Atkins, Caelan

From: Jarvis, Martyn <[redacted]>
Sent: 14 June 2023 22:30
To: Aquind Interconnector
Cc: Culot, Leon
Subject: AQUIND interconnector - Applicant's response to the responses of Interested Parties.
Attachments: Applicant's Response to IP responses to SoS RfI - 14.06.2023.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Sirs,

Please see attached the response on behalf of the Applicant in respect of the responses made by Interested Parties to the Statement of Matters published by the Secretary of State on 3 March 2023.

I would be grateful if you could kindly confirm receipt of the response and that this will be published following the deadline for responses of 23:59 on 20 June 2023.

Best regards,
Martyn

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AQUIND Limited

AQUIND INTERCONNECTOR

Applicant's Response to the Responses of Interested Parties to the Secretary of State's Request for Further Information of 3 March 2023

The Planning Act 2008

PINS Ref.: EN020022

AQUIND Limited

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Applicant's Response to the Responses of Interested Parties to the Secretary of State's Request for Further Information of 3 March 2023

PINS REF.: EN020022

DATE: JUNE 2023

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AQUIND INTERCONNECTOR

APPLICANT'S RESPONSE TO THE RESPONSES OF INTERESTED PARTIES TO THE SECRETARY OF STATE'S REQUEST FOR FURTHER INFORMATION OF 3 MARCH 2023

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1. INTRODUCTION

1.1 AQUIND Limited (the "**Applicant**") submitted an application for the AQUIND Interconnector Order (the '**Order**') pursuant to section 37 of the Planning Act 2008 (as amended) (the '**Act**') to the Secretary of State ('**SoS**') (the '**Application**') to authorise the construction and use of UK elements of AQUIND Interconnector (the "**Proposed Development**").

1.2 The Application was accepted by the Planning Inspectorate ('**PINS**') on 12 December 2019, with the Examination of the Application commencing on 8 September 2020 and completing on 8 March 2021. The Examining Authority ("**ExA**") submitted its Report and Recommendation to the SoS on 8 June 2021.

1.3 On 20 January 2022 the SoS refused the Order. That decision to refuse the Order was the subject of a claim for Judicial Review, which resulted in the making of an order of the High Court dated 24 January 2023 quashing the decision on grounds of unlawfulness.

1.4 The Application is now required to be redetermined by the SoS, and to assist with this redetermination the SoS issued a Statement of Matters requesting information dated 3 March 2023 (the "**RfI**") which requested information from the Applicant and certain Interested Parties. The Applicant submitted its response to the RfI on 28 April 2023.

1.5 The SoS published copies of the responses of all Interested Parties to the RfI on 23 May 2023 and at the same time requested comments on those responses by not later than 20 June 2023.

1.6 This Statement provides the Applicant's response to points raised by Interested Parties in their responses to the RfI where it is identified this may assist the SoS with his redetermination of the Application. The Applicant has only responded to matters where it considers this may be of assistance, rather than seeking to exhaustively respond to all points raised by rehearsing evidence which has already been exhaustively considered by the ExA.

1.7 We also wish to make clear that the Application is to be determined in accordance with section 104 of the Act, and as such the SoS is to have regard to relevant policy documents, any matters prescribed in relation to development of the description to which the application relates, and any other matters which he thinks are both important and relevant to his decision. The scope of what can be important and relevant is wide, however it is also a matter of law. For a matter to be important and relevant, it must be based on material planning considerations, and not matters which have no relevance to planning. We raise this because Interested Parties continue to raise matters which have no relevance to planning, including for example criticism of the directors of the Applicant and of their nationalities as a basis for stating that the Application should be refused.

1.8 Such unwarranted and unjustified criticism is not only not relevant, but also serves to demonstrate the absence of any significant legitimate objection to the Proposed Development, particularly when noting that the Proposed Development would, if consent is granted, operate in a sector which is the subject of significant regulation in the national interest. We respectfully request that the SoS disregards such irrelevant considerations and focuses of the matters of relevance to planning when taking his decision.

1.9 Should the SoS consider that he requires further information in relation to any other matters raised which are of relevance to his decision which are not addressed by the previous submissions on behalf of the Applicant or within this response, he is requested to seek this information at the earliest possible opportunity.

2. SOCIO-ECONOMIC IMPACTS IN RELATION TO SPORTS PITCHES

2.1 Sport England have made additional representations regarding changes to sports provision within Portsmouth since the SoS previous decision. They identify that:

2.1.1 St John's College Southsea Playing Fields, which previously provided facilities for playing cricket to local community clubs, is no longer accessible as the college has closed and is currently being sold.

2.1.2 With regard to the provision of facilities for playing Rugby, Southsea Nomads Rugby Football Club have relocated from the University of Portsmouth / Furze Lane site to the St John's College Southsea Playing Fields.

2.2 In light of the above, Sport England has requested the Applicant carry out a review of their socio-economic assessment in respect of the impact on sport and playing field provision, to ensure that the mitigations proposed remain suitable.

2.3 The Applicant's assessment of socio-economic impacts, including the impact of the Proposed Development on recreation and open space, is contained in the following documents:

2.3.1 Chapter 25 of the Environmental Statement (APP-140); and

2.3.2 Environmental Statement Addendum (REP1-139).

2.4 The approach to mitigation in respect of the impact of the Proposed Development on recreation and open space is detailed within the Framework Management Plan (FMP) for Recreational Impacts (AS-062).

2.5 St John's College Southsea Playing Fields is located within Farlington and sits adjacent to the Order Limits. Access to the playing fields is situated within the Order Limits. Prior to the closure of St John's College in 2022, two cricket teams, Portsmouth Cricket Club 3rd XI and Purbrook Cricket Club 3rd XI used the facilities at St John's College Southsea Playing Fields. It is understood based on the clubs respective websites[1] that both teams now have access to other cricket pitches in Portsmouth.

2.6 The Southsea Nomads Rugby Football Club relocated from University of Portsmouth/Furze Lane site to St John's College Southsea Playing Fields. It is understood that there is a short-term lease between the landowner and the Southsea Nomads Rugby Football Club for the club to use the playing fields. The land within St John's College Southsea Playing Fields is allocated as protected open space in the Portsmouth City Council draft Local Plan, and future use will be determined by the new owner.

2.7 Farlington Playing Fields is located immediately west of the St John's College Southsea Playing Fields and is within the Order Limits. Farlington Playing Fields includes three cricket pitches (one of which (Cricket Pitch 3) is currently disused[2]), ten adult football pitches and one nine-a-side football pitch.

2.8 As set out in the Sport England consultation response, the changes since the 2019 socio-economics assessment (i.e. the closure of St John's College Southsea Playing Fields) could affect the usage and demand for sport pitches affected by the Proposed

---

1 According to the Portsmouth Cricket Club website, the 2023 fixtures show that the Portsmouth Cricket Club 3rd XI have one home game scheduled in at Portsmouth Cricket Club (St Helen's Ground) and eight home games scheduled in at Farlington Playing Fields, off Eastern Road (PO6 1UW). (Portsmouth Cricket Club (2023) Portsmouth Cricket Club – 2023. [online]. Available at: [redacted]

The Purbrook Cricket Club 3rd XI websites indicates that five home games are scheduled in at HMS Dryad, Southwick Park (PO17 6EL) and one game at Hollybank (PO10 7TA) in 2023 (Purbrook Cricket Club (2023) Welcome to Purbrook Cricket Club. [online]. Available at: [redacted].

2 The Applicant attended Farlington Playing Fields on Thursday 8th June to confirm that Cricket Pitch remains not in use. Photographs showing the current position and that Cricket pitch 3 remains not in use are included in Appendix 1.

Development. Although the two cricket clubs have access to other cricket pitches there could be a small increase in demand for cricket pitches in the Portsmouth area. Once the lease between the Southsea Nomads Rugby Football Club and the landowner reaches an end, there could also be increased demand for rugby and football pitches in Portsmouth. It should also be noted that Portsmouth Cricket Club 3rd XI is currently using pitches at Farlington Playing Fields. The below text considers how this potential change in demand and usage of sport pitches would affect the socio-economics assessment and mitigation proposed for the Proposed Development.

2.9 The socio-economics assessment (as set out in Chapter 25: Socio-economics) considered the impact of the Proposed Development on recreation and open space. In determining the significance of a potential effect, the magnitude of impact arising from the Proposed Development was correlated with the sensitivity of the particular environmental receptor or process under consideration. As set out in Table 25.2 of the ES (APP-140), the sensitivity of receptors was assigned using a three-point scale: low, medium and high. As set out in Table 25.3, the magnitude of change was assigned using a four-point scale: negligible, low, medium and high. Significance was determined using the matrix set out in Table 25.4 of the ES (APP-140). The changes in demand and usage could affect the availability and demand of sport pitches within Portsmouth and, therefore, the sensitivity of a receptor.

2.10 As set out in the Framework Management Plan (FMP) for Recreational Impacts (AS-062), there are four receptors (Farlington Playing Fields, Baffins Milton Rovers Football Ground and associated sports ground, University of Portsmouth Playing Fields and Bransbury Park) that have sports pitches that would be directly temporarily affected by the Proposed Development within the Portsmouth area. The socio-economic assessment for these receptors (showing the sensitivity of receptor, magnitude of change and significance of effect) is summarised below:

Receptor	Sensitivity	Magnitude of Impact	Significance and Nature of Effects Prior to Mitigation	Summary of Mitigation / Enhancements	Significance and Nature of Residual Effects following Mitigation / Enhancement
Farlington Playing Fields	High	Medium	Major to moderate adverse (significant), direct, temporary, medium-term effect.	Consultation with affected users and local authority or landowner. Restoration of recreational and open space and car parks. Contractor review of construction programme and working areas.	Moderate adverse (significant), direct, temporary, medium-term effect.
Baffins Milton Rovers Football Ground and associated sports ground	High	Low	Moderate adverse (significant), direct, temporary, short-term effect.		Minor to moderate adverse (not significant), direct, temporary, short-term effect.
University of Portsmouth Playing Fields	Medium	Medium	Moderate adverse (significant) direct, temporary, short-term.		Minor to moderate adverse (not significant), direct, temporary, short-term effect.

Bransbury Park	High	Medium	Major to moderate adverse (significant), direct, temporary, medium-term.		Moderate adverse (significant), direct, temporary, medium-term.

2.11 Mitigation measures proposed for all the above receptors consists of consultation with affected users and the local authority or landowner; restoration of recreational and open space and car parks; and contractor review of construction programme and working areas, as set out in in the ES Chapter 25: Socio-economics. In addition, the Portsmouth Council Development Consent Obligation (REP8-042) secures a sports and recreation contribution for the amount of £100,000, which is to be used by PCC for distribution to sports clubs within the Council's administrative area who will be directly affected by the Development as a result of the temporary loss of available sports pitches. The sports and recreation contribution will enable PCC to administer support for community sports clubs, teams and groups while infrastructure capacity is reduced and to deliver alternative programmes in the affected areas to mitigate the residual impacts of the Proposed Development.

2.12 The following mitigation measures are also incorporated into the Onshore Outline Construction Environmental Management Plan ("OOCEMP") (Doc Ref: 6.9, Rev 009) to minimise effects on users of recreational and open space sites at paragraph 5.12.4:

> "*5.12.4.1: To ensure that negative effects on amenity value and disruption are reduced as far as practicable during the Construction Stage of the Proposed Development, the following mitigation measures can be implemented:*
>
> - *The community groups who utilise the areas of recreational and open space which will be impacted by the construction of the Proposed Development would be informed of the nature, timing and duration of particular activities during the construction stage;*
> - *If alternative routes or spaces are required to be utilised in and around areas of open and recreational space, directions would be clearly communicated at the appropriate place; and*
> - *The Applicant will discuss with local authorities and the University of Portsmouth opportunities to provide temporary mitigation during periods of disruption, such as where sports pitches are affected, reconfiguring pitches to maximise use of unaffected areas.*
>
> *5.12.4.2: The construction programme will be reviewed by the contractor(s) to see where there are opportunities to reduce effects on open space, for example by reducing construction programme though concurrent working on single or multiple spaces (including car parks) and avoiding key events. This would also apply to where there may be potential for cumulative effects with North Portsea Island Coastal Flood Defence Scheme at Kendall's Wharf if construction is concurrent. Site liaison is required to ensure construction site management minimises disturbance in this area.*
>
> *5.12.4.3: The areas required for longer- term construction works, such as Trenchless methods, within the Order Limits will also be reviewed by the construction contractors to determine whether there are any opportunities to reduce areas of open space required for long-term works*."

2.13 The FMP provides further detail on the proposed mitigation measures and demonstrates how the principles of mitigation set out in the 2019 ES and the OOCEMP (Doc Ref: 6.9, Rev 009) would be applied during construction to reduce effects, with a particular focus on careful timing of works and minimising working areas. Additional consideration is given to measures such as types of restoration and relocation of pitches. The FMP also provides

the basis for consultation with stakeholders. No further mitigation is identified in Environmental Statement Addendum (REP1-139).

2.14 When considering the changes in usage and demand for sports pitches affected by the Proposed Development, the outcomes of the socio-economics assessment would not change. The sensitivity of three of the receptors (Farlington Playing Fields, Baffins Milton Rovers Football Ground and associated sports ground and Bransbury Park) would remain high, which is the highest level of sensitivity. The sensitivity of the University of Portsmouth Playing Fields would remain as medium because, it is understood, that the playing fields are used by University teams and summer schools only with no access to the general public. The magnitude of impact would remain the same as previously assessed because there would not be a change to the construction and operation of the Proposed Development. This would mean that the significance of effect for the receptors would remain the same as detailed in the socio-economics assessment. No change to the mitigation is therefore identified to be required or is proposed.

3. THE LOCATION OF THE FRENCH LANDFALL

3.1 In several responses by Interested Parties it is asserted that the landfall in France for the Project has changed since the Project was assessed and the Examination undertaken. The Applicant can confirm that this assertion is entirely incorrect. The landfall for the Project has consistently been identified by the Applicant as being at Pourville-sur-Mer in the commune of Hautot-sur-Mer in Seine-Maritime Department of the Normandy region in northern France, or at nearby Dieppe where a landfall was also considered during optioneering.

3.2 Set out below is a summary of information submitted in support of the Application which confirms this to be the case, which dates from August 2016 when optioneering work was being undertaken for the landfall in France and the location of the marine cables:

3.2.1 The extent of the northern coast of France considered as having the potential to accommodate the landfall for the Project, and which was used to establish a study area for the marine cables in August 2016 is shown in Plate 2.7 of the Consideration of Alternatives chapter of the ES (APP-117) (and explained in paragraph 2.4.8.1). Pourville-sur-Mer is located towards the east of the area of the northern French coast used to define this study area.

3.2.2 The detailed marine cable route desktop study undertaken in 2017, which also identifies the shortlisted locations for the landfall in France, is explained at paragraph 2.4.5 of the Consideration of Alternatives chapter of the ES (APP-117). This identifies the preliminary criteria that were developed to define a preliminary survey corridor and preliminary route position list. Those criteria were used to identify a number of alternative options to shorten the marine cable route, evolving from the 'original marine cable route' (see orange line in Plate 2.11) which made landfall at Dieppe. This 'original marine cable route' was selected following the confirmation of Barnabos switching station as the preferred connection location to the French grid in 2016. Following this point in time, only landfalls in the area near Dieppe were considered further.

3.2.3 It is further identified at paragraph 2.4.15.6 of the Consideration of Alternatives chapter of the ES (APP-117) that the blue route (as shown on Plate 2.11) which makes landfall at Pourville-sur-Mer was selected as the preferred marine cable corridor, being significantly shorter than the 'original marine cable route', and thereby reducing environmental impacts, seabed occupation, and time taken during construction (with reduced health and safety risks and reduced operational impacts on other sea users).

3.2.4 A landfall location in France near to Dieppe was first explained publicly in the UK during the first round of consultation undertaken on the Proposed Development in January 2018. The Information leaflet (APP-027) circulated at the time of the consultation clearly stated that the Project was proposed to be located between Eastney in UK and Normandie in France, and that the proposed connection locations were Lovedean in UK and Barnabos in France. The exhibition boards used during that consultation (APP-028) also stated that "*[t]he offshore element of AQUIND Interconnector comprises four high-voltage DC subsea cables that will cover the distance of approximately 190km between Eastney, near Portsmouth, and the Normandie coast near Dieppe in France*".

3.2.5 The EIA Scoping Opinion request (AS-031), submitted to host local authorities in February 2018 prior to the Section 35 Direction being issued by the SoS, identified at paragraph 2.2.1 that "*The subsea cable route will be between 190km to 230km in length, spanning between the two landfall sites at Eastney (UK) and Pourville or Dieppe (France)"*.

3.2.6 The statement submitted in support of the request for a Section 35 Direction (AS-040), dated 19 June 2018, identified at paragraph 3.5.3 (D) "*It is proposed that the landfall site in France will be near Dieppe or Pourville-sur-Mer, with the exact*

location to be confirmed subject to further environmental and technical assessments".

3.2.7 The Applicant's Statement of Community Consultation (APP-076), published on 27 February 2019, and which was consulted upon and agreed with all of the host local planning authorities, including Portsmouth City Council and Winchester City Council, identified at paragraph 3.1.3 that "*It is proposed that the landfall site in France will be near Dieppe or Pourville-sur-Mer, with the exact location to be confirmed subject to further environmental and technical assessments*".

3.2.8 The Applicant's PEIR Non-Technical Summary (APP-090), dated 14 November 2019, identified at paragraph 2.6.1 that "*Due to their inter-related nature, the Marine Cable Corridor selection process was undertaken in parallel alongside the UK and French Landfall selection process. Following the selection of the two landfall sites, the Marine Cable Corridor between Eastney in the UK and Pourville in France was identified*".

3.2.9 The Applicant also explained the elements of the project in France and where those were located in response to ExQ1 (REP1-091), CA1.3.76. Within this response to the question "*Are the construction elements required in France and the UK similar in nature and complexity? Would the construction costs be less, more or equivalent?"*, the applicant identified that "*The HVDC marine cables in France will consist of the two HVDC Circuits, similar to the Proposed Development and will be installed from the landfall at Pourville-sur-Mer to the French EEZ for a total distance of approximately 73km. At the landfall marine cables will be installed via HDD. On the basis of the average per* kilometre cost *of marine cable, the cost of the marine cables within the French EEZ may appear lower"*.

3.3 It is correct that reference was made to Fecamp as being used in early 2015 as an assumed French Landfall for the purpose of facilitating an assessment of the technical, geographic and environmental considerations relevant to the three shortlisted substations in the UK at paragraph 2.4.2.6 of the Consideration of Alternatives chapter of the ES (APP-117), prior to the selection of the landfall location in France. The same paragraph identifies that the assumed UK landfall for the purpose of facilitating this assessment was East Wittering. The consideration of the UK landfall and matters relevant to that was ongoing at the time.

3.4 Fecamp is located in the area of the northern French coast where landfalls relevant for substations within the area identified by RTE as the area where connections to the French national transmission systems could be made (see Section 4.1.2 and Plate 2 of the Supplementary Alternatives Chapter (REP1-152)) and was close to the mid-point of the area of the northern French coast under consideration for the French landfall. This made using Fecamp as an indicative example for the purpose of facilitating the assessment of the shortlisted substations in the UK a logical and valid approach.

3.5 It is also clearly apparent that the selection of the shortlisted UK substation and the Landfall for this was not sensitive to the specific location of the landfall location on the northern French coast, with the area within which a landfall may be made to the shortlisted UK substations identified relative to each of those substations, and the area within which the French landfalls may be located relative to the available French substations identified by RTE.

3.6 Moreover, the area identified for the consideration of the French landfall location is entirely to the east of the area identified for consideration for the UK landfall location. Accordingly, any landfall in the UK (and the marine cable length between it and the French Landfall) would be equally affected by the French landfall being elsewhere in the French landfall search area than Fecamp (i.e. if further east all marine cable routes to landfalls for each substation connection location would be commensurately longer, and if further to the west all marine cable routes would be commensurately shorter). As such, whilst the overall length of the marine cable is a relevant matter to the selection of the shortlisted substation and the landfall for this, any change to the length of the marine cable because of the

selection of alternative landfalls to Fecamp would be a neutral factor as it applies equally to all potential landfall locations in the UK.

3.7 Accordingly, the Applicant confirms that it has undertaken all optioneering studies for the French landfall on the basis that Pourville-sur-Mer may be the location of the landfall in France, which a subsequent process of staged filtering has confirmed. This is the basis on which the project has been developed, consulted upon and assessed, including as relevant within the EIA undertaken. The landfall being located at Pourville-sur-Mer has been consistently stated publicly since 2018 and this remains the proposed location for the landfall in France. There is no substance in any assertion made that there has been a change in the location of the landfall in France, or that the assessments which have been undertaken have not been consistently undertaken on this basis and do not represent a robust assessment of the alternative options for the landfall or of the environmental effects of the marine cable route (and which it is noted for completeness does not give rise to any residual significant adverse effects).

4. THE CONSIDERATION OF NINFIELD SUBSTATION AS AN ALTERNATIVE CONNECTION LOCATION

4.1 Within the responses of several Interested Parties there is reference to Ninfield substation and assertion that this was not considered as a potential connection location for the Proposed Development and would provide an alternative connection location to Lovedean substation.

4.2 The Applicant has previously addressed the suitability of Ninfield substation and that it was identified at an early stage by National Grid Electricity Transmission Limited that Ninfield substation could not accommodate a connection to the Proposed Development and so was not considered beyond the initial stage of optioneering.

4.3 This matter is clearly addressed in the Applicant's letter of 6 December 2021 issued to the Secretary of State for Business, Energy & Industrial Strategy (and published on the PINS project webpage on 7 December 2021), which referred to information that was contained within the Consideration of Alternatives chapter of the ES (APP-117) and the Supplementary Alternatives Chapter (REP1-152).

4.4 In the interest of clarity, the Applicant further sets out the previously explained position in respect of the consideration of Ninfield substation:

4.4.1 Paragraph 2.4.2.3 of the Consideration of Alternatives chapter of the ES (APP-117) explains the search area that NGET refined to identify the substations on the 400kV transmission network on the South Coast to be taken forward for further studies to confirm their suitability to accommodate the connection of the Proposed Development, taking into account the existing grid network congestion in the South East and South West of England. As is evident from this paragraph and Plate 2.2 (which for the avoidance of doubt is a diagram of the 400kV transmission network, and not drawn to scale), Ninfield Substation was not identified to be suitable to be taken forward for further studies.

4.4.2 Paragraphs 4.1.3.1 – 4.1.3.4 of the Supplementary Alternatives Chapter (REP1-152) provided further information in relation to the initial discussions with NGET which identified the availability of existing electricity sub-stations on the 400kV transmission network which could potentially accommodate the import and export of 1800MW to 2000MW of power on the South Coast. At paragraph 4.1.3.3 it is confirmed that:

> *"[t]he region to the east of Bolney was considered by NGET to be too congested to accommodate the proposed 1800MW to 2000MW connection. In this context "congested" relates to the ability of the overhead transmission lines to carry the power flows from the adjacent generating stations (nuclear, gas and wind) and interconnectors. Accordingly, the individual substation options needed to be suitable for the additional connection from a new interconnector and the transmission lines in the local region needed to be capable of evacuating the power from that substation".*

4.4.3 It was explained why the south-east region, which it is acknowledged is closest to France, was identified to be unsuitable to accommodate any further large interconnector due to the congestion of power flows on the transmission lines in this area at paragraph 4.1.3.4, as follows:

(A) "*The Rampion 400MW off-shore wind farm near Hastings connects into Bolney. The 2000MW IFA 1 interconnector is connected into Sellindge and the Eleclink 1000MW interconnector would connect at the same station. The existing 1000MW interconnector to the Netherlands was connected at Grain substation. The new NEMO 1000MW interconnector to Belgium would connect into Richborough substation, which is close to Canterbury North. In addition, wind farms in the Thames estuary, notably London Array (600MW) and Thanet (300MW plus 340MW extension) connect into the network in this region. This made this south-eastern*

region, which is the closest region to France, unsuitable for a further large interconnector due to the potential congestion of power flows on the transmission lines in this area".

4.5 Noting the above, it was identified by NGET that substations to the east of Bolney substation, including Ninfield substation, would not have been able to accommodate the connection of the Proposed Development. Accordingly, it was known that there was not a realistic prospect of Ninfield delivering the same infrastructure capacity and it was not considered any further as an alternative connection location for the Proposed Development.

4.6 The Applicant also notes that no evidence has been provided by any Interested Party regarding the suitability of Ninfield substation to accommodate a connection to the Proposed Development. NPS EN-1 is clear on how the SoS should be guided in deciding what weight should be given to alternatives which are vague and unevidenced at bullet points 7 and 8 of paragraph 4.4.3:

> "*alternative proposals which are vague or inchoate can be excluded on the grounds that they are not important and relevant to the [SoS]'s decision; and*
>
> *it is intended that potential alternatives to a proposed development should, wherever possible, be identified before an application is made to the [SoS] 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). Therefore where an alternative is first put forward by a third party after an application has been made, the SoS may place the onus on the person proposing the alternative to provide the evidence for its suitability as such and the SoS should not necessarily expect the applicant to have assessed it*."

4.7 Moreover, and noting bullet point 7 which identifies that alternative proposals such as a connection to Ninfield substation which are vague and inchoate are to be excluded as they are not important and relevant to the SoS decision, bullet point 4 of paragraph 4.4.3 provides that:

> "*alternatives not among the main alternatives studied by the applicant (as reflected in the ES) should only be considered to the extent that the SoS thinks they are both important and relevant to its decision*".

4.8 In accordance with the clear policy framework within which the decision on the Application must be taken, an alternative connection to Ninfield substation should therefore be excluded as not important or relevant and given no weight.

5. THE REMOVAL OF THE FOC, CONSULTATION AND ASSESSMENT

5.1 At paragraph 1.24 of their response to the SoS Portsmouth City Council state that "*in the event the Applicant seeks to amend the application, excluding the commercial telecommunications development, there will therefore clearly need to be consideration given to the impact this has upon the evidence to date and indeed would give rise to consultation requirements as well as amendments to the EIA*".

5.2 The Applicant has already addressed issues relevant to the determination of the Application by the SoS in response to comments made by the Portsmouth City Council in this regard, at paragraphs 5.11 – 5.31 of the Applicant's Response to the Second Information Request dated 16th September 2021.

5.3 In summary the previous response by the Applicant detailed the following:

5.3.1 The removal of the commercial telecommunications development from any DCO to be granted in respect of the Proposed Development would not amount to a material change to the Application;

5.3.2 In the context of the Proposed Development as a whole it is not considered the removal of the commercial telecommunications development would alter the substance of the Application, which seeks consent for an electricity interconnector. Whilst the change would remove an element of the development, it is a small element of the overall development proposed and its removal would have no significant effects, environmental or otherwise;

5.3.3 It is not considered a tenable argument that the change is such that it can rationally be construed as substantial or to have the effect of making the development in substance not what was originally applied for;

5.3.4 Within the Applicant's response to the First Information Request and in its response to the Second Information Request the Applicant clearly explained why the land on which the commercial telecommunications elements are proposed is still required in connection with the Proposed Development in satisfaction of the conditions provided for in section 122 of the Act. There is a very minor change to a small proportion of Plot 1-30, whereby 67 sqm of this plot is instead included in Plot 1-32 which is subject to a less intrusive class of acquisition in the form of New Connection Works Rights. There would be no extension of the Order land.

5.3.5 Accordingly, the removal of the commercial telecommunications development would not result in any extension of the Order land or authorise the compulsory acquisition of any land over which powers of compulsory acquisition have not previously been sought.

5.3.6 The removal of the commercial telecommunications development has no influence on the Habitats Regulation Assessment for the Proposed Development and would not give rise to any requirement for any licence in relation to protected species.

5.3.7 The removal of the commercial telecommunications development would not give rise to impacts on local people and local businesses, with the ES Validity Review documents submitted as part of the Applicant's response to the First Information Request and alongside the Applicant's response to the Second Information Request identifying that there are no changes to the likely significant effects reported in the ES and the reasons why this is the case.

5.3.8 The benefits of the commercial telecommunications use, summarised at paragraphs 3.22 of the Applicant's response to the First Information Request, which local people and local businesses may benefit from would no longer be realised. The loss of this benefit is not deemed to be sufficient to indicate that the change should be considered as material.

5.3.9 The potential for the commercial telecommunications development to be removed from the DCO was considered during the course of the Examination, both at

hearings into the Application and in written submissions. All of the information in relation to the potential removal of the commercial telecommunications development was considered and in turn consulted on during the course of the examination.

5.3.10 Opportunities have been given to all Interested Parties to comment on submissions made in response to requests for information from the SoS, ensuring all persons are adequately consulted on those responses and may provide their views for consideration by the SoS for the purpose of his re-determination.

5.3.11 Adequate consultation on the removal of the commercial telecommunications development was undertaken during the examination in relation to the information submitted during its course and consultation has been and will be undertaken in relation to the further information requested by the SoS in all information requests issued. Accordingly, no person entitled to consultation on the information in relation to the removal of the commercial telecommunications development has been or will be deprived of an opportunity to make any representation that they may wish to make in relation to that information.

5.4 Accordingly, whilst it is accepted that the SoS should consider the impacts of the removal of the commercial telecommunications development for the purposes of his redetermination, the Applicant has previously set out and has summarised above the basis on which the SoS can be satisfied that all necessary assessment and consultation required in respect of that removal has been undertaken, and that there is no reason why any further assessment or consultation is required in connection with the removal of the commercial telecommunications development from the DCO.

5.5 The Applicant also understands that Portsmouth City Council and Winchester City Council may again make comments regarding the size of the FOC to be laid, and to again query if the provision of the ORS remains necessary where the commercial use of the FOC is not authorised by the DCO.

5.6 The Applicant has already dealt with these matters at length, including:

5.6.1 with regard to the required diameter of the fibre optic cable, at paragraph 2.9.7 of the Applicant's response to action points raised at ISH1, 2 and 3, and CAH 1 and 2 (REP6-063), where it is stated "*As explained in the Statement in relation to FOC (REP1-127), 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. 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 mean that the size of the cable itself would not change were the number of glass fibres within it was reduced from 192 to a lesser multiple*"; and

5.6.2 with regard to the continuing need for the ORS, at paragraphs 2.6 to 2.10 of the Applicant's Response to the Second Information Request and paragraphs 7.1 to 7.29 of the Applicant's Response to the Third Information Request, and which at paragraph 7.10 confirms that "*It may be possible for other HVDC interconnectors that use bi-polar HVDC cable systems to use in-line repeaters, as the electromagnetic effects are self-cancelling in a bi-polar system. However, as the Proposed Development uses a monopole-based system, electromagnetic inducted effects have to be taken into consideration in the engineering of the associated FOC. Furthermore, in-line regeneration systems are generally significantly less preferable for critical infrastructure, as they are more difficult to repair and restore quickly in the event of fault or damage occurring. For these reasons, ORS to house the electronic fibre optic cable signal regeneration equipment in secure buildings is proposed as part of the Proposed Development*".

5.7 The Applicant has continued to make enquiries with suppliers as part of its ongoing procurement exercises to confirm the need for the two ORS at the Landfall. It has been confirmed that if ORS are not installed at the landfall there would be an expected gap in the monitoring coverage for the whole of the marine cable route. Accordingly, the Applicant again re-confirms that two ORS are required to be provided for in the DCO as part of the Proposed Development to ensure the FOC can adequately and reliably perform its support function in connection with the operation of the interconnector.

5.8 The Applicant has also made clear its position on any proposed exclusion of the ability to authorise the FOC for commercial use in the future pursuant to separate consents, at paragraphs 5.36 to 5.40 of its Response to the Second Information Request. In summary, the Applicant is not amenable to provisions being included in the DCO which prevent any future use of the fibre optic cables to be installed for commercial telecommunications where otherwise authorised for that use in the future.

6. RESPONSE TO PCC COMMENTS ON THE NORTH PORTSEA ISLAND COASTAL DEFENCE SCHEME

6.1 The Applicant has noted the comments of PCC in its response to the RfI in relation to the North Portsea Island Coastal Defence Scheme ('**NPICDS**') and the need for an agreement to be entered into between the Applicant and PCC in relation to potential overlapping works (which it is identified is now highly unlikely) and in connection with the potential for the works to construct the Proposed Development to impact upon the completed NPICDS works.

6.2 The Applicant has confirmed to PCC that it remains willing to enter into a co-operation agreement in relation to the potential for the two sets of works to overlap, in the unlikely event of delay giving rise to such overlaps. The Applicant has also confirmed that it is agreeable to PCC's proposals in relation to planting detailed in their response. The Applicant provided those confirmations to PCC on 17th April 2023. Since that date, and despite requesting a response on the draft co-operation agreement on [five] occasions since then prior to the submission of this response, the Applicant has received no substantive response on the draft agreement.

6.3 The Applicant remains committed to entering into a co-operation agreement to address issues in relation to overlapping works, and in relation to the provision of planting following the works to construct the Proposed Development to avoid wasted cost and resource and will enter into such an agreement assuming that PCC meaningfully engage.

6.4 The Applicant would however note that the likelihood of works overlapping is now remote, and that in accordance with the restoration requirement (Requirement 22) contained in the Order if the Applicant needs to remove planting in connection with its works it would need to re-provide that planting subsequently, and so the Proposed Development could proceed without a co-operation agreement without any adverse impact.

6.5 The Applicant has also noted the comments of PCC at paragraph 3.3 of its response regarding the potential for impacts on the constructed NPICDS works. The response was the first time the Applicant was made aware of this request. Since the publication of the responses by the SoS the Applicant has sought to discuss this matter with PCC on several occasions. Again, no response has been received.

6.6 In this regard the Applicant refers to the position detailed in the Statement of Common ground with PCC (REP8-044), at reference PCC 4.7.4 (within Table 4.7):

6.6.1 The principle that works adjacent to the coastal flood defences can and will be designed to avoid works to existing or proposed coastal flood defence alignments is agreed with Coastal partners and PCC;

6.6.2 The principle of a short HDD (HDD-6) under the existing coastal flood defence to the north bund at Milton Common, west of frog lake, is agreed with Coastal Partners and PCC;

6.6.3 The principle of the proposed HDD under Broom Channel (Langstone Harbour HDD-3) to pass below or avoid any sheet piling associated to the coastal flood defence is agreed with Coastal partners and PCC;

6.6.4 Specific design principles and construction principles in relation to flood defences are embedded in principles section 6.6.4 of the DAS (REP7-021) and section 5.7 of the OOCEMP (Revision 009) respectively;

6.6.5 Requirement 6 (detailed design) and Requirement 15 (construction environmental management plan) of the DCO require the submission of detailed design and a construction environment management plan, in accordance with the design principles of the DAS and the OOCEMP respectively, therefore securing the measures relevant to coastal flood defences during construction and operation;

6.6.6 Works within 16m of a coastal flood defence will be subject to approval or exemption of environmental permits with the Environment Agency, and relevant in principle agreements in relation to these permits are agreed between the

Applicant and the Environment Agency and included within the relevant SoCG (REP7-055)

6.6.7 There is agreement with PCC that the application documents including the DAS and the OOCEMP, the DCO and Requirements secure relevant measures to protect and retain coastal flood defences during construction and operation and provide for appropriate reinstatement of land affected by the Applicant's works, and this indicates that this matter is agreed between the parties.

6.7 Accordingly, the protection of the constructed NPICDS works is assured through the Order and the related control documents, and the need for an environmental permit or the exemption from the need for an environmental permit to be obtained from the Environment Agency for any works within 16m of any a coastal flood defence. As such, the protection of the constructed NPICDS works is not a matter which needs to be addressed in any co-operation agreement that may be entered into.

7. THE NEED FOR THE PROJECT

7.1 It is suggested in various submissions made that decisions in the EU Courts have identified that there is not a need for the Proposed Development in France. The position in respect of the EU decisions and the information they provide regarding the reasons for the decisions in France at the time in 2019 are addressed in Section 8 below. However, before this is explained, the Applicant considers it would be helpful for the SoS to address the evidence which confirms that there is a continuing pressing need for the Project and the benefits which it would provide in the national interest.

7.2 The SoS will be aware that the Applicant submitted a Needs and Benefits Third Addendum alongside its response to the RfI and that this included an update on the Ten-Year Network Development Plan (TYNDP) 2022, which is the most recent revision of this study which offers a European wide vision of the future power system and investigates how power links and storage can be used to make the energy transition happen in a cost-effective and secure way.

7.3 The TYNDP is produced by ENTSO-E, the association of the European Electricity Transmission System Operators which, on a non-profit-making basis, pursues the co-operation of the European transmission system operators (TSOs) both on pan-European and regional levels. It coordinates TSOs' actions in the fields of transmission system operation, system development, market development and research, and its work is focused on promoting completion and functioning of the internal energy market in electricity and cross border trade.

7.4 ENTSO-E was formally established in accordance with Article 5 of Regulation (EC) No 714/2009 on conditions for access to the network for cross-border exchanges in electricity. The 39 member TSOs of ENTSO-E represent 35 countries who are responsible for the secure and coordinated operation of Europe's electricity system, the largest interconnected electrical grid in the world.

7.5 Furthermore, ENTSO-E has an active and important role in the European rule setting process, in compliance with EU legislation (network codes, Ten-Year Network Development Plans). The legally mandated tasks assigned to ENTSO-E in several EU Regulations, including the 2009 Regulation on Cross-Border Electricity Trading and the 2013 Regulation on Guidelines for Trans-European Energy Infrastructure, shape ENTSO-E's work.

7.6 As explained in the Needs and Benefits Third Addendum, TYNDP 2022 and the supporting System Needs Study has demonstrated that AQUIND Interconnector would contribute to an increase in annual socio-economic welfare (across the study area), reduction in CO^2 and greenhouse gas emissions, integration of renewable energy sources (through avoided curtailment) and security of supply (by reducing Energy Not Served) in all scenarios.

7.7 The TYNDP 2022 System Needs Study has also identified that there is a need for an additional 4.8 GW of interconnection between GB and France by 2030 on top of the starting grid position of 4GW (made up of the existing IFA, IFA2 and ElecLink) in 2025. Based on their current planned capacities, AQUIND Interconnector (2 GW), Gridlink (1.4GW) and FAB Link (1.4 GW) would provide for that additional 4.8 GW, should those projects all proceed and at those stated capacities, which is not certain.

7.8 Accordingly, drawing from TYNDP 2022 it is evident that there remains a pressing need for further interconnection between GB and France which AQUIND Interconnector would in part meet alongside other planned projects, should those projects come forward. This position is consistent with the most recent updates on energy policy on interconnection in GB and is aligned with Government's Statement of Cooperation on Energy made between the UK and France on 10 March 2023, also discussed in the Needs and Benefits Third Addendum. This position is also consistent with the more general findings of the Needs and Benefits Report and Addenda, which confirm the established compelling need for and benefits of AQUIND Interconnector in the UK.

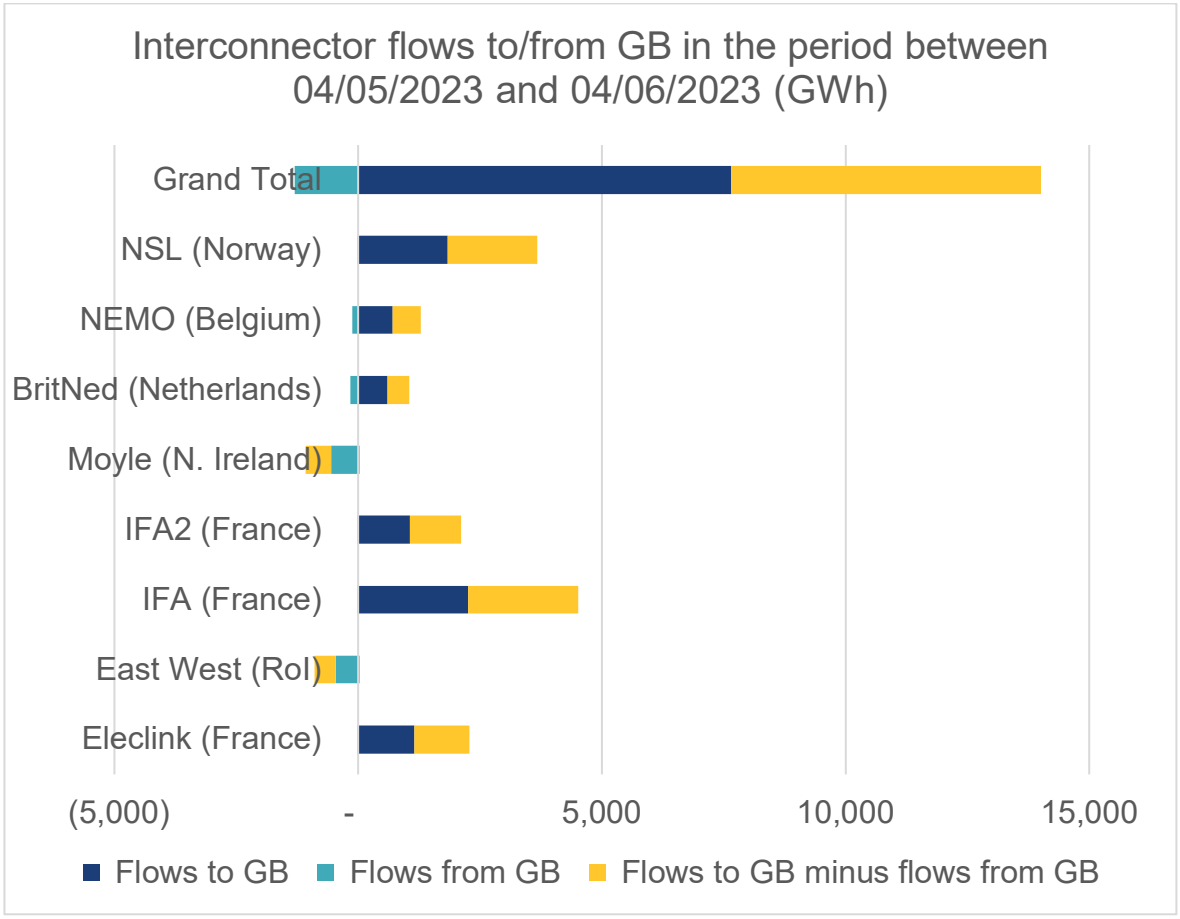
7.9 Accordingly, it has been clearly evidenced why the needs case for AQUIND Interconnector remains robust and compelling, even more so than at the time of the Application being

submitted, and that this compelling need for AQUIND Interconnector, along with its associated benefits, should be afforded very substantial weight in the planning balance by the SoS when taking his decision on whether to make the Order to consent the Proposed Development.

7.10 The Applicant also notes that Ms Viola Langley and Let's Stop Aquind in their responses refer to a concern that Aquind Interconnector will enable the sales of electricity to France to compensate for shortages of power in France and refer to periods of exports to France in the second half of 2022.

7.11 Interconnectors bring mutual benefits to connected countries and France indeed imports electricity from GB at times. GB also imports from France. In fact, GB imported via interconnectors more than 18% of its electricity demand in May 2023, which was the second largest contribution to GB supply after wind power.[3]

7.12 The largest part of those imports – nearly 4,500 GWh – came from France, as can be seen from the graph below (which has been produced based on data on interconnector flows taken from Elexon[4]).



7.13 That bi-directional interconnectors provide mutual benefits and establish increased market interaction between the countries they connect is of course not a surprise, nor is it any basis on which to consider refusing the Order.

[3] [redacted]

8. DECISIONS IN THE EU COURTS AND ACTIONS BEING TAKEN IN RELATION TO REGULATORY STATUS

8.1 A number of responses from Interested Parties refer to certain court judgments and the regulatory status of AQUIND Interconnector.

8.2 As set out in paragraphs 4.18 to 4.22 of the Applicant's response to the RfI:

8.2.1 in Great Britain, AQUIND Interconnector is expected to be regulated under a cap and floor regime. The Applicant applied for this regime as part of the Third Cap and Floor Window and on 24 February 2023 Ofgem confirmed the eligibility of the Applicant's request for further consideration. The cost benefit analysis for AQUIND Interconnector has been commenced by Ofgem for the purpose of considering its regulation under a cap and floor regime, and workshops have been held with the Applicant; and

8.2.2 in France, AQUIND Interconnector is expected to be regulated under an exemption pursuant to the EU-UK Trade and Cooperation Agreement.

8.3 The Applicant has previously set out, in its Post Hearing Note in respect of the non-UK Planning Consents and Approvals required (AS-069), that it may avail itself of the of the exemption route offered by the Trade and Cooperation Agreement between the United Kingdom and the European Union ("**TCA**").

8.4 The TCA commits the UK and the EU to cooperating to facilitate the timely development and interoperability of energy infrastructure connecting their respective territories (i.e. interconnectors), and in respect of electricity interconnectors includes a form of exemption regime that allows the UK or the EU to decide not to apply the third party access or unbundling provisions of the TCA if the relevant conditions under the TCA are met.

8.5 It is for the UK Government, and indeed the SoS, together with the EU counterparties to progress the establishment of the exemption regime within the mechanisms established by the TCA where this is necessary to ensure the regulatory status of a Project which is needed in the GB national interest, as AQUIND Interconnector evidently is. It is therefore expected that the UK Government will seek to work with its counterparts in France to address this situation, so that the Project may be realised for the mutual benefit of both GB and France (noting the identified compelling need, discussed and clearly explained above). The failure to establish the regulatory approval mechanisms which were envisaged by the TCA for just such projects would represent a failure of Brexit, which would result in adverse socio-economic welfare conditions for GB.

8.6 Once the UK Government has established with its EU counterparts the necessary regulatory positions for exemptions to be obtained by interconnector projects as envisaged by the TCA, the Applicant will seek an exemption. Given the evidenced compelling need for the Project in GB and France and the lawful basis on which decisions on which to grant exemptions are to be taken, it is considered by the Applicant that there is at the very least a reasonable prospect of such an exemption being granted.

8.7 More generally, there are various documents and actions that need to be issued or taken by various departments of the DESNZ in connection with the engagement with the EU and France in relation to the Project, which the Applicant understands have been delayed until the SoS has taken a decision in respect of the DCO.

8.8 It is also confirmed that Project of Common Interest ("**PCI**") status is not a requirement for the development of transmission infrastructure projects. The above regulatory route can be followed irrespective of whether AQUIND Interconnector has PCI status. Whilst this is the case, as a prudent operator and in the interest of seeking to secure benefits which are afforded to other similar projects, the Applicant has exercised its legal right to challenge previous decisions to not award the Project PCI status which it properly considers were unlawfully taken.

8.9 In light of the submissions made by various Interested Parties and the mistakes of fact that are contained within those, provided below is a summary of the recent judgments of the

courts of the European Union and their impact on AQUIND Interconnector, and clarifications in respect of particular points made by Interested Parties.

8.10 The below table summarises the latest judgments in litigation before the European Courts:

Decision Date	Reference	Court	Summary
1 August 2022	C-310/21 P	Court of Justice of the European Union	This case related to an appeal made by the Applicant against the Order of the General Court in T-885/19. The General Court dismissed the Applicant's application in case T-885/19 on the basis that the act in question was not open to challenge at the time the action was brought. That decision was upheld by the Court of Justice of the European Union in this case, which confirmed that an act of the European Commission can be appealed only within two months of coming into force. The Applicant had already brought case T-295/20 (see below) in order to guard against T-885/19 being found to be inadmissible on the grounds it was brought prematurely. This appeal C-310/21 P was then brought by the Applicant to ensure at least one of the cases was effective depending on when the courts decided the relevant act was in force. The substantive issues were ultimately decided in T-295/20 (discussed below).
8 February 2023	T-295/20	General Court	By this application, the Applicant brought a case against the European Commission to annul Commission Delegated Regulation (EU) 2020/389 which had resulted in the removal of AQUIND Interconnector from the European Union list of Projects of Common Interest ("**PCI**"). The Applicant brought a number of pleas, but the key point related to the reasons for AQUIND Interconnector's removal from the PCI list. The French Republic had opposed the inclusion of AQUIND Interconnector on the PCI list in 2019 on the grounds that there was "*a risk of overcapacity due to the existence of a number of projects and that the proposed Aquind interconnector was the most uncertain*". Essentially the court found that the French Republic was entitled to exercise such a veto right, that the European Commission was not required to examine the reasons given by the French Republic and that the Court did not have jurisdiction to examine those reasons. Accordingly, the Applicant's application was dismissed. The Court also agreed with the European Commission that the development of

			infrastructure projects is not dependent on whether or not they are Union PCIs. The Applicant has since brought proceedings in the *Tribunal Administratif de Paris* in France against the *Ministère de la Transition énergétique* on this matter, which is discussed further below at paragraph 8.13.
9 March 2023	C-46/21 P	Court of Justice of the European Union	This case was an appeal by ACER against the General Court's decision in T-735/18, which is discussed in Section 8 of the Funding Statement (REP6-021) and the Post-Hearing Note (AS-069). This case relates to the Applicant's request for an exemption in accordance with Article 17 of Regulation (EU) 714/2009 which was rejected by the Agency for the Cooperation of Energy Regulators ("**ACER**") in 2018. The exemption would enable the Applicant to build the Project without reliance on public funds by allowing multi-year contracts with users of interconnector capacity and the use of revenues to repay financing raised for the construction of the Project. The Applicant appealed that decision to the Board of Appeal ("**BoA**") of ACER (which found in favour of ACER) before appealing that decision of the BoA to the General Court in case T-735/18. The General Court found in favour of the Applicant, finding that (i) the scope of the review carried out by the BoA was insufficient and (ii) that the BoA had wrongly established an additional condition to the grant of an exemption related to the possibility of the Applicant applying for a regulated regime pursuant to the PCI regime. In C-46/21 P, the Court of Justice of the European Union dismissed ACER's appeal, holding that the General Court was correct to find that the BoA's review was insufficient. The Applicant advised the Secretary of State on that progress in paragraph 4.20 of the Applicant's response to the RfI.
15 February 2023	T-492/21	General Court	Following the General Court's ruling in T-735/18 (described above), the BoA was required to carry out a new consideration of the Applicant's appeal against ACER's decision made in 2018. On 4 June 2021, the BoA found that the appeal was now inadmissible on the grounds that as a result of Brexit it was no longer competent to make a decision. This case T-492/21 represents the Applicant's appeal of that decision of the BoA on 04 June 2021 to the General Court. The Applicant

			sought to annul the BoA decision on the grounds that the BoA was competent and that they failed to follow relevant procedures. The General Court dismissed the application, finding that the BoA was correct in holding that it was not competent to grant an exemption to AQUIND Interconnector following Brexit. The Applicant advised the Secretary of State on this matter in paragraph 4.21 of the Applicant's response to the RfI.

8.11 Accordingly, and as is apparent from the above, the Applicant continues to have a pathway to obtain the regulatory authorisations which are required for it to operate the Project, and it is continuing to manage those in a pro-active manner in the interest of securing the necessary regulatory authorisations and creating the circumstances for funding for the construction of the Project to be secured. Moreover, the Applicant has evidenced the rational basis on which it has identified that there continues to be a reasonable prospect of funds becoming available within the statutory period.

Clarifications in respect of particular points made by Interested Parties

8.12 At paragraphs 4.9 to 4.11 of their response to the SoS, Portsmouth City Council suggests that there is a decision of the French Administrative Court relating to France's objection to the inclusion of AQUIND Interconnector on the 4th PCI list in October 2019. Portsmouth City Council then goes on to conclude that this infers that "*the French government was justified in barring AQUIND from the PCI list*". This is not correct.

8.13 Whilst the PCI status is not a requirement for the development of infrastructure in the EU (including the Project), the Applicant believes that there was a legal error made and it needs to be corrected. The Applicant had brought proceedings on this matter in France against the *Ministère de la Transition énergétique* (**"MTE"**) in the *Tribunal Administratif de Paris* ("**TAP**"). In its decision on 13 April 2023 the TAP rejected the Applicant's challenge. An appeal in respect of that rejection was submitted on 14 June 2023. The TAP did not deal with the substance of the reasons for the MTE's objection to the inclusion of the Project in the 4th PCI list.

8.14 At paragraph 4.11 of its response to the SoS, Portsmouth City Council extrapolates from the order of the General Court in the interim application in case T-295/20 that the Applicant is "*seriously considering alternate landfall points in other EU Member States*", which it claims undermines any business case. It goes on to claim at paragraph 4.23 of its response that such a change in landfall renders the feasibility and environmental studies "*wholly unreliable*". Such assertions are entirely incorrect. The Applicant submitted in case T-295/20 in the application for confidential treatment that disclosure of the relevant information could affect alternative development routes and discussions with other Member States. Firstly, such reference to alternative development routes referred to alternative regulatory regimes for AQUIND Interconnector and not physical cable routes. The Applicant confirms that it is not considering a route to any other country This is demonstrated by the Applicant's recent application for an Initial Project Assessment within the Third Cap and Floor Window (see paragraph 4.18 of the Applicant's response to the RfI), where the application was clearly submitted on the basis of a proposed connection to France.

8.15 The Applicant would also clarify a point from the responses to the SoS provided by Let's Stop Aquind and Viola Langley. It is suggested in Section 2 of Let's Stop Aquind's response and section 6 of Viola Langley's response that the proposed Gridlink and FAB Link interconnector projects have already been approved. While it is correct that both Gridlink and FAB link have passed the Initial Project Assessment stage within the Cap and Floor Window 1 and Window 2 in Great Britain respectively, neither of the projects have

achieved a Final Project Assessment by Ofgem or commenced construction. As noted at paragraph 4.18 of the Applicant's Response to the RfI, in the UK the Applicant has applied to Ofgem for an Initial Project Assessment within the Third Cap and Floor Window and this request has been confirmed to be eligible for further consideration.

8.16 Paragraphs 117 to 125 and 136 of the Response to the SoS of Mr Geoffrey and Mr Peter Carpenter are principally concerned with the loss of AQUIND Interconnector's PCI status. It is not disputed that AQUIND Interconnector is no longer a PCI, and the Applicant made clear submissions which confirmed this to be the case during the course of the Examination once the position on continuing PCI status had been confirmed[5]. It is however necessary to clarify the implications of that loss of PCI status:

8.16.1 It is implied at paragraph 136 of the response that AQUIND is disadvantaged by comparison to the IFA 2 and Gridlink interconnector projects through not having PCI status. However, IFA 2 is already operational and therefore its transmission capacity has and will already be taken into account in any assessment of additional capacity required. Further, the other projects that are currently in development to France (FAB Link and Gridlink) also lost their PCI status on 28 April 2022 when the fifth PCI list came into force[6]. AQUIND Interconnector is therefore not disadvantaged compared to these projects;

8.16.2 Mr Geoffrey and Mr Peter Carpenter assert that because France identified a risk of overcapacity as the reason for its objection to AQUIND Interconnector's inclusion in the 4th PCI list in 2019 there is no longer a need for AQUIND Interconnector. Firstly, it should be noted that this risk of overcapacity was linked to the number of projects in development between Great Britain and France at that time. As described above, FAB link and Gridlink are currently in a similar position to AQUIND Interconnector in France and are also not PCIs following the removal of all GB – EU interconnectors from the 5th PCI list, and it is not necessary for an interconnector to be included on the PCI list to be developed in GB or France. Where there is a need for any additional capacity in France (which is clearly described in the Needs and Benefits report and addendums submitted and discussed further below), AQUIND Interconnector should not therefore be prevented from competing for such capacity. Secondly, such assessment ignores Great Britain's need for further interconnection and the Government's stated target of achieving 18GW of interconnection capacity by 2030; and

8.16.3 The PCI status is not a requirement for the development of transmission infrastructure projects. That was also stated by the European Commission and supported by the Court in the T-295/20 Judgment.

[5] For example, please see the Applicant's response to the written question with reference MG1.1.32 within the Applicant's Response to Written Questions ExQ1 (REP1-091).

[6] Commission Delegated Regulation (EU) 2022/564 of 19 November 2021 amending Regulation (EU) No 347/2013 of the European Parliament and of the Council as regards the Union list of projects of common interest

9. FRENCH PROJECT DECISIONS AND ACTIONS BEING TAKEN TO OBTAIN CONSENTS IN FRANCE

9.1 Within their response to the RfI, PCC query the current position in respect of consents in France.

9.2 The Applicant has previously confirmed the consents which are required for the Project to be constructed in France, including the route to and options for the obtainment of those, in the post hearing note in respect of the non-UK planning consents and approvals required in connection with the Project dated 23 February 2021 (AS-069). This information was provided for the purpose of explaining what is reasonably required by the Applicant before funding to allow for the construction of the Project in the UK and in France is secured.

9.3 As detailed in that post-hearing note, the following consents are required to be obtained to permit the construction of the Project in France:

9.3.1 *Autorisation Environnementale (Dossier Loi sur l'Eau / Etude d'Impact Environnemental)* – being the Environmental Impact Assessment covering the entirety of the project in France;

9.3.2 *Autorisation d'Occupation Temporaire* – being the grant of rights for temporary occupation of public land;

9.3.3 *Convention d'Utilisation du Domaine Public Maritime* – being the authorisation required to lay the marine cables on the seabed in French marine territory;

9.3.4 Building permit – being the permit required to build the Converter Station;

9.3.5 Archaeological approvals – onshore and marine; and

9.3.6 *Convention d'occupation temporaire* – being the agreement with SNCF to lay the onshore cables beneath a railway crossed by the proposed scheme in France.

9.4 In light of the comments of PCC, and of other Interested Parties who have made comments on the processes and procedures which the Applicant is following to obtain the relevant consents in France, we have set out below a short, updated summary in respect of each of the previously referred to consents.

9.5 Before providing that updated summary, we again highlight that the planning and permitting regime in France is complex and subject to examination by a range of institutions and administrative bodies at local, regional, and national level. We have sought to provide a clear and succinct explanation of French consenting position, for the purpose of demonstrating how the Applicant is properly managing the obtainment of those.

9.6 We also highlight that as noted previously, whilst the Applicant has and is continuing to properly manage the approvals and consents required for the Project, beyond those which would be provided by virtue of the grant of the Order, it was inevitable that the decision to refuse development consent had a chilling effect on the progress able to be made in respect of the other consents and approvals which are required. The Applicant is continuing to seek to make progress and expects that following that decision being quashed (and should the Order be made) its ability to make further progress will improve.

Autorisation Environnementale (Dossier Loi sur l'Eau / Etude d'Impact Environnemental)

9.7 The Applicant had secured favourable feedback within the *Autorisation Environnementale* process from the statutory consultee reviews upon initial submission. Whilst the process was interrupted because land rights had not been secured at Landfall, the Applicant is in the process of securing said rights (see paragraph 9.8 below) and will resubmit once these are secured. The Applicant is in the process of updating the *Autorisation Environnementale* to include materials submitted during the previous considerations and to make relevant updates (see paragraph 9.8 below), while securing the land rights requested by the Prefet (see paragraphs 9.9 - 9.12 below), and the application will be resubmitted once those are secured and following the decision in respect of this DCO, unless the process is restarted

based on the outcomes of the appeal which is currently under the consideration at the Tribunal Administratif de Rouen as explained in the table below

9.8 The Applicant has maintained working contacts with all relevant institutions in France responsible for environmental permitting and remains confident of the ongoing validity of the French Environmental Impact Assessment conclusions (pending minor survey updates), as neither the technical characteristics of the project nor the regulatory requirements have substantially evolved since the 2020 examination. It is expected that similar conclusions will be drawn and positive feedback received (which would inform the decision of the Prefet) would be obtained upon resubmission.

Autorisation d'Occupation Temporaire

9.9 As detailed in the Applicant's Response to the RfI, for the public roads and right of way where the Project is proposed to be located, requests for AOT were submitted to the CD76 (covering approx. 30km) and DIR-NO (approx. 5km) in March 2020. An additional request was submitted to DREAL (approx. 1km) in December 2020 in respect of a small section of the AOT submitted to the CD76 but which is under the stewardship of DREAL.

9.10 In November and December 2020, CD76 and DIR-NO issued draft agreements for the AOT in respect of 35km (97%) of the onshore cable route. Work to address the technical comments and requirements of these agreements took place in the spring of 2021. These agreements are expected to be finalised as part of the detailed design process, which will be undertaken prior to construction and following approval of the *Autorisation Environnementale*.

9.11 For the works area at landfall, a request for AOT was submitted to the Mayor of Hautot-sur-Mer (relating to a car park and mini-golf course only, covering approx. 2500m²) in June 2020. The Mayor of Hautot-sur-Mer declined the request for the AOT in October 2020. In December 2020 the Applicant informed the Mayor of its intention to challenge the decision, both in its form and its content. On 9 March 2023 the *Tribunal Administratrif de Rouen* ruled in the Applicant's favour and quashed the Mayor's decision not to grant the request for AOT.

9.12 Following the decision of the Tribunal the Applicant remains committed to working with the Mayor amicably and engagement to obtain the AOT for the landfall is ongoing. A revised proposal for the AOT has since been issued by the Applicant and feedback on this is currently awaited.

Convention d'Utilisation du Domaine Public Maritime (CUDPM)

9.13 As noted previously in AS-069, the Applicant has secured favourable feedback within the CUDPM process from the statutory consultee reviews. Further progress to obtain the CUDPM currently rests on the clarification of the general interest nature of the Project. This status is expected to be settled through the agreement on the regulatory status for the Project, and the form of such status that the Applicant expects to seek in France is an exemption in accordance with the Trade and Cooperation Agreement. This was discussed at paragraph 4.19 of the Applicant's Response to RfI and in Section 8 above.

9.14 The general interest of the Project can also be determined on the basis of the Project's future function as transmission infrastructure which access would be available to any third party which participates in relevant markets, in accordance with applicable market regulations.

9.15 However, whilst it is important that the general interest nature of the project is settled, the processes to settle this and the processes to evaluate the decision to grant the CUDPM do not need to be sequential in nature. The examination of the CUDPM will resume upon resubmission of the *Autorisation Environnementale*.

Building Permit

9.16 As detailed in the Applicant's post hearing note in respect of the non-UK planning consents and approvals required in connection with the Project dated 23 February 2021 (AS-069)), in addition to obtaining an *Autorisation Environnementale* a project owner must also obtain a building permit as part of the planning and permitting process. Whilst a project owner is free to choose when they apply for a building permit and this can be issued before an *Autorisation Environnementale*, it may only be implemented following the grant of the *Autorisation Environnementale* and therefore in practice is often obtained following this.

9.17 Noting the above, the application for the building permit will be submitted once the Applicant has received the *Autorisation Environnementale.* As stated previously, because all environmental matters will have been dealt with for the purposes of the grant of the *Autorisation Environnementale*, there is not expected to be any impediment to its likely grant. The relevant regulations for the building permit applicable to the area do not prevent the project from being carried out, and the building permit can be granted subject to compliance with the conditions for siting in the area

Marine Archaeology (DRASSM)

9.18 As previously detailed in the Applicant's post hearing note in respect of the non-UK planning consents and approvals required in connection with the Project dated 23 February 2021 (AS-069), the Applicant provided DRASSM with the results of the geophysical and geotechnical marine surveys of the relevant sections of the marine cable route undertaken in 2017-2018.

9.19 Following desktop analysis of geophysical and geotechnical data, followed by a diving campaign, DRASSM published the ”*Evaluation archéologique de l’interconnexion électrique AQUIND Rapport Final d’Opération*” in October 2019 which clears the Applicant of archaeological constraints within its proposed works corridor, provided that the two archaeological features identified (anchors) are either avoided or collected and preserved. As such, no significant marine archaeological impact is expected as a result of the works.

9.20 No further update is required with respect to marine archaeology. The DRASSM decision in relation to the Project remains valid so long as the cable route is not altered and DRASSM's prescriptions relating to the two archaeological features are adhered to prior to and during construction.

Onshore Archaeology (DRAC)

9.21 As previously detailed in the Applicant's post hearing note in respect of the non-UK planning consents and approvals required in connection with the Project dated 23 February 2021 (AS-069), following desktop analysis of existing cultural heritage data, DRAC recommended that a preventive archaeology campaign be carried out by the “Institut National de Recherches Archéologiques Préventives – INRAP” on the converter station site. It is agreed with DRAC that this campaign can be scheduled at any time prior to construction. The decision on whether to grant the *Autorisation Environnementale* is not sensitive to the required preventive archaeology campaign.

9.22 The cable route has been cleared of all archaeological concerns, and the landfall site is to be subject to a watching brief by an appointed archaeologist at commencement of the works (mitigation requested by DRAC). As such, no significant onshore archaeological impact is expected as a result of the works.

Convention d’occupation temporaire

9.23 As previously detailed in the Applicant's post hearing note in respect of the non-UK planning consents and approvals required in connection with the Project dated 23 February 2021 (AS-069), the requirements of SNCF can be prescriptive, but they are essentially technical matters that necessitate an approval on the installation solution. Technical discussions are progressing with SNCF (ground investigation took place near the railway crossing at Le Hamelet in December 2022 and January 2023), and it is not uncommon for COT to be secured after the *Autorisation Environnementale* has been granted.

Appeals against administrative acts in the French Courts

9.24 The Applicant has also noted that various Interested Parties have sought to make submissions on litigation which the Applicant is progressing in the French courts in relation to the Project in respect of project consents and regulatory matters. In the interest of providing the SoS with clarity, provided below is a summary of legal proceedings which the Applicant has been and is continuing to pursue in France:

Court	Case No	Defendant	Stage	Summary of the case and its implications
Tribunal Administratif de Rouen	No's: 2005168 ; 2005169 ; 2101452	Commune d'Hautot-sur-Mer	A decision made on 9 March 2023, decisions of the commune of Hautot-sur-Mer annulled. Not appealed. See paragraph 9.12 above regarding the revised proposal submitted for AOT. Consideration and engagement is ongoing.	Aquind successfully appealed the decision of the commune of Hautot-sur-Mer to refuse applications for the occupation (AOT) of the commune's land for the purposes of the construction (and further operation) of the Transition Joint Bay at the landfall in France.
Tribunal Administratif de Rouen	No: 2102784-2	Prefecture de la Seine Maritime	Written pleadings have completed, awaiting a hearing appointment date, which is identified to be likely after the summer.	Application for annulment of the prefectoral order of 18 January 2021 rejecting the application for *Autorisation Environnementale* under Articles L. 181-1 et seq. of the Environment Code, registered under number 76-2019-00698 and concerning the electricity interconnection project between France and the United Kingdom. Should AQUIND be successful in this application the Prefet would have to restart the consideration of the *Autorisation Environnementale*.
Tribunal Administratif de Paris	No. 2013204/4-1	The Ministry of Ecological and Solidarity Transition/ now the Ministry of Energy Transition	A decision was made on 13 April 2023 to reject the challenge. An appeal in respect of that rejection was submitted on 14 June 2023.	Aquind appealed the objection expressed by the representatives of DGEC (a directorate within the MTE) at the PCI Regional Groups Decision Making Meeting on 04 October 2019, where it expressed objections to Aquind Interconnector being included in the 4th list of Union Projects of Common Interest (PCI list). Should AQUIND be successful in this appeal it will be recognised that France objected to the Projects inclusion in the 4th PCI list unlawfully. This would not reinstate Aquind in the 4th PCI list. Likewise, if AQUIND is unsuccessful in this appeal the position will remain as it is currently, which is that AQUIND Interconnector is not a PCI but that PCI status is not a pre-requisite for its development.

Tribunal Administratif de Cergy-Pontoise	No. 2008225-1	The Ministry of Ecological and Solidarity Transition/ now the Ministry of Energy Transition	Written pleadings are ongoing in accordance with the processes of the Tribunal.	Seeking annulment of (i) the decision of the DGEC dated 12 October 2019 rejecting the notification made by Aquind Limited pursuant to Article 10(1)(a) of Regulation (EU) No 347/2013 with a view to determining the starting point of the authorisation procedure applicable to the project of common interest carried out by Aquind. Whether the Applicant is successful or not in this appeal, the position will remain as it is currently, which is that AQUIND Interconnector is not a PCI and does not benefit from the PCI regime, but that PCI status is not a pre-requisite for its development.
Tribunal Administratif de Cergy-Pontoise	No. 2013552-1	The Ministry of Ecological and Solidarity Transition (now the Ministry of Energy Transition)	Written pleadings are ongoing in accordance with the processes of the Tribunal.	The Applicant has requested to annul the decision of the Direction Générale de l'Energie et du Climat (DGEC) of 21 February 2020 refusing it the benefit of a declaration of public utility The declaration of public utility was requested as a form of benefit afforded to PCI projects by the TEN-E Regulation, which is intended to improve the timeline for consideration of applications for consent and may also potentially recognise the Project's public and general interest. However, not receiving a declaration of public utility does not mean that the Project cannot otherwise avail itself of the necessary consents, as discussed above and noting that PCI status is not a pre-requisite for its development.

9.25 The Applicant has also noted that various Interested Parties have raised that decisions made in the French courts are not available in English. Therefore, in the interest of ensuring these decisions are available in English, the Applicant has arranged for professional translations of the following decisions which are included at Appendix 2 to this response:

9.25.1 No's: 2005168 ; 2005169 ; 2101452 dated 9 March 2023

9.25.2 No. 2013204/4-1 dated 13 April 2013

Concluding remarks in relation to French consents

9.26 As noted previously, the Applicant has and is continuing to properly manage the approvals and consents required for the Project, beyond those which would be provided by virtue of the grant of the Order. It is however inevitable that the unlawful decision to refuse development consent had a chilling effect on the progress able to be made in respect of the other consents and approvals which are required.

9.27 The Applicant has demonstrated the pathway it is following to secure the required consents and that there is a reasonable prospect that the relevant applications will be successful. However, the Order itself is an integral consent for the Project, and the decision taken on this will again influence progress in securing the other consents and realisation of the delivery of the Project and its significant national and international benefits.

9.28 The Applicant has confirmed it has no objection to an article being included in the Order relating to the obtainment of the *Autorisation Environnementale* such that there should be no legitimate concerns about the required other consents and no legitimate basis to suggest that those other consents need to be in place before the Project in the UK may commence.

Zero Net Artificialization

9.29 Lastly with regard to the Project in France and French law, Viola Langley has in one submission raised the 'Zero Net Artificialization' ('**ZNA**') law introduced in France, which seeks to suspend any net increase in the total amount of artificial surfaces. It is suggested that the AQUIND Interconnector project would conflict with this law. This is not correct.

9.30 AQUIND Interconnector is included in the Regional Planning, Sustainable Development and Equality Plan for the Territories of the Normandy Region (SRADDET), introduced in 2020, as part of the objective of national and international integration of energy networks.

9.31 The Prefet of the Normandy Region recommends in further updates of the regional SRADDET in connection with the implementation of the recently introduced policies of “zero artificialisation” of land by 2050, which limit the use of non-urbanised land for housing and economic activities, to take into account projects of national and regional significance, where the use of such land cannot be avoided.

9.32 An allowance of 100 Ha (10% of the total 1000 Ha allowance for such projects) is recommended to be made available annually for relevant developments which would include AQUIND Interconnector between 2021 and 2030. For reference, the converter station of AQUIND Interconnector in France which would introduce an artificial surface will occupy the same area as in England - 200x200m, which is equal to 4 Ha.

9.33 Accordingly, the delivery of the Project in France would be in accordance with the ZNA laws.

10. THE CUMULATIVE ASSESSMENT OF SOUTHERN WATER HAMPSHIRE WATER TRANSFER AND WATER RECYCLING PROJECT AND OTHER PROJECTS

10.1 Southern Water are currently developing proposals for the Hampshire Water Transfer and Water Recycling Project (HWTWRP). This is a separate proposal to the current proposals for Havant Thicket Reservoir. HWTWRP would comprise a new water recycling plant on land close to Budds Farm Wastewater Treatment Works in Havant, with an underground pipeline network between the proposed water recycling plant and Havant Thicket Reservoir; and 40km pipeline from the Reservoir to Otterbourne Water Supply Works.

10.2 The latest information on the Planning Inspectorate website for this project indicates that Southern Water currently intend to submit an application for development consent in early 2025.

10.3 The project is at an early stage of development, with a number of corridor options being considered and consulted on in summer 2022. It is understood that Southern Water anticipates submitting a request for a Scoping Opinion to the Inspectorate in mid-2023 and that a Preliminary Environmental Information Report (PEIR) assessments would be conducted in parallel.

10.4 Th overarching NPS for Energy (EN-1) paragraph 4.2.5 states that "*When considering cumulative effects, the ES should provide information on how the effects of the applicant's proposal would combine and interact with the effects of other development (including projects for which consent has been sought or granted, as well as those already in existence)*". Given the timing of when the cumulative effects assessment was undertaken (2019), including the addenda since prepared and submitted to PINS, and the absence of consent having been sought, this project was not considered within the cumulative effects assessment.

10.5 HWTWRP currently falls within Tier 3 (i.e. least certain) as defined at table 2 of Advice Note 17 in relation to assigning certainty to other existing development and/or approved development as a project on the Planning Inspectorate Programme of Projects where a scoping report has not been submitted. Advice Note 17 advises that for tier 3 projects "*the Applicant should aim to undertake an assessment where possible, although this may be qualitative and at a very high level*".

10.6 There remains uncertainty with respect to the proposals until further information is published following the 2022 public consultation. However, given the indicative locations of the corridor options with respect to the underground pipeline network, there would likely only be a relatively small potential for spatial overlap in the projects. The potential for temporal overlap during construction works is currently unknown, though it is noted the Proposed Development is awaiting a decision on whether consent will be granted whereas HWTWRP is not due to be submitted for at least a further 18 months (and likely later than this).

10.7 Given the potential overlap, Southern Water would be considered a key stakeholder with respect to the construction works of the Proposed Development. In line with the commitments set out in the Onshore Outline Construction Environmental Management Plan (OOCEMP) (Revision 009), a Communications Strategy will be developed for the Construction Stage of the Proposed Development. The Communications Strategy will provide the framework for engaging and communicating with stakeholders in relation to the associated construction works of the Proposed Development. The Strategy will identify the key stakeholders and confirm agreed methods for engagement and communication, including developers. In addition, the Framework Traffic Management Strategy (FTMS) (AS-072) is supported by an Access to Properties and Car Parking Communication Strategy which sets out the Applicant's commitments to stakeholder engagement – including with businesses and other developers.

10.8 It is also noted that Southern Water will be required to consider the cumulative effects of the Proposed Development at the time of their submission as a Tier 1 project with a high degree of certainty – at which point the HWTWRP will be more defined enabling a more

informed assessment of the potential cumulative effects of the two schemes. Accordingly, the cumulative effects of the two schemes will be fully assessed.

10.9 With respect to the Bransbury Park leisure centre, it is understood that public consultation was held in March 2023. The leisure centre would comprise sports courts and swimming facilities, children's playground and possibly a GP surgery. A planning application is yet to be submitted to the Council, though according to the consultation website, is anticipated for Autumn 2023. Given the timing of when the cumulative effects assessment was undertaken (2019), including the addenda since prepared and submitted to PINS, and absence of a planning application submission, this project was not considered within the cumulative effects assessment, though would fall within the study area for consideration. Should the project be approved, there would be potential for spatial overlap with respect to proposed additional parking to the south-east corner of Bransbury Park and possibly proposed route improvements along the southern boundary of Bransbury Park, though sufficient information is not currently available in order to carry out an assessment.

10.10 It is understood that a detailed planning application at Tipner East for the redevelopment of the site to provide 835 residential units has recently been consented by Portsmouth City Council (Planning reference: 22/01292/FUL). Additionally, there is a further detailed planning application for a further 221 residential dwellings at Tipner East, adjacent to the above site (Planning reference: 21/01357/FUL). This application went before the Planning Committee on 31st May 2023, with determination deferred to the July 2023 committee.

10.11 These applications were not included in the ES Addendum 3 cumulative effects updated assessment, however they have been considered in the Sub-regional Transport Model Forecast Year Review Technical Note (Annex 1 to Appendix 4.2: Validity of survey data used in the Environmental Statement).

10.12 Table 4 of the Sub-regional Transport Model Forecast Year Review Technical Note (Annex 1 to Appendix 4.2: Validity of survey data used in the Environmental Statement) provides details of development sites included within the review along with their current status, forecast status within the SRTM 2026 Do-Minimum scenario and estimated status in 2027. This included Tipner Firing Range and Tipner Urban Priority Area. It is confirmed that the developments at Tipner East are included within the Sub-Regional Transport Model forecast year scenarios and have therefore been taken into account in all traffic and transport related construction assessments of the Proposed Development within the Environmental Statement. This is also the case for the Tipner West development proposals, which is an identified strategic employment and residential site within the Draft Portsmouth Local Plan 2038.

10.13 These developments do not fall within the Zone of Influence for potential effects in relation to onshore ecology, ground conditions, groundwater, surface water and flood risk, heritage and archaeology, air quality, noise and vibration, human health and waste and material resources.

10.14 Due to the distance and intervening topography and built form, cumulative landscape and visual effects would not be generated and there would be no losses of agricultural land at either of the two sites which could give rise to cumulative effects with the Proposed Development.

10.15 The construction of the committed development would lead to employment generation. This would result in a cumulative effect on socio-economic receptors when considered alongside the job generation from the Proposed Development. This would be a minor beneficial cumulative effect in relation to employment generation during construction and negligible effect during operation within the context of the labour market.

11. THE CONVERTER STATION AREA AND THE SATISFACTION OF CA TESTS AND GUIDANCE

11.1 Within the submissions made by Blake Morgan on behalf of Mr Geoffrey and Mr Peter Carpenter (the "**Affected Person**" or "**AP**") it is alleged that the Applicant has not satisfied the tests for when a DCO may include provision authorising the compulsory acquisition of land, as provided for by Section 122 of the Act. Moreover, it is alleged that the Applicant has not met the common law tests relating to alternatives, both in terms of providing sufficient evidence that there are not any reasonable alternatives to its scheme of Proposed Development and rebutting the alternatives proposed on behalf of the AP by Blake Morgan and their appointed Counsel.

11.2 The Applicant has previously addressed all matters relating to compulsory acquisition and the land which is necessary to be acquired in connection with the Converter Station in response to previous submissions made on behalf of the AP. It has justified the acquisition of each and every square metre of land and each and every right as being necessary and shown that the alternatives advanced by the AP are not reasonable alternatives so as to lessen the need for it to acquire the land and rights proposed. It was on this basis that the ExA reported in its Report and Recommendation to the SoS, at paragraph 10.7.133, that *" the ExA cannot see anything in this objection that would prevent the grant of the CA or TP powers sought. The ExA is therefore satisfied that land which is the subject of these objections is required and proportionate for the Proposed Development and that there is a compelling case for the CA powers sought and that the TP powers are justified*".

11.3 The criticisms made of the ExA's consideration of their objections and the distinction advanced between "Category A" and "Category B" persons therefore have no relevant bearing on the conclusions reached. The Applicant has clearly discharged the onus on it to show that there is no reasonable alternative to the acquisitions proposed and this was accepted by the ExA.

11.4 With regard to the actual terms of the guidance related to procedures for the compulsory acquisition of land[7] (the "**CA Guidance**"), paragraphs 8, 9 and 10 set out the 'General Considerations' that the SoS must be persuaded of to justify the inclusion of provisions authorising the compulsory acquisition of land in a DCO. These 'General Considerations' draw on the legislative requirements provided for by Section 122 of the Planning Act 2008 and are consistent with the common law requirements in respect of the consideration of alternatives[8].

11.5 Paragraph 8 of the CA Guidance provides that "*The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. The applicant will also need to demonstrate that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate".*

11.6 Paragraph 9 of the CA Guidance identifies that "*[t]he applicant must have a clear idea of how they intend to use the land which it is proposed to acquire. They should also be able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available. Otherwise, it will be difficult to show conclusively that the compulsory acquisition of land meets the two conditions in section 122*".

11.7 This Applicant has demonstrated that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored, including in relation to: (1) the consideration of Mannington as an alternative connection point, which has been clearly evidenced to not be a feasible and/ or viable alternative to the Proposed Development's connection to Lovedean substation; and (2) in relation to the land which is required to be

[7] Department for Communities and Local Government, September 2013

[8] An explanation of principles on whether alternative sites or options may permissibly be taken into account or whether, going further, they are an "obviously material consideration" which must be taken into account, is provided in the judgment of Holgate J at paragraphs 268 – of 276 of *R (on the application of Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport* [2021] EWHC 2161 (Admin).

acquired from the AP and in respect of the alternative proposals put forward on their behalf.

11.8 The Applicant has clearly explained why the alternative proposals put forward on behalf of the AP, which in the main comprise alternative drainage proposals premised on the removal of the permanent Access Road and the removal of landscape planting, as well as an ill-informed suggestion by their appointed representative that electrical transformers should be stacked on top of one another, are not physically suitable, would not sufficiently mitigate the adverse visual impacts of the Converter Station, and as such are not feasible alternatives. In this regard the Applicant refers the SoS to the following submissions:

11.8.1 Appendix A of the Applicants Responses to Deadline 6 Submissions - Hearing Appendices (REP7-075) - Response to Carpenters Submissions on the Scope of the Authorised Development;

11.8.2 Response to Submissions on behalf of Mr G Carpenter and Mr P Carpenter at Deadline 7 (REP7c-014), in particular section 3 which details why the alternative access proposals were not a feasible or suitable alternative; and

11.8.3 Response to Submissions made on behalf of Mr Geoffrey Carpenter and Mr Peter Carpenter (REP9-019), in paragraphs 2.3 – 2.15 which provide a concise summary of the reasons why the alternatives proposals put forward on behalf of Mr Geoffrey and Mr Peter Carpenter would not be suitable.

11.9 The Applicant has also in multiple previous submissions clearly explained why the AP's land is required for the Proposed Development, how they intend to use all of the land which is proposed to be acquired from the AP, and therefore why the land and rights which are proposed to be acquired are necessary and proportionate. In this regard the Applicant refers the SoS to the following submissions:

11.9.1 Applicant's Transcript of Oral Submissions for Compulsory Acquisition Hearing 1 (REP5-034), in particular paragraphs 4.20 – 4.33 inclusive, which explains why all of the land and rights to be acquired in connection with the Converter Station is necessary to be acquired and why the approach taken is proportionate;

11.9.2 Applicant's response to action points raised at ISH1, 2 and 3, and CAH 1 and 2 (REP6-063), in particular paragraphs 3.1.1 – 3.1.26, which further explains why Plot 1-32 is required for the Proposed Development; and

11.9.3 Appendix A of the Applicants Responses to Deadline 6 Submissions- Hearing Appendices (REP7-075) - Response to Carpenters Submissions on the Scope of the Authorised Development.

11.10 Moreover, the Applicant has clearly shown the legitimate purpose for which the Order would authorise the compulsory acquisition of the land in the ownership of AP, by reference to the compelling need for the Project and the national scale benefits of delivering energy security, integration of renewables and contributing to significant reductions in carbon emissions and reducing electricity prices. The Applicant has also demonstrated that the compelling need for and benefits of the Project would outweigh the private loss to the AP, including noting that compensation would be payable to the AP for the loss which arises from the use of the compulsory acquisition powers. In this regard the Applicant refers the SoS to the following submissions:

11.10.1 The Needs and Benefits Report (APP-115), the Addendum to the Needs and Benefits Report (REP1136), and the second Addendum to the Needs and Benefits Report (REP7-064), and the Needs and Benefits Third Addendum;

11.10.2 Statement of Reasons (REP8-008), in particular section 7 which details the justification for the use of powers of compulsory acquisition; and

11.10.3 Applicant's Response to Deadline 7c Submissions - Appendix A - Applicant's Response to Mr Geoffrey and Mr Peter Carpenter (REP8-065), in particular paragraphs 3.16 – 3.22 in relation to the Applicant's assessment of CPO compensation.

11.11 Paragraph 9 of the CA Guidance identifies that "*[t]he applicant must have a clear idea of how they intend to use the land which it is proposed to acquire. They should also be able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available. Otherwise, it will be difficult to show conclusively that the compulsory acquisition of land meets the two conditions in section 122*".

11.12 The Applicant has also demonstrated that there is a reasonable prospect of the requisite funds for acquisition becoming available and refers the SoS to the following submissions of relevance in this regard:

11.12.1 The Applicant's Funding Statement (REP6-021);

11.12.2 The Applicant's response to the further written question of the ExA (REP7-038), at the response to CA 2.3.2;

11.12.3 Appendix B of the Applicants Responses to Deadline 6 Submissions- Hearing Appendices (REP7-075) - Response to Carpenters submissions on Funding, in particular sections 8 - 11;

11.12.4 Post hearing note to Compulsory Acquisition Hearing 3 in respect of the non-UK Planning Consents and Approvals required (AS-069);

11.12.5 Applicant's response to the Deadline 7c submissions of Mr Geoffrey and Mr Peter Carpenter (REP8-065), at Section 3; and

11.12.6 Response to Submissions made on behalf of Mr Geoffrey Carpenter and Mr Peter Carpenter (REP9-019), in particular paragraphs 2.16 – 2.18 and 3.1 – 3.23.

11.13 In addition, the Applicant has agreed to articles being included in the DCO which provide for:

11.13.1 The provision of a financial security of £4.97 million in respect of the liabilities to pay compensation to landowners in connection with the acquisition of their land or of rights over their land or the temporary use of land by the undertaker exercising its powers under Part 5 of the DCO and the approval of that security in writing by the SoS before the development landwards of MHWS may commence; and

11.13.2 The *Autorisation Environnementale* under Article L. 181-1 of the Environmental Code (or such environmental authorisation as is required pursuant to any successor legislation) in France being required to be obtained before the development landwards of MHWS may commence.

11.14 Paragraph 10 of the CA Guidance identifies that "*[t]he Secretary of State must ultimately be persuaded that the purposes for which an order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected. In particular, regard must be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of acquisition of a dwelling, Article 8 of the Convention*".

11.15 As detailed above at paragraph 11.9 and 11.10, the Applicant has clearly explained the legitimate purpose for which it is seeking to acquire the land and rights over land in the ownership of the AP and justified why all of that land is required to be subject to the powers of compulsory acquisition sought.

11.16 The Applicant has clearly demonstrated that there is sufficient justification to interfere with the human rights of the AP in the circumstances, afforded by Article 1 of the First Protocol to the European Convention on Human Rights. With further regard to the justification for that interference, the Applicant refers the SoS to the following submissions:

11.16.1 Statement of Reasons (REP8-008), in particular paragraph 7.9 which details the justification for the use of powers of compulsory acquisition and the consideration of interferences with human rights specifically.

11.17 Accordingly, the Applicant has demonstrated all of the necessary considerations detailed within the CA Guidance, including in relation to the assessment of alternatives, are

satisfied. In so doing the Applicant has evidenced why the legislative requirements provided for by Section 122 of the Planning Act 2008 are met and why the provisions for compulsory acquisition sought in respect of the APs land should be included in any Order to be made.

12. IMPACTS ON MILTON COMMON AND MITIGATION OF POTENTIAL CONTAMINANT SOURCES

12.1 Various Interested Parties have again made statements relating to Milton Common and the potential for contaminants which are located beneath this to be released as a consequence of works to install the onshore cables across Milton Common and in other locations where historic landfill has been identified. Installation of the onshore cables at Milton Common is proposed to be by way of trenching and a short trenchless installation under the existing coastal flood defence west of Frog Lake at Milton Common.

12.2 Consultation with Portsmouth City Council (PCC) (summarised in Appendix 18.2 of the Environmental Statement (APP-430)) indicated that a number of areas of contamination along the Onshore Cable Route have undergone previous remediation, though specific details relating to Milton Common, Fort Cumberland car park or 'soil cleaning' were not provided. Following correspondence with PCC, the Applicant reviewed house records and reports in June 2019, and these were incorporated into the Baseline Environment Section (section 18.5) of Chapter 18 (Ground Conditions) (APP-133), and the information was used to create conceptual site models contained within Appendix 18.1 (Preliminary Risk Assessment and Generic Quantitative Risk Assessment) (APP-429). In addition, a review of desk-based information and a Landmark Envirocheck report undertaken as part of the Preliminary Risk Assessment (PRA) did not identify and records of remedial or soil cleaning works.

12.1 Preliminary ground investigations undertaken within the area of Milton Common former landfill and Fort Cumberland car park, and subsequent Generic Quantitative Risk Assessment, did not identify any exceedances of contaminants above the relevant Generic Assessment Criteria (GAC) when assessing the risks to human health. However, asbestos containing materials were identified within the vicinity during the investigation. The risk to human health receptors in the Milton Common area was identified as being Moderate, prior to the implementation of mitigation.

12.2 A number of landfills and current / former industrial and military land uses surround the Fort Cumberland area, including the Glory Hole Landfill. The proximity of historic landfills that fall outside of the Order limits has been reported and considered within the assessment undertaken. The Onshore Cable Route will be contained predominantly within existing highway boundaries, and it is not likely that construction works, particularly in relation to trenching activities, would disturb potentially contaminated ground. The risk to human health was assessed as being Minor, prior to the implementation of mitigation.

12.3 Taking into consideration the results of the preliminary ground investigation and subsequent assessments, a number of proposed mitigation measures to be implemented during construction phases have been presented within Section 18.9 of the Environmental Statement (APP-133) and the Onshore Outline CEMP (Document Ref: 6.9 - Revision 009), including at section 5.5 in relation to ground conditions generally, and at section 6.9.2 in relation to Milton Common specifically. With the application of the secured mitigation measures the risk to human health during construction was assessed to be Negligible.

12.4 In addition to the explanation contained in the ES of the assessment of ground conditions, surface water, groundwater and human health relating to the proposed works at Milton Common and contamination generally, the position in respect of works in Milton Common was discussed at length during the Examination of the Application, in particular at Compulsory Acquisition Hearing 1 in response to the following questions of the ExA:

12.4.1 Question 9.4 - The Applicant to explain how ground conditions on Milton Common could require the appointed contractor to lay one cable circuit across the Common and one along Eastern Road ((REP1-133) page 4-21 and (REP1-091) CA1.3.18); and

12.4.2 Question 9.5 - The Applicant to describe the expert views on comparative depths of made ground, contamination, ground obstructions, variable ground potentially vulnerable to differential settlement, soft ground potentially vulnerable to adverse

total settlement and potential ground gas at Milton Common and the source of these views ((REP1-091) CA1.3.18).

12.5 The Applicant's responses to those questions are detailed within the Applicant's Transcript of Oral Submissions for Compulsory Acquisition Hearing 1 (REP5-034), with the Applicant's oral submissions in respect of Question 9.4 located at paragraphs 9.18 – 9.32 and in respect of Question 9.5 at paragraphs 9.33 – 9.41.

12.6 The Applicant also provided a further response on these matters following Compulsory Acquisition Hearing 1, in relation to how ground conditions at Milton Common may require load spreading and how this may limit the installation of cable circuits, which is detailed at paragraph 3.7 of the Applicant's Response to action points raised at ISH1, 2 and 3, and CAH 1 and 2 (REP6-063).

12.7 This information explained how ground investigations at Milton Common had been investigated, the findings of those investigations, implications for the cable routing including the risks apparent from the Made Ground, and the engineering solutions to manage those potential risks.

12.8 Aligned with the assessment undertaken and explained in the above referred to documents, the Onshore Outline Construction Environmental Management Plan details specific mitigation measures required in connection with the installation of onshore cables across Milton Common at paragraph 6.9.2.1 (Document Ref: 6.9 - Revision 009).

12.9 In addition, the Applicant would be required to comply with Requirement 13 of the DCO, which provides that no phase of the Proposed Development landwards of MHWS within the area of a relevant planning authority may commence until a written scheme applicable to that phase in accordance with the Onshore Outline Construction Environmental Management Plan and Surface Water Drainage and Aquifer Contamination Mitigation Strategy (Appendix 3 to the DAS (REP8-012)) (in so far as relevant), to deal with the contamination of any land, including groundwater, within the Order limits landwards of MHWS which is likely to cause significant harm to persons or pollution of controlled waters or the environment, has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency and for the works and all remediation to be undertaken in accordance with the scheme approved.

12.10 Accordingly, the Applicant has provided a detailed assessment of the construction of the Proposed Development across Milton Common, the risks posed by contaminated substances within the Made Ground and how those risks would be managed to avoid adverse effects.

12.11 The Applicant notes the findings of the ExA in their Report and Recommendation to the SoS in this regard, which identified that:

12.11.1 subject to the implementation in full of the relevant measures identified in the relevant construction, operational and decommissioning management plans the construction, operational and decommissioning effects and risks to the water environment have been addressed (see paragraph 7.12.56); and

12.11.2 the Applicant has provided a sound and enforceable basis for the management and mitigation of safety risks associated with contaminated ground conditions and the ExA heard no compelling evidence to the contrary (see paragraph 7.14.38).

12.12 The ExA considered the matters of the onshore water environment and ground conditions to both be a neutral matter in the overall planning balance (see paragraphs 7.12.57 and 7.14.38).

13. MILTON ALLOTMENTS AND THE MITIGATION OF IMPACTS IN CONNECTION WITH PROPOSED HDD

13.1 Within various responses submitted by Interested Parties statements are made regarding risks associated with the proposed HDD beneath the Eastney and Milton Allotments and in particular the risks posed by a 'chemical breakout'.

13.2 The HDD beneath the Eastney and Milton Allotments is proposed to avoid the need to trench through the allotments, so as to avoid the impacts that would be associated with this.

13.3 The extent of the risk of bentonite breakout at the Eastney and Milton Allotments and the related remedial and control measures were concisely explained in the Applicant's Response to action points raised at ISH1, 2 and 3, and CAH 1 and 2 (REP6-062), at paragraph 3.4.

13.4 The information provided in this section of this document detailed the reasons why the risk of bentonite breakout occurring when the HDD is undertaken beneath the Eastney and Milton Allotments has been confirmed to be small to negligible and summarised the mitigation measures to be adopted to ensure any breakout is monitored for and addressed where identified to have occurred.

13.5 Moreover, the submitted information (at paragraph 3.4.9 of REP6-062) confirmed that the drilling fluids which are to be used are constructed of naturally occurring bentonite, and that the products safety is assured as the drilling products (Bentonite) are listed on the British Governments CEFAS (Centre for Environmental Fisheries and Aquatic Science) website and PLONOR (Pose Little Or No Risk) list[9].

13.6 The HDD Position Statement (REP1-132) outlines the requirements of the contractor for the HDD locations, setting out the constraints and specific requirements for construction at each HDD location

13.7 The mitigations required to be in place during the HDD at the Eastney and Milton Allotments and the controls to confirm that the drilling fluids to be used will be constructed of naturally occurring bentonite are detailed at section 6.2.10 of the Onshore Outline Construction Environmental Management Plan (Doc Ref: 6.9, Rev 009).

13.8 Accordingly, the risk of any breakout during construction has been minimised, monitoring measures to ensure any breakout is identified as soon as this occurs are secured, and in the highly unlikely event of any breakout occurring there will not be any lasting damage as a consequence of bentonite posing little or no risk.

13.9 The alternative would be to trench through the Eastney and Milton Allotments, but this would be a far more impactful approach and for this reason has been avoided.

13.10 With regard to operational maintenance, it is confirmed in the Onshore Outline Construction Environmental Management Plan (Doc Ref: 6.9, Rev 009) at paragraph 6.2.10.1 that maintenance of the cables beneath the allotments would involve visual inspections only, and that any maintenance of the cable under the allotments would be completed from the entrance and exit pits located outside of the Eastney and Milton Allotments and therefore will not affect the users at Eastney and Milton Allotments.

[9] [redacted] - the list is alphabetical, please scroll down the page to 'B' for bentonite

14. COMMENTS RELATING TO TRAFFIC

14.1 The Applicant notes the comments of Andrea Putnam-Moorcroft and others, who seek to allege that the construction of the Proposed Development will give have a direct impact on access to the Queen Alexandra Hospital, due to congestion being created in proximity to works near to the hospital, the creation of resultant backlogs, and that this will make it difficult for Ambulances to access and egress the hospital and for other persons attending. These comments are not agreed with for the reasons set out below.

14.2 The traffic assessments completed to inform the Environmental Statement (APP-137) and ES Addendum (REP1-139) have not identified any significant effects in relation to traffic delay on routes within the immediate vicinity of Queen Alexandra Hospital. This assessment used the Sub-Regional Transport Model to assess the impacts associated with construction of the Onshore Cable Route taking place simultaneously at six locations on the highway, which is the maximum that would be permitted by the Development Consent Order and the Framework Construction Traffic Management Plan (AS-074) so as to ensure impacts are minimised.

14.3 The entrance to the Accident and Emergency (A&E) department of the Queen Alexandra Hospital is over 1.3km by road from the construction route for the cable corridor. The section of the cable route construction corridor which is closest to the Hospital is the A3 London Road to the north of B2177 Portsdown Hill Road and the B2177 Portsdown Hill Road itself.

14.4 As is stated in paragraph 4.2.1.2. of the Framework Traffic Management Strategy (FTMS) (AS-072), "*the ducts for each circuit will be installed in short sections, typically up to 100m*". As such, traffic management measures to support this installation would also be limited to a continuous length of approximately 100m, so as to minimise disruption.

14.5 Along A3 London Road, the majority of construction works will involve the temporary closure of sections of the bus lanes and so will not be located so as to encroach upon the carriageway which is used by general traffic and two-way traffic flow will be maintained. The closet location where shuttle working traffic signals are required which will encroach on the carriageway used by general traffic is on the A3 London Road Lansdown Avenue and The Brow, which will be in place for three weeks per circuit and limited to the school holidays, June and July when traffic flows are generally lower than other times of year. On the B2177 Portsdown Hill Road shuttle working traffic signals will also be required for two weeks per circuit between the Portsdown Hill Car Park access and Farlington Avenue.

14.6 Section 2.16 of the FTMS (AS-072) also provides the details of further measures to be implemented to minimise any delay to emergency service vehicles, including in locations where emergency service vehicles are located along the cable route. As stated in section 2.16 of the FTMS, each construction zone location will be setup to ensure access by emergency vehicles is available at all times. To facilitate access and minimise delays through the works, a protocol will also be setup for the management of temporary traffic signals to assist in this regard. In addition, the Applicant will seek to produce a communication plan in conjunction with the emergency services to address their specific needs during the construction of the Proposed Development. The communication plan will outline the relevant procedures to be followed with regard to the dissemination of information and how emergency service vehicle access will be safeguarded and delivered through each individual phase.

14.7 Portsmouth FC Match Day Traffic

14.8 The Applicant notes the comments of Barry Dewing submitted on behalf of the Pompey Independent Supporters Association in relation to the potential for additional congestion to be caused on Portsmouth FC match days by traffic management measures implemented in connection with the works to deliver the Proposed Development.

14.9 As part of the Framework Traffic Management Strategy (FTMS) (AS-072) consideration has been given to how construction works on the A2030 Eastern Road respond to

Portsmouth FC home games, noting the potential traffic congestion resulting from pre-match and post-match traffic management that will reduce highway capacity.

14.10 During the Examination of the Application the Applicant completed a review of traffic survey data collected on the A2030 Eastern Road before and after weekday evening games played in February and March 2020, prior to Covid-19 Lockdown commencing. It was not possible to complete further traffic surveys on Saturday football match days during the Examination period due to the Covid-19 Lockdown and football matches not being played during this period.

14.11 The assessment identified that on a weekday match days, while traffic flows were comparable to weekday traffic peaks, the traffic surveys recorded a much higher proportion of slow moving traffic than non-match days. This therefore suggests that there is significant congestion on the A2030 Eastern Road on match days, which would be worsened by the implementation of traffic management in connection with the Proposed Development.

14.12 To mitigate the impacts associated with the traffic management and on a precautionary basis, the Applicant has agreed to the removal of traffic management on the A2030 Eastern Road on football match days and its replacement before works resume This mitigation would be achieved through the careful scheduling of works changeovers between each 100m construction section, which under the proposed 24-hour construction working hours would occur every three days. This will also allow the traffic management to be removed prior to a football match and reinstalled on the same day therefore minimising delay to the construction progress. This commitment is detailed within Section 2.8.2 and 10 of the FTMS (AS-072).

14.13 This need for such a restriction will be confirmed through the completion of confirmatory match day traffic surveys, which are to be completed prior to the start of construction. In the interest of ensuring the currency of the confirmatory surveys at the point in time that the works are in position to commence the Applicant has not yet undertaken these surveys, but the need to do so is secured. These surveys, and any alterations to the proposed traffic management restrictions consequent upon the findings of them, will be reviewed and agreed by Portsmouth City Council and Hampshire County Council.

14.14 **Access to Blake Road**

14.15 The Applicant has noted the comments of Mrs. Jane Carter in connection with vehicular access to their residence in Blake Road, a cul-de-sac off Farlington Avenue, during the works to construct the Proposed Development. In this regard the Applicant identifies that it is stated in paragraph 7.2.1.4. of the Framework Traffic Management Strategy (FTMS) (AS-072), "*temporary three-way signals or road plating will be required to provide access to the Blake Road cul-de-sac.*" As such, vehicular access to properties on Blake Road will be maintained at all times throughout construction of the cable route. It should also be noted that this traffic management will only be required for 1-2 weeks per circuit (2-4 weeks in total for the construction of the Proposed Development) due to the way in which the construction corridor will progress in 100m sections.

15. THE BOOK OF REFERENCE AND CORRESPONDENCE FROM THE APPLICANT

15.1 The Applicant notes the submissions of Jennifer Jackson, who holds an ad medium filum interest in Plot 4-42, which is highway land, proposed to be utilised for the installation of the Proposed Development, which alleges that the Applicant's approach to "consultation" is flawed because since acquiring their property in September 2020 they have not received any correspondence regarding the proposal from the Applicant.

15.2 The last document issued to the property by the Applicant was a Section 56 Notice of Acceptance for a Development Consent Order letter dated 23 December 2019. Since this date, which pre-dates Jennifer Jackson's ownership, there has been no legal requirement for the Applicant to submit any correspondence to this property and no correspondence has been issued by the Applicant.

15.3 Moreover, the Applicant notes that Jennifer Jackson is listed as an owner of Plot 4-42 in the Book of Reference, which has been the case since revision 007 of the Book of Reference was submitted to the examination at Deadline 8 when it was updated at the close of the Examination. It is also noted that Jennifer Jackson has issued representations in relation to the Application since August 2021.

15.4 The Applicant has had no need to refresh the Book of Reference since the close of the Examination. The next point at which there will be a need for the Applicant to refresh the Book of Reference is where an Order is made and it is necessary for the Applicant to serve compulsory acquisition notices in accordance with section 134 of the Act. It is confirmed that should an Order be made the Applicant will refresh the Book of Reference before serving such notices.

16. RISKS POSED BY ELECTRO-MAGNETIC FIELDS

16.1 Various submissions have raised concerns about electromagnetic fields (EMF) associated with the operation of the Proposed Development. These concerns mirror concerns raised during the course of the Examination.

16.2 The issue of EMFs was discussed at length during the examination and the Applicant and Public Health England submitted the following information to confirm that EMF in connection with the Proposed Development would comply with the International Commission on Non-Ionizing Radiation Protection (ICNIRP) limits and that effects would be negligible and pose no significant risk to public health:

16.2.1 Chapter 26 of the ES on Human Health (APP-141);

16.2.2 Appendix 3.7 Onshore Electric and Magnetic Field Report (APP-361);

16.2.3 Public Health England Relevant Representation (RR-065);

16.2.4 Public Health England letter dated 16th September 2020 (REP1-218); and

16.2.5 Applicant's Response to submissions made at Open Floor Hearings (REP6-061)

16.3 In light of this, the ExA expressed its agreement with the Applicant's ES and the advice from Public Health England that EMF effects would be negligible and would not pose a risk to public health, and that there was no conflict with NPS EN-5 in this regard (see paragraph 9.2.27 of the ExA's Report and Recommendation to the SoS). Accordingly, it was reported that EMF matters do not indicate against the Order being made and that the ExA found this to be a neutral factor in the final planning balance.

17. HAMPSHIRE AND ISLE OF WIGHT SOLENT SEAGRASS RESTORATION PROJECT

17.1 Within a response submitted by Dr. Hannah Pleasance it is alleged that the Proposed Development would give rise to adverse impacts on the Solent Maritime Special Area of Conservation, including by damaging the Hampshire and Isle of Wight Solent Seagrass restoration project. This is not correct.

17.2 The Proposed Development will not have any direct effects on the Solent Maritime SAC or seagrass habitats as the construction works do not overlap with the SAC site boundary or any areas where seagrass beds are identified as a protected feature or sensitive habitat.

17.3 It is recognised that there are proposed works planned in the northern channel of Langstone Harbour to cross from Portsea Island to the mainland. However, the construction method used will be Horizontal Directional Drilling (HDD) which will drill some 10-15 m underneath the seabed which will not result in any direct impacts to any sensitive habitats on the surface of the seabed that are located in this area (illustrated in Sheet 7 and 8 of REP5-059). Furthermore, when works are to be undertaken in this area, the outline Onshore Construction Environmental Management Plan (CEMP) (REP8-025) and Outline Marine CEMP (APP-488) have described measures that would be undertaken to avoid and prevent any pollution to the marine or coastal environments in undertaking these works. Very early consultation was undertaken in 2018 with the Langstone Harbour Board and Natural England on these works in this location and both organisations were content that there would not be any direct impacts to these sensitive habitats with the secured measures in place. Similarly, the HDD works that are to be completed at Eastney beach which is the UK Landfall (illustrated in APP-148) will not directly impact the SAC in this location as the HDD will drill underneath the seabed. The employment of HDD methods was welcomed by Natural England as a means of minimising impacts upon the SAC and sensitive habitats (as recorded in the Statement of Common Ground with Natural England (REP8-031)).

17.4 It has been recognised in the application that the Proposed Development has potential to cause indirect effects on the SAC and seagrass habitats as some construction methods may result in an increase in suspended sediments which can drift into areas beyond the construction footprint and also result in sediment deposition when the suspended sediments deposit on the seabed. Indirect effects on sensitive habitats that are captured under the Solent Maritime SAC protective designation have been fully assessed within the Habitat Regulations Assessment Report (REP8-020) for the Proposed Development in accordance with the Habitats Regulations and the Offshore Habitats Regulations. This assessment concluded that there will be no adverse effects on the integrity of the SAC's protected features (which includes intertidal and subtidal seagrass features) as a result of the Proposed Development alone or in combination with other plans and projects. During the Examination Natural England expressed its agreement with this conclusion (as recorded in, and the acceptance of, the Statement of Common Ground with Natural England (REP8-031)).

17.5 Furthermore, potential effects resulting from the Proposed Development on seagrass habitats were also assessed in term of impacts on water quality as is presented in the Marine Water Framework Directive Assessment (WFD) (APP-372). This assessment is undertaken in accordance with the WFD and falls under the competent authority of the Environment Agency. The assessment concluded that given the distance of construction works from known seagrass habitats, and the very transient nature of any suspended sediments resulting from the works, they would not result in risk to seagrass in the Langstone Harbour Water Body or sensitive habitats in the Solent Water Body. As such, it was concluded that the marine activities resulting from the Proposed Development will not prevent the water bodies from meeting environmental objectives or prevent improvement on their status in future. During the Examination the Environment Agency expressed its agreement with this conclusion (as recorded in, and the acceptance of, the Statement of Common Ground with Environment Agency (REP8-031)).

17.6 During the Examination period, the only further query on seagrass was a request for further assurance from the ExA that a precautionary approach had been taken in the WFD

assessment and that the most appropriate environmental information was employed in regard to the location of the sensitive habitats relating to the WFD. In response, the Applicant provided further illustrative detail on suspended sediments and their potential for impact on these highly sensitive WFD habitats (REP5-070). No further information was requested.

17.7 Seagrass beds within the vicinity of the Proposed Development were also afforded assessment as a protected marine habitat within Chapter 8 Intertidal and Benthic Habitats of the Environmental Statement (APP-123). No changes to littoral seagrass bed function or distribution were considered likely to arise as a result of the Proposed Development for the same reasons as those provided within the WFD Assessment. In the course of Examination, Natural England expressed its agreement with this conclusion (as recorded in, and the acceptance of, the Statement of Common Ground with Natural England (REP8-031)).

17.8 Given all of the above, and the recent validity review that concluded that all these assessments remain valid in 2023, the Applicant considers that there is robust evidence to support the conclusion that the Proposed Development will not result in adverse effects on the sensitive marine habitats of the Solent Maritime SAC or the seagrass works being undertaken by Hampshire and Isle of Wight Solent Seagrass Restoration Project.

APPENDIX 1

Photographs of Farlington Playing Fields – 8th June 2023

The below image identifies the approximate location of each of the photographs included in this Appendix.

Photograph 7075

Photograph 7076

Photograph 7078

Photograph 7079

APPENDIX 2

English Translations of French Appeal Decisions

ADMINISTRATIVE COURT
OF ROUEN

No. 2005168; 2005169; 2101452

FRENCH REPUBLIC

AQUIND

ON BEHALF OF THE FRENCH PEOPLE

Mr Bouvet
Rapporteur

The Administrative Court of Rouen

Ms Cazcarra
Public rapporteur

(3rd Chamber)

Hearing of 23 February 2023
Decision of 9 March 2023

24-01
C

Having regard to the following procedures:

- **I./** By way of an application registered on 21 December 2020 under number 2005168 and briefs registered on 10 November 2022 and 14 February 2023, the company AQUIND, represented by Maître Santoni, asked the court, in the most recent of its written submissions:

- 1) primarily, to annul the implied refusal decision of the municipality of Hautot-sur-Mer dated 24 August 2020 against its application for authorisation to temporarily occupy public property on "*the plots on which the mini golf course and the sections of rue du Casino in the municipal public road network are located*" on the grounds of abuse of power;

- 2) in the alternative, to annul the decision of the municipality of Hautot-sur-Mer, adopted by way of deliberation on 8 October 2020, to refuse its application for authorisation to temporarily occupy public property relating to the aforementioned plots on the grounds of abuse of power;

- 3) in any case, to order "*the municipality of Hautot-sur-Mer*" to issue the requested temporary occupation permit within one month from the judgment to be delivered, subject to a fine of one hundred euros per day of delay;

- 4) in any case, in the alternative, to order "*the municipality of Hautot-sur-Mer*" to reinstate the application for a requested temporary occupation permit within one month of the judgment to be delivered, subject to a fine of one hundred euros per day of delay;

- 5) to charge the municipality of Hautot-sur-Mer the sum of 1500 euros under the provisions of Article L. 761-1 of the French Code of Administrative Justice.

AQUIND argued that:

The implied decision to refuse its application:
- is insufficiently justified;
- is vitiated by a manifest error of assessment since its application is compatible with the use of the public property;
- the refusal of its application is not based on a reason of public interest;
- it infringes the principle of freedom of trade and industry;
- it contravenes the principle of effectiveness of European Union law;
- it is vitiated by a misuse of power.

The deliberation of the Municipal Council dated 8 October 2020:
- cannot be regarded as constituting a disclosure of the reasons for the implied refusal of its application;
- is illegal since only the Mayor, and not the Municipal Council, has jurisdiction to issue or refuse authorisation to temporarily occupy public property;
- is insufficiently justified;
- is vitiated by an error of law since the project does not in any way disregard the Seine-Maritime coastal and flood risk prevention plan (PPRI - *plan de prévention des risques littoraux et d'inondations*) approved on 29 May 2020; as a matter of fact, the landing chambers do not constitute constructions within the meaning of urban planning law, nor do they constitute constructions within the meaning of the PPRI; on the contrary, they constitute equipment and structures of public interest authorised by the PPRI;
- the reasons for the deliberation based on the negative consequences of the works and the project's lack of interest are materially inaccurate.

By way of a brief in response registered on 8 July 2022, a supplementary brief registered on 31 January 2023 and a brief registered on 16 February 2023, the latter not disclosed, the municipality of Hautot-sur-Mer, represented by Maître Capitaine, petitioned for:

1) the refusal of the application as it is inadmissible, and in the alternative, as it is unfounded;

2) the company AQUIND to be charged the sum of 3000 euros under the provisions of Article L. 761-1 of the French Code of Administrative Justice.

The municipality argued that:
- no implied refusal decision was issued on 24 August 2020; the time limit for lodging an appeal is calculated from 29 July 2020, the date on which Aquind received the Mayor's letter containing the express refusal decision; it follows that Aquind's application is out of time and, as such, inadmissible;
- the pleas raised by the applicant company are unfounded.

The application was sent to the Prefect of Seine-Maritime, who did not make any comments.

II./ By way of an application registered on 21 December 2020 under number 2005169 and briefs registered on 10 November 2022 and 14 February 2023, the company Aquind, represented by Maître Santoni, asked the court, in the most recent of its written submissions:

- 1) primarily, to annul the implied refusal decision of the municipality of Hautot-sur-Mer dated 24 August 2020 against its application for authorisation to temporarily occupy public property on "*the plots on which the car park and the sections of rue du Casino, rue du Golf miniature and rue des Canadiens in the municipal public road network are located*" on the grounds of abuse of power;

- 2) in the alternative, to annul the decision of the municipality of Hautot-sur-Mer, adopted by way of deliberation on 8 October 2020, to refuse its application for authorisation to temporarily occupy public property relating to the aforementioned plots on the grounds of abuse of power;

- 3) in any case, to order "*the municipality of Hautot-sur-Mer*" to issue the requested temporary occupation permit within one month from the judgment to be delivered, subject to a fine of one hundred euros per day of delay;

- 4) in any case, in the alternative, to order "*the municipality of Hautot-sur-Mer*" to reinstate the application for a requested temporary occupation permit within one month of the judgment to be delivered, subject to a fine of one hundred euros per day of delay;

- 5) to charge the municipality of Hautot-sur-Mer the sum of 1500 euros under the provisions of Article L. 761-1 of the French Code of Administrative Justice.

AQUIND argued that:

The implied decision to refuse its application:
- is insufficiently justified;
- the letter from the Mayor of Hautot-sur-Maire dated 29 July 2020 cannot be regarded as an express decision to refuse its application;
- the decision is vitiated by a manifest error of assessment since its application is compatible with the use of the public property;
- the refusal of its application is not based on a reason of public interest;
- it infringes the principle of freedom of trade and industry;
- it contravenes the principle of effectiveness of European Union law;
- it is vitiated by a misuse of power.

The deliberation of the Municipal Council dated 8 October 2020:
- cannot be regarded as constituting a disclosure of the reasons for the implied refusal of its application;
- is illegal since only the Mayor, and not the Municipal Council, has jurisdiction to issue or refuse authorisation to temporarily occupy public property;
- is insufficiently justified;
- is vitiated by an error of law since the project does not in any way disregard the Seine-Maritime coastal and flood risk prevention plan (PPRI) approved on 29 May 2020; as a matter of fact, the landing chambers do not constitute constructions within the meaning of urban planning law, nor do they constitute constructions within the meaning of the PPRI; on the contrary, they constitute equipment and structures of public interest authorised by the PPRI;
- the reasons for the deliberation based on the negative consequences of the works and the project's lack of interest are materially inaccurate.

By way of a brief in response registered on 8 July 2022, a supplementary brief registered on 31 January 2023 and a brief registered on 16 February 2023, the latter not disclosed, the

municipality of Hautot-sur-Mer, represented by Maître Capitaine, petitioned for:

1) the application to be refused;

2) the company AQUIND to be charged the sum of 3000 euros under the provisions of Article L. 761-1 of the French Code of Administrative Justice.

The municipality argued that:
- no implied refusal decision was issued on 24 August 2020; the time limit for lodging an appeal is calculated from 29 July 2020, the date on which Aquind received the Mayor's letter containing the express refusal decision; it follows that Aquind's application is out of time and, as such, inadmissible;
- the pleas raised by the applicant company are unfounded.

The application was sent to the Prefect of Seine-Maritime, who did not make any comments.

III./ By way of an application registered on 15 April 2021 under number 2101452 and briefs registered on 10 November 2022 and 14 February 2023, the company AQUIND, represented by Maître Santoni, asked the court, in the most recent of its written submissions:

- 1) to annul the decision of the municipality of Hautot-sur-Mer dated 15 February 2021 refusing its application for withdrawal of the deliberation of 8 October 2020 of the Municipal Council of this municipality, this application being formulated within the framework of the non-contentious appeal lodged on 21 December 2020, on the grounds of abuse of power;

- 2) to annul the decision of the municipality of Hautot-sur-Mer, adopted by way of deliberation on 8 October 2020, to refuse its application for authorisation to temporarily occupy public property on the grounds of abuse of power;

- 3) to charge the municipality of Hautot-sur-Mer the sum of 1500 euros under the provisions of Article L. 761-1 of the French Code of Administrative Justice.

AQUIND argued that:
- the deliberation of 8 October 2020 is illegal since only the Mayor, and not the Municipal Council, has jurisdiction to issue or refuse authorisation to temporarily occupy public property;
- it is insufficiently justified;
- is vitiated by an error of law since the project does not in any way disregard the Seine-Maritime coastal and flood risk prevention plan (PPRI) approved on 29 May 2020;
- the reasons for the deliberation based on the negative consequences of the works and the project's lack of interest are materially inaccurate;
- the refusal of its application is not based on a reason of public interest;
- it infringes the principle of freedom of trade and industry;
- it contravenes the principle of effectiveness of European Union law;
- it is vitiated by a misuse of power.

By way of a brief in response registered on 8 July 2022, a supplementary brief registered on 31 January 2023 and a brief registered on 16 February 2023, the latter not disclosed, the municipality of Hautot-sur-Mer, represented by Maître Capitaine, petitioned for the refusal of the application and the company AQUIND to be charged the sum of 3000 euros under the provisions of Article L. 761-1 of the French Code of Administrative Justice.

The municipality argued that the pleas raised by the applicant company are unfounded.

The application was sent to the Prefect of Seine-Maritime, who did not make any comments.

Having regard to the other documents in the files.

Having regard to:
- the French General Local Authorities Code;
- the French Code of Relations between the Public and the Administrative Authorities;
- the French Code of Administrative Justice.

The parties were regularly notified of the day of the hearing.

The following were heard during the public hearing:
- Mr Bouvet's report;
- the pleading of Ms Cazcarra, public rapporteur;
- the comments of Maître Santoni, for the company AQUIND;
- the comments of Maître Hurel for the municipality of Hautot-sur-Mer.

Considering the following:

1. AQUIND is planning to set up a high voltage direct current electricity interconnector between France and the UK through the construction of subsea and underground infrastructure. This cross-border interconnector would involve a subsea link between Eastney, a district in the south-east of Portsmouth (Hampshire), and the municipality of Hautot-sur-Mer (Seine-Maritime). The project involves the construction of a landing zone linking the subsea cables to the land cables. Among several sites suitable for the establishment of such infrastructure, that of Pourville-sur-Mer, located on the territory of the municipality of Hautot-sur-Mer, was selected by AQUIND. By way of letters dated 22 June 2020, received on the following 24 June, AQUIND submitted two applications to the municipality for authorisation to temporarily occupy public property in order to install two underground connecting cavities and to carry out directional drilling for the landfall. These two requests concerned the site of the municipal mini-golf course and the site of the municipal public car park respectively. The administrative authorities' silence on these requests gave rise to an implied refusal decision at the end of the two-month period. In addition, by way of a deliberation dated 8 October 2020, the Municipal Council of Hautot-sur-Mer refused the applications for authorisation to occupy public property submitted by AQUIND. By letter dated 21 December 2020, AQUIND filed a non-contentious appeal with the Mayor of the municipality to withdraw the above-mentioned deliberation. By way of a letter dated 15 February 2021, the Mayor of Hautot-sur-Mer refused this appeal. By way of these proceedings, the applicant company seeks, primarily, the annulment of the implied decisions of 24 August 2020 rejecting its applications for authorisation to temporarily occupy two plots of public property, and the annulment of the deliberation of the Municipal Council of 8 October 2020, as well as the annulment of the express decision of 15 February 2021 refusing its non-contentious appeal for the withdrawal of the aforementioned deliberation.

On the junction:

2. The above-mentioned requests relate to the same applications for authorisation to temporarily occupy public property and were investigated together. They should be linked for the purpose of taking a decision on them in a single judgment.

Admissibility of the pleadings of applications no. 2005168 and no. 2005169:

3. Under the terms of Article L. 232-4 of the French Code on Relations between the Public and the Administrative Authorities: *"An implied decision in cases where the explicit decision should have been accompanied by a statement of reasons is not illegal simply because it is not accompanied by such reasons. / However, at the request of the party concerned, made within the time limit for bringing an action, the reasons for any implied refusal decision must be communicated to him/her within one month of such a request. In this case, the time limit for bringing an action against that decision is extended until expiry of a two-month period following the day on which s/he was notified of the reasons."*

4. The municipality of Hautot-sur-Mer argues that, contrary to what Aquind argues, no implied decision to refuse its applications for authorisation to temporarily occupy public property was issued on 24 August 2020. The municipality argues that the Mayor's letter dated 29 July 2020 addressed to the applicant company, which does not dispute having received it, constitutes an express decision refusing its applications, which caused the time limit for bringing an action to run from the date of its receipt, therefore the application for disclosure of the reasons made by Aquind on 12 October 2020, which is "*out of time*", could not interrupt the two-month time limit for bringing an action. The municipality concludes that the application lodged by Aquind on 21 December 2020, after the expiry of the two-month appeal period, is out of time and, as such, inadmissible.

5. However, it is clear from the documents in the file, in particular from the terms of the letter of 29 July 2020 mentioned above, which in any event does not contain any mention of the means and time limits for appeal, thereby rendering the time limits for appeal unenforceable against the applicant company, that this letter, in which the Mayor of Hautot-sur-Mer merely acknowledges receipt of the applications for authorisation to temporarily occupy public property submitted by Aquind, to respond to the request for a meeting that accompanied the applications and, finally, to reiterate the opposition of the Municipal Council to the Aquind project, cannot in any way be held to constitute an express decision to refuse the applications for authorisation to occupy public property filed by the applicant company on 22 June 2020 and received by the municipality on the following 24 June. It follows from this that, contrary to what the municipality of Hautot-sur-Mer argues, the time limit for contentious appeal did not start to run from the date of receipt of the letter of 29 July 2020, a date of receipt which it does not specify, but from 24 August 2020, the date on which two implied decisions refusing its applications were issued, for a period of two months, this period having, moreover, been interrupted and then restarted for a further period of two months from 12 October 2020, due to the application made on that date by Aquind for the reasons for the implied refusal decisions of 24 August 2020 mentioned above. It follows that the pleadings of application no. 2005168 and application no. 2005169 directed against the implied decisions of 24 August 2020 are not out of time. The total refusal of the municipality of Hautot-sur-Mer to accept the application must be set aside.

The pleading for annulment:

Regarding the legality of the implied refusal decisions of 24 August 2020:

6. The decision by which the authority owning or managing public property refuses an application for the issuance of a unilateral authorisation to temporarily occupy public property constitutes a refusal of authorisation within the meaning of Clause 7 of Article L. 211-2 of the French Code of Relations between the Public and Administrative Authorities (CRPA - *Code des relations entre le public et l'administration*) and must therefore be justified in accordance with these provisions.

7. Aquind argues that the municipality of Hautot-sur-Mer did not respond to its application for disclosure of the reasons for the implied refusal decisions of 24 August 2020, which it submitted on 12 October 2020, therefore these decisions, which are insufficiently justified, must be annulled.

8. It is clear from the documents in the file that on 12 October 2020, Aquind sent the municipality of Hautot-sur-Mer an application for disclosure of the reasons for the implied decisions to refuse its applications for authorisation to temporarily occupy public property, which were issued on 24 August 2020. This application for disclosure of the reasons was received by the municipality on the following 14 October, as evidenced by the acknowledgement of receipt filed in the proceedings. The letter of 29 July 2020 from the Mayor of Hautot-sur-Mer, which the municipality relies on in its defence, cannot be regarded as constituting a disclosure of the reasons in view of its content, on the one hand, and the fact that it was even sent before the implied decision at issue, the reasons for which were requested, on the other hand. Furthermore, the transmission of the deliberation dated 8 October 2020 of the Municipal Council to the applicant company by the Mayor of the municipality of Hautot-sur-Mer via e-mail on 5 November 2020 cannot, in itself, be regarded as constituting disclosure to Aquind of the reasons for the implied decisions of 24 August 2020, since on the one hand, this transmission was not accompanied by any reference to the application for disclosure of the reasons made by the applicant company, and, on the other hand, the mere reference to an opinion issued by a body without the competent authority appropriating or reproducing it, cannot take the place of the reasons required by law. It follows that Aquind is entitled to argue that the implied decisions at issue are insufficiently justified. Therefore, without the need to rule on the other pleas raised against these decisions, they must be annulled.

As regards the legality of the deliberation of 8 October 2020:

9. Under the terms of Article L. 2241-1 of the French General Local Authorities Code: "*The Municipal Council deliberates on the management of assets and property transactions carried out by the municipality (...)*" According to Article L. 2122-21 of the same code: "*Under the supervision of the Municipal Council and the administrative supervision of the State representative in the department, the Mayor is responsible, in general, for carrying out the decisions of the Municipal Council and, in particular: 1) To preserve and administer the properties of the municipality and, consequently, to do everything to preserve its rights; (...)*" According to Article R. 2241-1 of the same code: "*(...) Authorisations to occupy or use the municipal public property are issued by the Mayor.*"

10. It follows from Article L. 2122-21 of the French General Local Authorities Code, which provides that the Mayor has jurisdiction, under the supervision of the Municipal Council, to preserve and administer the properties of the municipality, and that, while it is up to the Municipal Council to deliberate on the general conditions for administration and management of municipal public property, the Mayor alone has jurisdiction to issue authorisations to occupy public property. The

Mayor also has jurisdiction, on the basis of the same provisions, to withdraw or repeal them.

11. It is clear from the documents in the file, in particular the text of the disputed deliberation, that the Hautot-sur-Mer Municipal Council, although titling its deliberation "*Application for the occupation of public property - Opinion on the application for a concession to use the public maritime domain*", did not limit itself to issuing an opinion on the application for authorisation to temporarily occupy public property addressed to the Mayor of the municipality, but refused to accede this application, as revealed by the terms closing the deliberation "*On this note, the Municipal Council, after having debated and deliberated, unanimously: Refuses the application to occupy public property submitted by Aquind.* In this respect, it follows from the provisions and principles mentioned in points 18 and 19 that the Municipal Council had no jurisdiction to do so. It follows, without needing to rule on the other pleas raised by Aquind against the deliberation at issue, that the deliberation must be annulled.

12. The annulment of the illegal deliberation dated 8 October 2020 of the Municipal Council of Hautot-sur-Mer necessarily entails, by way of consequence, the annulment of the refusal to repeal this deliberation, issued by the Mayor of the municipality to the applicant company, on 15 February 2021.

The pleading for an injunction:

13. In view of the grounds on which it is based, the execution of this judgment necessarily implies that the Mayor of the municipality of Hautot-sur-Mer is ordered to reinstate the applications for authorisation to temporarily occupy the public property requested by

Aquind. The Mayor should be ordered to do so within three months of the notification of the judgment. There is no need to attach a penalty payment to this injunction.

The costs of the litigation:

14. The provisions of Article L. 761-1 of the French Code of Administrative Justice prevent Aquind, which is not the losing party, from being charged the sum requested by the municipality of Hautot-sur-Mer for the fees incurred and not included in the costs. In application of these provisions, the municipality of Hautot-sur-Mer should be required to pay the applicant company the sum of EUR 1500.

DECIDES:

Article 1: The implied refusal decisions of 24 August 2020 are annulled.

Article 2: The deliberation of the Municipal Council of Hautot-sur-Mer dated 8 October 2020 is annulled.

Article 3: The decision of the Mayor of the municipality of Hautot-sur-Mer dated 15 February 2021 is annulled.

Article 4: The Mayor of Hautot-sur-Mer is ordered to reinstate the applications for authorisation to temporarily occupy the public property requested by Aquind within three months of notification of the judgment.

Article 5: The municipality of Hautot-sur-Mer shall pay a sum of 1500 euros to Aquind under Article L. 761-1 of the French Code of Administrative Justice.

Article 6: The remainder of the parties' pleadings is rejected.

Aquind, the municipality of Hautot-sur-Mer and the Prefect of Seine-Maritime shall be notified of this judgement.

Deliberated after the hearing of 23 February 2023, at which were seated:

Ms Gaillard, Chair,
Mr Leduc, First Councillor,
Mr Bouvet, First Counsellor.

Made public by placing at the disposal of the court clerk on 9 March 2023.

The Rapporteur,	The Chair,
signed	signed
C. BOUVET	A. GAILLARD

The Court Clerk,

signed

N. BOULAY

The Republic instructs and orders the Prefect of Seine-Maritime, insofar as he is concerned, or any commissioner for justice required to do so in respect of ordinary law proceedings against private parties, to ensure the execution of this decision

True Certified Copy,
The Court Clerk,
signed
S. Combes

ADMINISTRATIVE COURT OF PARIS

N° 2013204/4-1

FRENCH REPUBLIC

AQUIND LIMITED

ON BEHALF OF THE FRENCH PEOPLE

Mr Vincent Perrot
Rapporteur

The Administrative Court of

Ms Anne Baratin
Public Rapporteur

Paris (4th Section - 1st Chamber)

Hearing of 30 March 2023
Decision of 13 April 2023

C

Having regard to the following procedure:

By a preliminary ruling of 19 May 2022, the court, ruling on the petition presented by Aquind Limited, seeking the annulment of the decision of 4 October 2019 of the Ministry of Ecological Transition and Solidarity refusing to give approval to the appraisal of its interconnection project on the list of projects of common interest (PIC) annexed to EU Regulation No 347/2013 of 17 April 2013, decided to stay the proceedings, pending the production by the Ministry of Ecological Transition of its decision to refuse approval on 4 October 2019 and, assuming that this decision is only oral, the communication of the reasons for this decision and, if applicable, all documents relating to the Aquind Limited project sent to the European Commission within the framework of or with a view to the meeting of 4 October 2019, as well as the minutes of this meeting drafted or translated into the French language, insofar as they concern the Aquind Limited project.

By a memorandum, registered on 6 July 2022, the Ministry of Energy Transition produced the minutes of the meeting of 4 October 2019, blacked out of the mentions that do not concern the Aquind Limited project, and asked the court to stay the proceedings pending the decision of the General Court of the European Union on the same project.

By memoranda, registered on 26 July, 19 August 2022 and 14 March 2023, supplementing By application and memoranda registered on 24 August 2020, 20 November 2020 and 16 February 2022 respectively, Aquind Limited, represented by Mr Dezobry and Mr Savoie, asks the Court to :

1°) annul the decision of 4 October 2019 of the Ministry of Ecological Transition and Solidarity refusing to give approval to the investigation of its interconnection project on the list of PICs, as well as the implicit decision rejecting its appeal;

2°) to charge the State with the sum of 1,000 euros pursuant to Article L. 761-1 of the Code of Administrative Justice.

It argues that :
- the contested decision is vitiated by a failure to state reasons;
- it is vitiated by an error in the assessment of the project's compliance with the CIP qualification criteria;
- it fails to respect the principle of equality;
- it constitutes a misuse of power.

By statements of defence, registered on 29 July 2022 and 28 February 2023, supplementing that of the Ministry of Ecological Transition of 27 January 2022, the Ministry of Energy Transition concluded that the application should be rejected.

He argues that none of the grounds relied on are well-founded.

By an order of 16 March 2023, the investigation was closed on 23 March 2023.

Seen :
- the other documents in the file.

Seen :
- the Treaty on the Functioning of the European Union;
- Regulation (EU) No 347/2013 of 17 April 2013 on guidelines for trans-European energy infrastructure;
- the code of relations between the public and the administration ;
- Order No. 2020-306 of 25 March 2020;
- the Code of Administrative Justice.

The parties were duly notified of the day of the hearing. The

following were heard during the public hearing
- Mr Perrot's report,
- the conclusions of Ms Baratin, public rapporteur,
- and the observations of Mr Savoie, representing Aquind Limited.

Considering the following:

1. Aquind Limited planned to establish a new high voltage direct current electricity connection between France and the UK. This interconnection project was selected by European Commission Regulation (EU) 2018/540 as a project of common interest (PCI), thus appearing on the list of PCIs under number 1.7.4 within the priority corridor "Northern Seas Energy Network" (NSEN) and the priority thematic area "Electricity Highways", pursuant to Regulation (EU) 347/2013 of 17 April 2013. Two years later, following the revision of the list of CIPs by the European Commission's Delegated Regulation (EU) 2020/389 of 31 October 2019, the project submitted by Aquind Limited was not reinstated. By letter dated 20 February 2020,

the European Commission informed Aquind Limited that this decision followed the French government's refusal, at the meeting of the decision-making bodies on 4 October 2019, to approve the inclusion of its interconnection project on the list of PICs. In a letter dated 4 December 2019, received on the following 5 December and still unanswered, Aquind Limited requested the withdrawal of this decision from the Ministry of Ecological Transition and Solidarity. In parallel, Aquind Limited, Aquind SAS and Aquind Energy requested the annulment of Commission Delegated Regulation (EU) 2020/389 of 31 October 2019 amending Regulation (EU) No 347/2013 of the European Parliament and of the Council as regards the list of PICs, which the General Court of the European Union rejected by a decision of 8 February 2023. By the present application, Aquind Limited requests the Court to annul the decision of the Ministry of Ecological Transition of 4 October 2019 as well as the implied decision to reject its informal appeal.

On the plea alleging failure to state reasons :

2. Firstly, under the terms of Article L. 211-2 of the Code on relations between the public and the administration: "*Natural or legal persons have the right to be informed without delay of the reasons for unfavourable individual administrative decisions which concern them. To this end, reasons must be given for decisions which: (...) 6o Refuse a benefit, the granting of which constitutes a right for persons who meet the legal conditions for obtaining it; 7o Refuse an authorisation, except where communication of the reasons could be likely to infringe one of the secrets or interests protected by the provisions of a to f of 2o of Article L. 311-5; (...)*".

3. Contrary to what the applicant alleges, the inclusion of a project on the list of CIPs does not constitute an authorisation or an advantage, the allocation of which would constitute a right for applicant companies. Thus, the contested decision did not have to be reasoned on the basis of the provisions of Article L. 211-2 of the Code on relations between the public and the administration.

4. Secondly, according to Article 172 of the Treaty on the Functioning of the European Union: "*Guidelines and projects of common interest which concern the territory of a Member State shall require the approval of the Member State concerned*". According to Article 3 of the Regulation of 17 April 2013 on guidelines for trans-European energy infrastructure, known as TEN-E: "*When a group draws up its regional list: a) each individual proposal for a project of common interest shall require the approval of the Member States whose territory is affected by the project; if a Member State refuses to give its approval, it shall submit the reasons for such refusal to the group concerned;*".

5. It follows from the provisions cited above that, under Article 3 of the TEN-E Regulation, the obligation to state reasons incumbent on a Member State refusing to give its approval to the inclusion of a project on the list of CIPs exists only in respect of the regional group concerned and not in respect of the applicant undertaking. Consequently, the plea alleging inadequate reasoning of the contested decision with regard to Article 3 of the TEN-E Regulation must be dismissed as inoperative. In any event, it is common ground that the French administration refused, at the meeting of the decision-making body of the regional group concerned on 4 October 2019, to give its approval to the inclusion of Aquind's project on the list of CIPs. However, it is clear from the documents in the file, in particular the minutes of the meeting of 4 October 2019 and the decision of the European Union Tribunal of 8 February 2023, that the representative of France justified his position by the overcapacity to which the Aquind project would lead and that no Member State requested an examination of these reasons, so that the European Commission took this refusal into account in order to amend Annex VII of the regulation of 17 April 2013 referred to above. Thus,

the French administration must be considered to have given sufficient reasons for its decision to the regional group concerned.

6. Lastly, in any event, it is apparent from the decision of the Court of First Instance of the European Union of 8 February 2023 that, by an email of 12 July 2019, the Commission informed the applicant of the French administration's reservations about its project and suggested that it contact the ministry concerned. Thus, the applicant was aware of those reservations before the decision of 4 October 2019. Moreover, it is clear from the same decision that Aquind Limited was informed of the reasons for the French position as early as 5 December 2019 and is therefore not entitled to claim that it could not have been informed of those reasons.

7. It follows from what has been said in points 2 to 6 that the plea alleging failure to state reasons for the contested decision must be dismissed in all its parts.

On the plea of manifest error of assessment :

8. According to Article 3 of the Regulation of 17 April 2013: "*The Commission shall be empowered to adopt delegated acts in accordance with Article 16, which lays down the list of projects of common Union interest (...). In exercising its powers, the Commission shall ensure that the Union list is drawn up every two years, on the basis of the regional lists adopted by the decision-making bodies of the groups (...)*". According to Article 4 of the Regulation of 17 April 2013: *"1. Projects of common interest shall meet the following general criteria: a) the project is necessary for at least one of the priority energy infrastructure corridors or areas; b) the potential overall benefits of the project assessed in accordance with the respective specific criteria in paragraph 2 outweigh its costs, including in the long term; and c) the project meets one of the following criteria: (i) it involves at least two Member States by directly crossing the border of two or more Member States; (ii) it is located in the territory of a Member State and has a significant cross-border impact as set out in Annex IV, point 1; (iii) it crosses at least the border of one Member State and one European Economic Area State. ".*

9. Aquind argues that it meets the criteria set out in Article 4 of the Regulation of 17 April 2013 and that since there has been no change in the legal or factual circumstances specifically affecting the project, the assessment of its application should not have been changed from the previous one. However, on the one hand, it is clear from the above-mentioned provisions that the list of CIPs is revised every two years and that there is no guarantee that the projects on the previous list will be re-inscribed. On the other hand, the documents in the file show that, prior to examining the applicant's application, the Commission de régulation de l'énergie (CRE) issued a detailed report on the
In its decision of July 11, 2019, the French energy regulator (CRE) published a report on the "*determination of a target interconnection capacity between France and the United Kingdom*", concluding that "*a new interconnection would not be economically relevant in any of the scenarios studied*", in particular, but not exclusively, in view of the uncertainties surrounding the terms and conditions of the United Kingdom's exit from the European Union. With regard to the project carried out by Aquind, CRE considered, in a deliberation of 11 July 2019 on the assessment of optimal electricity interconnection capacity and on new interconnection projects with the United Kingdom, that it "*was not in a position to give an opinion on the interest of the European community in this project*", noting in particular that the European Agency for the Cooperation of Energy Regulators had itself rejected a request for exemption submitted by the company. Furthermore, even though France indicated before the European Union court that the CRE is "*an independent authority*", "*does not represent the French authorities*" and that its assessment "*does not constitute the reason for the refusal*

of the French authorities to approve the said project", thus recalling that the French administration was not bound by the opinion of the CRE, this circumstance does not prevent the elements contained in the said assessment from having been taken into account by the State to determine its position. In those circumstances, in the light of the circumstances of the case and taking into account the wide margin of appreciation available to the Member States in the matter, it is not apparent from the documents in the file that the Ministry of Ecological Transition vitiated the contested decision by a manifest error in the assessment of the project of the company Aquind.

On the plea alleging breach of the principle of equality :

10. Aquind submits that the contested decision infringes the principle of equality since its project is the only one, among all the interconnection projects with the United Kingdom, to have been withdrawn from the list of CIPs in 2019. However, in the context of a procedure for the selection of candidates, the principle of equality does not preclude candidate undertakings from being treated differently if they are carrying out different projects and are thus placed in different situations. Thus, the plea alleging infringement of the principle of equality must be rejected.

On the plea of misuse of powers:

11. Although the applicant argues that the decision is vitiated by a misuse of powers, it is not apparent from the documents in the file that the decision was taken for a reason other than that adopted by the administration. The plea thus put forward must therefore be rejected.

12. It follows from the above that the application of Aquind Limited must be rejected in its entirety.

D E C I D E :

Article [1]: The application of Aquind Limited is dismissed.

Article 2: This judgment shall be notified to the company Aquind Limited and to the Minister for Energy Transition.

Deliberated after the hearing of 30 March 2023, in which were

present: Mrs Le Roux, President,
Mr Perrot, Counsellor,
Mr Palla, Counsellor.

Made public by placing at the disposal of the court clerk on 13 April 2023.

The rapporteur,

V. PERROT

The Chair,

M-O. LE ROUX

The Registrar,

L. THOMAS

The Republic requests and orders the Minister for Energy Transition, insofar as he is concerned, or any court commissioner required to do so in respect of the ordinary law, against the private parties, to provide for the execution of this judgment.