate information to describe and explain its

assessment of alternatives in relation to the social and environmental effects, technical feasibility and costs, and that the Applicant's consideration of alternatives was sound, with adequate information provided on a range of alternative routes and locations, and that the requirements of NPS EN-1 and the Environmental Impact Assessment ("EIA") Regulations had been met. It also indicated that there are no policy or legal requirements that led the ExA to recommend that consent be refused for the proposed development in favour of another alternative.

- 4.8. The Secretary of State disagrees with the ExA's conclusion on this matter and considers that in this instance insufficient consideration was given by the Applicant to the alternative connection point at the Mannington substation. The Secretary of State notes that the document *Environmental Statement Addendum – Appendix 3 – Supplementary Alternatives Chapter*¹ states that ten existing substations were evaluated as part of a feasibility study carried out by National Grid Electricity Transmission ("NGET"). The Secretary of State understands that the Applicant submitted a request to NGET for a Feasibility Study in December 2014, and that the final version of the Feasibility Study was issued in January 2016. The Mannington Substation was assessed as part of this Feasibility Study. The Feasibility Study notes that the substation was not considered to be suitable for the proposed connection because, at the time, there was already a connection agreement in place for the proposed Navitus Bay offshore wind farm. The Addendum notes that the Navitus Bay offshore wind farm project was subsequently abandoned but the grid connection agreement remained in place "for some time following the feasibility study" during which "significant progress" was made on the AQUIND interconnector project meaning that it was not reasonable, having regard to costs and delay, for the Applicant to re-consider the potential for a connection at Mannington at that later stage.
- 4.9. The decision to refuse development consent for the Navitus Bay development was taken by the Department of Energy and Climate Change on 11 September 2015. The Secretary of State requested information from the Applicant on 4 November 2021 in respect of how long the connection agreement for the Navitus Bay development remained in place following that refusal, what enquiries the Applicant made in respect of the potential use of the Mannington substation following the refusal of the Navitus Bay project, and at what stage the development of the proposed AQUIND Interconnector project was when the connection agreement ended.
- 4.10. The Applicant submitted their response to this request on 18 November 2021. At paragraph 2.6 of this response, the Applicant noted that the letter submitted by NG ESO on 25 January 2021 stated that "Options to the West of Lovedean required all or nearly all the same network reinforcements as a connection at Lovedean plus additional reinforcements to either get the power to Lovedean or reinforcements to the west to Exeter substation and as far northwards as

¹ <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN020022/EN020022-001488-7.8.1.3%20ES%20Addendum%20-%20Appendix%203%20Supplementary%20Alternatives%20Chapter.pdf>

Minety", and that "these sites would likely have resulted in more overall reinforcements, which would therefore lead to more environmental impact, and increased costs to the GB consumer". At paragraph 2.7 of its response, the Applicant noted that in addition to these reasons from NG ESO as to why Mannington Substation was not taken forward for systems analysis, the shared connection point with the 970MW Navitus Bay offshore windfarm raised technical concerns around the suitability of Mannington Substation as well.

- 4.11. The Applicant advises that the connection agreement for the Navitus Bay offshore windfarm at Mannington Substation remained for some time after the Feasibility Study request in December 2014. The Applicant goes on to state at paragraph 2.14 of their response that, following the refusal of development consent for the Navitus Bay offshore wind farm, the Applicant made enquiries with NGET on 14 October 2015 regarding the impact of that refusal on the Feasibility Study which was being undertaken and known to be near completion. However, the Applicant has not been able to locate a response to this enquiry, though the Applicant notes that it was understood that the refusal would have been subject to the six-week legal challenge period provided for by section 118 of the Planning Act 2008 and as such the connection agreement for Navitus Bay offshore wind farm would have remained in place. The Applicant was aware by January 2016 that the connection agreement was no longer in place (paragraph 2.15 of their response). The Application was submitted on 19 November 2019.
- 4.12. On 1 December 2021, the Secretary of State invited Interested Parties to comment on the Applicant's response to his request for information of 4 November 2021. Various Interested Parties commented on the Applicant's response regarding Navitus Bay offshore wind farm and the consideration of alternatives. Portsmouth City Council noted that the Applicant's response did not answer the Secretary of State's question as to how long the connection agreement for the Navitus Bay offshore wind farm development remained in place following the refusal for development consent. Portsmouth City Council indicated they were surprised that a single, unresolved enquiry in October 2015 by the Applicant is considered by them to be an adequate investigation of this matter. Portsmouth City Council's view is that reasonable approaches to NGET and/or the promoters of the Navitus Bay offshore wind farm application could have yielded responses in a timely manner which could have then been considered in the Feasibility Study report. Portsmouth City Council do not consider that the Applicant's response explains its failure to deal with this matter and concludes that the matter was either deliberately overlooked, or that the Applicant had closed its mind. Portsmouth City Council also note that the Applicant does not make any assessment of the private loss to be suffered in consequence of the different options in either the Consideration of Alternatives Chapter 2 of the Environmental Statement, or in the Supplementary Alternatives Chapter. Portsmouth City Council state that as a result, the Secretary of State will not be in a position to properly determine either that the route option(s) selected represents the most equitable balance of public benefit versus private loss.

- 4.13. Winchester City Council also commented on this matter. They note that when the Navitus Bay offshore wind farm scheme was refused, the Applicant did not re-consider the availability of the connection point at Mannington Substation, and that the Applicant has not provided clear detail beyond the statement that the re-introduction of Mannington Substation into the connection review process would have resulted in lost time and expenditure. Winchester City Council suggest that the developer has to accept that when initiating a project with a long lead in time, it carries the inherent risk that some aspect that feeds into site selection or another part of the process might change over time, and that this may require a developer to go back and repeat or reshape the terms of reference before any work is undertaken. Winchester City Council also disagree with the Applicant's view that a connection at Mannington Substation would have resulted in an impact on the Jurassic coastline, as the Navitus Bay offshore wind farm project was not making landfall on the relevant section of coastline, but rather east of Christchurch, and Winchester City Council consider that the proposed AQUIND Interconnector project would have made landfall in the same area had Mannington Substation been an option. Winchester City Council also suggested that it would be appropriate to seek views from NGET to provide a clear picture of how the process was undertaken, including any benchmarks the process contains. Winchester City Council consider that the views of NGET are particularly relevant, as they are likely to have been more aware of the situation and timeline when Navitus Bay offshore wind farm was refused. Winchester City Council therefore suggested that the Secretary of State ask NGET for an outline of the key stages and the timeline that the joint exercise would have followed together with an explanation for the lack of a reply to the correspondence the Applicant says they tried to initiate on this matter. The Secretary of State considers that the Applicant has access to any relevant information relating to discussions between the Applicant and NGET, and therefore considers that the Applicant would have submitted all available and relevant information on this matter and that there is therefore no requirement to seek views from NGET. The Applicant has had the opportunity to address the issue of this alternative and could have sought any information it required from NGET. It is the Secretary of State's view that it is not appropriate in the circumstances to further delay the decision for this purpose.
- 4.14. Hampshire County Council submitted a late response to the invitation for comments on 16 December 2021. Hampshire County Council's response also refuted the Applicant's claim that a connection at Mannington Substation would have resulted in impacts on the Jurassic coastline for the same reasons as Winchester County Council. Hampshire County Council's view is that limited weight can be given to the Applicant's argument that a connection at Mannington Substation was not preferable to Lovedean without further clarification from the Applicant as to whether such reinforcement was needed with consent for Navitus Bay offshore wind farm being refused.
- 4.15. The Secretary of State agrees with the views of Interested Parties that the Applicant should have undertaken further work to assess the feasibility of the Mannington Substation as the grid connection point once it became aware of the consent refusal for the Navitus Bay offshore wind farm project. Further

consideration of the connection at Mannington Substation could provide an alternative to avoid the material harms caused by the Application route.

- 4.16. The Secretary of State considers that at the point in the timeline (i.e. 11 September 2015) when consent for the Navitus Bay offshore wind farm was refused), that the Mannington Substation option should have been adequately explored. The Applicant states that it raised its enquiries with NGET around the impact of the refusal for Navitus Bay offshore wind farm on the Feasibility Study on 14 October 2015. At this point in time, the Feasibility Study had not yet been completed, and the six-week legal challenge period for Navitus Bay offshore wind farm was nine days away from expiry on 23 October 2015. The Secretary of State also notes that the Applicant's inability to provide a response to the enquiries it raised with NGET on 14 October 2015 regarding the impact on the Feasibility Study, means that the Secretary of State is unable to review in full the discussions that took place regarding this matter at the time.
- 4.17. The Secretary of State notes the Applicant's view that it was not reasonable or necessary to further consider Mannington Substation as the grid connection point for the proposed development following the completion of the Feasibility Study. However, the Secretary of State considers that the Applicant should have pursued further the option to include Mannington Substation in the Feasibility Study given that the Applicant was aware that consent had been refused for the Navitus Bay offshore wind farm. The Secretary of State notes that the Applicant understood the potential importance of the refusal of consent for Navitus Bay offshore wind farm at the time, as it raised queries with NGET regarding the impact of this on the Feasibility Study. The Secretary of State considers that the Applicant has provided insufficient detail as to why further investigation into Mannington Substation was not undertaken. Whilst the Secretary of State understands that this could have resulted in further work for the Applicant, and the Applicant may not have been able to progress with regulatory and other submissions until that process was complete, the Secretary of State considers that the potential adverse effects of the proposed development (as identified by the ExA) necessitate the adequate consideration of those alternatives that the Applicant had identified. The Secretary of State also notes that the refusal of Navitus Bay was in September 2015 and the Application would not be made until over four years later.
- 4.18. As noted above, NPS EN-1 states that potential alternatives should be identified wherever possible before an application is made to the Secretary of State so as to allow appropriate consultation and the development of a suitable evidence base in relation to any alternatives which are particularly relevant. However, the Secretary of State disagrees with the ExA's conclusion on this matter and considers that the failure to adequately consider the alternative of the Mannington Substation as a connection point is a material consideration. The Secretary of State considers that this weighs significantly against the proposed Development as he is unable to conclude that the proposed route is justified.
- 4.19. The Secretary of State also acknowledges the implications of the Applicant's consideration of alternatives and the compulsory acquisition powers it seeks as part of the Application. Blake Morgan LLP submitted comments to the Secretary

of State on behalf of landowners the Carpenters on 15 December 2021 which raised the concerns around the possibility of an alternative connection point at Mannington Substation and the implications this has for the compulsory acquisition of the Carpenters' land. In their comments of 15 December 2021, Portsmouth City Council noted its concerns that the Applicant had not made any assessment of the private loss to be suffered in consequence of the different options available and had not weighed that loss against the public benefits of the proposed development.

- 4.20. The Secretary of State acknowledges that alternatives are material in exceptional circumstances only. The Secretary of State considers that this test is met given the combination of adverse impacts from the proposed route through a very densely populated urban area. He considers that the change in circumstances relating to the Mannington Substation was known by the Applicant at a sufficiently early stage of the Feasibility Study, and that the change was of sufficient importance and scale. Therefore, further investigation should have been undertaken to ensure that sufficient evidence was available in its application documents to support the preferred choice of route taken forward by the Applicant.
- 4.21. The Secretary of State acknowledges that if the Applicant had investigated a connection at Mannington Substation further, it may have concluded that it was not a feasible option. However, in the absence of sufficient evidence on this matter, the Secretary of State cannot grant consent for the AQUIND Interconnector project taking into account the adverse effects identified by the ExA and the possibility that a connection point at Mannington Substation might potentially have resulted in less adverse impact.

5. Submissions to the Secretary of State after Receipt of the ExA's Report

- 5.1 The Secretary of State received late representations from a significant number of individuals following the close of the examination period. The Secretary of State has considered these representations and has taken the view that these late representations do not materially add to the information that was already available to him through the ExA's examination and report.
- 5.2 Penny Mordaunt MP wrote to the Secretary of State on 5 May 2021 expressing concerns about the AQUIND Interconnector project's impact on the City of Portsmouth, including on the traffic and road network, and the local environment. Penny Mordaunt's letter also raised concerns regarding the UK's energy resilience and reliance on France for energy. Penny Mordaunt MP delivered a petition to the Secretary of State on 10 June 2021 in objection to the proposed development, and also wrote to the Secretary of State on 12 August 2021, in response to the Secretary of State's invitation for comments on the Applicant's response to the first request for further information.
- 5.3 Stephen Morgan MP submitted a letter on 22 June 2021 objecting to the proposed development. On 6 July 2021, Stephen Morgan MP asked an Oral Parliamentary Question regarding the project, in which he requested that the Secretary of State reject the proposals. Stephen Morgan MP also secured a

Westminster Hall Debate on the AQUIND Interconnector project on 13 July 2021. Stephen Morgan MP submitted a further letter to the Secretary of State regarding the AQUIND Interconnector project on 14 July 2021, in which he requested that all correspondence with AQUIND Limited be published immediately, and also requested an independent review of the proposed development. On 14 September 2021, Stephen Morgan MP presented a petition with over 6,200 signatures to the House of Commons objecting to the proposed development. On 17 September 2021, Stephen Morgan MP wrote to the Secretary of State noting the local opposition to the proposed development and the number of signatures on the petition and stated that the project should be stopped.

- 5.4 The Secretary of State has considered the representations made by Penny Mordaunt MP and Stephen Morgan MP and the petitions which they presented. So far as these relate to planning matters, the issues raised were covered by the examination and the Secretary of State has therefore taken them into account during his consideration of the ExA's report.
- 5.5 Catherine West MP submitted a letter to the Secretary of State on 6 July 2021 that, amongst other concerns, raised a question regarding the number of green jobs provided by the proposed project. In taking his decision on the proposed development, the Secretary of State has considered the socio-economic effects of the proposed development, including job creation, along with all other matters relevant to planning.
- 5.6 On 28 July 2021, Flick Drummond MP submitted a representation to the Secretary of State that set out concerns regarding the route of the cable, the siting and construction of the converter building, and the disruption associated with the proposed development including the environmental impact. The Secretary of State notes that Flick Drummond MP submitted comments to the Planning Inspectorate whilst the Application was being examined. The Secretary of State considers that the matters raised by Flick Drummond MP were covered by the examination, and the Secretary of State has given them consideration in taking his decision on the proposed development.

6. Findings and Conclusions in Relation to Habitats Regulations Assessment

- 6.1 The Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations") and the Conservation of Offshore Marine Habitats and Species Regulations 2017 ("the Offshore Habitats Regulations") require the Secretary of State to consider whether the proposed Development would be likely, either alone or in combination with other plans and projects, to have an adverse effect on the integrity of any site(s) forming part of the UK's national site network as defined in the Habitats Regulations and the Offshore Habitats Regulations (collectively referred to in this document as a "protected site"). If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State pursuant to regulation 63(1) of the Habitats Regulations and regulation 28(1) of the Offshore Habitats Regulations

to address potential adverse effects on site integrity. The Secretary of State may only agree to the project if he has ascertained that it will not adversely affect the integrity of a protected site. This process is collectively known as a Habitats Regulations Assessment.

- 6.2 The preparation of the Habitats Regulations Assessment (“HRA”) that is published alongside this decision letter was prepared by environmental specialists in BEIS. The HRA concludes that a likely significant effect cannot be ruled out in respect of 13 protected sites when considered alone or in-combination with other plans and projects [ER 8.4.7]. It was, then, necessary to consider whether the proposed development, either alone or in-combination, would have an adverse effect on the integrity of those sites. An Appropriate Assessment was, therefore, undertaken by the Secretary of State to determine whether an adverse effect on the protected sites could be ruled out in light of the sites’ conservation objectives.
- 6.3 The Applicant’s conclusion that adverse effects on integrity (“AEoI”) could be excluded from all protected sites was disputed by Natural England in relation to the dark-bellied brent goose feature of the Chichester and Langstone Harbours Special Protected Area (“SPA”) and Ramsar site, and Portsmouth Harbour SPA and Ramsar site. To avoid an AEoI on the sites, the Applicant proposed implementation of winter working principles and screening around the perimeter of horizontal direct drilling (“HDD”) compounds as described in the Onshore Outline Construction Environment Management Plan. Natural England then confirmed their agreement that there would be no AEoI on the protected sites.
- 6.4 The overall conclusion of the assessment is that there would be no AEoI of any protected sites, either alone or in-combination with other plans and projects. This conclusion of no AEoI of the protected sites is based on the implementation of the proposed mitigation measures, including but not limited to standard best practice in relation to waste management and spill response, winter working principles during construction, the use of HDD under Langstone Harbour and part of Milton Common, and the development of a Marine Pollution Contingency Plan [ER 8.4.10]. The proposed mitigation measures related to the onshore environment are secured in requirement 15 of the Order in relation to the Construction Environmental Management Plan, and the marine provisions are secured in the Deemed Marine Licence. The Secretary of State does not, therefore, consider that there would be any breach of his duty under the Habitats Regulations and the Offshore Habitats Regulations in the event he was to grant development consent for AQUIND Interconnector.
- 6.5 The Secretary of State notes that the ExA also concluded that the proposed development, subject to the inclusion of controls set out in the Recommended Order and the final agreement as provided from Natural England and the Joint Nature Conservation Committee, would not have any AEoI on any protected sites. The Secretary of State finds no reason to disagree with the ExA’s conclusions on this matter.

7. The Secretary of State's Consideration of the Planning Balance

- 7.1 Section 104 of the Planning Act 2008 set out the procedures to be followed by the Secretary of State in determining applications for development consent where National Policy Statements have effect. The Secretary of State has to have regard to a range of policy considerations including the relevant National Policy Statements and development plans and local impact reports prepared by local planning authorities in reaching a decision. For applications determined under section 104, the primary consideration is the policy set out in the National Policy Statements.
- 7.2 The ExA has identified [ER 9.3.4 et seq] that adverse impacts arising from the proposed development include significant though temporary effects on highways conditions and onshore transport during the construction phase, temporary noise and vibration affecting some residents, and a loss of access to formal sports facilities along the cable route. There would also be short and long-term adverse landscape and visual effects, including some harm to the South Downs National Park, as well as harm to the significance of the Grade II listed Cottage known as Scotland, and the Fort Cumberland scheduled monument. However, the ExA is satisfied [ER 9.3.10] that the adverse effects would be mitigated as far as reasonably practicable in respect of the Application route. The Secretary of State does not disagree but a significant number of adverse effects remain. These remaining impacts, in the view of the Secretary of State, make the consideration of alternatives exceptionally relevant to the Secretary of State's decision in this case.
- 7.3 In addition to these impacts identified by the ExA, the Secretary of State considers that the Applicant's failure to adequately assess the feasibility of Mannington Substation as an alternative connection point, means that the planning balance weighs against the Order being made, given the proposed development's obvious impacts on the City of Portsmouth and the possibility that a connection at Mannington Substation might have resulted in less adverse impact.
- 7.4 Although the ExA found that the benefits of the proposed development would outweigh its adverse effects, the Secretary of State disagrees with this conclusion, as the alternative of a connection to the Mannington Substation has not been properly assessed and therefore he cannot conclude that the proposed route has been justified and determine that the need for and benefits of the proposed Development would outweigh its impacts.

8. Other Matters

Section 35 Direction and Associated Development

- 8.1 The ExA considered the principle of and need for the proposed commercial telecommunications development in its report. The ExA took the view that although the section 35 direction had proposed that surplus capacity in the fibre optic cable should be used for commercial telecommunications purpose as

associated development, the section 35 direction itself had overridden this by including use of the surplus capacity as part of the development and that this included buildings associated to this use as part of the development for which development consent is required [ER 5.3.45]. As a result, this part of the proposed development was not associated development within the meaning of section 115(2) of the Planning Act 2008 and submissions by various parties that they failed to meet the tests to be considered as associated development were not considered as relevant by the ExA.

- 8.2 The Secretary of State has considered carefully the views of the ExA and the representations put forward by the Applicant. Section 35 provides a limited power to the Secretary of State to direct development to be treated as development for which development consent is required where it meets certain conditions, including: that the development is in the field of energy; the Secretary of State thinks the development proposed is nationally significant; and it is in England or waters adjacent to England. The Secretary of State is of the view that nothing in section 35 permits a direction to constrain, determine or oust the question of whether something is associated development or not. At the section 35 direction stage, the precise parameters of every aspect of the proposed project were not known, and it was therefore not possible for the Secretary of State to take a decision as to whether aspects of the proposed development fell to be considered as part of the 'main' development or associated development under sections 115(1)(a) or 115(1)(b) respectively. In addition, the Secretary of State is of the view that a section 35 direction cannot be construed to direct that development which does not meet the necessary section 35 criteria itself (the telecommunications equipment does not fall within the included 'fields' of development) be treated as development for which development consent is required. This does not mean, however, that such development cannot be associated development and thus be consented through a development consent order.
- 8.3 The Secretary of State therefore disagrees with the ExA's view that all elements of the proposed development described in the section 35 direction request, including those which are described as associated development, are part of the development for which development consent is required [ER 5.3.43]. The elements of the proposed development which therefore relate to commercial telecommunications activity were not made development for which development consent is required under section 115(1)(a) of the Planning Act 2008.

Human Rights Act 1998

- 8.4 The ExA and the Secretary of State has had regard to the potential infringement of human rights by the proposed Development, in relation to the European Convention on Human Rights as given effect by the Human Rights Act 1998 in the event that the application is granted. The Secretary of State does not consider that refusing development consent would be incompatible with any Convention Right.

Equality Act 2010

- 8.5 The Equality Act 2010 includes a public sector equality duty (“PSED”). This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; gender; gender reassignment; disability; marriage and civil partnerships²; pregnancy and maternity; religion and belief; and race.) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 8.6 In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered. The Secretary of State does not consider that his decision to refuse consent would have significant differential impacts on any of the protected characteristics.

Natural Environment and Rural Communities Act 2006

- 8.7 The Secretary of State has considered the Secretary of State’s duty in accordance with section 40(1) of the Natural Environment and Rural Communities Act 2006, where he is required to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent.
- 8.8 The Secretary of State is of the view that the ExA Report, together with the environmental impact analysis, considers biodiversity sufficiently to inform his decision in this respect.

9. Challenge to decision

- 9.1 The circumstances in which the Secretary of State’s decision may be challenged are set out in the Annex to this letter.

10. Publicity for decision

- 10.1 The Secretary of State’s decision on this Application is being publicised as required by section 116 of the Planning Act 2008 and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

² In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

Yours sincerely

Gareth Leigh

Gareth Leigh
Head of Energy Infrastructure Planning

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, refusal of development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Secretary of State's reasons (the decision letter) is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/aquind-interconnector/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).