



**Canal &
River Trust**

Making life better by water

YorkshireGreen@planninginspectorate.gov.uk

Your Ref EN020024

Our Ref IPP-129

Monday 05 June 2023

Application by National Grid Electricity Transmission (NGET) for an Order Granting Development Consent for the Yorkshire GREEN Project.

Canal & River Trust Response Submission for Deadline Three (Interested Party Number 20034443)

The Canal & River Trust's written comments below summarise those matters raised in our oral submissions made by Simon Tucker of the Trust and Samantha Woods of Winckworth Sherwood at Issue Specific Hearing 3 held on 26 May 2023.

**Agenda item 4(b) – Articles of the dDCO
Item (xvii) – Article 54 (Temporary closure of, and works in, the river Ouse)**

1. The Trust explained that it recognised the need for temporary closures of the river to enable the works to be constructed but that the Trust's main consideration is ensuring that closures are managed to avoid overly restricting the operation of the navigable network.
2. The Trust is content with the most recent amendment that the Applicant has made to the drafting of article 54 at the Trust's request which would limit the ability to close the river to only in relation to Work No.6 and associated works. However, the overall impact of the article, in conjunction with the protective provisions is still to enable total closure of the river. This is a problem for the Trust and its river users. Cables, bridges and other works are installed over the Trust's network without river or canal closures during the day and it is not clear why the Applicant is unable to agree to do so at this location.
3. The Trust requested that the Applicant justify the extent of the powers sought for day-time river closures at any time of year and set out that the Trust needs to be appropriately protected by the Protective Provisions, in particular with reference to notice periods for closures, the length of closures, approval of temporary works in the river.
4. The Trust is seeking for the power of closure to be restricted to night-time working as far as possible. The Public Rights of Way Management Plan (Document 5.3.3G) identifies that only night-time working will be required. However, the drafting of the DCO and protective provisions which the Applicant has most recently proposed to the Trust envisages day-time working and does not restrict the length or quantity of day-time closures or restrict multiple consecutive days of closures. If the Applicant is able to justify a revised need for day-time working, the Trust will require sufficient notice periods and a restriction on the quantity and consecutive nature of closures of the river.

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5. The Trust provided some background on the River Ouse by explaining that it is a major river thorough way in the north of the Trust's network, providing a route for vessels between beyond York, including Ripon and Boroughbridge. During the day-time, it is used by large variety of craft, both commercial and leisure, and day-time closure of the river would have a significant impact.
6. The Trust also summarised the difficulties it faces in shutting a river, particularly during the day and where there is nowhere for vessels to be diverted, as is the case with this section of the River Ouse.
7. The Trust explained that due to the very low levels of night-time traffic, it is much easier to accommodate closures during the night-time and its experience is that a lot can be achieved during night-time works. By way of example, approximately five years ago we worked with Network Rail who were able to install the Scarborough railway bridge, just outside of York station in 8 hours during a night-time closure.
8. The impacts of day-time closures are much more significant and, at this location, would impact several different types of river user – for example local pleasure craft, such as hired holiday boats, commercial vehicles and recreational paddle craft. Leisure and commercial vessel users, such as people hiring a vessel for holidays, do typically plan routes many months in advance, and significant notice is required to ensure that any closure does not inadvertently impact commercial movements on the network. This could have commercial implications for companies that hire out boats or offer moorings.
9. A higher number of craft that would be expected during daytime hours, and the width of the river would likely prevent the potential for a barrier to be erected, meaning that safety boats would be required to intercept craft. Should a high number of craft seek to pass the site of closure, then it might be difficult to stop craft.
10. The Trust went on to explain why this is a pertinent issue for the River Ouse in this location, as it is the only navigable route to the Ripon Canal and Ure Navigation, which would be cut off from the rest of the network in the event of a river closure. As such, users cannot be diverted. To mitigate the impact of the closure, warning signs and notice to river users would be required to limit the impact. This would need a notice period of several months to enable river users to plan accordingly. Notice is also required to ensure that maintenance vessels can be sited appropriately on our network for any necessary activities in advance of any closure that could hinder their movement.
11. The Trust then moved on to explaining how it typically manages engagement with its stakeholders concerning closures. The Trust operates a standard process to advertise closures in advance so that the impact on our users and operations is effectively managed.
12. For any other developer seeking daytime closure, the Trust requests notice from the developer by the end of February for a closure the following winter low season. Daytime closures during high season are rarely permitted due to the volume of river users which could be affected. The proposed closures are advertised and consulted on in two waves of consultation with stakeholders: boaters, anglers, other river users and operatives. The Trust will also co-ordinate its own work programmes with third parties' works. Having considered the consultation responses, typically a decision to close a navigation is made in August. That closure can then be advertised. This is very different to what is being proposed by the Applicant, which is seeking the power to close the river at any time of year throughout the day.

Agenda Item 4(g) – Schedule 15 (Protective Provisions)

13. The Trust explained that it has been engaging with the Applicant in relation to the Protective Provisions to be included on the face of the DCO. It was agreed with the Examining Authority that it had seen the draft provided by the Trust at deadline 2 and dated 26 April 2023.

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14. Most recently the Trust held a call with the Applicant and its legal advisors on Thursday 18 May and received revised drafting on both Thursday 18 May and Monday 22 May. Progress was made at the meeting but the parties remain some way apart on matters concerning:
 - 14.1 day-time and high season river closure
 - 14.2 the notice period for river closure and of relevant works;
 - 14.3 deletions made by the applicant in their latest submission to the Trust concerning the definition of construction, which removes protection for the Trust in relation to maintenance and various other works; and
 - 14.4 details concerning the requirements for the Applicant to seek the Trust's consent for survey works and the closure of the river (in addition to notice and the approval of plans).
15. The Trust made clear that it will continue to engage with the Applicant and are hopeful that these matters can be resolved with further engagement and that, with further understanding of the obligations of the Trust, protective provisions can be agreed prior to deadline 5. However, it wanted to ensure that the Examining Authority had an opportunity to hear the Trust's views on these outstanding issues as part of the ISH process. It was agreed that because the latest drafting was not before the Examining Authority, it was better for the principles to be spoken to as distinct from the specifics of drafting which would be seen by the Examining Authority in due course.

Notice periods

16. The Trust set out its key concerns in relation to the notice periods to be included within the Protective Provisions. It reiterated that although the Trust recognises the national significance of the infrastructure, it is not clear why day-time working over the river is required to deliver it.
17. The Trust noted that the submitted Public Rights of Way Management Plan (Document 5.3.3G) confirms at page 25 that the works over the Ouse will comprise of "Temporary closure overnight for a short period of time up to one hour at a time for up to eight times over the duration of the Project." For night-time working, due to the lower impact, the Trust can accept a shorter notice period. As mentioned earlier, our experience is that a lot can be achieved during night-time works.
18. If the Applicant is unable to accommodate the works during night-time working only, despite what is said in the Public Rights of Way Management Plan then the Trust would still have concerns about the Applicant has proposed. The drafting does not draw a distinction between notice periods for a single day of closure or multiple consecutive days of closure. The Trust explained that it objects to the idea that multiple consecutive days of closures would be needed.
19. The Trust explained that it has accepted that day-time closures of less than one hour would have less impact than a whole day, and would require less notice than closures of longer than one hour. For these longer periods, and if it is possible for the Applicant to demonstrate the need for consecutive day-time closures, then the Trust would require several months' notice.
20. Finally, the Trust noted that the latest drafting received from the Applicant allows for no notice to be provided in the case of emergencies. The Trust appreciates that genuine emergencies can occur and would request that in that situation it be given notification as soon as reasonably practicable.

Definition of "construction"

21. The Trust explained that the latest draft of the Protective Provisions shared by the Applicant has had the definition of "construction" removed. The definition of "construction" included previously included

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works for maintenance. It is important to the Trust that the Protective Provisions apply to the maintenance of the works across the river throughout the lifetime of the development. The Trust explained to the Examining Authority that if the previously broad definition of construction is omitted, there will need to be drafting changes throughout to ensure maintenance is covered.

The Trust's Code of Practice

22. The Trust summarised that its Code of Practice sets out the procedures for all third parties whose work may or will affect the Trust's network.
23. The Trust explained that the Applicant has included wording in the draft DCO which makes reference to the Code and deals with inconsistencies between the two, for which the Trust is grateful. However, the Trust remains unclear as to whether the Applicant would comply with the Trust's Code of Practice if it contained a provision on which the protective provisions in the DCO are silent.
24. The Trust explained that it hopes that this is just a drafting issue and that this will be something the Applicant can clarify to the Trust's satisfaction. However, the Trust noted that its view is that if the Code of Practice provides for an approach where no provision is made in the DCO, then the Code of Practice should be followed.

Consent from the Trust

25. The Trust explained that the latest draft of the Protective Provisions received from the Applicant removed the Trust's ability to give consent to and impose reasonable terms and conditions on the use of powers to survey and investigate land and on the power to close the river. The Trust made clear that it would like to see these reinstated.
26. The Trust understands the Applicant's goal of simplifying the drafting, but does not think that should come at the expense of the Trust being able to consent to surveys and closures, or impose conditions that would limit the impacts on navigation.
27. The alternative which has been proposed to the Trust by the Applicant in the latest draft is that its engagement with the Trust is limited to providing a notice of specified works (not including surveys), and plans which the Trust can then either refuse or accept. This seems less beneficial to both parties providing for a process of constructive engagement, and allowing the Trust to impose reasonable terms and conditions than a binary acceptance or refusal.
28. In relation to surveys specifically, the Trust would want to ensure that any surveying or investigating of the waterway would not adversely impact navigation. In development consent orders already made, this is typically achieved by requiring the Trust's prior consent, with such consent not to be unreasonably withheld and can be subject to reasonable conditions. This was the position under the last draft and the Trust would ask that this be reinstated.

Failure to complete works

29. Finally, the Trust explained that there had been recent discussions in relation to the paragraph in the protective provisions which deals with what happens if the Applicant fails to complete the specified works. The Trust accepts the need to limit the works which it could step-in and complete, and it explained that it has no desire to carry out works to the electricity network. However, the Trust would request that wording be included to place an obligation on the Applicant to complete a work that has been started over the river as soon as reasonably practicable following a notice from the Trust, in order to limit the impact of partially completed works over the river.

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Yours sincerely,

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