



## Meeting note

<b>Project</b>	AQUIND Interconnector
<b>File reference</b>	EN020022
<b>Status</b>	<b>FINAL</b>
<b>Author</b>	The Planning Inspectorate
<b>Date</b>	28 August 2019
<b>Meeting with</b>	Aquind
<b>Venue</b>	Telecon
<b>Meeting objectives</b>	Project update meeting and review of draft documents
<b>Circulation</b>	All attendees

### Summary of key points discussed and advice given:

The Planning Inspectorate (the Inspectorate) advised that a note of the meeting would be taken and published on its website in accordance with section 51 of the Planning Act 2008 (the PA2008). Any advice given under section 51 would not constitute legal advice upon which applicants (or others) could rely. It was explained that names of attendees (personal data) would not be published, in accordance with the General Data Protection Regulation (GDPR).

**TEN-E Requirements (trans-European energy infrastructure)** (including timeframes for remaining pre-submission TEN-E work).

The Inspectorate outlined the two procedures within the permit granting process:

1. The Pre-Application Procedure between the start of the permit granting process and the acceptance of the submitted application file.
2. Statutory Permit Granting Procedure from date of acceptance of application file to until the comprehensive decision is taken (Maximum duration is one year and six months).

The Secretary of State for Business, Energy and Industrial Strategy (BEIS) is the National Competent Authority (NCA) in the UK.

The Inspectorate raised their concerns about the Applicant submitting an application for a Development Consent Order (DCO) prior to the French NCA acknowledging the notification of a Project of Common Interest (PCI).

Both the Applicant and the Inspectorate agree that there is nothing in the PA2008 to prevent the acceptance of a DCO application, but the Inspectorate explained that it has to discharge its duties under both the PA2008 and the TEN-E regulation (TEN-E).

There are specific requirements under TEN-E for the pre-application stage and the Inspectorate is concerned that if the French NCA acknowledge the notification of a PCI very shortly before submission of a DCO application, the Inspectorate won't have time to carry out their duties in relation to the permitting process before the 28 day acceptance period for the DCO application has been reached.

The Applicant confirmed it would send the Inspectorate its latest draft of the – Concept for Public Participation document and Schedule for Permit Granting Process, so can have sight of them, which may speed up the process later.

The Applicant agreed to send a written submission to the Inspectorate on how the Inspectorate may handle the remaining TEN-E requirements.

## **Project Update**

The Applicant is still intending to submit the application at the end of October 2019 and confirmed that the DCO application would contain all elements required in order to deliver the project.

The Applicant confirmed that it is engaging with stakeholders whilst finalising the onshore cable route. It was possible that the submitted DCO application may have several route options at specific points along the route, but that the cable route in general had been fixed.

Some Local Authorities have no prior experience of the DCO process; therefore, the Applicant is meeting with them to brief them on the process.

The Applicant advised that thirteen additional areas of land that extend beyond the red line boundary have been identified, mostly in local authority ownership. The Applicant will undertake a targeted consultation for these areas.

Land interest questionnaires will be sent to new consultees identified, that weren't consulted during the original consultation. The Applicant advised that land confirmation schedules will be sent approximately six weeks prior to submission of the DCO application to those with land interests. The Inspectorate advised that the approach to all acquisition or rights over land should be justified in the Statement of Reasons.

## **Statutory Consultation**

The Applicant updated the Inspectorate on progress:

Environment Agency (EA): seemed pleased with work on drainage management.

Natural England (NE): Concerns had been raised in one particular onshore area. The Applicant will utilise Horizontal Directional Drilling to minimise impacts and is discussing entry and exit points.

A draft Habitats Regulations Assessment (HRA) has been sent to EA, NE and the Joint Nature Conservation Commission (JNCC). A draft Marine Conservation Zone assessment has also been produced.

The Applicant is working with 'hard to reach' groups, such as commercial fisheries and recreational anglers.

Maritime and Coastguard Agency: comments have now been received on the PEIR, not too many concerns regarding safety and navigation.

Consultation has been taking place with the Marine Management Organisation (MMO), NE, JNCC, Trinity House and Historic England on the draft deemed marine licence. Offshore disposal site discussions have also been taking place with the MMO and the Centre for Environment, Fisheries and Aquaculture Science (CEFAS).

The Inspectorate asked if comments had been received from statutory bodies on the baseline data used for the Applicant's HRA and ES, including the marine environment baseline. The Applicant stated that it had not received specific comments or had any concerns raised by the MMO or NE with respect to the baseline data used to inform their marine assessment, including the HRA. The Inspectorate advised that written statements or approved minutes from meetings held with MMO/ NE should be included in the Applicant's HRA report to demonstrate acceptance with their approach.

**Post meeting note:** The Applicant advises it has now received feedback from NE stating that they are "content with the data sources used to inform the environmental baseline for the marine aspects of the HRA", and that feedback from JNCC/EA and States of Alderney have also been received and will be presented within the HRA Report.

The Applicant also advised that they have been engaging with the relevant local and highway authorities on landscape and visual effects and traffic and transport since the close of the consultation.

## **Draft documents**

The Inspectorate has issued detailed comments to the Applicant following the review of the draft documents. These are set out in the table appended to the end of this note.

In response to a query from the Applicant, the Inspectorate commented that reports in A3 format are acceptable but suggested the Applicant consider using A4, as this is more reader friendly. The Applicant agreed that A4 format will be utilised where practical.

The Inspectorate advised that the Proposed Development should not require an (electrical) grid connection statement, as it is not a generating station and neither the Electricity Act 1989 nor the National Policy Statement (NPS) for Electricity Networks Infrastructure (EN-5) require one (EN-5 applies only to overhead lines).

The Applicant will need to demonstrate to the Examining Authority that there is no risk in connecting to the grid and that it is advisable to supply a statement to clarify how the project will connect.

The Applicant stated that it will be building the connection to the grid as part of the DCO application. National Grid agrees with the Applicant's approach.

Document Deposit locations (s56 notices) will be a huge printing exercise; therefore, the Applicant proposes to provide electronic versions in libraries (USB, internet, tablets etc). The Inspectorate interprets its duty to make information available at deposit locations as being acceptable in electronic format (free to use internet accessible computer with printing facilities). It is for the Applicant to decide if it considers this approach to be acceptable with regards to project documents.

The Inspectorate responded to the Applicant's queries on the following draft documents:

### ***Draft HRA Report***

The Inspectorate confirmed that the Applicant's approach of having separate onshore and offshore elements is acceptable but advised that they both be contained in one HRA report.

With respect of the Inspectorate's comments at points 16, 18 and 19 in the HRA section of the table below in relation to the 'People Over Wind' European Court of Justice (CJEU) judgment (applying mitigation for HRA purposes), the Inspectorate advised that the risk of legal challenge to any DCO for the Proposed Development would be reduced if, rather than debating whether 'embedded mitigation' could be used to discount likely significant effects, matters were taken through to the appropriate assessment stage.

### ***Draft Consultation Report***

The Applicant confirmed that the figures given in relation to the Inspectorate's comment at point 3 in the consultation report section of the table below (paragraph 8.10.1.1) appear incorrect. The Applicant confirmed these figures will be updated.

### ***Draft DCO***

In relation to the Inspectorate's comment at point 4 in the DCO section of the table below, the Applicant asked if this approach (compensation for compulsory acquisition/temporary use of land) had been utilised before, as they could find no precedent of an Applicant having adopted this approach.

The Inspectorate advised that this advice had only recently been given by the Inspectorate and that it may need to be addressed. It was for the Applicant to seek its own legal interpretation.

## AQUIND INTERCONNECTOR

### Section 51 Advice – draft Application Document by AQUIND Limited for PINS review

This advice relates solely to matters raised upon The Planning Inspectorate’s (the Inspectorate’s) review of the draft application documents submitted by the Applicant, and not the merits of the proposal. The advice is limited by the time available for consideration and raised without prejudice to the acceptance or otherwise of the eventual application. It is provided to assist the preparation of the next iteration.

#### *Abbreviations used*

<b>PA2008</b>	<i>Planning Act 2008</i>	<b>BoR</b>	<i>Book of Reference</i>	<b>dDCO</b>	<i>draft Development Consent Order</i>
<b>EM</b>	<i>Explanatory Memorandum</i>	<b>ExA</b>	<i>Examining Authority</i>	<b>MP</b>	<i>Model Provisions</i>
<b>PINS</b>	<i>Planning Inspectorate</i>	<b>SoR</b>	<i>Statement of Reasons</i>	<b>SoS</b>	<i>Secretary of State</i>

### General Drafting points

1. The Applicant should ensure that when the development consent order (DCO) is finalised all internal references and legal footnotes are checked and that the drafting follows best practice in Advice Note (AN) 13 and 15 and any guidance on statutory instrument drafting.
2. A thorough justification should be provided in the Explanatory Memorandum (EM) for every Article and Requirement, explaining why the inclusion of the power is appropriate in the specific case. The extent of justification should be proportionate to the degree of novelty and/or controversy in relation to the inclusion of that particular power. The EM should also state whether the Article replicates a precedent Article. It would also be helpful if the EM clarified whether any change to a precedent Article is considered by the Applicant to be minor and has been made where in the Applicant’s view the precedent Article is unclear or does not follow standard statutory instrument drafting practice. Where a precedent Article is substantially changed, the EM should clearly explain how that alters the effect. Ideally (and particularly if an Article is novel), the power on which each Article is based should be identified.
3. Notwithstanding that drafting precedent has been set by previous DCOs, whether or not a particular provision in this DCO application is appropriate will be for the Examining Authority (ExA) to consider and examine taking account of the facts of this particular DCO application and having regard to any views expressed by the relevant authorities and interested parties.

Draft Development Consent Order			
Q No.	Article (A)/ Requirement (R)	Extract from DCO (for ease of reference)	Comment/Question
1.	General draft DCO (dDCO)		The Applicant should ensure that all cross references within the dDCO are checked and corrected where necessary/relevant, this includes references to any plans and we would assume this will be corrected in the application version.
2.	General draft DCO (dDCO)		The Applicant will be asked to maintain a list of all plans and other documents that will require SoS certification (including plan/document references), updated throughout the examination process, and supplied to the ExA before the close of the examination
3.	General draft DCO (dDCO)		The DCO is proposed to be a SI and so should follow the statutory drafting conventions. The draft DCO (and any subsequent revisions) should be in the form required by the statutory instrument template (see Planning Inspectorate AN15) and validated as such using the current SI template, including detailed footnotes to all statutory references.
4.	General draft DCO (dDCO): references to Part 1 of the 1961 Act		A number of Articles make provision for " <i>compensation to be determined, in case of dispute, under Part 1 of the 1961 Act</i> ". It is acknowledged that a provision in this form is in the various MPs and is commonplace in DCOs and other Orders. However, Part 1 of the 1961 Act only relates to compensation for compulsory acquisition. In order for there to be certainty that it would apply in other situations (e.g. the temporary use of land under <b>A29</b> ), should a modification be included as with the other compensation provisions in <b>Schedule 14</b> ? If not, why not?
5.	Article 2 - interpretation	Definition of 'authorised development' includes "any other development authorised by this Order...."	Do the ancillary works therefore not constitute development within s32 PA 2008? If they don't then does Part 2 of Schedule 1 need to include an express prohibition on it authorising any works constituting development within s32 PA 2008?

Draft Development Consent Order			
Q No.	Article (A)/ Requirement (R)	Extract from DCO (for ease of reference)	Comment/Question
		"authorised project" definition includes 'ancillary works' in addition to the 'authorised development'	
6.	Article 2 - interpretation	"Commence"	This article is likely to be the subject of close scrutiny, subject to the application being accepted, including the interplay between development and marine activities, and the 'carve out' of matters not constituting development.
7.	Article 2 - interpretation	"maintain" and operative power in article 4	This article is likely to be the subject of close scrutiny, subject to the application being accepted. Also note duplication following '(b) in respect of in respect of'
8.	Article 7	consent to transfer	This article is likely to be the subject of close scrutiny, subject to the application being accepted, particularly with regard to whether being subject to arbitration places a fetter on the Secretary of State's discretion
9.	Articles 10, 13 and others	deemed consent from certain authorities/regulators	This article is likely to be the subject of close scrutiny, subject to acceptance. Certain authorities and regulators have, in the past, objected strongly to deemed consent provisions.
10.	Article 29	Temporary use of land for carrying out authorised project	We note that the time periods have not yet been included in this draft. Full justification will be required for any time periods proposed.
11.	Article 35	special category land	This article is likely to be the subject of close scrutiny, subject to the application being accepted, with particular regard to whether a sufficient case is made that the plots of special category land when burdened with rights imposed by the DCO will be no less advantageous than they were before.
12.	Article 40(4)(a)	Felling or lopping of trees [and removal of hedgerows]	Please refer to AN15 where it states that 'Hedgerows affected by the Proposed Development should be identified in a Schedule to and on a plan accompanying the draft DCO. The Schedule and plan could also helpfully identify those hedgerows that are 'important' hedgerows.

Draft Development Consent Order			
Q No.	Article (A)/ Requirement (R)	Extract from DCO (for ease of reference)	Comment/Question
			Therefore it is advised that all hedgerows are identified in a schedule, and not just important hedgerows.
13.	Article 41	<i>Trees subject to tree preservation orders</i>	Please refer to AN15 which states: '22.3 <i>Trees subject to TPO and/ or are otherwise protected (and likely to be affected) should be specifically identified. It is not appropriate for this power to be included on a precautionary basis. Proper identification of affected trees will enable the ExA to give full consideration to the particular characteristics that gave rise to their designation and the desirability of continuing such protection</i> '. Whilst it is noted that schedule 16 (blank) titled 'Trees Subject to Tree Preservation Orders' has been included in the dDCO, this schedule has not been referenced in the Article.
14.	Article 46	<i>Crown rights and whether this mirrors preferred formulations which do not include the word "take" and whether consent has been received under s135 (1) and (2)</i>	This article is likely to be the subject of close scrutiny, subject to the application being accepted.
15.	Schedule 1 PART ONE	<i>'A nationally significant infrastructure project as directed.....'</i>	This wording should be reviewed against the section 35 Direction and wording of s35 of the PA 2008. Note that the s35 Direction states: ' <i>THE SECRETARY OF STATE DIRECTS that the proposed Development, together with any development associated with it, is to be <u>treated as development for which development consent is required</u></i> '. (emphasis added).
16.	Schedule 1 Part 2	<i>scope of ancillary works and "such other works" and whether this wide scope is justified</i>	This article is likely to be the subject of close scrutiny, subject to the application being accepted.



Draft Development Consent Order			
<b>Q No.</b>	<b>Article (A)/ Requirement (R)</b>	<b>Extract from DCO (for ease of reference)</b>	<b>Comment/Question</b>
17.	<b>Requirements para (4)</b>	"amendments"	This requirement is likely to be the subject of close scrutiny, subject to the application being accepted, particularly with regard to whether the flexibility sought is fully justified.
18.	<b>General provisions - Interpretation</b>	"environmental statement" means the document submitted by the undertaker to support its application for development consent and certified as the environmental statement by the Secretary of State under article 45...	<p>There appears to be a mistake in this text – article 42 rather than article 45 refers to the certification of plans.</p> <p>It is also unclear how, if any of the evidence in the Environmental Statement (ES) is updated during the course of an Examination, these changes would be recognised as part of the certified ES.</p>

Draft Explanatory Memorandum			
<b>Q No.</b>	<b>Paragraph</b>	<b>Extract from EM</b>	<b>Question/comment</b>
1.	<b>General draft EM (dEM)</b>		<p>Generally, the dEM tends to explain the <i>effect</i> of the relevant provision in the DCO, rather than explaining <i>why</i> it is necessary.</p> <p>Further explanation and evidence (including the outcomes of any consultation) is required to explain why the content of each article, schedule etc to the dDCO is relevant and required for this proposal. Please refer to AN15.</p> <p>The EM should provide explanation and justification where a provision departs from a precedent. (See AN13 and 15).</p> <p>This should include reference to the particular circumstances of this development and an explanation as to why this is necessary or desirable.</p>

Draft Explanatory Memorandum			
Q No.	Paragraph	Extract from EM	Question/comment
2.	4.3.7	"maintain"	An explanation of the breadth of the definition chosen should be provided.
3.	6.5	Article 14 (Access to works) ... <i>'The inclusion of deemed approval is considered reasonable'</i>	An explanation as to why 28 days is considered reasonable has not currently been included in the document. In addition, it would be helpful to state if agreement on this timeframe has been sought from the relevant street authorities.  This comment applies to other references to timeframes and deemed consent, for example (but not limited to) paragraph 7.1 Article 17.
4.	6.7	Article 16 (Traffic regulation measures) <i>'precedent for this article can be found..... These projects all involved works within the street which required the undertaker to obtain powers to control speeds and use for safety and operational reasons'.</i>	An explanation stating why this provision is necessary for this proposal is required.
5.	8.6	Article 22 (Time limit for exercise of authority to acquire land compulsorily) .. <i>'imposes a time period of [7] years...'</i>	An explanation and justification for this specific time period given should be provided.
6.	General		There are many references included to where articles are taken from the model provisions, whilst this can be helpful, it is also useful to understand if there is precedent in other made orders and why the article/power is considered relevant to the proposal.

Draft Land Plans			
Q No.	Land Plan Ref		Question/Comments
1.	Sheet 3 of 12		Should this instead be sheet 6 of 12?  All plan references should be checked prior to submission.

<b>Draft Land Plans</b>			
<b>Q No.</b>	<b>Land Plan Ref</b>		<b>Question/Comments</b>
<b>2.</b>	<b>All</b>		A key plan is supplied. The plans are at a scale of 1:2500 at A1 size and show the direction of North. The scale of the plans is therefore acceptable.
<b>3.</b>	<b>All</b>		The level of detail in the background layers causes larger file sizes and potentially longer loading times
<b>4.</b>	<b>All</b>		Where present, the cut lines are a welcome addition; general design (fonts colours etc.) is acceptable.
<b>5.</b>	<b>All</b>		Red line boundary and plot boundaries are well defined
<b>6.</b>	<b>Sheet 3 of 12</b>		We have noted that plot numbering does not seem to be consistent – the use of the sheet number in the plot number is helpful, but 5-xx, 6-xx & 7-xx can be found on this sheet.
<b>7.</b>	<b>Sheet 10 of 12</b>		Some of the plot boundaries are not clear – example plots 10-21 & 10-22
<b>8.</b>	<b>Sheet 9 of 12</b>		The depiction of Mean High Water on the land plans (sheet 10) may not be appropriate. It reduces clarity and can be confused with plot boundary lines (example plots 9-10 & 9-13).
<b>9.</b>	<b>All</b>		Work No. 4 - would expect to see joint bays, link boxes etc locations depicted on works plans.
<b>10.</b>	<b>All</b>		Work No. 5 – DCO states 'up to three' temporary laydown compounds. Only two can be found on the works plans. Could these compounds be labelled as Work No. 5a / 5b etc to aid clarity.
<b>11.</b>	<b>All</b>		Work No. 8 – unsure about the boundary of this work. Is it showing limits of deviation? A clearer method may be advisable
<b>12.</b>	<b>All</b>		Work. No. 9 – this couldn't be found on the works plans provided. Can the applicant confirm that it was not meant to be shown

<b>Draft Works Plans</b>			
<b>Q No.</b>	<b>Work Plan Ref</b>	<b>Extract from Schedule 1: Authorised Development (PART 1)</b>	<b>Question/Comments</b>
1.	All		Some colours used to represent the different works are very similar in appearance, this may lead to confusion.
2.	All		The limits of deviation lines and order limit lines are unclear in places.
3.	Sheet 02 of 14		The proposed location of the converter station itself (or its limits of deviation) are not identifiable from this plan.
4.	All		In regard to work number 4, is it proposed for options to be included in the dDCO, noting instances where the purple highlighting splits into two routes?
5.	All		The red line boundary is unclear at points on these plans. Care should be given to showing the extent of the order limits. There are no cut lines present in the current versions.
6.	All		The works plans show indicative areas for where works are planned to be carried out as they appear in the Book of Reference (such as Work No. 1). It would be useful to see limits of deviation for the specific works with Work No. 1
7.	Sheet 2 of 14		<p>In the DCO Work No. 3 states that Work No. 3 is 'a temporary work area of up to five hectares associated with Work No. 1, Work No. 2 and Work No. 4'.</p> <p>On works plan sheet 2, this appears to be four compounds (it is unclear if they are joined up and this is not shown on the plan (i.e under Work No. 2)).</p> <p>In addition, the legend on works plan sheet 2 describes Work No. 3 as being 'associated with works No. 1 &amp; 2' only.</p>

<b>Draft Consultation Report</b>			
<b>Q No.</b>	<b>Paragraph/Section</b>	<b>Extract from CR (for ease of reference)</b>	<b>Question/Comments</b>
1.			We note that several key parts of the consultation report have not been completed, and the annexes are not supplied.

<b>Draft Consultation Report</b>			
<b>Q No.</b>	<b>Paragraph/Section</b>	<b>Extract from CR (for ease of reference)</b>	<b>Question/Comments</b>
<b>2.</b>	<b>3.5.1.2</b>	<i>not less than 28 days beginning</i>	Further to the amendment made by regulation 36 of the Infrastructure Planning (EIA) regulations 2017, this is 30 days.
<b>3.</b>	<b>8.</b>	<i>Land Interests (S42(1)(d))</i>	Further explanation on the diligent inquiry should be included. Is the Applicant sure that the figures in the current consultation report are correct?
<b>4.</b>	<b>8.2.1.7</b>	A full list of Section 42(1)(a), section 42(1)(aa) and Regulation 11(1)(c) consultees is included in Appendix ...	This appendix will be used to confirm compliance with S42 – please check it carefully prior to submission.

<b>Draft Book of Reference</b>			
<b>Q No.</b>	<b>Paragraph/Section</b>	<b>Extract from [abbreviation of doc] (for ease of reference)</b>	<b>Question/Comments</b>
<b>1.</b>	<b>General paragraph numbers</b>		All paragraph numbers should be reviewed and checked prior to submission. The length of the current paragraph numbers do not appear to logically flow from the sub-headings.
<b>2.</b>	<b>1.1.1.6</b>	'The land plans identify: (i) All of the land extended beyond the land shown on the Land Plans required for and affected by the authorised development'	This sentence is badly phrased.

Draft Book of Reference			
Q No.	Paragraph/ Section	Extract from [abbreviation of doc] (for ease of reference)	Question/Comments
3.	1.4.1.3	'Certain relevant persons included within Part 1 of the BoR have also been included within Part 3 where their rights may be considered to be affected'.	<p>Note paragraph 8 of the Governments Compulsory Acquisition Guidance states that:</p> <p><i>'For example, a person entitled to enjoy easements or other private rights over land which the applicant proposes to extinguish, suspend or interfere with identified in Part 3 should also be recorded in Part 1 as a person within categories 1 or 2 as set out in section 57 of the Planning Act.'</i></p> <p>Therefore, in accordance with the Guidance, all persons identified in Part 3 should also be recorded in Part 1, this does not appear to be the case based on the information provided.</p>
4.	General		<p>Regarding paragraph 10 of the Government's guidance on compulsory acquisition, the rights are not currently clearly identified within the book of reference. We note that the Applicant intending to provide further information (classification of rights for example) within the submission version of this document.</p> <p>Paragraph 10: <i>'Where it is proposed to create and acquire new rights compulsorily they should be clearly identified'.</i></p>

Draft HRA			
Q No.	Paragraph/Section	Extract from [abbreviation of doc] (for ease of reference)	Question/Comments
1.	<b>Overall structure</b>		The report is structured such that the study areas used to gather baseline data are described in Chapters 4 and 5. The relationship, between the study areas and the zones of influence, which have been defined for the Proposed Development, are not defined until Chapter 6, which is confusing and lacks clarity regarding the approach. The definition of the study areas and the relationship to the zones of influence should be explained before the baseline data is described. It would also be helpful if figures could be provided showing the study areas and zones of influence for the Proposed Development in relation to the European sites included in the assessment.
2.	<b>Baseline data - surveys</b>		The Inspectorate notes that no project-specific survey data has been collected for fish, birds or marine mammals in the offshore environment and the baseline relies on existing published data. With regards to the over-wintering bird surveys undertaken for the inter-tidal zone, it appears that data was collected for one season. The Inspectorate is concerned that in absence of this information there could be legitimate cause for concern regarding the validity of the assessment of likely significant effects. The Applicant is strongly advised to seek agreement with relevant consultation bodies, including Natural England, on the approach to baseline data appropriate for use in the HRA. The Applicant should include evidence of any agreements reached, or areas of disagreement, with relevant consultation bodies such as Natural England regarding the approach and append this evidence to the HRA report/application documents.
3.	<b>Throughout document</b>	<i>The report makes a distinction between features which are the primary features for the purposes of site designation and those which are not, for instance in paragraphs 7.2.2.1, 7.2.2.9 and 7.2.2.17</i>	For the purposes of HRA, the assessment must consider all qualifying features equally, regardless of whether they are a primary or non-primary reason for designation. It is not clear what benefit is provided by making this distinction.

Draft HRA			
Q No.	Paragraph/Section	Extract from [abbreviation of doc] (for ease of reference)	Question/Comments
4.	2.1.1.5	<i>...UK Government policy (ODPM Circular 06/2005) states that internationally important wetlands designated under the Ramsar Convention...are afforded the same protection as SPAs and SACs...The Government also affords the same level of protection to potential SPAs...and candidate SACs.</i>	While ODPM Circular 06/2005 is still extant, the National Planning Policy Framework is a more recent expression of Government policy in relation to European sites. It also extends the range of sites that are protected (in England) to cover possible SACs, proposed Ramsar sites and sites identified as compensatory measures for adverse effects on European sites. As currently drafted the wording in the HRA does not reflect this and should be amended accordingly.
5.	2.3.1.1	<i>The National Infrastructure Directorate within the Planning Inspectorate (hereafter known as "the Examining Authority") is the body responsible for examining applications for development consent under the Planning Act 2008.</i>	Suggest the wording of this paragraph is reviewed as follows: The Planning Inspectorate (hereafter known as the Inspectorate) is the body responsible for administering applications under the Planning Act 2008 (PA 2008). Once an application is accepted for examination, an Inspector(s) is/are appointed to form the Examining Authority to examine the application and make a recommendation to the Secretary of State.
6.	2.4.1.2	<i>...LSEs on the site(s) cannot be discounted and these require an Appropriate Assessment by the Competent Authority (in the case of an NSIP</i>	Some text appears to be missing from this bullet point.
7.	4.2.3.6	<i>References to ICES rectangles and ICES Division VII.7.d</i>	It would be helpful if a figure was supplied which showed the areas covered by the relevant ICES rectangles and divisions.
8.	Plate 5.1	<i>Location of vantage points</i>	It is difficult to find the vantage points on this figure without zooming right in. It is recommended that they be shown more clearly in the final version. Consideration should be given to whether a standalone A3 figure would be more appropriate.



Draft HRA			
Q No.	Paragraph/Section	Extract from [abbreviation of doc] (for ease of reference)	Question/Comments
9.	6.2.5.3	<i>Justification for excluding LSE on some designated features</i>	This paragraph states that “where features are not represented in the study area for the Proposed Development, it is considered that there is no route to impact and further consideration is not provided”. It is unclear whether this conclusion has been reached based on the survey results. If so, this should be explained.
10.	6.2.5.6	<i>Scoping out of various Special Protection Areas (SPAs)</i>	This paragraph should explain the justification for concluding that there is no potential for connectivity between these SPAs and the Proposed Development.
11.	Table 6.6	<i>Designated features of listed SPAs</i>	The qualifying features in this table do not appear to match the features listed in Natural England’s conservation objectives for the SPAs. For instance, in Table 6.6 little tern is listed as an assemblage feature of Chichester and Langstone Harbours SPA/Ramsar site; however, the conservation objectives appear to list breeding little tern as a qualifying feature in its own right. The Applicant should ensure that the correct qualifying features are identified and considered in the HRA report. The Applicant should also seek to agree the correct qualifying features and conservation objectives for the European sites considered with Natural England and provide evidence of any agreements reached with the HRA report/DCO application.
12.	6.3.1.4	<i>Sites designated for Annex I habitats</i>	This paragraph states that there is no connectivity between various Special Areas of Conservation (SACs) and the onshore elements of the Proposed Development. It would be helpful if this statement could be expanded to explain if indirect effects (eg on hydrology) have been considered.

Draft HRA			
Q No.	Paragraph/Section	Extract from [abbreviation of doc] (for ease of reference)	Question/Comments
13.	6.3.2.2 6.3.3.2	<p><i>Screening for sites designated for Annex II habitats</i></p> <p><i>Screening for sites designated for ornithological features (onshore)</i></p>	<p>The HRA report does not provide justification for using a distance of 10km to identify European sites with bats as a qualifying feature. The report does not explain how this relates to the zone of influence for the Proposed Development. The same comment applies to the use of a 5km distance to identify European sites with otters as a qualifying feature and a 10km distance to identify European sites with birds as a qualifying feature. The Applicant should ensure that the assessment study area is established according to the extent of the likely impacts (ie based on the zone of influence) rather than arbitrary distances which lack explanation.</p> <p>It is also noted that the reference to "CIEEM (2016)" at paragraph 6.3.2.2 does not appear in the references at present, thus it is unclear as to which document this is referring.</p>
14.	Table 6.6	Table 6.6.	Two different tables have been labelled Table 6.6. To avoid confusion, please could these tables be given different numbers and titles.
15.	6.4.2.4	<p><i>Although the effect of habitat loss is included in Table 6.8 it only relates to the loss of habitat from within a European site. As the Proposed Development does not overlap the boundary of any European site designated for Annex II diadromous migratory fish this impact will not be considered in the determination of LSE.</i></p>	<p>Table 6.8 identifies the potential for removal of substratum during construction/decommissioning to lead to habitat loss for a number of SACs. It is not clear why habitat loss has been identified as a potential effect in Table 6.8 but then discounted in paragraph 6.4.2.4. It is recommended that the HRA report be revised to clarify. For example, what is the justification for assuming that habitat loss outside the boundaries of a European site would not undermine the conservation objectives for the SACs, given the mobile nature of the species which are the qualifying features?</p>

Draft HRA			
Q No.	Paragraph/Section	Extract from [abbreviation of doc] (for ease of reference)	Question/Comments
16.	Table 7.1	<i>...the implementation of best practice measures for management of INIS introduction is as low as reasonably practicable. It is therefore considered that there is no potential for LSE... Adoption of routine measures and standard best practice in terms of waste management, auditing, pollution prevention measures and the implementation of a dropped object protocol will make the likelihood of loss of litter into the environment highly unlikely...</i>	It appears that the conclusions regarding likely significant effects (LSE) from invasive species and marine litter rely on good practice measures to avoid/reduce effects. The 'People Over Wind' ruling from the European Court of the European Communities (case reference C-323/17) states that mitigation measures cannot be taken into account when LSE is being determined. The Applicant should ensure that where measures are proposed to avoid or reduce harmful effects on a European site and its qualifying features, these are considered in relation to the adverse effects on integrity stage of the HRA process and are considered in light of the site(s)'s conservation objectives.
17.	Table 7.2 – Increased SSC – Intertidal and subtidal seagrass beds	<i>Both intertidal and subtidal seagrass beds have high sensitivity to increases in SSC etc.</i>	The text in this box states that there is no potential for LSE on this feature but the column to the right states the opposite. It is not clear from the way the evidence is presented in the box as to which conclusion is the correct one. In addition to clarifying whether there is LSE or not, it would be helpful if the text could be re-structured to make the arguments clearer.
18.	Table 7.6 Table 7.8 Table 7.10	<i>Pollution events – It is considered however, that the likelihood of a marine pollution event occurring...is extremely low given the preventative measures in place.</i>	The conclusions about no LSE from pollution events in relation to salmon, allis shad, twaite shad, river lamprey and sea lamprey appear to rely on mitigation measures. As noted in comment 17 above, mitigation measures cannot be taken into account when LSE is being determined. The HRA report should ensure that where measures are proposed to avoid or reduce harmful effects on a European site and its qualifying features these are considered in relation to the adverse effects on integrity stage of the HRA process and are considered in light of the site(s)'s conservation objectives.

Draft HRA			
Q No.	Paragraph/Section	Extract from [abbreviation of doc] (for ease of reference)	Question/Comments
19.	7.2.2.6, 7.2.2.14, 7.2.2.23.	<i>It is assumed that one repair would be required every 10-12 years which would be undertaken by a single vessel with repair and re-burial using similar methods to installation.</i>	<p>Is there a justification in the Environmental Statement (ES) which supports this statement? If so, it would be helpful to cross-refer to the relevant section of the ES in this paragraph.</p> <p>The ES, with reference to the dDCO, should clearly describe the likely construction, operation (including repair and maintenance) and decommissioning activities for the Proposed Development, and these should be adequately assessed in the HRA. The Inspectorate acknowledges that the draft HRA report in its current form is yet to contain information describing the Proposed Development and recommends that the HRA report cross-refer to the ES and dDCO, as appropriate, to support the assessment.</p>
20.	Table 7.13	<i>Justification for no LSE from auditory injury/disturbance</i>	The HRA report does not reference or explain if the 2018 National Oceanic and Atmospheric Administration/National Marine Fisheries technical guidance ('NOAA guidance') has been followed in relation to this assessment. The Inspectorate understands that Natural England advocate it's use. The Applicant should demonstrate the effort made to reach agreement with Natural England on the approach to the assessment of the effects of underwater noise generated by the Proposed Development.
21.	Table 6.14	<i>INIS – Supporting habitat – Invasive species may be introduced into the water column via biofouling or ballast water from vessels. However, it is highly unlikely that any of these will be harmful to prey species present in the water column.</i>	It would be helpful if a reference could be provided to the evidence which supports this statement.

Draft HRA			
Q No.	Paragraph/ Section	Extract from [abbreviation of doc] (for ease of reference)	Question/Comments
22.	8.1.1.5	<i>The list was compiled on XX July 2019 and is considered to be sufficient for undertaking an appraisal of the effects of any other plans or projects which, in combination with the Proposed Development, following agreement with PINS.</i>	<p>It is unclear whether text is missing from this sentence. It should be noted that it is not the role of the Inspectorate to agree which plans or projects should be included in the in-combination assessment nor do we prescribe the cut-off date for Applicants' assessments. It is for the Applicant to determine the reasonable cut-off date for the assessment. You may therefore wish to remove the text in this sentence which infers that the Inspectorate has agreed to a specific cut-off date.</p> <p>The Applicant's attention is drawn to the advice regarding 'assessment cut-off date' contained in the Inspectorate's Advice Note 17, which states that "<i>It is understood that applicants are required to stop assessment work at a particular point in time in order to be able to finalise and submit an application. The applicant should state any assessment cutoff date. However, where new 'other development' comes forward following the stated assessment cut-off date, the Examining Authority may request additional information during the examination in relation to effects arising from such development. The applicant should be aware of the potential need to conduct further assessments to reduce delays and questions during examination.</i>"</p> <p>The Applicant is advised to contact the relevant consultation bodies, such as relevant local authorities, the Marine Management Organisation, the Environment Agency, and Natural England, to ensure that they have considered all plans or projects likely to interact with the Proposed Development.</p>
23.	8.2.4.4	<i>For those European sites and features where no LSE could not be concluded for the project alone...</i>	The use of the double negative is confusing (and this phrase appears more than once in the HRA documents). It would be clearer if this wording was amended to read 'For those European sites and features where LSE could not be excluded...'

Draft HRA			
Q No.	Paragraph/Section	Extract from [abbreviation of doc] (for ease of reference)	Question/Comments
24.	9.1.1.1	<i>Annex I Habitats within the Solent Maritime SAC and South Wight Maritime SAC have been assessed for LSE...no LSE could not be concluded for...in the Solent Maritime SAC.</i>	Paragraph 8.2.1.3 states that it is considered that LSE on the South Wight Maritime SAC could arise due to in-combination effects from suspended sediment concentrations (SSC) but paragraph 9.1.1.1 only refers to LSE on the Solent Maritime SAC. This apparent contradiction needs to be resolved.
25.	10.2.3.5	<i>Within these definitions, 'long-term' is considered to be five years.</i>	Does this statement come from the Habitats Directive or any EU/UK guidance? If so, it would be helpful to explain that in this paragraph. The basis for this assumption should be stated in the HRA report.
26.	10.2.5.3	<i>Given that the populations and distribution of qualifying features are reliant on the extent, distribution, structure, function and processes of supporting habitat, assessment of indirect effects on the latter two conservation objectives is considered to encapsulate assessment of the conservation objectives related to supporting habitat. As such, only the latter two conservation objectives have been taken forward for assessment.</i>	This approach is deemed to be not particularly helpful to the competent authority who will have to address the effects on all the conservation objectives. The HRA report should explicitly address the effects on all of the conservation objectives rather than using two as a proxy and leaving the effects on the other conservation objectives to be inferred. The Applicant is reminded of the requirement on them under Regulation 63(2) of the 2017 Habitats Regulations to provide such information as the competent authority may reasonably require for the purposes of the assessment.
27.	Table 10.1 – 10.7	<i>General</i>	The text in the assessment column appears to be using terms drawn from the ES ('minor magnitude', 'not significantly adverse') rather than those relevant to the consideration of effects on site integrity. The HRA report needs to explain clearly what effects the Proposed Development would have on the integrity of the European site, with reference to the conservation objectives.

Draft HRA			
Q No.	Paragraph/ Section	Extract from [abbreviation of doc] (for ease of reference)	Question/Comments
28.	<b>Table 10.1 – 10.2</b>	<i>As no significant effects are predicted for the Proposed Development, there is no contribution to in combination disturbance and displacement (NB – example text only – statement about in combination is made in relation to a range of effects throughout the tables).</i>	In combination effects appear to have been dismissed on the grounds that there would be no significant effects predicted for the Proposed Development. The logic of this is difficult to follow and doesn't address the possibility that non-significant effects from the Proposed Development could interact with effects from other plans or projects to create a combined adverse effect on the integrity of a European site.
29.	<b>Table 10.1 – 10.7</b>	<i>Reliance on routine mitigation measures and good practice to avoid adverse effects on integrity.</i>	Where mitigation is relied on to avoid or reduce adverse effects on site integrity (for instance in relation to measures to avoid accidental oil spills) it would be helpful to explain how delivery of mitigation has been secured. This could be done through including a table which lists all the relevant mitigation measures relied on in the HRA and explains which requirements in the DCO would secure delivery.
30.	<b>Screening and integrity matrices</b>		<p>No matrices have been provided for any of the Ramsar sites. The version of the matrices submitted with the application should include matrices for these sites in addition to the SPAs/SACs.</p> <p>Where the footnotes to the matrices refer to the HRA report, care should be taken to ensure that the relevant section of the HRA report does actually contain the supporting evidence. If the detailed supporting evidence is actually provided in the ES or other supporting documents the footnotes should cross-reference to these documents.</p>

Draft ES Briefing note			
Q No.	Paragraph/Section	Extract from [abbreviation of doc] (for ease of reference)	Question/Comments
1.	General	<i>Project description</i>	The Applicant should be aware that it will be necessary to describe the Proposed Development in its entirety to fulfil the requirements of the EIA Regulations 2017, including those elements that fall outside of the jurisdiction of the UK.
2.	Paragraph 2.2.2.21	<i>Make reference to methods used in collating baseline information...etc</i>	It would be useful if this list also included a bullet point requesting a description of the extent of agreement with relevant consultation bodies regarding the methodology applied (for example, the field surveys).
3.	Paragraph 2.2.2.28	<i>Confirm Zone of Influence for Cumulative Effects Assessment and likely projects/effects to be included for your topic etc</i>	The ES should also explain the approach to the cumulative effects assessment (CEA) and how the list of projects and plans has been determined. The ES should identify the sources of information and evidence any agreements made with relevant consultation bodies, such as relevant local authorities and the Marine Management Organisation etc, regarding the list of projects/plans to be included in the CEA. The Applicant is directed to the advice in the Inspectorate's Advice Note 17 with regards to CEA.
4.	Paragraphs 2.2.2.29 to 2.2.2.32	<i>H - Proposed Mitigation and Enhancement Measures</i>	The assessment should consider the potential for proposed mitigation measures applied to one aspect/matter to give rise to adverse effects on other environmental aspects/matters.
5.	Paragraph 2.2.2.32	<i>Additional mitigation measures and enhancement measures referred to in the ES chapters would be detailed in the draft CEMP.</i>	The ES should also explain, for both embedded and additional mitigation measures, how these measures have been secured through the draft DCO.
6.	Section 2.3	<i>Non-Technical Summary (NTS)</i>	The Applicant should ensure that the NTS complies with the requirements of the EIA Regulations 2017, which also includes a description of the Proposed Development and the reasonable alternatives studied by the Applicant.



Draft ES Briefing note			
<b>Q No.</b>	<b>Paragraph/ Section</b>	<b>Extract from [abbreviation of doc] (for ease of reference)</b>	<b>Question/Comments</b>
<b>7.</b>	<b>Appendix 1 – section 1.7</b>	<i>SECTION 1 – LOVEDEAN (CONVERTER STATION AREA) [REPEAT FOR CABLE CORRIDOR SECTIONS AS REQUIRED]</i>	The template suggest that the effects of the onshore cable will be reported for each of the ten sections listed in section 1.5.1. How will the ES report on the total effects for the whole onshore corridor/whole of the Proposed Development?

Draft Location Plans			
<b>Q No.</b>	<b>Plan Ref</b>		<b>Question/Comments</b>
	<b>All</b>		No comments. The scale of this plan appears appropriate.

Draft Crown Plans			
<b>Q No.</b>	<b>Paragraph/ Section</b>		<b>Question/Comments</b>
<b>1.</b>	<b>All</b>		The general appearance of these appears fine but it is unclear why a distinction is made for Freeholder plots.

Draft Converter Station Plans			
<b>Q No.</b>	<b>Paragraph/ Section</b>		<b>Question/Comments</b>
<b>1.</b>	<b>All</b>		These are indicative plans. The scale appears appropriate.

## General

1. [DCLG: Application form Guidance](#), paragraph 3 states: *The application must be of a standard which the Secretary of State considers satisfactory: Section 37(3) of the Planning Act requires the application to specify the development to which it relates, be made in the prescribed form, be accompanied by the consultation report, and be accompanied by documents and information of a prescribed description. The Applications Regulations set out the prescribed form at Schedule 2, and prescribed documents and information at regulations 5 and 6.*