**Summary of judgment in *R(oao AQUIND Limited)* (Claimant) *v Secretary of State for Business, Energy and Industrial Strategy* (Defendant) *and Portsmouth City Council* (Interested Party) [2023] EWHC 98 (Admin), by Portsmouth City Council**

Aquind Limited ("Aquind") has succeeded in its High Court claim for judicial review, meaning that the decision of the Secretary of State for Business, Energy and Industrial Strategy("SoS") to refuse development consent for the Aquind project has been quashed.

This means that the Secretary of State will need to take the decision again without making the errors that the judge identified in the Secretary of State's refusal of development consent. The Secretary of State issued the now-quashed decision letter on 20 January 2022.

Broadly speaking, the judge found that the SoS dealt with the evidence before him in a way that failed to account for the proper range of necessary factors in relation to whether Mannington would have been a suitable alternative substation (Ground 1b). In particular, Aquind had been asked by the SoS about the change brought about by the refusal of a consent for a windfarm called Navitus Bay that would have also used Mannington substation. However, it was held that the SoS should have addressed the general feasibility of Mannington rather than focussing just on the Navitus Bay refusal issue.

Additionally, the judge found that the SoS had not properly understood and applied the national planning policy relating to electricity infrastructure projects when writing his decision letter (Grounds 2 & 3).

Lastly, the judge held that the public interest arising from the undisputed capacity of the scheme to supply in the region of 5% of the UK's electricity need meant that no reasonable decision-maker could have jumped to the conclusion to refuse the Aquind application without a further round of questions to Aquind and National Grid concerning whether Mannington was at least feasible as an alternative substation site (Ground 4).

Portsmouth City Council succeeded in supporting the SoS's case that Aquind had every opportunity to supply information concerning the feasibility of Mannington substation, yet Aquind failed to do so. Nonetheless, the judge held that it was still incumbent on the SoS to demand further information.

The SoS will take time to consider whether or not to appeal the judgment.

If the SoS does not appeal the judgment, it is important to note that the decision on whether or not to grant development consent must now be taken again by the SoS. It is not the case that the Court has told the SoS what the decision must be, simply that the SoS must reconsider all the relevant material to come to a properly reasoned decision.