

My ref: PH/CJD/JMW

25 February 2015

Mr Jacob Hain
Triton Knoll Project Manager
RWE Npower Renewables Limited
Auckland House
Lydiard Fields
Great Western Way
SWINDON SN5 8ZT

County Offices
Newland
Lincoln
LN1 1YL

Tel: 01522 552096
Fax: 01522 552072
Email: cllrc.davie@lincolnshire.gov.uk

Dear Mr Hain

TRITON KNOLL COMMUNITY INVESTMENT FUND (CIF) QUESTIONNAIRE: LINCOLNSHIRE COUNTY COUNCIL (LCC) RESPONSE

I am writing in response to RWE's questionnaire for which the consultation deadline is 26 February 2015. LCC would comment as follows:

Lump Sum: The proposed figure of "up to" £500,000 is considered wholly inadequate in relation to the overall value of the project which is estimated at £3 – 4 billion. LCC believes a minimum sum of £5 million is justified and affordable.

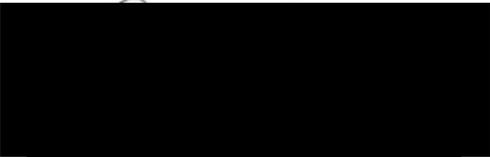
Revenue: Similarly, the proposed annual figure of "up to" £40,000 for the operational life of the project is also considered inadequate and should be increased to a minimum of £500,000 per annum.

These revised figures reflect the environmental impact and disruption to the daily lives and business of local residents. In simple terms, coastal Lincolnshire will bear all the environmental cost of the development without reaping any economic benefit. Such minute sums as proposed by RWE will do nothing to advance enhancement of the Coastal Country Park or provide a significant number of apprenticeships, which are the preferred spending priorities of LCC.

LCC maintains its objection to landfall at Anderby Creek but seeks mitigation of £2.3 million for habitat creation and improvements, separately and in addition to the CIF, should the scheme go ahead. We would welcome a meeting to discuss the details of the mitigation measures that we feel are necessary and appropriate at this sensitive environmental location.

Finally, LCC wishes to be represented on the CIF Panel when making decisions on the distribution of the CIF.

Yours sincerely



Councillor Colin Davie;
Executive Councillor
Economic Development, Environment, Planning, Tourism

In the matter of Triton Knoll
Development Consent Order

Additional representations made in behalf of Lincolnshire
County Council

30 November 2015

Lincolnshire County Council
County Offices
Newland
Lincoln
LN1 1YL

Additional Representations made on behalf of the Lincolnshire County Council at the Deadline for the 30th November 2015 in respect of the Triton Knoll DCO Application.

Introduction.

1. The Lincolnshire County Council, the LCC, welcomes the opportunity to make additional representations to the Examining Authority following the Open Hearings which were held into the proposal. The Open Hearings allowed for various matters to be aired, which has enabled the LCC to understand more fully what is intended by the Applicant. That enhanced appreciation and understanding has allowed the LCC to take on board that information and accordingly these representations are presented and represent those various matters where the LCC position remains one of opposition to the proposals. LCC will however through these representations respond to the invitation made by the Applicant to comment further on aspects where it was made clear that such views would be helpful.
2. LCC would wish to make one thing clear from the outset and to dispel a fact so heavily relied on by the Applicant, particularly in comments made by Mr C Lloyd, in respect of the draft Statement of Common Ground between the Council and the Applicant. The document submitted by the Applicant as an agreed document and relied upon by Mr Lloyd was not agreed. It is correct to say that certain non contentious aspects had been sorted out to the agreement of both parties but many matters had not been discussed to the extent that the document could be regarded as being agreed. The LCC view as agreed with the Applicant was that it was to be held as a document that was still being considered. At this stage that

remains the position. A new Statement of Common Ground is being worked on, which will reflect additional agreed matters and will be presented as soon as it reasonably can be.

3. For that reason the reliance upon it by the Applicant as indicating agreement when none was present, and the continued reliance by the Applicant even after that position was accepted by the Examining Authority is at the very least misleading.
4. The County Council's position, whilst continuing to work with the Applicant on several matters is one where it is opposed to the Order being made for the reasons set out in its original representations and the LIR. Where necessary those various matters will be referred to in these representations where the position has changed.
5. The LCC intends in these representations to cover the following matters, which are set out in no order of priority:-
 - The recently submitted change to the Station proposed at Bicker Fen.
 - The Viking Link
 - The Public Open Space and the "Sandhills Act".
 - The CPO Justification.
 - The effect of using trenchless drilling techniques.
 - The Lincolnshire Coastal Country Park (LCCP) and the Revised Business Plan relating to the LCCP.
 - The potential effect on Tourism.
 - The Role of and Reliance on NE to support the agricultural case.
 - Highways and Public Rights of Way.
 - Heritage issues.
 - Questions in respect of the drafting of the DCO.

- Skegness Vision Document

The Change at Bicker Fen

6. LCC has considered the papers presented by the Applicant in respect of the proposed change at Bicker Fen. The LCC is aware of the statement issued by the Examining Authority in relation to the nature of the proposed change and the “minded to “decision which it indicated it was likely to make.
7. LCC recognises that the application of the relevant test to decide whether to accept that change into the Examination would suggest that the change is not so significant that it would be excluded and further that the effects of the change can be taken into account. On that basis the LCC would not wish to oppose the application made to incorporate that change.
8. The reason for the change and the consequence of accepting it do need to be taken into consideration. It is clear that having indicated throughout its documentation that the Applicants proposals would not require any alteration to the arrangements at Bicker Fen the Applicants must accept that is no longer the case. The Statement from National Grid confirmed that the change, despite there being agreement in place, was required to enable the site to cater for future use. That use included not only the Applicants proposals but also other known anticipated activity which would arise from the Viking Link and the Heckington Fen wind farm. Given the change it must be accepted that those other proposals are sufficiently certain to require National Grid to take the action it has.
9. That change, if accepted and as indicated above the LCC recognise the application of the correct approach would justify accepting it, means that the consequence of the Viking Link coming forward is reinforced.

The Viking Link.

10. The approach to this is little more than incredible. The Bicker Fen end of the arrangements is being amended to enable that proposal to link in as one of the additional elements. The document produced to the Council, not on a confidential basis as was suggested during the Hearing, but in order to inform the approach suggests a starting land fall point as well as a route. The proposal is to all intents and purposes known in sufficient detail to enable it to be taken into consideration in the way the Examining Authority's original timetable envisaged but we are being invited to ignore it.
11. To ignore what is clearly a highly material consideration in the context of this scheme is not only to fail to take into account what is clearly a strong likelihood but further to put to one side what is now known to be the case.
12. The prospective "opening "times of the two schemes is a mere two years apart. The Viking Link proposal is time lead by the need to wait four years before its cable can be produced. The Applicants confirmed however that the lead in time for the cable for Triton Knoll was about two years and accordingly unless the cable has been ordered now in advance of knowing the scheme is to proceed then it too will be a strong influence on when work can start.
13. A two year lead in time for an anticipated 2019 completion means that the cable has to be ordered well before 2017 to enable work to commence. Assuming that is achieved it would suggest that these works, taking a full three and a half years would be concluding at a time that the Viking link works had already commenced.

14. The relationship between the two projects in terms of scale and effect and the essential need to ensure that the true effects of them is taken into account means that we need to apply our minds to them now.
15. That can be done on the basis of the information so far available. To suggest that the document produced to the Council was a high level document and as such capable of being ignored is unrealistic. Clearly work had been done prior to the document being released and the contents of it being presented to the LCC by way of power point and but for the LCC releasing that document the position might have not emerged as it has. LCC did not receive the document in confidence, there was no need for it to be presented in that way and it was not marked as such. LCC confirmed to the authors of it the intention to release it to the Examination and no comment was made suggesting that it should not be so released. The purpose of the release was to inform the debate following the answers given by National Grid to the Inspectors questions.
16. This position through remains as set out in paragraphs 3.18 to 3.22 of LCC's LIR. The only material difference being that the potential for it to come forward and for the construction periods and overlaps has been reinforced.

The Public Open Space and the “Sandhills Act”.

17. LCC has considered the position in respect of the Public Open Space with the Applicants as it indicated it would during the Hearings. As a consequence of those discussions the position is largely agreed as to the application of the major parts of the “Sandhills Act” although there remains a significant and very major difference between the parties. That difference relates to the judgment as to whether the test is met that would

justify the compulsory acquisition of the public open space. That is addressed in the context of the LCCP below.

18. The LCC is of the view that the public open space in its own right is such that the disposal of it voluntarily cannot be justified to enable a development project to be pursued. It is an invaluable resource in its own right and in addition it makes a significant contribution to the LCCP; which is also addressed below.

19. The fact that the Applicant was not aware of the existence of the Sandhills Act, despite being informed of the same by the County Council is not explained but in any event the relevant provisions must be taken into account in the promotion of the DCO and the land is to be treated as public open space. The DCO needs to recognise the requirements by incorporating the reference within the DCO and also justifying the acquisition by reference to evidence.

20. The judgement of the relevant Secretary of State has to be based on the presentation of evidence. Given that the only reference to that is contained in the Statement of Reasons which fails to identify the relevant considerations that are part of the judgement to be made the Applicant has failed to discharge that requirement. The Applicants current request therefore cannot be granted, the public open space cannot be acquired and the relevant Secretary of State cannot issue the relevant certificate.

The CPO justification.

21. Counsel for the LCC indicated that it may be necessary for a legal note to be presented to the Examining Authority describing how the Applicant had failed to approach the compulsory acquisition of the land in a way that conformed to the legal requirements. A closer examination of the situation

has revealed however that the Applicant has not failed to identify the appropriate legal requirements but rather has failed to produce the evidential basis to demonstrate what is claimed as being required is justified. In fact the evidential position presented by the Applicant has tended to demonstrate that on a number of occasions, albeit unspecified as to location or dimensions, the Applicants accept that its proposals are not justified as the full width of the corridor is not required and therefore compulsory acquisition is not justified.

22. The position as to what is required is actually agreed if what is set out in chapters 11 and 12 of the Statement of Reasons is applied. The relevant matters having been used by the Examining Authority as topics for discussion in the Open Hearing dealing with the CPO aspects.
23. Those various matters indicate that the compulsory acquisition of all the land contained within the DCO needs to be justified in order for the authority to acquire it to be granted. The approach that has to be followed and the various matters that have to be proved are therefore clear and the LCC would agree that they are properly identified.
24. The difficulty arises in that the Applicants have failed to identify why all the land has to be acquired and further why other means cannot be used to acquire the relevant interest. The Applicants stress, other than in relation to those permanent ground level structures, that the effect of the scheme proposals is limited to a cable run through the various plots of land that once in situ would not give rise to a continuing surface effect beyond seeking to guarantee the cables safety. That does not justify compulsory acquisition provided sufficient permission is given, which can be achieved via relevant leases, to allow and enable the activity of construction to take place. That approach is not uncommon and has been used in similar circumstances elsewhere.

25. Accordingly not only does the Applicants approach, in which they have failed to seek to obtain such leases from the relevant landowners but have preferred to bring forward the CPO as a starting point rather than as a matter of last resort, fail to meet the legal requirements it is clearly an excessive requirement. It would only be justified if having tried to use such measures if there was a blank refusal to grant them. All the relevant agents as well as many of the landowners have confirmed that no such attempts were made and those who have discussed the situation with the Applicants have confirmed that the position as to the restrictive covenant on the land was non negotiable and as such no genuine negotiations have taken place.
26. In addition the evidence presented to the Examination has demonstrated that the Applicants cannot and do not try to justify the acquisition of all the land they have included in the CPO. The Applicants cannot therefore demonstrate that they need all that land and they clearly do not need to acquire it all.
27. The justification for making that statement comes from the various comments made by the witnesses on behalf of the Applicants during the Hearings. In respect of site E on the grazing Marsh it was indicated that the width of the corridor could be reduced to reduce the impact. If that is so then the whole 60 metre width cannot be justified and must be reduced. How that is to be done and the dimensions and area it covers are not specified. The CPO cannot be confirmed with such imprecise dimensions.
28. Similarly in respect of the trenchless areas the land requirements change and the removal of hedgerows cannot be justified to the same extent if they can be justified at all. Again the location for that as well as the

dimensions for that and also the potential for the reduction in the CPO area is not known. The CPO cannot be confirmed on such a basis.

29. Further it has not been justified that the full width is required for the cable runs. The cables themselves require very limited area to install although gaps between them will be necessary. In the Statement of Reasons the gaps are said to be 3.5 metre centres and the rest of the land is made up of a 6.3 metre wide haul road and spoil storage areas. The width of the haul road is not justified as being necessary and the extent of the spoil heaps is indicative at best. Even the requirement for six cable runs is not justified. The case is presented on the basis that up to six may be required and accordingly the Applicants have chosen to seek to use six rather than it being a necessity.

30. Taken together the relevant justification for the compulsory acquisition of all the land is simply lacking. If, for example, this were a road scheme CPO then the promoting authority would be at pains to prove the need for every parcel of land, it would describe in detail how it was to be used and the acquisition would be justified. It would not seek to acquire any more than it could prove was needed. That approach applies equally to the Applicants in bringing forward these proposals.

31. A final point to note on this is that during the Hearings the Applicants claimed that the land drainage considerations played a significant part in determining the corridor width to ensure that it could carry out what was intended in collecting the drains together where they were broken by the scheme to allow a diversion. If that was indeed the case then it would be clear from the wording contained within the Statement of Reasons for making the order itself. There is no reference to any such matters within the section which claims to explain why the corridor width is the size it is.

32. The cable width at 60 metres is wider than has been applied in other locations and although that would not be considered determinate in the absence of a clear explanation and justification for the overall dimensions the Applicants request should not be permitted.

The effect of using trenchless drilling techniques and the DCO

33. The Applicant confirmed within the Hearing and subsequently with LCC that the Crossing Schedule (Document 8.3) lists where it has been agreed through discussions during the Evidence Plan process that trenchless techniques would be used to cross various obstacles or features, the locations where trenchless techniques have been agreed are listed within Table 1.1, it is noted within this document that various affected public rights of way and highways are not listed as being trenchless works, therefore a situation could arise where a highway will be excavated and trenched to allow for the cabling to be placed in situ.

34. In the Hearing on 18 November the Applicant stated that they would only allow a tree/hedge species with shallow root systems to be planted over the cabling. LCC are of the view that the critical factor that should be influenced by the size of a tree/hedge's root system is mainly how the above ground portion of the tree/hedge is managed as all trees and hedges have shallow root systems i.e. within the first 1m of soil. The root system of a hedge is likely to be much less extensive than the root system of a tree, due to the fact that a hedge will have less crown to feed, therefore requiring a smaller, more compact root system, compared with a large growing tree whose root system will develop according to the size of

the crown to feed.

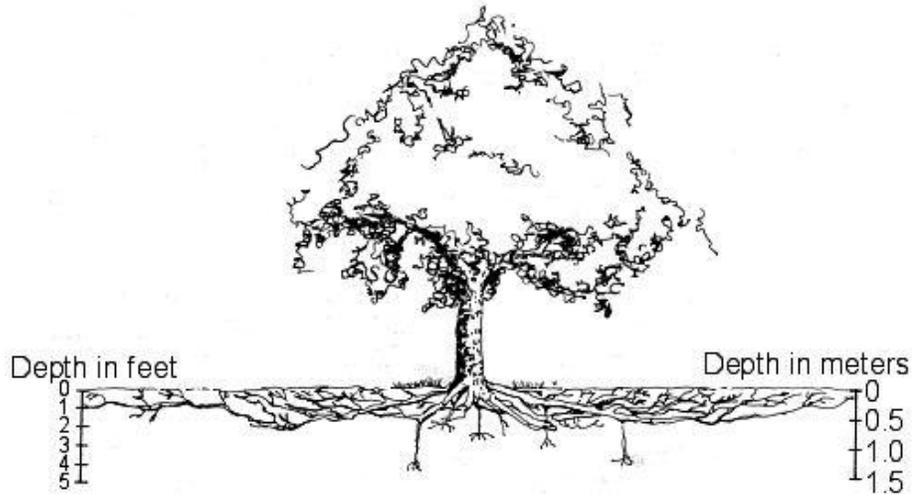


Figure 1. Diagram of a typical root system

35. The restrictions within the DCO are therefore not justified.

The Lincolnshire Coastal Country Park and the Revised Business Plan description relating to the Lincolnshire Coastal Country Park

36. The importance and significance of the Lincolnshire Coastal Country Park were described by Miss Kate Percival during the Open Hearings; attached hereto at Appendix 1 are noted of what she said.. It is the pristine and entirely unspoilt nature of the Country Park offering, as it does a unique opportunity to experience truly unspoilt and natural countryside which gives rise to its special importance. The Applicants approach has been to acknowledge the identification of the area in that way but has failed to appreciate what has been achieved and what is intended going forward.

37. To accept the description of the place, as the Applicants do, and to say it is important, which the Applicants also do is to recognise the description without giving it the weight it merits and deserves. This area is a special

place where the change, even if relatively small has the potential to have major adverse consequential effect on the area as a whole.

38. Set out above is the position in respect of the CPO and the Sandhills which I do not need to repeat. What the Hearings have identified is however the nature of the operation now envisaged and therefore the effect of that on the Park. The construction period will last for a period of up to 14.7 months out of 36 scheduled. It will entail the creation of an area to allow the cables to be driven through and for space to accommodate the exit on the beach itself. It will require fencing at various times throughout that period which will inevitably interfere with the ability to use and enjoy the space. It will also require the closure, without direct compensation of the footpath access to the beach and the alteration of it to form a vehicular access track to the area where the physical works will be carried out. Other footpaths namely Huttoft 965/1 and Anderby17 will also be driven over to allow for the movement of vehicles.

39. Once the works are complete the continued need to enable maintenance and access to all the works will ensure a continued physical presence which will be widely visible in the area.

40. In the LCC's view the works themselves as well as the continued and permanent works will fundamentally alter the area and will bring with it consequential effects. The first and most obvious being that it cannot be said, as a result of the construction and then post construction works that the area remains as being no less advantageous than it was before. Before it was unspoilt and devoid of these modern influences. After it will be known to have been subject to a lengthy and prolonged period of construction, which will of itself have an effect. After that the remnant of the construction will continue to be visible and will intrude into the area

and further a road access will have been created where previously a footpath use existed.

41. Taken together the situation cannot be said to meet the applicable test and cannot therefore enable the compulsory acquisition of the public open space and further it will have changed the pristine and unspoilt nature of the Park which is the fundamental fabric of the public open space.
42. The Park and the public open space within it will no longer be as they were before the activity and that change requires the justification for the approach to be clear and weighty. Given the lack of adequate consideration of alternatives, which was relied upon by the LCC in its original representations, the loss of this area is not justified.
43. Miss Percival made two other points in respect of the Park. First she indicated that LCC had issued a revised Vision through the Business Plan 2013-2018. That revised Vision is attached as Appendix 2 to these representations. That revised Vision strengthens the approach and would reinforce a finding that the Applicants proposals are not acceptable within it.
44. The second point related to the continued financial support for the park. Miss Percival explained and Mr Gutherson added further detail. If the particular and unique qualities of the Park for which the approach has been adopted are adversely affected in the way which would arise with the Applicants proposals then LCC would be obliged to reconsider its continued financial support. That would mean not only the removal of future financial support but also the recognition that what has been spent so far was abortive.

45. The role of the Park, the contribution it makes and its continued future existence all need to be given considerable weight in the decision making process and despite statements that it has been taken into account the evidence supporting that is lacking. Finally the public open space as a consideration in its own right and also as part of the Park needs to be given considerable weight in the overall assessment and the effects of construction and the remnants of what follows clearly cannot justify its acquisition as being no less advantageous given the peculiar and unique circumstances which exist.

The Potential Effect on Tourism.

46. Leading directly from the previous section is the need to assess and then take into account the potential effect on tourism from the adverse consequences arising from the Scheme. The LCC through the direct evidence of Lydia Rusling produced facts and figures of the importance of tourism to this area. Those figures demonstrated the true asset that exists here and justifies an approach which seeks to guarantee that the Scheme will have no significant effect on it. In the Council's view the Applicants approach has failed to do that and despite referring to possible tourist effects they have been dismissed. The reason for the dismissal arises, it would appear from the belief that this quiet largely unspoilt area does not contribute significantly to the tourist offer as the Applicants believe that the tourist offer is actually based in the tourist areas to the south.

47. That fails to appreciate the nature of the tourist offer made by this part of Lincolnshire. The offer is not limited to the traditional bucket and spade holiday which is experienced further to the south but also from the offer to those seeking a more remote and less organised holiday experience. It is that which the LCCP offers and which much of the recent effort on behalf of the LCC and its partners have been seeking to grow.

48. Miss Rusling supplied us with the figures in the following form.

1. GENERAL TOURISM

Tourism IS worth £1.9billion to Greater Lincolnshire (second only to food and farming) and over 40% is attributable to the East Lindsey district (£556 million). Growth has been £117 million over the past 5 years in this area alone.

We currently attract 4 million visitors to the area predominantly in summer months by road. These visitors are critical to the area's employment and businesses.

The Local Enterprise Partnership (LEP) has specified nature/green tourism as an integral element to growth for the tourism sector. This is also nationally recognised as a vibrant sector and the recent GLNP report has shown nature tourism is worth £58 million to Lincolnshire.

The aim is to double the value of visitor economy in Greater Lincolnshire and extending the season is critical to this.

Our large natural and pristine coastal landscape with sites of special scientific interest, parks and nature reserves not only attracts visitors but supports businesses and employment and has driven significant growth.

2. FUNDING

Rural development LEADER funding of £1.3 million supported 27 projects in the Coastal Action Zone specifically under related measures of tourism activities, farm diversification, micro enterprises and heritage conservation.

3. FUTURE FUNDING

Over £1.2 million is allocated for 2014-2020. It is important to note that funding is intrinsically linked to outcomes.

The Effect on Agriculture and the Role of and Reliance on NE to support the agricultural case.

49. There are two essential issues in respect of agricultural issues. I will deal first with the Applicants comments about the agricultural case generally before turning to their reliance on NE to support their approach.

50. LCC has written to NE in respect of the reliance placed upon that organisation to support the agricultural arguments put forward by the Applicant: the email correspondence is attached as Appendix 3. I would note that the Applicant also relied on an alleged agreement with the LCC in similar terms despite the fact that was not agreed within the Statement of Common Ground and in the face of the evidence produced by Mr Wood on behalf of the LCC demonstrating the contrary position. The LCC view in relation to this is that the Applicant has not demonstrated that it has either taken the true effects of the scheme on agricultural practices and interests into account in promoting the Scheme or has provided a reasonable remedial approach that can be guaranteed by the DCO.

51. The email exchange with NE confirms that a global desktop exercise is all that has been undertaken; NE confirms that by reference to the application of DEFRA best practice guide and reliance upon the approach followed elsewhere. The email does not however indicate that the particular features relevant to activity in the Fens have been given weight or even taken into account in that process.

52. In the LCC view there is a common argument put forward by the affected farmers and landowners which all indicates the extent of the problem which arises from the particular nature and effect of the soils and

agricultural practices followed in the area affected. The Fens enjoy a particular form which means that the unique qualities of the area have to be safeguarded. The Applicants have not provided evidence to justify the view they are stating that it will be resolved satisfactorily and reliance on NE is not an answer to the position.

53. The position remains as set out in Mr Woods's evidence although the Applicant has produced further information to seek to demonstrate that the position can be resolved.

54. Insofar as that purported resolution is a remedy the Applicants have not demonstrated any of the following matters. They have not demonstrated that it will be a remedy given the need for details of every farm field to be treated separately and appropriately and as presently advised the Applicant has no information to indicate that can be done. Secondly how that is to be guaranteed within the DCO is not clear and given the current lack of knowledge such a conclusion is to be expected. Given that the Applicant does not know what is required, as there have been no detailed contact with the affected landowners, how is it possible for those presently unknown measures to be incorporated into a scheme that the Applicant will ensure will come forward.

55. In addition the Applicants approach towards these concerns raises additional and specific questions related to the compulsory acquisition of the land. For land to be taken against an owners will, the owner is entitled to know not only why the land is being taken but also the effect of that compulsory removal.

56. As presently advised those questions cannot be answered. As indicated by the Lead Inspector in questions to the Applicants each affected landowner does not know how his holding will be affected. The Secretary

of State cannot be informed how long the construction will take, over what area of land, when or how the land drainage will be reinstated or the consequences of that on the holding either within or outside the Order Lands.

57. In such circumstances the affected landowner's position is wholly unacceptable and the Applicants approach has created a wholly unacceptable position that should not be expected to exist at this stage. That is best described by reference to the willingness to reduce land take when it is for an identified purpose.

58. During the Hearings the Applicant indicated that it was willing to reduce the land take required to a 40m wide strip through the land notated as area E in order to reduce the potential effect on the grazing marsh. Elsewhere it has indicated that a reduction to 30 metres may be possible where certain techniques are being used. Further in respect of other areas, including where it would be advisable to retain existing hedgerows where trenchless drilling is being used to cross roads the extent of land take could be reduced provided access for the haul road was maintained might be acceptable. Given the haul road is a maximum width, although even that extent is not justified, of 6.3metres then that must allow less land still to be taken.

59. Given the indication set out above about the need to justify land take then the position is not yet justified and the DCO is not capable of being authorised.

60. Mr Wood has examined the comments made by the Applicant in Appendix 5 replying to the written representations made on behalf of LCC. Mr Wood's response is attached as Appendix 4 . His response is in note form

but given that his comments are clear they are not developed further in this representation.

61. In addition Mr Wood has looked more closely at the effect of the restrictions contained within the DCO on normal agricultural practices within the Fenland environment his comments are attached as Appendix 4 in the form of a note starting under the heading " Schedule 5" on page 2. His comments reveal that the restrictions have not only the potential to severely disrupt agricultural practices but that there is a strong probability that they will do so.

Highways and Public Rights of Way.

62. There are a number of important considerations which arise under this heading. The first relates to the effect of the proposals on Highways, the second relates to Public Rights of Way including any specific considerations arising from them and the third the effect of the construction activity itself on such rights.

63. In looking at these various matters the Council is extremely concerned that the true effect of the DCO has not yet been disclosed. At the open Hearing into the DCO time ran out before all matters could be explored and when Counsel for the LCC referred to the wording of Article 13 to survey and investigate land the indication was given that we would return to it on another day. It would appear that time did not permit that to happen and so the wording of Article 13 continues to give concern.

64. The effect of the DCO on those matters of interest to the LCC as the Highway authority for all rights of way is to give power for activity to take place that would otherwise not be permitted; including but not limited to road closures and diversions and road investigations. The need for such

matters within the land affected by the proposals may be justified to enable the scheme to proceed but the effect of Article 13 is to give power not only to the Order Lands but also for other areas of land to be the subject of survey and investigation; although Article 13(5) would prevent trial holes without the Highway Authorities permission.

65. The ability for the Applicant to be authorised to carry out such activity on land outside the Order limits is not understood and clearly needs to be justified.

66. In Highway terms LCC is content that subject to some alterations to the Outline Access Management Plan, the Outline Onshore Code of Construction Practice and the Outline Traffic Management Plan, which are currently awaited then the Council will be in a position to agree a Statement of Common Ground covering many highway issues. That position cannot be reported further at this stage.

67. In terms of Rights of Way the position is not so clear. LCC is not clear as to how the DCO will deal with the full range of highways affected by the proposals. The DCO refers specifically to Streets and Highways, which as defined would include footpaths but there is no detail sufficient to be able to judge the extent and nature of the proposal. The DCO therefore gives power for action to be taken without knowing the consequential effect of that action.

68. In relation to Public rights of way, it should be noted that the Definitive Map and Statement for this area is only reflective of the rights that are recorded upon it and that other unrecorded rights and higher rights may subsist. For example,

- (a) North of Anderby Creek off Sand Land to the Beach – LCC are currently investigating an application for public footpath rights that are reasonably alleged to subsist.
- (b) Huttoft Public Footpath No.10 and Anderby Public Footpath No.17 (plot 02/04, 02/05) are both dual recorded on both the Definitive Map and Statement and the List of Streets prepared under Section 36(6) Highways Act 1980.
- (c) It is also noted that within plot 01/02 it is recorded that this is track and public footpath (Hutt10/04) , the List of Streets held under the Highways Act 1980 also denote that part of the plot is also publically maintainable highway, which is in a different location to that of the Footpath.

69. LCC has adjudged that the effect of the Natural Environment & Rural Communities Act 2006 has been to extinguish the public mechanically propelled vehicle (MPV) rights that may exist along this route however, there is a general assumption that equestrian, cycling and/or non MPV rights would probably exist. The 2006 Act converts any rights reasonably required for access to land such as agricultural access, or in this case for LCC to access the area of land known as Moggs Eye, to being private rights of access. Therefore, the CPO descriptions at plot 01/02, 02/04 and 02/05 should refer to the adopted highway in addition to the public rights of way. In addition any diversion and temporary stopping up will have to include the additional rights that exist on the land and alternative provisions made for these higher rights.

70. The third consideration under this heading relates to the effect of the DCO on the highway network generally.

71. The LCC was under the impression that despite what is contained within the DCO (see Requirement 5 in Part 3 of Schedule 1) where reference is

made to specific works that all crossing points for roads as well as for other obstructions that trenchless techniques would be used.

72. The LCC sought to confirm that with the Applicants (see the email exchange dated 25th November see Appendix XX) and it has become clear that trenchless techniques will only be used where stated and unless stated then the decision as to where it will be used is not yet determined. The LCC is aware that the Applicant was intending to show in plan form where such techniques are to be used and will therefore await the outcome of that investigation.

73. In the meantime the LCC view is that as the DCO in particular schedule 5 is currently drafted LCC will not be able to carry out its statutory functions as Highway Authority for the area, in respect of it will be unable to maintain its highways and public rights of way, resurface, reconstruct highways which may need to be reconstructed to a depth exceeding 600mm, re-profiling highway ditches.

74. In addition, in relation to the imposition of new rights under the DCO, the applicant is seeking to store materials and spoil within the order limits this would be contrary to section 148 Highways Act 1980, erection of fencing on a highway or public right of way is contrary to section 143 Highways Act 1980. In addition if the applicants wish to pass and re-pass over public footpaths this is a criminal offence under section 34 Road Traffic Act 1988.

75. How the Applicant intends to deal with and remedy those deficiencies it is currently unclear.

76. It is also noted that within the crossings schedule that footpath Huttoft 965/1 is referred to, this is the only reference and document that refers to this route. The Applicant has suggested that it is not referred to within the

DCO despite falling within the order limits as it will not be affected. The Applicant however will be moving equipment between the landfall TCC and the beach, and that it will not be closed or diverted and it does not fall within the line that is to be drilled. LCC takes a contrary view and suggests that the public's use of the route will be limited by the Applicants activities and therefore should be included within the provisions. (See Appendix 5)

Heritage Issues.

77.LCC would draw specific attention to the IEC location in the context of heritage issues. The Applicant has correctly identified that location as being one where there is an existing heritage issue (site 55). That site is described as being of High importance in the documentation. The effect of the scheme on it and the significance of that effect do not seem to have been given any weight in the overall judgment made as to locating the IEC at this point.

Questions in respect of the Drafting of the DCO.

78.LCC has spotted certain matters where the DCO should be examined further and pursuant to the Applicants request the Council would draw attention to those matters now.

79.LCC raised the question of the involvement of the highway authority in the document during the Hearings and that is repeated. The inconsistency of approach is also maintained pending clarification by the Applicant. Requirement 8 seems to be inconsistent with part 3 in the way it addresses the relationship between the highway and planning authorities in respect of matters within the highway authority's power.

80. In Article 2 in the context of the definition of maintain, given the wording elsewhere in the DCO then the words maintained and maintaining should also be referred to in this part.
81. In defining “watercourses” the words drain and drains are used in different contexts.
82. LCC would suggest that Article 6 should contain reference to the “ Lindsey County Council (Sandhills) Act 1932”
83. The position about footpaths should be made clear.
84. In article 25 a period of 12 months is given for temporary use of land without any justification. Given the severe limitation this places on the legitimate use of the land by the owner this period should be reduced.
85. The consideration of the restrictive covenants was left incomplete from the relevant open Hearing and will be returned to at a later stage. The LCC would wish, despite refereeing to various aspects in these written representations, to contribute further to that debate at that stage.
86. As presently advised the restrictions under the DCO applies to all of the plots of land owned by LCC or under its control as Statutory Authority. There does not appear to be any logical reason for that global approach. There is no reason for the restriction to apply to the public open space, which by its very nature will not be developed or otherwise used in any way likely to interfere with the Applicants interests. As such there is no reason for its imposition.
87. Further the covenant has the potential to interfere with the Councils lawful duties in respect of highway maintenance, which is not justified.

88. On a more general point the restriction is imposed, according to the Applicants statement to protect its cable as well as the safety of others in the area. Accordingly those restrictions based on the premise that something may be more difficult or costly but not related to safety cannot be justified and should not be imposed.

89. Further there can be no justification for the imposition of any such “safety” based restriction across the whole of the width of the corridor when the cables themselves only occupy a restricted area and where trenchless techniques are being used then the justification for the imposition is even more lacking.

90. The suggestion that the restriction is required to guarantee against tree route damage is without foundation. This is referred to in paragraph (15) above.

Skegness Vision

91. The Examining Authority was referred to this document in the hearings. Mr Gutherson sought to assist by expressing his understanding of the situation despite not being directly involved himself. LCC has accordingly investigated the matter further so that an informed decision can be made about the significance of the document.

92. The document is not LCC document and the line of the suggested bypass as shown on the Applicants plans does not represent either a line for a bypass as suggested by LCC or even a proposal within its programme. The suggestion of a bypass, which may have benefits, was not made by LCC but rather reflected the ambitions of landowners. The line shown appears to have been selected by affected landowners.

Presented on Behalf of LCC and drafted by people who have contributed at the hearings.