

SP MANWEB



Reinforcement to the North Shropshire Electricity Distribution Network

Deadline 5 Submission

Application Reference: EN020021

SP Manweb's Response to Deadline 4 Submissions

Reinforcement to the North Shropshire Electricity Distribution Network

Response to Deadline 4 Submissions

June 2019
PINS Reference EN020021

QA Box

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1. INTRODUCTION

- 1.1. This document provides SPM comments on the submissions made to PINS by the Canal and River Trust and Highways England at Deadline 4 (4th June 2019).

2. CANAL AND RIVERS TRUST (REP4-005)

Subject Matter: Statement of Common Ground (SoCG)
<p>The applicant provided the Trust with a revised draft Statement of Common Ground (SoCG) on Friday 24th May, following the Trusts edits/comments on 10th May. The Trust have subsequently provided the applicant comments on the third draft SoCG on 3rd June. We are currently seeking to agree a final version of the SoCG.</p>

SP Manweb Response

- 2.1. SPM has been liaising with the Trust in order to reach an agreement on a SoCG. Since Deadline 4 the SoCG has been signed and has been submitted into the Examination at Deadline 5.

Subject Matter: Update on Other Matters
<p>The Trust met with the applicant on 16th May to discuss the outstanding matters raised by the Trust within our Deadline 3 submission. These relate to the Trusts response to the ExA Question to the Trust on the LVIA conclusions and mitigation planting; undergrounding of the line; construction impacts; the CEMP; additional planting and land agreement. A meeting note is attached for the ExA information.</p>

SP Manweb Response

- 2.2. Since the Deadline 4 submission, SPM has held a further meeting with the Trust (11th June).
- 2.3. The agreed SoCG submitted at Deadline 5 refers to agreement on the landscape and visual assessment (2.1.5) and that the proposed design exceeds the minimum clearance distances (2.3.1). Further consideration will

be given by the Trust to the design of the Proposed Development (including the issue of whether the lines are located above or below ground) (2.3.2).

- 2.4. Discussions are ongoing with regard to the Outline Habitat Improvement Strategy although following the meeting on the 11th June an additional section relating to Canal-side Habitats has been added and the revised draft is appended to the signed SoCG.

Subject Matter: Update on Other Matters

Following this meeting [16th May] the Trust received correspondence from the applicant dated 24th May in respect of the land agreement. This stated that discussions in respect of the land agreement would not continue until the actions from the 16th May meeting had been completed. These actions, however, relate to matters which are entirely separate to any potential land agreement. We therefore do not consider it appropriate for the applicant to stall discussions on the land agreement. The Trust object to the use of compulsory acquisition powers in relation to the Trust's interests and would have expected, at this stage in the Examination, to have made further progress in relation to a separate land agreement.

SP Manweb Response

- 2.5. SP Manweb's comment in relation to a land agreement and matters raised in the meeting were made in response to the Trust's position on the land agreement relating to a potential cost saving from not undergrounding at the canal. SP Manweb consider it appropriate to address the undergrounding point separately to the land agreement point.
- 2.6. SP Manweb is seeking to progress negotiations with the Trust regarding a land agreement.

Subject Matter: Update on Other Matters

As set out in the Trust's Deadline 3 submission, the applicant has also failed to progress the protective provisions and, in particular, has not responded to a revised draft sent to the applicant on 15 February, despite regular chasing emails/calls. The approach of the applicant in respect of the land agreement and protective provisions is extremely concerning to the Trust and we would be grateful if the

Subject Matter: Update on Other Matters

ExA could invite the applicant to progress these matters as soon as possible. As set out in the Trust's Deadline 3 submission, the Trust have provisionally suggested the need to participate in the Compulsory Acquisition Hearing and Issue Specific Hearing in relation to the draft DCO. It is hoped that the Trust would not require legal representation at these upcoming hearings, however the applicant's unreasonable conduct in these matters means unnecessary and wasted costs will likely be incurred defending our position on these matters. We have put the applicant on notice of this.

SP Manweb Response

- 2.7. SP Manweb has reviewed the Trust's comments on the submitted protective provisions and is engaging with the Trust's legal advisers on matters that can be agreed or not. Following the Trust's comments on the provisions, there are a number of matters that can be agreed, some which require further clarification and some which SP Manweb considers it cannot agree. Based on the status of SP Manweb's current review and engagement with the Trust, it is anticipated that a position will be reached soon and SP Manweb can provide a further update at that time.

Subject Matter: Draft Construction Environmental Management Plan

In our deadline 3 letter the Trust advised that we would be providing detailed comments on the draft Construction Environmental Management Plan (CEMP) to the applicant. However, during the meeting with the applicant on 16th May, a number of our concerns with the draft CEMP were provided verbally to the applicant. The applicant advised that the draft CEMP would be updated for deadline 4. As such the Trust will review that draft before providing full comments. It is hoped that a number of our concerns will be addressed in the updated draft CEMP.

SP Manweb Response

- 2.8. SP Manweb has noted the Trust's comments on the draft CEMP submitted at Deadlines 3 and 4 and has made a number of amendments, including adding a Canal Crossing Plan (1:20) which identifies the issues and specific measures of relevance to the Trust (for example bird diverters and warning signs for anglers).

- 2.9. The draft CEMP now includes the 2019 version of the Trust's Code of Practice Parts 1 and 2 and the Trust's approved standard for 'Managing the Risks to Anglers from Overhead Power Lines.
- 2.10. The updated draft CEMP (Version 4) was shared with the Trust prior to the meeting on the 11th June and has been submitted at Deadline 5.
- 2.11. Requirement 9 of the draft DCO has also been updated to address the Trust's concerns (see below) and was submitted as Version 3 at Deadline 4:

Construction environmental management plan

9.—(1) *No authorised development is to commence until, following consultation with the relevant highway authority and the Environment Agency, a detailed construction environmental management plan, which is substantially in accordance with the construction environmental management plan, has been submitted to and approved by the relevant planning authority. The construction environmental management plan must include measures to minimise impacts of construction works and must include but not be limited to the following plans—*

- (a) hedgerow management plan;*
 - (b) a construction traffic management plan.;*
 - (c) a canal crossing plan detailing the measures to manage the risks of overhead power lines to anglers, bird collisions and tree works which has been agreed with the Canal and River Trust.*
- (2) The authorised development must be carried out in accordance with the construction environmental management plan as approved under this requirement.*

- 2.12. This amendment also responded to the Trust's concerns at Deadline 3 that the wording '*substantially in accordance with the draft construction environmental management plan*' had been removed from the draft DCO.
- 2.13. SP Manweb considers that the concerns raised by the Trust in relation to the draft CEMP have now been addressed.

3. HIGHWAYS ENGLAND (REP4-006)

Subject Matter: A5 trunk road access

As we previously noted the use of the proposed temporary A5 trunk road access has been agreed in principle. We have agreed with the applicant that the lack of physical works on the A5 trunk road allows us to conclude that the access can be used for the Order purposes only without adverse effect on the trunk road. This position is predicated on the provision of an agreed set of temporary signage and the system of traffic management for the A5 access and associated works compound being detailed in the final Construction Environmental Management Plan.

SP Manweb Response

- 3.1. SP Manweb has amended the draft CEMP (Version 4 submitted at Deadline 5) to include Technical Note 2 (Version 2) which details the temporary signage strategy and the system of traffic management for the A5 access and associated works compound. This Note has been the subject of discussions with Highways England.
- 3.2. Highways England have agreed this strategy in an email dated 21st June 2019, a copy of which is attached to this response as Appendix 1.

Subject Matter: Cable Crossing of the A5

We recorded at Deadline No 3 the intention of the applicant to use the Order "Requirements" to ensure that the Cable Crossing is designed and implemented to our requirements. Following further discussion with the applicant and consideration of their proposed wording for the additional "Requirement" we are content that our interests are satisfactorily protected subject to final agreement of the protective provisions relating to ourselves. We are continuing to engage with the applicant to finalize the wording of the relevant protective provisions.

SP Manweb Response

- 3.3. As noted by Highways England, in agreement with Highways England SP Manweb has included an additional Requirement, Requirement 11, in the draft DCO submitted at Deadline 4. This Requirement requires details of the cable installation under the A5 to be agreed with Highways England. The relevant

protective provisions provide additional measures for SP Manweb and Highways England to agree the proposed cable installation.

- 3.4. Highways England has informed SP Manweb that it requires three changes to the provisions; a bond provision should SP Manweb fail to complete the works to their satisfaction; removing the deemed consent from the prior approval in paras 57 (2) and (3) and instead accepting a provision not to unreasonably delay approving details; and removing reference, in para 60(3), to Highways England using reasonable endeavours to mitigate and minimise indemnity costs.
- 3.5. With regard to the bond provision, SP Manweb has informed Highways England that as the new Requirement 11 requires SP Manweb to provide details of the cable installation for approval by Highways England prior to work commencing, they have the opportunity to approve those details. In addition, this provision is not included in protective provisions in other DCOs nor is it one that other SUs consider needs to be included. Furthermore, SP Manweb has submitted a Funding Statement (**DCO Document 4.2** (APP-015)) which refers to there being available funding for the project. Therefore, with measures included which give Highways England control, and with funding available for the project's construction, SP Manweb does not accept the need for a bond or surety in this case.
- 3.6. In relation to the deemed approval point in paras 57(2) and (3), again, Requirement 11 now provides assurances that details of the works affecting the A5 will be submitted to and approved by Highways England. Furthermore, paras 57(2) and (3) afford Highways England to disapprove such details. SP Manweb notes Highways England's suggestion to include '*Highways England shall not unreasonably delay its approval to the undertaker*' in place of the wording '*Any failure to notify the undertaker within 28 days shall constitute deemed approval by Highways England*' in para 57(2). However, SP Manweb sees it is reasonable to maintain a 'backstop' to this process such that, in the event of a disapproval and submission of revised details, as in 57(3), Highways England does not then further delay. To be consistent with the changes agreed under Article 37, which exclude Highways England from the deemed consent, SP Manweb accepts that the reference to 'deemed approval' should be removed and proposes that this is replaced with 'approval'.
- 3.7. With regard to paras 60(3), as with the response above, there are measures in place (in Requirement 11) to protect the SRN. SP Manweb also does not accept the removal of the provision in para 60(3) requiring Highways England to mitigate and minimise costs under the indemnity. This seems a reasonable provision to include, requiring a SU party to control any such costs in relation to the indemnity provision.

- 3.8. SP Manweb can therefore, in para 57(2) accept the removal of the 'deemed approval' and the insertion of not to unreasonably delay, and in para 57(3)) to replace 'deemed approval' with 'approval'. SP Manweb does not however accept the requirement of a bond provision, or removing the provision requiring Highways England to mitigate and minimise costs under the indemnity (para 60(3)). SP Manweb considers the Highways England approach to be unreasonable given that these are not provisions used in other statutory undertakers provisions in this or other recent DCOs and that there are financial guarantees for the project as set out in the Funding Statement (**DCO Document 4.2** (APP-015)).
- 3.9. SP Manweb is continuing to negotiate with Highways England on finalising the detail of the Protective Provisions.

Subject Matter: Deemed Consent

Notwithstanding the above commentary that the principle of using "Requirements" is an appropriate approach to ensuring that the Cable Crossing is designed and installed to our satisfaction, we remain fundamentally opposed to the concept of deemed consent within the DCO for the trunk road works as previously indicated. We understand from the applicant that the agreed revised wording, including the removal of deemed consent from a number of the Articles affecting us, which overcomes this issue will be included in the further draft DCO to be submitted at Deadline No 4.

SP Manweb Response

- 3.10. SP Manweb has addressed Highways England's concern by amending the draft DCO (as submitted at Deadline 4 (REP4-002)) as follows:
- Article 9 (Power to alter layout, etc. of streets) – new sub para (5) inserted as follows
(5) The powers conferred by paragraph (1) do not apply to the A5(T).
 - Article 13 (Access to the Works) - new sub para (2) inserted as follows
(2) The powers conferred by paragraph (1) do not apply to the A5(T).

- Article 26 (Temporary use of land for carrying out the authorised development) - sub para (4) amended as follows (highlighted text has been added):

...remove all temporary and permanent works (including accesses to the public highway) and restore the land to the reasonable satisfaction of the owners of the land and any highway access to the reasonable satisfaction of the relevant highway authority

And a new sub para (13) inserted as follows:

(13) The undertaker may not rely on the power conferred by paragraph (1)(c) to construct any new means of access without the consent of Highways England where they are the relevant highway authority for the highway from which the access will be taken.

- Article 27 (Temporary use of land for maintaining the authorised development) - sub para (5) amended as follows (highlighted text has been added):

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works (including accesses to the public highway) and restore the land to the reasonable satisfaction of the owners of the land and any highway access to the reasonable satisfaction of the relevant highway authority.

- Article 37 (Procedure in relation to certain approvals etc) - sub para (2) amended as follows (highlighted text has been added):

(2) Save for the applications made pursuant to Schedule 7 (Procedure for discharge of requirements,) and any application made to Highways England, if, within 42 days after the application or request has been submitted to an authority or an owner as referred to in paragraph (1) of this article (or such longer period as may be agreed in writing with the undertaker) it has not notified the undertaker of its decision (and if it is a disapproval the grounds of disapproval), it is deemed to have approved the application or request.

And a new sub para (4) inserted as follows:

(4) The powers conferred by paragraph (1) do not apply to an application to or request made of Highways England and in relation to the A5(T).

- Requirement 11 (A5(T) Traffic Management Crossing)

11.—(1) No authorised development is to commence until, following consultation with Highways England, details of the construction traffic management for the temporary use of the existing A5(T) access and of the construction method for the installation of the underground cable under the A5(T) have been submitted to and approved by the relevant planning authority, following written confirmation of approval by Highways England. The authorised works must be carried out in accordance with the approved details under this requirement.

- 3.11. Highways England have accepted this approach.

Subject Matter: Statement of Common Ground
We have entered into a Statement of Common Ground (SoCG) between us and the applicant. The applicant has supplied this to PINS.

SP Manweb Response

- 3.12. The agreed Statement of Common Ground between SP Manweb and Highways England was submitted at Deadline 4 (REP4-003).

Subject Matter: Next Steps
We are seeking to finalize the temporary signage strategy with the applicant at this time; the applicant's technical advisor has been requested to supply additional information to aid this work. We will review the further draft DCO that is anticipated and engage with the applicant to seek a final agreed position on the wording of the Order, including the protective provisions, in a timely manner.

SP Manweb Response

- 3.13. SP Manweb submitted the signage strategy to Highways England on 3rd June and received a response from them on 6th June advising that the strategy was being reviewed. SP Manweb has not received a further response from Highways England to date. SP Manweb is continuing to liaise with Highways England on the contents of the strategy.

- 3.14. SP Manweb has continued to liaise with Highways England to agree and finalise the wording of the Protective Provisions, as referred to in paras 3.3 to 3.8 above.

Appendix A

**Email from Highways England to SP
Manweb**

Shropshire DCO - Signage Strategy

21st July 2019

Jacquie Critchley

From: Sansoy, Priya <Priya.Sansoy@highwaysengland.co.uk>
Sent: 21 June 2019 11:40
To: Jacquie Critchley
Cc: Edwards, Steven; James McGavin; Jaffier, Robert; Chadha, Adrian
Subject: RE: Shropshire DCO - Signage Strategy

Dear Jacquie,

Thank you for your email dated 3 June 2019 in relation to the Shropshire DCO Signage Strategy. We note that the document attached to your email; *Technical Note No.2 (Version 2): Traffic Management Signage Strategy, Access AC2, A5'* prepared by The Transportation Company (TTC) and dated May 2019 has been updated to reflect the recent correspondence and discussions on this matter.

We have reviewed the revised TTC technical note (TN) and we note that SP Manweb is able to confirm that the proposed traffic management signage will be temporary and there will be no requirement to install new posts. The TN states that the installation is expected to use standard temporary signage frames, which would be secured in place using a sandbag or something similar. This confirmation from SP Manweb adequately addresses our concerns with regard to the issue of how the temporary traffic management signage would be installed.

We also understand that SP Manweb intend to deal with the detail of the signage strategy through the provision of a suitably worded 'DCO Requirement', which states that the applicant will discuss and agree its implementation with Highways England prior to any works being commenced.

This approach has previously been discussed and in principle, it is considered to be acceptable.

Kind regards

Kind Regards,

Priya Sansoy

Assistant Asset Manager

Shropshire, Telford & Herefordshire - Operations Directorate

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From: Jacquie Critchley [mailto:Jacquie.Critchley@gillespies.co.uk]

Sent: 03 June 2019 09:45

To: Sansoy, Priya <Priya.Sansoy@highwaysengland.co.uk>

Cc: Edwards, Steven <Steven.Edwards@spenergynetworks.co.uk>; James McGavin <James@ttc-transportplanning.com>

Subject: Shropshire DCO - Signage Strategy

Morning Priya

Following your email to Steven, I have attached a revised Technical Note (Technical Note 2 Version 2) 'Traffic Management Signage Strategy, Access AC2, A5'. This has been updated by James McGavin to reflect the recent correspondence and discussions.

Hopefully this now covers all the issues that were outstanding.

Regards

Jacquie

Jacquie Critchley
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2019 Civic Trust Award Winner – Aldgate Public Realm
2018 Landscape Institute Awards - Highly Commended - The Piece Hall, Halifax
2018 BALI Award - Holland Park Villas
2018 BALI Award - Elephant Park



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