

South Humber Bank Energy Centre Project

Planning Inspectorate Reference: EN010107

South Marsh Road, Stallingborough, DN41 8BZ

The South Humber Bank Energy Centre Order

**Document Reference: 8.13 The Applicant's Written Summary of Oral
Submissions – DCO Issue Specific Hearing**



Applicant: EP Waste Management Ltd
Date: February 2021

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Applicant's Summary of Oral Case
Issue Specific Hearing on the DCO – 9 February 2021

PROVISION	SUMMARY OF APPLICANT'S ORAL CASE & POST-HEARING ACTIONS
Agenda item 2 – Articles and Schedules of the dDCO	
Overview of the dDCO	The Applicant provided a summary of the draft DCO's articles and schedules.
Article 2 – Interpretation	<p>In response to a question from the Examining Authority the Applicant confirmed that it will consider whether a definition of "bridleway" should be added to article 2.</p> <p><i>Post-hearing note:</i> the Applicant has included a definition of "bridleway" in article 2 which defines it by reference to the Highways Act 1980 (which defines bridleway in section 329 as "a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway").</p> <p>In response to a question from the Examining Authority the Applicant confirmed that the definition of "swept path analysis plan" is included in article 2 (rather than requirement 1 as was envisaged by paragraph 14.2.9 of the Draft Statement of Common Ground with NELC (Document Ref 7.1 / REP3-005)) because it is used in article 25 as well as in the requirements.</p>
Article 5 – Effect of the Order on the SHBEC planning permission	<p>The Applicant updated the Examining Authority that since Deadline 2 no further applications have been made to discharge the conditions on the SHBEC planning permission. The Applicant confirmed it is on track to appoint a contractor by early Q2 of 2021 and that it will be looking to discharge pre-commencement conditions under the SHBEC planning permission when the contractor has been appointed. The Applicant confirmed that it does envisage commencing construction of the Consented Development prior to switching to building out the Proposed Development under the DCO (once granted).</p> <p>The Applicant confirmed it would provide an indicative table for Deadline 4 setting out the anticipated programme for the discharge of conditions. The ExA's Action List also requires the Applicant to provide an explanation of how any discharged Planning Condition, attached to the above mentioned SHBEC Planning Permission, might interact with the grant of the DCO, especially Article 5.</p>

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	<p><i>Post-hearing note:</i> a table is provided below identifying the most likely timescale for implementation under Scenario 1 (the most likely construction programme scenario described in Chapter 5 of the ES Vol. 1, Document Ref. 6.2 / APP-039) and an explanation of how Article 5(5) as drafted in the latest draft DCO submitted at Deadline 4 will interact with each condition. This represents an update to the information provided in Appendix 3 of the Response to the Examining Authority's First Written Questions (Document Ref. 8.2/REP2-008).</p> <p>The final row describes the most likely timing of the switchover (service of notice under Article 5(2)) being January 2022.</p> <table border="1" data-bbox="719 576 2047 1005"> <thead> <tr> <th data-bbox="723 579 943 775">Anticipated Programme Milestone</th> <th data-bbox="947 579 1099 775">Date</th> <th data-bbox="1104 579 1574 775">Conditions under the Planning Permission requiring the approval of plans, details or other matters by the Local Planning Authority before the Programme Milestone</th> <th data-bbox="1579 579 2042 775">Explanation of interaction with the grant of the DCO by virtue of Article 5(5)</th> </tr> </thead> <tbody> <tr> <td data-bbox="723 778 943 874">EPC Contractor Appointed</td> <td data-bbox="947 778 1099 874">April/ May 2021</td> <td data-bbox="1104 778 1574 874">–</td> <td data-bbox="1579 778 2042 874">–</td> </tr> <tr> <td data-bbox="723 877 943 1002">EPC Contractor Detailed Design Stage</td> <td data-bbox="947 877 1099 1002">June – September 2021</td> <td data-bbox="1104 877 1574 1002">–</td> <td data-bbox="1579 877 2042 1002">–</td> </tr> </tbody> </table>				Anticipated Programme Milestone	Date	Conditions under the Planning Permission requiring the approval of plans, details or other matters by the Local Planning Authority before the Programme Milestone	Explanation of interaction with the grant of the DCO by virtue of Article 5(5)	EPC Contractor Appointed	April/ May 2021	–	–	EPC Contractor Detailed Design Stage	June – September 2021	–	–
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EPC Contractor Appointed	April/ May 2021	–	–													
EPC Contractor Detailed Design Stage	June – September 2021	–	–													

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	Site Establishment and PPW	July – September 2021	<p>Condition 10 'Construction Environmental Management Plan' Phase 1</p> <p>Condition 13 'Contamination'</p>	<p>Confirmation of compliance received 27.9.19 (local authority reference DM/0713/19/CND)¹. Article 5(5) deems that the CEMP for this first phase of works is also approved for the purposes of R15.</p> <p>Confirmation of compliance with all parts of condition 13 received 17.9.20 (local authority reference DM/0626/20/CND)². Article 5(5) deems that these details are also approved for the purpose of R19, so R19 is fully complied with.</p>
	Commencement of Work	October 2021	Condition 4 'Details of final positioning of buildings, elevations and floor levels'	<p>Article 5(5) deems that the details, plans or other matters approved under condition 4 will be approved for the purpose of R5.</p> <p>After the switchover a submission under R5 solely in respect of the larger ACCs and transformers will be required.</p>

¹ This is also set out in response to ExQ1 1.0.2 by the Applicant (Response to the Examining Authority's First Written Questions, Document Ref. 8.2/REP2-008) and North East Lincolnshire Council (REP2-017 which includes the decision notice, and REP2-018).

² As above.

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			<p>Condition 9 'Scheme for surface and foul water drainage</p>	<p>were needed for the Additional Works, then they would require a specific submission under the Requirement).</p> <p>Art 5(5) deems that the details, plans or other matters approved under condition 9, so far as relating to surface water drainage, will be approved for the purpose of R13, and those for condition 9 so far as relating to foul drainage will be approved for the purpose of R14.</p> <p>After the switchover no further submission will be required as the Additional Works will not give rise to different surface or foul water drainage proposals. For example, the concrete slab (overlain by stone chippings) would be installed the same size for either ACC layout since it is sized for various factors including access/ maintenance requirements. (Nonetheless, if different designs were needed for the Additional Works, then they would require a specific submission under the Requirement).</p> <p>The Planning Performance</p>

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			<p>Condition 10 'Construction Management Plan' Phase 2</p>	<p>Agreement that the Applicant is seeking to enter into with NELC (see page 13 of this document) will stipulate that NELC consults the bodies named as consultees in R13 and R14 before the approval of the details submitted under condition 9. This consultation is already normal practice by the local planning authority but the PPA secures it.</p> <p>In the draft DCO submitted at Deadline 4 a row has been removed from Schedule 3 in respect of R15, so that Article 5(5) does not result in the condition 10 details being deemed to discharge R15. Whilst not requested by any interested party, the Applicant recognises that there is a small additional degree of mitigation secured in the requirement compared to the condition (fencing and tree protection), and therefore considers that deemed discharge should not apply.</p> <p>As deemed discharge will not apply a submission will be required under R15 of the DCO to approve the</p>

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				<p>CEMP before works pursuant to the DCO can commence. Nevertheless in practice the Applicant expects to include the additional fence and tree details within the application to discharge condition 10.</p> <p>Article 5(5) deems that the details, plans or other matters approved under condition 10 so far as relating to construction traffic management and travel planning will be approved for the purpose of R16.</p> <p>After the switchover no further submission will be required as the Additional Works will not give rise to any different or additional environmental management measures or forecast construction traffic due to the conservative assumptions used in the Transport Assessment. (Nonetheless, if different measures were needed for the Additional Works, then they would require a specific submission under the Requirement).</p> <p>The additional consultation provided for in R16 would be carried out for condition 10 (Network Rail) and</p>

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			<p>Condition 11 'Piling type and specification' *Note: to be varied to be pre commencement (save for PPWs) shortly. ³</p>	<p>secured via a Planning Performance Agreement (see page 13 of this document).</p> <p>Article 5(5) deems that the details, plans or other matters approved under condition 11 will be approved for the purpose of R17.</p> <p>After the switchover no further submission will be required as the Additional Works will not give rise to additional piling. For example, the concrete slab would be installed the same size for either ACC layout since it is sized for various factors including access/ maintenance requirements. (Nonetheless, if different designs were needed for the Additional Works, then they would require a specific submission under the Requirement).</p>

³ This is explained in the Applicant's response to Q1.0.2 ((Response to the Examining Authority's First Written Questions, Document Ref. 8.2/REP2-008): "To enable 'permitted preliminary works' such as fencing and contractor's facilities to get underway in a more timely manner following contract signing, the Applicant has recently decided that the piling works will not be carried out as 'permitted preliminary works' and has updated the Draft DCO submitted at Deadline 2 to show this (Requirement 1 is amended to remove piling works from the definition of 'permitted preliminary works' and Requirement 17 is amended to add an exclusion for 'permitted preliminary works'). The Applicant is also applying to North East Lincolnshire Council to vary Conditions 3 and 11 of the Planning Permission to make the same changes."

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			Defence Geography Centre'	<p>for the purpose of R30.</p> <p>After the switchover no further submission will be required as the Additional Works do not alter the information to be submitted in relation to air safety, which relate to the tallest structures (the emissions stacks, whose maximum height, diameter, and location are controlled in both the Planning Permission and draft DCO requirement 3(1)).</p>
	DCO granted	November 2021	–	
	Planning Permission – DCO Switchover	January 2022	-	<p>After this point, submissions would be made in respect of DCO requirements that have 'operation' or 'commissioning' triggers or other triggers later than 'commencement' (R9, R10, R12(1), R20(2), R22(1), R23(1)).</p> <p>The Applicant has reviewed again the terms of the conditions and requirements, and has discussed them further with NELC. The Applicant recognises that materially greater mitigation is stipulated in R12(1) and R22(1) compared to the relevant conditions, and therefore</p>

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				<p>these have been removed from Schedule 3 (i.e. removed from the deemed discharge process) in the draft DCO submitted at Deadline 4.</p> <p>Condition 18 Delivery and Servicing Plan has been confirmed complied with on 31.1.20 (local authority decision reference DM/1117/19/CND) and Network Rail were consulted by the LPA before issuing this decision, and responded to confirm no objection. Article 5(5) deems that the details, plans or other matters approved under condition 18 will be approved for the purpose of R24.</p> <p>Network Rail has formally confirmed it is content with the Delivery and Servicing Plan approved under Condition 18 and they have not commented on the Delivery and Servicing Plan included with the DCO Application. It is not necessary in planning terms for the approval under condition 18 to be discarded so that the same plan can be submitted under Requirement 24 and the same consultation carried out. The suitability of the details submitted for</p>

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				<p>condition 18 in relation to Requirement 24 is set out clearly by NELC in its response to ExQ1 5.0.18 and Network Rail's withdrawal letter is clear that they have no outstanding objection based on the agreement reached and the amendments to the DCO draft to be submitted at Deadline 4. In short there is no material difference in the mitigation secured under the requirement and the condition.</p> <p>⁴The effect of including Network Rail as a consultee in R24 is that Network Rail will be consulted if fresh details need to be submitted at any point during the operation of the Proposed Development, for example if there were an unforeseeable change to key matters (such as the closure of a local road or the opening of a more direct route to the SRN during the 30 year lifetime of the development) set</p>

⁴ See response to Q5.0.18 in REP2-018 which states "the DCO operational HGV movements accord with those proposed within the planning approval and routing accords with the details agreed through condition discharge application DM/1117/19/CND, Appendix D, it is considered that the required actions and implementation mirrors that of condition 18 and covers the areas of specific concern".

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				out in the Delivery and Servicing Plan.
Article 9 – Consent to transfer	<p>In response to a question from the Examining Authority, the Applicant confirmed that it would consider whether article 9(2) should except paragraph (8) (in addition to paragraph (3)) and would make any</p>			

The Applicant explained that article 5 has been drafted so as to be sufficiently flexible and to operate satisfactorily whatever the construction and 'switchover' scenario is in practice.

In response to a question from the Examining Authority, the Applicant provided a brief summary of how the drafting of conditions under a planning permission and requirements within a DCO differ - the Applicant highlighted that it is not usual practice within planning conditions for a particular party to be named as a consultee, whereas that is often done in requirements within a DCO. The Applicant confirmed that such difference applies in relation to the SHBEC planning permission and the dDCO, but noted that in practice NELC had in fact consulted Network Rail and the Environment Agency on the relevant conditions discharged to date. The Applicant set out its understanding that consultees named within requirements would be consulted by NELC in relation to the corresponding condition, notwithstanding such parties are not expressly named as consultees within the conditions.

The Applicant confirmed that it would make a written submission for Deadline 4 further justifying the position created by article 5 in relation to consultation, or to propose an alternative approach.

Post-hearing note: the Applicant has discussed the approach to consultation on applications to discharge conditions with NELC and, whilst it is demonstrably already NELC's usual practice to consult relevant statutory bodies on such applications, in order to provide certainty to the Secretary of State, the Applicant and NELC have agreed they will enter into a planning performance agreement ("PPA") to secure this. The Applicant has proposed that the PPA will be a legally binding agreement which will set out that NELC will, when receiving an application to discharge a condition under the SHBEC Planning Permission, consult any person who is named as a consultee in an 'equivalent' requirement under the Draft DCO. The heads of terms for the PPA have been agreed between the Applicant and NELC, and it is their intention to enter into the PPA as soon as possible. A copy of the completed PPA will then be entered into the examination.

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benefit of the Order	<p>changes for Deadline 4.</p> <p><i>Post-hearing note:</i> the Applicant has updated article 9(2) to refer to both paragraph (3) and paragraph (8).</p>
Article 17(6) – Felling or lopping of trees	<p>In response to a question from the Examining Authority the Applicant confirmed that as per the Applicant's response to First Written Question 5.0.28 (Document Ref 8.2 / REP2-017 and REP2-018) there are no tree preservation orders within the Order limits or immediately adjacent, and that this provision is intended to cover the potential for a tree preservation order to be put in place in the future.</p>
Article 19 – Statutory undertakers	<p>In response to a question from the Examining Authority the Applicant confirmed that it was not aware of whether National Grid had seen the revised wording of article 19 and that it would contact National Grid to draw this update to its attention. The ExA's Action List also requests an update in regard to progress on the Statement of Common Ground (SoCG) with NG and where negotiations have reached with NG as to the wording of any Protective Provisions they are seeking to be included within the draft DCO, including any current draft wording of those Protective Provisions.</p> <p><i>Post-hearing note:</i> the Applicant has contacted National Grid's solicitors to ensure that their client is aware that Article 19 of the Draft Order has been previously updated. The Applicant is submitting an updated draft Statement of Common Ground with National Grid at Deadline 4, alongside this document.</p>
Article 26(3)(a) – Service of notices	<p>In response to a point raised by the Examining Authority the Applicant confirmed that it would review whether there was a typographical error in this provision and make any changes for Deadline 4.</p> <p><i>Post-hearing note:</i> the Applicant has amended article 26(3)(a) to refer to “the secretary or clerk” instead of “the secretary of clerk”.</p>
Schedule 8 – Protective provisions	<p>In response to a question from the Examining Authority the Applicant confirmed that protective provisions for Network Rail would be added as a new part 5 of Schedule 8 for Deadline 4.</p> <p><i>Post-hearing note:</i> protective provisions for Network Rail have been added as a new part 5 of Schedule 8.</p> <p>The Applicant confirmed that it would seek Network Rail's confirmation in the updated Statement of Common Ground to be submitted for Deadline 4 that Network Rail is satisfied that, with the protective provisions in the DCO and the agreement in place with the Applicant, that there is no serious detriment to the operation of the railway. The ExA's Action List also requires confirmation in the updated SoCG</p>

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	<p>that the side agreement has been signed and dated by both parties.</p> <p><i>Post-hearing note:</i> the Applicant has submitted a signed Statement of Common Ground with Network Rail Document Ref. 7.7) at Deadline 4 and which covers these matters.</p> <p>In response to a point raised by the Examining Authority the Applicant confirmed that it would consider whether the definition of National Grid in paragraph 11 of Schedule 8 could be updated to cross refer to article 2.</p> <p><i>Post-hearing note:</i> the definition of National Grid in paragraph 11 of Schedule 8 has been updated to cross refer to article 2.</p>
<p>Agenda item 3 – Schedule 2 of the dDCO – Requirements</p>	
<p>Requirement 2 – Commencement of the authorised development and notices</p>	<p>In response to a question from the Examining Authority the Applicant confirmed that it would consider whether the reference to "event" in requirement 2(2) could be clarified.</p> <p><i>Post-hearing note:</i> the Applicant has added further drafting to clarify what is meant by "event".</p> <p>In response to a question from the Examining Authority the Applicant confirmed that requirement 2(2) does not refer to notice of the commencement of the authorised development because this is already required under article 5.</p> <p>The Applicant confirmed that it would review whether the words "start of commissioning" in requirement 2(2)(a) are appropriate and make any changes for Deadline 4.</p> <p><i>Post-hearing note:</i> the Applicant has not made any change to the phrase “start of commissioning”. It is not appropriate to use “commencement of commissioning” instead, as “commence” (and related phrases) are defined by reference to the Planning Act 2008, and relate to activities which comprise “development”. Due to the nature of commissioning it is possible that the activities (such as testing equipment) would not in themselves be “development”.</p>
<p>Requirement 5 – Detailed design (position and scale)</p>	<p>In response to a question from the Examining Authority the Applicant confirmed that it would submit any supporting information confirming the Health and Safety Executive's position on safety zones at Deadline 4.</p>

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	<p><i>Post-hearing note:</i></p> <p>The relevant issue is ensuring development in accordance with HSE land use planning methodology (https://www.hse.gov.uk/landuseplanning/index.htm), in this case the avoidance of workplace development of three or more occupied storeys within the inner zone of a major installation. The only part of the development that could exceed this number of occupied storeys is the admin block (Work 1B) and hence its location (outside of the inner zones) and its configuration is controlled in the planning application and the draft DCO as follows:</p> <ul style="list-style-type: none"> - In the Planning Permission by virtue of condition 2 which, inter alia, requires development to be in accordance with the “Development Areas Plan (2522-031 rev R1)” and by condition 4 which controls the number of occupied floors as part of its control over finished floor levels, elevations and floor plans (which shall be in general accordance with the submitted plans). - Due to the different way in which DCOs secure such details, this control is provided via the works plans (which specifies the location of the administration block, Work No. 1B) and by the insertion of Requirement 5(2) into the draft DCO which stipulates the number of occupied floors by stating that no part of the authorised development may have more than three occupied storeys save for Work No. 1B. <p>We have provided in Document 8.15 at Deadline 4 confidential information provided by the HSE (or containing their information) that shows the consultation zones to which the Proposed Development is subject. This is marked confidential and we request it is not published on the PINS project web page. This information is generally only made available to developers and their agents and local authorities and not the general public. It should be read in conjunction with the below timeline of engagement with HSE for the Consented Development</p> <p>The regard had to HSE comments is also contained in a summary form in pages 3, 27, 37 and 74 of the Planning, Design and Access Statement (Document Ref. 5.5 / APP-024).</p> <table border="1" data-bbox="719 1134 2047 1342"> <thead> <tr> <th data-bbox="719 1134 1095 1190">Date</th> <th data-bbox="1095 1134 1480 1190">Event</th> <th data-bbox="1480 1134 2047 1190">Notes</th> </tr> </thead> <tbody> <tr> <td data-bbox="719 1190 1095 1342">01/06/2018</td> <td data-bbox="1095 1190 1480 1342">HSE provided CZ plans to DWD.</td> <td data-bbox="1480 1190 2047 1342">This included individual zone plans for specific local sites. These are included within Appendix 1 of Document Ref. 8.15 submitted at Deadline 4.</td> </tr> </tbody> </table>	Date	Event	Notes	01/06/2018	HSE provided CZ plans to DWD.	This included individual zone plans for specific local sites. These are included within Appendix 1 of Document Ref. 8.15 submitted at Deadline 4.
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01/06/2018	HSE provided CZ plans to DWD.	This included individual zone plans for specific local sites. These are included within Appendix 1 of Document Ref. 8.15 submitted at Deadline 4.					

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	29/06/2018	Request sent to HSE via email to confirm a 'Do Not Advise Against' response in principle.	.
	12/07/2018	HSE response received.	HSE responded with qualified advice. It does not advise, on safety grounds, against the granting of planning permission in this case. However, this is providing that no workplaces within the HSE Inner Zones will provide for 100 or more occupants in each building and there are less than 3 occupied storeys within each building. Where a workplace building will accommodate more than 100 occupants or has 3 or more storeys, these will need to be situated in either the middle or outer zones, or outside of the consultation zones.
	17/07/2018	DWD sent HSE a clarification email.	Clarified that the driver welfare building is a workplace and is not for members of the public or providing accommodation. Included updated Zone Plan overlay.
	06/12/2018	DWD submitted planning application for SHBEC to NELC, including a Confidential Site Plan showing HSE Zones (ref. 2522-028 rev R1 - included within Appendix 2 of Document Ref. 8.15 submitted at Deadline 4).	

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	24/01/2019	HSE Formal NELC Response.	Response stated the risk of harm to people at the proposed development is such that HSE's advice is that there are sufficient reasons, on safety grounds, for advising against the granting of planning permission in this case.
	24/01/2019	DWD Response to NELC.	Provided further clarification on the scheme in included Zone Plans.
	06/02/2019	HSE confirmation of 'Do Not Advise Against' advice (Appendix 3 of Document Ref. 8.15 submitted at Deadline 4).	HSE is now satisfied as to the separation of the administration area and the main building and therefore the administration block is within the middle zone, and has changed its advice.
	29/11/2019	HSE S42 response (Appendix 7.2 of Document Ref. 5.1 / APP-020).	HSE would not advise against this nationally significant infrastructure project.
	18/02/2020	DWD sent request for SoCG to HSE.	
	19/02/2020	HSE confirmed no intention to enter in to SoCG.	It would not be HSE policy to enter into a Statement of Common Ground when we have stated that we would not advise against a project. Provided that it is acknowledged in the Consultation Report or associated documents that the points made by HSE have been noted, we would not then raise a 'Relevant Representation' and would not become an 'Interested Party'.

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	27/05/2020	S56 Consultation Letter Sent.	
	27/05/2020	HSE confirmation of receipt and confirmed If HSE has outstanding issues, we will raise a Relevant Representation, within the timescale.	
Requirement 7 – Retained trees	<p>In response to a question from the Examining Authority the Applicant referred to its response to First Written Question 5.0.37 (Document Ref 8.2 / REP2-017 and REP2-018) in respect of the use of tailpieces. The Applicant confirmed its position is that the tailpieces in the dDCO are limited by article 34, which prevents the relevant planning authority from going outside of the terms of the documents referred to in the requirements, and that the Secretary of State therefore has certainty that the tailpieces are adequately constrained. The Applicant provided an explanation of the position that was considered in respect of the planning conditions, which was that tailpieces were appropriate to allow for unforeseeable changes for which it would be impractical to have to go through an eight week approval process.</p> <p>In response to a question from the Examining Authority the Applicant confirmed that it would consider whether requirement 7(2) should refer to the works plan and would make any changes for Deadline 4.</p> <p><i>Post-hearing note:</i> the Applicant has not amended requirement 7(2), but instead has clarified the wording in article 2(4) to make clear that references to “numbered works or Work No.” are to the work numbers listed in Schedule 1.</p>		
Requirement 8 – Means of enclosure and hard landscaping	<p>In response to a question from the Examining Authority the Applicant confirmed it would review the implementation triggers in this provision and make any changes for Deadline 4.</p> <p><i>Post-hearing note:</i> the Applicant has inserted new text requiring the implementation of all aspects approved under the requirement during construction, and their subsequent retention.</p> <p>Further, in discussion with NELC, the Applicant has also agreed to insert similar wording regarding timing of implementation into requirements numbered 9, 16, 22, 26, 27, and 35(5) in the draft DCO submitted at Deadline 4, for the same reasons of precision.</p>		

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Requirement 9(2) – Lighting scheme	<p>In response to a question from the Examining Authority the Applicant confirmed it would review the wording of this provision against the Schedule of Changes to the Draft Development Consent Order (Document Ref 8.7) submitted at Deadline 3 and would make any changes for Deadline 4.</p> <p><i>Post-hearing note:</i> the wording of requirement 9(2) has been amended to refer to “principles of” instead of “principles in”.</p>
Requirement 11 – Biodiversity protection	<p>In response to a question from the Examining Authority the Applicant confirmed it would seek confirmation from Natural England that it is content with the wording of this provision and confirm such for Deadline 4.</p> <p><i>Post-hearing note:</i> the Applicant has been in contact with Natural England to explain the updates to the wording of requirement 11; Natural England confirmed by email on 11 February 2021 (copy attached at Appendix 1) that it is satisfied with the changes. NELC is also content as noted in the SoCG submitted at Deadline 4.</p>
Requirement 12(1) – Biodiversity enhancement and mitigation	<p>In response to a question from the Examining Authority the Applicant confirmed it would review the implementation triggers in this provision and make any changes for Deadline 4.</p> <p><i>Post-hearing note:</i> the wording “for approval” has been added to requirement 12(1).</p>
Requirements 13(2) – Surface water drainage and 14(2) – Foul water drainage	<p>In response to a question from the Examining Authority the Applicant confirmed it would consider whether reference to the "relevant part" of the outline drainage strategy is sufficiently specific and make any changes for Deadline 4.</p> <p><i>Post-hearing note:</i> the Applicant has updated requirement 13(2) to refer specifically to Section 2 (Policy and Stakeholder Requirements), Section 4 (Proposed Surface Water Management) and Section 6 (Residual Risk Mitigation) of the outline drainage strategy; the Applicant has updated requirement 14(2) to refer specifically to Section 2 (Policy and Stakeholder Requirements) and Section 5 (Proposed Foul Drainage Management) of the outline drainage strategy.</p>
Requirement 16 – Construction traffic management and travel planning	<p>In response to a question from the Examining Authority the Applicant confirmed it would provide an explanation at Deadline 4 as to why Royal Mail is not referred to as a consultee in requirement 16(1).</p> <p><i>Post-hearing note:</i> Royal Mail is not named as a consultee in requirement 16 as it has been agreed with them that notification by the Applicant, rather than consultation by the relevant planning authority, is required, and it is</p>

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	<p>to be done in a different way. Royal Mail is to be provided with copies of approved Construction Traffic Management Plans, rather than being consulted on the drafts – this is secured within Section 7 of the updated Framework Construction Traffic Management Plan (December 2020) submitted at Deadline 1 (Document Ref. 6.4.12 / REP1-009). Nevertheless, notification of Royal Mail will be secured within the PPA (see page 13).</p> <p>In response to a question from the Examining Authority the Applicant confirmed it would consider whether the term "railway asset" in requirement 16(3)(a) could be made more precise or defined and would make any changes for Deadline 4</p> <p><i>Post-hearing note:</i> the Applicant has not made any changes to requirement 16(3)(a) at Deadline 4. The term "railway asset" is broad and is considered to be sufficiently defined so as to enable all parties to understand what is meant. In the context of paragraph (3) (in relation to abnormal loads), it is clear that it can (from a practical perspective) only be parts of the railway which cross or interact with highways (on which the abnormal loads may travel).</p>
Requirement 17 – Piling	<p>In response to a question from the Examining Authority the Applicant confirmed it would seek confirmation from Natural England that it is content with the change of wording from "shall" to "must" and would confirm the position for Deadline 4.</p> <p><i>Post-hearing note:</i> the Applicant has been in contact with Natural England to explain the updates to the wording of requirement 17; Natural England confirmed by email on 11 February 2021 (copy attached at Appendix 1) that it is satisfied with the changes.</p>
Requirement 21 – Procedure in cases of unexpected contamination	<p>In response to a point raised by the Examining Authority the Applicant confirmed it would discuss the addition of a tailpiece in requirement 21(3) with NELC and would make any changes for Deadline 4.</p> <p><i>Post-hearing note:</i> This has been discussed with NELC (11 February 2020 and subsequent SoCG submitted at Deadline 4) and is agreed to be appropriate.</p>
Requirement 24 – Delivery and servicing plan	<p>In response to a question from the Examining Authority, the Applicant provided an update on the status of the environmental permit which has been applied for in respect of the Consented Development and Proposed Development. The Applicant confirmed that the environmental permit for the Consented Development (under the SHBEC Planning Permission) has been granted. The Applicant confirmed it would provide a written summary of the position in respect of the environmental permit for the proposed development under the DCO at Deadline 4. The ExA's Action List requested an explanation of a) the current status of the</p>

PROVISION	SUMMARY OF APPLICANT'S ORAL CASE & POST-HEARING ACTIONS
	<p>Environmental Permit sought in relation to the current DCO proposed development, including whether the applicant is anticipating any issues arising from its Environmental Permit submission; Applicant Deadline 4; b) the term ‘made’ in relation to the submission of the application for an Environmental Permit to the Environment Agency; and c) anticipated timescales in regard to the issuing of the Environmental Permit, which the Applicant has sought from the Environment Agency, bearing in mind the backlog of Environmental Permit applications that the Applicant has indicated currently exist at the Environment Agency.</p> <p><i>Post-hearing note:</i> the environmental permit application for the Proposed Development has been 'duly made' (on 23rd December 2020), which means the Environment Agency has carried out its initial checks and has accepted the application, and will proceed to consider the application in detail. The Applicant clarified that 'duly made' does not mean the permit has been granted. Whilst the permit for the Proposed Development has not been granted, no substantial issues are anticipated because the permit will be very similar to that of the Consented Development which has already been granted. The Applicant further confirmed that at this stage it is not expected that the permit for the Proposed Development will be granted before the end of the examination.</p>
<p>Requirement 33 – Decommissioning</p>	<p>In response to a question from the Examining Authority the Applicant confirmed it would discuss the insertion of reference to a "timetable" in requirement 33(1) with NELC and make any changes for Deadline 4.</p> <p><i>Post-hearing note:</i> the Applicant has discussed this point with NELC and updated requirement 33 to require the submission of a timetable for implementation of the decommissioning plan.</p>
<p>Requirement 35 – Combined heat and power</p>	<p>In response to a question from the Examining Authority the Applicant confirmed it would review whether the wording from paragraph 14.2.5 of Draft Statement of Common Ground with NELC (Document Ref 7.1) had been correctly carried across into this provision and make any changes for Deadline 4, and confirmed it would discuss the controls under this provision with NELC and make any changes for Deadline 4.</p> <p><i>Post-hearing note:</i> the Applicant did omit the extra wording (“and must remain available for connection and use”) which was agreed with NELC in the draft SoCG, and has included equivalent wording in the draft DCO submitted at Deadline 4, in association with some further changes that have arisen in response to discussion during the hearing regarding precision, the Applicant has reviewed the wording of Requirement 35 and has added more detail - 35(1) and (2) now provides for approval of the specification of the CHP facility inside the main building, and 35(3) and (4) provides for express approval of the reserve space (i.e. in building) and routes suitable for</p>

PROVISION	SUMMARY OF APPLICANT'S ORAL CASE & POST-HEARING ACTIONS
	suitably sized steam pipes (i.e. inside and outside of buildings). 35(5) then requires implementation prior to coming into operation and maintenance throughout the operation of the authorised development. 35(6) places controls over any steam pipeline specification that is provided in the future, and 35(7) requires implementation and maintenance of that pipeline.
Requirement 37 – Heavy goods vehicle prohibition	<p>The Applicant explained that this requirement has been included and is specific to HGVs because, notwithstanding the bridleway status of South Marsh Road (west of Hobson Way), the Applicant has always been aware that it is not suitable for use by HGVs and has agreed with Network Rail that it is appropriate to put that position beyond doubt on the face of the DCO. The Applicant further set out that requirement 37 relates to the plans submitted pursuant to requirements 16, 24 and 33, which could be submitted some way in the future when the formal status of South Marsh Road may have changed, and in those circumstances the control in the DCO would be the sole control to be relied on.</p> <p>The Applicant confirmed it would provide an explanation of the ability for motorised vehicles to use a bridleway, and the background/ need for requirement 37 at Deadline 4.</p> <p><i>Post-hearing note:</i> as per the definition of a bridleway noted above against article 2, it is not permitted for public users of a bridleway to do so in motorised vehicles (those doing so privately, such as to access property directly from the bridleway, may be in a different position). The Applicant maintains the position explained at the hearing and noted above, that notwithstanding the designation of part of South Marsh Road as a bridleway, that requirement 37 is necessary. The Applicant has also discussed the matter further with NELC, and understands that it agrees that Requirement 37 is considered necessary and appropriate to govern the various HGV related traffic management plans required throughout the lifetime of the development, as noted in the SoCG submitted at Deadline 4.</p>
Potential requirement 38	In response to a question from the Examining Authority the Applicant confirmed Network Rail is no longer pursuing the inclusion of a new requirement 38.
Agenda item 4 – Article 25 of the dDCO – Certification of Plans	
Article 25 – Certification of plans etc.	The Applicant confirmed its position that any document referred to in the dDCO should be certified, either by being listed in article 25 or by virtue of sitting within a document which is referred to in article 25 (for example the environmental statement). The Applicant further explained that documents are also named expressly in article 25 if they are an updated version of a document previously contained within a document to be certified – for example the Framework CTMP was included in the environmental statement, but subsequently a revised version

PROVISION	SUMMARY OF APPLICANT'S ORAL CASE & POST-HEARING ACTIONS
	<p>has been submitted and therefore that version is referred to in its own right in article 25.</p> <p>The Applicant confirmed the list in article 25 would be updated as necessary for Deadline 4 and that the Applicant would also separately provide a written explanation of the status of each of the documents referred to in article 25 and why they are included.</p> <p><i>Post-hearing note:</i> the Applicant has added the indicative landscape strategy to the list of documents set out in article 25. The status of the documents listed in article 25 is as follows:</p> <ul style="list-style-type: none"> • the access and rights of way plan – this document is referred to in requirement 26, requirement 27 and Schedules 4, 5, 6 and 7; it does not sit within any other document referred to in this list, so must be listed in its own right • the book of reference – this document is referred to in the National Grid protective provisions; it does not sit within any other document referred to in this list, so must be listed in its own right • the environmental statement – this document is referred to in the definitions of “framework construction traffic management plan” and “maintain” in article 2, Schedule 1, the definition of “outline drainage strategy” in requirement 1, and in requirements 15, 16, 19, 22, 24, 25 and 34; it does not sit within any other document referred to in this list, so must be listed in its own right • the land plans – this document is referred to in the National Grid protective provisions; it does not sit within any other document referred to in this list, so must be listed in its own right • the works plans – this document is referred to in the definitions of “limits of deviation” and “the Order limits”, article 4 and requirement 7; it does not sit within any other document referred to in this list, so must be listed in its own right • the indicative lighting strategy – this document is referred to in requirement 9; it does not sit within any other document referred to in this list, so must be listed in its own right • the biodiversity strategy – this document is referred to in the definitions of “biodiversity protection plan” and “indicative biodiversity mitigation and enhancement plan” in requirement 1 and in requirements 15 and 17 ; it does not sit within any other document referred to in this list, so must be listed in its own right

PROVISION	SUMMARY OF APPLICANT'S ORAL CASE & POST-HEARING ACTIONS
	<ul style="list-style-type: none"> • the framework construction traffic management plan – this document is referred to in requirement 16; the latest version does not sit within any other document referred to in this list, so must be listed in its own right • the swept path analysis plan – this document is referred to in requirements 26 and 27; it does not sit within any other document referred to in this list, so must be listed in its own right • the indicative landscape strategy – this document is referred to in the definition of “arboricultural survey report”; it does not sit within any other document referred to in this list, so must be listed in its own right <p>The Applicant has removed reference to the ‘proposed culvert for site access plan’ from the wording of Requirement 26. This reference was obsolete (it referenced an unscaled schematic drawing that was prepared in 2018 and included with the planning application for the Consented Development – see appendix 2). The drawing did not form part of the DCO application, and sufficient control regarding the design of the site access and the culvert is provided by virtue of the remainder of Requirement 26, the section 278 approval process, and via the separate consent that will be required from the Internal Drainage Board (IDB) under s23 Land Drainage Act as identified in the IDB’s written representation (REP2-016) and in the Other Consents and Licences Document (see in particular the update at Deadline 4).</p>
Agenda item 5 – Consents licences and other agreements	
N/A	<p>The Applicant confirmed that the position in respect of the gas connection remains as reported at Deadline 3.</p> <p>The Applicant provided an update that the deed of variation to the existing s106 agreement is agreed between the Applicant and NELC and is with the Applicant's mortgagee for confirmation that it is content with the deed of variation.</p>

APPENDIX 1: NATURAL ENGLAND EMAIL 11.02.2021

From: [REDACTED]@naturalengland.org.uk>
Sent: 11 February 2021 18:24
To: [REDACTED]@aecom.com>;
<[REDACTED]@naturalengland.org.uk>
Cc: [REDACTED]@aecom.com>
Subject: [EXTERNAL] RE: SHBEC DCO Natural England SoCG

Hi [REDACTED],

Thank you for the explanation and glad to hear that the wording has been agreed with the local planning authority already. Natural England is satisfied with the proposed changes.

Kind regards,

[REDACTED]

Lead Adviser - Sustainable Development
Yorkshire and Northern Lincolnshire Area Team
Natural England, 4th Floor, Foss House, Kings Pool, 1-2 Peasholme Green, York, Y01 7PX
Tel: [REDACTED]

During the current coronavirus situation, Natural England staff are primarily working remotely to provide our services and support our customers and stakeholders. Please continue to send any documents by email or contact us by phone to let us know how we can help you. See the latest news on the coronavirus at <http://www.gov.uk/coronavirus> and Natural England's regularly updated operational update at <https://www.gov.uk/government/news/operational-update-covid-19>.

Stay home. Protect the NHS. Save lives.

www.gov.uk/natural-england

Thriving Nature
for people and planet



From: [REDACTED]@aecom.com]
Sent: 11 February 2021 12:07
To: [REDACTED]@naturalengland.org.uk>;
<[REDACTED]@naturalengland.org.uk>
Cc: [REDACTED]@aecom.com>
Subject: RE: SHBEC DCO Natural England SoCG

Hi [REDACTED]

We amended the consented development planning condition to include a staged approach for the DCO requirement so that a verification report is submitted approximately half way through the 3yr construction period: We felt this was a stronger provision and enabled the Council and yourselves to see and influence work in progress rather than wait til the end of the 3 year period. We use the 'relevant parts' because we don't yet know which parts of the build will be completed first. The verification report would therefore explain what activities have been done at that point and verify implementation of those.

Both the planning condition wording and the more stringent DCO requirement wording, are agreed with the local planning authority including their ecologist Rachel Graham.

Hopefully that helps explain – I do think the reword is giving more control about what works are done.

Kind regards

[REDACTED]

From: [REDACTED]@naturalengland.org.uk>
Sent: 11 February 2021 10:30
To: [REDACTED]@aecom.com>;
<[REDACTED]@naturalengland.org.uk>
Cc: [REDACTED]@aecom.com>
Subject: [EXTERNAL] RE: SHBEC DCO Natural England SoCG

Dear [REDACTED],

Thank you for getting in touch. It would be useful to get some background on the reasons for the changes to requirement 11. Please could you clarify what it means by "implementation of the relevant parts of the biodiversity protection plan"? How will it be defined as to what is relevant? I'm thinking about this from the local planning authority's point of view, as I'm not sure how easy

it would be for them to determine what the relevant measures should be at each stage of the development. Are there measures that won't be required for certain parts of the development or is this more in reference to the works that might be undertaken via the planning permission?

Kind regards,

[REDACTED]

From: [REDACTED]@aecom.com]

Sent: 09 February 2021 13:32

To: [REDACTED]@naturalengland.org.uk>;

<[REDACTED]@naturalengland.org.uk>

Cc: [REDACTED]@aecom.com>

Subject: RE: SHBEC DCO Natural England SoCG

Dear [REDACTED]

We have just had our DCO hearing on SHBEC. All went well. The ExA pointed out two minor points of wording change that have happened through the drafting of requirements since we agreed our SoCG with you and wanted you to be aware of them:

1. Requirement 11 has been slightly reworded as below:

Biodiversity protection

11.—(1) The biodiversity protection plan must be implemented during the construction of the authorised development, unless otherwise agreed by the relevant planning authority.

(2) No later than ~~24~~ 18 months from the commencement of ~~construction of the new access on South Marsh Road~~ the authorised development a report by a qualified ecologist verifying the implementation of the relevant parts of the biodiversity protection plan and setting out implementation measures for the remaining parts of the biodiversity protection plan must be submitted to ~~and approved by~~ the relevant planning authority for approval, unless otherwise agreed by the relevant planning authority.

2. Requirement 17 - Piling

The wording has been tightened by replacing a 'shall' with a 'must' so it now reads:

(2) The written specification submitted to and approved under sub-paragraph (1) must include a scheme to mitigate the effects of the piling with regard to noise to ecological receptors (which must include seasonal piling restrictions and/or the use of continuous flight auger piling as each of those are described in section 7 of the biodiversity strategy) and a scheme to mitigate the effects of the piling with regard to groundwater resources (which must be in accordance with the results of the site investigation carried out, and the remediation strategy submitted, pursuant to requirement 19).

Essentially these tighten what we are obliged to do, but please can you confirm you are happy with them so we can confirm that to the ExA?

Many thanks and kind regards

[REDACTED]

Director – E&GE Power Sector Lead

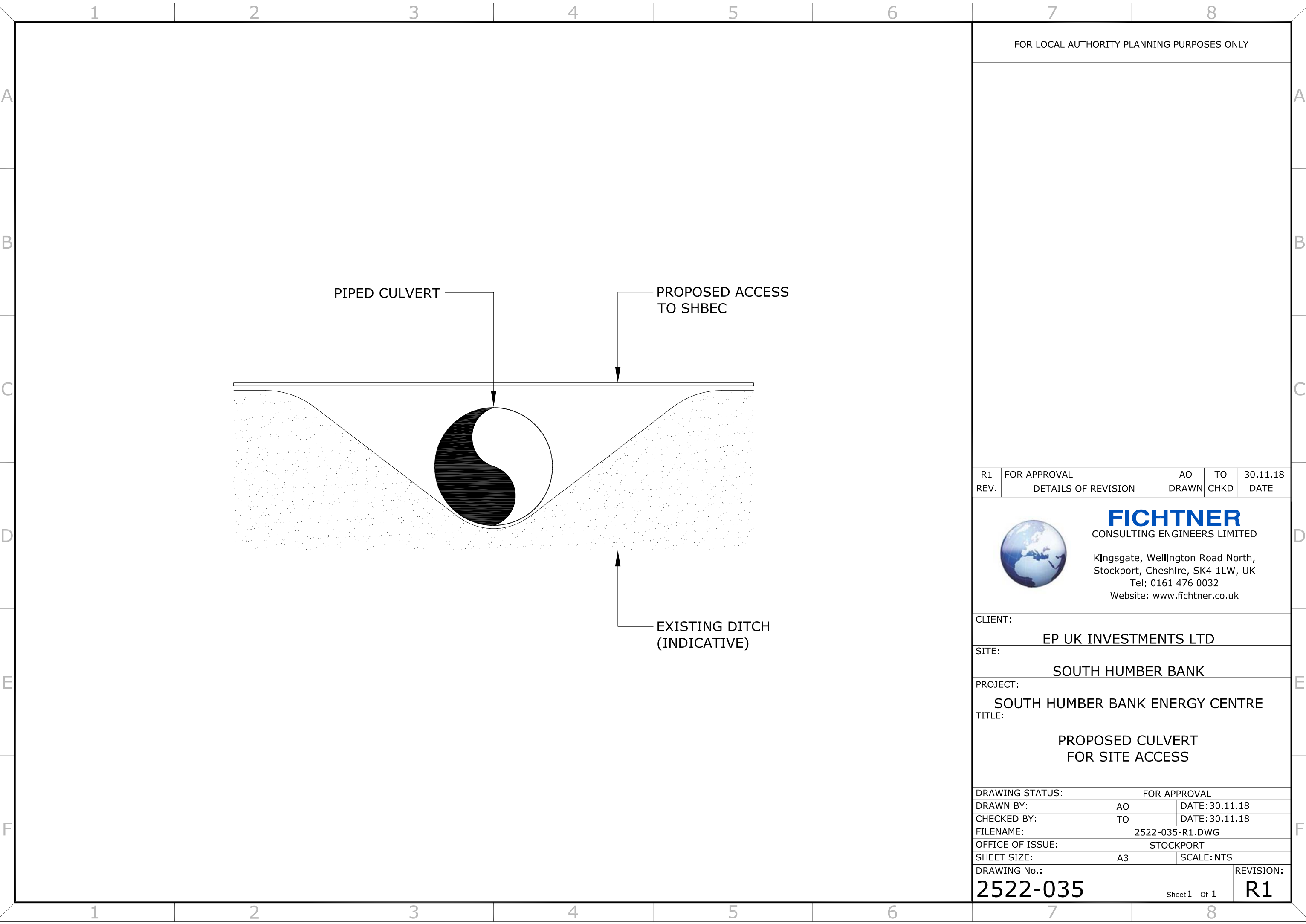
AECOM
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Leeds
LS11 9AR
Mob: [REDACTED]

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**APPENDIX 2: 'PROPOSED CULVERT FOR SITE ACCESS PLAN'
PREPARED IN 2018 AND INCLUDED WITH THE PLANNING
APPLICATION FOR THE CONSENTED DEVELOPMENT**



FOR LOCAL AUTHORITY PLANNING PURPOSES ONLY

R1	FOR APPROVAL	AO	TO	30.11.18
REV.	DETAILS OF REVISION	DRAWN	CHKD	DATE



FICHTNER
CONSULTING ENGINEERS LIMITED
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Website: www.fichtner.co.uk

CLIENT: EP UK INVESTMENTS LTD

SITE: SOUTH HUMBER BANK

PROJECT: SOUTH HUMBER BANK ENERGY CENTRE

TITLE: PROPOSED CULVERT FOR SITE ACCESS

DRAWING STATUS:	FOR APPROVAL	
DRAWN BY:	AO	DATE: 30.11.18
CHECKED BY:	TO	DATE: 30.11.18
FILENAME:	2522-035-R1.DWG	
OFFICE OF ISSUE:	STOCKPORT	
SHEET SIZE:	A3	SCALE: NTS

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