



# The Planning Inspectorate Yr Arolygiaeth Gynllunio

**The Planning Act 2008**

**River Humber Gas Pipeline Replacement Project**

**Examining Authority's Report of Findings and Conclusions**

**and**

**Recommendation to the  
Secretary of State for Energy and Climate Change**

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**Examining Authority**

**Jeremy Aston BSc (Hons) FRICS**

**27 May 2016**

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**ERRATA SHEET – River Humber Gas Pipeline Replacement Project – Ref. EN060004**

**Examining Authority`s Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Business, Energy, Innovation and Strategy dated 25 August 2016**

**Corrections agreed by the Examining Authority prior to a decision being made**

<b>Paragraph</b>	<b>Error</b>	<b>Correction</b>
8.9.4	Incorrect reference to a formal representation made by Northern Gas Networks and section 127 being engaged.	NGN did <u>not</u> submit a representation, so that <u>s127 is not engaged</u> . <del>That representation was not formally withdrawn, so that s127 is engaged.</del>

**The Examining Authority's findings and conclusions and recommendation in respect of an application by National Grid Gas Plc (National Grid) for an order granting development consent for the River Humber Gas Pipeline Replacement Project**

**File Ref EN060004**

The application, dated 10 April 2015, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 15 April 2015.

The Applicant is National Grid Gas Plc.

The application was accepted for Examination on 12 May 2015 and the Examination of the application began following the Preliminary Meeting on 9 September 2015 and was completed on 7 March 2016.

The development proposed comprises the construction of a replacement section of gas pipeline crossing under the Humber Estuary between the existing Goxhill Above Ground Installation on the south bank within North Lincolnshire to the Paull Above Ground Installation on the north bank within the East Riding of Yorkshire.

**Summary of Recommendation:**

The Examining Authority recommends that the Secretary of State should make the Order in the form at Appendix D.

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# **1 INTRODUCTION**

## **1.1 INTRODUCTION**

- 1.1.1 This is the Examining Authority's (ExA's) report to the Secretary of State (SoS) for Energy and Climate Change (the SoS), following the Examination of an application for a Development Consent Order (DCO) for the River Humber Gas Pipeline Replacement Project by, National Grid Gas Plc (NGG) (the Applicant). It sets out the findings and conclusions of the ExA and its recommendation to the SoS.

### **Examination Library**

- 1.1.2 The Planning Inspectorate publish all documents issued and received providing a comprehensive record of the Examination. This is recorded in the Examination Library (Appendix B). Throughout the report references to Examination documents are provided by reference to this, for example the Applicant's covering letter on application [APP-01].
- 1.1.3 The Examination Library in turn provides hyperlinked access to copies of the documents referred to in this report, all of which are publicly available<sup>1</sup> on the Planning Inspectorate's project website for this report.

### **Master Version Control Document**

- 1.1.4 At the ExA's request (see below) the Applicant submitted a document version control sheet at Deadline 1 [REP1-001] and this was updated throughout the Examination to record everything issued during the Examination and identify the latest issue documents at the Examination close [REP9-015].

## **1.2 APPOINTMENT OF THE EXAMINING AUTHORITY**

- 1.2.1 Jeremy Aston was appointed as the single ExA on 9 June 2015 under delegation from the SoS, to examine the application under s78 of the Planning Act 2008 as amended (PA2008) [PD-001].

## **1.3 THE APPLICATION**

### **The Applicant and the Project**

- 1.3.1 The Applicant proposes to construct the replacement of a 42" (1067mm) natural gas transmission pipeline, housed within a new tunnel beneath the Humber Estuary. The pipeline would commence approximately two miles north east of Goxhill, North Lincolnshire and

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<sup>1</sup> The examination documents are publicly available via the following link to the national infrastructure pages of the [Planning Inspectorate website](#).



terminate approximately one mile south east of Paull, East Riding of Yorkshire.

- 1.3.2 A more detailed description of the application and the Applicant can be found in Chapter 2 of this report.

### **The application and representations**

- 1.3.3 The application dated 10 April 2015 [APP-01] was made under s37 of the PA2008 and was received in full by the Planning Inspectorate on 15 April 2015 [PD-003].
- 1.3.4 The SoS had previously issued a Screening Opinion on 1 April 2014 [APP-077]. The opinion concluded that the proposal would require an environmental impact assessment as it was likely to have significant effects on the environment by virtue of the characteristics of the development, its location and its potential impact. The application accordingly included an Environmental Statement (ES) [APP-030 to APP-079].
- 1.3.5 The Applicant stated in the Explanatory Memorandum (EM) [APP-017] that the project was a Nationally Significant Infrastructure Project (NSIP) within s20(3) PA 2008. The EM explained that although the pipeline was less than 40 kilometres in length, and thus not within s20(3)(a) PA2008, subsection (3)(b) was met in that the SoS's Screening Opinion was that the project would be EIA (Environmental Impact Assessment) development and was likely to have significant effects.
- 1.3.6 The application was accepted for Examination on 12 May 2015 [PD-002].
- 1.3.7 Thirty Relevant Representations (RRs) were received in total [RR-001 to RR-030].

### **Compulsory Acquisition**

- 1.3.8 The application seeks compulsory acquisition (CA) powers for the acquisition of freehold land, permanent rights (such as easements and rights of access) and temporary rights over the Order land for construction. Temporary Possession (TP) of land is a significant feature of this application. TP is not the same as CA and different tests apply. However, because of the interplay of TP and (in some not all cases) CA affecting individual plots they are discussed together in Chapter 8.
- 1.3.9 A Book of Reference (BoR) [APP-021] and Statement of Reasons [APP-019] accompanied the application. These were updated during the Examination to their final form at the close [REP9-012] and [REP8-004].
- 1.3.10 By the start of the Examination the Applicant had already commenced voluntary negotiations to acquire the necessary rights for the project [APP-089]. By the Examination close the latest position on these

commercial agreements was summarised in an updated schedule [REP9-013].

### **Environmental Impact Assessment**

- 1.3.11 The application was accompanied by an ES [APP-030 to APP-079], together with a non-technical summary [APP-80] which was considered to be adequate for acceptance.
- 1.3.12 The ExA is satisfied that the ES met the definition provided in Regulation 2(1) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

### **Habitats Regulations Assessment**

- 1.3.13 The application identifies that it is one to which the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations) apply.
- 1.3.14 It was accompanied by a Habitat Regulations Assessment Report (HRA Report) [APP-027 and APP-028].
- 1.3.15 The ExA is satisfied that the HRA Report is sufficient to enable the SoS to proceed to make an appropriate assessment (AA) pursuant to these regulations.

### **Environmental Statement Errata and Amendments Document**

- 1.3.16 From the first Deadline the Applicant introduced a record on minor errata and amendments [REP1-042]. This document remained 'live' throughout the Examination and records errata and amendments in the ES, the initial Construction and Environmental Management Plan (CEMP) and the HRA from that originally submitted as part of the DCO application in April 2015. A final version was issued at Deadline 4 [REP4-032].

## **1.4 STRUCTURE OF REPORT**

- 1.4.1 The Report is structured as follows:
  - **Section 2** - sets out the main features of the proposed development;
  - **Section 3** - summarises the legal and policy context applicable to consideration of the application;
  - **Section 4** - sets out the Principal Issues (PIs) identified by the ExA for consideration at the outset of the Examination and outlines their development during the Examination to its close;
  - **Section 5** - discusses under topic headings, the relevant and important issues that were examined and sets out the ExA's findings and conclusions in relation to the potential impacts of the development;
  - **Section 6** - assesses the application against the Habitats Regulations;

- **Section 7** - draws the individual conclusions presented under Chapters 5 and 6 together, considers the balance of impacts against the public benefit and provides the ExA's conclusion on the case for development consent;
- **Section 8** - assesses the requests for CA;
- **Section 9** - assesses the draft DCO; and
- **Section 10** - sets out the ExA's overall conclusions and recommendations to the SoS.

1.4.2 The following appendices are included within this Report:

- **Appendix A** - details the main events occurring during the Examination and the main procedural decisions taken by the ExA;
- **Appendix B** - contains the Examination Library which lists the documents submitted by the Applicant and others in connection with the Application and identifies the references used in this report;
- **Appendix C** - is a list of Abbreviations used in this report; and
- **Appendix D** - contains the DCO that the ExA recommends the SoS should grant (Recommended DCO).

## 1.5 THE EXAMINATION AND PROCEDURAL DECISIONS

1.5.1 The Examination began on 9 September 2015 and concluded on 7 March 2016.

1.5.2 A Preliminary Meeting (PM) was held on 9 September 2015 to which all Interested Parties (IPs) were invited (Rule 6 Letter dated 22 July 2015). The letter included a draft timetable for Examination and the ExA's initial assessment of the PIs from the application [PD-004].

1.5.3 As part of the Rule 6 letter, the ExA made a number of procedural decisions which included:

- setting a Deadline of 12 October 2015 for any statutory party who had not already made a RR, or a local authority without direct responsibility in the project area, to inform the ExA of their wish to be considered as an IP;
- setting a Deadline for submission of Statements of Common Ground (SoCGs) in advanced draft format (Deadline 1, 23 September 2015), as well as outlining the purposes of drafting and submitting SoCGs, and listing the required topics of each requested SoCG;
- a request to the Applicant to provide the evidence requested in the s51 advice (issued 12 May 2015) to justify ruling out in combination effects of other projects during construction, operation or de-commissioning on the Humber Estuary Special Area of Conservation (SAC), as well as updated screening and integrity matrices provided within the HRA Report to include clear cross-references to specific paragraphs/sections of the HRA Report and/or Environmental Statement where necessary in order to support the conclusions drawn; and

- a request for further information, including:
  - (a) plans and drawings as originally requested in s51 advice issued 12 May 2015;
  - (b) a Version Control sheet and implementation of a version control process;
  - (c) an updated Environmental Mitigation Commitments Document [APP-088];
  - (d) an updated Schedule of Progress on Voluntary Negotiations Document [APP-089].
- updated ES documents:
  - (a) Flood Risk Assessment (FRA) [APP-025];
  - (b) Geology and Soils and Appendices [APP-049-059]; and
  - (c) Water Resources and Appendices [APP-071-074], in particular to include information regarding Phase 1 and Phase 2 ground and laboratory tests, a pump test at Goxhill and updated modelling to predict the effects on ground water and flooding.

### **Examination Participants**

- 1.5.4 In its Rule 6 letter [PD-004], the ExA invited all those who made RRs and all statutory parties and other parties to become involved in the Examination process.
- 1.5.5 The PM which was held on 9 September 2015 was attended by;
  - Cllr David Wells from North Lincolnshire Council (NLC);
  - Natural England (NE);
  - Royal Society for the Protection of Birds (RSPB);
  - DDM Agriculture (Mr Dale);
  - members of the public, and;
  - the Applicant.
- 1.5.6 The Environment Agency (EA) were unable to attend but provided their thoughts ahead of the meeting [AS-005] and these were taken into consideration.
- 1.5.7 Full details of the attendees are contained in Appendix A of the PM note [EV-002].

### **Written Representations**

- 1.5.8 A full opportunity was provided for the Applicant, IPs and invited persons to make written representations drawing the ExA's attention to the issues that they considered arose from the application proposal.

### **Local Impact Reports**

- 1.5.9 As required under s60 of the PA2008, relevant local authorities were invited to submit a Local Impact Report (LIR) [PD-004]. A LIR was received from NLC (Goxhill) [REP2-018] and East Riding of Yorkshire

Council (ERYC) [REP2-004]. Together, these reports cover the relevant project area and each has been fully considered by the ExA.

### **The ExA's written questions and requests for information**

- 1.5.10 The ExA issued two rounds of written questions:
- round 1 was issued on 14 September 2015 [PD-006]; and
  - round 2 was on 8 December 2015 [PD-010].
- 1.5.11 In each case all participants were provided opportunity to respond to the answers given by others as set out in the Rule 8 timetable [PD-005].
- 1.5.12 Rule 17<sup>2</sup> letters asking additional questions were issued on 7 January 2016 [PD-012], 15 January 2016 [PD-013], a Rule 17 and Procedural Decision on 1 February 2016 [PD-014] and final Rule 17 on the 26 February 2016 [PD-017].

### **Statements of Common Ground**

- 1.5.13 A SoCG Schedule was provided on application [APP-090] but no drafts accompanied the application. The ExA requested the preparation and early submission of a range of SoCG in the Rule 6 Letter [PD-004]. The purpose of these being to focus the Examination on matters outstanding of relevance and importance.
- 1.5.14 Updated schedules of SoCG were provided during the Examination to identify progress during the Examination and the final version was supplied ahead of the close [REP7-024].
- 1.5.15 The ExA has taken the content of all submitted SoCG into account, in the context provided by other written representations and oral submissions and evidence.

### **Agreements**

- 1.5.16 The Applicant negotiated various commercial agreements outside of the Examination for example protective provisions with utility providers and heads of terms for voluntary agreements for land acquisition, or the temporary use of land.
- 1.5.17 This is discussed where appropriate within the report (e.g. Chapter 8).

### **Hearings**

- 1.5.18 Notification of hearings was issued 20 October 2015 [PD-007] providing details of the hearings.

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<sup>2</sup> Planning Act 2008: Guidance for the examination of applications for development consent, [para 75](#), March 2015, DCLG

- 1.5.19 The Open Floor hearing was cancelled under s93 of the PA2008, due to no requests to speak at this hearing being received
- 1.5.20 Three hearings took place during the Examination, all of which were held at the Mercure Hull Royal Hotel, 170 Ferensaway, East Yorkshire, Hull, HU1 3UF. These were:
- Issue-Specific Hearing (ISH) on construction and HRA/EIA issues, 17 November 2015;
  - ISH on the DCO, 18 November 2015; and
  - Compulsory Acquisition Hearing (CAH), 18 November 2015.
- 1.5.21 The notification of hearings issued 20 October 2015 [PD-007] also provided details for additional ISHs related to the DCO and any other outstanding matters to be held 5 and 6 January 2016; however it was decided that these were no longer required, and a Rule 8 (3) notification of variation to the timetable was issued 9 December 2015 [PD-011].
- 1.5.22 Details from these hearings are provided where relevant later in the report.
- 1.5.23 The ExA has taken all submissions and evidence arising from hearings fully into account.

### **Site Inspections**

- 1.5.24 The ExA made unaccompanied site inspections (USIs) on 28 July 2015 and 8 September 2015, the routes of which were planned with regard to issues raised in the RRs. An account of both the USIs was published 14 September 2015 [EV-003].
- 1.5.25 It was decided by the ExA that an Accompanied Site Visit would not be required, and notification of this was issued 9 December 2015 in the Rule 8(3) notification of variation to the timetable.
- 1.5.26 The report takes account of the ExA's knowledge gathered from those visits.

### **Engagement on the draft Development Consent Order**

- 1.5.27 The ExA held an ISH to discuss the draft DCO. An Agenda schedule was prepared and issued ahead of that meeting to identify areas the ExA sought to discuss.
- 1.5.28 Opportunity was provided during the Examination for all IPs to engage and ask questions on the DCO structure and content.
- 1.5.29 Updated draft DCOs were submitted during the Examination at Deadlines 3, 4, 6 and 7 with the final version submitted at Deadline 9 [REP9-010].

- 1.5.30 All responses and comments on the draft DCOs have been considered by the ExA throughout the Examination.

**Other consents required**

- 1.5.31 A list of Other Consents and Licenses was submitted as part of the application [APP-029].
- 1.5.32 The ExA has taken the need for these consents and their timing relative to the project programme into account throughout the Examination.

**Examination closure**

- 1.5.33 The ExA completed its Examination of the application on 7 March 2016. As required by s99 PA2008, the ExA wrote to all IPs on 8 March 2015 to inform them of the closure of the Examination [PD-018].

**1.6 REQUESTS TO BECOME OR WITHDRAW FROM BEING AN INTERESTED PARTY (S102A, S102B AND S102ZA).**

- 1.6.1 The following persons submitted requests to be registered as IPs to the application under s102(1)(ab) of the PA2008, all of which were accepted by the ExA [PD-008 and PD-009]:
- Mr J Harrison - registered as an IP under s102 (1)(ab) as of 26 October 2015;
  - Mr I Wathen - registered as an IP under s102 (1)(ab) as of 26 October 2015;
  - Mr B Tull - registered as an IP under s102 (1)(ab) as of 26 October 2015;
  - Mr Leech - registered as an IP under s102 (1)(ab) as of 26 October 2015; and
  - Claire Mills - registered as an IP under s102 (1)(ab) as of 2 November 2015.

**1.7 UNDERTAKINGS/OBLIGATIONS GIVEN TO SUPPORT APPLICATION**

- 1.7.1 There were no undertakings or obligations given by the Applicant to support the application.

## **2 MAIN FEATURES OF THE PROPOSAL AND SITE**

### **2.1 INTRODUCTION**

- 2.1.1 This Chapter provides more detail of the Applicant, the application site, the nature of the works to be undertaken on land and beneath the River Humber and amendments made to the application during the Examination.

### **2.2 THE APPLICATION AS MADE**

- 2.2.1 The Applicant is National Grid Gas Plc (NGG) who owns and operates the high pressure National Transmission System (NTS) for natural gas throughout Great Britain and owns and operates a significant lower-pressure gas distribution network throughout England.
- 2.2.2 The proposed development would seek to ensure the long term security of the Feeder 9 Gas Transmission Pipeline where it crosses the River Humber by its replacement. The pipeline carries a high level of importance within the NTS as a strategic pipeline carrying significant volumes of natural gas from the Easington importation terminal south towards Hatton compressor facility. The river bed cover over the existing pipeline is being removed by the erosive action of the estuary. Remediation works using concrete mattresses have been carried out to protect the existing pipeline from further erosion as a temporary measure.
- 2.2.3 The Applicant is proposing to replace the section of the pipeline located under the River Humber with a new pipeline crossing in a newly constructed concrete lined tunnel under the river bed.

### **2.3 THE SITE**

- 2.3.1 The following three illustrative drawings; Works Plan Sheet 1 of 9 [REP1-006], Site Layout Plan (Goxhill) [REP1-008], Site Layout Plan (Paull) [REP1-009] and the Tunnel Long Section [REP1-010] give an overview of the site.
- 2.3.2 The proposed replacement pipeline would link to the existing Above Ground Installations (AGI) at Paull and Goxhill. The total maximum length of the pipeline would be 6km (with the width of the river being c. 4.9km).
- 2.3.3 It is proposed to tunnel under the river, providing a new concrete lined tunnel with a diameter between 3-4 metres (m). The tunnel would be laid to have a minimum depth of 6m below the true bed of the estuary. The steel gas pipe diameter, within the tunnel, would be 1.05m. Where the pipe is to be installed onshore it would be laid at a depth of not less than 1.2m within an excavated trench. Approximately 300m of pipeline would be laid onshore at Paull (north) and 500m at Goxhill (south). The drive pit from which the



excavations would start is proposed at Goxhill with a 15m diameter receive shaft at Paull.

## **2.4 PRINCIPAL WORKS DESCRIBED**

- 2.4.1 The principal works that are proposed, and for which development consent is required, are identified as Work No. 1 to Work No. 3E in the Recommended Development Consent Order (DCO) (Schedule 1, Part 1, Authorised Development).
- 2.4.2 Work No. 1 - A high-pressure gas transporter pipeline up to 6km in length and up to 1050 millimetres in diameter between the Goxhill AGI and Paull AGI and comprised of the following:
  - 2.4.3 Work No. 1A – A high-pressure gas pipeline approximately 1,100m in length, starting at the Goxhill AGI and ending at the indicative start point of Work No. 1B, and construction and installation of the pipeline by trenched and trenchless methods which may include the installation of a concrete sleeve drive shaft and tunnel, backfilling of permanent structures.
  - 2.4.4 Work No. 1B – A high-pressure gas pipeline approximately 3,800m in length starting at the indicative end point of Work No. 1A and ending at the indicative start point of Work No. 1C, and construction and installation of the pipeline by trenchless methods which may include the installation of a concrete sleeve tunnel, backfilling of permanent structures.
  - 2.4.5 Work No. 1C – A high-pressure gas pipeline approximately 600m in length starting at the indicative end point of Work No. 1B and ending at the Paull AGI, construction and installation of the pipeline by trenched and trenchless methods which may include the installation of a concrete sleeve reception shaft and tunnel, backfilling of permanent structures and reinforcement of existing high-pressure gas pipeline within the Paull AGI.
- 2.4.6 Work No. 2A – In North Lincolnshire —(South of the River - Goxhill) A buried array of cathodic protection anode canisters with relevant associated equipment comprising an area not greater than 1,536m<sup>2</sup> at a depth not less than one metre below ground.
- 2.4.7 Work No. 2B – Underground cathodic protection cables connecting Works No 2A and 2C to Work No. 1 comprising a strip not greater than 6m in width and not less than 1m below ground.
- 2.4.8 Work No. 2C – Works for the connection of Work No. 1A into the Goxhill AGI and associated capping works to the existing Feeder 09 pipeline comprising an area no greater than 792m<sup>2</sup> temporary stopple and bypass pit, buried permanent stopple tees deviating vertically to a depth no greater than 4m, permanent above-ground nitrogen monitoring kiosk with dimensions not greater than 1m by 2m and not greater than 2m in height, cathodic protection facility including two transformer rectifier kiosks each comprised of control cabinet and

junction box on a concrete plinth with dimensions not greater than 1m by 2m and not greater than 2m in height and permanent post and rail fencing not greater than 1.5m in height.

- 2.4.9 Work No. 3A In the East Riding of Yorkshire (North of River – Paull) Works within the Paull AGI for the installation of above and below ground piping, and relevant associated insulation joints, valves, actuators and vents for the purposes of connecting Work No. 1C into the Paull AGI such works not to be greater than 4m in height;
- 2.4.10 Work No. 3B – A cathodic protection facility including two transformer rectifier kiosks and distribution network operator kiosk, each comprised of control cabinet and junction box on a concrete plinth with dimensions not greater than 1m by 2m and not greater than 2m in height, surrounded by a post and rail fence.
- 2.4.11 Work No. 3C – Underground cathodic protection cables connecting Works No 3B to Work No. 1 comprising a strip not greater than 6m in width and not less than 1m below ground.
- 2.4.12 Work No. 3D – Isolation works for the existing Feeder 09 pipeline comprising an area no greater than 154 m<sup>2</sup> and temporary stopple and bypass pit, buried permanent stopple tees deviating vertically to depth no greater than 4m and permanent above-ground nitrogen monitoring kiosk with dimensions not greater than 1m by 2m and not greater than 2m in height;
- 2.4.13 Work No. 3E – a buried array of cathodic protection anode canisters with relevant associated equipment comprising an area not greater than 99m<sup>2</sup> at a depth not less than 1m, below ground associated temporary construction areas for the installation of Work, and temporary widening and improvement works for construction access for the authorised development.
- 2.4.14 The Work definitions within the DCO together with the Work Plans adequately describe the project.

## **2.5 ASSOCIATED DEVELOPMENT DESCRIBED**

- 2.5.1 The draft DCO incorporates various proposals which would constitute associated development, Work No. 4 to Work No. 13 and also in paragraph 2 of Schedule 1, Part 1, Authorised Development, which includes the following (summarised):
- site preparation works, site clearance (including fencing and vegetation removal), earthworks (including soil stripping and storage) and site levelling, pre-construction drainage;
  - in relation to Work Nos. 1, 2, 3, 4, 5 and 10, pipeline works to remove or alter the position of apparatus including mains, sewers, drains and cables;
  - landscaping and other works including the use of fencing and soil bunds to mitigate the impacts of the construction, maintenance or operation of the authorised development;

- works for the benefit or protection of land affected by the authorised development;
- temporary access tracks and improvements to the public highway to create a construction haul road to and from each construction compound;
- installation of drainage, drainage attenuation and land drainage including outfalls;
- the establishment of control barriers and setting up and management of mitigation land for birds displaced by the construction activities; and
- such other works as may be necessary for the purposes of or in connection with the construction, operation or maintenance of the authorised development and which do not give rise to any materially different effects from those assessed in the Environmental Statement (ES).

2.5.2 The Associated Development definitions adequately describe the project and the division of such works from 'The Works' integral to the project is clear.

## **2.6 KEY PLANS**

2.6.1 The Applicant submitted plans with the application documents, including the:

- Land Plans [APP-06] later updated to [REP7-009];
- Works Plans [APP-07] later updated to [REP7-010];
- Access and Rights of Way Plans [APP-08] later updated to [REP7-011];
- Site Layout Plans [APP-09] later updated to [REP1-008 and REP1-009];
- Elevations (Tunnel Long Section) [APP-010] later updated to [REP1-010];
- Crown Land Plans [APP-012] later updated to [REP7-012]; and
- Environmental Features and Heritage Designation Plans (Parts 1-3) [APP-013-APP015].

2.6.2 The evolution of these documents can be traced in the Schedule of Amendments to DCO and Plans [REP9-014].

## **2.7 THE APPLICATION AT THE CLOSE OF EXAMINATION**

2.7.1 During the Examination there were a number of changes to the project description and to relevant documentation. These included the submission of additional information as requested by the Examining Authority (ExA) in Annex G of the Rule 6 letter [PD-004], the updating of plans at the request of the ExA at the start of the Examination (for clarification) [PD-006] and later as a consequence of refinement in response to ongoing negotiations between the Applicant, Statutory Parties, Interested Parties (IPs) and ExA questions.

2.7.2 In a similar manner, various documents, including for example the Book of Reference (BoR), were updated as a consequence of ongoing

work by the Applicant in the identification of landowners and parties with rights over land [REP1-011, REP4-019, REP7-017 and REP9-012].

- 2.7.3 Of particular note, at Deadline 6 in response to the ExAs Rule 17 question, Q7 [PD-012] the Applicant submitted a change request [REP6-004] in respect of an additional field close to the original application land to provide additional foraging and roosting land for birds displaced from the construction compounds.

### **Change request**

- 2.7.4 During the Examination at the Issue Specific Hearing (ISH) on 17 November 2015 it was apparent that Natural England (NE) and the Royal Society for the Protection of Birds (RSPB) sought additional mitigation for birds displaced by the project for the duration of its construction.
- 2.7.5 In response to the ExA's second written question (PD-010, EXQ2, 42) the Applicant identified a possible change in the Order limits to capture additional land to give effect to additional mitigation agreed with NE and the RSPB [REP5-010]. A Rule 17 was issued on 7 January 2016 requesting additional information and asking whether a change to the Order limits might be required and if so how the Applicant intended to progress this within the Examination [PD-012].
- 2.7.6 The Applicant's response confirmed that amendment to the Order limits was required and made a formal change request to the ExA. Supporting documents and plans were supplied [REP6-004].
- 2.7.7 The change request included:
- An extension to the Order limits to include additional mitigation land (Field 8, plot 132); and
  - Three additional barriers to control vehicle movements to be installed on land within the original Order limits.
- 2.7.8 The Applicant stated that since only temporary possession was required over the land, Compulsory Acquisition (CA) did not apply and hence the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 were not engaged.
- 2.7.9 A draft red line amendment plan 'XX-UA006029-01' was attached indicating the barrier location and additional land (Field 8). This plan was later replaced by a corrected plan which changed the location of Gate 2 [REP6-022].
- 2.7.10 Of importance and relevance, the Applicant stated that the parties directly affected by the land were already aware of these proposals as they had been raised in ongoing negotiations on voluntary agreements. No objections were raised to this statement.
- 2.7.11 On receipt of the change request on the 15th January 2016 the ExA issued a Rule 17 to ensure all IPs were aware of the proposal and

given opportunity to comment [PD-013, Q1]. The ExA also requested a site notice be erected by the Applicant to notify the public about the proposed installation of control barriers along East Marsh Road [PD-013, Q13].

- 2.7.12 At Deadline 6a a limited number of responses were received on the change request. A concern was raised by the Environment Agency (EA) [REP6a-002] who did not object to the additional land but wished to discuss the proposed control barriers and ensure their access to flood defence assets remained unimpeded. The EA suggested the use of EA padlocks. There is no specific evidence that this matter was resolved ahead of the Examination close. However the Protective Provisions within the Recommended DCO at Schedule 10, Part 3 (24) provide protection to the EA on this point.
- 2.7.13 Mr Dale (representing Mr Finch and Mr Faulding) [REP7-002] raised the following concerns:
- That gates at locations 2 and 3 could increase fly tipping on his client's land and therefore wished to see gate 1 installed permanently.
  - That a request to not use bird scarers during construction on the mitigation land would affect crop yield.
  - Mr Dale concluded that *"It is hoped heads of terms can be agreed with the Applicant concerning the barriers, application of farmyard manure and non-use of bird scarers"*.
- 2.7.14 In response at Deadline 8 the Applicant suggested that no detailed grounds for objection had been provided and therefore that these concerns were associated with the invalid ground of quantum of compensation [REP8-009].
- 2.7.15 Mr Dale's final response at Deadline 9 was to refute the Applicant's suggestion at Deadline 8 and resubmit grounds for objection entered into Examination at an earlier date [REP9-005 and REP9-006].
- 2.7.16 Further discussion is given on this matter in Chapter 8.
- 2.7.17 A public notice was erected on site (ExA request) and no responses were received [REP7-037, page 2].
- 2.7.18 On the 1 February 2016 the ExA published its acceptance of the change request. The reasons for that acceptance are set out in the procedural decision [PD-014].
- 2.7.19 The Order limits were subsequently changed and the BoR, Statement of Reasons and Land Plans were updated by the Applicant [REP7-017, REP8-004 and REP7-009].

- 2.7.20 The ExA concludes that the accepted change request provided the required information<sup>3</sup> was subject to additional consultation, was not met with objection that should prevent its consideration and was limited in extent. As such the change was reasonably and fairly accepted within the Examination, in accordance with the principles of natural justice<sup>4</sup> and Department for Communities and Local Government (DCLG) guidance<sup>5</sup>. This removed the final outstanding concern held by the nature conservation parties.
- 2.7.21 These changes can be tracked by reference to the Examination Library (Appendix B) and each document change is also recorded (including a clear statement of each final version - '*latest*') in the Applicant's version control [REP9-015] implemented at the request of the ExA [REP5-009].

## **2.8 RELEVANT PLANNING HISTORY**

- 2.8.1 No planning applications or other decisions impinging on the proposal were identified during the Examination. Furthermore, no other nearby pipeline applications were identified during the Examination.

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<sup>3</sup> [Advice Note 16](#) - Requesting changes, July 2015

<sup>4</sup> See *Bernard Wheatcroft Ltd V Secretary of State for the Environment* (1982) 43 p and CR 233

<sup>5</sup> Guidance for the examination of applications for development consent, March 2015, DCLG

## **3 LEGAL AND POLICY CONTEXT**

### **3.1 INTRODUCTION**

- 3.1.1 This Chapter identifies the legal and policy context for the Examination of the application which was taken into account by the Examining Authority (ExA) in undertaking its Examination and in making its findings and recommendations to the Secretary of State (SoS) for Energy and Climate Change.
- 3.1.2 Matters of fact are dealt with in this Chapter, but not evidence from the Examination or the testing of the application against these policies together with the ExA's opinion and recommendations, which is provided in subsequent Chapters.

### **3.2 RELEVANT APPLICATION AND EXAMINATION DOCUMENTS**

- 3.2.1 The application is accompanied by a Planning Statement in which the Applicant considers the compliance of the project as a whole against the relevant planning policy, within the context of National Policy Statements (NPS) [APP-081].
- 3.2.2 The legal and policy context for Habitats Regulations Assessment (HRA), together with relevant factual material are found in Habitats Regulations Assessment parts 1 and 2 [APP-027 and APP-028] and Screening Opinions [APP-077].
- 3.2.3 The Local Impact Reports (LIRs) provided by the relevant two local authorities, North Lincolnshire Council (NLC) [REP2-018] and East Riding of Yorkshire Council (ERYC) [REP2-004] set out their views on relevant National Planning Policy Framework (NPPF) and local plan policies.
- 3.2.4 No questions or concerns were raised on matters of policy within the LIRs, or during the Issue Specific Hearing (ISH) on 17 November 2015.

### **3.3 PLANNING ACT 2008**

- 3.3.1 The project comprises the construction and operation of a replacement high-pressure gas transmission pipeline and associated infrastructure between the existing Above Ground Installations (AGIs) at Goxhill and Paull.
- 3.3.2 This application is for a Nationally Significant Infrastructure Project (NSIP) namely the construction of a replacement high-pressure gas transmission pipeline, because it falls within the relevant definitions under s14 of the Planning Act 2008 (PA2008).
- 3.3.3 Whilst the pipeline would be below the 40km length threshold in s14, 3(a) of the PA2008 it nonetheless falls within the definition under 3(b) because the construction of the pipeline is likely to have a significant effect on the environment. This was verified in a Screening Opinion

issued by the SoS on the 1 April 2014 ahead of the Examination [APP-077]. No concerns were raised during the Examination that the NSIP did not meet this threshold test by any Interested Party (IP).

- 3.3.4 The pipeline would operate at 70barg and would be part of a national gas infrastructure transporting approximately 20% of the UK winter gas supply to 10.8 million customers (Planning Statement, APP-081, page vii item 9 and para. 2.1.2) therefore (4) and (5) of s14 of the PA2008 are satisfied.
- 3.3.5 The Secretary of State must therefore, under s104 of the PA2008, have regard to *'any national policy statement which has effect in relation to development of the description to which the application relates'* subject to certain exceptions.
- 3.3.6 Whilst other policies, including those contained in the development plans for the area, may constitute matters that the SoS may regard as important and relevant to the decision, the primacy of the NPSs is clear (PA2008 s104(3) and NPS EN-1, paragraph 1.1.1).
- 3.3.7 S104(3) of the PA2008 requires that the SoS must decide an application for development consent in accordance with any relevant NPS, except to the extent that the Secretary of State is satisfied that (in summary):
- doing so would lead to the United Kingdom (UK) being in breach of its international obligations;
  - doing so would lead to the Secretary of State being in breach of any duty imposed on her under any enactment;
  - doing so would be unlawful under any enactment;
  - the adverse impact of the project would outweigh its benefits; or
  - that any prescribed condition for deciding the application otherwise than in accordance with the NPS would be met.
- 3.3.8 S104(2) of the PA2008 sets out the matters to which the SoS must have regard in deciding an application submitted in accordance with the PA2008. In summary, the matters set out in s104(2) include any relevant NPSs; any LIR; and any other matters the Secretary of State thinks are both important and relevant to the decision.
- 3.3.9 This report sets out the ExA's findings, conclusions and recommendations taking all of these matters fully into account and applying the approach set out in s104 PA2008.

### **3.4 NATIONAL POLICY STATEMENTS**

- 3.4.1 The ExA had regard first and foremost to the requirements of the PA2008. In relation to s104 PA2008 this included the matters in subsection (2). There are two relevant NPSs (s104 (2) (a) of the PA2008) for energy in force:
- EN1: Overarching National Policy Statement for Energy; and



- EN4: National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines.

3.4.2 These NPSs are produced by the Department for Energy and Climate Change. They came into force on 19 July 2011 and together they provide the primary policy context for this Examination. The ExA's views on their significance for this application are set out in Section 4. For further information and to view the NPSs, visit the National Infrastructure public website<sup>6</sup>.

3.4.3 The ExA has had regard to these NPSs throughout the Examination. Specific relevant NPS requirements are identified and discussed throughout the remainder of this report.

### **3.5 MARINE AND COASTAL ACCESS ACT 2009**

3.5.1 The Marine and Coastal Access Act 2009 (MCA) introduced the production of Marine Plans and designation of Marine Conservation Zones (MCZ) in the UK waters as well as establishing the Marine Management Organisation (MMO).

3.5.2 The UK Marine Policy Statement (MPS) and marine planning are dealt with below. Under the MCA the SoS for Environment, Food and Rural Affairs (Defra) has designated to date 50 MCZs around the English coast to form part of a network of Marine Protected Areas (MPA).

3.5.3 No MCZs are directly affected by this application.

3.5.4 The Applicant's draft DCO includes, at Schedule 9, a Deemed Marine Licence (DML). The project comprises a steel gas pipeline within a concrete lined tunnel running beneath the River Humber and therefore may impact the marine area.

3.5.5 Under s104(2)(aa) PA2008 the SoS must have regard to the appropriate marine policy documents and as the statutory authority representations from MMO are a material consideration.

#### **UK Marine Policy Statement**

3.5.6 The MPS was prepared and adopted for the purposes of s44 of the MCA and was published on 18 March 2011 by all the UK administrations as part of a new system of marine planning being introduced across UK seas.

3.5.7 The MPS is the framework for preparing Marine Plans and taking decisions affecting the marine environment. It contributes to the achievement of sustainable development in the UK marine area. The UK marine area includes the territorial seas and offshore area adjacent

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<sup>6</sup> National Policy Statements - <http://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/national-policy-statements/>

to the UK, which includes the area of sea designated as the UK Exclusive Economic Zone (the Renewable Energy Zone until the Exclusive Economic Zone comes into force) and the UK sector of the continental shelf. It includes any area submerged by seawater at mean high water spring tide, as well as the tidal extent (at mean high water spring tide) of rivers, estuaries and creeks.

- 3.5.8 The MPS is the framework for marine planning systems within the UK. It provides the high level policy context, within which national and sub-national Marine Plans will be developed, implemented, monitored, amended and will ensure appropriate consistency in marine planning across the UK marine area. The MPS also sets the direction for marine licensing and other relevant authorisation systems.
- 3.5.9 The MPS has provided the overarching policy context for the ExA's consideration of the application offshore works and DML.

### **East Inshore Marine Plan**

- 3.5.10 The MMO is the marine plan authority for the East Inshore Marine Plan Area which was adopted in April 2014 [map<sup>7</sup> - see area 3]. This area extends from mean high water springs out to 12 nautical miles, including inland areas such as the Broads and other waters subject to tidal influence. Full details of the plan are available from the MMOs website [MMO<sup>8</sup>].
- 3.5.11 Under s104(2)(aa) PA2008 the Secretary of State must have regard to the appropriate marine policy documents. In this case that is the UK MPS and East Inshore Marine Plan which has provided the overarching policy context for this report.

### **Applicant and MMO's agreed position**

- 3.5.12 A Statement of Common Ground (SoCG) was signed between the Applicant and MMO on 15 December 2015 [REP6-017]. This agreed that all project activities apart from the need to place caged pumps in the intertidal area for water extraction and the tunnel flooding operation were exempt from marine licencing.

## **3.6 EUROPEAN REQUIREMENTS AND RELATED UK REGULATIONS**

### **Habitats Directive (Council Directive 92/43/EEC)**

- 3.6.1 The Habitats Directive (together with the Council Directive 79/409/EEC on the conservation of wild birds (The Birds Directive<sup>9</sup>)) forms the cornerstone of Europe's nature conservation policy. It is built around

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<sup>7</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/325688/marine\\_plan\\_areas.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325688/marine_plan_areas.pdf)

<sup>8</sup> <http://mis.marinemanagement.org.uk/north-east>

<sup>9</sup> [http://ec.europa.eu/environment/nature/legislation/birdsdirective/index\\_en.htm](http://ec.europa.eu/environment/nature/legislation/birdsdirective/index_en.htm)

two pillars: the Natura 2000 network of protected sites and the strict system of species protection. The Directive protects over 1000 animals and plant species and over 200 habitat types (for example: special types of forests; meadows; wetlands; etc.), which are of European importance. It requires the designation of Special Areas of Conservation (SACs) for habitats listed on Annex I and species listed on Annex II of the Directive.

- 3.6.2 When determining this application, the SoS as the Competent Authority, must take the Habitats Directive into account. Matters to do with the Habitats Directive and its implications are addressed in Chapter 6 of this report.

### **Birds Directive (Council Directive 2009/147/EC)**

- 3.6.3 The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union. The Directive recognises that habitat loss and degradation are the most serious threats to the conservation of wild birds. It therefore places great emphasis on the protection of habitats for endangered as well as migratory species. It requires classification of areas as Special Protection Areas (SPAs) comprising all the most suitable territories for these species. Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.
- 3.6.4 The Birds Directive bans activities that directly threaten birds, such as the deliberate killing or capture of birds, the destruction of their nests and taking of their eggs, and associated activities such as trading in live or dead birds. It requires Member States to take the requisite measures to maintain the population of species of wild birds at a level which corresponds, in particular, to ecological, scientific, and cultural requirements while taking account of economic and recreational requirements.
- 3.6.5 The UK is also bound by the terms of the Convention on Wetlands of International Importance 1971 (the Ramsar Convention), resulting in the designation of Ramsar sites in the UK, which are wetlands of international importance.
- 3.6.6 These are relevant to this application because the project is proposed in an area designated as a SAC, SPA<sup>10</sup> and Ramsar site, (collectively termed 'European sites'<sup>11</sup>). These designations cover the majority of the River Humber including the inter-tidal mud flats [APP-013-15]. The adjacent farmland is also used for foraging and roosting by birds from the protected zone and some fields are 'functionally linked' as they are used by SPA birds.

<sup>10</sup> Humber Estuary Special Protected Area (SPA)

<sup>11</sup> The term European Sites in this context includes Sites of Community Importance (SCIs), Special Areas of Conservation (SACs), candidate SACs and possible SACs, Special Protection Areas (SPAs), potential SPAs, Ramsar sites, proposed Ramsar sites and any sites identified as compensatory measures for adverse effects on any of the above.

- 3.6.7 The Birds Directive and its implications have been taken into account in considering the application and these are addressed in Chapter 6 of this report.

### **Conservation and Species Regulations 2010 (as amended) the Habitats Regulations**

#### **Conservation of Habitats and Species (Amendment) Regulations 2012**

- 3.6.8 The Conservation of Habitats and Species Regulations 2010 replaced The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) in England and Wales. The Conservation of Habitats and Species Regulations 2010 (which are the principal means by which the Habitats Directive is transposed in England and Wales) update the legislation and consolidated all the many amendments which have been made to the regulations since they were first made in 1994.
- 3.6.9 The Conservation of Habitats and Species Regulations 2010 apply in the terrestrial environment and in territorial waters out to 12 nautical miles.
- 3.6.10 The Conservation of Habitats and Species (Amendment) Regulations 2012 came into force on 16 August 2012. These Regulations amend the Habitats Regulations. They place new duties on public bodies to take measures to preserve, maintain and re-establish habitat for wild birds. They also make a number of further amendments to the Habitats Regulations to ensure certain provisions of Directive 92/43/EEC (the Habitats Directive) and Directive 2009/147/EC (The Birds Directive) are transposed clearly.
- 3.6.11 These are relevant to this application because the project is proposed in an area designated as an SAC, SPA and Ramsar and therefore consideration of the effects of the proposed project on these designated sites is discussed in Chapter 6 (HRA) of this report.
- 3.6.12 As stated in EN-1, when determining this application the Secretary of State must, in accordance with the Conservation of Habitats and Species Regulations 2010, consider whether the project may have a significant effect on a European Site of nature conservation importance alone or in combination with other plans or projects. I have set out my findings and conclusions in relation to HRA in Chapter 6.

### **Water Framework Directive**

- 3.6.13 On 23 October 2000, the "*Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy*" or, in short, the EU Water Framework Directive (WFD) was adopted.

- 3.6.14 The Directive<sup>12</sup> was published) on 22 December 2000 and entered into force the same day. Some amendments have been introduced into the Directive since 2013.
- 3.6.15 The WFD expands the scope of water protection to all European Community waters and sets out clear objectives that must be achieved by specified dates. The purpose of the Directive is to establish a framework for the protection of inland surface waters (rivers and lakes), transitional waters (estuaries), coastal waters and groundwater. Twelve "*Water notes*" which intend to give an introduction and overview of key aspects of the implementation of the Water Framework Directive are available to download<sup>14</sup>.
- 3.6.16 NPS (EN-1) para. 5.15.6 states that the Secretary of State: "*should satisfy itself that a proposal has regard to the River Basin Management Plans and meets the requirements of the Water Framework Directive (including Article 4.7) and its daughter directives, including those on priority substances and groundwater*".
- 3.6.17 The Secretary of State should also consider whether appropriate requirements should be attached to any development consents or planning obligations in order to mitigate adverse effects on the water environment (NPS (EN-1) para. 5.15.7).
- 3.6.18 NPS (EN-1) requires the Secretary of State to consider whether the mitigation measures put forward by the Applicant for the construction and operation of the development are acceptable. It also recognises that the impact on local water resources can be minimised through effective planning and design (para. 5.15.8). If appropriate, the Secretary of State should consider whether any Requirements should be attached to development consent and/or development consent obligations.
- 3.6.19 The project has potential to effect hydrology and flood risk as discussed in section Chapter 5 of this report.

### **3.7 OTHER LEGAL AND POLICY PROVISIONS**

#### **United Nations Environment Programme Convention on Biological Diversity 1992**

- 3.7.1 As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA has had regard to this Convention in its consideration of the likely impacts of the project and appropriate objectives and mechanisms for mitigation and compensation. The Convention is dedicated to promoting sustainable development.

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<sup>12</sup> <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32000L0060>

<sup>13</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:02000L0060-20090625:EN:NOT>

<sup>14</sup> [http://ec.europa.eu/environment/water/participation/notes\\_en.htm](http://ec.europa.eu/environment/water/participation/notes_en.htm)

- 3.7.2 In particular the ExA finds that compliance with the UK provisions on environmental impact assessment and transboundary matters, referred to below, satisfies, with regard to impacts on biodiversity, the requirements of Article 14.
- 3.7.3 The UK Government ratified the Convention in June 1994. Responsibility for the UK contribution to the Convention lies with the Department for Environment, Food and Rural Affairs who promote the integration of biodiversity into policies, projects and programmes within Government and beyond.
- 3.7.4 This is of relevance to environmental impact assessment and HRA matters as discussed in Chapters 4 and 5.

#### **The Wildlife and Countryside Act 1981 (as amended)**

- 3.7.5 The Wildlife and Countryside Act 1981 is the primary legislation which protects animals, plants, and certain habitats in the UK. The Act provides for the notification and confirmation of Sites of Special Scientific Interest (SSSIs). These sites are identified for their flora, fauna, geological or physiographical features by the countryside conservation bodies (in England, Natural England). The Act also contains measures for the protection and management of SSSIs.
- 3.7.6 The Act is divided into four parts: Part I relating to the protection of wildlife, Part II relating to designation of SSSIs and other designations, Part III on public rights of way and Part IV on miscellaneous provisions. If a species protected under Part I is likely to be affected by development, a protected species license will be required from Natural England (NE).
- 3.7.7 This has relevance to consideration of impacts on SSSIs and on protected species and habitats; the potential effects on which are considered in Chapter 5.

#### **Protection of Badgers Act 1992**

- 3.7.8 Under the Protection of Badgers Act (1992) it is an offence to capture, kill or injure a badger, to damage or destroy a sett, to block access to a sett or to disturb a badger in its sett. It is also an offence to treat a badger cruelly, to deliberately send or intentionally allow a dog into a sett or to bait or dig for badgers. Interference with a badger sett should be avoided but if this is not possible then developers must apply to NE for a licence.
- 3.7.9 The effect of the project on badgers and their setts is considered in Chapter 5.

#### **Natural Environment and Rural Communities Act 2006**

- 3.7.10 The Natural Environment and Rural Communities Act (NERC) made provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites, SSSIs, National Parks

and the Broads. It includes a duty that every public body must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the purpose of biodiversity. In complying with this, regard must be given to the United Nations Environment Programme Convention on Biological Diversity of 1992.

- 3.7.11 This is of relevance to biodiversity, biological environment and ecology and landscape matters in the project.

### **3.8 TRANSBOUNDARY EFFECTS**

- 3.8.1 Under Regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (EIA Regulations), the Secretary of State for Communities and Local Government screened the project for potential transboundary effects twice<sup>15</sup>. First on 22 August 2014, following the Applicants request for a Scoping Opinion and again on 9 June 2015, following acceptance of the application documents.
- 3.8.2 Under Regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (EIA Regulations) and on the basis of the information available from the Applicant, the Secretary of State is of the view that the project would be unlikely to have significant effects on the environment in another European Economic Area (EEA) State.
- 3.8.3 In reaching this view the Secretary of State has applied the precautionary approach (as explained in the Planning Inspectorate Advice Note 12<sup>16</sup> Transboundary Impacts Consultation).
- 3.8.4 The ExA is satisfied that with regard to regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, all transboundary biodiversity matters have been addressed and there are no matters outstanding that would argue against the Order being confirmed.

### **3.9 LISTED BUILDINGS, CONSERVATION AREAS AND SCHEDULED MONUMENTS**

- 3.9.1 When deciding an application which affects a listed building or its setting, a conservation area, or a scheduled monument or its setting the decision-maker must have regard to the duties set out in Regulation 3 of The Infrastructure Planning (Decisions) Regulations 2010<sup>17</sup>.
- 3.9.2 Matters regarding historic heritage are discussed in Chapter 5.

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<sup>15</sup> <http://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN060004/2.%20Post-Submission/EIA/Regulation%2024/Regulation%2024%20Transboundary%20Screening%20document.doc.pdf>

<sup>16</sup> <http://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2013/04/Advice-note-12v2.pdf>

<sup>17</sup> <http://www.legislation.gov.uk/uksi/2010/305/contents/made>

### **3.10 NATIONAL PLANNING POLICY FRAMEWORK**

- 3.10.1 The NPPF sets out the Government's planning policies for England and how these are expected to be applied.
- 3.10.2 Section 5.1 of the Planning Statement [APP-081] identifies from paragraph 15 of the NPPF 12 core planning principles of relevance to the project.
- 3.10.3 The NPPF states in paragraph 3 that it: *"...does not contain specific policies for nationally significant infrastructure projects for which particular considerations apply. These are determined in accordance with the decision-making framework set out in the Planning Act 2008 and relevant national policy statements for major infrastructure, as well as any other matters that are considered both important and relevant (which may include the NPPF). National policy statements form part of the overall framework of national planning policy, and are a material consideration in decisions on planning applications"*.
- 3.10.4 NPPF policies which are important and relevant to this application in certain parts are highlighted in Chapter 5.

### **3.11 LOCAL IMPACT REPORTS**

- 3.11.1 S104 and 105 of PA2008 state that in deciding the application the Secretary of State must have regard to any LIR within the meaning of s60(3).
- 3.11.2 There is a requirement under s60(2) of PA2008 to give notice in writing to each local authority falling under s56A inviting them to submit LIRs. This notice was given on 22 July 2015 [PD-004].
- 3.11.3 LIRs have been submitted by East Riding of Yorkshire (ERYC) [REP2-004] and North Lincolnshire Councils (NLC) [REP2-018]. The principal matters raised in the LIR[s] are;
- the construction impacts on the users of the local highway network;
  - noise impacts; and
  - effects on cultural heritage.
- 3.11.4 Each of these matters is considered in detail in Chapter 4.

### **3.12 THE DEVELOPMENT PLAN**

- 3.12.1 The application site is located within the boundaries of the local authorities of North Lincolnshire on the southern side of the Humber Estuary (Goxhill AGI) and within the East Riding of Yorkshire on the northern side of the Humber Estuary (Paull AGI). The proposed pipeline would cross under the River Humber in a new tunnel and connect to existing gas pipeline infrastructure at Goxhill and Paull AGIs.



### **North Lincolnshire Council**

- 3.12.2 The development plan for NLC comprises the North Lincolnshire Core Strategy (adopted 2011) and those policies in the North Lincolnshire Local Plan (adopted 2003) which were saved by the direction of the Secretary of State and which have not been superseded by the Core Strategy.

### **East Riding of Yorkshire Council**

- 3.12.3 The Proposed Submission Strategy Document of the emerging East Riding Local Plan has been submitted to the Planning Inspectorate for the purposes of 'Examination in Public'. Until the East Riding Local Plan is adopted, four Local Plans continue to form the basis of the Development Plan in the East Riding area. These are:

- Beverley Borough Local Plan (adopted June 1996);
- Boothferry Borough Local Plan (adopted April 1999);
- East Yorkshire Borough Local Plan (adopted June 1997); and
- Holderness District Wide Local Plan (adopted April 1999)

- 3.12.4 By the close of the Examination the new Local Plan was still undergoing its Examination in public with the Inspectors Report published by NLC on 16 January 2016.

### **NPS and Local Plans**

- 3.12.5 NPS EN-1 at para 4.1.5 acknowledges that whilst the NPS acts as the 'benchmark' for what is and is not an acceptable nationally significant energy development, 'other matters' that may be considered important and relevant to the ExAs decision making may include the Development Plan Documents, or other documents in the Local Development Framework.
- 3.12.6 Whilst in the event of a conflict in policy the NPS prevails in this Examination (as discussed later in this report) the LIRs of each council accepted the summary of Local Plan policies provided with the ES [APP-030- APP-080] and neither local plan contains particular local policies that require specific testing against.

## **3.13 THE SECRETARY OF STATE'S POWERS TO MAKE A DCO**

- 3.13.1 The ExA was aware of the need to consider whether changes to the application during examination meant that the application had varied to the point where it was a different application and whether the Secretary of State would have power therefore under s114 of PA2008 to make a DCO having regards to the development consent applied for.

- 3.13.2 The Secretary of State will be aware of the March 2015 updated PA2008: Guidance for the Examination of applications for development consent, paragraphs 109 to 115<sup>18</sup>, which provides guidance in relation to changing an application post acceptance. The view expressed by the Government during the passage of the Localism Act that s114(1) places the responsibility for making a DCO on the decision-maker, and does not limit the terms in which it can be made.
- 3.13.3 A change request was made during the Examination and a procedural decision was made to accept that [PD-014]. The ExA's decision was made on the basis of the latest guidance and without breaching principles of fairness and reasonableness. Details of the change are set out in Chapter 2. The ExA believes that the application is not so different that it could be considered a new project and there is no impediment to the Secretary of State making a decision on the DCO.

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418015/examinations\\_guidance\\_final\\_for\\_publication.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418015/examinations_guidance_final_for_publication.pdf)

## **4 FINDINGS AND CONCLUSIONS IN RELATION TO THE MAIN ISSUES, THE PRINCIPLE OF THE DEVELOPMENT AND RELEVANT POLICY**

### **4.1 MAIN ISSUES IN THE EXAMINATION**

- 4.1.1 The Examining Authority's (ExA's) initial assessment of Principal Issues (PIs) for the Examination, as required under s88 of the [Planning Act 2008](#)<sup>19</sup> (as amended) (PA2008) and Rule 5 of The Infrastructure Planning (Examination Procedure) Rules 2010, was made prior to the Preliminary Meeting (PM).
- 4.1.2 The list was created having regard to the application documents [APP-01 to APP-090], the EN-1 and EN-4, other relevant policies set out in Chapter 3, relevant [DCLG Guidance](#)<sup>20</sup> and Relevant Representations (RRs) submitted by Interested Parties (IPs) [RR-001 to RR-030].
- 4.1.3 The initial assessment of principal issues was distributed to all Interested Parties (IPs) as shown in Annex C of the Rule 6 letter dated 22 July 2015 [PD-004]. This made it clear that it was not a comprehensive or exclusive list and that regard would be had to all important and relevant matters in reaching a recommendation after the conclusion of the Examination.
- 4.1.4 The PIs - as set out in the Rule 6 letter are as follows;
- Construction and Project Delivery;
  - Biodiversity, Ecology and Natural Environment;
  - Noise, Disturbance and Vibration;
  - Transportation and Traffic;
  - Debris, Waste and Contamination;
  - Historic Environment;
  - Design, Landscape and Visual Impact;
  - Socio Economic Effects;
  - Draft DCO; and
  - Compulsory Acquisition.
- 4.1.5 In their relevant representation dated 26 June 2015 [RR-010], the Environment Agency (EA) expressed concern over hydro-geological impacts and raised the need for additional information for example, a pump test [RR-010]. As a consequence the Rule 6 letter issued by the ExA contained a procedural decision, and at Annex G requested submission of additional information after the PM by Deadline 1 of the Examination (23 September 2015 [PD-004]).

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<sup>19</sup> <http://www.legislation.gov.uk/ukpga/2008/29/contents>

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418015/examinations\\_guidance\\_final\\_for\\_publication.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418015/examinations_guidance_final_for_publication.pdf)

- 4.1.6 Ahead of the PM the EA submitted a further representation stating that they would not be attending the PM and asking that items be added to the agenda at the Issue Specific Hearing (ISH). They also requested that additional time be set aside in the Examination timetable for discussing hydro-geology [AS-005].
- 4.1.7 During the PM the ExA therefore acknowledged the EA's representations and checked on this matter with the Applicant. The Applicant explained that the outstanding issues with the EA had been narrowed, that good progress was being made and that they felt it unlikely that additional time within the Examination would be required. The ExA took all of this into account when publishing the Examination timetable.
- 4.1.8 At the PM, the ExA heard representations from a Mr Dale of DDM Agriculture who stated he represented a number of parties affected by the project; Councillor David Wells who expressed a wish to speak on transport matters; and Mr and Mrs Burn [EV-001]. None of those parties, nor anyone else present, raised any new PIs beyond those defined in the Rule 6 letter and summarised above.
- 4.1.9 It was explained at the PM that the PIs were broadly defined and that the list was not intended to be exhaustive or definitive. The initial assessment of PIs would not constrain the Examination of other important and relevant matters.
- 4.1.10 Following the PM, the Examination timetable and content of the ISH agenda were issued reflecting the EAs representation, and the first item of the PIs was consequently broken out into three topics including the two requested by the EA:
- Construction – how the project will be planned and executed and its effects;
  - Flood risk and drainage; and
  - Hydro-geology
- 4.1.11 In addition 'Navigation' was added by the ExA because of a point raised by the Corporation of Trinity House [RR-006]. This did not become a matter of significance as the Examination progressed.
- 4.1.12 Full details of the final Examination timetable and the refinement of the PIs are reflected in the Examination timetable issued following the PM as part of the Rule 8 letter [PD-005].
- 4.1.13 The ExA had regard to all the points made in the representations at the PM, the RRs (published on 14 July 2015) and the EAs two representations ahead of the PM. Those comments, as far as they are relevant, have been taken into account during the Examination. The additional matters raised were considered and examined by the ExA under the main topic headings identified within the Rule 8 letter in accordance with the legal and policy background applicable to such matters.

- 4.1.14 The ExA's findings and conclusions in respect of most of these issues are set out in Chapter 5 of this report, except for matters relating to Compulsory Acquisition (CA) (including a discussion of temporary powers) or the draft Development Consent Order (DCO) which contained in Chapters 8 and 9. All representations, even if not explicitly mentioned, have been fully considered in reaching the conclusions set out.

## **4.2 ISSUES ARISING FROM WRITTEN SUBMISSIONS**

- 4.2.1 A number of issues were raised in relevant and written representations, nearly all of which fell within the categories of issues identified in the ExA's initial assessment of principal issues.
- 4.2.2 The EA submitted a relevant representation on 26 June 2015 and raised a number of concerns. In particular in respect of the potential effects of the project on groundwater. They stated "*We have very serious concerns that the project is not currently supported by adequate information about its impacts on groundwater*" thereby highlighting the need for comprehensive pump testing and identifying that the existing groundwater resource was fully committed [RR-010].
- 4.2.3 As a consequence the ExA issued a request for further information ahead of the PM in Annex G of the Rule 6 letter [PD-004]. This is discussed further in Chapter 5.
- 4.2.4 RRs were received from two local residents regarding the effects of the project on the local highway network and their day to day lives in terms of noise and disruption for the 36 month construction period [RR-017 and RR-021]. Goxhill Parish Council [RR-013] and Barton on Humber Town Council [RR-002] raised similar concerns with the former suggesting later on in the Examination at Deadline 4 [REP4-044] that two-way traffic along Chapel Field Road with a longer bypass exiting onto the public highway would provide a better solution. This view was supported by a Mr J Teasdale [RR-017], and by local Councillor David Wells and his two councillor colleagues [RR-003 and RR-005].
- 4.2.5 Goxhill Parish Council acknowledged the Applicant's proposed one way traffic system beneficially avoided the centre of the village [RR-014]. The methodology for the selection of the proposed haul route, detailed exploration of the various issues at the ISH and Applicant's final proposal of mitigation is discussed in detail in Chapter 5.
- 4.2.6 During the Examination further representations were received either directly, or via Mr Dale of DDM Agriculture who represented parties with land affected, or living close to the proposed haul route near Soff Lane. Traffic and transport impacts are discussed further in Chapter 5 and matters related to the exercise of compulsory powers at Chapter 8. A CA hearing was held on 18 November 2015 and Mr Dale participated.

- 4.2.7 Public Health England reviewed the project and confirmed they were satisfied with the approach taken in preparing the Environmental Statement (ES) and the conclusions drawn. They did not participate further in the Examination [RR-028].
- 4.2.8 The Office of Rail and Road [RR-027] acknowledged that CAPITA were in discussion with Network Rail around the structural integrity of the railway bridge at Ferry Road and the relevant local authorities to ensure the road and rail network remains safe. This is discussed further at Chapter 5.
- 4.2.9 Highways England registered as an IP but in response to the ExAs first round of written questions confirmed there would be no material impact on the strategic road network [REP3-003].
- 4.2.10 Natural England (NE), the Royal Society for the Protection of Birds (RSPB), Yorkshire Wildlife Trust (YWT) and Lincolnshire Wildlife Trust (LWT) raised concerns at the potential impact of the construction phase on the Humber Estuary which is a Special Area of Conservation (SAC), Special Protected Area (SPA<sup>21</sup>) and Ramsar site. In particular there were concerns over the potential disturbance to SPA/Ramsar birds both within the site and in adjacent fields from noise and the activities associated with the pumps used for tunnel flooding [REP2-017, REP2-005 and REP2-006, REP2-011 and REP2-008]. NE, YWT and LWT also raised the potential for construction to have an adverse impact on badgers. Badgers are a protected species under the protection of Badgers Act 1992<sup>22</sup>.
- 4.2.11 NE, the EA, YWT and LWT together with Mr G Carr [RR-012] raised concerns over the impact of the project on water voles, also a protected species<sup>23</sup>. YWT highlighted concern at the impact of the project on bird populations and visitors to their Paull Holme Strays Nature Reserve. Each of these issues was examined and is discussed in further detail in Chapter 5.
- 4.2.12 Mr G J Winchester [RR-011] objected to compulsory purchase of his land but this was resolved during the Examination. Matters involving CA are discussed in detail in Chapter 9.
- 4.2.13 Mr and Mrs Burn raised concern at the impact on those living closest to the construction sites [RR-018 and RR-022]. They participated in the Examination and their concerns were responded to by the Applicant as the Examination progressed. These issues are discussed in detail in Chapter 5.
- 4.2.14 The Corporation of Trinity House submitted a relevant representation concerned at the potential impact of the project on navigation within

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<sup>21</sup> Humber Estuary Special Protected Area (SPA)

<sup>22</sup> <http://www.legislation.gov.uk/ukpga/1992/51/contents>

<sup>23</sup> Wildlife and Countryside Act 1981

the River Humber [RR-006]. This was added to the PIs within the ExA's Rule 8 letter [PD-005] to discuss at the ISH. The proposed works involve tunnelling beneath the river and Trinity House was not concerned at the temporary pump works in the intertidal area beyond provision of navigation lights [REP2-003]. They did not participate further in the Examination.

- 4.2.15 Historic England submitted a relevant representation and participated in the Examination [RR-016]. Cultural heritage is discussed further in Chapter 5.
- 4.2.16 At Deadline 2 written representations were received from the EA [REP2-015], NE [REP2-017], RSPB [REP2-005], YWT [REP2-011], DDM Agriculture [REP2-009], Royal Mail Group [REP2-010]. Most of the points raised had already been reflected in RRs. These issues are discussed where relevant in detail in Chapter 5.
- 4.2.17 The Health and Safety Executive (HSE) had been consulted during the consultation stage but there was no clear evidence of their opinion on the project. This matter was therefore raised during the November ISHs by the ExA and as an action following that the Applicant submitted a '*HSE/MAH Consultation Note*' [REP5-011]. A letter dated 30 October 2014 within that report confirms that HSE were consulted and aware of the project details.
- 4.2.18 The HSE raised the need for the Applicant to comply with general health and safety legislation but had no specific concerns and did not participate further in the Examination. The Applicant's action note confirmed that the Control of Major Accident Hazards 1999 (COMAH) does not apply because no gas storage is undertaken, purely gas transport.
- 4.2.19 All representations received informed and shaped the Examination timetable, hearings and the ExA questions. At the hearings before closing each topic of discussion an opportunity was provided by the ExA for new issues to be raised but none were [EV-008 to EV-0013].

### **4.3 ISSUES ARISING IN LOCAL IMPACT REPORTS**

- 4.3.1 The Local Impact Reports (LIR) for ERYC and NLC were submitted at Deadline 2 [REP2-004 and REP2-018].
- 4.3.2 The ExA observed that the Applicants decision to drive the tunnel from the Goxhill side of the River Humber (south) would result in the larger site compound being located at the Goxhill Above Ground Installation (AGI) along with the majority of vehicle movements.
- 4.3.3 Most of the matters raised in the submitted LIRs coincide with the ExAs initial assessment of principal issues. The main impact issues are identified in the LIRs were:
  - highways and transportation - particularly impacts at Goxhill;
  - noise and vibration - impacts on local people and its control; and

- heritage assets - potential impact and need for trial trenching (Goxhill and Soff Lane diversion).

4.3.4 The LIRs were comprehensive and covered the full range of potential effects. ERYC concluded that *'There are no local policy objections to the principle of development subject to appropriate consideration of detailed matters'*. They recognised there would only be minor external above ground works that would be screened and landscaped and that *'impacts on the landscape, highway safety, heritage assets, residential amenity, ecology, drainage, flood risk, groundwater protection, coastal erosion and public rights of way have all been thoroughly considered in the submitted application'* [REP2-004].

4.3.5 NLC concluded that *'The most significant impacts from the River Humber Gas Pipeline Replacement Project on the North Lincolnshire Council area are the construction impacts on the users of the local highway network, noise impacts, and those associated with Cultural Heritage'* [REP2-018]. They expressed a preference for a permanent diversion at Soff Lane as a legacy benefit; suggested use of a different noise parameter for the control of noise; sought an assessment of visual impacts of the bypass on Goxhill Medieval Hall (Grade I listed); and additional trial trenching information to assess the impact on cultural heritage.

4.3.6 The Applicant undertook additional trial trenching during the Examination and continued to work with both local authorities on matters of cultural heritage and transport [REP7-038]. NLC also participated in the ISHs on 17 and 18 November 2015 [EV-008]. These matters are discussed further in Chapter 5.

4.3.7 NLC supported Cllr David Wells and Goxhill Parish Council in their desire to seek an alternative to the use of Ferry Road for the inbound haul route [EV-009]. This matter was discussed at the November 2015 hearings and is reported in detail in Chapter 5.

4.3.8 The ExA has had regard to all the matters raised by the LIRs and these have been further explored and considered during the course of the Examination as will be reported within the following Chapters.

#### **4.4 CONFORMITY WITH THE DEVELOPMENT PLAN POLICIES**

4.4.1 In NLCs LIR [REP2-018] it was confirmed that the application documents set out the relevant development Plan Policies for the project in the North Lincolnshire administrative area [REP2-018, para 6.8]. Under sections 7 to 13 of that report NLC consider the application of their local policies against the proposed NSIP project. Each topic and NLC's consideration is summarised below:

- Section 7: Impacts: Landscape and Visual - *"It is therefore considered that the project will primarily have a localised visual impact and any impact will be over a temporary period of time"*.
- Section 8: Impacts: Highways and Transportation - *"The Local Planning Authority's preference is for a permanent access road to*



*bypass the pinch point in the village and provide a permanent beneficial legacy for the residents of Goxhill".*

- Section 9: Impacts: Public Rights of Way (PROW) - *"there is likely to be a temporary loss of amenity for users due to proximity of works resulting in temporary minor negative effects with users experiencing this impact for a short duration. Once operational there will be no effect on the PROW's".*
- Section 10: Impacts: Noise and Vibration - *"it is not unreasonable to consider that noise limit criteria and mitigation should include consideration of established LA<sub>max</sub><sup>24</sup> levels that are known to have significant adverse impacts".*
- Section 11: Impacts: Air Quality - *"The air quality in the area will not be adversely affected by construction or vehicular movements. It is also acknowledged that the dust impacts in tables 5.6 and 5.7 of the Dust Risk Assessment will be adequately mitigated by the measures listed in Table 5.10 provided they are strictly adhered to".*
- Section 12: Impacts: Ecology - *"the Council considers the overall effect to be neutral or minor positive. However as Competent Authority, the Planning Inspectorate will need to determine whether or not the project will have a likely significant effect on the Humber Estuary SAC, SPA or Ramsar site, either alone or in combination with other plans or projects".*
- Section 13: Impacts: Historic Environment - *"Until the trial trenching on both the Goxhill site and Soff Lane Diversion is completed, there is insufficient information to agree the mitigation proposals. In the event that trial trenching indicates that remains of national significance would be harmed by the development, mitigation to conserve that significance may require in situ preservation, avoiding any damage to remains and may thus require redesign of the site layout."*

4.4.2 NLC then summarise that the NSIP meets local Development Policy save in relation to the control of traffic (the desire for a permanent 'legacy' bypass), establishing noise control parameters (based on LA<sub>eq</sub><sup>25</sup> over shorter time periods) and further archaeological trenching to agree the value of cultural heritage and thereby establish direct and indirect impacts. Each of these matters developed during the Examination for example, by agreement between NLC and the Applicant the trial trenching was complete and reported on at Deadline 7. Further details on these matters are provided in Chapter 5.

4.4.3 ERYCs LIR [REP2-004] identifies the relevant Development Plan policies at 5.1. Within the LIR, ERYC's Highways expert recommended the ExA consider replacement of Requirement 15 of the draft DCO with three separate requirements. Ultimately NLC signed a Statement of Common Ground (SoCG) with the Applicant on highways matters

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<sup>24</sup> The maximum A - weighted sound pressure level recorded over the period stated

<sup>25</sup> The notional steady sound level over a stated period of time

[REP7-026]. This is discussed further in Chapters 5 and Chapter 9 (DCO).

- 4.4.4 ERYC suggested an alternative method of dealing with archaeological investigations on the north bank using '*Strip, Map and Sample*'. This was resolved during examination when ERYC signed a SoCG to confirm their agreement with the Applicants approach to further work and archaeological mitigation [REP2-037]. This particular point is therefore not discussed further. ERYC's LIR concludes that '*There are no local policy objections to the principle of development subject to appropriate consideration of detailed matters*'.
- 4.4.5 NLC and Heritage England agreed with the Applicant that additional trial trenching could be undertaken during the Examination. That work was completed after crops had been harvested and a supplementary report and Written Scheme of Investigation (WSI) was submitted at Deadline 7 [REP7-040] and a SoCG was subsequently signed between the Applicant and NLC [REP7-025]. Other issues around the trial trenching did arise and these matters are discussed in detail in Chapter 5.
- 4.4.6 Neither local planning authority raised any local policy based objections to the project. The ExA therefore did not explore such matters during examination, nor do they appear further within this report.

## **4.5 THE PRINCIPLE OF AND NEED FOR THE DEVELOPMENT**

### **The Principle of the Development**

- 4.5.1 The project comprises a replacement gas pipeline of approximately 6km in length and up to 1050mm diameter laid beneath the River Humber within a new concrete lined tunnel approximately 5.03km in length of internal diameter up to 4m. At each end the pipeline would be connected to the existing AGIs using approximately 120m of onshore pipeline at Goxhill and 400m at Paull.
- 4.5.2 To facilitate these works the development includes the establishment of two temporary works compounds either side of the river, temporary accesses and the erection of small equipment kiosks and below ground cathodic protection. The pipeline is designed to have a minimum operational life of 40 years and the tunnel a minimum design life of 100 years.
- 4.5.3 The works are required because the existing pipeline crossing the River Humber was laid in a 4m deep trench (in 1984) set within the seabed and is becoming exposed due to erosion. Surveys completed in 2008 identified the problem, in 2010-2011 and again in 2013 remedial works were undertaken and further monitoring surveys have since been undertaken.
- 4.5.4 A detailed assessment of the condition and review of the options for remedial works was commissioned in 2010 from Associated British

Ports, Marine Environmental Research (ABP Mer) [APP-085, section 4.0]. The temporary repairs undertaken in 2010 were assessed as likely to be effective until about 2020 therefore requiring a permanent solution to meet licence obligations and safeguard network supply.

- 4.5.5 Should the crossing need to be taken out of service the Applicant says that entry capacities would be reduced to less than 50% of current levels south of the Humber Estuary resulting in the need to curtail gas supplies [APP-085, section 6.0]. This could reduce the available supply capacity by between 12.2%-17.2% [APP-085, para 2.4 and para 4.1].
- 4.5.6 The Applicant's position is that the implementation of the project is essential to meet its licence obligations and to ensure the security of supply in the transport of gas to users throughout the UK [APP-085, section 6.0].
- 4.5.7 National Grid Gas have a duty (imposed by licence) to develop and maintain an efficient and economical pipeline system for the conveyance of gas [APP-085, section 3.0].

### **The Need for the Development**

- 4.5.8 The Overarching National Policy Statement (NPS) for Energy (EN-1) recognises that the UK is highly dependent on natural gas for domestic premises (largely for space heating), for commercial electricity generation and across business (EN-1, para 3.8.1).
- 4.5.9 It also identifies and supports the need for the UK's gas supply infrastructure to be sufficient to meet peak demand when in winter season daily use nearly doubles (EN-1, para 3.8.6).
- 4.5.10 EN-1, 3.8.20 states "*Gas is the cleanest and most reliable fossil fuel. It is likely to continue to be a central part of GB's energy mix during the transition to a low carbon economy.*"
- 4.5.11 Guidance for IPC<sup>26</sup> decision making on the question of need is set out at in EN-1 at section 3.1 stating that applications should be assessed '*on the basis that the Government has demonstrated that there is a need for those types of infrastructure*' (3.1.3) and that '*The IPC should give substantial weight to the contribution which projects would make towards satisfying this need...*' (3.1.4)
- 4.5.12 EN-4 recognises "*the efficient import, storage and transmission of natural gas and oil products is crucial to meeting our energy needs during the transition to a low carbon economy*" (para 1.1.1) and in

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<sup>26</sup> The Infrastructure Planning Commission (IPC) was set up under PA2008 to examine National Significant Infrastructure Projects. The IPC was abolished by the Localism Act 2011 and its decision making powers were transferred in all cases to the relevant Secretary of State. A new Infrastructure Planning Unit within the Planning Inspectorate is (are) now appointed on behalf of the relevant Secretary of State (SoS) to examine DCO applications and report to the S of S with their findings. This person(s) is called the Examining Authority (ExA).

connection with the Government support of the need for new energy infrastructure states that *"the IPC (ExA) should act on the basis that need for the infrastructure covered by this NPS has been demonstrated"*.

- 4.5.13 The Applicant provided a document setting out the 'Need Case' as part of the DCO application [APP-085].
- 4.5.14 The financial and technical viability of the proposed project is assessed in Chapter 8.
- 4.5.15 During the Examination no IPs questioned the need case, or the financial and technical viability of the project.
- 4.5.16 The ExA therefore notes that there is a substantial weight of policy with a presumption in favour of granting consent. This will be discussed in more detail in Chapter 7 where the ExA's examination of the Principle Issues and their testing against the relevant NPSs (Chapter 5) are drawn together to reach a conclusion on the case for development consent.

#### **4.6 CONFORMITY WITH NATIONAL POLICY STATEMENTS, MARINE POLICY STATEMENT AND MARINE PLANS AND OTHER KEY POLICY STATEMENTS**

- 4.6.1 The statutory framework for deciding applications for development consent under the Planning Act is set out in s104(3) PA2008. The Act requires that an application for development consent should be decided in accordance with the relevant NPS, subject to the exceptions set out in subsections (4)-(8). Subsections (4) to (8) PA2008 include where:
  - such a determination would lead to the UK being in breach of its international obligations.
  - such a determination would lead the Secretary of State to be in breach of any duty imposed on the Secretary of State by or under any enactment.
  - the adverse impact of the project would outweigh its benefits.
  - any condition prescribed for deciding an application otherwise than in accordance with a NPS is met.

- 4.6.2 As explained in Chapter 3 of this report, the relevant energy NPSs are EN-1 and EN-4.

##### **National Policy Statement EN-1**

- 4.6.3 EN-1 sets out the Government's policy for the transition to a low carbon economy but recognises two main securities of supply challenges during this process: the need for increasing reliance on the importance of oil and gas and the requirement for substantial private sector infrastructure investment (para 2.2.25). The intention of EN-1 is therefore *'to provide a robust planning framework to facilitate private sector investment'* (para 2.2.26).

- 4.6.4 The Government expects industry to bring forward relevant projects and technologies within the strategic framework of energy planning and as set out above states that the IPC (ExA) should consider the Government has demonstrated the need case.
- 4.6.5 Electricity meets a significant proportion of our overall energy needs and its use is forecast to increase towards 2050 (para 3.3.1). Gas is a significant energy source contributing towards this.
- 4.6.6 EN-1 section 4 sets out the general policies in accordance with which applications relating to energy infrastructure are to be decided requiring that an ExA should start with a presumption in favour of granting consent to applications for energy NSIPs (4.1.2). However when considering any project the ExA must weigh up its adverse impacts against its benefits (4.1.3). These include taking into account environmental, social and economic benefits and adverse impacts, at national, regional and local levels including the content of LIRs (4.1.4).
- 4.6.7 The general principles of assessment set out in EN-1 relevant to the project relate to environmental statements, habitats and species regulations, consideration of alternatives, good design, climate change adaption, pollution control and other regulatory regimes, safety, health and national security.
- 4.6.8 The Applicant has produced a report to inform the Habitats Regulation Assessment. The potentially significant effects of the project have been assessed alone, as well as in combination with other relevant plans and projects, and mitigation measures are identified where appropriate. The assessment concludes that the project would not have an adverse effect on the integrity of any European Sites of nature conservation importance. This is discussed further in Chapter 6 which is dedicated to HRA matters.
- 4.6.9 The ES includes information about the main alternatives that have been studied. The main reasons for the Applicant's choices are set out in the ES, Design Iterations and Alternatives Considered [APP-032].
- 4.6.10 In summary the consultation work on alternatives included [APP-022]:
- Non Statutory Strategic Options Consultation, December 2012 to January 2013;
  - Non Statutory Pre Consultation Engagement, December 2012 to January 2013;
  - Non Statutory Stage 1 Consultation, December 2012 to January 2013;
  - Stage 2, Statutory Consultation - September to October 2014;
  - Stage 2, Section 42 Consultation with Prescribed Consultees, Local Authorities, Persons with Interest in Land (PILs) and Non Prescribed Consultees;
  - Stage 2, Section 47 Consultation with the Local Community;
  - Stage 2, EIA Consultation;

- Supplementary Consultation (Non Statutory), December 2014 to January 2015;
  - Supplementary Consultation with Specific Consultees and PILs, December 2014 to January 2015;
  - Supplementary Consultation with the Local Community; and
  - Consultation with PILs identified during Stage 2.
- 4.6.11 The work engaged key stakeholders: ABP, NE, the EA, Marine Management Organisation (MMO), NLC and ERYC, Historic England, PILs and the public. This led to the final decision to utilise a short and direct tunnel crossing of the River Humber as this would have the least impact. The preferred engineering and environmental route was therefore Route Option C1 [APP-035].
- 4.6.12 Both Local Planning Authorities were engaged in pre-application consultation with the Applicant and each confirmed in their Adequacy of Consultation Response that they were satisfied with that work (ERYC [AoC-003] and NLC [AoC-004]).
- 4.6.13 Both authorities participated in the Examination with NLC attending the hearings. Neither authority, nor any other IPs raised any concern over the adequacy of consultation. This matter is therefore not considered any further by the ExA in this report.
- 4.6.14 The design evolution of the project is set out in the ES, Design Iterations and Alternatives Considered [APP-032]. The Applicant contends that the project demonstrates compliance with the principles of good design through routing, siting, design, and the sensitive use of materials in order to minimise, or to mitigate adverse impacts [APP-081 para 4.3.25-29]. The Applicant's design of assets/components and their resilience to climate change are outlined in the Planning Statement [APP-081, para 4.33.30-32]. The Applicant submits that *'owing to the temporary nature of the (construction) works the predicted effects of climate change on flood risk will not impact upon the scheme.'* Thereby the Applicant suggests that its assessment is in accordance with section 4.8 of EN-1.
- 4.6.15 During the Examination the EA raised concern about the resilience of above ground equipment kiosks, flood risk to site workers during construction and the risk of a breach of the flood defences from tunnel collapse [RR-010]. It also became apparent that there is a River Humber Emergency Planning Unit whose opinion the EA recommended should be sought by the ExA [REP3-002]. That was done and these matters are discussed further in Chapter 5.
- 4.6.16 Turning to pollution control, EN-1, para 4.10.3, requires the decision maker to focus on whether the development itself is an acceptable use of the land, and on the impacts of that use and to work on the assumption that the relevant pollution/environmental control regime will be properly applied and enforced by the relevant regulator. These matters were explored during the Examination and are discussed further in Chapter 5.

- 4.6.17 The Applicant considered the potential requirement for permits and consents [APP-029] and these matters were examined including a discussion with the EA during the ISH on 17 November 2015. For example, the EA confirmed when discussing waste management that there were no '*show stoppers*' under the Environmental Permitting Regulations (2010) [REP4-008]. There was also consideration of possible licencing requirements for protected species. By the Examination close NE were satisfied on this matter by the content of the initial Construction and Environmental Management Plan (CEMP) and final draft DCO. No IPs raised any further objections.
- 4.6.18 EN-1, 4.11 discusses safety and highlights the role of the HSE in energy infrastructure projects. They are responsible for enforcing a range of occupational health and safety legislation with some installations also being subject to the COMAH. This matter was raised at the 17 November 2015 Hearing and this is reported on in Chapter 5.
- 4.6.19 EN-1, 4.14 highlights s158 PA2008 which confers authority to undertake development consented by a DCO and thereby provides a defence to proceedings for nuisance under Part III of the Environmental Protection Act 1990 (statutory nuisance). As such the NPS identifies the importance of giving careful consideration regarding the mitigation of possible sources of nuisance [para. 4.14.2]. These matters are discussed further in Chapter 5 (dust, odour, artificial light, noise and vibration). The Applicant provided a Statement of Statutory Nuisance within the application [APP-026]. No concerns were raised on this matter by any parties during the Examination.
- 4.6.20 EN-1, Part 5 sets out the generic impacts of energy infrastructure projects which must be considered in the ES which accompanies the application. The generic impacts relevant to the project have been addressed in the ES which has assessed the potential effects arising during pre-construction, construction, operation and decommissioning of the project and the inter-relationship of those effects.

#### **National Policy Statement EN-4**

- 4.6.21 EN-4 provides the statement for Gas and Oil supply infrastructure. The policy recognises that the efficient import, storage and transmission of natural gas is crucial to meeting the UK's energy needs and that security of supply requires investment in such infrastructure (EN-4, 1.1.1).
- 4.6.22 The NPS fits under the Overarching Energy NPS, EN1 and therefore the presumption of the need for such energy infrastructure to be consented and built applies [EN-1, 1.3]. NPS, EN-4 specifically raises the following relevant matters;
- 4.6.23 **Safety** is an important issue and the IPC is directed to seek advice from HSE (para 2.19.15). The COMAH can apply (para 2.5.1). These

matters were raised during Examination and are dealt with in Chapter 5.

- 4.6.24 **Noise and vibration** impacts from increased traffic during construction and from drying after hydrotesting and flaring requires assessment (para 2.20.2 and 2.18.1). Where relevant these matters were raised during Examination and are dealt with in Chapter 5.
- 4.6.25 **Impacts on water quality** and resources together with indirect effects on ecological receptors should be assessed for acceptability in line with EN-1, 5.15 [para 2.2.25]. These matters were a source of significant concern by the EA before the Examination commenced. The Applicant subsequently supplied additional information into Examination. This is dealt with in detail within Chapter 5.
- 4.6.26 **Impacts on soil and geology** and the mitigation of any impacts is an important consideration [para 2.23.5]. These matters were raised during Examination and are dealt with in Chapter 5.
- 4.6.27 In summary the NPS position is therefore that the project would replace a vulnerable section of the UK's national gas transmission system thereby maintaining the efficient and safe distribution of gas. EN-1 recognises this as being a category of development for which there is an urgent need. The ExA is satisfied that the application has taken into account the general principles of assessment set out in EN-1 that are relevant to the project.
- 4.6.28 The ExA considers in later Chapters of this report whether the project would actually achieve compliance with those general principles, and the generic impacts identified in EN-1 Part 5, and those matters raised in EN-4.
- 4.6.29 The particular question of alternatives is considered further in Chapter 5, the socio-economic impacts in Chapter 5 and whether any serious detriment would be caused through the exercise of the compulsory acquisition powers and temporary possession rights sought, is considered in Chapters 8.

### **Marine Policy Statement**

- 4.6.30 The marine policy context is set out in Chapter 3 of this report and comprises the Marine Policy Statement (MPS) and East Inshore Marine Plan. The MPS states, at paragraph 3.3.1, that: "*A secure, sustainable and affordable supply of energy is of central importance to the economic and social well being of the UK*". It continues that: "*Contributing to securing the UK's energy objectives, while protecting the environment, will be a priority for marine planning*".
- 4.6.31 The signed SoCG between the Applicant and the MMO [REP6-017] shows on page 7 that only the inter-tidal pumping works (to flood the tunnel on completion) require a Deemed Marine Licence (DML).



- 4.6.32 The ExA concludes that there is no impact of the project of any significance on the marine environment and therefore this matter is not considered further.

### **The National Planning Policy Framework**

- 4.6.33 The NPPF sets out the Government's national planning policies for England and how it expects these to be applied strategically in the development plan system and in the management of development. The NPPF is explicit about the role of the NPS being the primary decision-making document for NSIPs under the Act. However, the ExA considers it to be an important and relevant consideration in decision-making for NSIPs.
- 4.6.34 The NPPF, paragraph 6, states that, "*the purpose of the planning system is to contribute to the achievement of sustainable development.*" It goes on to state that planning has a key role to play in, "*supporting the delivery of renewable and low carbon energy and associated infrastructure.*"
- 4.6.35 The project would reflect that general principle in that it is intended to support the UK's existing gas transmission capacity and thereby assist the UK maintain its energy needs during the transition to a low carbon economy.
- 4.6.36 The NPPF does not include policies specifically relating to the provision of new gas transmission infrastructure. However, it includes policies for:
- 4.6.37 **Traffic and Transport** (Paras 32 and 36) - The Applicant has provided an ES Chapter on this together with separate Transport Assessment and initial Traffic Management Plan (TMP) [APP-082 and APP-083]. The TMP reached its final form following update [REP4-023] and is discussed further in Chapter 5.
- 4.6.38 **Good Design** (Para 56) - this policy seeks to ensure that projects are properly and carefully developed to provide a functional result that is safe, respects local character and history and is visually attractive. The Applicant presents this case in the Planning Statement [APP-081, 5.1.9] and this is discussed further in Chapter 5.
- 4.6.39 **Healthy Communities** (Para 75) - this seeks to protect and enhance PROWs. The Applicant summarises the footpaths affected in the Planning Statement [APP-081, para 5.1.15-16]. The LIRs from ERYC and NLC raised no objection [ERYC REP2-004, para 6.5.3 and NLC REP2-018, para 9.1]. Towards the close of the Examination a change request was accepted and this included the provision of three control gates along East Marsh Road. This is discussed further in Chapter 2.
- 4.6.40 **Climate Change, Flooding and Coastal Change** (Para 99) requires that new development is planned to avoid increased vulnerability to the range of impacts arising from climate change. The Applicant's position is set out 5.17-22 of the Planning Statement [APP-081]. Flood

risk was raised ahead of the Examination by the EA and is discussed further in Chapter 5.

4.6.41 **Biodiversity and Nature Conservation** [Paras 109 and 118]. The NPPF requires that the planning system should contribute to and enhance the natural and local environment. The Applicant's case is set out in the Planning Statement [APP-081, Para 5.1.23]. This includes the supply of the following detailed supporting information at application:

- **Ecology and nature conservation** [APP-047, NPPF 118]. The Applicant's ES concludes that the majority of mitigation measures have been included as environmental design and that the project is therefore in compliance with the NPPF.
- **Geology and soils and water resources** [APP-049 and APP-071]. These provide details of environmental design measures to be implemented to avoid adverse impacts. The issues were examined in detail and are further discussed in Chapter 5.
- **Health and amenity** [APP-064]. The Applicant's position was that noise and vibration effects would be temporary in nature and with the mitigation measures proposed compliant with policy. This matter was explored at the Hearings and is discussed further in Chapter 5.
- **Historic environment** [APP-041]. The NPPF requires great weight to be given to the conservation of assets [para 132]. The Applicant's case was presented at Application and archaeological trial trenching took place during the Examination. This matter is discussed further in Chapter 5.
- **Landscape features** [APP-063]. The ES states that the landscape would be reinstated to reflect existing features. This was not raised during the Examination by IPs.
- **Air quality** [APP-039]. The ES considers the potential impacts of dust and emissions from vehicles and plant during construction. This was not raised during the Examination by IPs.

4.6.42 The ExA considered whether there would be any adverse impacts that would conflict with the policy approach set out in the NPPF and the conclusions on the case for development consent are set out in Chapter 7 of this report.

#### **National Planning Policy for Waste (October 2014)**

4.6.43 The project is expected to generate a 108,500m<sup>3</sup> volume of waste material [REP4-038]. The Applicant proposes that a Site Waste Management Plan (SWMP) is developed by the Main Works Contractor appointed if an order were made. Details are contained in the initial CEMP [APP-084]. The CEMP and waste management proposal were reviewed during the Examination and this is discussed further in Chapter 5.

4.6.44 The Applicant intends to apply the waste hierarchy (*eliminate - reduce - re-use - recycle - responsible disposal*) and proposes the

development of an appropriate waste management plan which is secured via the initial CEMP.

- 4.6.45 The outline SWMP would accord with the general principles set out in the National Planning Policy for Waste (October 2014) (NPPW). This matter is discussed further in Chapter 5.

### **Conformity with Development Plan Policies**

- 4.6.46 EN-1, paragraph 4.1.5, confirms that other matters which the Secretary of State may consider both important and relevant to decision-making include Development Plan documents or other documents in the Local Development Framework. The same paragraph explains, however, that in the event of a conflict, the NPS prevails for the purposes of the Secretary of State's decision-making, given the national significance of the infrastructure.
- 4.6.47 The Applicant's Planning Statement sets out the key local plan policy documents against which the project should be considered [APP-081, Section 7]. It provides, in Table 7.1, an assessment of the project against adopted and saved local planning policies and concludes that the project is in compliance with all of the relevant policy requirements (7.3 Summary).
- 4.6.48 As indicated in Chapter 3 of this report, the LIRs by NLC and ERYC also make reference to relevant local planning policies and raise no concerns.
- 4.6.49 There are no specific policies applicable to the provision of this type of infrastructure. However, there are policies that seek to control impacts of the type that are likely to be generated by the project.
- 4.6.50 The ExA concludes that there are no matters of detail to report on further in relation to the conformity of the project with Development Plan policies, there are no conflicts. Consideration of the relevant Development Plan policies, in the context of NPS guidance has been taken into account by the ExA in reaching the conclusions on the case for development consent in Chapter 7.

## **4.7 ENVIRONMENTAL STATEMENT AND ENVIRONMENTAL IMPACT ASSESSMENT (EIA)**

### **The Need for Environmental Impact Assessment**

- 4.7.1 A copy of the Scoping Opinion<sup>27</sup> issued by the Secretary of State in June 2014 (see para 1.3.4) is provided within the application [APP-078]. The executive summary of the Scoping Opinion identified the main potential issues as:

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<sup>27</sup>A Scoping Opinion allows the relevant authority to clarify what it considers the main effects of the development are and therefore on which aspects an applicant's Environmental Statement should focus.

- Noise, vibration and visual disturbance to birds during the construction phase.
- Transport and accessibility during the construction phase.
- Cumulative impacts during the construction phase.

4.7.2 The application for a DCO made on 10 April 2015 was accompanied by an ES [APP-30-79] together with a Non-Technical Summary [APP-080].

4.7.3 The Environmental Impact Assessment (EIA) Directive requires an assessment of the likely significant effects of the proposed project on the environment, covering the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects at all stages of the project, and also of the measures envisaged for avoiding or mitigating significant adverse effects (EN-1, 4.2.1).

### **Adequacy of the Environmental Statement/Environmental Impact Assessment**

4.7.4 Overarching NPS, EN-1 (EN-1) section 4.2 sets out the considerations to be taken into account in determining the adequacy of the ES accompanying an application for development consent. The ExA considers that the ES at application together with the evidence submitted during the progress of the Examination adequately identified the significant effects, including any residual effects, taking into account proposed mitigation and cumulative effects as required by EN-1 4.2 and in compliance with the EIA Directive (85/337/EEC) 1985.

4.7.5 On submission, all the application documents were reviewed within the statutory period available for Acceptance<sup>28</sup>. The information within the ES was considered adequate for the purpose of acceptance. During the course of the Examination, having considered the submitted information in detail and taken into account submissions from the Applicant and IPs, the ExA raised a number of questions and the Applicant submitted supplementary information in response to the ExA's questions and actions, from ISHs and from ongoing negotiations with IPs.

4.7.6 In particular the EA raised concern at the information available in order for an assessment to be made of the impact of the project on groundwater and flooding [RR-010]. In Annex G of the Rule 6 issued ahead of the PM this data was requested [PD-004] and at Deadline 2 the supplementary information was supplied by the Applicant [REP2-025 to REP2-036].

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<sup>28</sup> The Acceptance stage begins when a developer submits a formal application for development consent to the Planning Inspectorate. There follows a period of up to 28 days (excluding the date of receipt of the application) for the Planning Inspectorate, on behalf of the Secretary of State, to decide whether or not the application meets the standards required to be formally accepted for examination

- 4.7.7 There were developments of the application ES documents during the Examination and the relevance and importance of those are discussed further in Chapter 5. As identified at the start of Chapter 1 these changes can be tracked using:
- The Examination Library - see Appendix B;
  - The Master Version Control Schedule [REP8-010]; and
  - The Environmental Statement Errata and Amendments Document [REP4-032].
- 4.7.8 The ExA therefore considers that the various elements of the EIA, supplemented by the information received throughout the Examination, collectively form an adequate basis for this report and recommendation and decision making by the Secretary of State.

### **Habitats Regulations Assessment**

- 4.7.9 Prior to granting a development consent order, the Secretary of State must, under the Habitats and Species Regulations consider whether the project may have a significant effect on a European site, either alone or in combination with other plans or projects.
- 4.7.10 The project crosses beneath the River Humber which is designated as an SAC, SPA and Ramsar site; collectively these form the Humber Estuary European Marine Site. These are the European Sites considered by the Applicant.
- 4.7.11 The Applicant submitted a HRA with their application [APP-027-028]. The HRA matrices recommended in (and appended to) Advice Note 10<sup>29</sup> were supplied as Appendix 3 to Part 2 of 2 of the HRA Report [APP-028]. These were revised in response to questions raised by the ExA during the Examination until reaching their final version at Deadline 4 [REP4-021].
- 4.7.12 The Report on the Implications for European Sites (RIES) was issued by the ExA on 2 February 2016 [PD-016]. This compiles, documents and signposts information provided within the DCO application and the information submitted throughout the Examination by both the Applicant and IPs, up to 1 February 2016.
- 4.7.13 The ExA considers that the HRA, supplemented by the information received in response to the ExA's questions and submissions by IPs, together form an adequate basis for our report and recommendation and decision making by the Secretary of State.
- 4.7.14 This is discussed in detail at Chapter 6.

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<sup>29</sup> <http://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2015/06/Advice-note-10v4.pdf>

## **5 FINDINGS AND CONCLUSIONS IN RELATION TO THE POTENTIAL IMPACTS OF THE DEVELOPMENT**

### **5.1 INTRODUCTION**

5.1.1 This Chapter is focused on the consideration of the potential impacts of the project which are considered under topic headings based on the Principle Issues from Chapter 4. These are arranged in alphabetical order. The topics covered in this Chapter are:

- Biodiversity, biological environment, ecology and geological conservation;
- Flood risk, hydrology, ground investigation and water quality;
- Geology and soils;
- Traffic and transport and public rights of way;
- Waste management and contamination;
- Noise disturbance and vibration;
- Air quality, dust and light emissions;
- Construction and project delivery;
- Good design;
- Heritage and historic environment;
- Socio-economic impacts;
- Landscape and visual impacts; and
- Marine and navigation.

5.1.2 For each topic, applicable national policy is summarised followed by an outline of the Applicant's relevant application documents and their approach. This is followed by a discussion of the issues discussed during Examination (in particular representations received and objections raised) and finally the Examining Authority's (ExAs) conclusions and recommendations.

### **5.2 THE CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN**

5.2.1 The Application included an initial Construction Environmental Management Plan (CEMP) [APP-084] which is secured via Requirement 12 of the Recommended Development Consent Order (DCO) (see Chapter 9).

5.2.2 The initial CEMP both sets out and secures (through the requirements in the Recommended DCO how the Applicant would, subject to an Order being granted, move the project through detailed design and into construction whilst delivering the necessary care, attention and mitigation necessary to minimise the potential adverse effects of the proposed development as set out in the Applicant's Environmental Statement (ES).

5.2.3 The initial CEMP was therefore at the centre of the Examination and subject to the updates identified as a consequence of continued direct engagement between the Applicant, statutory bodies, nature conservation bodies, Interested Parties (IPs) and ExA questioning.

- 5.2.4 The initial CEMP is defined in Article 2 of the DCO (see Chapter 9). During the Examination it was updated by the Applicant at Deadline 3 [REP3-010], Deadline 4 [REP4-024] and Deadline 6 [REP6-010] to its final version at Deadline 7 [REP7-019].
- 5.2.5 The DCO sets out at Requirement 12 how the initial CEMP must be approved by the relevant local planning authority (LPA) prior to commencement of works. This is discussed further in Chapter 9.
- 5.2.6 The initial CEMP describes how the Main Works Contractor appointed for the project would be responsible for developing the initial CEMP into the Project Environmental Management Plan (PEMP) and states this "*must be substantially in accordance with, and include the following plans and strategies, from the initial CEMP*" [REP9-010, Requirement 12, 1 (2)].
- 5.2.7 An illustration of how the initial CEMP sits at the centre of a control process for the project's implementation was requested by the ExA and supplied by the Applicant at Deadline 4 [REP4-033]. It may be helpful to the Secretary of State to have this roadmap to hand when reading this chapter of the report.
- 5.2.8 The mitigation described within the Applicant's ES together with that which was developed through the Examination, is secured either directly by the requirements within the Recommended DCO or via the CEMP as illustrated on the roadmap.
- 5.2.9 At the close of the Examination Statements of Common Ground (SoCGs) had been agreed with the statutory nature conservation body, non-statutory nature conservation bodies and two affected local authorities. There were no outstanding matters in connection with the initial CEMP or the means by which that is secured.
- 5.2.10 The CEMP is referred to, where relevant, in the following topics:
- Environmental Mitigation Commitments Document**
- 5.2.11 An Environmental Mitigation Commitments Document [APP-088] was also submitted with the application. The Environmental Mitigation Commitments Document is described at section 5 of the initial CEMP as a sister document to the CEMP. This identifies the project-specific commitments with reference to any relevant documentation and provides a framework within which all parties are aware of their responsibilities. As the initial CEMP was updated during the Examination, so too was this document into its final form [REP7-022].
- Environmental Design Measures**
- 5.2.12 Environmental design measures are a term used within the application and therefore referred to in this Chapter. These are measures introduced during the development of the design of a project targeted at reducing environmental impacts during construction. For example, a

wheel wash facility for lorries before they leave site will reduce dirt and dust transmitted out of the site.

### **5.3 BIODIVERSITY, BIOLOGICAL ENVIRONMENT, ECOLOGY AND GEOLOGICAL CONSERVATION**

#### **Introduction**

- 5.3.1 This section of the report deals with aspects of biodiversity, ecology and geological conservation including nationally designated sites; protected and notable species; locally designated sites; and opportunities for enhancement.

#### **Policy Tests**

- 5.3.2 The relevant National Policy Statements (NPSs) are the overarching NPS EN-1: Energy (EN-1) and NPS EN-4: Gas Supply Infrastructure and Gas and Oil Pipelines. The biodiversity, biological, ecological and geological conservation matters of importance to this Examination covered in the policy guidance in EN-1 are sites and species identified through international conventions and European directives, sites of special scientific interest (SSSIs), regional and local sites, species and habitats that receive statutory protection under the Wildlife and Countryside Act<sup>30</sup>, species with their own legislation such as badgers<sup>31</sup>, ancient woodland and veteran trees and other environmental impact assessment (EIA) matters (EN-1 section 5.3).
- 5.3.3 EN-1 directs the decision maker to take account of the context of climate change and to recognise the need to protect the most important biodiversity and geological conservation interests and to avoid significant harm through mitigation and the consideration of reasonable alternatives (para 5.3.7). EN-1 provides for appropriate compensation measures where significant harm cannot be avoided. It sets out the need for the decision maker to attach appropriate weight to designated sites, habitats and species (EN-1 para 5.3.6 to 5.3.8).
- 5.3.4 EN-1 draws attention to the need for projects to consider opportunities for ecological enhancement (paras 5.3.4 and 5.3.11). The Natural Environment and Rural Communities (NERC) Act 2006 at s40 '*Duty to conserve biodiversity*' requires every public authority and statutory undertaker in exercising its functions to have regard to conserving biodiversity which includes "*restoring, or enhancing a population or habitat*" (40(3)).
- 5.3.5 EN-1 recognises the impact on wildlife and states at para 5.11.2 that "*Noise resulting from a project can also have adverse impacts on wildlife and biodiversity. Noise effects of the project on ecological*

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<sup>30</sup> Wildlife and Countryside Act 1981 (as amended)

<sup>31</sup> Protection of Badgers Act 1992



*receptors should be assessed by the IPC in accordance with the Biodiversity and Geological Conservation section of this NPS."*

- 5.3.6 EN-4 refers to the general principles that should be applied in the assessment and ExA report and recommendations on biodiversity and landscape and visual impact assessments set out in EN-1 (paras 4.3 and 5.9). It also recognises that long term impacts upon the landscape from gas pipelines is likely to be limited with most infrastructure usually buried (para 2.21.2).
- 5.3.7 The National Planning Policy Framework (NPPF) establishes that the planning system should contribute to conserving and enhancing the natural environment, which includes minimising impacts on biodiversity and geodiversity and recognising the wider benefits of ecosystem services (section 11). Principles are set out for conserving and enhancing biodiversity, including planning positively for biodiversity networks. The ExA has had regard to the policies set out in the NPPF in its examination and consideration of the biodiversity aspects of the project.

#### **Applicant's Approach**

- 5.3.8 Via the development of the SoCGs and the hearings that in the lead up to the drafting of the ES and throughout the Examination the Applicant engaged with the key parties including Natural England (NE), the Royal Society for the Protection of Birds (RSPB), Lincolnshire Wildlife Trust (LWT), Yorkshire Wildlife Trust (YWT), North Lincolnshire Council (NLC) and East Riding of Yorkshire Council (ERYC). The approach followed in preparing the Ecology and Nature Conservation Chapter of the ES was agreed in consultation with NE and followed the Institute of Ecology and Environmental Management guidelines for Ecological Impact Assessment in the UK (IEEM Guidelines) [APP-047, 7.3.2].
- 5.3.9 The ES application document Ecology and Nature Conservation [APP-047] presents the ecological baseline based on the results of a desk-based assessment and a number of ecological surveys undertaken in 2013 and 2014. It comprises a high level assessment to identify key ecological receptors (KERs), for which a detailed assessment is subsequently presented. Cumulative effects are considered in a separate ES subject document [APP-075].
- 5.3.10 In addition to the ES, a set of plans illustrate the environmental features and heritage designations [APP-013 to APP-015]. The illustrative site layout plans for Goxhill [REP1-008] and Paull [REP1-009] construction compounds and a tunnel long section [REP1-010] are helpful documents that the Secretary of State may wish to refer to as they provide an illustrative overview of the scope of the works proposed.
- 5.3.11 The proposed development is located close to and runs beneath the River Humber Estuary which is an important wetland and marine area. The Humber Estuary is designated on an international level as a

Special Protection Area (SPA<sup>32</sup>), Special Area of Conservation (SAC) and Ramsar site; potential impacts on these sites are discussed in Chapter 6.

- 5.3.12 At a national level, the Humber Estuary is notified as a SSSI for a number of features (67 in total<sup>33</sup>), including:
- for the presence of nationally important populations of wintering and passage wading birds and nationally important assemblages of breeding birds;
  - the presence of intertidal habitats and mud and sand flats not covered at low tide; and
  - the presence of sea and river lamprey.
- 5.3.13 The Applicant states within the ES that subject to environmental design measures to ensure discharges from the main works area would be treated or attenuated before entering the estuary and pollution control through the PEMP, the project would not give rise to any direct impacts on the qualifying features of the SSSI [APP-047, 7.4.27].
- 5.3.14 Part of the Humber Estuary is designated as an Important Bird Area (IBA) on the basis that it supports internationally important numbers of a range of bird species [APP-047, 7.4.22]. The Applicant states that the project would not give rise to any significant direct impacts during its construction [APP-047, 7.4.23].
- 5.3.15 Two non-statutory designated sites were identified within 2km of the project at Goxhill and five within 2km of Paull, including Paull Holme Strays Nature Reserve. With the implementation of the environmental protection measures to be implemented through the PEMP, no direct or indirect impacts were considered likely by the Applicant and each site was scoped out of the detailed assessment stage.
- 5.3.16 A high-level assessment of habitats and species was undertaken in order to determine which receptors would be classified as KERs. Those considered by the Applicant, but not subsequently identified as KERs, were [APP-047, Table 7-12]:
- plants and habitats;
  - terrestrial invertebrates;
  - aquatic invertebrates;
  - fish and commercial fisheries;
  - amphibians;
  - reptiles;
  - bats;

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<sup>32</sup> Humber Estuary Special Protected Area (SPA)

<sup>33</sup>

<https://designatedsites.naturalengland.org.uk/SiteDetail.aspx?SiteCode=S2000480&SiteName=humber&countyCode=&responsiblePersonhttps://designatedsites.naturalengland.org.uk/SiteDetail.aspx?SiteCode=S2000480&SiteName=humber&countyCode=&responsiblePerson>

- dormice;
- otters;
- badgers;
- brown hare;
- hedgehog;
- Annex 1 bird species;
- Schedule 1 bird species including peregrine falcon; and
- other notable bird species of nature conservation importance.

5.3.17 The KERs to be scoped in for detailed assessment were ecological resources which could experience significant effects and were identified as being of sufficient value to be material to decision making. These were considered to be [APP-047, Table 7-11]:

- golden plover;
- bar-tailed godwit;
- ruff;
- marsh harrier;
- shelduck;
- dunlin;
- redshank;
- black-tail godwit;
- assemblage species;
- barn owl; and
- water vole.

5.3.18 The ES concluded that on the basis of mitigation measures (discussed below) being in place, during construction there would be no significant effects on any of the KERs at any geographic level (para 7.10.3).

5.3.19 The ES concluded that since the installed pipeline would be below ground and the land reinstated to its existing condition following completion, during operation no potential impacts are predicted (para 7.8.4).

5.3.20 The initial CEMP [APP-084] provides details of how the project would be managed to minimise its effects, with measures for ecology in Pre F1-F10 for pre-construction, Con F1-F16 for construction and Post F1-F4 for post-construction.

5.3.21 The CEMP at the sections identified provides full detail but examples include the provision of bunding and close board fencing to reduce noise/visual disturbance where necessary, baffles for lighting to control lightspill and minimising ditch crossings to limit the effects on water vole habitat.

5.3.22 In summary the following Requirements within the draft DCO control how the project would be implemented:

- Requirement 7, Removal of trees and hedgerows - no stage may commence until details of works involving felling, or lopping of trees, or hedgerows.....;

- Requirement 12, CEMP - no stage may commence until a construction and environmental management plan.....;
- Requirement 13, Noise - no stage may commence until a written scheme for noise .....
- Requirement 17, Temporary external lighting - no stage may commence until details of external lighting.....;
- .....(this applies to each of the above) has been supplied and approved by the LPA;
- Requirement 18, Environmental mitigation land - restricts activities that can take place on the environmental mitigation land, and;
- Requirement 21, Amendments to approved details - part (2) requires any amendment or variation to be in accordance '*with the principles and assessment set out in the environmental statement*'.

5.3.23 An additional new Requirement 19, Ecological Surveys, was added during the Examination and the drafting of some of the clauses identified was subject to Examination and updated as detailed (where appropriate) below and in Chapter 9.

5.3.24 The Applicant's ES Chapter on Geology and Soils provides evidence that there are no Local Geological Sites of interest or Regionally Important Geological Sites of interest within the area affected by the project [APP-049 para 8.4.30-33]. There was no evidence submitted to the contrary, therefore the ExA does not consider sites of geological interest further and considers that the Secretary of State can conclude there would be no adverse impact on any such sites.

### **European protected species (EPS) and Licencing**

5.3.25 The Applicant originally identified that after pre-construction surveys, an EPS licence might be required for great crested newts [APP-047, para 7.4.69] and water voles (para 7.7.5). Badgers are not an EPS but were also identified as a possible licence application due to potential disturbance from the project (para 7.4.86).

### **Examination**

5.3.26 NE is the statutory nature conservation body and has been engaged by the Applicant during pre-application and throughout the Examination together with the RSPB, the County Ecologist's at ERYC and NLC and two local nature conservation groups: The LWT (Goxhill); and YWT (Paull).

5.3.27 YWT manage the Paull Holme Strays Nature Reserve on behalf of the Environment Agency (EA) situated on the edge of the River Humber in an area above ground located directly adjacent to the Applicant's fenced enclosure containing the Above Ground Installation (AGI). The Applicant also owns part of the nearby field (Stoneledge Field) which is the proposed site of the reception shaft for the tunnel (referred to elsewhere).

- 5.3.28 Each party was engaged throughout the Application with the two local conservation groups providing helpful information but ultimately deferring to NE who with their agreement took the lead.
- 5.3.29 The topics that were the subject of discussion during the Examination are discussed further below.

### ***Water voles***

- 5.3.30 Water voles are a protected species under the Wildlife and Countryside Act 1981 (as amended). The project involves the excavation of a drive shaft at Goxhill and a reception pit at Paull to construct a tunnel beneath the River Humber and connect the two. This would require deep excavation on both sides and de-watering to lower the natural groundwater table enabling the excavation to safely proceed. The ES [APP-047] acknowledged the potential for temporary displacement and disturbance of water voles within the ditch network, however this was considered to be localised and impacts were assessed as being not significant at any geographical level. The ES confirmed that pre-construction surveys would be undertaken to inform appropriate mitigation measures (para 7.7.5) and that this could result in a licence from NE being required. The ES also specified that monitoring before and during the de-watering exercise would be undertaken for water voles (page 60, final bullet point).
- 5.3.31 During the Examination, NE [RR-023] agreed that pre-construction surveys would be required to determine mitigation requirements for water vole.
- 5.3.32 YWT [RR-030] also welcomed the proposed pre-construction surveys and water vole monitoring during construction, however considered that the scope of the water vole surveys undertaken to inform the ES was inadequate because the Applicant had been unable to inspect all drainage ditches due to health and safety limitations and the ditches being dry or full of vegetation. YWT also had concerns over fragmentation of water vole habitat due to three proposed ditch crossings at Paull. The EA [RR-10] raised similar concerns over the potential effects of groundwater dewatering on water voles and requested a water vole mitigation plan be produced.
- 5.3.33 During the Examination the Applicant produced a proposal for ground water re-charge [REP2-036, para 3.2.1.2] to address concerns raised by the EA and YWT. This process (which is described later in '*Flood Risk, Hydrology and Water Quality*') would minimise impacts on the existing ground water resource.
- 5.3.34 By Deadline 3 the EA stated "*The proposed mitigation will minimise the zone of influence (of groundwater) and restrict the magnitude of the impact to something smaller than the fluctuations in groundwater levels which would be expected to occur naturally [REP3-002, page 6 'Water Voles']*." YWT welcomed the proposed mitigation strategy and inclusion of wording within the draft DCO and CEMP which they

considered adequate to ensure the protection of water voles during construction of the project [REP5-016, Pre-F4, page 3 and EXQ21 response page 7].

- 5.3.35 The Applicant confirmed that, as proposed in the ES, they would undertake pre-construction water vole surveys prior to works commencing. They also agreed to discuss appropriate mitigation measures with YWT and to undertake such works (if they were required) under NE licence [REP6-018, page 9].
- 5.3.36 The CEMP was updated at Deadline 3 to reflect the pre-construction surveys that were proposed in the ES (Pre-F3) and the need for the production of a water vole mitigation strategy (Pre-F4). The draft DCO was updated at Deadline 3 [REP3-006] to secure the pre-construction surveys and need for a licence from NE at Requirement 19. This has been retained in the Recommended DCO.
- 5.3.37 As a consequence at Deadline 6 a signed SoCG records agreement between the Applicant and YWT over matters relating to water voles on the basis that consideration will be given to water vole mitigation in the design of culverts [REP6-018].
- 5.3.38 Executed SoCG's with the EA [REP6-016, page 8] and NE [REP7-027, page 16] together with a final statement from NE that no further comments were necessary to raise demonstrate that this matter was resolved [REP9-019].

#### ***Badgers (Meles meles)***

- 5.3.39 Badgers were scoped out of the detailed assessment in the ES [APP-047], however the ES confirmed that a pre-construction badger survey would be undertaken to confirm the status of all setts and allow time for a licence to be applied for should it be required.
- 5.3.40 NE initially considered that badgers should have been identified as a KER within the assessment, however they agreed that the nature of the works expected to occur would be unlikely to cause disturbance and that further surveys would be required [RR-023, para 3.4]. The signed SoCG identifies agreement between the Applicant and NE for a 30m buffer zone to be retained around setts, use of appropriate mitigation measures, pre-construction surveys and if appropriate, licences being obtained. These measures were included in Pre F5 and Pre F6 of the initial CEMP submitted with the application and were retained in the final version of the initial CEMP [REP7-019]. NE also stated they were satisfied with the Applicant's explanation as to why badgers were scoped out of detailed assessment [REP7-027].
- 5.3.41 Requirement 19 was added to the DCO at Deadline 3 [REP3-006] to secure such surveys and require consultation with NE and (if necessary) to secure the necessary licence(s) from NE [REP6-006].

### ***Barn Owls (Tyto alba)***

- 5.3.42 The application contained an excepted report on Barn Owls. At Goxhill a single barn owl box that was in use was identified.
- 5.3.43 There was discussion during the Issue Specific Hearing (ISH) on 17 November 2015 over the appropriate number of additional barn owl boxes to be provided in mitigation for the project. The Applicant offered one barn owl box. The RSPB suggested installation in pairs was generally preferable but deferred to local expertise from YWT. YWT accepted the proposal and was this included in the initial CEMP [REP5-016, EXQ2, 13, page 7].

### ***Noise and Visual Impact (lighting and construction activities)***

- 5.3.44 At the outset of the Examination concerns were expressed over the potential temporary disturbance and displacement of SPA and Ramsar birds using the construction compounds, the Humber Estuary and adjacent fields. These issues are discussed in Chapter 6 (Habitats Regulations Assessment) (HRA)) and the potential impact on humans under noise and vibration later in this Chapter.
- 5.3.45 Lighting would be required for the construction compounds particularly at Goxhill where the tunnel drive pit would be located and operations are proposed to be continuous. The initial CEMP identifies that light spill would be controlled both by design and using baffles [REP7-019, Con A7 and Con H11] and the draft DCO requires that a lighting scheme is designed and submitted to the relevant LPA for approval before work proceeds (Requirement 17).
- 5.3.46 The ExA raised a question about the potential effects of light spillage on bats during the first round of questions. In response NE confirmed they were satisfied with the measures proposed within the application [REP2-017, EXQ1, 5.19]. Light spillage was not raised by any other IPs.

### ***Marsh harrier***

- 5.3.47 Concern was expressed by the RSPB [RR-029 and REP2-005] on the potential impact of the project on these ground nesting birds. This matter was resolved at Deadline 3 by agreement and securing of a monitoring and mitigation strategy. This issue is discussed further in Chapter 6.

### ***Paull Holme Strays Nature Reserve***

- 5.3.48 Paull Holme Strays Nature Reserve is managed by the YWT on behalf of the EA. It is an area that was created in 2003 by the EA to provide flood risk management and compensatory habitat for the adverse effects on the Humber Estuary SPA/SAC resulting from the implementation of the Humber Flood Risk Management Strategy (a new flood defence wall).

- 5.3.49 During the early stages of examination YWT were concerned at the potential impacts of the project in terms of both noise disturbance to birds using the reserve and visitors.
- 5.3.50 YWT's concern regarding visitors was that the project construction would affect their experience/enjoyment and create practical issues of accessing the visitor car park. By Deadline 6 YWT had reached agreement with the Applicant and executed a SoCG with the Applicant [REP6-018].
- 5.3.51 The potential impact of the project on visitor numbers is discussed in the socio economic section of this Chapter and noise under that section. In each case these matters were resolved within the Examination (see Chapter 6, 6.5.54 to 6.5.57).

### ***Sea and River Lamprey***

- 5.3.52 NE were concerned that lamprey, designated under Article 4(4) of the Habitats Directive, might be adversely affected during the tunnel flooding operation by being drawn into the pumps and injured or killed. At this stage the Applicant proposes using pumps positioned in the intertidal area to flood the completed tunnel [REP3-019].
- 5.3.53 At the 17 November ISH it was evident that discussions were ongoing between the Applicant and NE on this matter. In response to the ExA's second round of questions [PD-010, EXQ2, 6a] which enquired whether this matter had been agreed, NE stated "*Natural England is satisfied that the requirement for a lamprey screen has been secured through CON-F 17 in the CEMP*" [REP5-007, EXQ2, Q6]. An obligation to place the pumps within a suitable mesh cage was the solution.

### ***Site of Special Scientific Interest Assent***

- 5.3.54 SSSIs are the country's very best wildlife and geological sites, often standing out as the last remaining areas of natural habitat in our modern countryside. Apart from under limited circumstances (emergency work, where planning permission has been granted under the Town and Country Planning Act 1990, or if you have statutory permission, authorisation, or a licence from another public body and that public body has consulted NE) then written notice must be served on NE and consent granted to undertake works that may affect an SSSI.
- 5.3.55 The SoCG between the Applicant and NE confirms their agreement that for operations likely to damage the special interests of a SSSI, SSSI consent would be obtained by the Applicant if NE deemed this to be required [REP7-027].
- 5.3.56 No specific impacts of concern were cited but a mechanism for dealing with such works should they be identified during detailed design has been agreed.



### ***Hedgerows and Trees***

- 5.3.57 Hedgerows and Trees were scoped out of detailed assessment but subject to questioning during the Examination [EXQ1, 6.6 and 8.29]. The ExA sought clarity from the Applicant over which hedgerows and trees might be affected. The Applicant had also made statements within the ES, such as a commitment that trees would be retained and for coppicing to be undertaken outside of the bird nesting season, but these were not duplicated within the application version of the initial CEMP [APP-084]. The ExA's questions were designed to test the extent of the potential construction impacts and whether this required mitigation by inclusion of these matters within the initial CEMP.
- 5.3.58 Following an unaccompanied site inspection it was clear to the ExA that the hedgerows are set back from the highway behind wide grass verges and are therefore unlikely to be significantly affected.
- 5.3.59 In response to the ExAs first round of questions [PD-006], the CEMP was also updated at Deadline 3 to include new clauses; Con F18 and F19, Post F2, Post H1 and H2 [REP3-010]. This provides a clear commitment to retain and protect trees and undertake any coppicing (if required) outside of the bird nesting season. Any damaged trees would be replaced and hedges reinstated.
- 5.3.60 Requirement 7 of the Recommended DCO '*Removal of trees and hedgerows*' also requires details of any tree or hedge removal to be supplied and approved by the relevant LPA ahead of any such works commencing.

### ***Enhancement***

- 5.3.61 During the Examination LWT suggested that more should be done to enhance biodiversity [RR-019]. They said there would be significant opportunities for the project to support the enhancement of terrestrial biodiversity in accordance with EN-1 and that given the size of the project they were disappointed with the limited enhancements initially proposed. For example, they suggested that rather than restoring land to agriculture alternative options should be considered such as the creation of species rich grassland or wet grassland which could be of benefit to SPA birds as a roosting site at high tide.
- 5.3.62 The ExA asked questions on enhancement opportunities during the Examination [EXQ1, 5.8, EXQ2, 11 and 12], mindful of the obligations under NERC Act 2006. In response the Applicant set out the measures already within the application, or agreed during Examination which are described elsewhere.
- 5.3.63 The position between the Applicant and LWT regarding ecological enhancement was not concluded at Examination close. The Applicant considers that the scale and nature of the project and residual impacts following embedded mitigation would not warrant further enhancement and that the desire of landowners to farm their land should be a key consideration [REP2-038, section 4, page 17]. The

area of permanent land-take above ground for the whole project would be less than 1 hectare (ha) and the area of enhancement within the application would be c.2ha. The Applicant maintains that reinstatement would ensure that resources previously used by SPA birds would continue to be available on completion.

- 5.3.64 The two parties agreed to disagree on additional enhancement. LWT confirmed they will not be changing their view on the need for additional enhancements. The position is summarised in a SoCG under *'matters not concluded'* [REP2-038].
- 5.3.65 Field 26 is an area of farmland at Paull [APP-047, Figure 7.6] which the Applicant proposes to set aside during construction to offset land required temporarily. YWT suggested that this mitigation land should be kept available post construction and managed in the long term. A long term funding plan was also requested by YWT [REP2-011, page 4]. YWT also provided a list of suggested enhancement measures at Paull Holme Strays Nature Reserve.
- 5.3.66 In response to a question from the ExA [PD-010, ExQ2, Q9] at Deadline 5 the YWT provided their response on the initial CEMP which was updated at Deadline 4 by the Applicant to reflect discussions with IPs and following the ISH on 17 November 2015 [REP5-016]. YWT said *'We advise that a long term monitoring and management programme is put in place in order to manage Field 26 for biodiversity and ensure that it meets its enhancement aims in accordance with Paragraph 118 of the NPPF.'*
- 5.3.67 YWT also recommended that waste material from construction be used to create biodiversity enhancements such as vegetation piles for reptiles and amphibians. This was agreed by the Applicant and is documented at pages 10-12 of the SoCG executed at Deadline 6 [REP6-018]. YWT confirmed agreement to Con F16 within the initial CEMP that establishes the provision of a number of reptile hibernacula and one barn owl box.
- 5.3.68 YWT and the Applicant did not agree on the potential impacts of the project on the Paull Holmes Strays Nature Reserve and as such the Applicant has not agreed to provide YWT with additional compensation. YWT considered that a project of the magnitude proposed should provide additional enhancement mitigation. However, it is reported within the SoCG that the easement payment being made by the Applicant to the EA will be passed on by the EA to YWT. The intention being that it will be used by YWT to undertake works at Paull Holme Strays Nature Reserve to offset potential visitor disturbance [REP6-018, page 8].
- 5.3.69 This compensation was agreed between the Applicant and EA outside of the Examination. Whilst the exact details of the compensation package were not given, YWT confirmed in response to EXQ2, 11 *'Following the agreement between the EA and the Applicant on the compensation package for Paull Holme Strays Nature Reserve*

*Yorkshire Wildlife Trust is now satisfied that the nature reserve visitor impacts during the construction phase of the project will be appropriately compensated for.'* [REP5-016].

- 5.3.70 By Deadline 6 an executed SoCG between the YWT and the Applicant was submitted. This records that Field 26 will be improved for nature conservation on completion for local benefit and states that the Applicant will continue to discuss future management of Field 26 with YWT [REP6-018]. The provision of a barn owl box and reptile hibernacula within Field 26 is secured via the CEMP at Con F16 [REP7-019, page 30].
- 5.3.71 The SoCG executed with the EA and submitted at Deadline 6 records EAs contentment with the package of measures agreed for Paull Holme Strays Nature Reserve [REP6-016, page 9].

***SoCGs on matters other than Enhancement and Local Impact Reports (LIRs)***

- 5.3.72 At the Examination close, agreement had been reached with NE as the statutory nature conservation body on the survey work, baseline information, environmental design measures for all ecological receptors, the likely effects of the project on each of the KERs and SSSI Assent for operations likely to affect the special interests of a SSSI [REP7-027]. It confirms that all matters of biodiversity including the final versions of the initial CEMP [REP7-019], Environmental Mitigation Commitments [REP7-021] and DCO [REP9-010] are agreed with no matters outstanding.
- 5.3.73 The draft SoCG with RSPB at Deadline 3 [REP3-020] records in Table 3-1 that the ecological and nature conservation survey work, baseline information and environmental design measures for all ecological receptors were agreed apart from:
- Nocturnal surveys - golden plover/ lapwing; and
  - Environmental design measures - the RSPB wished to see a marsh harrier mitigation strategy.
- 5.3.74 Both of these matters progressed during the Examination to a satisfactory conclusion as recorded in the final executed SoCG [REP7-028]. These issues are discussed in Chapter 6.
- 5.3.75 The SoCG executed with LWT and submitted at Deadline 6 records the Applicant's engagement with LWT and agreement with the method of baseline assessment and reporting adopted. Only one matter was recorded as '*not concluded*' at table 4-1 9 (page 17). The Applicant considered the package of enhancement measures including the restoration of land on completion and provision of reptile hibernacula and a barn owl box to be reasonable. LWT suggested that alternative options should be considered such as the creation of species-rich grassland or wet grassland which could be of benefit to SPA birds as a roosting site at high tide.

- 5.3.76 The SoCG executed with the YWT and submitted at Deadline 6 records the Applicant's engagement with YWT and agreement with the method of baseline assessment and reporting adopted. There was one outstanding matter regarding enhancement and final position statements for each party are set out above.
- 5.3.77 LIRs from ERYC and NLC provide the County Ecologist's view on these matters:
- ERYC's LIR confirms satisfaction in the findings and conclusions of the Ecology and Nature Conservation Chapter deferring the decision to the ExA but raising no objections [REP2-004, para 6.3.5].
  - NLC's LIR report considers the overall effect of the project to be neutral or minor positive but defers the decision of the impact on the Humber Estuary SAC, SPA, Ramsar site to the ExA and raises no objections [REP2-018, para 12.3].
- 5.3.78 A SoCG was also signed with ERYC [REP2-037] and NLC [REP7-025] which confirms agreement on matters of ecology and nature conservation, stating that it is agreed "*The likely effects of the project have been assessed as 'Not Significant' at any geographic level*".

### ***Development Consent Order***

- 5.3.79 During the Examination the application draft DCO was subject to Examination and drafting changes. Details are set out in Chapter 8 and can be tracked using the Applicant's Schedule of Amendments to DCO and Plans [REP9-014].
- 5.3.80 Requirement 19, Ecological Surveys (2.11.15 updated 27.11.15) was a new addition to the draft DCO during Examination [REP9-011]. This requirement ensures further survey work to check for the presence of badgers and water voles and if found, requires consultation with NE and licencing under regulation 53 (licences for certain activities relating to animals or plants) of the Conservation of Habitats and Species Regulations 2010(a).
- 5.3.81 By the Examination close NE and RSPB were in agreement with the Deadline 6 version of the draft DCO [REP7-039 and REP7-0041]. Following this the draft DCO was updated at Deadline 7 to include details agreed in negotiation with NE and the RSPB. No substantive changes of relevance were made in the final version at Deadline 9 and the Recommended DCO therefore contains drafting as agreed by NE and the RSPB. Full details on the DCO are set out in Chapter 9.

### **ExA's Reasoning and Conclusions on this Topic**

- 5.3.82 The ExA has had regard to the application documents including all updates and submissions of new information during the Examination from the Applicant and all IPs in written and oral evidence at the Hearings as recorded in the Examination Library.

- 5.3.83 The ExA is content that there would either be no adverse impact on SSSI, or such matters are capable of control via a process of SSSI Assent via NE as set out in the SoCG on page 9 [REP7-027]. There would also be no significant adverse impact on any non-designated site(s) that would outweigh the public benefit of the project which receives robust support under NPSs.
- 5.3.84 In relation to geological conservation, there was no evidence contrary to the ES findings submitted during the Examination, therefore the ExA considers that the Secretary of State can conclude there would be no adverse impact on any such sites. The ES Chapter on Geology and Soils and the results of ground investigations in relation to tunnelling are considered separately elsewhere.
- 5.3.85 The ExA is satisfied on the basis of the evidence within the Examination, in particular the final SoCGs executed between the Applicant and NE, and the Applicant and RSPB, that there would be no significant adverse impacts on habitats or species if the Secretary of State were to grant an Order for the project.
- 5.3.86 Licences from NE may be required for operations likely to affect great crested newts, badgers, or water voles, or that could damage the special interests of a SSSI, if further pre construction surveys revealed new facts increasing such potential risks. On the basis of the evidence submitted these risks appear low. There are also mechanisms in place and agreement between NE and the Applicant on how to deal with this should it become necessary (captured in the initial CEMP).
- 5.3.87 The ExA had regard to the derogation tests under the EPS licensing regime and how these tests can be met. Based on the full engagement of NE throughout the Examination, the final executed SoCG between NE and the Applicant and their final representation in response to the last Rule 17 issued, the ExA has no reason to believe that a licence(s) would not be granted if required [REP7-027 and REP9-019]. As a consequence there is no reason for the Secretary of State to withhold the granting of an Order.
- 5.3.88 LWT and YWT each presented a case for ecological enhancement. LWT and the Applicant provide a final position statement in their SoCG. The Applicant considers that the farming interests of the landowner need to be balanced against the desire for longer term enhancement measures and that sufficient mitigation has been offered within the project presented. LWT consider such a large project should provide additional enhancement beyond that offered.
- 5.3.89 The ExA has empathy with the position stated by LWT based on policy requirements. However, given the use of the land is temporary, that the mitigation package during construction was significantly improved during Examination (to the satisfaction of NE and the RSPB), and that the land will be reinstated on completion, the ExA considers that the package of mitigation is reasonable. The Secretary of State should not consider this a reason for withholding the grant of an Order.

- 5.3.90 YWT were hopeful that there may be a commuted sum paid to them so they could take future responsibility for the management of Field 26 at Paull. This aspiration was not met but evidence was supplied in the SoCG executed with the Applicant that the easement payment agreed between the Applicant and the EA would be passed on to YWT for enhancement works at Paull Holme Strays Nature Reserve. Whilst the level of this enhancement payment remains a commercial and confidential matter such an arrangement is welcome.
- 5.3.91 The ExA notes the Applicant's intent to revisit the possibility of an enhancement payment for the management of Field 26 during the progression of the project. This is welcome but is not an item that can be taken into balance since it may not be achieved. This is a matter of enhancement and not mitigation and since the commercial arrangement between the EA and the YWT resulted in no outstanding matters of concern the ExA concludes that enhancement has been adequately addressed and the Secretary of State should not consider this a matter that should prevent the grant of an Order.
- 5.3.92 Having taken into consideration the executed SoCGs with NE and the other nature conservation bodies, the ExA considers that the Secretary of State can conclude the requirements of EN-1 for biodiversity, biological environment, ecology and geological conservation have been met and there are no residual impacts that need to be taken into account in the final decision [REP5-006]. Matters in relation to HRA are discussed in Chapter 6.

## **5.4 FLOOD RISK, HYDROLOGY AND WATER QUALITY**

### **Introduction**

- 5.4.1 Hydrology and Flood Risk were two of the areas that were raised in representations by the EA ahead of the Preliminary Meeting (PM) [RR-010] and were included in the ExA's initial Rule 6 letter [PD-004]. This section considers the potential impacts of the project on groundwater and flood risk.

### **Policy Tests**

- 5.4.2 EN-1 states in para 5.7.3 that flood risk is taken into account in the planning process, *"...to avoid inappropriate development in areas at risk of flooding, and to direct development away from areas at highest risk. Where new energy infrastructure is, exceptionally, necessary in such areas, policy aims to make it safe without increasing flood risk elsewhere and, where possible, by reducing flood risk overall"*.
- 5.4.3 The Sequential Test, defined in para 5.7.13 of EN-1, provides that preference should be given to locating projects in Flood Zone 1. If there is no reasonably available site in Flood Zone 1, then projects can be located in Flood Zone 2. If there is no reasonably available site in Flood Zones 1 or 2 then nationally significant energy infrastructure projects can be located in Flood Zone 3 subject to the Exception Test.

- 5.4.4 The test provides a method of managing flood risk while still allowing necessary development to occur.
- 5.4.5 EN-1 section 5.7.16 states: *"All three elements of the test will have to be passed for development to be consented. For the Exception Test to be passed:*
- it must be demonstrated that the project provides wider sustainability benefits to the community that outweigh flood risk;*
  - the project should be on developable, previously developed land or, if it is not on previously developed land, that there are no reasonable alternative sites on developable previously developed land subject to any exceptions set out in the technology-specific NPSs; and*
  - a FRA must demonstrate that the project will be safe, without increasing flood risk elsewhere subject to the exception below and, where possible, will reduce flood risk overall."*
- 5.4.6 The exception referred to in the third bullet point of section 5.7.16, is explained in para 5.7.17 as follows: *"Exceptionally, where an increase in flood risk elsewhere cannot be avoided or wholly mitigated, the [decision-maker] may grant consent if it is satisfied that the increase in present and future flood risk can be mitigated to an acceptable level and taking account of the benefits of, including the need for, nationally significant energy infrastructure.... In any such case the [decision-maker] should make clear how, in reaching its decision, it has weighed up the increased flood risk against the benefits of the project, taking account of the nature and degree of the risk, the future impacts on climate change, and advice provided by the EA and other relevant bodies"*.

### **Other policy**

- 5.4.7 'Planning Practice Guidance - Flood Risk and Coastal Change' (DCLG, 7th March 2014)<sup>34</sup> provides further detailed advice on flood risk including a detailed explanation of flood zones, the content of a Flood Risk Assessment (FRA) and other relevant matters such as the application of the Sequential and Exception Tests.
- 5.4.8 The Water Framework Directive (WFD) 2000/60/EC is a European Union directive which commits member states to achieve good qualitative and quantitative status of all water bodies. The WFD requires an assessment to be made of all permanent developments that may impact the water environment.
- 5.4.9 EN-1 states that the decision-maker may consider Development Plan Documents or other documents in the Local Development Framework both important and relevant to its decisions. In the event of a conflict between these or any other documents and an NPS, the NPS prevails

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<sup>34</sup> Accessed via National Planning Portal; NPPF and Practice Guidance Documents

for purposes of decision making given the national significance of the infrastructure (para 4.1.5).

### **Applicant's Approach**

5.4.10 The principal documents that the Applicant provided within the ES and supplementary reports that deal with hydrology and flood risk are recorded in the Examination Library. A number of supplementary documents were supplied during the Examination to meet concerns raised by the EA, questions from the ExA and IPs feedback. Details of this evolution are recorded in the Master Version Control Document and are set out later [REP9-009]. The primary application documents for this topic are:

- FRA (this included an Initial Flood Incident Response Plan (FIRP)) [APP-025];
- Water Resources [APP-071];
- WFD Assessment [APP-072];
- The Planning Statement [APP-081] (setting out, at section 4.4.31, the Applicant's approach to satisfying the NPS policy tests); and
- Drainage Report [APP-087].

### **Flood Risk**

5.4.11 The EA Flood Map indicates that the sites are located within Flood Zone 3a, which is defined as land assessed as having a high probability of flooding from rivers or the sea. The area is defended by flood defences and the risk arises from the River Humber.

5.4.12 The existing Humber Estuary defences would protect the temporary construction compounds against a 0.5% Annual Exceedance Probability (AEP) coastal flood event. The FRA says that the EA has confirmed that the flood risk vulnerability classification for the temporary construction works constitute '*Less Vulnerable*' development. The ExA is also satisfied on the basis of the Applicant's proposed construction arrangement in line with NPPF guidance, development of this classification is deemed appropriate in Flood Zone 3a and the exception test is not required.

5.4.13 However, the EA recommended that the permanent tunnel and surface features of the project (i.e. the cathodic protection kiosks and the small nitrogen monitoring kiosks (which were initially both designed to be flood resilient)) constitute '*Essential Infrastructure*.' This classification of development is deemed appropriate in Flood Zone 3a, providing that the Exception Test has been applied.

5.4.14 The Applicant applied and reported on the results of the sequential and exception test and full details are at section 4.2 of the FRA [APP-025]. The Applicant followed the guidance on the suitability of land use classification in relation to each of the Flood Zones as set out in the NPPF. The EA were satisfied with the adequacy of the assessment of flood risk in the FRA following Deadline 3 [REP6-016, page 6].



- 5.4.15 Most of the project's equipment would ultimately be buried. The flood risk for the project therefore relates to the temporary construction period of 36 months (tunnel flooding causing a breach of the defences) and a limited number of above ground nitrogen monitoring or cathodic protection kiosks. The location of '*Essential Infrastructure*' in Flood Zone 3a is therefore acceptable.
- 5.4.16 The FRA report then documents how the project would be safe with respect to all forms of flooding, without increasing flood risk to other sites, with a particular emphasis on coastal and fluvial flooding.
- 5.4.17 In relation to fluvial flood risk, the FRA assessed that there is a high risk of fluvial flooding at the Goxhill site. Therefore, flood mitigation measures are required to protect the site during the construction period. At Paull the Applicant says there is no history of past flooding but given the close proximity of the Thorngumbald drain there is likely to be some degree of risk and therefore flood mitigation measures are recommended during construction.
- 5.4.18 In relation to coastal flood risk, the FRA reports that existing defence located along the south bank of the Humber Estuary is only likely to protect the Goxhill site against a 5% AEP coastal flood event and therefore concludes that in the event of a breach of the existing defence, during the construction period, there is a significant risk of severe flooding of the site and therefore flood mitigation measures are required.
- 5.4.19 At Paull the flood defence along the northern back of the Humber Estuary is reported to protect the Paull construction site to a standard in excess of a 0.5% AEP event. There is consequently a significant risk of severe flooding and flood mitigation measures are again recommended during construction.
- 5.4.20 With adoption of suitable site water management no impacts from groundwater or surface water flooding are anticipated.
- 5.4.21 The Applicant states in the Crossing Options Report [APP-035] that the locations for the proposed tunnel shafts were carefully selected to minimise interference with the EA's existing flood defence walls as well as species inhabiting these areas.
- 5.4.22 The FRA includes mitigation measures to protect against the risk of flooding the construction compound or immediate land surrounding each site. These measures include the erection of 1.4m high flood bunds around the drive and reception pits (during tunnel construction) to protect against flood risk from a tunnel collapse. In addition, in case the sea defences were overtopped, diesel generators would be located on raised platforms [APP-025 and REP1-013 (addendum)] and a FIRP linked to the EA's advanced flood warning system would enable risks to be monitored and the need to put in place an evacuation and site shutdown process [APP-025, section 6.4].

- 5.4.23 The Applicant included an initial FIRP as an appendix to the FRA [APP-025, Appendix C].
- 5.4.24 The ES FRA Chapter states in the Executive Summary that with the use of 1.4m high flood bunds at the drive and reception pit to protect against fluvial and extreme coastal flooding during construction and a Site Water Management Plan to ensure embedded design measures such as permeable car park surfaces, surface water flooding is not considered to pose a specific risk.

### **Water quality and groundwater**

- 5.4.25 Water quality and groundwater impacts were assessed by establishing the baseline conditions at each site [APP-071, section 13.4], looking at environmental design measures to mitigate potential impacts (section 13.7) and then summarising the residual effects (section 13.8).
- 5.4.26 The baseline assessment considered the Humber Estuary and the East Halton Beck and Thorngumbald Drain and the requirements of the WFD.
- 5.4.27 Potential impacts considered included effects on abstraction and discharges and pollution. Water quality environmental design measures included consideration of:
- earthworks mobilising suspended solids in run-off;
  - drainage design to control surface waters;
  - pollution control (taking account of EA's Pollution Prevention Guidelines - section 13.7.5);
  - emergency spillage; and
  - water storage and site use.
- 5.4.28 The Applicant concluded that once appropriate environmental design measures are in place the potential for residual water quality effects was negligible.
- 5.4.29 The impact of dewatering to construct the drive pit was considered (sections 13.8.4 and 13.8.9). The East Halton Beck is classified as being of poor ecological status under the WFD and as such dewatering could have potential to affect the EAs objective of achieving good ecological potential by 2027. The Applicant considered the duration to be short and therefore concluded overall the significance of this effect would be neutral.
- 5.4.30 The dewatering could also affect water available for other users and the Applicant noted that the groundwater at Goxhill is already fully committed. Therefore whilst the Applicant stated that there was high sensitivity the duration of the dewatering was temporary and overall the significance was moderate. At Paull there are no public abstractions and the significance was concluded to be slight.
- 5.4.31 The application documents also included a separate assessment of the project under the WFD [APP-072]. This reviewed the potential impact

of the project against a number of key surface water and groundwater receptors that have potential to be affected. This concluded that the main effects of the project would be on groundwater bodies, specifically on the water resources and water quality attributes of the Grimsby Ancholme Louth Chalk Unit and the Hull East Riding Chalk, as a result of groundwater control during construction of the drive pit and reception pit. The proposal is made to reduce any such effects by better understanding of the hydrogeology and detailed design of groundwater control methods.

- 5.4.32 The Applicant supplied an initial Site Water Management Plan (SWMP) which outlines the environmental risks associated with the project and considers appropriate methods to mitigate against those risks [APP-073]. This was updated ahead of the close to its final form [REP6-008]. The Recommended DCO requires this plan to be developed during detailed design and approved by the relevant LPA, in consultation with the EA ahead of construction (Schedule 3, Requirement 5).

### **Examination**

- 5.4.33 The EA made an early detailed representation raising serious concerns about the adequacy of information supplied with the application [RR-010].
- 5.4.34 The EA's issues were highlighted ahead of the PM in their Relevant Representation (RR) [RR-010] and in a further letter to the ExA in response to the issue of the Rule 6 letter ahead of the PM [AS-005]. Annex G of the ExA's Rule 6 [PD-004] therefore contained a procedural decision, requiring amongst other matters a SoCG to be produced by the Applicant with the EA on a range of matters and an updated FRA, Geology and Soils Appendices and Water Resource Chapters including the results of a pump test and completed ground and laboratory tests [PD-004, page 23]. The purpose being to ensure this information was supplied early within the Examination in order to provide reasonable opportunity for its proper consideration by all parties engaged.
- 5.4.35 The EA's initial concerns are set out clearly and in full within the stated representations but in summary the principle items relevant to flood risk, hydrology and water quality included:

### **Flood Risk**

- inadequacies in the FRA including the use of old data that may underestimate risk and the lack of consideration of the effects of climate change;
- an increase in flood risk as a consequence of a possible tunnel collapse breaching the EAs tidal flood defences;
- the need for the ExA to consult River Humber Emergency Planning Services on the initial FIRP;

- insufficient detail on the potential effects of tidal flooding including satisfying the EA that the equipment kiosks (above ground) would be safe from or unaffected by flooding; and
- settlement of the EAs flood defences (tunnel passes beneath) compromising its effectiveness.

### **Groundwater Impacts**

- insufficient information about the effects on groundwater, in particular insufficient site investigation data and the requirement for a pump test;
- a concern regarding the impact of de-watering on groundwater including impacts on local ground water users, flows in the East Halton Beck (including effects on ecology) and the risk of saline intrusion; and
- the requirement for an abstraction licence and the potential lack of abstraction capacity in the area.

5.4.36 In response to the procedural decision and the EA's concerns, the Applicant commissioned a mini pump test to obtain further data on the underground conditions so that the effects of dewatering on the ground water system could be better understood and potential mitigation solutions presented. The Applicant also completed further ground investigation work and the following supplementary information was provided at Deadlines 1, 2 and 6:

- FRA Addendum - 23 September 2015, Deadline 1 [REP1-013];
- Addendum Report to Hydrological Impact Assessment - 12 October 2015, Deadline 2 [REP2-036];
- Mini Pumping Test Results and Factual Report - 12 October 2015, Deadline 2 [REP2-035]; and
- Updated initial SWMP, Deadline 6 [REP6-008].

5.4.37 In addition there was ongoing direct engagement between the Applicant and EA to progress these matters during the Examination.

5.4.38 The Applicant proposed a groundwater re-charge mitigation solution described in the Addendum to the Hydraulic Impact Assessment (HIA) (section 3.2.1.2 of [REP3-026]). The re-charge system would allow water to be removed from the immediate excavation area at the drive pit but would reintroduce that into the ground nearby to minimise any change in water levels, or available abstraction volumes.

5.4.39 By the ISH on 17 November 2015 the EA reported that a number of their concerns had been addressed. EA stated orally that [EV-008, 54]:

- FRA data was agreed including allowance for climate change. There was one outstanding matter regarding the impact of spoil storage within the flood plain on fluvial risk and the Applicant therefore submitted updated figures at Deadline 4 [REP4-034, pages 5-6]. These reflected climate change and the loss of

- farmland flood storage capacity when construction underway and spoil retained on site;
  - A flood protection height of 3.4m Above Ordnance Datum (AOD) had been agreed for the drive and reception pits bunds/protection during construction and the initial CEMP was updated at Deadline 4 to specify that as a minimum requirement [REP4-025, Con L1]. The EA said 3.4m would provide meaningful protection against normal daily tides;
  - It was agreed that the above ground kiosks need not be designed to be flood resilient as they solely provided weather protection to equipment and if damaged this would not affect the integrity of the installation;
  - The Applicant agreed to monitor settlement of the EA's flood defences as a consequence of tunnelling operations and to ensure a minimum depth of cover, or separation between the flood wall and the tunnel. This is secured in the Recommended DCO (Schedule 10, Part 4, 27) and is confirmed in the SoCG [REP6-016, page 8];
  - Of most significance, the mini pump test and HIA addendum with a groundwater re-charge proposal from the Applicant's specialist consultant OGI provided sufficient comfort to the EA at this stage for them to confirm there remained no "*show stoppers*".
  - The EA were able to verify subject to mitigation measures there would be no adverse effects in terms of the WFD.
- 5.4.40 Focus thereby moved to the content of the initial SWMP, the CEMP and the drafting of Requirement 5 (which secured the Site Water Management Plan) in the draft DCO.
- 5.4.41 Requirement 5 was developed into a more detailed list of matters to be addressed in liaison and under the control of the EA ahead of commencement. These changes can be tracked in the Applicant's Schedule of Amendments to the DCO and Plans [REP9-014] and is discussed further in Chapter 9.
- 5.4.42 By Deadline 6, a SoCG was executed with the EA [REP6-016] and this records agreement on all matters apart from the final detail of the Protective Provisions. A final representation at Deadline 9 verifies the EA's position as content on all matters apart from the wording of an indemnity clause in the Protective Provisions. The recommended DCO includes that wording (see Chapter 9 and Appendix D).
- 5.4.43 The ExA asked an additional question on the potential impact of flooding as a consequence of a tunnel collapse during construction in order to clarify the extent of land and property that could be affected. In response the Applicant said they had used "*extremely conservative*" flood modelling and that the village of Goxhill settlement is "*well above the extremely conservative flood level estimates for the tunnel collapse scenarios investigate*". This confirmed that the majority of the settlement of Goxhill would be unaffected [REP5-010, EXQ2, Q18].

- 5.4.44 On the 15 January 2016 the EA responded to the ExA providing their view on the Applicant's response (above) [REP6-023]. They said *"If the ExA wishes to have greater detail on land levels in this locality, the Environment Agency's LIDAR information (topographical survey) is available free of charge and can be provided to the applicant if requested"* but expressed no particular concern.
- 5.4.45 The ExA noted after the Examination close that whilst a representation from the EA dated 13 January 2016 was received and published to apologise that due to a flood event their response on this matter would be delayed, when that response dated 15 January 2016 arrived it was inadvertently not published by the Planning Inspectorate.
- 5.4.46 That situation was corrected on 25 April 2016 when the Secretary of State sent a notice to all IPs and the EA's letter was published on the on the project website [REP6-001], with a banner to highlight it.
- 5.4.47 No party apart from the ExA expressed concern or an opinion over the matters raised within this representation during Examination. The ExA is satisfied that the principles of fairness and public interest have been met.
- 5.4.48 The SoCG signed between the Applicant and the EA records under Adequacy of the mitigation proposed in the FRA, that subject to the securing of a minimum continuous flood bund around the drive and reception pits of 3.4m AOD, then with the exception of the following points the EA's concerns were resolved.
- 5.4.49 The EA's outstanding matters were recorded as [REP6-016];
- *"The ExA will also need to satisfy themselves in relation to the acceptability of the risk associated with tunnel collapse;*
  - *"Please note that the Environment Agency has not considered the acceptability or otherwise of the proposed emergency flood response (FIRP); and*
  - *"It may also be deemed necessary by the ExA to secure additional mitigation to deal with any increase in fluvial flood risk."*

### **Flood Emergency Response Plan**

- 5.4.50 At the 17 November 2015 ISH, the ExA asked the Applicant to consult the River Humber Emergency Planning Service (as recommended by the EA during the hearing) over the content and adequacy of the initial FIRP. At Deadline 4 the Applicant supplied a response from Emergency Planning Service confirming their awareness of the project, verifying that the initial FIRP covers all elements they would expect to see in such a plan but indicating that it would need development during detailed design to its final form [REP4-041].
- 5.4.51 By the Examination close the initial CEMP was updated at Pre A3 to include an obligation that the FIRP would be updated during detailed design by the Main Work Contractor in consultation with the Humber

Emergency Planning Services [REP7-019]. The CEMP is secured via Requirement 12 [Appendix D].

- 5.4.52 The ExA is therefore content that the second point in the EA's SoCG listed above is controlled within the Recommended DCO.

### **Internal Drainage Boards**

- 5.4.53 The Internal Drainage Boards operating near or across land required for the project are the South Holderness Internal Drainage Board (SHIDB) (Paull) and North East Lindsay Drainage Board (NELDB) (Goxhill). Both parties were engaged in the project by the Applicant. Neither party expressed any particular concerns regarding the project.
- 5.4.54 NELDB require a written consent for any water course crossing but agreed that the Board would be involved at a later stage of the project when consents are required for culverting watercourse and working within the 7m easement strip of maintained water courses. A signed SoCG confirms this agreement [REP1-030].
- 5.4.55 The project falls outside of the jurisdiction of SHIDB [REP1-031].

### **Drainage**

- 5.4.56 There were objections raised by Mr Dale on behalf of Mr Faulding and Mr Finch who are local farmers with land affected [REP5-002]. He requested greater detail of the land drainage works proposed before, during and after construction (reinstatement).
- 5.4.57 The Applicant responded on Mr Dale's objection of a lack of detail at Deadline 6 [REP6-003]. *"The demands for detailed construction information are disingenuous as they have been advised that this information will not be available until detailed design has been progressed by the main works contractor"*.
- 5.4.58 Mr Dale's concern regarding the absence of detail on drainage matters is dealt with in Chapter 8; however in summary the ExA is satisfied that control exists over the development of land drainage within the Recommended DCO in accordance with the NPS because of Requirement 9 (Agricultural land drainage) and accepts that in such projects detail design evolves and it is premature for all the solutions to have been defined at this stage.
- 5.4.59 This matter overlaps with a concern raised by Mr Dale regarding impacts on soil. That is discussed later under socio and economic impacts.

### **ExA's Reasoning and Conclusions on this Topic**

- 5.4.60 The ExA considers that the application DCO supplemented by the Flood Risk Assessment, mini pump test and HIA addendums and other updated documentation meets the NPS requirements.

- 5.4.61 In relation to the permanent works the ExA concludes that while the project may be exposed to flood hazards, the impact on the permanent works would be negligible because the infrastructure is largely located below ground and unaffected and the small number of above ground (ventilated) kiosks are impractical to make flood resilient and non-essential to the integrity of the installation.
- 5.4.62 The permanent works would not impact on flood risk to other receptors as the influence of the works on each flood source would be negligible.
- 5.4.63 In relation to the temporary works, the ExA considers that there would be a new potential risk of flooding of the site and immediate surrounding farmland and a limited number of residences during construction by breach of the flood defence if a tunnel collapse were to occur (see Geology and Soils). However, by rigorous planning and execution in accordance with the best available techniques and in compliance with the relevant standards and codes of practices identified by the Applicant during examination, including a final independent design check, the risk of the tunnel's collapse leading to breach of the defence and flooding risk is low. The residual risk would be further mitigated by the provision of flood bunds at the drive and reception pits during construction of the tunnel which is included in the initial CEMP and secured through the DCO.
- 5.4.64 During the construction stage the site compounds will be at risk of tidal flooding if the EA flood defences were overtopped by an extreme event, or from tunnel collapse. However these risks can be reduced by the evolution of the initial FIRP which would be developed in consultation with the River Humber Emergency Planning Service as secured via the initial CEMP [REP7-019, Pre A3, page 18].
- 5.4.65 During the construction stage there would also be a risk that the proposed works might increase the flood risk to other receptors but the additional modelling provided at the request of the ExA indicates that this would not affect the local villages which are located on higher ground [REP4-034, page 7]. The EA's SoCG [REP6-016] asks the ExA to consider whether additional mitigation "*may be*" necessary. Given there will remain a residual risk additional mitigation is attractive however that would involve additional cost and in the ExA's view is ultimately a commercial judgement for the Applicant. There is a lack of evidence to support the imposition of additional requirements upon the Applicant that could by their nature be considered unreasonable.
- 5.4.66 During the ISH hearing on 17 November 2015 the height of the flood protection bunds during tunnelling was discussed. The EA expressed desire for them to be as high as possible and in response to a question from the ExA the Applicant said that an "*aspiration of the team is we should be able to achieve extra 2-300mm but this is for MWC*". The Applicant expressed a will to increase the height of bunding from 3.4m AOD if at detailed design this was feasible and such an offer although



not binding is nonetheless welcome and would further reduce risk for all concerned [EV008-EV-010].

- 5.4.67 The fact that the project is necessary in this location to safeguard established national gas distribution network infrastructure is a significant factor in weighing the public benefit that offsets the residual risks and impacts identified.
- 5.4.68 Mitigation is proposed during construction to reduce the effects of flooding on the works and on the surrounding receptors including raising sensitive equipment above the flood level, the development of the initial FIRP and the provision of flood protection bunds at the drive and reception pit during tunnelling. These measures are each adequately secured via the initial CEMP.
- 5.4.69 Water quality and groundwater resources could be affected but measures within the initial SWMP and initial CEMP provide adequate control.
- 5.4.70 The requirements of the WFD are capable of being met as a consequence of the initial SWMP.
- 5.4.71 The initial SWMP secured in Schedule 3, Requirement 5, together with the initial CEMP secures a framework developed during the Examination and approved by the EA within which matters of flood risk, water quality, pollution, WFD would be satisfied.
- 5.4.72 By the Examination close the EA were satisfied on all counts apart from the final drafting of a clause within the protective provisions. This is discussed in Chapter 9 but has been included in the Recommended DCO (Appendix D). The ExA is therefore satisfied that the Recommended DCO at the Examination close meets the relevant policy tests.

## **5.5 GEOLOGY AND SOILS**

### **Introduction**

- 5.5.1 General ground conditions are covered in the ES in a report on Geology and Soils [APP-049]. This was supplemented with additional information during the Examination.
- 5.5.2 This section highlights the ground features of significance that were discussed during the Examination.
- 5.5.3 Geological Conservation has already been dealt with in the Biodiversity, biological environment, ecology and geological conservation Chapter.

## **Policy Tests**

- 5.5.4 EN-1, 5.10.8 requires that "*Applicants should also identify any effects and seek to minimise impacts on soil quality taking into account any mitigation measures proposed.*").
- 5.5.5 EN-4 , 2.23 requires Applicant's to assess ground conditions and consider matters such as ground stability, the use of horizontal directional drilling (HDD) and the potential impact of a scheme on designated areas of geological, or geomorphical interest.

## **Applicant's Approach**

- 5.5.6 The Applicant submitted an ES Chapter on Geology and Soils [APP-049] with 11 Appendices comprising a series of desk studies, ground investigations, geophysical surveys, a chalk report and information on Stoneledge Field (former brickworks and landfill site) at Paull [APP-050 - APP-060].
- 5.5.7 The assessment was undertaken in accordance with current legislation along with national, regional and local plans and policies as summarised in Table 8-1 [APP-049, page 2].
- 5.5.8 The assessment considered:
- impact on geological resources;
  - loss of resources; and
  - impact of contaminated land on receptors.
- 5.5.9 Details of the approach taken are set out at 8.3.4 of the ES Chapter identified.
- 5.5.10 Baseline information was gathered from a combination of desk study, site surveys and feedback from statutory consultees. The area studied comprised the land within the application boundary, plus an additional 250m buffer.
- 5.5.11 Plate 8-1 within the report [APP-049, page 16] details the geology encountered along the proposed pipeline route.
- 5.5.12 Made ground was encountered (for example Stoneledge Field, Paull - site of the reception shaft) along with tidal flat deposits, peat, glacial till and chalk.
- 5.5.13 Soils were reviewed using the National Soil Resources Institute database<sup>35</sup> and were generally found to be loamy and clayey soils of coastal flats with naturally high groundwater present on either side of the estuary. Chemical testing and ground gas monitoring were also completed.

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<sup>35</sup> <https://www.landis.org.uk/soilscapes>

- 5.5.14 Stoneledge field, a former brickworks and landfill site within the application site at Paull (location of the tunnel receive shaft), was found to contain fill and traces of asbestos containing materials (ACMs) were identified. Air monitoring was undertaken during ACM site testing and no significant airborne fibre concentrations were released during the investigations. Remediation is reported to have taken place by the former owners prior to handover to the Applicant [APP-049, para 8.7.6].
- 5.5.15 No regionally or locally significant geological sites were identified and this was verified by reference to records and local experts [APP-049, section 8.4.30-32]. Other desk based assessment (DBA) included looking at the site history using old maps, checking for pollution incidents, contaminated land, landfill sites and unexploded ordnance at Paull Battery (to the north) a former firing/practice range.
- 5.5.16 Environmental design measures proposed by the Applicant and included within the initial CEMP [REP7-019, section G] that is secured by Requirement 12 (see Chapter 9) includes:
- further baseline surveys ahead of setting up the proposed site compounds;
  - a watching brief during site strip for signs of contamination;
  - site set up to include designated areas for storage of chemicals, waste oils etc.;
  - generators to be bunded;
  - soil handling measures to protect and conserve topsoil;
  - development of a SWMP and a Materials Management Plan (MMP) that would form part of the PEMP; and
  - environmental design measures to prevent pollution incidents.
- 5.5.17 The ES proposed a number of mitigation measures which were included in the first draft of the initial CEMP that was submitted with the application and the accompanying draft DCO. The initial CEMP included at Pre-L1, Pre-L4, Pre-L6, Con-J6 an outline of the process to be followed in surveying the existing land drainage and installing new drainage. At Pre-F2, Pre-G1, Con-E3, Con-F12, Con-G8, Con-H1, Con-J10, there are details of a pre-construction survey, site stripping operations, soil handling and storage and pollution control measures.
- 5.5.18 The CEMP also provides for the development of a reinstatement plan, including soil handling and restoration measures which must be submitted to and approved by the LPA ahead of commencement. This is secured by Requirement 12 (e) of the DCO.
- 5.5.19 These mitigation measures have all been retained in the final version of the initial CEMP and the Recommended DCO.
- 5.5.20 The Applicant's ES [APP-049] concluded that with mitigation measures in place, the residual impacts on soils and geology and human health would be of '*negligible*' significance.

## Examination

### Site investigations and laboratory tests

- 5.5.21 In considering the detail of the ES Chapter on Geology and Soils ahead of the PM, the ExA noted that certain laboratory test and site investigations remained incomplete at the time of application. For example in the risk register at of the Ground Investigation Report on [APP-054, section 8, page 100] it states "*noting inability to undertake GI*" at the Paul Reception Shaft, leaving a residual low-medium project risk. In other cases residual risks are recorded as medium, or even high. It was clear that given the completion of this work the risks identified in that register might be more certain and perhaps reduced.
- 5.5.22 There is an overlap between hydrology and geology and soils. There is a relatively high water table near the estuary and the works/project would require dewatering during the excavation of the ground to create the drive pit and reception shaft for the tunnel. The nature of the ground in the vicinity of each end of the tunnel and the details of the water movement within the chalk layers and the nature of the ground itself could affect either the location of each end of the tunnel, or create challenges in its delivery. The ground would need to be suitable for the safe excavation of the drive and reception pit without unresolvable support, or de-watering issues.
- 5.5.23 On page 40 of the Ground Investigation Report [APP-054] it states "*The geology of both land sites along the tunnel route is laterally and vertically changeable making it difficult to model the water flow and recharge status for the chalk*".
- 5.5.24 The ExA therefore raised these matters in Annex G of the Rule 6 letter [PD-004, page 23] and this was discussed at the PM. The ExA's intent was to ensure that relevant supplementary information was made available early on during the Examination for full and proper consideration by all IPs and thereby to enable an appropriate Examination timetable to be confirmed.
- 5.5.25 The ExA also raised questions on these matters during the Examination. For example EXQ1, 4.3 [PD-006] raised questions on the risk register at the end of the Ground Investigation Report [APP-054], questioning how those risks might be reduced and enquiring how confident the Applicant could be in the conclusions presented within the ES.
- 5.5.26 The purpose being to ensure that there was sufficient evidence that the project was reasonably capable of delivery (for Compulsory Acquisition (CA) consideration purposes), within the order limits (a lack of initial information appeared to be available to confirm the location of the reception shaft site) and to the satisfaction of the EA in terms of potential impacts on groundwater etc.
- 5.5.27 During the Examination, the Applicant responded to the questions raised and confirmed completion of the Phase I and Phase II ground

investigations [REP2-043, EXQ1, 4.4], and also submitted the following supplementary information in support of the ES:

- Phase I Test Results and Factual Report Volumes 1-10 [REP2-025-034];
- Addendum - Phase II Test Results and Factual Report [REP3-008]; and
- The updated risk register [REP3-025].

5.5.28 This information, together with the results of the Mini Pumping Test [REP2-035] and addendum to the Hydrological Impact Assessment [REP2-036] (discussed earlier in this Chapter), gave a more detailed picture of the nature of the project and its likely impacts.

5.5.29 The Applicant stated in their full response to EXQ1, 4.4 [REP2-043] *"there is nothing to suggest that the geology over this section of tunnel is likely to affect the deliverability of the project in any way, or necessarily influence the position of the reception shaft, the TBM[tunnel boring machine] type or any other aspect of the tunnel as designed"*.

5.5.30 No IPs raised any concerns over these matters during Examination.

### **Tunnel collapse**

5.5.31 The EA was initially concerned at the risk of possible tunnel collapse during construction and the possibility thereby of a breach of the flood defences [RR-010, 2.1 (3)].

5.5.32 On this point in response to the ExAs question (EXQ1, 2.11) [REP5-010] the Applicant set out the reasons for the collapse of Yorkshire Water's Humbercare Wastewater Sewer tunnel in Hull in 1999 which had been raised by the EA. They also explained how tunnelling technology has developed in the intervening 16 years. In particular, the implementation of improved means to understand and manage risk that emerged as result of the introduction of the Joint Code of Practice (JCOP) for Risk Management of Tunnel Work in the UK in 2003.

5.5.33 The Applicant identifies in that response, details of a comprehensive list of current standards and codes of practice that the tunnel would be designed to. They included the fact that independent validation of lining design (including segment fastenings) for sufficient robustness would be undertaken.

5.5.34 The ExA also questioned on 15 January 2016 [PD-013, R17 Q15] why the Applicant had sought to remove a requirement for tunnel construction methodology to be approved by the relevant LPA from the DCO. This is discussed in Chapter 9 but had a satisfactory outcome. Additional text was included within the CEMP which is secured within the Order [REP7-019, at Pre L14].

5.5.35 No other objections were received regarding soil and geology from IPs.

- 5.5.36 One objection was raised regarding the effect on crop yield. This is discussed later under socio economic impacts.

### **ExA's Reasoning and Conclusions on this Topic**

- 5.5.37 There is no doubt that this will be a very large engineering operation affecting the existing farmland used for construction compounds over a minimum period of three years.
- 5.5.38 By the Examination close the EA were satisfied on all points under their statutory control. The EA did qualify this in regard to the risk of flooding through tunnel collapse [REP4-008, page 1]. They said "*the risk from this scenario is a function of both probability and consequence and making clear that we do not feel we have sufficient expertise or remit to pass judgment on the probability component. We are however content that the FRA now presents sufficient information to allow the potential consequences of a tunnel collapse to be understood. It is now for the ExA to satisfy itself that the risks are acceptable.*"
- 5.5.39 The ExA considers that given the level of control over tunnel construction as set out in the Applicants response to EXQ1, 2.11 [REP2-043], the fact that within the initial CEMP at 2.4.2 it states '*all construction works would be undertaken in accordance with the prevailing best practice guidance*' and under Pre L14 "*An independent validation of the tunnel design will be undertaken by a Chartered Engineer prior to the commencement of tunnelling*" then the ExA is satisfied this risk would be controlled.
- 5.5.40 The ExA is therefore satisfied that the project does meet the aims of policy advice on geology and soils and is capable of doing so without unacceptable residual impacts that outweigh the public benefit. This is the case both in terms of individual and cumulative effects, and during construction, operation and decommissioning.

## **5.6 TRAFFIC AND TRANSPORT AND PUBLIC RIGHTS OF WAY**

### **Introduction**

- 5.6.1 This section deals with the impact of the project on the existing highway network and the impact on Public Right of Ways (PRoWs) that are crossed by the project.

### **Policy Tests**

- 5.6.2 EN-1 Section 5.13 identifies traffic and transport as a topic that should be considered in the assessment of any nationally significant energy infrastructure project. The NPS recognises the economic, social and environmental effects that can be created and requires full consideration of mitigation measures proposed to minimise any adverse impacts.

## **Applicant's Approach**

- 5.6.3 The Applicant set out its approach to traffic and transport issues in the ES at Chapter 6.12 Traffic and Transport [APP-070] and section 12.3 identified the methodology used.
- 5.6.4 A drawing of the proposed haul route is available in the Traffic and Transport Chapter of the ES:
- Goxhill - [APP-070, Figure 12.1, page 68]; and
  - Paull - [APP-070, Figure 12.2, page 69].
- 5.6.5 The Traffic and Transport study included site visits in November 2014 to undertake an inspection of the local highway network to assess the suitability of roads to accept the construction traffic. Traffic surveys using manual and automated traffic counts were also undertaken in September to December 2014.
- 5.6.6 Following initial EIA scoping, the Applicant commenced pre-application consultation to agree EIA methodology with the local highway authorities at NLC (Goxhill - the main construction tunnel drive site) and ERYC (Paul - the tunnel reception site). This regular engagement between the Applicant and the local highway authorities is noted in the application documents (Table 12-4) and was evidenced at the ISH on the 17 November 2015.
- 5.6.7 The study assessed the significance of effects of changes in traffic flows based on a comparison of the expected traffic generation during the project's construction against the existing traffic levels and in accordance with Institute of Environmental Management and Assessment (IEMA) guidelines focused on where those traffic flow, or Heavy Goods Vehicle (HGV) flows, or predicted driver delays were significant (section 12.3.23).
- 5.6.8 On completion of construction, traffic would result from ongoing maintenance activities and the significance of these effects was considered to be negligible, a point not questioned during examination.
- 5.6.9 The study also looked at the predicted impacts on accidents and road safety, parking and loading, public transport and the PRoW network.
- 5.6.10 The existing highway network is described from section 12.4 and at Goxhill comprises an essentially rural network with the carriageways reducing from two lanes to single lane approaching the site at Goxhill where the majority of the construction activity and vehicle flows would take place.
- 5.6.11 At Paull there is a similar rural network but the site is located much closer to the dual carriageway (A1033) leading towards Hull. Much of the highway network has no pavement, some has grass verges.

- 5.6.12 At section 12.6 [APP-070] the Applicant examined the sensitivity of receptors along the proposed haul route for both sites and assigned a value from minor to major. At Goxhill the sensitivity increases as the site is approached from Goxhill as the highway narrows [APP-070, Table 12-18, pages 28-30]. At Paull the proposed haul route would use a private access via Rose Hill Farm and as a consequence avoid the village of Paull.
- 5.6.13 The sensitivity of the highway network and local environment to the project was therefore considered to be much less at Paul than at Goxhill, the site of the drive pit and therefore most construction and vehicle activity [APP-070, Table 12-26, page 45].
- 5.6.14 The Applicant sets out the results of the baseline surveys (existing traffic counts) against the traffic flows predicted from modelling in accordance with the IEMA Guidelines [APP-070, 12.3.3].
- 5.6.15 The increase in traffic levels is presented in graphic and tabular and graph format in the ES [APP-070]. The data for Goxhill can be reviewed at pages 33-42 and Paull at pages 47-54.
- 5.6.16 The principle mitigation measures embedded in the design include at Goxhill:
- Traffic Management Plan (TMP);
  - one-way traffic from College Lane around Goxhill/North End/South End;
  - the Soff Lane diversion;
  - during school term periods, deliveries of tunnel segments, arisings removals, and HGV traffic would be limited to between 09.00hrs and 15.15hrs through Goxhill;
  - temporary signage for construction traffic and public; and
  - Driver Information Packs.
- 5.6.17 Further measures such as an advisory speed limit, policing of the construction traffic rules, and the notification of local business of the timing of abnormal loads are also proposed.
- 5.6.18 At Paull the primary mitigation measure in the project is the proposed use of a private road though Rose Hill Farm past the sewage treatment works and to the AGI thereby bypassing the village of Paull.
- 5.6.19 These mitigation measures along with the haul route plans would control vehicle movement and drivers vehicle operation via the initial TMP [APP-083]. The initial TMP would be finalised by the Main Works Contractor and requires approval by the relevant LPA under Requirement 15 before commencement (see Chapter 9). This secures the mitigation and is discussed further in Chapter 9.
- 5.6.20 The residual impacts are described at section 12.8 of the ES and summarised in Table 12-33 for Goxhill and Table 12-34 for Paull [APP-070].



- 5.6.21 The Applicant summarises that at Goxhill "*The residual impacts of the scheme are mainly assessed as negligible or minor adverse. Moderate adverse effects would be seen on those roads where baseline flows are notably low*" [APP-070, 12.8.2].
- 5.6.22 The Applicant summarises that at Paull "*The residual impacts of the Scheme are mainly assessed as negligible or minor adverse*" [APP-070, 12.8.3].

### **Examination**

- 5.6.23 During the Examination representations were received from NLC Ward members [RR-003 to RR-005], NLC [REP2-018], Goxhill Parish council [RR-013] and members of the public [RR-017] concerned at the potential impacts of construction traffic.
- 5.6.24 Highways England were consulted on the impact of the project on the wider strategic network but concluded it would have an immaterial impact on the strategic road network [REP3-003].
- 5.6.25 The Barton on Humber Town Council was concerned at the potential impact of non-HGV construction traffic [RR-02]. They did not participate further in the Examination.
- 5.6.26 Goxhill Parish Council were concerned at the impact on the village and suggested the Applicant consider an alternative plan to route traffic in and out of the site along Chapel Field Road [RR-013].
- 5.6.27 On this issue, a group of three local Ward Councillors led by Cllr David Wells attended the PM to engage in the Examination. They had issued a RR expressing concern at traffic impacts and wished during the Examination to press for a two way traffic solution along Chapel Field Road and an extended Soff Lane diversion. They sought for any such improvements to remain after construction was completed to provide a '*legacy benefit*' for the village [RR-003].
- 5.6.28 Mr J Teasdale was similarly concerned at the increased traffic volume and its potential effects and supported a two way traffic solution along Chapel Field Lane [RR-017]. Thereafter he participated no further in the Examination.
- 5.6.29 Mr Leech [AS-012] and Mr P and M Stancer [RR-021 and REP4-045], an affected person and Category 3 party (See Chapter 8) owning land proposed to be used as part of the Soff Lane diversion, objected directly and via his agent to the project based on potential traffic impacts to their residences, or businesses. They were both represented by Mr Dale of DDM Agriculture [REP4-002].
- 5.6.30 NLC attended the ISH on 17 November 2015 and raised concerns at the potential construction traffic impacts of the project. They expressed a desire to see a solution that included long term highway improvement benefits. They also supported the use of Chapel Field Road for two way traffic to avoid the village and a longer diversion

route at Soff Lane avoiding use of the private concrete road that had been subject to some local objection.

5.6.31 In response to NLC's desire to see a post construction permanent highways benefit for the local community the Applicant highlighted the following constraints to providing a two way haul road on Chapel Field Road:

- services in the verges of Chapel Field Road that would require costly and lengthy diversion delaying commencement;
- that Chapel Field Road highway verge is required for the necessary widening and is not included within the order limits;
- that Chapel Field Road highway verge is not within the control of the Applicant and there is a lack of justification for the CA of that land; and
- disproportionate cost.

5.6.32 At the ISH on 17 November 2015 the potential use of Chapel Field Road for 2-way traffic and the possibility for some of the temporary passing places on the inbound haul route along Ferry Road and East Marsh Lane to remain after completion was discussed. The ExA asked the Applicant to supply:

- details of the services within the highways verge that they stated made it impractical to provide a 2-way solution for review by NLC [EV-014, Action point 18]; and
- a table to identify the passing places in the original application identifying:
  - those which were existing;
  - those which were proposed; and
  - those that following landowner discussions might be offered to remain permanent as an additional mitigation measure [EV0-14, Action point 19].

5.6.33 This information was supplied by the Applicant following the meeting in a technical note [REP4-042].

5.6.34 The ExA also requested that NLC Councillors submit a summary of their thoughts and recommendation in respect of an alternative 2-way haul road along Chapel Field Road [EV-014, Action point 17]. This was supplied following the meeting [REP4-005].

5.6.35 This process led to NLC accepting the additional mitigation measure of some of the temporary passing places along the narrow parts of the haul route becoming permanent and agreeing to their adoption [REP7-026 and REP7-040]. By the Examination close a SoCG had been signed between the Applicant and NLC [REP7-026] on highways matters. A similar SoCG was also executed between the Applicant and Goxhill PC [REP7-029]. The draft DCO and works plans had been updated to reflect and secure the passing places and the original objections were thereby withdrawn [REP7-040].

- 5.6.36 At Paull, Mrs Burn expressed concern at the use of local roads as a '*rat run*' by construction personnel to access local shops [EV-009, 1:40:39]. Following discussions at the 17 November 2015 ISH the Applicant produced a follow up note on this [REP4-035, page 3] explaining that workers would not have access to their own vehicles and access to vehicles on the site would be regulated. Construction workers would have to adhere to the terms of the TMP and the CEMP [REP4-035, page 3].
- 5.6.37 The Applicant's proposed haul route at Paull avoids the village by using a private track at Rosehill farm. ERYC had no concerns over this and signed a SoCG [REP2-037].
- 5.6.38 The ExA questioned the final destination of the tunnel arising's which would impact HGV traffic flows. It was established that there was capacity within the project to hold all arising's on site but that the Transport Assessment had assumed its removal as generated (worst case).
- 5.6.39 The ExA noted that an embedded mitigation measure was to reduce inbound traffic movements during term time to a 6.25 hour period but that the traffic flow projections were calculated over the unrestricted 12 hour construction period. The Applicant produced revised figures to demonstrate that the impact of this change would not be significant [EV-009, 1:30:49 and REP4-039]. This statement was agreed by NLC [REP4-005].

#### **ExA's Reasoning and Conclusions on this Topic**

- 5.6.40 The ExA concludes that concerns raised during the Examination in respect of traffic have been adequately addressed by the Applicant with reference to the relevant policy tests.
- 5.6.41 The suggestion of a two-way traffic solution was explored at the ISH on 17 November 2015 and technical information was subsequently exchanged in response to Actions set by the ExA. The ExA is satisfied from the evidence provided and the response from NLC as statutory highways authority that there are technical issues in making Chapel Field Lane two-way.
- 5.6.42 Additional mitigation in the form of permanent passing places was negotiated and agreed between the Applicant and NLC and this is secured in the Order and updated Works Plans.
- 5.6.43 NLC as statutory highways authority reached agreement with the Applicant that subject to the provisions of additional mitigation in the forms of permanent passing places to adoptable standards they were satisfied by the initial TMP. This is secured through in the Recommended DCO via Requirement 15.
- 5.6.44 No significant concerns were raised regarding traffic impacts at Paull and a SoCG is agreed with ERYC, the statutory highway authority.

- 5.6.45 There remain outstanding objections from some local residents near the Soff Lane diversion. In particular Mr Leech who owns a section of the concrete road (part of the Soff Lane diversion). It is important and relevant that the Applicant has reached voluntary agreement with Mr Shephardson who was believed to be the owner of the entire concrete road including that now known to belong to Mr Leech. This situation arose due to a defective Land Registry title record.
- 5.6.46 There is evidence submitted that the Applicant has agreed heads of terms with Mr Leech. This was not corroborated as the Examination closed and in any event would not be legally binding so can be afforded little weight.
- 5.6.47 The traffic impacts are to be managed through the recommended draft DCO and initial TMP, and the ExA considers that the adverse impacts of construction have been reduced as far as is practical and that the public benefits of the project outweigh any minor residual and temporary effects.

## **5.7 WASTE MANAGEMENT**

### **Policy Tests**

- 5.7.1 EN-1's requirements for Waste Management (para 5.14.6) are:
- Proposals for managing any waste produced and preparation of a SWMP.
  - Information on the proposed waste recovery and disposal system for all waste generated by the development.
  - An assessment of the impact of the waste arising from development on the capacity of waste management facilities for at least five years of operation.
  - Measures taken to minimise waste produced and waste disposal.
- 5.7.2 Requirements on the decision-maker include consideration of the extent to which the Applicant has proposed an effective system for managing hazardous and non-hazardous waste arising from the construction, operation and decommissioning of the project (EN-1, para 5.14.7).
- 5.7.3 EN-1 para 5.14.7 also states that the decision maker should be satisfied that:
- any such waste would be properly managed, both on-site and offsite, and that the waste from the proposed facility could be dealt with appropriately by the waste infrastructure which is, or is likely to be, available.
  - such waste arising's should not have an adverse effect on the capacity of existing waste management facilities to deal with other waste arising's in the area; and that adequate steps have been taken to minimise the volume of waste arising's, and of the volume of waste arising's sent to disposal, except where that is the best overall environmental outcome.

## **Waste Management Plan for England**

- 5.7.4 The Waste Management Plan for England, DEFRA, December 2013 (WMPE) provides an overview of waste management in England and complies with Article 28 of the revised Waste Framework Directive for Member States. One of the objectives of the WMPE is that by 2020 at least 70% by weight of construction and demolition waste is subjected to material recovery.

## **National Planning Policy for Waste (October 2014)**

- 5.7.5 National Planning Policy for Waste (NPPW) requires that waste planning authorities use a proportionate evidence base in preparing local plans, to identify the need for waste management facilities and to identify suitable sites and areas for those facilities. In identifying needs, authorities should drive waste management up the waste hierarchy and away from disposal.
- 5.7.6 In determining planning applications for non-waste development, waste planning authorities are asked (para 8) to ensure that:
- the likely impact on existing waste management facilities is acceptable;
  - the development makes sufficient provision for waste management; and
  - it promotes good design to ensure that waste management facilities are integrated with the rest of the development and with the local landscape.
- 5.7.7 Authorities must also ensure that waste handling from construction and operation maximises recovery opportunities and minimises off-site disposal (para 8).

## **Legislation**

- 5.7.8 The WMPE states that other relevant legislation should be taken into account including:
- Hazardous Waste Regulations 2005;
  - Environmental Protection Act 1990 (Duty of Care);
  - The Waste (England and Wales) Regulations 2012; and
  - Waste (England and Wales) Regulations 2011 as amended.
- 5.7.9 The Environmental Protection Act 1990 imposes duties on any person(s) who produces, carries or disposes of controlled waste.
- 5.7.10 The Waste Regulations 2011 impose a duty on all persons who produce, keep or manage waste, to apply the waste hierarchy. The principles of the waste hierarchy are also known as 'Sustainable Waste Management Principles'.

## **Revised EU Waste Framework Directive (2008/98/EC)**

- 5.7.11 In summary, the Waste Framework Directive requires Member States to take appropriate measures to encourage the prevention or reduction of waste production and the recovery of waste by means of recycling, re-use or reclamation or the use of waste as a source of energy. Hazardous waste is defined and various types of waste are classified through a List of Wastes (LoW).

### **Applicant's Approach**

- 5.7.12 The Applicant provides an outline of waste management in the initial CEMP [REP7-019, section 2.5, page 5].
- 5.7.13 There was no SWMP submitted as part of the application, however the Planning Statement at section 4.4.93-96 [APP-081] explains that a SWMP would be prepared for the project. The aim would be to minimize the volume of waste generated and maximize resource efficiency by applying the waste hierarchy (*eliminate – reduce – reuse – recycle – responsible disposal*).
- 5.7.14 There would be a significant volume of tunnel arisings from the project and there are large areas of agricultural land being stripped of topsoil which would be stored and reinstated on completion.
- 5.7.15 The Applicant identifies the following four options for the material:
- storage and local re-use (e.g. flood defence work by the EA);
  - reuse by another organisation for restoration (e.g. Cemex, or a landfill operator for capping);
  - storage on site and spreading on agricultural land; or
  - off-site disposal at a licenced facility [APP-084], section 2.5.11-2.5.15].
- 5.7.16 The SWMP and a MMP would be prepared following the protocols within the Contaminated Land Application in the Real Environment (CL:AIRE) Definition of Waste: Development Industry Code of Practice [REP7-019, section 2.5.11-2.5.16]. An MMP would establish details of how the project would manage construction materials for example it would include a detailed plan for the handling of large quantities of tunnel mining waste and where possible seek to find a beneficial local re-use.

### **Examination**

- 5.7.17 There were no objections or concerns raised by statutory bodies, or IP's.
- 5.7.18 However, the ExA explored this matter during Examination in order to:
- test and validate the waste volume estimates [EXQ1, 8.4.1];
  - ensure thereby that the calculation of HGV movements that impact the ES chapters on noise, traffic and socio economic

impacts had assessed the 'worst case' under EIA [EXQ1, 8.4.2 and 3];

- clarify whether the entire waste stream production could be accommodated within the site compounds [EXQ1, 9.5];
- establish why given the scale of the waste stream operation an initial SWMP had not been produced; and
- establish whether licences would be forthcoming and if the local waste streams could manage the volume if a suitable re-use was not found [EXQ1, 9.1] and [ISH 17 November 2015].

5.7.19 In response, a Technical Note was produced by the Applicant following the Hearings [REP4-038]. This identifies that:

- the total volume of tunnel arisings would be 108,500m<sup>3</sup>;
- all spoil arisings from tunnelling would be returned to the Goxhill side of the project for storage and removal;
- the ES assessed the worst case scenario of all material being removed from site during construction; and
- that during term time due to restricted operational hours to mitigate against the effects of traffic at Goxhill during this time HGV movements would double from 5 to 10 per hour (peak).

5.7.20 During the ISH on 17 November in response to the ExAs questions, the EA confirmed [Audio tape ref]:

- Permitting would not be a '*show stopper*'. It was difficult to progress until further design was completed providing better knowledge of the nature of the (chalk) waste arisings;
- The EA is likely to be regulator of the licenced recipient sites;
- Capacity is likely to be self-regulating since it is not in the Applicant's interests to send it far and there is commercial benefit for re-use; and
- The EA would be interested in use for flood defence work but it depends upon the nature of the material and timing [REP2-016, Q9.3].

### **Site Waste Management Plan**

5.7.21 As noted above, the Planning Statement [APP-081] explains that a SWMP would be produced. The initial CEMP also sets out at section 2.5 the aims and principles of the SWMP placing the responsibility on the Main Works Contractor for its development [REP7-019, section 2.5.2].

5.7.22 Requirement 6 of the Recommended DCO secures the development of an initial SWMP and its approval by the relevant LPA in consultation with the EA before works commence. The DCO requirement was updated at the ExA's request on 27 November 2015 to identify a list of items that must be included in the approved SWMP [REP9-014, page 6] and the Applicant's final draft DCO was agreed by the EA [REP6-016].

5.7.23 At the ISH on 17 November 2015 the lack of an initial SWMP was discussed. The Applicant explained that it was premature to produce

one because the precise nature of the waste material could not yet be determined and that the market for potential uses including for example that of the EA (flood defences) varied over time. The EA acknowledged this was a reasonable statement and expressed no concern over the lack of a more detailed SWMP at this stage.

### **ExA's Reasoning and Conclusions on this Topic**

- 5.7.24 If an Order were granted the large volume of material generated by the tunnelling activities would have a significant impact in determining HGV flow rates and its final destination would dictate the impact on the highway network.
- 5.7.25 The ExA is satisfied that the worst case effects were considered within the ES; that there is capacity on site for storage of materials; and that there is potential for the Main Works Contractor to manage HGV flows and mitigate traffic impacts as the initial TMP is developed and subsequently approved by NLC.
- 5.7.26 There is an aspiration by the Applicant and the EA to use the material locally for flood improvement works (separate to this project) and as the EA stated there will be a commercial driver (reduced haulage costs) that will promote and influence that outcome.
- 5.7.27 No concerns were expressed by the EA during a detailed exchange on the matter of waste at the ISH on 17 November 2015, or following the Applicant's issue of the supplementary technical note. A SoCG is also signed between the Applicant and the EA. This confirms that EA are content with the adequacy of information supplied and that *"the Environment Agency is comfortable, based on the information available, that there are no showstoppers to National Grid Gas obtaining the necessary permits/licences"*.
- 5.7.28 The ExA therefore concludes that the Applicant has adequately addressed matters of waste within the ES that are relevant to the policy tests.
- 5.7.29 The Recommended DCO secures the development of a SWMP as detailed design progresses. The ExA considers that the public benefits of the project outweigh any minor residual and temporary effects.

## **5.8 NOISE DISTURBANCE AND VIBRATION**

### **Introduction**

- 5.8.1 This section deals with the impact on residents of the noise and vibration that would be caused by the project during construction, operation and decommissioning.
- 5.8.2 Potential effects on wildlife and biodiversity have already been covered.



## **Policy Tests**

- 5.8.3 EN-1 Section 5.11 identifies noise and vibration as a topic that should be considered in the assessment of any nationally significant energy infrastructure project. It notes at para 5.11.1 that excessive noise can have wide ranging impacts on the quality of human life, health and enjoyment.

## **Applicant's Approach**

- 5.8.4 The Scheme is described in detail elsewhere in this report. In summary it requires a construction compound on land at Goxhill and Paull and would create a new tunnel, running under the River Humber between the two sites.
- 5.8.5 The tunnel would be driven from Goxhill which is where the most intense construction activity would occur. A haul route has been selected for the transport of materials and workers to and from each site (see Traffic and Transport below).
- 5.8.6 The Applicant describes the potential impacts of the project in the Noise and Vibration Chapter of the ES [APP-064] and three supporting Appendices [APP-065 - APP-067] that provide the data collected to establish existing baseline noise conditions in the vicinity of the project. This data was then used in noise modelling using a computer program to predict noise impacts and inform mitigation measures.
- 5.8.7 The study area comprised the project boundary and a further 300m buffer and the assessment was undertaken in accordance with British Standard 5228:2009+A1:2014 '*Code of Practice for Noise and Vibration Control on Construction and Open Sites*' [APP-064, section 10.3.2].
- 5.8.8 Potential receptors were identified as birds from the SPA, SAC and Ramsar site (Humber Estuary) within the estuary, foraging and roosting in nearby fields, and humans occupying local residences.
- 5.8.9 Noise would be generated from the construction compounds at Goxhill and Paull, the construction haul route to and from each compound, and (potentially) the tunnelling activity.
- 5.8.10 Surveys were undertaken to establish background noise following a desk study that identified eight representative receptor locations. These locations [APP-064, Table 10-3, page 7] were agreed with the relevant local Environmental Health Departments (NLC and ERYC respectively) prior to being undertaken [REP2-037, Table 3-5, ERYC and REP7-025, Table 3-5 NLC]. Surveys were conducted over a period of five to seven days including weekends and week days, daytime, evening and night time.
- 5.8.11 Predictions of noise generated from the project were made based on a model using a computer based prediction program IMMI (produced by Wölfel Meßsysteme). The software package follows the procedures

given in BS 5228 and is widely used to predict noise impacts for various types of environmental noise assessments. The construction noise assessment was based upon an indicative construction schedule and construction plant itinerary which was provided by the Applicant [APP-066].

- 5.8.12 The study states that "*Operational effects are not assessed within the Chapter as there would be no change to the existing baseline on completion of the construction works*" [APP-064, section 10.3.12].
- 5.8.13 Section 10.7 of the Noise and Vibration ES Chapter sets out the environmental design measures proposed to eliminate and/or reduce any potential impacts of the project as a result of the construction phase. These measures are set out in the initial CEMP [Section Con I, page 33-34) and secured under Requirement 12 of the Recommended DCO and Requirement 13 (see Chapter 9). These include:
- the use of 3.0m high soil bunds around the construction compound at Goxhill [Con I6];
  - the installation of 2.4m close boarded fencing, both as illustrated on the Site Layout Plans [Con I7]; and
  - HGV movements restricted to 07:00 to 19:00 on weekdays (excluding bank holidays) only. Any isolated HGV movements on a Saturday would occur before 1pm and there would be no HGV movements on a Sunday [REP3-009, paras 3.1.4-5].
- 5.8.14 The noise Chapter interlinks with three other ES Chapters:
- the Traffic and Transport Assessment [APP-070] because in that Chapter the nature and type of equipment required on site and travelling to and from site and the frequency of those journeys is predicted thereby it provides data input for the noise model;
  - the Socio Economic Chapter [APP-068] because of the potential impacts on people and businesses, and;
  - the ecology and nature conservation Chapter [APP-047], because of the potential for noise and vibration impacts on ecological receptors.

### **Examination**

- 5.8.15 ERYC's LIR [REP2-004] acknowledged at section 6.6.2 that the project could potentially result in disturbance from noise and vibration to residential amenities during construction. However they concluded that the application ES demonstrated that the best practicable means would be adopted in order to eliminate or mitigate adverse impacts, and were satisfied with the use of Requirement 11 (construction hours) and Requirement 13 (noise) (see Chapter 9) to secure control, and raised no outstanding concerns.
- 5.8.16 A SoCG signed on 8 October 2015 records agreement between ERYC and the Applicant on their approach to the assessment of baseline noise levels including noise monitoring, the list of potentially affected

receptors at Paull, and that the measures outlined in the initial CEMP are appropriate for managing noise levels [REP2-037].

- 5.8.17 NLC's LIR [REP2-018] agrees with the baseline noise assessment and that measures proposed for monitoring noise outlined in the initial CEMP along with the environmental design measures are appropriate for the planning of noise management. A SoCG signed on 11 February 2016 records agreement between NLC and the Applicant on the approach to the assessment of baseline noise, the potentially affected receptors, that the measures described in the CEMP (along with section 10.7 of the ES) provide an effective basis from which to plan detailed measures for the management of noise emissions [REP7-025].
- 5.8.18 NLC state agreement with the overall approach to the ES assessment of construction noise and vibration used in the production of Chapter 10: Noise and Vibration [REP2-018, para 10.2]. However, they also recommend that in addition to considering noise criteria based on the 12h LAeq (Equivalent Continuous Level), the Applicant should also consider criteria for the control of noise based on LAeq over shorter time periods for activities that have high noise levels over short time periods, and LAm<sub>ax</sub> (Maximum Sound Level) for impact noise where appropriate [REP2-018, para 10.3]. The Applicant included an additional commitment to satisfy NLC on this matter in the CEMP at Pre I4 [REP7-019, page 23].

### **Impacts on residential amenity**

- 5.8.19 Mr and Mrs Burn attended the ISH on 17 November 2015 and raised concern at the potential impact of noise from construction works at Paull on their nearby home. In response, the Applicant added their property to the list of monitoring locations within the CEMP at Con I8 and Con I9 [REP7-019].
- 5.8.20 This monitoring would be undertaken at least one day a month throughout the construction period. Requirement 13 of the Recommended DCO requires a written scheme for noise management during construction and maintenance of each stage to be submitted to and approved, in writing, by the relevant LPA before commencement. NLC would therefore have control over this matter.
- 5.8.21 During the 17 November 2015 hearing Mr Burns confirmed he was now satisfied on this matter.
- 5.8.22 A group of three local Ward councillors represented during the Examination by Cllr D Wells made oral and written representations regarding the haul route. They were concerned at its impact on the local highway network but did not focus on noise or vibration [RR-003].
- 5.8.23 Mr P Stancer who lives within 12m of the Soff Lane diversion expressed concern in his RRs on the potential impact of noise and vibration [RR-021]. He submitted a further representation expressing

alarm at the proposal by NLC and others for the route past his home and business being made two-way to remove the need for the inbound haul route through Goxhill [REP4-045].

- 5.8.24 The Parish, Town Council and Mr J Teasdale expressed concern at the impacts on the local highway network including, disruption, safety and non-HGV traffic impacts but did not specifically raise noise as an issue [RR-013, RR-002 and RR-017].
- 5.8.25 Goxhill PCC were initially concerned at the vibration impact on the Grade 1 listed village church and wrote to express relief and appreciation at the application stage proposed haul route that would not see traffic passing close to the church [RR-014].
- 5.8.26 Concerns were raised over the impact of noise and vibration on residential amenity and local businesses by affected persons and Category 3 parties. These matters are discussed further under Socio Economic Impacts and in Chapter 8, CA.

### **Construction traffic noise**

- 5.8.27 The ExA was concerned that the increase in volume of local HGV traffic had been inadvertently reported over the incorrect time period and that the flows, noise and vibration impacts on local people could have thereby been understated. The ExA also sought clarity on the volume of tunnel arisings from the project, capacity for on-site storage and the plan for the control of HGV movements/flows from the site. This matter was discussed at the ISH on 17 November 2015 and is reported in detail below under Traffic and Transport.
- 5.8.28 The ExA raised questions on the noise impacts of construction traffic during the Examination [PD-006 and PD-010], in particular:
- whether the Applicant had taken into account the doubling of the predicted numbers of HGV movements (reflecting the impact of the mitigation strategy to reduce HGV hours during term time) [REP3-009, paras 3.1.4-5] and consequently if the results of the ES assessment had changed;
  - if in response to suggestions made by NLC for alternative methods of evaluating noise impacts in their LIR (measurement over different time periods) [REP2-018] NLC considered the proposed construction noise control via Requirement 13 of the DCO and the initial CEMP was sufficient. NLC confirmed they were content on the matter [REP2-019, EXQ1, 7.2];
  - whether irrespective of all the British Standard measurements and predicted noise levels, given the pre-existing peaceful rural location, NLC considered that the increase (doubling) of HGV numbers using the haul route (see Traffic and Transport section) and the noise and vibration generated by construction traffic would have a noticeable effect on people or not; and

- whether Network Rail had clearly confirmed the adequacy of the railway bridge at Goxhill to take the intended loads. This matter was later dealt with by protective provisions [REP4-035].

- 5.8.29 The initial TMP submitted on application placed a restriction on inbound HGV traffic along Ferry Road to between 9:00-15:15 hrs during term time [APP-083, para 3.1.4] to minimise the impacts on the local highway network at Goxhill. The ExA also asked questions at the ISH on 17 November 2015 on the impact of these restricted hours (6.25 hours) on the flow rate of HGVs which appeared to have been calculated over the unrestricted 12 hour period [APP-016, Requirement, 11(a)].
- 5.8.30 Chapter 9 details how this was and remains (in the Recommended DCO) secured by Requirement 15 but this mitigation measure was not originally specifically detailed in either location.
- 5.8.31 In response to these queries, as requested by the ExA, the Applicant provided an HGV Noise Clarification Note following the hearing [REP4-039]. This states that the difference in terms of environmental noise when HGV flow rates are adjusted to reflect the reduced operational hours during term time (6.25 hours instead of 12 hours outside of term time) would be less than 1 decibel (dB) LAeq. This is considered negligible and would be below the threshold of perception.
- 5.8.32 In response to an ExA question, NLC [REP4-005] also confirmed that having carried out their own analysis they agreed with the Applicants assessment. They said *'On this basis I would agree with the Applicant's Noise Clarification Note that there would be no significant adverse noise impact associated with restriction of HGV movements to 6.5h inbound instead of 12h inbound.'*
- 5.8.33 On reviewing the representations received and the Traffic Assessment and having driven the proposed haul route, the ExA noted that despite the conclusion of the technical assessment within the ES there would be a significant variation in HGV traffic using certain sections of the haul route. Traffic impacts were a matter that had been demonstrated to be an important matter to local residents, Goxhill Parish Council and NLC. The inclusion of this mitigation offer within the Order was discussed during the Examination. The Applicant considered it should remain within the initial TMP secured via the CEMP. The ExA considers it of importance and therefore that it should be added to Requirement 15 (see Chapter 9).
- 5.8.34 The ExA therefore raised questions on this and suggested alternatives. As a consequence a change has been made to Requirement 15 within the Recommended DCO (see Chapter 9 and Appendix D).

### **ExA's Reasoning and Conclusions on this Topic**

- 5.8.35 The objection from Mr and Mrs Burns was removed following the Applicant's addition of noise monitoring at their house within the initial

CEMP and the ExA is content that adequate and secured monitoring is in place for construction phase controlled by the LPA.

- 5.8.36 The Applicant's supplementary note, Annexure 3 to Hearing Action Checklist - Action 2 HGV Noise Clarification Note [REP4-039] issued following the hearing indicated that the impact of the adjusted traffic flow (doubling) would create a net change of less than 1dB LAeq (negligible). This is a figure agreed by NLC and therefore one on which the ExA is content to rely on in concluding that there will not be any significant additional noise effects that have not already been considered within the ES.
- 5.8.37 The ExA is satisfied that the Recommended DCO provides control over construction noise and vibration under Requirement 13 (see Chapter 9), and that parameters for the development of an effective noise management plan are set out in the initial CEMP at Pre I1- I4 and Con F1-F3. The relevant LPA would have control of the final noise management details ahead of commencement and would be responsible for enforcement thereafter.
- 5.8.38 The ExA concludes that concerns raised during the Examination in respect of noise and vibration issues have been adequately addressed by the Applicant with reference to the relevant NPS policy tests and that subject to noise management being secured through the Recommended DCO and initial CEMP the public benefits of the project outweighs any minor residual and temporary effects.
- 5.8.39 Once operational the ExA is content that the AGIs would not cause any significant noise or vibration impacts.

## **5.9 AIR QUALITY, DUST AND LIGHT EMISSIONS**

### **Introduction**

- 5.9.1 This section of the report deals with aspects of air quality, including dust, and light emissions.

### **Policy Tests**

- 5.9.2 National Policy Statement (NPS) EN-1 explains that planning and pollution control are separate but complementary and that the IPC<sup>36</sup> (ExA on behalf of the Secretary of State) should focus on whether the development itself is an acceptable use of land and on the impacts of that use. The NPS highlights that there are already other pollution control regulatory regimes in place.
- 5.9.3 In Part 5: Generic Impacts, EN-1 provides guidance for cases where the project is likely to have adverse effects on air quality and

paragraph 5.2.7 sets out the criteria that should be assessed in the Applicant's ES.

- 5.9.4 The ExA<sup>37</sup> is asked to give substantial weight to consideration where a project would lead to deterioration in air quality (5.2.9) and to consider whether mitigation measures are needed during construction or operation over and above a project application (5.2.11).
- 5.9.5 In section 5.6 of EN-1, under the heading of Dust, odour, artificial light, smoke, steam and insect infestation, EN-1 recommends that the assessment provided by the Applicant should describe:
- the type, quantity and timing of emissions;
  - aspects of the development which may give rise to emissions;
  - premises or locations that may be affected by the emissions;
  - effects of the emission on identified premises or locations; and
  - measures to be employed in preventing or mitigating the emissions.
- 5.9.6 The decision-maker is advised in paragraph 5.6.7 of EN-1 to satisfy itself that:
- an assessment of the potential for artificial light, dust, odour; smoke, steam and insect infestation to have a detrimental impact on amenity has been carried out; and
  - that all reasonable steps have been taken, and will be taken, to minimise any such detrimental impacts.
- 5.9.7 Paragraph 5.6.10 of EN-1 suggests the decision-maker considers the need for a scheme of management and mitigation to reduce any loss to amenity which might arise during the construction, operation and decommissioning of the development.

### **Applicant's Approach**

- 5.9.8 The relevant application ES documents are ES Chapter 5 Air Quality [APP-039] including Appendix 5.1 Dust Risk Assessment [APP-040] and Landscape and Visual Amenity (light emission) [APP-063]. In addition a Statement of Statutory Nuisance [APP-026] was supplied in Volume 5 (*'Other Reports'*).
- 5.9.9 ES Chapter 5 presented an assessment of potential construction dust impacts which was undertaken following the Guidance on the Assessment of Dust from Demolition and Construction (Institute of Air Quality Management (IAQM), 2014). It concludes that site preparation, excavation and construction have the potential to generate dust emissions. However, subject to implementation of site

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<sup>37</sup> The Infrastructure Planning Commission (IPC) was removed under the Localism Act 2011 by the Coalition Government and that decision making role replaced by relevant Secretary of State (SoS). The Examining Authority (ExA) is appointed by the SoS to make the recommendation upon which the SoS makes that decision

specific mitigation measures that are incorporated into the initial CEMP it says there would be no significant impacts on air quality [APP-081, 4.3.2].

- 5.9.10 The Environmental Design measures within the project includes the use of bunding around the construction compounds, use of wet methods to prevent dust emissions and early removal of surplus materials that have potential to produce dust. Materials being used on site would be covered and stockpiles seeded or fenced. A full list of these measures is set out in table 5-10 of the Dust Risk Assessment [APP-040].
- 5.9.11 The proposed mitigation measures would be secured via the initial CEMP and Requirement 12 of the Recommended DCO. The content of the initial CEMP regarding air quality control measures are listed at Con D1-D23. Chapter 9 of this report deals with securing of the CEMP and the Requirements.
- 5.9.12 The impact of lighting is considered in the Landscape and Visual Amenity Chapter of the ES [APP-063] commencing at section 9.4 where baseline conditions are reviewed and then section 9.7 where the impact of the project is considered [APP-063]. The construction compounds would be lit by lights at a height of up to 10m throughout the construction period at Goxhill and for a far lesser period (generally limited to security lighting at cabins but potential for 2 weeks of 24 hour working) at Paull (section 9.7.11).
- 5.9.13 Construction lighting control measures are listed at Con-A7 and Con-H11 of the initial CEMP provided within the application and have been retained in the final version [REP7-019]; these require lighting to be baffled and angled down towards work to minimise light spill. In addition to the measures set out in the CEMP, Requirement 17 of the draft DCO requires external lighting design details to be approved by the relevant LPA before works commence. This Requirement remains in the Recommended DCO.
- 5.9.14 The overall impact of lighting is stated to be of moderate significance on the night time character of the local landscape at Goxhill [9.8.13] and negligible significance at Paull [9.8.27]. No lighting would be required during operation therefore there would be no post construction impacts [section 9.8.14].

### **Examination**

- 5.9.15 The Applicant's ES reached a conclusion of no significant air quality effects and this was not challenged by IPs during the Examination. No questions or concerns were raised regarding the night time lighting required during construction.
- 5.9.16 The LIRs prepared by NLC [REP2-018, paras 11.1-2] and ERYC [REP2-004, paras 6.6.2-3] accept the scope of the ES and reach the conclusion that the effects will be adequately mitigated by the measures identified in Table 5.10 (Dust Risk Assessment) and



Requirement 17 which requires details of temporary lighting to be supplied to and approved by the LPA before works commence.

- 5.9.17 The SoCG signed with NLC confirms agreement on matters of air quality, dust and lighting [REP7-025, Table 3-1].
- 5.9.18 The SoCG signed with ERYC confirms agreement on matters of air quality, dust and lighting [REP2-037, Table 3-1].
- 5.9.19 Public Health England (PHE) reviewed the application documents and in their RR stated that they were satisfied with the Applicant's assessment and conclusion that subject to the proposed mitigation being implemented construction related air quality and dust emissions are predicted to have no significant impact on public health [RR-028].

### **ExA's Reasoning and Conclusions on this Topic**

- 5.9.20 The ExA finds that the ES adequately addresses the requirements of NPS policy.
- 5.9.21 In reaching this conclusion the ExA has taken account of:
- the information presented in the ES [APP-39, APP-40 and APP-63];
  - the advice given by PHE [RR-028];
  - the LIRs;
  - the responses to ExA questions;
  - the mitigation provisions within the CEMP secured by requirement 12; and
  - Requirement 17 controlling detailed lighting design.
- 5.9.22 The ExA finds that the impacts caused by air quality and lighting during construction have been properly assessed, that there are no other emissions identified in EN-1 that have the potential to cause significant impact and that all reasonable steps would be taken to minimise their impact in accordance with EN-1. Dust impacts would only be an issue during construction not operation and is controlled via the CEMP. The ExA is content that with the mitigation proposed, the development would comply with the NPPF.

## **5.10 CONSTRUCTION AND PROJECT DELIVERY**

### **Introduction**

- 5.10.1 The means by which the project would be organised and executed was the subject of ExA questions during the Examination. The purpose being to ensure the project was capable of delivery ahead of considering the requested compulsory powers.
- 5.10.2 In particular the following items were explored;
- the fate of the existing Feeder 9 pipeline;
  - pipeline safety issues;

- the adequacy of the geological and hydrological assessment; and
- flood risk.

5.10.3 The latter two items will be considered under the relevant and separate topic headings below. The following paragraphs address the existing pipeline and safety issues.

### **Policy Tests**

5.10.4 EN-1 - para 4.2.1 states that The European Environmental Impact Assessment Directive<sup>38</sup> requires an assessment of the likely significant effects of the proposed project on the environment, covering; *'the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects at all stages of the project'*.

5.10.5 EN-4 - para 2.19.5 (and EN-1 4.11) requires the ExA to take advice from the Health and Safety Executive (HSE) about safety issues. NPS EN-1, 4.11 identifies that some energy infrastructure will be subject to the Control of Major Accident Hazards (COMAH) Regulations 1999; this appeared to be of relevance to this application but that turned out not to be the case as explained below.

### **Applicant's Approach**

5.10.6 The Applicant sets out, within the project Description [APP-031] at section 2.10, details of the existing Feeder 9 pipeline crossing. On completion of the new pipeline, high pressure gas would be removed from the existing pipeline and transferred to the new pipeline. They stated that the existing pipeline would then be *'left in situ, filled with inert gas at low pressure'* and an earth system installed and connected to the existing pipeline to limit corrosion.

5.10.7 At 2.10.4 they state *'There would be ongoing monitoring. Removal of the existing pipeline does not form part of this project'*.

### **Examination**

5.10.8 The works listed within the draft DCO identified at Work 2C and Work 3D describe the decommissioning, isolation and protection works necessary to support the long term maintenance of the original pipeline. At the outset of the Examination the ExA explored the fate of the existing Feeder 9 pipeline because with infrastructure installations it is common for there to be a requirement to remove equipment when it is no longer operational. This requirement can be driven by planning, or commercial agreements.

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<sup>38</sup>Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, amended by Directives 97/11/EC and 2003/35/EC

- 5.10.9 In response to an ExA written question on the fate of the existing pipeline the Crown Estate (CE) advised that it was subject to two agreements. The first, a lease with CE in favour of the Applicant. That lease is due to end on the 1st October 2016 and an extract was provided identifying that on expiration there is an obligation (clause III, para 13) to remove the pipeline and restore the site [REP2-001].
- 5.10.10 A second agreement covers the south side of the existing crossing where the CE is freeholder of the land but it is leased to Associated British Ports (ABP) on a 999 year lease with over 850 remaining. CE stated *'it will be for ABP to advise as to the existing and proposed arrangements'* [REP2-001].
- 5.10.11 ABP state that the existing underlease to NGG for the existing pipeline expires on 30 September 2016. Terms are agreed for the grant of a supplemental underlease in respect of an additional area occupied by remedial works undertaken in December 2011 [REP3-031].
- 5.10.12 ABP acknowledge that there have been discussions with regard to the proposed renewal of the existing underlease and supplemental underlease for the existing Feeder 9 pipeline. They say that whether they agree will depend upon the pipeline's condition nearer to the date of renewal. They suggest renewal for a period consistent with the period required for the construction of the new tunnel and commissioning of the new pipeline. They end by stating *'Upon successful commissioning of the tunnel/new pipeline it is presumed that the existing pipeline will become redundant in which case removal of the same, is considered appropriate to ensure there are no future navigational safety implications.'* [REP3-031].
- 5.10.13 A final position statement on this matter was provided by the Applicant at Deadline 7 [REP7-036]. The Applicant reports that the existing Feeder 9 pipeline does not form part of the project and is not affected by it, that it will remain in-situ and that negotiations for renewal of the existing lease with ABP and CE continue. They say *'The parties are confident that agreement will be reached in due course and are progressing outstanding matters.'*
- 5.10.14 The matter of safety (NPS EN-1, 4.11 and EN-4, para 2.19.5) was raised by the ExA during the ISH on the 17 November following which at the ExA's request a submission was made by the Applicant under Action Point 1 [REP4-037]. This clarified that the COMAH Regulations do not apply to the project which involves transport of gas and not its storage.
- 5.10.15 The Applicant's action note [REP4-037] issued after the 17 November 2015 ISH also summarises the consultation undertaken with the HSE during the project's development with a letter dated 30 October 2014 verifying that engagement. The HSE subsequently confirmed on 7 December 2015 that they had nothing further to add in relation to safety compliance [REP5-011].

- 5.10.16 No other objections or concerns were raised on these issues by IPs during the Examination.

**ExA's Reasoning and Conclusions on this Topic**

- 5.10.17 Within infrastructure consents there is often a requirement that on cessation of use, redundant equipment should be removed and the land reinstated. The existing Feeder 9 pipeline was laid in a trench in the sea bed. Its removal would be a disruptive process and one not considered in the EIA. The Applicant confirmed they had no intention of removing it "*The parties are confident that agreement will be reached in due course and are progressing outstanding matters*" [REP7-036, section 4].
- 5.10.18 The ExA considers that the potential effects of removing the existing pipeline would be significant because this work would likely require disturbance to navigation and involve significant impacts on the Humber Estuary SAC, SPA and Ramsar site. These are effects that the tunnel solution for the new pipeline had been selected to avoid.
- 5.10.19 The scope of the project under Examination, as presented and that would be authorised by the DCO does not include the removal of the existing Feeder 9 gas pipeline. As such whilst the ExA is under a duty to consider the worst case impacts of a project this aspect lays outside of the application and therefore the Examination. In considering the worst case, the ExA should also give consideration to cumulative effects which could arise if the Feeder 9 gas pipeline was removed. However, the ExA notes that the Applicant has stated that they have no intention of removing it.
- 5.10.20 No evidence was submitted to suggest that the retention or removal of the pipeline is not capable of resolution by means of the agreement of commercial terms for a new Lease and Underlease from ABP and CE at the appropriate time and this appears a logical outcome albeit not one that is guaranteed.
- 5.10.21 Health and safety matters aspects of the project have been reviewed by the HSE who in their updated advice raised no objection, or concerns.
- 5.10.22 The ExA explored [PD-006, EXQ1, 1.1, 2.1, 2.2] the potential linkage between the project presented and the potential trigger of the removal of the existing Feeder 9 pipeline as a consequence of the commissioning of its replacement. No objections were received on this matter from IPs during Examination.
- 5.10.23 From the evidence presented the Applicant has no intention of removing the existing Feeder 9 pipeline. CE and ABP are each aware of this situation and negotiations are in hand with ABP to reach a commercial agreement to renew the existing lease. The existing Feeder 9 pipeline removal does not form part of the application and therefore remains outside of the Examination.

- 5.10.24 The ExA is therefore satisfied that the ES was presented based on worst case scenario, that health and safety matters are governed by the relevant bodies, that NPS policy tests are met and that neither prevents the Secretary of State taking a decision on whether to grant an Order.

## **5.11 GOOD DESIGN AND CONSIDERATION OF ALTERNATIVES**

### **Introduction**

- 5.11.1 This part of the report considers whether the application proposal is of good design and how the design evolved including the Applicant's consideration of alternatives.

### **Policy Tests**

- 5.11.2 PA2008 s10(3)(b) requires the Secretary of State to have regard, in designating an NPS, to the desirability of good design. Section 4.5 of EN-1 sets out the principles of good design that should be applied to all energy infrastructure. It makes clear that whilst good design must take account of aesthetic considerations, it extends more broadly to considerations of sustainability and the effective siting and delivery to mitigate avoidable adverse effects.
- 5.11.3 The Applicant therefore needs to demonstrate clearly how the design evolved to produce a sustainable development with minimum adverse effects, that it is fit for purpose, functional and addresses all relevant issues and constraints well.
- 5.11.4 EN-1, section 4.4, gives consideration to alternatives. It states that Applicants are obliged to include in their ES, as a matter of fact, information about the main alternatives they have studied. It explains that in some circumstances, there are specific legislative requirements for the decision-maker to consider alternatives and, in some circumstances, the relevant energy NPSs may impose policy requirements to consider alternatives.
- 5.11.5 EN-1 imposes such a policy requirement in sections 5.3, 5.7 and 5.9, which respectively relate to biodiversity and geological conservation, flood risk and landscape and visual. EN-1 provides that the consideration of alternatives in order to comply with policy requirements should be carried out in a proportionate manner.

### **Applicant's Approach**

- 5.11.6 The Applicant sets out the approach to design at section 4.3.27 of the Planning Statement [APP-081]. They say they have undertaken various studies, appraisals, workshops and consultations to determine the most suitable and sustainable option for the replacement of the existing Feeder 9 gas pipeline.
- 5.11.7 The Applicant sets out the process by which the preferred option was selected which involved combining the shortest routing, the least

number of service crossings, road crossing, pipeline crossing and ditch crossings, thereby the design has sought to mitigate adverse impacts from the outset. Alternatives are also covered in the ES [APP-032].

- 5.11.8 The Applicant also points to section 2.4 of the Planning Statement [APP-081] which summarises the environmental design measures, such as the initial CEMP, that are proposed as part of the project to mitigate potential environmental impacts.
- 5.11.9 The Applicant therefore concludes that the project is in compliance with the NPS requirements for '*Good Design*'.
- 5.11.10 The Applicant sets out how the design was developed and the alternatives considered in Chapter 6 of the ES 'Design Iterations and Alternatives Considered' [APP-032]. Three Appendices to that report then provide further detail on the strategic options considered, the route corridors that were studied and crossing options [APP-033-035].
- 5.11.11 In 2012 the Applicant published a strategic options report which considered five options for the replacement pipeline. These ranged from 6km direct crossing of the River Humber to 250km onshore. Each was subject to high level environmental assessment including landscape and visual, ecology, historic environment and other environmental issues (including air quality and noise). Capital costs and lifetime costs were also evaluated.
- 5.11.12 This work led to a recommendation to take the direct and shortest route options forward to the next stage. A Strategic Options Report was issued to key stakeholders and following a review of the responses narrowed the options to a direct crossing of the river with a replacement pipeline in a tunnel, or trench.
- 5.11.13 A Route Corridor Investigation Study was then undertaken to analyse each option in greater detail. The appraisal reported that the trenched methods would be less expensive to construct than a tunnel. However, it would create far more ecological impacts and was at risk of long term pipeline exposure as had occurred to the existing Feeder 9 pipeline. Route Corridor 2 (the shortest crossing by means of a tunnel) became the preferred option as it was considered to have less environmental and socio economic impacts relative to the other options.
- 5.11.14 A non-statutory public consultation was undertaken between December 2012 and January 2013. Options were then explored for a tunnel crossing within the route corridor. Trenching was once again reviewed against tunnelling but environmental impacts and disruption to the busy navigation channel, along with capital and lifecycle costs favoured a tunnel option. This finding was supported by a statutory consultation in September to October 2014.
- 5.11.15 Section 3.6 of the Design Iterations and Alternatives Considered [APP-032] sets out further details of how the horizontal and vertical alignment of the pipeline was refined. This now included geotechnical

and hydrological considerations along with a review of which side to drive the tunnel from, a selection that would significantly affect construction traffic and therefore highway impacts.

- 5.11.16 This led to two possible drive locations at Goxhill and five reception shaft options at Paull. Further internal workshops refined the project to the final proposal received by the ExA at application.

### **Examination**

- 5.11.17 No objections were received to the development of the design, or its final scope as defined in the application and (in some instances) modified during the Examination.
- 5.11.18 During the Examination, responses to the ExAs written questions and hearings demonstrated a detailed understanding of the project and the work that had been undertaken to develop the design using a logical iterative process.
- 5.11.19 At the ISH on the 17 November 2015 the Applicant provided a project overview and explained how the site compounds would be set up, why they were laid out as the illustrative layout plans demonstrate [REP1-008, Goxhill and REP1-009, Paull] and why each area within the compound was required [REP4-040].
- 5.11.20 The Applicant also provided a plan [REP4-043] to illustrate how the Order limits had been tightened during the design process and thereby the land area subject to compulsory powers had been reduced (see Chapter 8).
- 5.11.21 The degree to which the design process remained engaged with relevant stakeholders was evidenced during the Examination at hearings and within SoCGs. A final summary (version E) of all SoCGs and their status was requested by the ExA and provided by the Applicant at Deadline 7 [REP7-024].
- 5.11.22 Apart from the temporary features of the construction compounds including for example stockpiles of materials, cranes, lighting, car parking and offices the only permanent features would be some small equipment cabins (Work 3B and Work 3D(c) with one (3B) enclosed by post and rail fencing. The ExA considers that against the existing AGIs this would have very little (if any) additional visual impact.
- 5.11.23 By the end of the Examination, there were no outstanding design concerns of relevance and importance and all IPs appeared to be content.
- 5.11.24 No representations were received expressing specific concern with the selection of the final route, or the work completed in consideration of alternatives during the Examination.
- 5.11.25 The EA did question the proposed tunnel size (diameter) but was later satisfied on that point as described in Chapter 8 [REP2-016, Q15.2].

- 5.11.26 Mr Dale of DDM Agriculture representing Mr Finch and Mr Faulding at Goxhill did, during the CA hearing, question the extent of the land required for the construction compound at Goxhill. This was answered by the Applicant during the hearing and is discussed further in Chapter 8. No further concerns were expressed on this point.
- 5.11.27 Concern was expressed over the impact of the project on the highway network at Goxhill as described in detail elsewhere in this report. The haul route options were therefore reviewed and changes were made prior to application to avoid the centre of Goxhill. This was supported by the Goxhill Parish Council [RR-014] and during the Examination the Applicant offered additional mitigation in the form of making passing places along the haul route a permanent adoptable improvement which was accepted by NLC [REP7-026]. This is secured by inclusion of these works within the order (see Chapter 9 and Appendix D).
- 5.11.28 By the close of the Examination there were no outstanding objections, or concerns regarding the consideration of alternatives.

### **ExA's Reasoning and Conclusions on this Topic**

- 5.11.29 The ExA acknowledges that there would be impacts from the project during its construction in its final form as set out within this report. The ExA considers that the Applicant has nonetheless engaged in consultation with affected parties, taken feedback into consideration and undertaken a logical and thorough iterative design process that considered wide ranging alternatives and has therefore met the NPS requirements in terms of good design.
- 5.11.30 The ExA concludes that during this process alternatives have been adequately addressed by the Applicant with reference to the relevant NPS policy tests and that subject to further mitigation secured via the Recommended DCO and initial CEMP the public benefits of the project outweigh any minor residual and temporary effects.

## **5.12 HERITAGE AND HISTORIC ENVIRONMENT**

### **Introduction**

- 5.12.1 This section deals with the historic environment.
- 5.12.2 As the project involves tunnelling beneath the River Humber, marine archaeology was scoped out. This was agreed with the Humber Archaeology Partnership, North Lincolnshire Historic Environment Record Officer and Historic England (HE) (formerly English Heritage) and was confirmed as scoped out in the Secretary of State's Scoping Opinion [APP-079].

### **Policy Tests**

- 5.12.3 The EN-1 states at paragraph 5.8.8 that the Applicant should provide a description of the significance of the heritage assets affected by the project and the contribution of their setting to that significance.



- 5.12.4 EN-1 paragraph 5.8.9 notes, regarding archaeological interest, that the Applicant should carry out appropriate desk-based assessment and, where such desk-based research is insufficient to properly assess the interest, a field evaluation.
- 5.12.5 EN-1, at paragraphs 5.8.13 to 5.8.15, points to the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets, the contribution of their settings and the positive contribution they can make to sustainable communities and economic vitality. It notes that there should be a presumption in favour of the conservation of designated heritage assets and the more significant the asset, the greater the presumption in favour of its conservation. Any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of the development, recognising that the greater the harm to the significance of the heritage asset the greater the justification will be needed for any loss.
- 5.12.6 Furthermore, paragraph 5.8.18 of EN-1 notes that when considering applications for development affecting the setting of a designated heritage asset, the decision-maker should treat favourably applications that preserve those elements of the setting that make a positive contribution to, or better reveal the significance of, the asset. When considering applications that do not do this, the decision maker should weigh any negative effects against the wider benefits of the application. The greater the negative impact on the significance of the designated asset, the greater the benefits that will be needed to justify approval.
- 5.12.7 Paragraphs 5.8.4 and 5.8.5 of EN-1 discuss heritage assets with archaeological interest that are not currently designated, but which are demonstrably of equivalent significance. It notes that if the evidence indicates that a non-designated heritage asset may be affected by the project then the heritage asset should be considered subject to the same policy considerations as those that apply to designated heritage assets.

### **Applicant's Approach**

- 5.12.8 The Applicant's approach to the assessment is outlined within section 6.3 of the Cultural Heritage Chapter of the ES [APP-041]. The scope of the assessment was defined following consultation with NLC and HE and comprised a DBA, followed by a program of field walking, geophysical survey and then trial trenching to confirm results and determine the nature, extent and significance of any archaeological remains.
- 5.12.9 An assessment of the setting of designated heritage assets likely to be impacted by the development was also completed.
- 5.12.10 The location of Environmental Features and Heritage Designations are identified on three plans [APP-013-015].

- 5.12.11 Goxhill - evidence was identified of potential Bronze or Iron Age features, medieval field systems (and post medieval farming activity) and Roman activity and crop marks just beyond the southern boundary of the project which could extend into the application site. A geophysical survey was recorded providing evidence of these activities within the application land.
- 5.12.12 Soff Lane diversion - Goxhill moated site, a Scheduled Monument (SM) is located in the vicinity of the proposed temporary bypass. The 17th century house known as Goxhill Hall is also located nearby and is Listed Grade II\*. The setting for the moated site is agricultural and as such is described as making some contribution to its significance. Two Romano-British enclosures were noted to southeast of the proposed Soff Lane diversion. Geophysical survey work did not record any anomalies of archaeological origin.
- 5.12.13 Paull - prehistoric activity was recorded nearby on higher ground. The ES suggests that since this period alluvium has accumulated across the site and could mask areas of such activity. A palaeo-environmental assessment carried out in advance of the Easington to Paull pipeline produced a palaeo-environmental sequence from the Bronze Age to the Saxon period. Geophysical survey work was inconclusive.
- 5.12.14 Eight Listed Buildings were identified within a 1km study area of which five would not be affected. Of the remaining three the report describes Goxhill Hall (as detailed above) being of architectural significance and that its setting is related to Goxhill moated site such that the element of its setting makes a key contribution to its significance.
- 5.12.15 The Church of St Andrew is Grade 1 Listed located to the west of the Paull site. Goxhill Hall and associated Stables and adjoining Coach House are Grade 2 listed and located to the north of the Paull site.
- 5.12.16 Overall the ES describes the landscape in the vicinity of the application site as primarily agricultural in nature and characterised by areas of fields and enclosed land dotted with settlements in the form of isolated farmsteads.
- 5.12.17 Due to the project timescales and unavailability of the land (crops were yet to be harvested so access was unavailable) it was not possible to complete all stages of the archaeological assessment prior to completion of the ES. The Applicant therefore agreed with NLC and HE that trial trenching would be undertaken during the Examination and the results submitted as a supplement to the ES [REP2-039, HE and REP7-025]. Following completion of trial trenching that supplementary report, Archaeological Mitigation Strategy (parts 1 and 2) [REP7-038] was submitted at Deadline 7.
- 5.12.18 The supplementary report presents an updated assessment of the archaeological resource within the southern portion of the application site (Goxhill), incorporating the results of the trial trench evaluation,

and presents an archaeological mitigation strategy for the project, incorporating a draft Written Scheme of Investigation (WSI).

- 5.12.19 Environmental design measures proposed in the ES are contained in the initial CEMP and secured by Requirement 10 of the Recommended DCO and include:
- development of the initial WSI by the Main works Contractor as referred to above [REP7-038, section 1.1.6];
  - installation of topsoil storage bunds and either close board fencing or heras fencing to create partial screening of the construction activities and to reduce the impacts on the settings of heritage receptors;
  - an archaeological watching brief during construction when soil stripping would take place;
  - archaeological trial trench evaluation which has been carried out within the application site and was completed in October 2015;
  - prior to construction any archaeological remains within the Goxhill application site proved by evaluation would be subject to a programme of archaeological mitigation;
  - ensure all written records of the archaeological investigations are completed and submitted in a timely manner; and
  - the upstanding ridge and furrow would be reinstated where impacted upon by construction.
- 5.12.20 The Applicants original ES concluded (on matters not updated by the later report - see below) that there would be the following significance of residual effects:
- 5.12.21 The majority of residual effects were assessed as being of negligible or slight adverse significance and were all acknowledged to be temporary during the construction phase. Moderate adverse impacts were identified for the Roman settlement at Goxhill and potential medieval activity (indicated by cropmark evidence and geophysical survey) at Goxhill.
- 5.12.22 The ES for Goxhill concluded the following in respect of the Goxhill site [REP7-038, section 2.3]:
- 5.12.23 Most the effects reported were neutral or of low significance. The more substantial effects both recorded as "*moderate adverse*" were; construction activity would have a direct physical impact on Romano-British settlement activity at the main site; there would be a moderate adverse significance of effect on Pre-Conquest settlement activity at Soff Lane.
- 5.12.24 The Impact Assessment for Paull remained unchanged [REP7-038, section 2.4].
- 5.12.25 The mitigation strategy is to reduce the impact of the project on the archaeological resource through a programme of archaeological investigation and recording. Details are set out in section 3.2 of the updated archaeological report.

## Examination

- 5.12.26 NLC noted in their LIR [REP2-018] that section 6.4 of the ES Built Heritage omits an assessment of the impacts of the development on Goxhill Medieval Hall a Grade I listed building and as such it is a high value asset. The relationship between Goxhill Medieval Hall, Goxhill Hall and Goxhill moated site is a key contributing factor to its significance. Goxhill Medieval Hall also has historical and architectural significance.
- 5.12.27 This matter was addressed by the Applicant in the updated archaeological document submitted at Deadline 7 [REP7-038], and the outcome is summarised and agreed in the Deadline 7 SoCG [REP7-025] as having a '*minor impact*' on the setting of the asset. This conclusion being weighted by the temporary nature of the diversion route. Therefore the significance of effects on the asset were concluded to be slight adverse but temporary.
- 5.12.28 The impact of the project on Thornton Abbey was scoped out of the ES assessment by the Applicant (see Table 6-13 of the ES) as it was concluded during the site visit there was no relationship between the site and the asset. However, during the Examination, NLC requested it be considered. The Applicant subsequently demonstrated that there would be no impact [REP7-038]. By agreement with NLC Thornton Abbey was therefore scoped out of the assessment [REP7-025, page 12].
- 5.12.29 Mr G Carr stated [RR-012] that the SM (Goxhill Moated Site) extends beyond the area scheduled. He was therefore concerned that it could be affected by the Soff Lane diversion and requested a survey ahead of works. He did not contribute further to the Examination. The Applicant responded to this representation at Deadline 2 stating no evidence of any remains associated with the Schedule Monument were recorded during the survey [REP2-042].
- 5.12.30 HE made a representation in response to a timetable change implemented by the ExA to accommodate a late change request from the Applicant [REP6a-004]. In that letter they said that during the application process, an application to schedule a part of field 7 adjacent to field 8 (the additional mitigation land) had been considered by HE's Listing team. The case remained under deliberation at that stage but could be considered an archaeological area of national importance. The Applicant did not respond on this point but a SoCG was executed with HE with no outstanding issues [REP8-009].
- 5.12.31 As explained above, archaeological trenching work was undertaken during the Examination. In response to the ExA's request for NLC's opinion on the results of the trial trenching (EXQ2, 15), NLC confirmed at Deadline 7 that "*NLC have signed (11/02/2016) an amended SoCG that confirms that NLC agree with all the cultural heritage content and that there are no unresolved issues*" [REP7-040].

- 5.12.32 HE did not provide any comments on the results of the trial trenching, therefore the ExA asked the Applicant at the 17 November ISH and in the second round of written questions [EXQ2, 14] to supply HE's advice on the results of the trial trenching. This was requested because at the time the SoCG [REP2-039] between the Applicant and HE was executed, the results of the trial trenching were not available and had therefore not been seen by HE.
- 5.12.33 In response the Applicant stated "*Historic England's remit does not extend to undesignated archaeological remains however if relevant this document will be forwarded to Historic England for their information*" [REP5-010, Q14]. No response from HE was subsequently provided. The ExA therefore asked HE directly for a final response on the findings of the trial trenching on the 26 February 2016 [PD-017, Q9] but no response was received by the Examination close.
- 5.12.34 In response to an ExA Rule 17 regarding the late change request, Mr Dale raised concern that the proposed trenching proposed in Areas B-D [REP7-038, part 1, page 31] would affect his clients' (Mr Finch and J C and J D Faulding) land and that it would significantly affect cropping and agricultural subsidy payments [REP9-003, pages 31 and 32]. He concluded that "*If the Applicant undertakes to compensate the Landowners.....there would be no further objection from the parties affected.*" As such this objection appears to focus on compensation and under s87, 8(3)(c) may be disregarded by the ExA as it is capable of resolution via the Lands Chamber.
- 5.12.35 HE was consulted by the Applicant during the application stage and a SoCG was executed [REP2-039]. There was agreement on the methodology used, approach to baseline assessment and mitigation proposals (including trial trenching and further reporting during the Examination) but as discussed, HE was unable to comment at the time the SoCG was executed on the results of the Trial Trenching because it had not yet been completed and because they have no remit for undesignated assets.
- 5.12.36 The executed SoCG with NLC verifies the Applicant's agreement with NLC on all matters including the trial trenching, initial WSI and updated reporting on the significance of the impact of the temporary Soff Lane diversion on Goxhill Medieval Hall (minor impact). This was signed after NLC had reviewed the Applicant's supplementary report following trial trenching. The SoCG records no outstanding unresolved matters [REP7-025].
- 5.12.37 ERYC's Conservation Officer raised no objection to the project [REP2-004, section 6.10.5].

### **ExA's Reasoning and Conclusions on this Topic**

- 5.12.38 The Applicant worked closely with IPs during the Examination and ahead of the close had reached agreement on all matters with NLC, ERYC and HE with SoCGs completed.
- 5.12.39 On the question of possible Scheduling of part of field 7, no further information was made available by HE at the Examination close. Field 7 lies outside the Order limits between the additional mitigation land (field 8, accepted as part of the change request at Deadline 6 [REP6-004]) and land within the Order limits at field 6 (for a field illustration plan see page 10, REP6-004).
- 5.12.40 The ExA notes that in HE's representation [REP6a-004] they say that if the site is scheduled there will be a requirement to apply for SM consent for works which would impact the site, regardless of whether the works require planning permission. They also say they do not consider this new information alters the existing application.
- 5.12.41 The ExA's duty is to consider the application made and that therefore excludes the potential for field 7 to be scheduled. Even if that were to occur the land would not be physically disturbed by construction activities. The trial trenching provided additional data in support of the findings in the ES and was accepted by NLC as statutory advisor.
- 5.12.42 The ExA notes "*NLC agrees with the assessment of residual effects on cultural heritage receptors based on all available information*" [REP7-025]. The ExA is therefore satisfied that this meets the terms of the measures agreed with NLC and HE.
- 5.12.43 Whilst there was not a final response from HE specifically on the results of the trenching, it is important and relevant that HE state in their final representation (in response to an R17 requesting comments on the accepted change request) that "*Historic England does not consider that this new information alters the existing application; the addition of the new parcel of land and additional gates does not alter our understanding of the historic environment in this area.*" [REP6a-004].
- 5.12.44 Taking all the above into account, the ExA is therefore satisfied that the project would not have a long term adverse impact on the Goxhill Medieval Hall, or the Scheduled Monument and would meet the aims of cultural heritage policy set out in NPSs and the NPPF. With the embedded design measures the residual effects are limited, the process of their assessment and compilation of the residual effects list is agreed by all parties and the public benefit of the project outweighs any minor residual impacts.

## **5.13 SOCIO-ECONOMIC IMPACTS**

### **Policy Tests**

- 5.13.1 EN-1 5.12 recognises that the construction, operation and decommissioning of energy infrastructure may have socio-economic impacts at local and regional levels and that where such impacts are likely an Applicant should include such impacts in its ES.
- 5.13.2 The ExA should have regard to the potential socio-economic impacts of new energy infrastructure identified by the Applicant and from any other sources that the ExA considers to be both relevant and important to its decision. These considerations include minimising the impacts on the best and most versatile agricultural land, and also recognise the importance of public rights of way as a recreational facility.
- 5.13.3 The ExA may conclude that limited weight is given to assertions of socio-economic impacts that are not supported by evidence (section 5.12.7).
- 5.13.4 EN-1, 5.10.8 requires Applicant's to seek to minimise the impacts on the best and most versatile agricultural land (grades 1, 2 and 3A).
- 5.13.5 The Equalities Act 2010 legally protects people from discrimination in the workplace and in wider society and sets out the different ways in which it's unlawful to treat someone.

### **Applicant's Approach**

- 5.13.6 The Applicant reported on the potential impacts of the project in Chapter 6.11 Socio Economics and Land Use [APP-068] with an Appendix setting out the results of an Agricultural Land Survey [APP-069].
- 5.13.7 The assessment reviewed the impact of the project on local settlements and people, the local economy, PRow, land use and agriculture and tourism and looked at the Order land together with an area within a 500m buffer.
- 5.13.8 The work involved desk based research and site visits in the first two months of 2014. Full details are set out in the identified documents.
- 5.13.9 Embedded design measures to minimise adverse impacts are stated to include:
- Creating local employment during construction;
  - Developing local education links to inspire future engineers;
  - Developing and maintaining good communications with the local community;
  - Shielding the site using fencing and soil bunds (Con H1 Con H2);
  - Temporary closure of footpaths to be kept to a minimum (Con J8); and

- Control of the management of soils via the initial CEMP (Con G8, Con J10).
- 5.13.10 The last three items listed are secured in the initial CEMP via Requirement 12 of the Recommended DCO (see also Chapter 9).
- 5.13.11 In summary the residual effects outlined in section 11.8 of the ES [APP-068] were considered negligible on the local population, minor positive for local businesses and the wider economy and generally negligible on the PRow network with one case of minor negative at Paull and Goxhill.
- 5.13.12 The significance of effects on agricultural land (of medium/low value) at Goxhill was summarised as significant and at Paull low value for the 36 month construction period. Following completion of the project the residual effects for each site is described as negligible.
- 5.13.13 For impacts on tourism the residual effects at Goxhill and Paull during construction are described as negligible.

### **Examination**

- 5.13.14 No objections or concerns were raised over the Applicant's ES in respect of its potential to generate local jobs and educational opportunities.
- 5.13.15 No objections were received or concerns raised regarding the residual impact of the construction compounds after the site set up with fencing and soil bunds used to screen external receptors from noise, lights and the impacts of the construction work.
- 5.13.16 The LIR from NLC [REP2-018] covers footpaths at section 9 of the report and recognises the temporary loss of amenity during construction. The signed SoCG between the Applicant and NLC confirms NLC's agreement to the assessment of effects, mitigation proposed and confirms that following the short term construction impacts there will be no effects during operation [REP7-025, table 3-6].
- 5.13.17 The LIR from ERYC [REP2-004] stated that the largest impacts would be during construction when construction traffic is on the roads. It concluded that "*it is not considered that these impacts during construction would have any significant impact on users, tourist or recreational facilities*". The signed SoCG between the Applicant and ERYC records ERYC view that the effects will be short lived and transient during the construction period and on completion there would be no impact during operation [REP2-037].
- 5.13.18 Concerns were raised by IPs during Examination on the potential impacts of the proposed project on their homes and businesses and in respect of Mr Finch and Mr and Mrs Faulding (local farmers represented by Mr Dale of DDM Agriculture) the potential effects on soil quality, crop yield and land drainage.



- 5.13.19 The Applicant responded to each representation made by IPs and provided a summary of those before the Examination close [REP9-009]. The Applicant's position statement on the concerns of the parties (listed on their part below) was common and said that "*the objection relates to the invalid ground of quantum of compensation*". This Applicant's statement applied to the following parties:
- Mr P Stancer (page 1)
  - DDM Agriculture (representing Faulding, Finch, Whitter, Reeve, Golland, Turner, Akin, Fisher, Simons, Ladlow, Cadwallader, Shephardson, Able Humber Ports, Stancer, Leech, Mills, Tull, Harrison and Wathen) (page 4);
  - Mr J Finch; and
  - Mr Leech.
- 5.13.20 Mr Dale (DDM Agriculture) represented each of the above named parties and participated in the Examination. Full details of his clients are set out in Chapter 8.
- 5.13.21 The Applicant also sets out in a document '*Comments on DDM Agriculture Responses to the ExA's Rule 17 Letters*' which provides more details of its final position and view on the potential impact of construction on the various named parties [REP8-008]. In particular they say:
- Mr P Stancer - NGG is currently in negotiations with P and M Stancer and hopes to have reached an agreement by Deadline 9; and
  - Mr Leech - Heads of terms have been accepted by NGG and a response is awaited from Mr Leech's agent. NGG are hopeful that an agreement will be reached by Deadline 9.
- 5.13.22 Further details are of these concerns which centred on CA matters are set out under Chapter 8 where the Applicant's case for CA is reviewed.
- 5.13.23 Of relevance to this section of the report is the position reported by Mr Dale on behalf of his client's at the Examination close which is summarised below.
- 5.13.24 In the case of Mr Finch and Mr Faulding these parties each own farmland and operate farm businesses that would have large areas of land taken over by the Applicant for the duration of the project's construction. Mr Dale therefore acts as their agent in pursuing an acceptable voluntary commercial agreement for the temporary rights the Applicant seeks. Those rights are largely temporary for construction with limited permanent rights required thereafter for the operation and maintenance of the pipeline.
- 5.13.25 An objection was lodged by Mr Dale on behalf of Mr Faulding and Mr Finch regarding the reinstatement of land and its impact on soil structure, drainage, weed population and fertility [REP9-003 and REP9-004, letters dated 13.11.15]. A separate letter of objection was also submitted in respect of these same parties and Reeve Brothers in

respect of possible additional damage by further archaeological works which would be required prior to construction [REP9-003].

- 5.13.26 These matters are potential impacts from construction and therefore are relevant factors for consideration under this section. In the case of Mr Finch, Mr and Mrs Faulding, Mr Leech and Mr Stancer all have land potentially affected by the exercise of powers under the DCO to obtain Temporary Possession (TP) of land or to acquire longer term land rights under CA powers if voluntary agreements cannot be concluded. These matters are therefore discussed in further detail at Chapter 8.
- 5.13.27 The pre-application consultation on transport and traffic led to the application proposal for a temporary diversion at Soff Lane [REP7-010, Work 6C and 6B, Works Plan sheet 1 of 8]. This would cross farmland (Work 6C) and then proposes to make use of a private concrete access road (Work 6B) to reconnect with the public highway at Soff Lane.
- 5.13.28 It had been discovered by Mr Dale at some point prior to the PM that a small section [REP7-009, plot 116.2] to the east end of the concrete road (Work 6B) was owned by Mr Leech. Previously the Applicant understood the whole of the road to be owned by Mr Shepardson (plots 116.1 and 116.2)
- 5.13.29 Mr Leech was therefore not initially registered in the BoR since his land ownership was not correctly recorded at HM Land Registry. Therefore it had previously appeared to the Applicant that this land was owned by Mr Shepardson (adjacent title owner with whom Heads of Terms for a voluntary agreement in connection with use of the concrete road were agreed on 30.10.15 [REP7-023]). The BoR was subsequently updated by the Applicant [REP7-017, page 204].
- 5.13.30 Mr Leech was concerned at the impact of the use of the haul road which runs over a section under his ownership on his joinery business and other buildings on his land in use by an operatic society and a car repair business [AS-012].
- 5.13.31 A second set of Mr Dale's clients (including Ms C Mills, Mr W Tull, Mr J Harrison and Mr and Mrs Watham) hold Category 3 interests listed in the BoR which means they occupy property, or land nearby and may be indirectly affected but do not own land that is directly required for the project.
- 5.13.32 As explained in Chapter 8 each of these parties expressed a range of social or economic impacts that they considered they would suffer if the project commenced.
- 5.13.33 Final position statements were received from Mr Dale at Deadline 9 and details of these objections are set out in Chapter 8.
- 5.13.34 Mr Stancer also wrote directly to the ExA on the 9 December 2015 [REP4-045] to express concern at the impact of the project on his home and business. He stated "*I own and live at my business*" and said that his home is located within 12m of the haul road proposed at

Soff Lane. He expressed a desire that the route be extended further south through farmland and back onto the public highway thereby avoiding the route past his property. He was concerned at a lack of representation by local councillors in assisting with his concerns and wondered whether anyone had inspected the situation. He and his wife remain totally opposed to the route proposed for the Soff Lane diversion [REP4-045].

- 5.13.35 The ExA considers the potential socio economic impacts on the farming activities of Mr Finch and Messrs Faulding in particular could be significant. For the purposes of this section those effects are likely to be financial consequences created by the projects impacts on each parties farming business. However in the case of Mr Finch there could also be a serious social impact if the project results in the severing of Mr Finch's family's protected tenancy rights. These issues therefore require consideration in terms of both CA and TP. This important and relevant matter is discussed further in Chapter 8.

### **Impacts on Paull Holme Strays Nature Reserve**

- 5.13.36 YWT raised concern in their RR over the potential impact of the project on visitor numbers at their Paull Holme Strays Nature Reserve [RR-030]. They said "*The increase in infrastructure, vehicle movements, noise and dust as a result of the development may have a significant impact on visitor numbers to our reserve and the quality of the visitor experience*".
- 5.13.37 The Applicant responded to this at Deadline 2 and stated "*Residual effects were assessed as negligible within ES Chapter 11: Socio-economics (page 27, Doc 6.11) on Paull Holme Strays Wildlife Trust Reserve and car park*" [REP2-042]. They said they would discuss these issues with YWT in advance of the hearing.
- 5.13.38 As described elsewhere in this report the Applicant agreed an arrangement with the EA for an easement payment and it appears (but is not certain, or secured) that an agreement is in place for the EA to pass that benefit onto the YWT [REP6-018].
- 5.13.39 A SoCG between the Applicant and the YWT verifies there are no matters of concern outstanding [REP6-018, page 8].

### **Impacts on local people and businesses from construction traffic**

- 5.13.40 The potential impacts of construction traffic are discussed in the next section. The ExA examined this area during two unaccompanied site inspections and is mindful that the local rural highway network is quiet and narrow and that there are businesses and residences located directly off the haul route. The ExA was also mindful of the concerns expressed by the Parish Council, Ward Councillors and NLC.

### **ExA's Reasoning and Conclusions on this Topic**

- 5.13.41 There were relatively few objections raised on potential social and economic impacts.
- 5.13.42 The most significant effects would be on the land and the immediate neighbours (business and residences) to the two construction compounds and those parties located within close proximity of the haul route (particularly those near the Soff Lane diversion) during construction.
- 5.13.43 Of these the most significantly affected parties would be the landowners and tenant of the farmland at Goxhill (Mr Finch, Trinity House and Mr and Mrs Faulding). Significant areas of farm land of established businesses would be directly affected.
- 5.13.44 The ExA describes the traffic impacts further in the Traffic and Transport section but in summary foresees the potential for adverse effects due to the frequency and volume increase in HGV traffic (in a local context) because of the very quiet nature of the existing local highway network. However, as recorded elsewhere the ExA also notes that the Applicant reached agreement with NLC, Goxhill Parish Council and ERYC on highway matters [REP7-026 and REP7-029] and had also agreed Heads of Terms with the parties owning (according to Land Registry title records) the land required for the Soff Lane diversion. The ExA places significant weight on the advice of NLC as statutory advisor.
- 5.13.45 The ExA considers that there would remain adverse impacts on those parties whose land and businesses are affected by the project if an Order were granted. The key question therefore becomes whether these impacts are capable of mitigation by means of financial compensation and if so whether there is adequate compensation provision secured within the Recommended DCO.
- 5.13.46 The ExA sets out at Chapter 8 the reasons why in the Recommended DCO residual socio-economic impacts affecting farmland are capable of compensation. These claims could be significant and there are Human Rights Acts considerations but that said the recommended DCO provides a mechanism under well established and proven compensation procedures for its assessment (if relevant) via the Lands Tribunal.
- 5.13.47 Therefore subject to the recommended changes to the final draft DCO and having considered the duties under the Equalities Act 2010, the ExA considers that the socio-economic effects of the project following proposed mitigation and with the availability of compensation would be acceptable and would meet the aims of relevant national and local policies.

## **5.14 LANDSCAPE AND VISUAL IMPACTS**

### **Introduction**

- 5.14.1 This section reports on landscape and visual matters and alternatives as they are relevant to landscape and visual effects as set out in the NPSs.
- 5.14.2 The majority of the project would be located below ground and therefore there is very limited permanent above ground equipment to report upon. Otherwise potential landscape and visual impacts (LVIA) would be temporary during construction.

### **Policy Tests**

#### **National Planning Policy**

- 5.14.3 EN-1 (para 5.9.5) requires the Applicant to carry out a landscape and visual assessment and report it in the ES. The assessment is to include effects on landscape components, on landscape character and on views and visual amenity during construction of the project and its operation (EN-1, para 5.9.6).
- 5.14.4 Factors to be taken into account when judging impact on a landscape include existing character of local landscape, its current quality, how highly it is valued and its capacity to accommodate change (EN-1, para 5.9.8).
- 5.14.5 EN-1 accepts that virtually all nationally significant energy infrastructure projects will have effects on the landscape, but that the aim should be to minimise harm to the landscape; having regard to siting, operational and other relevant constraints and providing reasonable mitigation where possible and appropriate (EN-1, para 5.9.8).
- 5.14.6 EN-1 requires the decision-maker to judge if any adverse effect on the landscape would be so damaging as not to be offset by the benefits, including the need (EN-1, para 5.9.15). The extent to which impacts are temporary or reversible should also be taken into account (EN-1, para 5.9.16).

#### **Other Policy**

- 5.14.7 The NPPF establishes that the planning system should contribute to conserving and enhancing the natural environment, which includes planning positively for green infrastructure networks, giving weight to conserving landscape and scenic beauty in designated landscapes and encouraging good design.

#### **Applicant's Approach**

- 5.14.8 The Application included an ES Chapter on Landscape and Visual Amenity [APP-063] that was prepared following submission of a

Scoping Report and the issue of a Scoping Opinion by the Inspectorate in June 2014.

- 5.14.9 Prior to the production of the ES, a Preliminary Environmental Information Report (PEIR) was also prepared and issued for statutory consultation. Feedback from NLC and ERYC is set out in table 9-4 of the ES [APP-063] and verifies that each council agreed the methodology, including study area, baseline conditions, receptors and viewpoints.
- 5.14.10 The relevant national and local landscape character areas and character types are set out in full at section 9.4.2 of the ES, but in summary the application site does not lie within an Area of Outstanding Natural Beauty but does fall within a National Character Area that covers the largely flat, open farmland either side of the River Humber estuary, the mudflats and a 2km (approximately) wide strip of land either side. Overall the nature sensitivity of this undesignated landscape is considered high.
- 5.14.11 The Applicant sets out in ES section 9.7 details of the environmental design measures proposed which include retention of field boundaries and the use of 2m close boarded fencing and 3m high topsoil storage bunds to screen the majority of the construction activities. The main exception being up to 4 No material silos up to 15m tall, cranes and 10m lighting masts. Lighting would be required most extensively at Goxhill to support 24 hour tunnelling operations. These measures are secured via the initial CEMP and Requirement 12, or Requirement 4 (See Chapter 9 for details).
- 5.14.12 The Applicant suggests reinstatement of the farmland on completion would quite quickly restore the land to its former character. On completion there would be very little infrastructure visible including small 1m x 2m x 2m high kiosks for nitrogen monitoring and cathodic protection and 2m high field boundary marker posts.
- 5.14.13 The project's impact was assessed overall and at night time and the finding was that after mitigation the effects would be of a moderate significance on the character of the flat open farmland at Goxhill and Paull.
- 5.14.14 Due to the rural location of each site limited moderate adverse effects during construction were identified for a limited number of receptors (houses and farms), details of which are set out at in table 9-14 of the ES [APP-063] .

#### **Examination**

- 5.14.15 The LIR provided by NLC provides a brief summary on LVIA and raises no concerns on this matter [REP2-018].
- 5.14.16 The signed SoCG between the Applicant and NLC records agreement with the Applicant on methodology, baseline assessment, environmental design measures (mitigation) and the Applicant's

assessment, findings and conclusion that the impacts would be localised over a short period of time [REP7-025].

- 5.14.17 The LIR provided by ERYC sets out the relevant local plan policies and confirms that the LVIA was prepared in an appropriate manner and concurs with its findings [REP2-004, section 6.2]. The report concludes that there are no local policy objections to the principle of development, that most work will be underground, and that the greatest permanent impacts on the East Riding side would be minor above ground works at Paull AGI which would be screened and landscaped, therefore no objections were raised.
- 5.14.18 The signed SoCG between the Applicant and ERYC records agreement with the Applicant on all LVIA matters as set out above [REP2-037].
- 5.14.19 No concerns were expressed on this matter by any other IPs during the Examination.

#### **ExA's Reasoning and Conclusions on this Topic**

- 5.14.20 No concerns or objections were raised on methodology or conclusions for the Applicants LVIA.
- 5.14.21 ERYC LIR states "*Overall the nature of the effect of the rural undesignated but locally valued landscape at Paull during construction is not considered to be significant as the landscape elements affected would be of a limited nature and influence of the scheme would be contained to a small part of the overall study area*" [REP2-004, page 12].
- 5.14.22 NLC LIR states that "*It is therefore considered that the scheme will primarily have a localised visual impact and any impact will be over a temporary period of time*" [REP2-018, page 5].
- 5.14.23 The ExA undertook two unaccompanied site inspections to view the topography and setting of the area and is satisfied that the project would meet the aims of LVIA policy set out in the NPSs and the NPPF. With the embedded design measures, the residual effects are limited, short term during construction, the process of their assessment and compilation of the residual effects is agreed by all parties and the public benefit of the project outweighs any residual impact.

### **5.15 MARINE AND NAVIGATION**

#### **Introduction**

- 5.15.1 During the consideration of alternatives for the Scheme a tunnel solution was selected in order to minimise the effects on the SPA/Ramsar and navigation. The only works within the River Humber relate to the tunnel flooding near completion of the project over a short period.

### **Policy Tests**

- 5.15.2 There is no specific policy test within the NPS.

### **Applicant's Approach**

- 5.15.3 The Applicant did not specifically cover this matter in the initial ES.

### **Examination**

- 5.15.4 The project requires the placement of pumps in the inter-tidal area at Goxhill for tunnel flooding towards the end of the three year construction period. This process is estimated to take approximately two weeks.
- 5.15.5 The ExA asked Trinity House whether there would be any requirement for night-time warning lights, or any other matters the ExA should be aware of [PD-006, Q11.1].
- 5.15.6 Trinity House responded stating "*There may be a requirement for day and night marking with aids to navigation. Appropriate consideration will be given by Trinity House in consultation with the Local Lighthouse Authority and direction given as necessary*" [REP2-003].

### **ExA's Reasoning and Conclusions on this Topic**

- 5.15.7 This is a small matter within a large and complex engineering project. Should an order be granted then Trinity House are aware and appear content to liaise with the Applicant regarding any necessary night time lighting requirements. Therefore the ExA is satisfied that there will be no significant adverse effects.

### **Working Towards the Conclusion on Planning**

- 5.15.8 The following Chapter 6 deals specifically with relevant matters under the Habitats Regulation Assessment necessary under EEC regulations identified at the outset of that chapter.
- 5.15.9 Chapter 7 then draws together the ExA's findings and conclusions from chapters 4-6, balancing the evidence for and against development consent as set out in policy and balancing those matters to provide an overall planning conclusion on the case for development consent.



## **6 FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS**

### **6.1 INTRODUCTION**

- 6.1.1 This Chapter of the recommendation report sets out the analysis and conclusions relevant to Habitats Regulations Assessment (HRA). The Competent Authority has certain duties under the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as codified) (the Habitats Directive), as transposed in the UK through The Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitats Regulations). The relevant Secretary of State is the Competent Authority for the purposes of the Habitats Directive and the Habitats Regulations for applications submitted under the Planning Act 2008 (as amended).
- 6.1.2 The Examining Authority (ExA) does not carry out an appropriate assessment (AA) or any subsequent stage of assessment or decision making under HRA. This role is reserved to the Secretary of State as the Competent Authority. However, the ExA has been mindful throughout the Examination process of the need to ensure that the Secretary of State has an adequate basis of information from which to carry out their duties as Competent Authority. This is important because consent may only be granted on the basis that the potential adverse effects the project could have on European sites have been assessed and that the Competent Authority considers that it passes the relevant tests in these Habitats Regulations.

### **BACKGROUND**

- 6.1.3 The Applicant submitted a report with their Development Consent Order (DCO) application to inform a HRA under Regulation 5(2)(g) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 entitled Habitats Regulations Assessment Part 1 of 2 [APP-027] and Part 2 of 2 [APP-028] ('the HRA Report')<sup>39</sup>; this included screening and integrity matrices. The information in the Applicant's HRA Report was determined sufficient to accept for Examination.
- 6.1.4 During the Examination, the ExA issued written questions on 14 September 2015 [PD-006] and 8 December 2015 [PD-010]. Further rounds of written questions under Rule 17 were issued on 7 January 2016 [PD-012], 15 January 2016 [PD-013], 1 February 2016 [PD-014] and 26 February 2016 (PD-017) regarding mitigation for potential impacts on the Special Protected Area (SPA)<sup>40</sup> and Ramsar site.

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<sup>39</sup> Part 1 of the HRA Report [APP-027] included the main report and Figures 1-11. Part 2 of the HRA Report [APP-028] included Figures 12- 14 and Appendices 1-7; this included the HRA screening matrices (Appendix 3) and integrity matrices (Appendix 4)

<sup>40</sup> Humber Estuary Special Protected Area (SPA)

- 6.1.5 The ExA held an Issue Specific Hearing (ISH) on natural environment effects matters on 17 November 2015, which included consideration of the potential impacts of the project on European sites on the agenda [EV-005]. Parties with an interest in HRA matters that attended the ISH were the Royal Society for the Protection of Birds (RSPB) and the Applicant. Natural England (NE) did not attend.

#### **THE REPORT ON THE IMPLICATIONS FOR EUROPEAN SITES**

- 6.1.6 Under the Habitats Regulations the Competent Authority must, for the purposes of an AA, consult the appropriate nature conservation body and have regard to any representation made by that body within such reasonable time as the authority specifies.
- 6.1.7 The ExA prepared a Report on the Implications for European Sites (RIES), with support from the Planning Inspectorate Environmental Services Team, based on working matrices prepared by the Applicant. The purpose of the RIES [PD-016] and the consultation responses received in relation to it is to compile, document and signpost information in relation to HRA that was provided within the DCO application, and that submitted throughout the Examination by both the Applicant and Interested Parties (IPs).
- 6.1.8 The RIES was issued for consultation, including to NE as the relevant statutory nature conservation body (SNCB), for the purposes of Regulation 61(3) of the Habitats Regulations. Consultation was undertaken between 1 February 2016 and 17 February 2016. The RIES was not updated upon receipt of consultation responses concerning the RIES.
- 6.1.9 Comments on the RIES [PD-016] were received from:
- the Applicant [REP7-006] - who stated the RIES presents an accurate reflection of the work undertaken to date; and
  - RSPB [REP7-041] - who confirmed they did not have any comments to make on the RIES.
- 6.1.10 NE did not comment on the RIES.
- 6.1.11 The ExA considers that the consultation on the RIES may be relied upon by the Secretary of State for the purposes of Regulation 61(3) of the Habitats Regulations in the event that it is concluded that an appropriate assessment is required.

#### **6.2 RELEVANT EUROPEAN SITES AND THEIR QUALIFYING FEATURES/INTERESTS**

- 6.2.1 The Applicant's HRA Report [APP-027 and APP-028] submitted with the DCO application identifies the following three European sites for inclusion within the assessment:
- Humber Estuary Special Area of Conservation (SAC);
  - Humber Estuary SPA; and

- Humber Estuary Ramsar.

- 6.2.2 The locations of these sites are shown on Figure 1 of the Applicant's HRA Report [APP-027]. The Applicant did not identify any potential impacts on European sites in other European Economic Area States within their HRA Report [APP-027 and APP-028].
- 6.2.3 The Applicant's HRA Report [APP-027 and APP-028] identifies the qualifying features/interests for which each European site is designated. No concerns were raised by the IPs regarding whether the correct qualifying features/interests had been identified and assessed by the Applicant in relation to the other European sites considered.
- 6.2.4 Taking into account the information provided in the HRA Report during the Examination and from submissions of IPs, the ExA considers that all relevant European sites and the qualifying features/interests of those sites have been included in the Applicant's assessment.

### **CONSERVATION OBJECTIVES**

- 6.2.5 The conservation objectives for the Humber Estuary SAC and SPA were provided in Appendix 2 of the Applicant's HRA Report [APP-028].
- 6.2.6 The HRA Report [APP-027 and APP-028] notes that there are no stand-alone conservation objectives for the Ramsar site, but states that those for the SPA designation will be relevant to the Ramsar designated features (paragraph 8.2.6 of APP-027).

### **6.3 HRA AND THE PROJECT**

- 6.3.1 The Applicant confirmed that the project is not connected with or necessary to the management for nature conservation of any of these European sites [APP-027].
- 6.3.2 The HRA Report [APP-027] states that no construction works would take place within the Humber Estuary itself or within the adjacent intertidal habitat and therefore there would be no direct impacts upon the SAC, SPA or Ramsar site (paragraphs 6.2.5, 6.2.12 and 6.2.21 of APP-027).
- 6.3.3 However, the potential for indirect effects was considered by the Applicant, as detailed in section 5.6 of the HRA Report [APP-027]. This related only to potential impacts during the construction phase and considered:
- potential displacement and disturbance to SPA/Ramsar bird species within the Humber Estuary SPA/Ramsar site through noise and visual disturbance;
  - potential displacement and disturbance to SPA/Ramsar bird species in the fields within and adjacent to the construction area through noise and visual disturbance; and
  - loss of foraging/ roosting habitat of SPA/Ramsar birds in the fields within and adjacent to the construction area.

- 6.3.4 No impacts were identified during the operational phase or during decommissioning [paragraphs 5.6.3-5.6.6 of APP-027].

#### **EMBEDDED MITIGATION MEASURES**

- 6.3.5 The Applicant's assessment was undertaken on the basis of the inclusion of a number of embedded design mitigation measures. The measures have been incorporated into the initial Construction Environmental Management Plan (CEMP) [REP7-019] which is secured through Requirement 12 of the Applicant's final version of the draft DCO [REP9-010] and remains unchanged in the Recommended DCO.

- 6.3.6 The measures are detailed in section 3.4 of the HRA Report [APP-027] and in summary include:

- retaining existing hedgerows (Con F6 of the initial CEMP);
- providing fencing and bunding to the construction compounds [REP1-008 and REP1-009] (Con H2 and Con H7 of the initial CEMP);
- where possible, undertaking the activities which would be considered likely to cause the most disturbance to birds using the Humber Estuary and fields adjacent to the main works area outside of the overwintering bird period (i.e. during April to October) (Pre F10 and page 2 of the initial CEMP).

#### **IN-COMBINATION ASSESSMENT**

- 6.3.7 The Applicant addressed in-combination effects within their HRA report (section 2.2 of APP-027).

- 6.3.8 A total of 17 consented or proposed projects within 10km of the project were identified following consultation with NE, East Riding of Yorkshire Council (ERYC) and North Lincolnshire Council (NLC) and a web-based search (see Appendix 1 of APP-028). Of these, the following eight plans/projects were identified by the Applicant as having the potential to give rise to in-combination effects as a result of disturbance to bird species:

- Paull Local Development Order (LDO) Enterprise Zone;
- Port of Hull LDO;
- Hedon Haven Key Employment Site;
- North Killingholme Power Project;
- Killingholme Energy Centre;
- Hornsea Offshore Wind Farm Onshore Infrastructure project;
- Able UK Logistics Park; and
- Able Marine Energy Park.

- 6.3.9 The locations of these plans/projects are identified on Figure 1 of the Applicant's HRA Report [APP-027].

## **6.4 ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS RESULTING FROM THE PROJECT, ALONE AND IN-COMBINATION**

### **HUMBER ESTUARY SAC**

6.4.1 The Applicant's HRA Report noted [paras 6.2.2-6.2.11 of APP-027] that no construction works would take place within the Humber Estuary itself, or within the intertidal habitat adjacent to the river. It concluded that the project was not likely to give rise to significant effects, either alone or in-combination with other projects or plans, on the qualifying features of the Humber Estuary SAC.

6.4.2 This conclusion was based on the following:

- The implementation of standard pollution prevention measures to control pollution and sediment discharge [paragraphs 3.4.1 and 6.2.6]; this was included in the initial CEMP at Con F15 [REP7-019] which is secured through Requirement 12 of the Applicant's final version of the draft DCO [REP9-010].
- The premise that the access routes would not pass in the vicinity of the SAC boundary; the traffic routes are identified on Figure 2 (for Goxhill) and Figure 5 (for Paull) of the initial TMP [REP4-023] which is secured through Requirement 15 of the Applicant's final version of the draft DCO [REP9-010].
- That measures including seeding and damping down would ensure no airborne pollutions and/or dust would reach the designated sites; dust suppression measures are included in section Con D1-D23 of the Initial CEMP [REP7-019] which is secured through Requirement 12 of the Applicant's final version of the draft DCO [REP9-010].

6.4.3 By the close of the Examination, no IPs disputed the conclusion of no Likely Significant Effects (LSE) on the Humber Estuary SAC. However, in order to reach this agreement, the following relevant matters were discussed during the Examination:

- the potential impacts on inter-tidal habitats within the Humber Estuary SAC from flooding the tunnel with seawater; and
- potential impacts on the lamprey qualifying feature of the Humber Estuary SAC.

### **Potential impacts on inter-tidal habitats within the Humber Estuary SAC**

6.4.4 The Applicant's HRA Report [APP-027] states that once the tunnel is installed, it would be flooded with seawater. This would involve pumping water from an extraction point in the Humber Estuary to the drive pit on the Goxhill side of the Humber Estuary through two pipes laid across the mudflats (location identified as Work No. 12 on the Works Plans [REP1-006]). The HRA Report concluded that there would be localised disruption on the intertidal habitat, however this would be small scale and take no longer than two weeks and therefore "no

*significant impacts on the intertidal habitat are considered likely”* (paragraph 6.2.4 of APP-027).

- 6.4.5 In its RR, NE [RR-023] requested further information on the vehicle movements associated with the installation and removal of the pipes in order to determine whether the project would have a likely significant effect on the Humber Estuary SAC. The Applicant confirmed [REP2-042] that the installation of the pipeline for the tunnel flooding would include up to three people walking out onto the intertidal habitat to place the pipeline and associated pumps into the Humber Estuary. NE subsequently agreed that a LSE on the SAC could be excluded [REP2-017 and REP3-019].
- 6.4.6 The Statement of Common Ground (SoCG) between the Applicant and the Marine Management Organisation (MMO) [REP6-017] contained details of the pump deployment method and agreed that “*no significant impacts on the intertidal habitat are considered likely*”.
- 6.4.7 The Applicant updated the CEMP at Deadline 3 to reflect discussions with NE and MMO to include the methodology for the tunnel flooding (Con F17 of REP3-010).

#### **Potential impacts on lamprey**

- 6.4.8 The main text of the Applicant’s HRA Report [APP-027] did not specifically address impacts on the sea lamprey and river lamprey qualifying features of the Humber Estuary SAC and Ramsar site (Criterion 8). However, email correspondence between the Applicant and NE in Appendix 7 of the HRA Report [APP-028] shows agreement to scope out lamprey from the HRA.
- 6.4.9 In the SoCG between the Applicant and NE [REP3-019], NE agreed to no LSE on the Humber Estuary SAC from the tunnel flooding on the basis that the provision of a screen would prevent lamprey being drawn into the tunnel. NE subsequently confirmed [REP5-007] that the requirement for a lamprey screen had been secured through Con F17 of the initial CEMP [REP7-019].

#### **HUMBER ESTUARY SPA AND RAMSAR SITE**

- 6.4.10 The qualifying and interest features of the Humber Estuary SPA and Ramsar site are identified in section 4.2 of the Applicant's HRA Report [APP-027]. Although the application site is not located within the European site, the HRA Report noted the potential for impacts on birds functionally linked to the SPA that use the fields within and surrounding the application site.
- 6.4.11 In order to determine which SPA and Ramsar bird species could be affected, the Applicant undertook a desk based study and bird surveys. The study area for the bird surveys included the fields and estuarine habitats within and adjacent to the main works area and within the likely extent of biophysical change associated with the proposed works. Professional judgement was used to determine that

this was the possible extent to which noise was considered likely to be experienced. Further details of these surveys are included in sections 5.2 and 5.3 of the HRA Report [APP-027].

- 6.4.12 The Applicant's HRA Report [APP-027] acknowledged that the project was likely to give rise to significant effects, either alone or in combination with other projects and plans, on some of the qualifying and interest features of the Humber Estuary SPA and Ramsar site as a result of the indirect effects mentioned above in this recommendation report. Table 3.1 of the RIES [PD-016] identifies the qualifying and interest features screened in and out by the Applicant.
- 6.4.13 The Applicant's HRA Report [APP-027] did identify a LSE for the Humber Estuary SPA for the qualifying features whose peak numbers recorded during bird surveys (undertaken in 2013/14) exceeded the 1% significance threshold of the SPA population (paragraph 8.1.1 of APP-027). These were the waterbird assemblage species, marsh harrier, bar-tailed godwit, golden plover, dunlin, black-tailed godwit, shelduck, common redshank, ruff and the waterfowl assemblage species.
- 6.4.14 The Applicant also identified a LSE for Criterion 5 (non-breeding waterfowl assemblage) and Criterion 6 (passage waterfowl assemblage) for the Humber Estuary Ramsar site. A justification for the identification of a LSE for these criteria is not explicitly stated within APP-027, however the screening matrices [APP-028] stated that *"minor impacts [are] predicted"*.
- 6.4.15 A LSE was excluded for the qualifying and interest features (see Table 3.1 of the RIES [PD-016]) which were not recorded during the surveys.
- 6.4.16 The SoCG between the Applicant and NE [REP7-027] states that NE *"agrees with the site and features selected taken to the Appropriate Assessment Stage"*.

#### **Consideration of SPA assemblage features**

- 6.4.17 The Humber Estuary SPA qualifies under Article 4.2 of the Birds Directive by regularly supporting over 20,000 waterbirds in any season, as described in paragraphs 5.4.40-5.4.72 of the Applicant's HRA Report [APP-027]. The RSPB [RR-029] raised concerns with the Applicant's approach to assessing the assemblage, stating that populations of the assemblage's constituent species should be assessed on a species-by species basis.
- 6.4.18 In its first written questions [PD-006], the ExA sought comments from NE and the RSPB on the Applicant's approach to assessing impacts on the assemblage; NE considered sufficient information had been provided by the Applicant [REP2-017] whereas the RSPB's concerns remained [REP2-005 and REP2-006]. The Applicant considered it had assessed the assemblage species effectively and noted that the approach had been agreed with NE [REP7-027].

- 6.4.19 By the close of the Examination, the RSPB confirmed that the combination of embedded environmental design measures and the further measures proposed to mitigate habitat loss (see below for further information), addressed their concern over the assessment of impacts on assemblage species by providing suitable mitigation for all relevant assemblage species [REP7-028].

## **OPERATION AND DECOMMISSIONING**

- 6.4.20 The Applicant did not identify any LSEs on any European sites from the operational phase on the basis that the installed pipeline would be below ground and land would be reinstated within twelvemonths following completion of the works. Similarly, no LSEs were identified from the decommissioning phase as the assets would remain in situ with only very minor works required within and immediately adjacent to the Above Ground Installations (AGIs) [paras 5.6.3-5.6.6 of APP-027]. These conclusions were not disputed by any IPs during the Examination.

## **CONCLUSION OF LIKELY SIGNIFICANT EFFECTS ASSESSMENT**

- 6.4.21 The ExA agrees that a LSE on the qualifying features of the Humber Estuary SAC can be excluded. This is on the basis of having taken into account the information provided during the course of the Examination, in particular, by the Applicant in their HRA Report; and the views expressed by IPs, such as NE and the RSPB.
- 6.4.22 The ExA also agrees with the Applicant that a LSE can be excluded for the operation and decommissioning phases of the project for all European sites.
- 6.4.23 The ExA agrees with the Applicant that a LSE cannot be excluded for some qualifying features and interests of the Humber Estuary SPA: waterbird assemblage species, marsh harrier, bar-tailed godwit, golden plover, dunlin, black-tailed godwit, shelduck, common redshank, ruff and the waterfowl assemblage species; or for the Humber Estuary Ramsar site: Criterion 5 (non-breeding waterfowl assemblage) and Criterion 6 (passage waterfowl assemblage).
- 6.4.24 The ExA recommends that the Secretary of State undertakes an AA of the indirect construction effects of the project, alone and in combination with other plans and projects, on the qualifying features and interests of these European sites identified by the Applicant.
- 6.4.25 On the basis of the information provided in the DCO application and during the course of the Examination, the ExA is content that the Humber Estuary SPA and Ramsar site are the only sites where a LSE may arise and an AA may be required by the Secretary of State.



## **6.5 FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY OF EUROPEAN SITES**

- 6.5.1 Section 8 of the Applicant's HRA Report [APP-027] provides information to inform an AA of the construction effects of the project alone, and in-combination with other plans and projects, on some of the qualifying features and interests of the Humber Estuary SPA and Ramsar site [APP-027 and APP-028]. It considered the potential impacts from disturbance, displacement and the loss of foraging/roosting habitat on SPA/Ramsar bird species using the estuarine habitat within the Humber Estuary and SPA bird species in the fields within and adjacent to the construction works. It also considered the potential for in-combination impacts.
- 6.5.2 The Applicant's HRA Report concluded that the project would not adversely affect the integrity of any European Site, alone or in-combination with other plans and projects (paragraph 10.1.5 of APP-027).
- 6.5.3 By the close of the Examination, all IPs agreed that there would be no adverse effect on the integrity of any European sites as a result of the project. However, in order to reach this agreement, the following relevant matters were discussed during the Examination:
- consideration of Paull Holme Strays Nature Reserve;
  - potential impacts on marsh harrier;
  - potential noise impacts on Humber Estuary SPA and Ramsar birds;
  - sufficiency of ornithological surveys; and
  - mitigation for bird species affected by habitat loss.

### **CONSIDERATION OF PAULL HOLME STRAYS NATURE RESERVE**

- 6.5.4 The Applicant's HRA Report acknowledged that Paull Holme Strays Nature Reserve managed by the Yorkshire Wildlife Trust (YWT) on behalf of the Environment Agency (EA), would be likely to be included within the Humber Estuary SAC/SPA at some point in the future [paragraph 4.2.5 of APP-027] and included a number of references to Paull Holme Strays Nature Reserve throughout the report.
- 6.5.5 The RSPB (RR-029 and REP2-005) noted that Paull Holme Strays Nature Reserve was created in 2003 by the EA to provide flood risk management and compensatory habitat for the adverse effects on the Humber Estuary SPA/SAC resulting from the implementation of the Humber Flood Risk Management Strategy. As such, the RSPB considered Paull Holme Strays should be treated as part of the Humber Estuary SAC/SPA/Ramsar due to the protection afforded it as a compensation site under paragraph 118 of the National Planning Policy Framework (NPPF).
- 6.5.6 The Applicant explained [REP2-042] that Paull Holme Strays Nature Reserve had been discussed throughout the HRA Report and provided further discussion of potential noise impacts on Paull Holme Strays

Nature Reserve in a technical note (Appendix B of REP7-028). No further comments were received from the RSPB during the Examination.

- 6.5.7 The ExA recommends that, when assessing the potential for adverse effects on the Humber Estuary SPA and Ramsar site, the Secretary of State gives consideration to the potential impacts of the Scheme on the Paull Holme Strays Nature Reserve. The ExA considers that any such potential impacts have been adequately addressed by the Applicant and that sufficient information is available for the Secretary of State to inform an appropriate assessment.

### **POTENTIAL IMPACTS ON MARSH HARRIER**

- 6.5.8 The Applicant's ornithological surveys identified the presence of marsh harrier at Goxhill [paragraphs 5.4.17-5.4.19 of APP-027] and a LSE was screened in for the species on the basis that peak numbers recorded exceeded the 1% significance threshold of the SPA population (Table 9 of APP-027). However, no breeding behaviour was noted and no nest sites were known or recorded during the surveys.
- 6.5.9 An adverse effect on integrity from disturbance was ruled out by the Applicant on the basis that foraging marsh harrier would likely "*only be temporarily displaced from foraging areas within and directly adjacent to the construction area*" and as the construction area would be more than 400m from where the birds were recorded [paragraphs 8.3.8 and 8.3.12 of APP-027]. In addition, suitable foraging habitat for marsh harrier was identified within the construction area but marsh harrier was not recorded using these features [paragraph 8.3.44 of APP-027].
- 6.5.10 However, the RSPB [RR-029 and REP2-005] noted a record from previous breeding bird surveys (undertaken prior to Ground Investigation works linked to the project) which identified nesting marsh harriers close to the Goxhill works site. Therefore, the RSPB considered that the assessment should be updated and an appropriate mitigation strategy developed to address disturbance issues should marsh harriers be found nesting close to the construction compound.
- 6.5.11 The Applicant did not consider that the record altered the assessment as the nesting area was over 500m from the works behind the sea wall and would not be affected at this distance. However the Applicant agreed to undertake pre-construction surveys for breeding marsh harrier and prepare a mitigation strategy if required [REP2-042]. This was included at PRE F11 of the initial CEMP [REP7-019] and an outline of the mitigation strategy was produced by the Applicant (Appendix D of the initial CEMP, REP7-019). This approach and mitigation strategy was agreed with the RSPB in a SoCG [REP7-028]. The initial CEMP and thereby the outline marsh harrier mitigation strategy is secured by Requirement 12 of the Recommended DCO.

## **POTENTIAL NOISE IMPACTS ON HUMBER ESTUARY SPA AND RAMSAR BIRDS**

- 6.5.12 The Applicant's HRA Report acknowledged the potential for temporary displacement of SPA and Ramsar birds as a result of noise disturbance during construction. It noted that noise disturbance would effectively sterilise approximately 40 hectares (ha) (6ha at Paull and 34ha at Goxhill) of arable land within the main works area for the duration of the construction period [paragraph 8.3.36 of APP-027].
- 6.5.13 The Applicant modelled the worst case construction noise based on draft plant inventories and indicative site layouts in order to determine effects on SPA/Ramsar bird species outside of the construction area. The scope of the noise monitoring was agreed in consultation with NE [REP7-027], NLC and ERYC [REP2-037, Table 3-5, ERYC and REP7-025, Table 3-5 NLC] and took into account bunding and fencing around the construction site (these measures have been incorporated into the initial CEMP [REP7-019]).
- 6.5.14 The HRA Report considered that construction noise levels should be restricted to below 70dB as *"birds would habituate to regular noise below this level; however, where possible, sudden, irregular noise above 50dB should also be avoided, as this causes disturbance to birds"* (paragraph 8.3.19 of APP-027).
- 6.5.15 The HRA Report concluded:
- for SPA/Ramsar bird species using the estuarine habitat - average levels (LAeq) would be less than 50 decibels (dB) at the saltmarsh/intertidal habitat/Paull Holme Strays. The LAmax (maximum noise levels) could reach up to 73dB during Month 35 (July) at Paull but for the majority of the construction phase, the LAmax reaching the Humber Estuary would be less than 70dB. An adverse effect on integrity was ruled out on the basis that these levels were below the threshold at which SPA species would be disturbed and were only slightly higher than average background noise levels to which the birds are habituated; and as extra fencing would be placed around activities likely to cause the highest levels of noise [paragraphs 8.3.20-8.3.25 of APP-027].
  - for SPA/Ramsar birds in fields adjacent to the construction area - average noise levels (LAeq) would be less than 50-55dB and levels from the noisiest activities (LAmax) would be 70-80dB. The HRA Report acknowledged the potential for some localised short term displacement of birds but ruled out adverse effects on integrity, stating that disturbance would be temporary during construction; that birds using the fields would be habituated to existing levels of background noise; and that there were alternative areas available for foraging and/or roosting [paragraphs 8.3.36-8.3.41 of APP-027].
- 6.5.16 NE disagreed with the Applicant's conclusion and considered that there could be a significant impact on SPA bird species if LAmax are higher

than those from existing sources, or if loud noises were experienced more frequently [paragraph 5.2 of RR-023 and paragraph 6.3.1 of REP2-017]. Similarly, concerns over noise impacts were raised by the RSPB [RR-029], Lincolnshire Wildlife Trust (LWT) [RR-019] and YWT [RR-030]. This included the need for the Applicant to provide an estimate of the frequency of loud noise. No individual species was identified as being specifically affected, although comments were made in relation to 'SPA species' as a whole (note that the RSPB stated that references in their responses to the SPA should also be taken as referring to the relevant Ramsar components, paragraph 1.4 of REP2-005).

- 6.5.17 The Applicant responded [REP2-042], asserting that the noise modelling was undertaken on a worst case scenario and that actual noise levels that would be experienced during construction phase would likely be lower than those presented. The Applicant maintained their position on the basis that although "*relatively large numbers of birds might be disturbed and potentially displaced from the fields close to the Project, such events would be infrequent...[and]...well within the tolerances of species... Whilst such disturbance might exert some minor energetic stress (i.e. through the need to fly elsewhere), this would have a negligible effect, both on individual birds and on the population as a whole, and would have no impact upon the conservation objectives for the SPA populations of these species*" [REP2-042]. However, to provide clarity on some of the matters raised by NE and the RSPB, the Applicant produced a supplementary HRA Technical Note (Appendix B of REP7-028) which predicted 'likely' noise levels during construction rather than the 'worst case' scenario that was presented in the HRA.
- 6.5.18 Further to this clarification, the SoCGs between the Applicant and NE [REP3-019] and between the Applicant and the RSPB [REP7-028] confirmed that NE and RSPB are "*in agreement with the findings of the predicted likely noise contours presented in the Technical Note (refer to Appendix B) and agree that noise disturbance beyond the construction footprint would be unlikely to have a significant effect upon the SPA bird populations*".

#### **SUFFICIENCY OF ORNITHOLOGICAL SURVEYS**

- 6.5.19 Paragraphs 5.3.3-5.3.11 of the Applicant's HRA Report [APP-027] describe the ornithological surveys undertaken to inform the assessment.
- 6.5.20 The RSPB [RR-029 and REP2-005] raised concerns over the sufficiency of the nocturnal survey effort as the dawn and dusk surveys did not cover the periods between dusk and dawn. The RSPB considered that "*the regularity, extent, profitability and importance of feeding by golden plover and lapwing of the Humber Estuary SPA on the fields within and adjacent to the construction compounds*" may have been underestimated and therefore the assessment may have underestimated the fitness and survival implications for golden plover

and lapwing from potential habitat loss and disturbance impacts. In response, the Applicant explained the difficulties in nocturnal surveying and that the survey methodology was agreed in consultation with NE [REP2-042 and REP7-028].

- 6.5.21 Disagreement over the sufficiency of the surveys remained between the RSPB and the Applicant; however the final SoCG [REP7-028] confirmed that these concerns were addressed through adopting a more precautionary approach to mitigation, as discussed below.
- 6.5.22 The RSPB also raised concerns over the survey effort in the spring passage period [RR-029] however following clarification from the Applicant that two surveys per month were undertaken, the RSPB were satisfied that the survey effort was sufficient [REP2-005].

### **MITIGATION FOR BIRD SPECIES AFFECTED BY HABITAT LOSS**

- 6.5.23 The pipeline would be tunnelled beneath the Humber Estuary; therefore the Applicant's HRA Report stated that there would be no direct impacts on the designated features of the Humber Estuary SAC, SPA and Ramsar site [para 4.2.3 of APP-027]. However, the Applicant's HRA Report acknowledged that during the construction phase the main works area would result in the temporary loss of approximately 40ha (6ha at Paull and 34ha at Goxhill) of roosting/foraging habitat available to birds associated with the designated sites (Table 10 of APP-027). It was considered unlikely SPA species would use the footprint of the main works area due to noise disturbance [para 8.3.36 of APP-027].
- 6.5.24 The Applicant concluded that there would be no adverse effects on the SPA bird species on the basis that the loss would be temporary and the fields would be re-instated post-construction; there were other habitats available in the wider area; and the fields that would be lost provide a sub-optimal resource to the SPA birds. The Applicant also proposed to set aside part of Field 6 (Work Number 11) at Goxhill for the duration of the construction period to compensate for some of the habitat loss; this would be left as stubble for the duration of the construction works, and would provide an alternative roosting and/or foraging site for birds associated with the SPA [para 8.3.43-8.3.49 of APP-027].
- 6.5.25 However, NE stated that they were not confident the set-aside area of Field 6 provided "*a large enough area or sufficient quality of habitat to act as an equivalent foraging or roosting resource, in order to mitigate for the effects of disturbance to birds using fields 4, 5 and 6*" [paragraph 5.4 of RR-023]. This view was echoed by the RSPB [RR-029] and LWT [RR-019].
- 6.5.26 The Applicant responded that Field 6 is currently intensively managed, therefore setting it aside would enhance the feeding resource for the local overwintering bird population and would be sufficient to mitigate for the loss of habitat under the footprint of the works [REP2-042].

Nevertheless, NE [REP2-017] and the RSPB [REP2-005] continued to argue that the Applicant's proposal was insufficient.

6.5.27 At Deadline 6, the Applicant confirmed [REP6-004] that the mitigation measures had been agreed with NE and the RSPB. These included:

- Work No. 11 (Field 5) to be managed as grassland with a short sward for the duration of the construction period;
- a marshalled, temporary gate to be installed south of Fir Tree Farm to restrict vehicle movements down East Marsh Road during the construction phase and thus reduce disturbance to SPA birds using Fields 6, 7 and 8;
- permanent lockable barriers to be erected at two locations (one on East Marsh Road and one at East Halton Skitter) to reduce disturbance to SPA birds using Fields 6, 7 and 8 and to prevent vehicles from accessing the salt marsh over the sea wall; and
- the extension of the red line boundary to incorporate an additional area of farmland adjacent to the existing redline (Field 8 - the 'additional Mitigation Land') to be temporarily possessed during construction with the following measures implemented:
  - organic matter to be spread annually for the duration of construction to encourage invertebrates;
  - gas guns not to be used during construction; and
  - the height of vegetation to be kept low during the winter period.

6.5.28 These mitigation measures relied upon a change request for an extension to the red line boundary [REP6-004] which was accepted by the ExA on 1 February 2016 [PD-014].

6.5.29 The mitigation measures were ultimately secured in Con F20 of the initial CEMP, and in the description of Works Nos. 4 and 13 (Schedule 1) and Requirement 18 (Schedule 3) of the Applicant's final version of the draft DCO [REP9-010]. NE [REP7-038] confirmed that these mitigation measures would ensure there would be no adverse effect on the integrity of the Humber Estuary SPA, and RSPB [REP7-041] stated that they were content with the mitigation package and the means by which it will be secured.

6.5.30 Furthermore, the final versions of the SoCG between the Applicant and NE [REP7-027] agreed *"that there would be no adverse effect on the integrity of any Natura 2000 sites and features as a result of the scheme, alone or in-combination with other plans and schemes"*.

6.5.31 Subsequent to the agreement of mitigation measures between the Applicant, NE and the RSPB, the affected landowners [REP7-002] expressed concerns over the installation of barriers and the request not to use bird scaring guns during the construction period. They also considered that the crop height would exceed more than 15cm if winter crops are sown. The landowners stated that *"it is hoped that Heads of Terms can be agreed with the Applicant concerning the*

*installation of the barriers, the application of farmyard manure and the non use of bird scares [sic]"*.

- 6.5.32 Heads of Terms had not been agreed by the close of Examination and even if they had they would not be legally binding. However the ExA is content that these mitigation measures are adequately secured on the basis that temporary possession rights could be exercised if voluntary agreement is not concluded. These matters have been addressed in the Chapter 8 of this recommendation report.
- 6.5.33 The ExA noted that the measures proposed in the Archaeological Mitigation Strategy which was submitted by the Applicant at Deadline 7 [REP7-038] potentially affected the original area of mitigation land for birds displaced by the construction works. As a consequence, a R17 request for further information was issued [PD-017, Q10] to establish whether this affected the final view of NE or the RSPB on their conclusion that with the existing and accepted change request relating to plot 132, additional mitigation land there would be no LSE on the SPA/Ramsar. NE [REP9-019] and the RSPB [REP9-021] agreed with the Applicant [REP9-017] that any archaeological mitigation works would be timed such that there would be no conflict with the achievement of the required ecological mitigation, as controlled through Requirement 18 of the DCO.

### **CONCLUSIONS OF THE INTEGRITY TEST**

- 6.5.34 Taking into account the information provided during the course of the Examination, in particular, by the Applicant in their HRA Report and the views expressed by IPs , such as NE and the RSPB, the ExA recommends that:
- An adverse effect on the Humber Estuary SPA can be excluded when considering the qualifying features, in view of the site's conservation objectives and having regard to the mitigation and monitoring measures secured in the version of the draft DCO recommended to the Secretary of State (Appendix D).
  - An adverse effect on qualifying interests on the Humber Estuary Ramsar site can be excluded, when having regard to the mitigation and monitoring measures secured in the version of the draft DCO recommended to the Secretary of State (Appendix D).
- 6.5.35 The ExA notes that NE [REP5-007] confirmed they are satisfied with the in-combination assessment and that the RSPB [REP5-013] agreed there will be no adverse in-combination impacts. The ExA is satisfied that the Applicant has included all relevant plans/projects in the in-combination assessment.
- 6.5.36 The ExA considers that there is sufficient evidence within the Applicant's HRA Report [APP-027 and APP-028] and the Examination documents discussed in this Chapter, to enable the Secretary of State to undertake their duties under the Habitats Regulations and to consider the potential effects of the project, alone and in-combination

with other plans and projects, on European sites. The ExA agrees with the statement made in the SoCG between the Applicant and NE [REP7-027] that *"the need for a further Examination of alternative designs, activities and process is therefore not considered necessary"*.



## **7 THE EXA'S CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT**

### **7.1 THE PLANNING BALANCE**

#### **Introduction**

- 7.1.1 This section of the report draws together all the relevant parts of chapters 1-6 including where on certain items conclusions may have already been made. It thereby assembles relevant information, identifies the positive and negative benefits on each relevant issue and brings them together to make an overall recommendation on the case for development consent.
- 7.1.2 The main issues have been established in Section 4.1 of this report. They include those which were identified in the ExA's initial assessment of Principal Issues (PIs); those which were raised at the Preliminary Meeting (PM), Issue Specific Hearings (ISHs) and in written and oral representations; and all the matters raised by the Local Impact Reports (LIRs). All these various issues have been explored and considered during the course of the Examination.
- 7.1.3 The ExA's findings and conclusions in respect of the generic planning issues are set out in Chapter 5, and Habitats Regulations Assessment (HRA) matters are considered in Chapter 6 of this report.

#### **The Principle and Need for the Development and Consideration of Alternatives**

- 7.1.4 In section 4.3 details are set out of the proposed replacement gas pipeline which is required because the existing pipeline has become exposed and therefore vulnerable to damage. Details of an independent report on its condition were provided. At section 4.4 relevant planning policies are set out and there is robust government support for the project under EN-1.
- 7.1.5 The Applicant's consideration of alternatives during the development of the project is reported in Chapter 5. In this case options for the replacement pipeline were constrained by the need to reconnect existing infrastructure between two fixed points. No objections or concerns were raised during the examination on either need or alternatives.
- 7.1.6 The ExA therefore concludes that the application has taken into account the general principles of assessment set out in EN-1 that are relevant to the project and therefore has demonstrated its need. The ExA is also satisfied that there remains no policy, or legal requirements that would lead it to recommend that consent be refused for the proposed development in favour of another alternative.

## **The General Impacts of the Proposed Development**

### ***Biodiversity, Biological Environmental, Ecology and Geological Conservation***

- 7.1.7 This topic is discussed in Chapters 5 and 6. The ExA recommends in Chapter 6 that, when assessing the potential for adverse effects on the Humber Estuary SPA and Ramsar site, the Secretary of State gives consideration to the potential impacts of the Scheme on the Paull Holme Strays Nature Reserve. The ExA considers that any such potential impacts have been adequately addressed by the Applicant and that sufficient information is available for the Secretary of State to inform an appropriate assessment.
- 7.1.8 The ExA is satisfied that the embedded mitigation together with the controls in place under the initial Construction and Environmental Management Plan (CEMP), initial Traffic Management Plan (TMP) and initial Site Water Management Plan would ensure that construction would meet both HRA and Environmental Impact Assessment (EIA) obligations. The proposed development would therefore not adversely affect the integrity of the relevant European Sites of the River Humber Estuary.
- 7.1.9 The measures in place within the initial CEMP and secured through the Recommended DCO were negotiated and agreed with NE and the non-statutory nature conservation bodies and will provide protection and meet the tests within EN-1. There were no outstanding objections from NE or the RSPB at the Examination close.
- 7.1.10 The ExA concludes that the Applicant's ES adequately describes the predicted effects from construction, operation and decommissioning of the proposed development. Having taken into consideration the executed Statement of Common Grounds (SoCGs) with NE, and the other nature conservation bodies, the ExA considers that the Secretary of State can conclude the requirements of EN-1 for biodiversity, biological environment, ecology and geological conservation have been met and there are no residual impacts that need to be taken into account in the final decision.

### ***Flood Risk, Hydrology and Water Quality***

- 7.1.11 These issues were at the heart of the EA's initial concerns with the application and their representations requesting additional information partly referred to above.
- 7.1.12 The Applicant and the EA engaged effectively during the Examination and details are provided in Chapter 5 of the supplementary information that was supplied and subject to examination and testing.
- 7.1.13 The mini pump test provided essential additional data upon which the EA were then able to provide evidence-based advice to the ExA. The initial Site Water Management Plan, together with the final form of Requirement 5 (Site Water Management Plan) within the

Recommended DCO sets the framework to control this essential area during the development of detailed design.

- 7.1.14 By the Examination close the EA were satisfied on all counts apart from the final drafting of a clause within Schedule 10 the protective provisions, Part 3 (23). This is discussed in Chapter 9 but has been included in the Recommended DCO.
- 7.1.15 The ExA is satisfied that the ES assessed the relevant worst case scenario and that the application documentation at the close of the Examination contained sufficient information for the EA as statutory advisor to provide robust advice to the ExA.
- 7.1.16 There remain some residual risks of impacts associated with flooding during construction due to tunnel collapse, or adverse impacts on the ground water supply. However embedded mitigation for example, flood bunds around the tunnel drive and reception pit until its completion reduce the potential risk and adverse impacts as far as possible. In addition the initial SWMP and Requirement 5 within the Recommended DCO provide a framework developed and agreed with the EA within which to control these risks.
- 7.1.17 The public benefit from a long term solution that would be provided by replacement of the existing pipeline is significant and robustly supported under EN-1 and EN-4. The impact of the possible failure of the existing Feeder 9 gas supply pipeline on the national network would clearly be highly significant with wide ranging negative public impacts.
- 7.1.18 Taking all these matters into consideration the ExA therefore concludes that the Recommended DCO at the Examination close meets the relevant policy tests.

### ***Geology and Soils***

- 7.1.19 The ExA had some initial concerns over the application documents because it was evident from within the detail of reports supplied that some site investigation and laboratory testing was incomplete leaving unnecessary residual risks.
- 7.1.20 The Applicant undertook additional work during the Examination supplying further details. In particular this led to the updating and resubmission of a risk assessment table in which a number of risks were re-categorised as a consequence of the additional information and reduced in magnitude.
- 7.1.21 Ultimately these matters are a commercial risk for the Applicant rather than a planning matter but the ExA was mindful of the potential overlap of ground condition risks on flooding during construction by a possible breach of the flood defences, or impacts on delivery of the project which is relevant to CA considerations.

- 7.1.22 The ExA therefore concludes that the project does meet the aims of policy advice on geology and soils and is capable of doing so without unacceptable residual impacts that outweigh the significant public benefits identified. This is the case both in terms of individual and cumulative effects, and during construction, operation and decommissioning.

### ***Traffic and Transport and Public Rights of Way***

- 7.1.23 This matter overlaps with matters discussed under '*Noise Disturbance and Vibration*'.
- 7.1.24 Of significant relevance and importance at the examination close, NLC as statutory highways advisor was satisfied with the final traffic and transport proposals, initial TMP, mitigation proposals and draft DCO.
- 7.1.25 The ExA considers that the adverse impacts have been reduced as far as is practical, that the tests within the NPSs are met and concludes that the public benefit of the project outweighs any minor residual and temporary effects.

### **Waste Management**

- 7.1.26 The Examination explored the proposals for managing waste material from the tunnel construction because this generates the HGV traffic movements.
- 7.1.27 The Recommended DCO secures the development of a Site Waste Management Plan (SWMP) as detailed design progresses. The EA had no outstanding concerns at the Examination close and agreed that some of the details of the SWMP will by necessity need to await final detailed design, or the commencement of construction and thereby the establishment of the precise nature of the waste material produced from tunnelling.
- 7.1.28 There is room within the Order limits at Goxhill and Paull to store the necessary volumes of tunnelling material generated and that will provide flexibility on the management and control of waste and thereby HGV traffic flow.
- 7.1.29 The ExA therefore considers that the public benefits of the project outweigh any minor residual and temporary effects.

### ***Noise Disturbance and Vibration***

- 7.1.30 Noise and vibration impacts are discussed in Chapter 5 which sets out details of the options explored during the Examination and the level of questioning from the ExA on this area following two unaccompanied site inspections to view the proposed construction route and compounds. In their final representation the Taylors indicated they had an outstanding concern on the reported traffic flows. They had not engaged directly in the Examination at the ISH.

- 7.1.31 The ExA examined this matter in detail and the Applicant was engaged with NLC highways before and during the Examination. This included the investigation of alternative route options suggested during the Examination which turned out to be unviable, a position agreed by NLC.
- 7.1.32 The Applicant offered additional mitigation in the form of permanent passing places along the narrow sections of the proposed haul route and it was agreed with NLC that on completion these would be adopted and thereby available long term to benefit local people.
- 7.1.33 The ExA has modified the Recommended DCO to better secure mitigation in the form of reduced construction route use by HGVs during term time (Requirement 15 - see Chapter 9).
- 7.1.34 The ExA concludes that whilst there will remain residual adverse impacts during the forecast 3 year construction period those have been reduced as far as is practical and that the public benefit of the project outweighs any minor residual and temporary effects.

### ***Air Quality, Dust and Light Emissions***

- 7.1.35 The ExA finds that the Environmental Statement (ES) adequately covers the requirements of EN-1. No specific objections or concerns were raised on these matters.
- 7.1.36 The ExA concludes that the impacts caused by air quality and other emissions have been properly assessed and that all reasonable steps have been taken or will be taken to minimise their impact.

### ***Construction and Project Delivery***

- 7.1.37 Through the examination questions and at the Hearings the ExA tested the case for development to ensure the project was capable of delivery ahead of considering the requested Compulsory Acquisition (CA) and Temporary Possession (TP) powers sought.
- 7.1.38 This Examination included the fate of the existing Feeder 9 pipeline, safety issues and in response to concerns raised ahead of the PM by the EA, the adequacy of the Applicant's geological and hydrological assessment. In response further work including for example a mini pump test was undertaken during the examination and additional evidence was submitted for review by all Interested Parties (IPs).
- 7.1.39 The ExA concludes that the ES was presented based on the worst case scenario, that health and safety policy tests are met and that neither provides a reason that should affect the Secretary of State's decision on whether to grant an Order.

### ***Good Design and Consideration of Alternatives***

- 7.1.40 The ExA has considered the application and its development through the Examination and concludes that the Applicant has demonstrated a

well-considered, consultative and iterative design process. In the pre-application development of the project there is clear evidence of consideration and consultation on alternatives. The Applicant has therefore met the policy requirement of EN-1 and EN-4 relating to good design and the consideration of alternatives.

### ***Heritage and Historic Environment***

- 7.1.41 Archaeological fieldwork had not been undertaken at application stage but the Applicant had been engaged with and agreed with NLC and Heritage England (HE) a scheme of trenching to be undertaken during the Examination.
- 7.1.42 This additional information was supplied at Deadline 7 and included a Written Scheme of Investigation (WSI) and following review by NLC led to the execution of a SoCG which demonstrates that the post-excavation assessment report and mitigation strategy are agreed.
- 7.1.43 Taking all the above into account, the ExA concludes that the project would meet the aims of cultural heritage policy set out in NPSs and the NPPF. With the embedded design measures the residual effects are limited, the process of their assessment and compilation of the residual effects list is agreed by all parties and the public benefit of the project outweighs any minor residual impacts.

### ***Socio Economic Impacts***

- 7.1.44 Socio economic impacts from the project are confined to a limited number of parties as set out in Chapter 5 but also discussed in Chapter 8. There is potential for the businesses located near the Soff Lane diversion and those along the haul route to experience noise, vibration and possible delays. This is ordinarily a quiet area with a rural single lane highway network.
- 7.1.45 The most significant potential effects involve the direct impact(s) on those affected by the proposed taking of agricultural land for the site construction compound at Goxhill and nearby mitigation land for birds displaced during construction. In particular two farmers Mr Finch and Mr and Mrs Faulding whose land is subject to TP or CA for these purposes. The granting of an Order would lead these parties to lose farmland to the construction compounds for a period of up to 5 years and in the case of the mitigation land, to restrict its use, for example restricting the nature of crops that could be grown and preventing the use of bird scarers.
- 7.1.46 The most significant consequence discussed in Chapter 8 is the potential risk to Mr Finch and his family of losing their protected agricultural tenancy rights over a significant part of their existing land holding. This has the potential to create a conflict with Mr Finch's family's entitlement to protection under the Human Rights Act.
- 7.1.47 At the close of the Examination whilst there was evidence that voluntary negotiations on the terms for a commercial agreement

between the Applicant and Affected Parties was ongoing, these had not been concluded and there were outstanding objections to the granting of rights of CA and TP within the Order because of the potential adverse socio-economic effects.

- 7.1.48 The ExA notes these residual impacts and the concerns and empathises with those affected. However the impacts have been mitigated as far as practical and means of compensation is contained within the Recommended DCO for those most directly affected. In addition NLC as the public highway authority is satisfied with the construction traffic proposals in their final form and there would be control over the project's implementation under the initial TMP and Requirement 15 (see Chapter 9).
- 7.1.49 The ExA therefore concludes that the adverse social and economic impacts have been reduced as far as is practical and that the public benefit of the project outweighs any minor residual and temporary effects.

### ***Landscape and Visual Impacts***

- 7.1.50 The LIRs raised no concern on this matter.
- 7.1.51 The ExA concludes that the project would meet the aims of Landscape and Visual Impact Assessment (LVIA) policy set out in the NPSs and the NPPF. With the embedded design measures, the residual effects are limited, short term (during construction only), the process of their assessment and compilation of the residual effects is agreed by all parties and the public benefit of the project outweighs any residual impact.

### ***Marine and Navigation***

- 7.1.52 The only potential impact would be for the estimated two weeks when pumps would be installed in the intertidal area to flood the tunnel. Trinity House is aware of the scheme and content to liaise with the Applicant if the project proceeds.
- 7.1.53 The ExA concludes that there will be no significant adverse effects and that the public benefit would outweigh any minor residual effects, should any exist.

### **Conclusions on the Case for Development Consent**

- 7.1.54 The legal and policy context for the Examination of the application is set out in Chapter 3 of this report. This has provided the framework for the ExA's subsequent findings and conclusions.
- 7.1.55 Having regard to EN-1, paragraph 4.1.2, and the ExA's findings in relation to need and alternatives, the ExA starts with a presumption in favour of granting consent for the application. The ExA has considered, and applied, the more specific and relevant policies set out in the NPSs in the consideration of the main issues under the various

topic headings. There are no other NPS policies that clearly indicate that consent should be refused.

- 7.1.56 The ExA has taken into account the potential benefits of the proposed development including its contribution to meeting the need for energy infrastructure and perhaps more particularly the scale of adverse public impact if the development were not approved and the pipeline failed.
- 7.1.57 As identified above and in greater detail elsewhere within the report there remain 7 separate objections on the grounds of socio-economic impacts and these have been considered.
- 7.1.58 The ExA has had regard to the qualified rights under Article 8 and Article 1 of the First Protocol to the European Convention on Human Rights (ECHR) as incorporated by the Human Rights Act 1998, in relation to the impact upon the occupants of the various residential properties, farms, and businesses along the proposed route and those directly affected by the construction compounds and mitigation land at Goxhill and Paull. The ExA considered the personal concerns of those affected in relation to the perceived impact upon their private and family life and the potential interference with the peaceful enjoyment of their land and property. The ExA has balanced the fundamental rights of these individuals against the legitimate interests of the wider community and the public interest.
- 7.1.59 The ExA considers that the interference anticipated would be in accordance with the law and would be necessary in the interests of the economic well-being of the country.
- 7.1.60 The ExA concludes, that for the reasons set out, and incorporating the changes proposed, that development consent should be granted for the Recommended DCO set out in Appendix D.



## **8 COMPULSORY ACQUISITION AND RELATED MATTERS AND TEMPORARY POSSESSION POWERS**

### **8.1 INTRODUCTION**

- 8.1.1 This chapter sets out the Applicant's case for the Compulsory Acquisition (CA) of land and rights and the seeking of Temporary Possession (TP) rights over the Order land.
- 8.1.2 TP rights are sought over the entire Order land and permanent CA rights over part of the Order land. The Applicant seeks to obtain these rights by voluntary agreement [APP-019, 7.4.2-7.4.3] but in the event none is reached each could be enforced by compulsory powers contained within the draft Order (see Chapter 9).
- 8.1.3 Because of the interplay of TP and (in some but not all cases) CA rights affecting individual plots they are discussed together. It is important however to note that TP is not the same as CA and that different tests apply.
- 8.1.4 TP has been used with greater frequency and extent in recently made Orders. In this case because of the potential impact on one affected party (Mr Finch) the ExA questioned whether the draft Order provided a robust compensation mechanism as has been established<sup>41</sup> for land affected by CA.

### **8.2 THE REQUEST FOR COMPULSORY ACQUISITION POWERS**

- 8.2.1 The Applicant is seeking CA powers to secure certain lands, rights and interests within the Order Land to facilitate the project [APP-019].
- 8.2.2 A Book of Reference (BoR), Land Plans and Funding Statement were supplied with the application and updated to their final form ahead of the Examination close as identified below. The final documents reflect changes during the Examination including the addition of further mitigation land following an accepted change request (see Chapter 2 and below). The Order land is shown on the Land Plans (outlined in red) and is described in the BoR.
- 8.2.3 The application site is described in summary in section 2 of the Statement of Reasons submitted with the application and includes:
- land located adjacent to the existing Above Ground Installations (AGIs) either side of the River Humber at Paull and Goxhill to provide construction compounds;

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<sup>41</sup> Compensation Code - statutory compensation code. No 'code' exists as such, but it is generally taken to mean the law as set out in the Land Compensation Acts 1961 and 1973 and the Compulsory Purchase Act 1965, as amended by subsequent legislation and supplemented by case law.

- land nearby those compounds to provide environmental mitigation for displaced birds (see Chapters 5 and 6);
- land between the compounds and river and interconnecting land beneath the River Humber to provide for the proposed replacement pipeline in a new tunnel; and
- land at various locations along the proposed haul route (public highway or private farm track) for highway improvement works to provide access to facilitate construction.

8.2.4 The Statement of Reasons was updated ahead of the Examination close to provide consistency between the tables of rights at 6.1.8 (Permanent rights) and 6.2.14 (Temporary rights), the Land Plans and DCO [REP8-004].

### **Examination Documents Relevant to the CA and Development Consent Order (DCO) Chapters**

#### **Development of the DCO**

8.2.5 During the Examination the Applicant's draft DCO document underwent a number of updates and these are set out in detail at the start of Chapter 9.

8.2.6 In the next two Chapters the following references will be used for the DCO:

- Application draft DCO [APP-016] - as submitted on 15 April 2015;
- Final draft DCO [REP9-010, version 3.1E] - the final form of the draft at the Examination close on 7 March 2016; and
- Recommended DCO - the final draft with recommended changes by the Examining Authority (ExA), contained in Appendix D.

8.2.7 The updates to the application draft DCO can be tracked using the version control document [REP7-008] provided at the request of the ExA.

8.2.8 Details of the changes made can also be followed because tracked change versions of the DCO updates are available and the Applicant maintained a separate schedule of amendments to the DCO and Plans [REP9-014].

8.2.9 These changes will be discussed where significant and relevant but are mostly covered in the following Chapter 9.

#### **Development of the Land Plans, Book of Reference and Statement of Reasons**

8.2.10 The application BoR [APP-021] identifies all the plots of land required together with the details of those parties with an interest in each. The plots are also identified on the Land Plans [APP-06].

8.2.11 The application Statement of Reasons [APP-019] and Funding Statement [APP-020] set out the Applicant's case for the justification

of the CA rights sought and why in the Applicant's opinion there is a compelling case in the public interest for CA. The Funding Statement seeks to demonstrate that there is capital in place to both deal with CA compensation and to support the funding requirements for project construction.

- 8.2.12 At the request of the ExA the Statement of Reasons was updated during the Examination [REP8-004]. The Funding Statement remained unchanged.
- 8.2.13 The Land Plans submitted by the Applicant were revised and amended as the Examination proceeded and a final set of Land Plans were submitted on 17 February 2016 [REP7-009] and the final BoR on 4 March 2016 [REP9-012].
- 8.2.14 Unless stated otherwise the following chapters will usually reference the final version of the Land Plans, BoR and Statement of Reasons.
- 8.2.15 The updates to each of these documents during the Examination can be traced using the Master Version Control Document [REP9-009].

### **Change Request**

- 8.2.16 At Deadline 6 a formal change request was received [REP6-004]. This was subsequently consulted upon and then accepted by the ExA (see Chapter 2 for details). As a consequence an additional field (plot 132) was added to the BoR, the Land Plans, final draft DCO and updated Statement of Reasons.

### **Availability and Adequacy of Funds**

#### ***The Applicant's Case***

- 8.2.17 A Funding Statement was submitted by the Applicant with the Application on 27 February 2013 [APP-020]. This identifies that the parent company of the Applicant National Grid Gas (NGG) is National Grid plc a FTSE 100 member.
- 8.2.18 NGG is sole owner and operator of gas transmission infrastructure in the UK from terminals to distributors. NGG is under a duty to develop and maintain the system and in return users of the system pay a tariff which is used to maintain, improve and invest in the system.
- 8.2.19 NGG's report and accounts 2013/14 identifies revenues of £3.033 billion and operating profits of £1.359 billion. Since 2013 Ofgem have introduced a price control arrangement and the current settlement under this covers the period 2013 to 2021. This includes mechanisms to fund capital project costs.
- 8.2.20 The estimated cost of implementing the project is between £146 and £194 million (2014/15 prices).

- 8.2.21 The cost of land acquisition secured through voluntary acquisition, or CA powers is estimated at between £2.5 and £2.9 million.
- 8.2.22 The ExA raised questions during the Examination on the Funding Statement (EXQ1 15.5-15.17) regarding the RIIO contract (Ofgem funding mechanism), including asking who had calculated the estimated figures and how they had calculated the levels of project costs and CA compensation and how it would be ensured that the CA monies would be available at the appropriate time if an Order were granted [REP2-043].

### ***The Examination and ExA's Reasoning and Conclusion***

- 8.2.23 During the CA Hearing the Applicant summarised the funding case highlighting that voluntary negotiations were well advanced providing greater certainty over likely compensation levels. They also said that Chartered Surveyors had carried out an independent compensation evaluation. It was stated that *'immediate funding was in place and available for consenting activities'* [EV-013].
- 8.2.24 No concerns were raised over the availability of funding by IPs during the CA Hearing, or Examination.
- 8.2.25 The ExA is therefore sufficiently confident that the resource implications of the implementation of the proposed project in terms of CA and TP obligations and construction have been adequately met. A reasonable prospect of the required funds being available has been demonstrated (para. 9 DCLG Guidance<sup>42</sup>). The ExA therefore concludes that the requirements of the Planning Act 2008 (PA2008) and National Policy Statement (NPS) in respect of funding are met.

## **8.3 THE PURPOSES FOR WHICH THE LAND IS REQUIRED**

- 8.3.1 The application sets out in the Statement of Reasons and BoR (referenced above) details of the works and associated development to implement the project.
- 8.3.2 In summary Land for which TP or CA is required includes:
- To compulsorily remove existing easements, servitudes and other private rights in relation to all plots.

### **Permanent rights<sup>43</sup> (Table 1, page 28, Statement of Reasons)**

- to acquire freehold in 3 plots (P1<sup>44</sup>);
- to acquire new pipeline easements in 20 plots (P2);

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<sup>42</sup> [Planning Act 2008 Guidance](#) related to procedures for the compulsory acquisition of land

<sup>43</sup> For further details on the widths on land or sea over which these powers are sought see section 5.7 Statement of Reasons [REP8-004]

<sup>44</sup> P1-P2 represent the 6 categories of permanent rights and T1-T4 four categories of temporary rights described by the Applicant in the SoR [REP8-004]

- to acquire a lease (under the river) in 5 plots (P3);
- to acquire cable easements in 15 plots (P4);
- to acquire groundbed easements in 3 plots (P5); and
- to acquire access rights in 5 plots (P6).

### **Temporary rights (Table 2, page 33, Statement of Reasons)**

- to take TP for construction in 76 plots (T1);
- to take TP for management and mitigation in 10 plots (T2);
- to take TP for monitoring in 18 plots (T3); and
- to take TP for construction access in 34<sup>45</sup> plots (T4).

### **Crown Land**

- 8.3.3 Plots 55-59 (Permanent rights) and 62-63 (Temporary rights) involve Crown Land as freeholder and the requirements for consent under s135 is discussed later in this chapter. The permanent rights do not involve an attempt to secure the freehold.
- 8.3.4 Crown land is involved at the crossing of the River Humber with the rights being owned by the Crown Estate (CE). With the existing Feeder 9 pipeline, approximately half of the crossing (south) is subject to a long lease between the CE and Associated British Ports (ABP) [REP2-001]. On the new Feeder 9 crossing route all the land is subject to a long lease between CE and ABP [REP9-012, plots 55-59].
- 8.3.5 Where Crown interests arise the relevant plots are listed in Part 4 of the BoR as required by the relevant regulations. They are also listed in Part 1 of the BoR. Article 42 of the draft DCO protects the CE position in that their written consent is required where any land is to be taken, or used. During the Examination CE confirmed they are content that CE rights are adequately protected by that Article [REP9-002].

### **Statutory Undertakers**

- 8.3.6 The project involves works to the public highway and the construction of the pipeline, tunnel and construction access roads (described in detail in Chapter 5) which cross a number of third party infrastructure service routes. SoCGs, private commercial agreements, or Protective Provisions were used by the Applicant to resolve potential conflict in these areas and this is mentioned in this section and in particular Chapter 9.
- 8.3.7 There were outstanding objections from Statutory Undertakers at the Examination close that had not formally been withdrawn. These are reported on later in this chapter.

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<sup>45</sup> T4, Plot 91 duplicated in SoR

## **Compulsory Purchase (General Vesting Declarations) Act 1981**

- 8.3.8 The draft DCO seeks to incorporate the provisions of the Compulsory Purchase (General Vesting Declarations) Act 1981 (Article 24) the provisions set out in s158 of the Act relating to the statutory authority and protection given to override easements and other rights (Article 19).

## **8.4 THE REQUIREMENTS OF THE PLANNING ACT 2008 AND DCLG GUIDANCE**

### **Compulsory Acquisition**

- 8.4.1 CA powers can only be granted if the conditions set out in s122 and s123 of the PA2008 are complied with. DCLG has issued guidance on CA procedures<sup>46</sup> which the ExA also considered (DCLG Guidance).
- 8.4.2 S122(2) requires that the land must be required for the development to which the DCO relates or is required to facilitate or is incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and must be proportionate.
- 8.4.3 S122(3) requires that there must be a compelling case in the public interest which means that the public benefits must outweigh the private loss which would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right.
- 8.4.4 S123 requires that one of three conditions is met by the proposal. The ExA is satisfied that the condition in s123(2) is met because the application for the DCO included a request for CA of the land to be authorised.
- 8.4.5 In accordance with DCLG guidance or in accordance with legal duties on the decision maker a number of general considerations also have to be addressed:
- all reasonable alternatives to CA must be explored;
  - the Applicant must have a clear idea of how it intends to use the land and demonstrate funds are available; and
  - the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected and that the exercise of powers will not result in breaches of rights protected by the Human Rights Act 1998.

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<sup>46</sup> Guidance related to procedures for compulsory acquisition: [DCLG September 2013](#)

## **Temporary Possession and the Human Rights Act 1998**

- 8.4.6 The application seeks powers in the DCO to acquire temporary rights over and TP of land [REP8-004, para 6.2] to carry out construction works. The plots affected are identified in Table 2 of the Statement of Reasons (outlined later in this Chapter) and these plots are also listed in Schedule 8 of the Recommended DCO [Appendix D].
- 8.4.7 The Order is drafted to support the Applicant's intent that, in the absence of concluding voluntary agreements, TP under Article 26 would be needed. The construction works would be completed and then the land would in a number of cases be handed back. Where necessary for the pipeline's operation and maintenance permanent rights would then be acquired based on the final alignment of the pipeline.
- 8.4.8 As stated within the introduction, powers to temporarily possess land are not CA because there is no permanent transfer of land rights. Accordingly, the statutory CA tests in s122 and s123 do not apply. The relevant tests centre instead on consideration of whether the powers requested are necessary, proportionate and justified<sup>47</sup>.
- 8.4.9 The Human Rights Act 1998 provides a number of protected rights and two are potentially affected by the powers of TP (the right to peaceful enjoyment of property (Article 1; Protocol 1), and the right to respect for the home, family and private life (Article 8))
- 8.4.10 Because the Applicant seeks TP over all the Order land as well as CA over certain plots for the pipeline's retention, operation and maintenance the two matters are both discussed in this chapter. How the Human Rights Act might be engaged is explored below under '*Examination*'.
- 8.4.11 The robustness of the compensation provision within the draft DCO (more usually applied to CA) also comes under focus and will be discussed further below and in Chapter 9.

### **Change Request**

- 8.4.12 In Chapter 2 it was explained during the Examination that Natural England and the RSPB sought additional mitigation to compensate for the loss of roosting and foraging land for birds displaced from land used for construction activities.
- 8.4.13 In order to secure this the Applicant submitted to the ExA a change request at Deadline 6 to ask that additional land (a large nearby field - 'Field 8, Plot 132, Approx. 58 acres) be brought within the Order land by its extension. Details of this process are set out in Chapter 2.

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<sup>47</sup> The Human Rights Act 1998 incorporated the European Convention on Human Rights into every law in the UK

8.4.14 The DCLG Guidance was followed in the ExA's review and ultimate acceptance of this change request [PD-014]. This is relevant in this Chapter because the Order contains compulsory rights to acquire TP over this land, should a voluntary agreement not be concluded. On this plot (132) the only '*works*' are mitigation; there are no works directly associated with tunnel or pipeline construction.

8.4.15

## **8.5 HOW THE EXA EXAMINED THE CASE FOR COMPULSORY ACQUISITION AND TEMPORARY POSSESSION**

8.5.1 The ExA examined the case for CA and TP through:

- identifying CA and TP, including issues related to:
  - proposals and justifications for the acquisition of land and rights;
  - consideration of alternatives;
  - Statutory Undertakers and Protective Provisions; and
  - security of funding [PD-004].
- specific questions on CA and TP (questions EXQ1, 15.1-15.21) in the first round of written questions issued on 14 September 2015 [PD-006,];
- specific questions on CA and TP (R17, 01 – 010 and 16) in the Rule 17 questions issued on 15 January 2016 [PD-013];
- specific questions on CA and TP (R17, 01- 08 and 14) in the Rule 17 questions issued on 26 February 2016 [PD-017]; and
- holding a CA Hearing on 18 November 2015 [EV-004].

## **8.6 THE APPLICANT'S CASE FOR COMPULSORY ACQUISITION AND TEMPORARY POSSESSION**

8.6.1 Broadly speaking, the purpose of the compulsory powers for CA and TP are to enable the Applicant to construct and operate the proposed project, on the Order land. It is intended to acquire land that is necessary to enable construction of the proposed development and this comprises four main elements:

- TP across all of the Order land is to be used for the construction of the project.
- Once constructed the detailed pipeline alignment within the Order limits and the limits of deviation will have been fixed reducing the land required longer term for its operation and maintenance.
- CA is proposed to be exercised at that stage in respect of plots 26, 39.1 and 87, to obtain the freehold; and
- for the pipeline route - permanent easements and rights over land for its continued operation and maintenance including rights of access [REP8-004, Table 1, pages 28-30].

8.6.2 A detailed understanding of the Order land though well set out within the application (Statement of Reasons, BoR and The Land Plans) is nonetheless complicated because different classes of permanent or temporary rights are identified (six permanent P1-P2 and four



temporary T1-T4 rights categories). A plot may therefore be affected by more than one category of rights. For example, plot 86 at Goxhill is subject to permanent type 2 (P2) pipeline easement rights over land, permanent type 4 (P4) cable easements over land and temporary type 1 (T1) rights for construction.

- 8.6.3 A power is sought under Article 26 of the draft DCO to take TP of land (see rights Type 1-4 listed above). In the absence of prior voluntary agreement this power would be extensively used across all plots needed to accommodate construction works and to provide temporary access improvements to the construction haul route.
- 8.6.4 TP includes areas where land or rights over land are ultimately to be permanently acquired in order to facilitate the long term operation and maintenance of the replacement pipeline.
- 8.6.5 TP will apply to all plots and following construction either one or more of the suite of lesser Permanent rights (P2-P6 for the retention of the pipeline and access for its maintenance) would be taken, or for example, for highway access areas and most of the construction compound area (much of it farmland), the land would simply be returned to its original land or rights owner.
- 8.6.6 The ExA requested a final audit and resubmission of an updated BoR and Statement of Reasons ahead of the Examination close [PD-013, R17, Q5]. The Applicant agreed and the amended documents were submitted at Deadline 8 [REP9-012 and REP8-004].
- 8.6.7 Only three plots (26, 39.1 and 87) are subject to freehold acquisition (P1 rights) and a further 39 (total 42) are subject to other permanent rights (easement, lease, or access rights for maintenance) [REP8-004, Table 1, page 28].
- 8.6.8 At the Examination close:
- Schedule 8 of the final draft DCO records details of the 115 plots over which TP is sought;
  - Table 2 in the SoR identifies the T1-T4 rights for 118<sup>48</sup> plots over which TP is sought; and
  - Table 1 in the SoR identifies the 42 plots over which permanent rights are sought.
- 8.6.9 The Applicant seeks this land acquisition strategy because it's stated intent [REP8-004, para 5.2] is to reach a voluntary agreement with each affected landowner but agreement may not be secured with everyone and the Applicant requires the certainty provided by the compulsory powers to acquire the rights stated to finance and deliver the project.

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<sup>48</sup> The difference 118 - 115 is the three plots subject to freehold acquisition (P1 rights), plots 26, 39.1 and 87.

- 8.6.10 They also say this will enable them to complete their detailed design and fix the final location of the pipeline within the limits of deviation (Article 6). Thereby the Applicant says it could "*take precisely the land and rights it requires and no more*" [REP8-004, para 5.3].
- 8.6.11 As set out in the list above TP over plots is required for distinct reasons of construction, management and mitigation, monitoring and construction access. These temporary sites would be occupied for periods of up to five years from project commencement. This represents an estimated period of three years for construction [REP3-024] and up to two years for commissioning.
- 8.6.12 The Applicant sets out its case for the two year period in the document '*Comments on Responses to ExA draft DCO*' at Deadline 8 [REP8-007, 3]. They say this reflects model provisions, that they have no intention to remain in possession longer than absolutely necessary and that this is both "*necessary and proportionate*".
- 8.6.13 The intent of the Applicant's draft Order thereby varies from other made Orders under the PA2008 in so far that it proposes to make more extensive use of powers of TP. The consequences of this (Human Rights Act) and the focus it brings to the compensation provisions within the draft Order are considered in further detail later in this Chapter.

### **Need to Override Rights and Easements**

- 8.6.14 As well as seeking to acquire the Order land, powers are sought under Article 24 of the DCO which enable the overriding of third party rights on any land within the Order limits. This is similar to a power in other made Orders and provides certainty over the project's delivery if an Order were granted.
- 8.6.15 A Need Case supports the Applicant's case as to why the project is necessary [APP-085].

### **Land Acquisition Strategy**

- 8.6.16 The Applicant's land acquisition strategy comprises two key elements:
- to seek to acquire land or rights over land, wherever possible, by voluntary agreement; and
  - to make extensive use of the TP power (referred to above) across all the Order land to minimise the use of CA and, whenever possible, enabling land to be returned to its original owners once construction has been completed.
- 8.6.17 A summary of progress on land acquisition at the date of the application is set out in the Schedule of Progress on Voluntary Negotiations (SPVN) [APP-089] and the Applicant's progress during Examination is identified later.

### **Alternatives to Compulsory Acquisition**

- 8.6.18 In order to construct and operate the project, land and rights in the ownership of parties other than the Applicant would need to be acquired. Having regards to the scale and extent of the project this would be the case whichever alternative locations for the replacement pipeline are chosen.
- 8.6.19 The Applicant's case is that without all the Order land the project could not be constructed and operated.
- 8.6.20 The Applicant considers therefore that there is no alternative to including compulsory powers in the Order so that they can be exercised if voluntary agreements are not concluded across all of the Order land required to deliver the project.

### **Alternatives to the Project**

- 8.6.21 The existing national gas distribution system crosses the River Humber between the established AGI infrastructure at Goxhill and Paull. For this reason options for the replacement of the existing pipeline are constrained.
- 8.6.22 The Applicant nonetheless gave consideration to alternatives during the consultation process that was completed ahead of the application [APP-032]. The consideration of alternatives is covered in detail in Chapter 5.
- 8.6.23 No objection to compulsory powers on the grounds that an alternative was available was made during the Examination.
- 8.6.24 The ExA concludes on the basis of all the application documents and evidence within the Examination that the NPS tests for the consideration of alternatives has been met.

### **Extent of the Compulsory Acquisition Powers and Temporary Possession Powers Sought**

- 8.6.25 The Applicant's case for the extent of compulsory powers sought is set out in the Statement of Reasons [REP8-004, section 5]. They say that they seek to construct the authorised development using powers to enter and use land temporarily for the purposes of construction. The Applicant suggests this would then enable it to fix the final pipeline alignment within the limits of deviation contained in the draft Order and thereafter to take permanent rights over precisely the land required for the project and no more. Permanent powers would be exercised on completion of commissioning and reinstatement works [REP8-004, sections 5.2 and 5.4].
- 8.6.26 The land affected by compulsory powers if an Order were granted includes the whole of the Order land identified on the Land Plans [REP7-009] and within the BoR [REP9-012].

- 8.6.27 This area varies from that identified at application [APP-06 and APP-021] because of changes in the land requirements that occurred during the Examination as a consequence of negotiations, ongoing enquiries regarding ownership and further design. In addition an accepted change request at Deadline 6 brought additional farmland into the project [REP7-037, plot 132]. These matters are discussed further in Chapter 2 and also (where relevant) later in this Chapter.

### **Statutory Undertakers**

- 8.6.28 Statutory Undertakers' land and Electronic Communications Code Operators' land is extensively involved along the route and CA powers are sought to acquire land, interfere with interests, override interests and remove apparatus. All the land involved is included in Part 1 and Part 3 of the BoR.

### **The Applicant's Case - Summary and their Conclusion**

- 8.6.29 The Applicant believes that the Statement of Reasons [REP8-004] sets out a comprehensive case which complies with the requirements of s122 PA 2008 where it is proposed to include powers to compulsorily acquire land, or rights over land.
- 8.6.30 The need for the project which is set out in the Statement of Reasons is endorsed by the NPSs. The Statement of Reasons, the site selection process and the site acquisition strategy, all lead to the conclusion that all the Order land is required to facilitate, or is incidental to the development.
- 8.6.31 The Need Case [APP-085] and in particular the Associated British Ports, Marine Environmental Research (ABP Mer) report at Appendix B of that document provides evidence of the serious and urgent need to replace the existing pipeline. NPS policy sets out Government policy and recognises the need to maintain efficient gas supplies. Together they provide a compelling case for the River Humber replacement gas pipeline to be carried out.
- 8.6.32 The Applicant considers that it has demonstrated intent to achieve the land and rights required by voluntary agreement but that CA powers within the order are required in order to provide certainty to the efficient delivery of the project within the timescale which reflects the urgent need.
- 8.6.33 On funding the project the Applicant says that '*NGG is satisfied that the funding required to meet the estimated implementation costs will be made available by NGG and, if required by National Grid Plc*' [APP-020, section 3.4].
- 8.6.34 The Applicant therefore concludes that the Secretary of State should find that there is a compelling case in the public interest for the grant of the CA powers sought, thereby meeting the requirements of s122 PA 2008. Being thus satisfied, the principles of proportionality in respect of human rights, it maintains, will also be discharged.

## **8.7 THE EXAMINATION OF COMPULSORY ACQUISITION AND TEMPORARY POSSESSION**

8.7.1 The ExA raised questions during the Examination in order to establish a better understanding of the Applicant's proposed approach to CA and TP in particular:

- the layers of Permanent and Temporary rights affecting each plot and their purpose;
- to ensure all plots within the DCO (Schedule 8), Land Plans and the Statement of Reasons coordinated;
- to obtain further detail on the progress of voluntary negotiations;
- to establish whether the same robust compensation protection exists within the draft Order for TP as CA; and
- to test the availability of adequate secured project funding.

8.7.2 An Agenda was issued ahead of the 18 November 2015 CA Hearing [EV-004] and at the opening of that meeting with agreement of those present the ExA asked questions on evidence provided at Deadlines 1 and 3 to clarify with the Applicant details on the submitted SPVN [REP3-014].

8.7.3 The majority of questions were answered by the Applicant during the Hearing and the SPVN was subsequently updated and re-issued at Deadline 4 [REP4-028].

8.7.4 The final version of the SPVN was submitted at Deadline 9 ahead of the Examination close [REP9-013].

8.7.5 A comparison between the two is provided in the table below with the first row of numbers representing the situation on application and the second row showing the position at the final Deadline 9:

Heads of Terms Issued	Heads of Terms Signed	Lawyers Instructed	Agreements Exchanged
11	2	1	0
115	90	22	9

8.7.6 This data reflects the Applicant's expressed intent within the application and at the CA Hearing 18 November 2015 to reach voluntary agreement with landowners and to conclude as many as possible before the close [EV-012].

### **DDM Agriculture, Mr Dale (Land Agent) and his clients**

8.7.7 Mr Dale is a Chartered Surveyor and Land Agent. He provided notice that he intended to attend the Preliminary Meeting (PM) and said he acted for a number of parties affected by the project. His participation in the Examination is now set out followed by the case that he made on behalf of his clients.

8.7.8 At the PM [EV-002] the ExA asked Mr Dale to identify who he represented and to make use of s102A to request the ExAs agreement to his relevant clients not formally within the Examination being invited to participate fully in it.

8.7.9 That list was provided and set out the following [OD-009]:

***Clients with land taken***

- Mr E and J Faulding (later Mr G D Faulding and Mrs J C Faulding);
- Mr J Finch;
- Mr T Shepherdson (later stated as Mr Shephardson [REP2-009]);
- Messrs Reeve (Brothers) Ltd;
- R and J Witter;
- Able UK Ltd;
- Mrs C Ladlow and Mrs A Cadwallader;
- J and K Simons;
- Mr G Fisher;
- Mr R Atkin;
- Mr G Turner;
- Mr G Golland; and
- Mr B Leach (later stated Mr B Leech [REP2-009])).

***Clients with no land taken who wish to be treated as IPs due to their proximity to the proposed project***

- Mr and Mrs Stancer;
- Mr B Tull;
- Claire Mills (later stated Mrs C Mills);
- Mr J Harrison; and
- Mr and Mrs I Wathen.

8.7.10 The first set of parties had Category 1 or 2 interests (freehold, leaseholds, or rights over such land) in land within the Order limits and are thereby "*affected parties*" under PA2008. All apart from Mr Leech and Mr Golland were listed in the application BoR [APP-021].

8.7.11 Mr Leech was not originally listed because of a defective Land Registry title (described later in this chapter). Mr Leech was listed in the final BoR [REP9-012, plot 116.2]. Mr Dale was asked to submit a s102A request for Mr Golland but none was received. Mr Golland was listed in the final BoR [REP9-012, plot 122].

8.7.12 The second set lists Category 3 parties who own property nearby the project and have potential to be affected by it. Mr and Mrs Stancer had submitted a relevant representation and were already engaged in the Examination [RR-021]. The remaining parties submitted a s102A form and the ExA accepted them into the Examination and the Applicant was notified [PD-008 and PD-009]:

- Claire Mills (later stated Mrs C Mills);
- Mr and Mrs I Wathen [AS-011];
- Mr Leech [AS-012];

- Mr J Harrison [AS-013]; and
- Mr B Tull [AS-014].

8.7.13 No specific objection was received from Mr Golland or his agent Mr Dale.

8.7.14 Mr Dale initially stated he represented Able UK Ltd who are not listed in the BoR and he was therefore advised to submit a s102A. That was not done and later in the Examination, Able Humber Ports (AHP) were introduced to the BoR by the Applicant to recognise their interest as affected parties in plots 64-68 and 133 [REP9-012]. No specific objection was received from Mr Dale on behalf of AHP only a statement "*Negotiations are still ongoing with the Applicant*" [REP7-002].

8.7.15 A number of these parties signed heads of terms with the Applicant as noted in the table above. Mr Dale submitted details of his clients with whom Heads of Terms had been agreed with the Applicant. This was supplied at Deadline 7 [REP7-002] and listed the following parties as '*objections withdrawn*';

***Objections withdrawn:***

- Reeve Bros (Farmers) Ltd;
- Golland;
- Turner;
- Akin;
- Fisher;
- Simons;
- Ladlow;
- Cadwallader;
- Witter;
- Reeve; and
- Shephardson.

8.7.16 During the CA Hearing on 18 November 2015 Mr Dale confirmed that Heads of Terms had been signed by all Category 1 and 2 parties he represented except for Mr B Leech, Mr Finch and Mr Faulding. Mr Dale explained that he considered the Applicant's CA request slightly premature because in his view the process of obtaining voluntary agreement had not been fully exhausted.

**Specific groups of Affected Persons and Types of Land**

8.7.17 The following section sets out the specific concerns raised by the parties identified and how these were dealt with during the Examination for those who maintained objections at the close of the Examination. It therefore establishes the facts and evidence, the objections raised and the Applicant's response to those including how it considered the relevant test under s122 of the Human Rights Act is met.

**Mr G D Faulding and Mrs J C Faulding - Plots 60, 61, 67-69, 85-**

## **88, 132**

- 8.7.18 This affected land is agricultural land farmed by Mr and Mrs Faulding. The land area was recorded as 12.25 acres in the original BoR but ahead of the Examination close this land area was increased by a further 58 acres (Field 8, plot 132) [REP9-012] as a consequence of the accepted change request at Deadline 6 [REP6-004, page 10].
- 8.7.19 At the CA Hearing Mr Dale asked whether the Order land reflected the minimum amount of land required and stated that "*The main area of concern is land drainage*". He expressed frustration at a lack of detail on how drainage would be dealt with and suggested that it is a legal requirement to exhaust voluntary negotiations before an application for CA is put forward. [EV-013].
- 8.7.20 The Applicant said that terms had been agreed with Mr Faulding for three out of four land parcels. One commercial matter remained outstanding on the fourth and was identified as remaining contentious.

### **Mr J Finch - Plots 70, 82, 101, 102, 106**

- 8.7.21 This affected land is agricultural land farmed by Mr Finch who is tenant of freeholder Trinity House. The land area was stated by Mr Dale at the CA Hearing to be 139 acres (123 acres under an Agricultural Holdings Act (AHA) tenancy) of a 438 acre total farm holding [EV-013].
- 8.7.22 Mr Dale expressed a similar concern to that already stated regarding the land drainage effects of the project and a lack of detailed information on that point. He also identified that his client held the land under an AHA tenancy with protected rights of succession. He therefore expressed concern at the potential impact on his client if that agreement was severed by the CA proposals.
- 8.7.23 The Applicant responded at the CA Hearing stating that their negotiations were with Trinity House and that they deal with Mr Finch on a Landlord and Tenant basis. They said "*Our discussions are with Trinity and what they seek to resolve with their tenant isn't a matter for us and if I may say so Sir isn't a matter for you*".

### **Mr B Leech - Plot 116.2**

- 8.7.24 Mr B Leech was not originally included in the BoR since his property title was incorrectly recorded at the Land Registry (indicating the owner as Mr Shephardson, Plot 116.1 with whom the Applicant had agreed HoTs) [REP4-002].
- 8.7.25 This situation was discovered ahead of the PM when Mr Dale identified that the title of the adjacent land owner (Mr Shepardson) was defective, unwittingly identifying ownership of Mr B Leech's land as well as his own (plot 116.1). Evidence from Keith Ready and Co Solicitors (representing Mr Shepardson) was supplied to support the



fact that rectification of this title was in hand and the BoR was updated [REP4-002 and REP4-020].

- 8.7.26 Mr Dale said that his clients concerns related to a lack of knowledge of the potential effects on his business explaining that Mr Leech has a number of let units in the light industrial park located directly off the proposed haul route [EV-013].
- 8.7.27 The Applicant responded that the proposed haul route had been selected after careful consideration of the options, public consultation and engagement with the local highways authority (NLC). They also said that the initial TMP governed and controlled via the CEMP and the Order would ensure the impacts would be limited as concluded in the Environmental Statement (ES) [REP3-009].

### **Able Humber Ports - Plots 64 - 68, 109, 110 and 133**

- 8.7.28 These plots include those required for temporary water management pipes during construction (64-68 and 133, Type 1) and temporary access during construction (109 and 110, Type 4).
- 8.7.29 As previously discussed at the outset of the Examination following the PM, Mr Dale supplied a list of parties he represented and this included Able UK Ltd [OD-009]. AHP then appeared in documentation submitted at Deadline 2 but no specific objection was ever stated.
- 8.7.30 In response to the ExA's Rule 17 questions on 1 February 2016 Mr Dale stated that negotiations were on-going [PD-014].
- 8.7.31 At Deadline 8 the Applicant said that they were in negotiations with AHP and that heads of terms had been agreed in principle. They stated they believed that AHP's remaining concern related purely to matters of compensation, and said that this is not a valid ground for objection to the grant of compulsory or temporary powers [REP8-008, 9c].

### **P and M Stancer - Plot 117**

- 8.7.32 Mr Dale also represented P and M Stancer and set out the concerns of his client at Deadline 5 [REP5-002]. The position of Mr Stancer has already been discussed in Chapter 5 (Socio-Economic Impacts). In summary Mr Stancer is a Category 1 party with land and property near to the concrete road forming part of the Applicant's proposed Soff Lane diversion. Plot 117 comprises a 140m<sup>2</sup> grass verge that is directly affected by the application and is located alongside the proposed Soff Lane diversion.
- 8.7.33 Mr Stancer objected directly to the impacts on his home and business [RR-021 and REP4-045], and Mr Dale acting as his agent [REP4-002] registered a similar objection on his behalf [REP5-002].
- 8.7.34 The Applicant said that the ES had incorporated mitigation measures to limit the impacts of traffic and suggested that the loss of business is not a material consideration in the determination of a DCO but (where

a valid claim can be established) a compensation matter to be dealt with in accordance with the established Compensation Code<sup>49</sup> [REP2-042]. They also said they were in negotiation with P and M Stancer and hoped to reach agreement by Deadline 9 [REP8-009].

### **Category 3 Parties (Represented by DDM Agriculture, Mr Dale)**

- 8.7.35 Mr Dale said that his clients (see the bullet point list above) concerns related to the *"impacts of the project on homes and businesses born out of a lack of communication"*.
- 8.7.36 Relevant socio-economic considerations arising from Mr Dale's Cat 3 reps have (where they are important and relevant) been considered in Chap 5 but made no overarching difference to the planning merits case.
- 8.7.37 The ExA explained during the hearing that Category 3 parties may have a potential claim for compensation but that was not within the ExA's powers to examine [EV-013, 54]. Whether those parties who had become IPs after the start of the Examination were now listed in the BoR moving forward was a matter for the Applicant's judgement and in terms of whether that is or is not done, or whether any such claim has any merit would be a matter outside the Examination.

### **Mr Dale's Representations on the Application and those of Wilkin Chapman Solicitors (also acting for Mr Finch)**

- 8.7.38 Following the CA Hearing Mr Dale also made a representation [REP4-007] on the content of the Applicant's Statement of Reasons [APP-019] in which he raised the following points:
- under s112(3) PA2008 "*compelling case in the public interest*" - he suggested that this case had not been made and that granting CA would give the Applicant the ability to hold his clients to ransom;
  - he stated that all reasonable alternatives had not been explored because negotiations had not been followed through or concluded [para. 7.1.5.1 in the Statement of Reasons];
  - he suggested the Statement of Reasons to be misleading as it implies that the Applicant has been making constant effort to reach a negotiated settlement, to date he suggested this not to be the case [para 7.4.2] and that Paragraph 25 of the Guidance supported this point; and
  - he stated that the project would have a significant effect on his client's (Messrs Faulding's and Messrs Finch's) human rights.

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<sup>49</sup> Compensation Code - No 'code' exists as such, but it is generally taken to mean the law as set out in the Land Compensation Acts 1961 and 1973 and the Compulsory Purchase Act 1965, as amended by subsequent legislation and supplemented by case law. An established legal process for settling matters of land compensation.

- 8.7.39 In conclusion Mr Dale said that the evidence to date was that the parties were likely to come to a negotiated conclusion and therefore the application for CA powers within the draft DCO was premature.
- 8.7.40 A letter from Wilkin Chapman LLP Solicitors [REP3-030] was also received by the ExA. They act for Mr Finch and stated "*our client has agreed the principal terms the landlord has agreed with National Grid. The terms have not yet been formalised*". They requested that the Examination be stayed until proper negotiation was followed through. They did not attend the CA Hearing.
- 8.7.41 Following the CA Hearing on 17 November 2015 on these matters the Applicant responded to these points:
- Mr and Mrs Faulding - "*Consultation and negotiations with the Fauldings have been ongoing for over two years via DDM Agriculture (Mr Dale), and the Fauldings have been provided with all necessary information to understand the potential impact on their interests*" [REP6-003].
  - Mr Finch - "*Mr Finch's objection is not to the project or the acquisition of any of his rights by National Grid, but to the action of his landlord, Trinity House to require him to surrender his lease as a result of the project. This is a commercial matter between Mr Finch and Trinity House*" [REP6-003].
  - Mr B Leech "*Negotiations between National Grid and DDM Agriculture have been ongoing and National Grid has made several requests for site meetings with Mr B Leech, however the engagement has been slow or non-existent*".

**Representations on Compulsory Acquisition and Temporary Possession from other parties not represented by Mr Dale**

**Trinity House of Deptford Strond (Trinity House) - Plots 70, 82, 101, 102, 106 (same plots as Mr Finch - Tenant farmer)**

- 8.7.42 By the CA Hearing on 17 November 2015, Heads of Terms were agreed between the Applicants and the Corporation of Trinity House of Deptford Strond (Trinity House) the freeholder (the Landlord of Tenant farmer Mr Finch represented by Mr Dale).
- 8.7.43 On the day of the hearing Forsters, the Solicitors acting for Trinity House wrote to the ExA to advise they would not attend and that they had received draft documentation "*which will secure the necessary interests over the property by private treaty*" [REP4-001].
- 8.7.44 They said that they considered themselves to be in an advanced position in the negotiation of the rights required privately. As a consequence they suggested that there was therefore no compelling need in the public interest for the compulsory powers sought within the DCO and that compulsory powers should be removed from the application.

- 8.7.45 Forsters final statement in response to the ExA's Rule 17 letter of 26 February 2016 [PD-017] clarified that the only outstanding matter related to restoration of the property once the Project is complete and the payment by the Applicant of adequate compensation. They said "*all parties are expectant that a resolution can be achieved shortly*".
- 8.7.46 They remained of the view that no powers of CA are appropriate in relation to the Property since a deal was "*eminently capable*" of being concluded by private treaty.
- 8.7.47 The Applicant said in response "*Heads of Terms have been agreed with Trinity House as reflected in the SPVN*" [REP8-009]

**The Environment Agency - Plots 17, 19, 20.1, 20.2, 21-26. 27.1, 28, 32-34, 47-53, 54.1, 54.2, 60, 61, 67-69, 84-88, 91 and 132**

- 8.7.48 The Environment Agency (EA) responded to the ExA's first round of questions raising a concern about the extent of land being requested for the tunnel [REP2-016, Q15.2]. They were satisfied on this point during the Examination by the Applicant's response to an ExA question in which the Applicant set out the technical reasons for the selection of the tunnel diameter [REP3-028, EXQ1 15.14].
- 8.7.49 At the CA Hearing on 17 November 2015 the EA raised outstanding issues in relation to an indemnity clause of which they said "*we discussed this morning and think we have solutions identified*", and in relation to TP of EA land. Discussions were ongoing and a potential solution was identified in modifying Article 27 and the Protective Provisions.
- 8.7.50 The Applicant and the EA continued their engagement towards executing a SoCG. That was completed but the matter of agreement of the indemnity clause remained unresolved at the Examination close.

**Mr and Mrs Taylor - Plot 112**

- 8.7.51 A representation was received from P and G Taylor in response to the ExA's Rule 6 letter [AS-010]. The Taylors live in a property near the Soff Lane diversion. The road narrows outside their property and they were concerned at the potential effects of the project on their property in particular the boundary fence and nearby drainage ditch.
- 8.7.52 At Deadline 9 the Taylors confirmed they had reached agreement with the Applicant on road widening measures and had signed Heads of Terms and instructed their solicitors to proceed in formalising that. They also stated they had an outstanding concern on traffic flow figures within the application documents and were '*awaiting a response*' from the Applicant [REP9-020].
- 8.7.53 The Applicant's final position was to state that the traffic assessment had been agreed to be robust by all other parties during the Examination and that the Taylors may take their own independent

advice as to whether they have a claim for injurious affection arising from the Project [REP9-017, R17 Q8].

**Mr Winchester - Plot 123**

- 8.7.54 Mr Winchester [RR-011] has a 50% interest in a plot over which the Applicant seeks temporary rights for a passing place. He initially thought his land was to be subject to permanent CA and was therefore concerned. It was confirmed by the Applicant at the CA hearing that this objection had been removed by the execution of Heads of Terms [EV-013]. Mr Winchester did not participate further in the Examination but did not formally write and withdraw his initial concern.

**Mr and Mrs Burn [RR-018 and RR-022] and Mr J Teasdale [RR-017]**

- 8.7.55 Finally the ExA received Relevant Representations from the parties identified above, both Category 3.
- 8.7.56 Mr and Mrs Burn engaged directly in the Examination attending the PM and CA Hearing. No specific CA concern was raised during the Examination (other concerns were raised and those are addressed in Chapter 5).
- 8.7.57 Mr Teasdale took no further part in the Examination. He expressed concerns about the impact of traffic on others rather than himself.
- 8.7.58 Relevant socio-economic considerations arising from Mr Dale's Category 3 reps have (where they are important and relevant) been considered in Chap 5 but made no overarching difference to the planning merits case.
- 8.7.59 As already stated Category 3 claims were considered during Examination but ultimately matters of whether any claims are valid or the quantum of compensation fall under the compensation provisions of the Recommended DCO (see Chapter 9).

**8.8 THE COMPULSORY ACQUISITION AND TEMPORARY POSSESSION POSITION AT THE EXAMINATION CLOSE**

**Final position of Mr G D Faulding and Mrs J C Faulding - Plots 60, 61, 67-69, 85-88, 132**

- 8.8.1 In response to the Applicant's position statement Mr Dale supplied a final position statement at Deadline 9 [REP9-004]. The principle objections he identified were:
- the Applicant's final position statement is factually incorrect;
  - the Applicant has not made the case for compulsory rights to be granted; and
  - no further discussion had taken place with the Applicant on the grounds for objection stated in representations made on 11 November 2015, 27 November 2015 and 17 December 2015.

- 8.8.2 Specifically in terms of the accepted change request land at Deadline 9 Mr Dale expressed concern at the impact of these works on the land including cropping and agricultural subsidy payments but said *'If the Applicant undertakes to compensate the Landowners and Occupiers in line with industry agreed compensation, there would be no further objection from the parties affected'* [REP9-003].

### **The ExA's Consideration - Mr and Mrs Faulding**

- 8.8.3 The primary objection in the last representation received from Mr Dale was that the Applicant had not made the case for compulsory rights to be given against Mr and Mrs Faulding and that these powers should be excluded from the Recommended DCO [REP9-003]. Mr Dale said that he had made objections based on not receiving important and reasonable additional information on spoil handling, drainage and reinstatement. The Applicant says Mr Dale's objection centres on agreeing quantum of compensation.
- 8.8.4 At Deadline 7 DDM Agriculture identified that the installation of control barriers and the proposed restriction on the use of bird scarers remained a concern to their clients but *'It is hoped that HoTs can be agreed....'* [REP7-002]. In response to the ExA's final R17 question [Feb 26] regarding the potential impact of the additional archaeological work that may be necessary Mr Dale also said *"The scale of the archaeological digs will have an effect on cropping..... and implications to the Basic Payment Scheme"*. He concluded that *"If the Applicant undertakes to compensate the Landowners and Occupiers of the land in line with Industry agreed compensation, there would be no further objection from the parties affected"* [REP9-003].
- 8.8.5 The ExA considers such statements clear evidence that ultimately the arguments against CA put forward are fundamentally focused on the level of compensation awarded.
- 8.8.6 The ExA considers that there is a compelling case for CA rights because the scale of public benefit (moreover the consequence to UK gas supplies if the pipeline should fail) and that it is therefore reasonable for such rights to be included within the order.
- 8.8.7 Mr Dale's concern at the lack of detailed information supplied was also considered. The ExA understands Mr Dale's desire to obtain as much information as possible on works proposed to his client's farm land but accepts the Applicant has made available a reasonable level of detail at this stage in the design of the project. Furthermore the ExA is satisfied by the controls in place within the draft Order. For example, ahead of works a detailed drainage design must be produced and agreed with the Local Planning Authority (LPA) (Requirement 9).
- 8.8.8 The Applicant provided *'A Summary of Consultation on Non-Material Change for Mitigation Land'* at Deadline 7 [REP7-037] and this illustrates the level of engagement with Mr Dale on this matter (4 emails and a site meeting).

- 8.8.9 Mr Dale's submission on 4 March 2016 confirms that agreement in principle has been reached for the additional mitigation land subject to the matter of compensation being agreed [REP9-003 and REP9-004].
- 8.8.10 As previously identified given the extensive use of TP the ExA explored the question of compensation for TP that would be authorised by the draft Order. There are compensation provisions under the draft Order but for TP Article 26 (6) points to the Part 1 of the 1961 Act. Although that Part is headed '*Determination of disputed compensation*', its provisions are expressly related to CA. There is therefore a question over whether this therefore provides a fair and effective compensation mechanism for the TP powers that are sought.
- 8.8.11 During the Examination having noted the wide scale deployment of powers of TP the ExA explored whether adequate compensation provision was provided under the draft Order and was not fully satisfied on the Applicant's response. This matter came under focus when the accepted change request (discussed in Chapter 2) was received since this brought in a further 58 acre field (plot 132) required to support the project (mitigation required by NE - see Chapter 5) but not directly associated with the construction works. For this reason the ExA has modified Article 26(6) in the Recommended DCO. On this basis the ExA is content that a process is secured and available for dealing with TP as established for CA.

**Final position of Mr J Finch - Plots 70, 82, 101, 102, 106**

- 8.8.12 In summary, Mr Dale's final position:
- It is premature for CA powers to be included in an Order (if made) since with greater focus voluntary negotiations could be concluded.
  - Paragraphs 8 and 25 of the Guidance<sup>50</sup> have not been complied with.
  - Mr Finch's farming business would be substantially affected by the proposal and that it is therefore not in the public interest to support the grant of CA powers.
  - That objections relating to a lack of information regarding soil drainage and reinstatement, pre, during and post construction remain relevant; and
  - On 1st March 2016 Mr Dale stated that no agreement has been concluded between Trinity House and Mr Finch.
- 8.8.13 The Applicant stated during the CA Hearing that they were negotiating with the freeholder of the land Trinity House and that it was for Trinity House as Mr Finch's Landlord to agree terms with their Tenant. They said that the terms of an agreement between Trinity House and Mr Finch was not a matter for them, nor a matter for the ExA [EV-013].

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<sup>50</sup> Planning Act 2008 [Guidance](#) related to procedures for the compulsory acquisition of land

- 8.8.14 In their final position statement at Deadline 8 the Applicant states "*As no detailed grounds or evidence have been submitted by Mr Finch or his agent in relation to the principle of powers, NGG is of the view that the objections relate to the invalid ground of quantum of compensation*".

#### **The ExA's Consideration - Mr Finch**

- 8.8.15 The ExA considers that there is no doubt that negotiation was ongoing during the Examination and that the principle terms of an agreement were in place by the CA Hearing [REP4-002]. Details of those commercial terms remained largely outside of the Examination.
- 8.8.16 At the Hearing the Applicant explained that Heads of Terms were agreed with Trinity House as freeholder and that Trinity House had in turn agreed terms with their Tenant for the surrender of their existing lease [EV-013]. Because these terms were not legally secured both Mr Finch and Trinity House retained holding objections but Mr Dale agreed this to be a fair assessment of the position at that time [EV-013, 40:43].
- 8.8.17 Negotiations had been opened with Trinity House by the Applicant in 2014 as evidenced by Forsters letter 26 October 2015 [AS-015].
- 8.8.18 In response to a R17 issued on 1 February 2016 Mr Dale confirmed that '*negotiations are on still going with the Applicant. We hope to verify the final position by Deadline 8*' [REP7-002].
- 8.8.19 It is acknowledged that the Applicant's late change request at Deadline 6 brought in some new issues in connection with access control gates and a proposed restriction on the use of bird scarers but the concerns raised by Mr Dale on these points are capable of resolution by compensation [REP7-002].
- 8.8.20 The fact that the Applicant chose to negotiate with the Landlord is a matter for them and had the terms of the agreement been legally secured within the Examination would not be at issue. The Statement of Reasons identifies the process of engagement with affected parties which commenced in February 2015 (section 8.1). The variation between the SPVN between Application, Hearing and the Examination close (paragraph 8.7.5 above) illustrates the progress made.
- 8.8.21 The ExA does not accept Mr Dale's contention that there is no '*compelling case*' for CA powers; the reasoning for this is detailed earlier in this Chapter.
- 8.8.22 The Order if granted (and a voluntary commercial agreement had not been reached) would provide the Applicant with the power to take exclusive possession of a significant part of Mr Finch's farm holding for a period of up to 5 years. There is evidence that protected tenancy succession rights could be lost. This could have a significant impact on Mr Finch and his family. Thereafter the Statement of Reasons sets out that CA would be used by the Applicant to secure the necessary



permanent rights for the pipeline and access to it, details of which are set out in Chapter 9.

- 8.8.23 As discussed previously the ExA was concerned during the Examination to test whether adequate compensation provision exists for TP over land authorised by the Order (if the voluntary agreements listed on the SPVN are not concluded).
- 8.8.24 In the case of Mr Finch as Mr Dale highlighted during the CA Hearing there is potential for his AHA protected tenancy to be severed and that has potential to breach the rights of Mr Finch and his family under the Human Rights Act. If under TP robust and equitable compensation arrangements were not available under the Order as the established position under CA<sup>51</sup> then there could remain a serious issue that may affect the final ExA's balance and recommendation.
- 8.8.25 This case was set out above and led to the ExA's proposed amendment to article 26(6) of the Recommended DCO. As amended the ExA considers that Mr Finch's rights are protected and therefore this is a matter capable of resolution ahead of commencement voluntarily, or via the Lands Chamber, and it is not a matter for the ExA to weigh against a recommendation.
- 8.8.26 The ExA accepts that this project is smaller than a number of other made Orders but does not agree that this should not be classed as a long linear project. At 6km in length, crossing beneath the River Humber and affecting 112 plots this is a complex and long linear project. The ExA's view is therefore that paragraph 25 of the Guidance applies. This supports the dual tracking of voluntary negotiations alongside provision in an Order authorising CA.
- 8.8.27 Finally there is the ground for objection related to a lack of available detail regarding drainage and soil handling pre, during and post construction. In common with all large engineering projects there is a level of design that has been completed and made available to the Examination and further detail which would be undertaken between the grant of an Order (if made) and commencement.
- 8.8.28 The initial CEMP provides a structured framework for these works by identifying when the topsoil would be removed, the survey work that would be undertaken ahead of commencement and how contamination would be dealt with. The illustrative layout plan for Goxhill identifies where soil would be stored. Con J10 within the initial CEMP states that *'Where practicable soil would be handled and stored in line with Defra's Construction Code of Practice for the Sustainable Use of Soils on Construction Sites.'*
- 8.8.29 Drainage is dealt with in a similar fashion within the initial CEMP. Surveys are required to establish the existing drainage and its

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<sup>51</sup> The 'Compensation Code'.

condition (Pre L1), consent would be obtained from the relevant drainage boards for crossing ditches (Pre L6), a new drainage system would be installed for the duration of the construction phase (Con J6) and water monitoring would take place at discharge points to ditches (Con L3). In addition and of significant relevance and importance, Requirement 9 of the draft DCO requires that a written scheme of agricultural land drainage within the Order limits is submitted and approved by the relevant LPA ahead of commencement.

- 8.8.30 In terms of these outstanding objections subject to the amendment of Article 26 (6) to safeguard the compensation assessment for the TP of land proposed under the draft Order, the ExA considers that the Order is capable of being granted with inclusion of compulsory powers to obtain the permanent (P1-P6) or temporary rights (T1-T4) over land using CA, or TP without conflicting with the PA2008, the DCLG guidance, or the Human Rights Act.

### **Final position of Mr B Leech - Plot 116.2**

- 8.8.31 Mr Dale did not make a specific final position statement on behalf of Mr Leech at Deadline 9. In the absence of the removal of an earlier objection the ExA therefore believes that one remains as described above [REP4-002].
- 8.8.32 The Applicant's final position regarding Mr B Leech was that in the absence of grounds of objection that his objection relates to quantum of compensation which is not relevant to the Examination [REP8-009].
- 8.8.33 The Applicant also stated in reply to the ExA's Rule 17 letter "*Leech: Heads of terms have been accepted by NGG and a response is awaited from Mr Leech's agent. NGG are hopeful that an agreement will be reached by Deadline 9*" [REP8-008]. No evidence was submitted by Deadline 9 to verify whether that had been achieved.

### **The ExA's Consideration - Mr Leech**

- 8.8.34 Mr B Leech has Category 1 interests in the concrete access road that is proposed to be used for the Soff Lane diversion and objects based on the potential effects of the project on his businesses and residence and effects on his tenants.
- 8.8.35 The Applicant reported that Heads of Terms were accepted by Mr B Leech. At the Examination close there was no evidence submitted to suggest this voluntary agreement was concluded. In any event the ExA notes that such terms even if presented would not be legally binding.
- 8.8.36 Having examined these matters the ExA considers the substance of this objection remains one of effects that are capable of compensation. The rights sought are temporary for the duration of the construction (TP). The Soff Lane diversion was selected following the consideration of alternatives and public consultation as set out in detail within Chapter 5.

- 8.8.37 The ExA therefore considers that subject to the amendment proposed to Article 26(6) that it would be reasonable for the Order to include TP powers over this plot should voluntary agreement not be concluded.

**Final position of Able Humber Ports - Plots 64 - 68, 109, 110 and 133**

- 8.8.38 No final position statement was submitted ahead of the close by Mr Dale on behalf of AHP and as stated previously no specific grounds of objection were recorded during the Examination.
- 8.8.39 The Applicant states that it believes AHP's remaining concern relates purely to matters of compensation [REP8-008]. At the Examination close voluntary agreements were not concluded.

**The ExA's Consideration - AHP**

- 8.8.40 The ExA has little evidence to evaluate because grounds for a specific objection were not documented by Mr Dale or AHP during the Examination and therefore there is no formal objection on record.
- 8.8.41 The plots involved are all required temporarily either to facilitate construction (T1 and T2), or mitigation (T4). Compensation is available via the Recommended DCO and established process. The ExA therefore considers on the balance of evidence available that subject to the amendment proposed to Article 26(6) that it would be reasonable for the Order to include TP powers over these land parcels.

**Final position of P and M Stancer - Plot 117**

- 8.8.42 At Deadline 4 Mr Stancer submitted a second written representation highlighting the unsuitability of the proposed Soff Lane diversion and raising new concern at the proposal for this to be used for two-way traffic which he considered "*the most ridiculous suggestion to date*" [REP4-045]. This objection remained at the Examination close.
- 8.8.43 The Applicant said at Deadline 8 that they were in negotiations with P and M Stancer and hoped to have reached an agreement by Deadline 9 [REP8-009]. No evidence of agreement was supplied ahead of the close. They also said "*As no detailed grounds or evidence have been submitted by the Stancers or their agent in relation to the principle of temporary powers NGG is of the view that the objection relates to the invalid ground of quantum of compensation*".

**The ExA's Consideration - P and M Stancer**

- 8.8.44 P and M Stancer are Category 1 owners with interests in the grass verge to the concrete access road that is proposed to be used for the Soff Lane diversion under TP.
- 8.8.45 They object based on the potential effects of the project on their business. A final submission was not made at Deadline 9 by Mr Dale for, or on behalf of this party but as noted above at Deadline 4 Mr

Stancer submitted a written representation expressing continued and serious concern over the potential impacts.

- 8.8.46 The Applicant reported that negotiations continued with P and M Stancer. At the Examination close voluntary agreements were however not concluded.
- 8.8.47 The ExA has no details of the commercial content of any negotiations. Whilst the ExA has empathy with P and M Stancer, the evidence within the Examination identifies that alternatives for the haul route were considered and were subject to significant and extensive public consultation.
- 8.8.48 It is also important and relevant to the ExA's deliberation on this matter that NLC as the statutory highway authority supported by Ward Councillors sought exploration of haul route alternatives during the Examination. Ultimately however they concluded that with the additional mitigation offered by the Applicant during the Examination (permanent passing places) the proposed haul route was acceptable.
- 8.8.49 There is no doubt that there would be impacts upon other users of the access road and local highway network. Business impacts are however capable of compensation through the Recommended DCO and the established Lands Chamber process.
- 8.8.50 The ExA therefore considers that subject to the amendment proposed to Article 26(6) that it would be reasonable for the Order to include TP powers over these land plots.

**Final position of Category 3 Parties: C Mills, W Tull, J Harrison and I and V Wathen (Represented by DDM Agriculture, Mr Dale)**

- 8.8.51 Mr Dale submitted a final position statement on behalf of his Category 3 client's C Mills, W Tull, J Harrison and I and V Wathen [REP9-006]. He said that since the CA Hearing on the 18 November 2015 no contact had been made with his clients who would be significantly affected by the project and disputed that this claim relates purely to *'invalid grounds of quantum of compensation'* as the Applicant suggested in its final statement.
- 8.8.52 At the close of the Examination the Applicant supplied a position statement on all representations received during the Examination [REP8-009]. The following statement was used to summarise the final position in respect of each of the Category 3 parties identified; *"As no detailed grounds or evidence have been submitted by Mr Finch or his agent in relation to the principle of powers NGG is of the view that the objections relate to the invalid ground of quantum of compensation"*.
- 8.8.53 The Applicant also said that the ES concluded that significant impacts are unlikely at these locations, and did not identify the need for any particular additional mitigation measures [REP8-008].

## **Final position of other Parties Not Represented by Mr Dale**

### **Trinity House of Deptford Strond (Trinity House) - Plots 70, 82, 101, 102, 106 (same as Mr Finch - Tenant farmer)**

- 8.8.54 A final submission was received at Deadline 9 [REP9-008]. Forsters state that progress continues to be made at both legal and agent level and that all parties appear committed to completing a deal by private treaty. They said that the only outstanding matter involved negotiations regarding reinstatement and the payment of adequate compensation but that all parties *'are expectant that a resolution can be achieved shortly'* [REP9-008, page 2].
- 8.8.55 Forsters said that they remain of the view that no powers of CA are appropriate because agreement is capable of being concluded but that if such powers were granted they would seek a reduction in the 2 year period (Article 26(3)) that National Grid could remain in possession after completion [REP9-008, page 2].
- 8.8.56 The Applicant said *"Heads of Terms have been agreed with Trinity House as reflected in the SPVN"* [REP8-009].

### **The ExA's Consideration - Trinity House**

- 8.8.57 By the close of the Examination Forsters remained optimistic on the prospect of concluding a voluntary agreement with the Applicant but this had not been achieved [REP9-008]. An objection therefore remained to the grant of CA and TP powers.
- 8.8.58 This matter has already been reasoned above and the ExA's conclusion is that there is no reason why voluntary negotiations cannot continue alongside the grant of an Order containing CA powers, indeed this would be a matter of normal practice. A voluntary agreement therefore remains capable of achievement.
- 8.8.59 The plots affected involve TP over significant areas of land for temporary construction and management and mitigation and permanent Type 4 cable easement rights over Plot 82.
- 8.8.60 The ExA considers the scope and extent of the project is such that it is desirable for the project to have been completed, tested and commissioned thoroughly before TP land is handed back. To do this prematurely and discover a problem requiring a return to site and perhaps remedial works would be in neither party's best interest.
- 8.8.61 If no voluntary agreement can be reached on TP the Recommended DCO with the modified Article 26(6) contains the necessary compensation safeguards for the CA and TP powers contained within the Order. This is therefore capable of an equitable outcome and the public benefit of the project is highly significant.

**Final position of other Parties Not Represented by Mr Dale;**

**The Environment Agency (EA) - Plots 17, 19, 20.1, 20.2, 21-26. 27.1, 28, 32-34, 47-53, 54.1, 54.2, 60, 61, 67-69, 84-88, 91 and 132**

- 8.8.62 No matters of CA remained outstanding apart from the wording of the Indemnity Clause in the Protective Provisions.
- 8.8.63 The drafting content of the final DCO on CA and TP was agreed by the Examination close [REP8-001 and REP8-009]. This matter is discussed in Chapter 9 and is covered in Schedule 10, Part 3 of the Recommended DCO [Appendix D].

**Mr and Mrs Taylor - Plot 112**

- 8.8.64 The ExA examined the traffic flows in detail during the ISH on 17 November 2015 (including Traffic and Transport) and tested the data provided (Chapter 5). NLC and Goxhill PC were directly engaged with the Examination throughout and a SoCG was executed with each party by the close. Additional mitigation was also offered (permanent passing places) and this is secured within the Recommended DCO as set out in Chapter 9.
- 8.8.65 Whilst the ExA agrees there will remain some residual local traffic and transport effects, the ExA considers that the significant public benefit from this project outweighs any limited and temporary residual effects and that the inclusion within the draft DCO of powers to secure TP over this land for construction purposes is therefore reasonable.

**Mr Winchester - Plot 123**

- 8.8.66 No further representation was made. The Applicant stated at the CA Hearing that Heads of Terms were signed and that this objection was thereby removed [EV-013]. No written evidence was received from Mr Winchester ahead of the close of the Examination. The ExA notes that the requirement is for Temporary Type 4 access rights for construction and that the Applicant's concern was the permanent loss of land by CA [RR-011] whereas the rights required are TP. The ExA therefore considers the inclusion within the draft DCO of powers to secure TP over this land for construction access purposes is therefore reasonable.

**Mr and Mrs Burn [RR-018 and RR-022] and Mr J Teasdale [RR-017]**

- 8.8.67 No written evidence was received from Mr and Mrs Burn ahead of the close of the Examination but at the end of the CA Hearing on the 18 November the ExA confirmed orally that they had no outstanding concerns.
- 8.8.68 The Applicant states that [REP8-009]:

- NGG have been in contact with Mr and Mrs Burn throughout the Examination period and as far as NGG are concerned there are no outstanding issues; and
- no further correspondence was received and as far as NGG are aware there are no outstanding issues.

8.8.69 No rights over land are involved. Mr and Mrs Burn are a Category 3 party.

## **8.9 THE CASE UNDER SECTION 127**

8.9.1 The proposed development crosses or passes close a number of third party infrastructure providers' equipment.

8.9.2 The Applicant engaged in negotiation with these parties and reached agreement via SoCGs, Protective Provisions within the DCO (See Chapter 9), or private commercial agreements.

8.9.3 Network Rail and the Applicant have agreed terms for a separate commercial asset protection agreement as evidenced by the Applicant's response to the ExAs final questions R17(12) [REP9-017]. As Network Rail made no formal representations, s127 PA 2008 is not engaged.

8.9.4 Northern Gas Networks (NGN) have an interest in Plots 10, 16, 19, 27.1, 27.2, 111 and 112. NGN did submit a representation. That representation was not formally withdrawn, so that s127 is engaged. NGN and the Applicant are negotiating a private commercial side agreement, but there was no evidence of this having been completed before the close of the examination [REP7-024, see Applicant's SoCG Schedule]. The Protective Provisions in Schedule 10, Part 1 will apply. The ExA is therefore satisfied that, even if the side agreement is not completed, the land can nonetheless be purchased and not replaced without serious detriment to the carrying on of NGN's undertaking.

8.9.5 Northern Powergrid (NP) have an interest in Plots 13-15, 17, 60, 61, 67-91, 101, 104-107, 112, 115, 116, 125, and 132. NP did submit a representation. That representation was not formally withdrawn, so that s127 is engaged. NP and the Applicant have agreed a private commercial side agreement [REP7-031]. NP did submit a representation. That representation was not formally withdrawn, so that s127 is engaged. The Protective Provisions in Schedule 10, Part 1 will apply. The ExA is therefore satisfied that the land can be purchased and not replaced without serious detriment to the carrying on of NP's undertaking.

8.9.6 Other utility providers including KCOM Group PLC, Anglian Water, Yorkshire Water Services Ltd, BP, BT are protected via Schedule 10, Part 1, or Part 2 [see Applicant's SoCG Schedule REP7-0024]. None of these utilities submitted a formal representation, so that s127 is not engaged.

## **8.10 CROWN LAND**

- 8.10.1 The Order land includes Crown land, where the replacement pipeline crosses the River Humber. During the Examination, the Crown Estate (CE) identified that the southern part of the existing Feeder 9 crossing was subject to the residue (850 years) of a 999 year lease to Associated British Ports [REP2-001]. However the entire new Feeder 9 route is subject to a long lease in favour of ABP.
- 8.10.2 Under s135(1) PA 2008 a DCO may include provision authorising the CA of an interest in Crown land only if it is an interest which is held otherwise than by or on behalf of the Crown and the appropriate Crown authority consents.
- 8.10.3 In this case, as the Crown land is not held '*by or on behalf of the Crown*' as it is leased to ABP, compulsory acquisition powers relating to the Crown land can be included in the DCO, provided CE consent.
- 8.10.4 Similarly, under s135(2) PA 2008, a DCO may only include any other provision applying to Crown land or rights benefiting the Crown with the consent of the appropriate Crown authority. The consent of CE to the provisions of the DCO that apply to the Crown land will be required.
- 8.10.5 CE approved the wording of draft DCO Article 42 [REP2-001]. They were subsequently asked in a Rule 17 on 1 February 2016 whether they could confirm their consent under s135 of the PA 2008.
- 8.10.6 In response in their final position statement (4 March 2016), CE confirmed that they were not currently in a position to provide consent under subsection 1(b) of Article 42 but that inclusion of this Article in the final DCO would give the Crown Estate Commissioners the ability to confirm consent under s135 of PA 2008 at the appropriate time [REP9-002].
- 8.10.7 The Applicant submitted an update on negotiations with ABP and CE on 17 February 2016 [REP7-036]. The Applicant is negotiating private treaty rights with ABP for the grant of an underlease of the bed and foreshore of the River Humber.
- 8.10.8 The Terms are agreed and have been ratified by ABP's main board and the drafting of the agreement to lease and main lease are ongoing. The Applicant states '*The parties remain confident that all outstanding commercial matters will be settled by the close of Examination which will facilitate the grant of the Crown's consent under section 135*'
- 8.10.9 Confirmation of conclusion of that agreement was not received by the Examination close.



## **8.11 THE EXA'S CONSIDERATION OF THE COMPULSORY ACQUISITION AND TEMPORARY POSSESSION ISSUES**

### **The ExA's Approach**

- 8.11.1 The ExAs approach to the question whether and what CA powers it should recommend to the Secretary of State to grant has been to seek to apply the relevant s122 and s123 of the PA 2008, the Guidance<sup>52</sup>, and the Human Rights Act 1998; and, in the light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.
- 8.11.2 The ExA has shown in the conclusion of the previous Chapter that a view has been reached that development consent should be granted. The question that the ExA addresses here is the extent to which the case has been made for CA powers necessary to enable the development to proceed.
- 8.11.3 The effect of s122(1) and s122(2) of PA 2008 is to provide that the land to be subject to CA must be required for the development to which the development consent relates; effectively that the land needs to be acquired, or rights over or under it acquired, or impediments upon it removed, in order that the development can be carried out.
- 8.11.4 At the CA Hearing the Applicant provided a presentation [REP4-040] to explain the work requirements for delivering the project and identified how the extent of the Order land had been reduced during the progress of the project [REP4-043].
- 8.11.5 During the Examination some land plots were also removed from the BoR as they were no longer required [REP9-017; R17, 7].
- 8.11.6 Earlier in this Chapter (8.7.48) it was described how the EA's initial concern regarding the tunnel's diameter was explained and removed.

### **The Public Interest**

- 8.11.7 With regard to s122(3), in considering whether there is a compelling case in the public interest there are a number of issues to be considered in balancing the public interest against the private loss which would occur.
- 8.11.8 The overall planning case is considered in detail in Chapters 4 to 5 and summarised at Chapter 7.
- 8.11.9 EN-1 is unequivocal in recognising that the UK is and will remain highly dependent on gas (3.8.21) and Britain's gas supply

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<sup>52</sup> Planning Act 2008, Guidance related to procedures for compulsory acquisition (DCLG, 2013)

infrastructure must remain sufficient to meet peak demand, allowing sustained delivery and providing competitive gas supplies (3.8.5).

- 8.11.10 In particular, decision-makers are required under EN-1, 3.1 to *"assess all applications for development consent for the types of infrastructure covered by the energy NPSs on the basis that the Government has demonstrated that there is a need for those types of infrastructure.."* and *"The IPC should give substantial weight to the contribution which projects would make towards satisfying this need....."*
- 8.11.11 EN-4 highlights the legislation that governs the safety of gas pipelines which place requirements on operators to construct and operate pipelines so that associated risks are as low as possible (2.19.4).

### **Private Loss - The Case for Compulsory Acquisition and Temporary Possession**

- 8.11.12 In considering the potential private loss if an Order were granted the Applicant is taking an approach to seek TP over the Order land and thereby on completion of project it will either secure the necessary longer term rights (easements for the pipeline to remain and access rights to maintain it), or hand back the land.
- 8.11.13 The objections identified previously remain to the grant of CA powers from parties who seek further opportunity to reach settlement by voluntary agreement, to see a reduction in the period of TP following completion, or seek an alternative haul route at Soff Lane.
- 8.11.14 The ExA has taken account of all the evidence but is persuaded that the Applicant has demonstrated direct and effective engagement with affected persons over a considerable period in order to reach voluntary agreement. However, although (as at the close of the Examination), Heads of Terms had been agreed in relation to a number of plots, these are not legally binding. The ExA therefore still has to assess justification for CA of each of these plots.
- 8.11.15 The ExA does not agree with the statement made by Mr Dale (acting for a number of objectors) and supported (to an extent) by Forsters (acting for Trinity House) that there is a legal requirement to exhaust voluntary negotiations before CA is applied for, or that such an application is *'premature'*. In this case the Applicant has been engaged in lengthy negotiations with all parties and the Nationally Significant Infrastructure Project (NSIP) process was designed to expedite the largest and most important infrastructure projects for wider UK public benefit. Dual tracking of such negotiations during the preparation and examination of such projects is, normal, legal and in accordance with Government intent and policy and has been provided for in a considerable number of made Orders.
- 8.11.16 The voluntary negotiations may be capable of being concluded. Indeed evidence such as the final representation from Forsters demonstrates a will and intent on all sides to conclude such arrangements but the matter seems to be stuck on the issue of compensation.

- 8.11.17 In the case of the remaining objections and concerns each is capable of resolution (if appropriate) using the compensation provisions set out in the Recommended DCO. There exists long established and robust means via the Lands Chamber for such matters to be addressed and fairly concluded. These matters of quantum of compensation lie outside of the ExA's jurisdiction but the fact that an established mechanism is available is something which the ExA attaches significant weight in balancing the public benefit against private loss.

### **The balance between public benefit and private loss**

- 8.11.18 The ExA has taken into account the risks associated with the deterioration in protection of the existing pipeline and its importance to the national gas network. There can be little doubt its failure would create a substantial problem for the country and the consequence of that would create highly significant adverse public impacts.
- 8.11.19 Having regard to all the matters identified within this Chapter and elsewhere within the report (where CA related) the ExA considers in accordance with the PA2008 that overall the public benefit associated with the replacement gas pipeline is clear, substantial and compelling.
- 8.11.20 The public benefits associated with the project as provided for and set out in the NPS would in the ExA's view outweigh the private loss which would be suffered by those whose land may be subject to CA or TP (if voluntary agreements cannot be concluded) to enable the project to occur.

### **Compulsory Acquisition, Temporary Possession and Human Rights Act 1998 considerations**

#### **How the Human Rights Act might be engaged if an Order were granted**

- 8.11.21 If an Order were granted and voluntary negotiations are completed in time then the terms of those commercial agreements would control the Applicant's access to land for construction and the subsequent grant of the permanent rights requested for access to and operation of the pipeline.
- 8.11.22 The Applicant's last update identified that Heads of Terms had been issued for 115 plots, executed on 90, lawyers instructed on 22 and agreements exchanged on 9 [REP9-013]. That demonstrates significant progress since the date of application but only 9 of 115 plots were reported to have legal agreements in place at the Examination close.
- 8.11.23 For each and every plot where a voluntary agreement is not concluded, the Order (if made) would enable the Applicant to take TP of the relevant Order land to construct the project. The Applicant would then be entitled to remain in occupation for up to 2 years after construction (4-5 years in total since construction is estimated to take

36 months [REP3-024]) is complete before exercising permanent rights, or handing back the land.

- 8.11.24 This has the potential to affect the rights of the plot owners/occupiers under the Human Rights Act.
- 8.11.25 A key consideration in formulating a compelling case is consideration of the potential interference with human rights which may occur if CA powers are granted and exercised.
- 8.11.26 The Applicant acknowledges that the DCO engages a number of the articles of the Human Rights Act as set out above.
- 8.11.27 Consideration has been given as to whether the grant of temporary or permanent powers breach those rights as enjoyed by land owners and is set out below.
- 8.11.28 The Convention right protected by Article 1, Protocol 1 provides that that every natural or legal person is entitled to the peaceful enjoyment of his/her possessions, that no one shall be deprived of his/her possessions except in the public interest and subject to the conditions imposed by law and subject to the right of a state to enforce such laws as it deems necessary to control use of property in accordance with the general interest (or for other purposes not relevant here). This means that a fair balance must be struck between the public and private interests.
- 8.11.29 Article 8 provides that everyone has the right to respect for his private and family life, his home and his correspondence. Interference may be justified if it is pursues a legitimate aim, is in accordance with the law, is in the interests of the economic well-being of the country and is necessary in a democratic country.
- 8.11.30 This is a similar test to that of Article 1 Protocol 1 - justification requires proportionality whether the DCO Articles are reasonable including timescale, notice and compensation.
- 8.11.31 Both rights provide that restrictions must be authorised by law if they are to be justified. This requirement is met in that the restrictions, were the Order to be made, will be imposed by a statutory instrument that follows applicable statutory procedures.
- 8.11.32 The Applicant presents details of the need case in the application documents [APP-085]. That need case is accepted by the ExA such that potential breaches of Article 1, Protocol 1, are considered to be in the public interest. Exercise of the powers will constitute control of the use of property in accordance with the general interest because:
  - the minimum rights are being sought and TP for short term occupancies meaning that control will be kept to the minimum necessary;

- the order limits have been drawn tightly - a point illustrated during the CA Hearing [REP4-043] meaning no more land than absolutely necessary will be affected by the exercise of TP; and
  - rights owners will be entitled to compensation for any loss or damage caused by the exercise of that control - see Articles 22(5), 24(4), 26(6) and 27(6) of the DCO.
- 8.11.33 The Applicant accepts that Convention rights are likely to be engaged. However it concludes that the project will not conflict with those rights, will be proportionate and that there is a compelling case in the public interest that outweighs the impact on individual rights. In the latter context the Applicant states it is relevant that affected parties would be entitled to compensation (section 12.3.1 Statement of Reasons).
- 8.11.34 The benefit of the proposed extensive use of TP in this application is that it enables the Applicant to move a project forward, complete its construction and then having defined the pipeline route, limits of deviation are no longer required and the land parcel areas and permanent rights taken can thereby be minimised.
- 8.11.35 That process is of positive benefit in reducing the potential interference with affected parties. However, because TP is not CA compensation provisions become the focus.
- 8.11.36 During the Examination additional Rule 17 questions were raised because of the ExA's concern that the compensation provision under Article 26 of the draft DCO may not be effective under all of these circumstances.
- 8.11.37 In a Rule 17 question issued on 15 January 2016 at Q3 the ExA asked the Applicant to explain "*how the use of temporary powers in this regard will be justified in light of Article 1, Protocol 1 of the European Convention on Human Rights*" and to "*detail all relevant potential sources of compensation that would be available*" [PD-013].
- 8.11.38 The Applicant responded at Deadline 6a with a detailed justification of the proposed use of Article 26 [REP6a-006]. In summary this stated that:
- all parties affected have been engaged with a view to reaching voluntary agreement;
  - compensation will be available in line with the compensation code determined (if necessary) by the Lands Chamber;
  - there is a clear compelling case in the public interest to justify the interference with private rights; and
  - the nature of the private interference is temporary and is capable of being remedied by financial compensation.
- 8.11.39 The application of Human Rights Act to the request for Permanent rights is also relevant. Permanent rights are sought over four small parcels of land for monitoring equipment and rights for the retention and maintenance of the pipeline. The pipeline will be buried where it

crosses third party land and the agricultural land will be reinstated. The ExA has considered these matters and concludes that the impact of human rights will be limited and temporary and is capable of compensation through established process, secured within the Order.

- 8.11.40 Having regard to the relevant provision of the Human Rights Act, the ExA has considered the individual rights interfered with and the submissions made by affected parties in this regard, and subject to the amended wording in Article 26(6) of the Recommended DCO, is satisfied that:
- in relation to Article 1 of the First Protocol that the proposed interference with the individual's rights would be lawful, necessary, proportionate and justified in the public interest;
  - in relation to Article 6 that all objections which have been made have either been resolved with the objector, or the objectors have had the opportunity to present their cases to the ExA in writing and at the CA Hearing;
  - that in relation to Article 8 the interference is in accordance with the law and is necessary in the interests of the economic well-being of the country, and;
  - in relation to Mr Finch and the risk of the loss of protected tenancy rights there was clear evidence (not disputed) within the Examination that the principle of a voluntary agreement between the Applicant, Trinity House and Trinity House and its tenant (Mr Finch) was in place. The reason for this not being concluded was one of a failure to agree levels of compensation within the Examination. That matter remains capable of agreement before commencement, or should an Order be granted would be dealt with via the established compensation code

### **The ExA'S Overall Compulsory Acquisition and Temporary Possession Conclusion**

- 8.11.41 The ExA's approach to the question whether and what CA powers it should recommend to the Secretary of State to grant has been to seek to apply the relevant sections of the PA2008, notably s122 and s123, the Guidance, and the Human Rights Act 1998; and, in the light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.
- 8.11.42 The case for CA powers cannot properly be considered unless and until the ExA has formed a view on the case for the development overall and the consideration of the CA issues must be consistent with that view.
- 8.11.43 The ExA has shown in the conclusion to the preceding chapter that it has reached the view that development consent should be granted. The question therefore that the ExA addresses here is the extent to which, in the light of the factors set out above, the case is made for CA powers necessary to enable the development to proceed.

8.11.44 With regard to s122(2) of the PA 2008 the ExA is satisfied that the legal interests in all plots described and set out in the revised BoR and on the Land Plans (as amended including the accepted change request land) would be required in order to implement the development.

8.11.45 The ExA has had regard to the objections raised by all Affected Persons. With regard to s122(3) the ExA is satisfied in relation to the application:

- that the NPS identifies a national need for the River Humber Replacement Gas Pipeline;
- that the need to secure the land and rights required and to construct the development within a reasonable timescale and therefore ensure the delivery of the replacement pipeline to maintain the capability and efficiency of the national gas distribution system, represents a significant public benefit to weigh in the balance;
- that the private loss to those affected has been mitigated to a large degree through the selection of the application land, the use of TP to minimise permanent land take and the extent of the rights and interests proposed to be acquired;
- that the Applicant has shown that all reasonable alternatives to CA have been explored;
- that there is an established regulatory regime for funding the project (including CA costs and non-CA compensation and project costs) and therefore it is reasonable to conclude that funding would be made available and;
- that based on the Recommended DCO with modified Article 26(6), the proposed interference with the human rights of individuals would be for a legitimate purpose that would justify such interference in the public interest and to a proportionate extent.

8.11.46 In these circumstances the ExA considers that there is a compelling case in the public interest for the grant of the CA powers sought by the Applicant in respect of the Order land as shown on the Land Plans (as amended).

8.11.47 The proposal would therefore comply with s122 (2) and s122 (3) PA2008.

### **Temporary possession (TP)**

8.11.48 The TP powers sought are necessary both to facilitate implementation of the proposed development and to maintain it and in the case of the change request, to provide suitable and necessary additional mitigation to reduce potential impacts on the SPA/Ramsar.

8.11.49 Evidence submitted during the examination and expressed orally at the CA Hearing made it clear that voluntary agreement on securing the necessary TP rights over the original Order land was very close and that there was a will on all sides to achieve this [REP9-008].

- 8.11.50 When the accepted change request land entered the Examination there remained matters of detail to agree. However, the written evidence identifies concerns related to the impacts on farming activities and crop yields, both matters capable of compensation [REP7-002]. When the ExA questioned the effects of possible additional archaeological investigations on the original mitigation land concerns were also raised. However, these were stated as being capable of resolution by agreeing suitable compensation [REP9-003].
- 8.11.51 The ExA considers that the Recommended Order (as amended at Article 26 - see Chapter 9) contains the necessary protection to affected persons via the compensation code.



## **9 DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS**

### **9.1 INTRODUCTION**

- 9.1.1 This chapter of the report addresses the draft Development Consent Order (DCO). It starts by identifying the Application draft DCO [APP-016] and summarises the main drafting changes during the Examination leading to the Final draft DCO (version 3.1E) [REP9-010] at the Examination close. It then undertakes a more detailed appraisal of the Applicant's Final draft DCO.
- 9.1.2 By the Examination close the content of the Final draft DCO had largely been agreed with all parties apart from a limited number of unresolved matters including one specific to the Environment Agency (EA). The ExA deals with each of these outstanding points.
- 9.1.3 The DCO must define and secure the parameters of the authorised development (the Rochdale Envelope) and mitigation. Matters relevant to this that arose during the Examination are identified and where appropriate discussed before the ExA explains the final drafting amendments that have been made to the Recommended DCO (Appendix D).

### **9.2 FROM THE APPLICATION TO THE APPLICANT'S PREFERRED FINAL DRAFT DEVELOPMENT CONSENT ORDER**

- 9.2.1 A draft Development Consent Order (DCO) incorporating a Deemed Marine Licence (DML) [APP-016] along with an Explanatory Memorandum [APP-017] and a comparison of the draft DCO against Model Provisions<sup>53</sup> [APP-018] was submitted as part of the application for development consent by the Applicant. The Explanatory Memorandum indicates that the application draft DCO is based on the General Model Provisions with certain departures reflecting wording used in orders under the Transport and Works Act 1992<sup>54</sup>.
- 9.2.2 The application, if granted development consent, would authorise works to the National Grid Gas (NGG) transmission system between Goxhill Above Ground Installation (AGI) and Paull AGI. A more detailed description of the proposed works is set out in Schedule 1 of the DCO '*Authorised Development*' which is discussed later in this Chapter.
- 9.2.3 An initial review and comparison was undertaken by the ExA against that of the Willington C Gas Pipeline DCO, initially made by the Secretary of State on the 17 December 2014 and subject to a correction Order on 18th August 2015.

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<sup>53</sup> Infrastructure Planning (Model Provisions) (England and Wales) Order 2009

<sup>54</sup> Transport and Works (Model Clauses for Railways and Tramways) Order 2006

- 9.2.4 During the course of the Examination, the ExA reviewed the detail of the structure and effectiveness of the draft DCO through written questions and an Issue Specific Hearing (ISH) held on 18 November 2015. An ExA's draft DCO was published on the 17 February 2016 and feedback received from the Applicant and Interested Parties (IPs) at Deadline 7.
- 9.2.5 The Applicant engaged with statutory bodies and IPs participating in the Examination and agreements reached led to further amendments. For example, to satisfy concerns of Natural England (NE) a new Requirement 19 was added to secure ecological mitigation.
- 9.2.6 The sequence of the submission of the various draft DCOs is set out in the Master Version Control Document [REP7-008]. The draft DCO was updated from version 3.1 to version 3.1E during the Examination. An updated Explanatory Memorandum was issued at Deadline 7 [REP7-014] together with a comparison version against the application version [REP7-015]. Throughout this process IPs comments on the DCO drafting were encouraged and reflected in the ExA's questioning and the Applicant's updated DCOs.
- 9.2.7 The following draft DCO updates were issued during the Examination:
- Version 3.1A issued at Deadline 3 Submission: 02 November 2015 [REP3-006] with a comparison version [REP3-007];
  - Version 3.1B issued at Deadline 4 Submission: 27 November 2015 [REP4-017] with a comparison version [REP4-018];
  - Version 3.1C issued at Deadline 6 Submission: 13 January 2016 [REP6-006] with a comparison version [REP6-007];
  - Version 3.1D issued at Deadline 7 Submission: 17 February 2016 [REP7-013] with a comparison version [REP7-016]; and
  - Version 3.1E issued at Deadline 9 Submission: 4 March 2016 [REP9-010] with a comparison version [REP9-011].
- 9.2.8 In addition the ExA issued a draft DCO for comment by the Applicant and Interested Parties on 1st February 2016 [PD-015] and responses to that document were received from the EA [REP7-003], Forsters LLP [REP7-004], MMO [REP7-005], the Applicant [REP7-033], Natural England [REP7-039], North Lincolnshire Council [REP7-040], the RSPB [REP7-042] and Trinity House [REP7-044].
- 9.2.9 Comments on the responses to the ExA's draft DCO were also received at Deadline 8 from the Applicant [REP8-007].
- 9.2.10 The Applicant maintained a Schedule of Amendments to the draft DCO and the final version provides a record of the changes made at each update [REP9-014]. In broad terms:
- **Version 3.1A** - updates to the drafting text were made as a consequence of the ExA's first round of questions, refinements to the scheme design, and at the request of IPs;

- **Version 3.1B** - updates to the drafting text were made following the DCO Hearing on the 18 November 2015 at the request of the ExA, IPs, or to provide consistency and greater clarity;
- **Version 3.1C** - updates to the drafting text were made as a consequence of the ExA's second round of questions, ongoing negotiations with IPs, or to provide clarity;
- **Version 3.1D** - updates to the drafting text were made in response to the ExA's draft DCO, to reflect the accepted change request (additional mitigation measures), to correct inconsistency in model provisions, to respond to negotiations with IPs, to improve clarity and correct errors; and
- **Version 3.1E** - updates to the drafting text were made in response to the ExA's final Rule 17, for consistency with Advice Note 15 and made DCOs and in response to negotiations with IPs.

9.2.11 There was no fundamental change to the structure of the Application draft DCO with which the ExA was content.

9.2.12 The more important and relevant amendments are described below. The track change versions of the DCO at each update provide full details.

9.2.13 The Applicant submitted a final draft DCO and Schedule of Amendments to DCO and Plans at Deadline 9 [REP9-010 and REP9-014]. A substantively similar document had been provided at Deadline 8 but two specific matters were yet to be finalised with the EA and (possibly) NLC necessitating a final draft update that was issued at Deadline 9 [REP8-002, section 3.1].

### **Hierarchy of Plans (Roadmap)**

9.2.14 This document is not part of the Order but provides a very helpful illustrative guide, or roadmap to understand its operation and interface with the variety of plans or documents contained within the application. This was produced at Deadline 2 [REP2-047] in response to EXQ[1], 14.1 and was further refined at Deadline 4<sup>55</sup> [REP4-033].

9.2.15 The roadmap provides an illustration that identifies the multiple plans contained within the application and sets out how they inter-relate and link with the draft Order. It thereby provides a valuable tool to understand the operation of the Order and establish how for example, mitigation measures essential to the project's delivery with minimum residual effects are secured.

9.2.16 The key plans that are discussed within Chapter 5 in summary include the:

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<sup>55</sup> The was not updated at the Examination close but apart from referring to draft DCO version B (final version E), initial CEMP 7.3B (final version 7.3D) and initial Site Water Management Plan 6.13.2 (final version 6.13.2A) the structure, inter-relationships and requirements quoted remain accurate and helpful.

- **Construction and Environmental Management Plan (CEMP)** - this defines how the project will be implemented and the environmental effects minimised. It also identifies mitigation measures to reduce the potential adverse effects. From it a whole series of reports flow (top row of the Roadmap). The CEMP is secured via Requirement 12.
- **Site Water Management Plan** - this sets out how the project will be implemented whilst minimising the potential effects on groundwater and flood risk. This is secured by Requirement 5.
- **Site Waste Management Plan (SWMP)** - it was accepted by the EA that it is premature to produce this plan as the precise nature of the waste tunnelling material is not yet known. Requirement 6 secures this and ensures a plan is produced and agreed before works commence.
- **Written Scheme of Noise Management** - this will ensure control of noise effects. There is currently no separate draft plan but the initial CEMP helps set the scope of the plan to be produced. The content of the Order was agreed with NLC and the noise management plan's production is secured by Requirement 13.
- **Written Scheme of Archaeological Investigation (WSI)** - an initial WSI was produced following trial trenching that was undertaken during the Examination [REP7-038]. This plan ensures that in implementing the project works there is control over the potential effects on cultural heritage. This is secured by Requirement 10. A detailed WSI (based on the WSI referred to) must be prepared and approved before works commence.
- **Traffic Management Plan (TMP)** - this sets out how the potential impacts of construction traffic will be controlled for example, imposing a reduced operating window for traffic that could affect the school run for the residents of Goxhill. This is secured by Requirement 15.

### Relevant Made Orders

- 9.2.17 In drafting the Order the Applicant said they referred to made Development Consent Orders, or Transport and Works Act Orders including the Willington C Gas Pipeline Order 2014, Nottingham Express Transit System Order 2009, Network Rail (Hitchin (Cambridge Junction)) Order 2011 and the Rookery South (Resource Recovery Facility) Order 2011.
- 9.2.18 Willington is a relevant Order and some of the ExA's early questions during the Examination were derived from a comparison between the Willington Order and the Application draft DCO. However reference to the Willington Order was solely where the ExA considered similar policies and facts were relevant.

## **The Position on Agreement of the Final draft Development Consent Order at the Examination close**

- 9.2.19 By the Examination close on 7 March 2016 the final draft DCO (version 3.1E) submitted at Deadline 9 had been agreed by all statutory bodies and IP's apart from three matters, following its development during the Examination process.
- 9.2.20 Evidence of that agreement was provided in the form of signed Statement of Common Grounds (signed SoCGs) with the EA, NE, RSPB, MMO, HE, NLC and ERYC [REP7-024].
- 9.2.21 The three outstanding matters were:
- a point of detail on the protective provisions with the EA;
  - concerns over the duration of time the Applicant could retain possession after completion (up to 2 years); and
  - that it was premature for CA powers to be granted.
- 9.2.22 The latter two matters are discussed and dealt with in Chapter 8.
- 9.2.23 In terms of Statutory Undertakers during the Examination, representations were received and holding objections (on the basis that established infrastructure may be affected) made by the following parties:
- Anglian Water [RR-001];
  - DONG Energy [RR-007];
  - EDF Energy [RR-009]; and
  - Northern Powergrid Yorkshire [RR-026].
- 9.2.24 By the Examination close these matters had concluded as follows:
- Anglian Water - Protective Provisions (PPs) agreed and SoCG executed [REP8-006];
  - DONG Energy - not withdrawn;
  - EDF Energy - Objection withdrawn [AS-006]; and
  - Northern Powergrid Yorkshire - Protective Provisions (PPs) agreed and SoCG executed [REP7-031].
- 9.2.25 DONG Energy's representation was made in case there were potential impacts on the Hornsea Project One which is planned to connect to the Killingholme substation to the south of the replacement gas pipeline project, or Race bank situated in the Greater Wash area to the south. There was no formal withdrawal of this objection, or any update ahead of the close. However, given the localised nature of the replacement gas pipeline and its depth beneath the river bed it seems unlikely that there would be any interference between the projects.
- 9.2.26 In addition the Applicant's schedule of SoCG identifies that agreements were being negotiated or had been reached with Statutory Undertakers who had not engaged in the Examination or raised objection:

- Centrica - Protective Provisions (PPs) agreed and SoCG executed [REP7-030];
- Kingston Comms - Protective Provisions (PPs) included in the draft Order [REP7-024];
- Yorkshire Water - Protective Provisions (PPs) agreed and parties agreed SoCG not required [REP5-015];
- Network Rail - basis asset protection agreement terms agreed [REP9-017];
- BT Open Reach - Protective provisions for operators of electronic communications code networks included in draft Order and the Parties agreed no SoCG is required [REP1-019, Appendix 2];
- Northern Gas Networks - Confidential side agreement being negotiated [REP7-024].

9.2.27 At the Examination close, evidence of the agreements reached directly by the Applicant with Kingston Comms or Network Rail had not been received directly, nor evidence to demonstrate conclusion of the Northern Gas Network side agreement. There are however standard Protective Provisions to protect the interests of telecom operators and Network Rail were engaged in the Examination and a draft SoCG was being negotiated and reached its final form at Deadline 4 [REP4-030]. By the close of the examination, there were no matters left outstanding that in the ExA's view were adverse to the interests of any statutory undertaker that would indicate against the grant of the Order or against any of the powers sought and recommended to be provided in it.

9.2.28 There were no other private commercial agreements that the ExA is aware of that need to be taken into consideration.

9.2.29 The ExA deals below with the more relevant and important draft DCO matters which were the subject of discussion and amendment during the Examination and the Protective Provision item remaining outstanding between the EA and the Applicant at the close.

### **9.3 SECURING THE ROCHDALE ENVELOPE AND MITIGATION.**

9.3.1 The most important and relevant areas of testing or changes in the drafting of the Order during the Examination included:

9.3.2 **Content of the ES** - A request was made for document control to be implemented in Annex G to the ExA's Rule 6 letter (dated 22 July 2015), to be supplied at Deadline 1 and updated at Deadlines thereafter [REP1-001]. The use of this control document linked to Article 43, Certification of Plans and Documents was explored and a refined extract of the document supplied at Deadline 9 has been included in the recommended Order [REP9-015]. Reference to this version control document has been added by the ExA to the Recommended DCO at Article 2 (1), Interpretation and the volume 6 list of the final ES documents has also been included in Schedule 2 Part 4 (new) of the Recommended DCO.

## **Rochdale Envelope**

- 9.3.3 The authorised development limits were tested, including;
- investigating why Work 1A and Work 1B run from mean high water mark to the drive tunnel, or reception pit and comprise either works of tunnelling, or open trenching, and;
  - whether Work 2C and Work 3D affecting the ongoing maintenance of the existing pipeline (once disconnected) created a linkage whereby the fate of the existing pipeline and any de-commissioning should be considered as part of the Examination; and
  - testing whether the indicative site layout plans [APP-09] and tunnel long section [APP-010] should be part of the Order (Works Plans or Certified Documents).
- 9.3.4 These issues were drawn to a conclusion within the Examination as set out below.

### **9.3.5 Work 1A and 1B**

- 9.3.6 The ExA sought to explore the scope of the project, in particular whether the lack of definition of the transition point between tunnel and open trench within Work 1A and Work 1C (both within the Order Limits and the Work Plans) might affect risk and thereby the EA's concerns about impacts on groundwater and flooding. The illustrative long section [REP1-010] and site layout plans for Goxhill and Paull [REP2-023] and [REP2-024] identify a drive shaft and reception pit close to the existing AGIs with an interconnecting tunnel beneath the River Humber. The draft DCO and Works Plans define the limits of deviation such that the open trenching could run from Mean High Water causing more farmland and habitat disruption and potentially a greater risk of flooding.
- 9.3.7 In response to the ExAs first round of questions the Applicant stated that flexibility was required for the final positioning of the drive pit and reception shaft during detailed design and confirmed that for the ES the 'worst case' had been assessed [REP2-043, EXQ1 1.2]. By the November hearings a groundwater re-charge system had been proposed that alleviated the EA's concerns and it became evident that the use of a sealed tunnelling system meant that the EA had no particular concerns remaining over the flexibility provided in Works 1A or 1C. The use of open trench from a location closer to the River Humber to the AGI at either end of the project as opposed to as shown on the illustrative layout plan and long section also did not raise any specific objection from affected parties.

### **Work 2C and Work 3D**

- 9.3.8 If an Order were granted these works would be required to maintain the existing Feeder 9 pipeline. They comprise capping and protection against corrosion. In response to EXQ1, 2.1 the CE identified that the Feeder 9 pipeline is subject to a direct lease from CE and also a lease

from ABP Ltd. The CE lease for the existing Feeder 9 pipeline expires on 1 October 2016 and an extract from the lease identifies that this event requires NGG to '*demolish or remove the said pipes*' [REP2-001]. A further letter from ABP Ltd dated 6.11.15 [REP3-031] also provides evidence that the existing Feeder 9 pipeline lease with ABP expires on 30 September 2016.

- 9.3.9 The ExA considered whether evidence was required to verify that an agreement had been reached between the Applicant and ABP/CE to extend the existing Feeder 9 lease without which its expiration soon after the close of the Examination, or perhaps other clauses within the (unseen) full lease (e.g. a clause requiring the existing Feeder 9 pipeline to be removed upon cessation of its use) could trigger a requirement to remove the existing pipeline.
- 9.3.10 This has potential to start a process that could produce significant environmental effects since the existing Feeder 9 pipeline is laid in a trench across the bed of the River Humber and those impacts had not been considered within the ES.
- 9.3.11 In the CE representation it is clear that negotiations with CE are underway for the retention of the existing Feeder 9 pipeline. In the ABP letter it is evident that there have also been discussions between the parties about the possible renewal of the existing Feeder 9 pipeline underlease but that no final decision has been made because that will depend (on ABP's part) on the condition of the existing Feeder 9 pipeline nearer the date of lease expiry.
- 9.3.12 The Applicant said '*Negotiations on the heads of terms are progressing well between National Grid and ABP for the renewal of the existing FM09 lease.*' [REP3-028, 2.1].
- 9.3.13 The MMO said that the proposed method of de-commissioning the pipeline (which involves its retention) is not a licensable activity [REP3-028, 2.1].
- 9.3.14 ABP appear to hold commercial control over this outcome and no evidence was submitted into the Examination that ABP will require the pipe's removal. ABP simply state that they will make a commercial decision at the appropriate time based on its condition.
- 9.3.15 The application before the ExA is to consider making a recommendation to grant an Order approving works based on the premise that the existing Feeder 9 pipeline remains.
- 9.3.16 No IPs expressed concern when the ExA raised this question during Examination.
- 9.3.17 On this basis the ExA is satisfied that whilst there may be a theoretical trigger point between the removal of the original Feeder No 9 pipeline and its replacement with a new gas pipeline, its removal is likely to require a separate consenting process (planning and DML's etc.) and is not a matter under this Examination. Therefore the outcome does not



ultimately affect the recommendation being made to the Secretary of State which must be based upon the application presented.

### **The Construction and Environmental Management Plan and the Plans that Secure Mitigation**

- 9.3.18 Subject to the provisions of the Order and the requirements in Schedule 3, the Order authorises the development and associated development work set out in Schedule 1 [Article 4].
- 9.3.19 The management of the project during its detailed design and construction phases to ensure that appropriate environmental practices set out in the ES (including mitigation to reduce potential effects) is set out in the initial CEMP.
- 9.3.20 The central role of the initial CEMP in the control of the execution of the project, in particular the mitigation of effects, is illustrated in the Hierarchy of Plans (Roadmap) discussed earlier. A key part of the ExA's examination therefore focused on the content and securing of this important plan.
- 9.3.21 Details of the initial CEMP, the testing of it by the ExA and IPs, and its subsequent updating during the Examination to its final form at the close [REP7-019] is provided in Chapter 5. The initial CEMP is central to the control of the projects execution.
- 9.3.22 Having examined all the above matters during the Examination and considered all the matters described the ExA concludes that all necessary performance to the scope of the effects considered arising from the works proposed in the project and mitigation to meet the issues raised in the ES and by IPs through examination are properly secured in the Recommended DCO.

## **9.4 SUMMARY OF CHANGES TO THE DRAFT DEVELOPMENT CONSENT ORDER DURING EXAMINATION**

- 9.4.1 A summary of the more significant changes to the application draft DCO is provided below. The ExA identifies the relevant and important matters of change at each version update but does not set out each and every one. Full details can be traced by reference to the comparison track change versions at each update (listed above) and the Schedule of Amendments to DCO and Plans version 8.5E [REP9-014].
- 9.4.2 **Version 3A** (2 November 2015) - various drafting amendments were made to reflect the ExA's first round of questions [PD-006] which had included a comparison of the draft DCO against that of Willington C Gas Pipeline<sup>56</sup> including the correction order 18 August 2015<sup>57</sup>. The

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<sup>56</sup> <http://infrastructure.planninginspectorate.gov.uk/document/2939855>

amendments also responded to the Applicant's ongoing discussions with Interested Parties (IPs) and Statutory Undertakers, or responded to small changes in the scheme design.

- 9.4.3 **Version 3B** (27 November 2015) - the DCO Hearing took place on 18.11.15. Ahead of this the ExA had issued an Agenda Schedule [EV-006] setting out a series of questions on the draft DCO version 3A. The Applicant responded to these at the hearing and other questions raised by IPs [EV-011 and EV-012]. This updated draft reflects amendments discussed during the DCO Hearing and in particular led to the update of Requirement 5 (Site Water Management Plan). It had become evident during the Examination that adequate control over ground water and flooding was essential to meet the initial concerns of the EA described in Chapter 5. Therefore in response to the ExA's questions and points made by the EA, Requirement 5 was updated to list (at Requirement 5(2)) and thereby define the scope of the final Site Water Management Plan required ahead of commencement. The updated drafting also required that the final plan was "*substantially in accordance with*" (Requirement 5(1)) the initial plan and thereby reflective of discussions and exchanges during the Examination over this important issue.
- 9.4.4 **Version 3.1C** (13 January 2016) - The ExA's questions tested how well the mitigation measures were secured within the Order and sought drafting amendments. The draft DCO was updated in response to the ExA's second round of questions and ongoing IP negotiations. Article 2 (Interpretation) was updated to define '*initial CEMP*' and '*initial TMP*' and both of these plans were added to the list of documents to be certified under Article 43 [PD-006, EXQ1, 14.2 and PD-010, EXQ2, 26 and 30]. In each case the drafting was also updated to ensure that the final CEMP and TMP used during construction would be developed from the initial plan whose final form had been negotiated and agreed during the Examination. This was achieved by stating that in each case the plan (final) must be "*substantially in accordance with*" the initial plan (Schedule 3 Requirement 12 and requirement 15). The phrase '*initial site water management plan*' was also added to the definitions at Schedule 3 (Requirements), paragraph 1 and at Requirement 5 the drafting updated to ensure that the final Site Water Management Plan is "*substantially in accordance with*" the initial plan.
- 9.4.5 By this stage the agreement (in principle and confirmed ahead of the Examination close) had been reached with North Lincolnshire Council over making some of the passing places along the single track haul route permanent. Schedule 1 (Authorised Development) was therefore updated to delete the word '*temporary*' where relevant. At Schedule 3, (Requirements) paragraph 12 (Construction and Environmental

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<sup>57</sup> <http://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN060001/3.%20Post%20Decision%20Information/Decision/Willington%20C%20Gas%20Pipeline%20Correction%20Order%202015.pdf>

Management Plan) (2) was updated to ensure that the final CEMP *"must be substantially in accordance with, and include the following plans and strategies from the initial CEMP"*.

- 9.4.6 **Version 3.1D** (17 February 2016) - At Deadline 6, 13 January 2016 a change request was received full details of which are set out in Chapter 2 (at 2.7.4 to 2.7.21). The change involved inclusion of a new 48 acre agricultural field (plot 132) over which the Applicant sought TP its purpose being to provide additional mitigation land. The additional land is close to but not contiguous with the original Order land and is owned by one of the original Affected Parties (Mr and Mrs Faulding). As a consequence the draft DCO was updated to version 3.1D to include a change to the Order limits, to add new Work 13 to Schedule 1 (Description of Works) and amendments to Requirement 18 to define the agricultural/ecological management work to take place on the additional mitigation land. Schedule 10 Protective Provisions were also updated to reflect matters agreed with the EA and Centrica.
- 9.4.7 **Version 3.1E** (4 March 2016) - this final update (the Applicant's Final draft DCO) contained a minor drafting change at Schedule 1 (Authorised Development) where wording was updated in response to a final question Rule 17, Q17, 26 February 2016 [PD-017].
- 9.4.8 The ExA had suggested that in accordance with Advice Note 15<sup>58</sup> appropriate drafting might be *"Substantially in accordance with the environmental impact assessment set out in the environmental statement certified under article 43."*
- 9.4.9 The change made by the Applicant was from *"which are in accordance with the principles and assessment set out in the environmental statement"* to *"which fall within the scope of the works assessed by the environmental statement"*.
- 9.4.10 Given that in the Recommended DCO (Appendix D) the ES documents are specifically defined (New Schedule 2, part 4) the ExA is content with this wording.
- 9.4.11 The EA confirmed ahead of the Examination close that they were content with the final DCO drafting at version 3.1D apart from an outstanding issue over indemnity provision within in paragraph 23 of the Protective Provisions [REP9-007].
- 9.4.12 As the changes at version 3.1E were non material the ExA has used the Applicant's Final draft DCO version 3.1E in creating the Recommended DCO (Appendix D) since this was agreed between all IPs (apart from the EA point raised above) during the Examination.

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<sup>58</sup> Drafting Development Consent Orders, October 2014, version 1 - <http://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

## **9.5 THE APPLICANT'S FINAL DRAFT DEVELOPMENT CONSENT ORDER**

### **ARTICLES**

#### **Article 2 - Interpretation**

- 9.5.1 **"commence"** - This definition was narrowed in response to the ExA's first round of questions to constrain works possible ahead of the implementation of control provided by the detailed design and Local Planning Authority (LPA) approval process (Requirement 4) [REP2-043, 7.1]. As a consequence it ensures matters such as noise control which is controlled via Requirement 13 cannot be circumvented when the site set up will involve a substantial amount of large machinery and numerous site wide operations e.g. stripping topsoil across the site compound areas.
- 9.5.2 **"initial CEMP"** and **"initial TMP"** - These definitions were added for the purposes of Article 43 (certification) and Schedule 3 (Requirements). Each plan was submitted on application and developed through the Examination to incorporate the final form of mitigation to minimise potential effects of the project. The final CEMP and TMP would be developed from these framework documents as detailed design moves forward ahead of construction. Requirement 12 (CEMP) and Requirement 15 (TMP) necessitate approval by the relevant LPA of the final versions of these documents before works commence.
- 9.5.3 **"maintain"** - This was amended to delete the words '*decommission*' and '*demolish*' in response to the ExA's first round of questions to reflect two of the Secretary of States recent decisions (Hirwaun and Progress Power [REP2-043, 14.9].
- 9.5.4 **"National Grid Gas"** - The drafting was updated to add the words '*or any successor company performing the same function*', in response to the ExA's first round of questions [REP2-043, 14.10]. This provides additional flexibility to NGG if an Order is made.

#### **Article 3**

- 9.5.5 Application, modification and disapplication of legislative provisions - This was amended to dis-apply drainage and flood byelaws so as to give precedence to EA protective provisions added to Schedule 10. The update was in response to the Applicant's ongoing negotiations with the EA on Protective Provisions [REP2-043, 14.11]. The EA were content with this approach [REP6-016].

#### **New Article 8 (2)**

- 9.5.6 Transfer of benefit of Order - This article was added in response to ExA's first written questions. [REP2-043, 14. 14]. It provides flexibility for the Applicant to transfer the benefit of the Order (if made) to a successor entity.

**Part 3 - Acquisition and Possession of Land, Article 20 (Compulsory acquisition of land) and Article 21 (Compulsory acquisition of rights)**

- 9.5.7 These articles deal with CA of land and/or rights over land. Amendments were made during the Examination by the Applicant to "*correct inconsistency in model provisions*" [REP9-014].
- 9.5.8 In the final draft issue DCO at Deadline 7 [REP7-016] the Applicant deleted from Article 20 sub paras (2) and (3) and from Article 21 sub paras (2) and (5). This was designed to correct a minor inconsistency in the model provisions.
- 9.5.9 The ExA notes these changes were made to provide technical drafting improvements. Neither gave rise to concern or represent substantive changes and the ExA is therefore content with them.

**Article 26 - Temporary use of land**

- 9.5.10 This Article deals with the temporary use of land for carrying out the authorised development. Minor amendments were made during the Examination at version 3.1D on the 17 February 2016. The ExA raised question during the Examination on the adequacy of the compensation provisions for TP (Article 26(6)) and IPs raised question about the period that the Applicant would be entitled to remain in possession after works had been completed (Article 26(3)). These matters are discussed further in Chapter 8.
- 9.5.11 At the Examination close the ExA had outstanding concerns on the first point and for that reason amendment is suggested in the Recommended DCO. Details of this are set out in this Chapter under the Recommended DCO heading.
- 9.5.12 On the outstanding concern expressed by IPs on 26(3) the ExA discussed this and concluded in Chapter 8 that the period of up to 2 years possession following completion is reasonable and no change is therefore proposed.

**Article 42 - (Crown land)**

- 9.5.13 The ExA asked the Crown Estate (CE) to give express consent to the provisions of the DCO under s135 PA 2008 but they declined to do so. Instead they chose to defer giving consent on the basis that inclusion of Article 42 gave them "*the ability to confirm consent in accordance with s135 of the Planning Act 2008 at the appropriate time*".[REP9-002].

**Article 43 (Certification of plans etc.)**

- 9.5.14 This Article was the subject of ExA questions and discussions at the ISH on 18 November 2015. The ExA wanted to ensure that if an Order were granted there was clarity over the scope of works contained within that Order.

- 9.5.15 During the Examination the initial CEMP became central to the securing of mitigation and control of the execution of the works to ensure that the effects assessed in the Environmental Impact Assessment (EIA) would be minimised.
- 9.5.16 In a similar fashion the initial TMP was identified as a key document to minimise the potential effects of the project on local people, and provision for the development of the initial Site Water Management Plan [REP6-008] during detailed design was instrumental in satisfying the EA's significant concerns at the outset of the Examination [RR-010].
- 9.5.17 The initial CEMP and initial TMP were added to the lists of documents to be certified at Deadline 6, 13 January 2016. These are secured by Requirements 12 and 15 which require the initial plans to be developed during detailed design and submitted to and approved by the LPA prior to commencement.
- 9.5.18 The ExA requested that document control be implemented in Annex G of his Rule 6 letter (dated 22 July 2015) and that was supplied at Deadline 1 and updated at Deadlines thereafter. The control document was called the *Master Version Control Document* [REP1-001] and at each Deadline this was updated to record revisions to the application documents. It was agreed at the DCO hearing that a refined version would be produced ahead of the Examination close. This was supplied at Deadline 9 and records the latest issue documents forming the basis of Examination and the ExA's recommendation [REP9-015].
- 9.5.19 In a final question issued on 26 February 2016 [R17(16) - PD-017] the ExA suggested in accordance with Advice Note 15 that this control document be referred to in Article 43 and included within the Order as a schedule. This would then unequivocally identify the final Environmental Statement (ES) content and other key documents referred to in the final Recommended DCO.
- 9.5.20 The Applicant responded at Deadline 9 [REP9-017] and considered it inappropriate to use the Master Version Control Document '*It is unnecessary, confusing and misleading to certify documents which are not referred to in the Order, and which do not fulfil the function of setting the parameters for consent and enforcement*'.
- 9.5.21 The ExA considers that since the ES is central to the evaluation of a DCO application and it's weighing against the NPS policy tests, and given the multiplicity of documents within an Examination, it would be helpful for the final content of the ES to be identified. This could be achieved by reference to Volume 6 of the final Refined Master Version Document Control [REP9-015].
- 9.5.22 The ExA has therefore made a drafting change to the Recommended DCO and this is set out under the Recommended DCO heading below.

## DESCRIPTION OF THE WORKS

### Schedule 1 - Authorised Development

- 9.5.23 Schedule 1, specifies numbered works (Work 1 through to Work 13) comprised in the authorised development for which development consent is sought and other associated development works. The specified works are to be read alongside the relevant works plans [REP7-010]. Typographical and similar changes not set out below can be tracked in the Schedule of Amendments to the DCO [REP9-014].
- 9.5.24 **Work 6** - The description was updated to reflect agreement with North Lincolnshire Council in relation to a mitigation measure i.e. the permanent retention of passing places along the proposed haul route.
- 9.5.25 **Work 13** - This was added at Deadline 7, version 3.1D of the DCO to identify the additional mitigation land added to the application project and accepted by the ExA under the change request made at Deadline 6 [REP6-004]. The land was provided to satisfy NE and the RSPB and removed their final objection as detailed in Chapter 5.
- 9.5.26 **(2) Further Associated Development** - The first paragraph establishes the scope of associated development and was discussed at the DCO hearing and raised in questions thereafter [R17(17) 26 February 2016]. The ExA sought to tighten the wording. At Deadline 9 the Applicant updated the drafting to read '*which fall within the scope of the works assessed by the environmental statement*' in accordance with recent made Orders and considered the proposed use of '*Substantially in accordance with the environmental impact assessment set out in the environmental statement certified under article 43*' to not be appropriate or in accordance with Advice Note 15. The Applicant also highlighted that in the Willington C Gas Pipeline Order 2014 the description of '*associated development*' used the phrase "*which falls within the scope of the environmental impact assessment recorded in the environmental statement*".
- 9.5.27 On balance given that the ExA is recommending a change to the Recommended DCO that specifically identifies the content of the ES agreed at the close of the Examination, and that the ES and initial CEMP are certified under Article 43, this would seem the most significant factor to secure the desired control. The ExA has reviewed the Applicant's response and recent made Orders and on this basis is content to accept the drafting identified and appearing in DCO version 3.1E.

### Schedule 2 - Plans

- 9.5.28 Schedule 2 lists the work plans, land plans, access and rights of way plans, and now also the components of the ES (Part 4). The plans and documents that are required to be certified by the Secretary of State are set out in Article 43.

### Schedule 3 - Requirements

- 9.5.29 The Requirements<sup>59</sup> were reviewed for compliance against the NPS. The ExA considers that the Requirements as set out in the recommended DCO (Appendix D) meet the necessary test that they *"are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects."* (EN-1, 4.1.7).
- 9.5.30 **1 (Definitions)** - In response to EXQ2, 28 a definition of '*initial site water management plan*' was added and a requirement (para 4) for the site water management plan to be *"substantially in accordance with"* the initial site water management plan.
- 9.5.31 **4 (1) Detailed design approval** - Control via the LPA of '*tunnel construction methodology*' was removed. The ExA considered this important in relation to mitigating the risk of flooding caused by a breach of the EA flood defence barrier during tunnelling. This was separately identified in an early version of the draft DCO but removed at Deadline 6 (13 January 2016). The Applicant states *"Not necessary as this is included in the detail to be submitted for Work No. 1 under Requirement 4(1)(a). This deletion was agreed by NLC on 28 January"* [REP9-014 Schedule of Amendments to DCO and Plans]. Evidence of that agreement was submitted at Deadline 6b. The EA were also content with the final DCO drafting.
- 9.5.32 The initial CEMP does however include at Pre L14 a commitment that *'An independent validation of the tunnel design will be undertaken by a chartered engineer prior to the commencement of tunnelling'*. On this basis the ExA is content with the final form of drafting.
- 9.5.33 **5 (2) Site Water Management Plan** - Further details of the content of the site water management plan were added as a result of a request by the EA. One of the primary objections of the EA ahead of the PM was the impact of the project on groundwater (see Chapter 5). A solution involving ground water re-charge was introduced during the Examination and this became central to removing objections from the EA. It therefore became important to define and secure this mitigation within the Order.
- 9.5.34 In response to EXQ2 28 the drafting was updated for the Site Water Management Plan to be *"substantially in accordance with"* the initial site water management plan.
- 9.5.35 The Order is drafted such that no stage of the authorised development may take place until a Site Water Management Plan that is substantially in accordance with the initial Site Water Management Plan [REP6-008] has been submitted to and approved by the LPA in consultation with the EA.

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<sup>59</sup> As defined in section 120 of the Planning Act 2008.



- 9.5.36 This provides control by the EA as detailed design work proceeds. In addition further site investigation and development of the initial Site Water Management Plan has been included within the initial CEMP (Pre A2, Pre L Water Resources and Con L Water Resources) which is secured by Schedule 3, Requirement 12 of the draft DCO.
- 9.5.37 The EA confirmed they are content with this and an executed SoCG was submitted into Examination at Deadline 7 [REP6-016].
- 9.5.38 **11 Construction Hours** - As discussed in Chapter 5 the impact of the additional traffic flow using the haul route into and out of the construction site at Goxhill was a central issue in the Examination. Three local Councillors and the Parish Council along with some other local people made representations expressing concern. Embedded mitigation is proposed to reduce the operational hours of the inbound haul road during term time. In EXQ2, 31 the ExA asked whether this mitigation should be secured in Requirement 11. The Applicant's response was that the operational hours for construction and traffic should be kept separate in accordance with model provisions and that Requirement 15 covering the latter secured those hours through the initial TMP.
- 9.5.39 In the ExAs' final Rule 17(19), 27 February 2016, this question was explored again. In response the Applicant referred to Advice Note 15 (para 17.2), the fact that NLC have confirmed they are content with the drafting of the requirements and that other made Orders use a similar mechanism.
- 9.5.40 The ExA has reflected upon this response and as the reduced hours is presented in the ES as mitigation that will be of significant interest to local residents, considers that it does need to sit within the Recommended DCO. A drafting amendment has therefore been proposed and will be set out below.
- 9.5.41 At Schedule 3 (Requirements) para 11 (Construction Hours) 3(a) the phrase '*within the Order limits*' was added (at Deadline 6, 13 January 2016) in response to EXQ2 32. This ensured that this Article did not inadvertently authorise use of the haul route for spoil movement in conflict with the mitigation proposed in the initial TMP.
- 9.5.42 **12(1) Construction Environmental Management Plan** - The drafting was updated at request of the ExA [EXQ2, 26] to; "*The construction environmental management plan must be substantially in accordance with, and include the following plans and strategies from, the initial CEMP*".
- 9.5.43 During Examination, IPs and the ExA raised issues that went to the content of the CEMP. These matters are identified and discussed in Chapter 5.
- 9.5.44 The wording of this requirement was updated in response to the ExA's second round question EXQ2, 26. The ExA sought to tighten the requirement ensuring that if and when detailed design was developed

such work would be framed within the requirements of the initial CEMP and thereby the EIA demonstrated in the ES.

- 9.5.45 **12 (2)(j)** - a flood incident response plan was added following the Hearings to secure the management of the risk of flooding effects from a breach of the defences, or effects on construction and nearby land, property and people during construction.
- 9.5.46 **12 (2)(k)** - a marsh harrier monitoring and mitigation strategy was added at the request of the RSPB to satisfy them that there would be adequate, secured mitigation to minimise the potential effects on this protected species.
- 9.5.47 **13 (2) Noise** - Concern was expressed during the Examination by Mr and Mrs Burn at the potential impact of noise on their property located near to the construction compound at Paull [RR-022 and -REP2-007].
- 9.5.48 As discussed in Chapter 5, initial noise concerns related to the potential effects on birds which were addressed and resolved during Examination. The ExA explored the impact of noise on people, in particular that from increased construction traffic for the 3 year construction period. The amendment to the definition of 'commence' ensures that a written scheme for noise management is submitted and approved by the LPA ahead of works starting that are likely to generate significant noise.
- 9.5.49 In the second round of questions at EXQ2, 33 it was suggested that the drafting of Requirement 13 could be tightened including a new clause to cover noise monitoring. The Applicant updated the draft DCO at Deadline 6 to include monitoring at sensitive receptors before and during construction (13(c)). Con I1 of the initial CEMP was also updated and during the 17 November 2015 Issue Specific Hearing Mr Burn confirmed his satisfaction on this point.
- 9.5.50 **15 Construction traffic and accesses** - Traffic flows during the 3 year construction are discussed in Chapter 5. This was a point of concern for IPs. The DCO provides control via this requirement which requires a TMP to be produced based on the initial TMP that was part of the Examination. In response to EXQ2 30 the drafting was updated to include the words '*substantially in accordance with the initial TMP*' thereby setting the parameters for control.
- 9.5.51 **18 Environmental mitigation land** - Chapter 5 describes how, during the Examination, additional mitigation land was proposed and via an accepted change request subsequently added by the Applicant to resolve outstanding concerns over the residual impacts of the project on birds from the SPA/Ramsar. Negotiations between the Applicant, NE and the RSPB during the Examination led to the updating of this Requirement into its final form which met the concerns of the two nature bodies as evidenced by their final responses at Deadline 9 [REP9-019 and REP9-021].

- 9.5.52 **19 Ecological surveys** - this Requirement developed during the Examination reflecting ongoing negotiation between NE and the Applicant to minimise the effects on protected species. The final drafting met NE's concerns as evidenced by their final response at Deadline 9 [REP9-019].
- 9.5.53 **21 (1) Amendments to approved details** - In response to EXQ1 14.46 the words '*in general accordance*' were removed from this requirement and clause (2) was added to ensure any variation is in accordance with the principles and assessment set out in the ES.
- 9.5.54 In the second round of questions by the ExA, EXQ2 25 suggested a further tightening of 21(2) to include the words '*substantially in accordance with the principles and assessment set out the environmental statement.....*'. The Applicant suggested this was unnecessary and quoted the use of the phrase as drafted (Deadline 9) in the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015.
- 9.5.55 The ExA has reviewed the Creyke Beck Order and is content. The Recommended DCO therefore continues to use the wording proposed in the Applicant's final draft.

#### **Schedule 5 Streets subject to alteration of layout**

- 9.5.56 Chapter 5 explains how, during the Examination, there was discussion of haul route options to mitigate the effects of construction traffic. The final mitigation solution involved making permanent some of the original application passing places along the haul route. This necessitated updates to the application draft DCO and other Examination documents because what had been '*temporary*' rights became '*permanent*'. The final situation was agreed by the affected LPA, NLC as evidenced by the executed SoCG (with no matters unresolved) between the Applicant and NLC and Goxhill Parish Council received at Deadline 7 [REP7-026 and REP7-029].

#### **Schedule 8 - Land of which temporary possession may be taken**

- 9.5.57 This was updated to include the additional mitigation land (Work 13) and various other minor updates were undertaken during the Examination to plot numbers to reflect changes to the BoR and Land Plans on 23.09.15. These changes can be tracked using either the Schedule of Variation to the BoR, or the Schedule of Amendments to DCO and Plans [REP7-018, or REP9-014].

#### **Schedule 9 - Deemed Marine Licence**

- 9.5.58 These provisions were subject to very minor amendments. The Applicant engaged with the MMO and an executed SoCG was supplied at Deadline 6 [REP6-017]. Mitigation to minimise the effects of the final tunnel flooding using pumps positioned in the intertidal area was agreed by including that caged pumps would be utilised. This is identified within the DML in Schedule 9, Part 2, Licenced Activities, section 3(2) and is secured via Requirement 12 of the initial CEMP at

Con F17 [REP7-019]. A SoCG was submitted at Deadline 6 with no matters outstanding [REP6-017].

## **Schedule 10 Protective Provisions**

- 9.5.59 The Applicant was engaged in discussion throughout the Examination with parties who hold utility assets or infrastructure that has potential to be affected by the project. By the close of the Examination, Protective Provisions were either agreed with each party and included in the draft Order; agreed by means of a (private) commercial side agreement or remain under negotiation. Evidence of the agreements reached is within the Examination and details are set out above.
- 9.5.60 At the Examination close there was one item regarding the indemnity provision within the Protective Provisions at Part 3(23) unresolved between the EA and the Applicant.

## **9.6 THE RECOMMENDED DEVELOPMENT CONSENT ORDER**

- 9.6.1 The Recommended DCO contained in Appendix D is based on the Applicant's Final draft DCO version 3.1E submitted at Deadline 9 [REP9-010]. It contains a limited number of drafting changes which the ExA considers to be necessary to accommodate matters explored during the course of the Examination. The proposed changes are set out and discussed below.
- 9.6.2 The ExA then sets out the drafting objections that were raised, but not resolved by the close of the Examination, where the ExA does not consider further amendment to be necessary. In so doing the ExA has not sought to reference in detail every representation made in relation to the drafting of the DCO, but has identified the representative issues that are pertinent to the consideration of outstanding matters.

### **ExA Drafting Amendments to the Recommended DCO at Appendix D**

#### ***Article 2 - Interpretation***

- 9.6.3 The ExA added to the definition of "environmental statement" the text *'and listed in Part 4 of Schedule 2 (plans)'*.
- 9.6.4 Then at Part 4 the ES list extracted from the version control document (comprising Volume 6) has been inserted as a table to accurately record the ES documents. This information was taken from the refined document control list at the Examination close [REP9-015].
- 9.6.5 Reasoning for the amendment: Whilst made orders identify the Environmental Statement (ES) for certification the final content of the ES is a fundamental component of the order.
- 9.6.6 The refined document control list supplied by the Applicant at the Examination close [REP9-015] therefore lists at Volume 6 the final

content of the ES (developed during examination) upon which the ExA's recommendation is made.

**9.6.7 Article 26 – Temporary Possession Article 26(6)**

- 9.6.8 The ExA altered ('new text') Article 26(6) to read: Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act *'by the tribunal using established relevant valuation principles under the Act notwithstanding that paragraph (5) relates to temporary possession rather than the compulsory acquisition of land'*.
- 9.6.9 Reasoning for the amendment: the ExA noted at Article 26 (5) and (6) provision for compensation to be paid but in the context of the relevant test under the Human Rights Act sought evidence during the Examination that if temporary powers were exercised those parties affected would not be disadvantaged. In the case of the additional land (new Work 13) the 'works' would comprise maintaining reduced groundcover and spreading organic matter, neither directly related to project delivery and in the case of Mr Finch if a voluntary agreement is not reached there are potential Human Rights Act implications (see Chapter 8).
- 9.6.10 An additional question was then asked *"Please explain how article 26(5) provides that the Compensation Code will apply in respect of compensation for loss or damage under temporary possession"* [PD-014, Q3].
- 9.6.11 The Applicant responded that Article 26 (5), (6) and (7) are model provisions and that 26(5) provides that compensation *"must be paid for any loss or damage caused by the exercise of temporary powers of possession under the Order....."*, "The Applicant said *"These are settled statutory principles in the determination of compensation"* [REP7-007].
- 9.6.12 Whilst the model provisions and other made orders include similar reference to compensation assessment via the '*compensation code*' it is far from clear that this applies to the temporary possession of land. This is a central decision matter because voluntary agreement for Mr Finch to surrender his Agricultural Holdings Act protected Tenancy to Landlord Trinity House had not been concluded at the Examination close.
- 9.6.13 In adding this drafting the ExA seeks to ensure that the same robust compensation principles apply to TP as CA. On this basis the ExA was able to conclude in Chapter 8 that the powers of CA and TP contained within the Recommended DCO meet the relevant PA2008 and Human Rights Act tests.

**Article 26(8)(b) – Temporary Possession**

- 9.6.14 The ExA altered ('new text') Article 26(8)(b): acquiring any part of the subsoil or of the airspace over (or rights in the subsoil or of the

airspace over) that land '*(other than plot 132 on the land plans)*' under article 23 (acquisition of subsoil only).

- 9.6.15 Reasoning for the amendment: This needs to exclude the change request land, Plot 132 to ensure no CA is available and thereby ensure that the CA Regulations 2010 were not engaged by the accepted change request. Since this is purely mitigation land no such rights are necessary.

***Schedule 3, Requirement 15 – Construction traffic and access***

- 9.6.16 The ExA altered ('*new text*') the drafting by inserting a new subsection (4);
- 9.6.17 '*(4) Unless otherwise approved by the relevant planning authority in the traffic management plan, or in case of emergency, the following restrictions on the movement of vehicles will apply:*
- 9.6.18 *(a) Construction vehicles must not enter the site except between the hours of 0900 and 1515 during term time of North Lincolnshire Council district school(s)*
- 9.6.19 *(b) Construction vehicles must leave the site using the outbound construction route identified in the initial TMP*
- 9.6.20 *(c) Construction vehicles must not leave the site between 1900 hours and 0700 hours the following day*
- 9.6.21 *(d) All site-related traffic must follow the designated route identified within the Drivers Information Pack in the initial TMP'*
- 9.6.22 ...and define 'Drivers Pack' at Schedule 3(1) Interpretation;
- 9.6.23 "*drivers pack*" the collection of measures defined in the initial TMP at Paull (4.4.3) and at Goxhill (3.5.10) to mitigate the effects of construction traffic';
- 9.6.24 Reasoning for the amendment: The impact of traffic flow in this rural location during the implementation of the scheme over a forecasted 3 year construction period was a central concern articulated by three local councillors, North Lincolnshire Council, the Parish Council and IPs.

***Schedule 10, part 3 – Protective Provisions in favour of the EA***

- 9.6.25 The ExA altered ('*new text*') the drafting the following text to the Protective Provisions at 23;
- 9.6.26 '23 (1) Without prejudice to the other provisions of this part of this Schedule, the relevant undertaker must indemnify the **Agency** from all claims, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the **Agency** by reason of the construction of any of the specified works or

any act or omission of the relevant undertaker, its contractors, agents or employees whilst engaged upon the work.

- 9.6.27 (2) The relevant undertaker shall not be liable under sub-paragraph 2(1) to the limited extent that the liability is a result of negligence on the part of the Agency or its duly authorised representative, employee, contractor or agent.
- 9.6.28 (3) The Agency must give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed'.
- 9.6.29 Reasoning for the amendment: The Environment Agency modified their standard indemnity clause used in DCOs to assist the Applicant and reach agreement.
- 9.6.30 At the Examination close there was no response from the Applicant.
- 9.6.31 This is a major scheme involving work close to and beneath the EA flood defences that protect large areas of land, property and the public.
- 9.6.32 The inclusion of the proposed indemnity clause in its modified form is considered relevant, necessary and reasonable to protect the EA against 3rd party claims as a consequence of any damage caused by the undertaker during execution of the scheme (if approved).
- 9.6.33 The ExA made one small change to the EA's proposed drafting. The words "*drainage authority*" in 23(1) have been replaced with '**Agency**' to tie in with 23(2) and 23(3) which refer to the Agency and not the drainage authority.

## **9.7 CONCLUSIONS ON THE RECOMMENDED DCO**

- 9.7.1 The ExA has considered all representations received and has also had regard to all other important and relevant matters in its consideration of the application and has taken all these matters into account.
- 9.7.2 The embedded mitigation within the ES is clearly defined and documented within the Recommended DCO and accompanying suite of plans including but not limited to the initial:
- Construction and Environmental Management Plan (CEMP);
  - Site Water Management Plan; and
  - Traffic Management Plan (TMP).
- 9.7.3 The ES, CEMP and TMP are certified documents under article 43 and the scope of the ES from within the large number of application documents is clearly defined in Schedule 2, Part 4.

- 9.7.4 The CEMP is secured through DCO Requirement 12, the Site Water Management Plan through DCO Requirement 5 and the TMP through DCO Requirement 15.
- 9.7.5 The remaining potential impacts of the scheme for example noise have been described within this report and earlier in this chapter it has been identified where these matters are secured. All this being helpfully illustrated on the Hierarchy of Plans discussed above.
- 9.7.6 The ExA concludes that for the reasons set out in this report, and subject to the incorporation of the changes it has recommended to the Applicant's Final draft DCO, the Rochdale Envelope and all necessary mitigations have been secured and therefore the application should be granted development consent in the form of the Recommended DCO.



## **10 SUMMARY OF CONCLUSIONS AND RECOMMENDATION**

### **10.1 CONCLUSIONS**

10.1.1 In relation to s104 of PA2008, the ExA further concludes in summary:

- That making the Recommended DCO would be in accordance with National Policy Statements (NPSs) EN-1 and EN-4, the National Planning Policy Framework and other relevant policy, all of which have been taken into account in this report;
- That the ExA has had regard to the Local Impact Reports from North Lincolnshire Council and East Riding of Yorkshire Council, in making its recommendation;
- That whilst the Secretary of State is the competent authority under the Habitats Regulations, the ExA finds that, in its view, the proposal would not adversely affect European sites, species or habitats, and the ExA has taken this into account in reaching its recommendation;
- That in regard to all other matters and representations received, the ExA found no important and relevant matters that would individually or collectively lead to a different recommendation to that below;
- That there is no adverse impact of the scheme that would outweigh its benefits; and
- That there is no reason to indicate the application should be decided other than in accordance with the relevant NPSs.

10.1.2 In relation to the application for compulsory acquisition (CA) powers within the Recommended DCO, the ExA concludes that there is a compelling case in the public interest for the grant of the CA powers sought by the Applicant in respect of the Order land as shown on the Land Plans, listed in the Statement of Reasons and identified in Schedule 8 of the Recommended DCO. Further for the reasons set out in section (9.6.6-9.6.11) the ExA recommends that the final draft DCO is updated as the Recommended DCO to ensure that established compensation provisions for CA apply equally to land subject to Temporary Possession.

10.1.3 The ExA examined the powers requested for CA and TP and in both cases considers that on the basis of the Recommended Order, since compensation provision is available, that the rights requested are necessary, proportionate and justified.

### **10.2 RECOMMENDATION**

10.2.1 For all the above reasons, and in the light of the ExA's findings and conclusions on important and relevant matters set out in this report, the ExA recommends the Secretary of State for Energy and Climate Change makes the River Humber Gas Pipeline Replacement Project Order in the form recommended at Appendix D.

## APPENDICES

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## **APPENDIX A: EVENTS IN THE EXAMINATION**

The list below contains the main events which occurred, and procedural decisions taken, during the Examination.

28 July 2015	Site Visit (Unaccompanied)
9 September 2015	Preliminary Meeting
17 September 2015	Issue by ExA of: Rule 8 letter that included: <ul style="list-style-type: none"><li>• Examination timetable</li><li>• ExA first written questions (publication)</li></ul>
23 September 2015	Deadline 1: Deadline for receipt by the ExA of: <ul style="list-style-type: none"><li>• Statements of Common Ground (Drafts) and summary schedule</li><li>• Updated plans</li><li>• Updated Schedule of Mitigation Measures</li><li>• Updated Schedule of Progress of Voluntary negotiations</li><li>• In-combination assessment evidence for Humber Estuary SAC; survey data summary table; and updated Habitats Regulations Assessment (HRA) screening and integrity matrices</li></ul>
12 October 2015	Deadline 2 Deadline for receipt by the ExA of: <ul style="list-style-type: none"><li>• Comments on relevant representations (RRs)</li><li>• Summaries of all RR's exceeding 1500 words</li><li>• Written Representations (WRs) by all interested parties.</li><li>• Summaries of all WRs exceeding 1500 words</li><li>• Local Impact Reports (LIRs) from any local authorities</li><li>• Responses to ExA's first written questions (ExQ1)</li><li>• Updated ES chapters</li><li>• Comments on Statements of Common Ground (Drafts) from Deadline 1</li><li>• Notification of wish to speak at a Compulsory Acquisition hearing</li><li>• Notification of wish to speak at the Issue Specific Hearing on the draft Development Consent Order (DCO)</li><li>• Notification of wish to speak at any other Issue Specific Hearing</li><li>• Notification of wish to speak at an Open Floor Hearing</li></ul>

	<ul style="list-style-type: none"> <li>• Notification from statutory parties, or a local authority without direct responsibility in the proposed development area, of a wish to be considered an interested party</li> <li>• Nominations of locations to be inspected during unaccompanied site inspections, the features to be observed there, with reasons for each nomination; and</li> <li>• Nominations of locations to be inspected during accompanied site inspections, the features to be observed there, with reasons for each nomination.</li> <li>• Any other information requested by the ExA</li> </ul>
20 October 2015	<p>Issue by ExA of:</p> <p>A Rule 13 and 8(3) Notification of the Accompanied Site Inspection not being held on 19 November 2015 and Open floor hearing not being held on 18 November 2015.</p>
27 October 2015	<p>Issue by ExA of:</p> <ul style="list-style-type: none"> <li>• Notification of date, time and place for hearings and accompanied site visit(s)</li> </ul>
2 November 2015	<p>Deadline 3</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on WRs and responses to comments on RRs</li> <li>• Comments on Local Impact Reports</li> <li>• Comments on responses to ExA's first written questions</li> <li>• Progress report on draft SOCGs and updated summary schedule</li> <li>• Comments on any other documents submitted at Deadline 1</li> <li>• Any other information requested by the ExA</li> </ul>
10 November 2015	<p>Publication of:</p> <p>Agendas for the Issue Specific Hearings on 17 and 18 November 2015.</p>
17 November 2015	<p>Issue specific hearing on:</p> <p>Construction</p> <p>Flood Risk and drainage</p> <p>Hydro-geology</p> <p>Biodiversity, Ecology and Natural Environment impacts</p> <p>Noise impacts</p> <p>Transportation and Traffic impacts</p> <p>Debris, Waste and Contamination impacts</p> <p>Historic Environment</p>

	<p>Navigation</p> <p>Landscape and Visual Impact</p> <p>Socio Economic Effects</p> <p>Any other matter requested by the ExA</p>
18 November 2015	Issue specific hearing on draft DCO and any other matters
18 November 2015	Compulsory acquisition hearing
20 November	<p>Publication of:</p> <p>Action points from the hearings held on 17 and 18 November 2015.</p>
27 November 2015	<p>Deadline 4</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Post-hearing documents including written summaries of oral cases, of any evidence or documents presented, or amendments requested by the ExA</li> <li>• Revised draft DCO from the applicant taking into account all issues raised at hearings and in RRs/WRs (including both clean and track-change versions)</li> <li>• Response to comments from documents received at Deadline 3</li> <li>• Updated SoCGs and summary schedule</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>
8 December 2015	<p>Publication of:</p> <ul style="list-style-type: none"> <li>• ExA's second written questions</li> </ul>
8 December 2015	<p>Issue by ExA of:</p> <p>A Rule 8(3) that included:</p> <p>Notification of a variation to the timetable cancelling the hearings in January 2016</p>
22 December 2015	<p>Deadline 5:</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Responses to second written questions</li> </ul>
7 January 2016	<p>Issue by ExA of:</p> <p>A Rule 17 request for further information from:</p> <p>The Applicant</p> <p>Natural England</p> <p>RSPB</p>

13 January 2016	<p>Deadline 6:</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Applicant's revised draft DCO taking account of issues and comments raised, clean and track-change</li> <li>• Updated SOCGs (where progress has been made since Deadline 4) and summary schedule</li> <li>• Comments on responses to the second round of questions (if issued) ExQ2</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>
15 January 2016	<p>Issue by ExA of:</p> <p>Rule 17 and Rule 8(3) request for further information and change to the timetable.</p>
22 January 2016	<p>Deadline 6a:</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Responses to Rule 17 request dated 15 January 2016</li> </ul>
29 January 2016	<p>Deadline 6b:</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on responses to Rule 17 request dated 15 January 2016</li> </ul>
1 February 2016	<p>Publication of:</p> <p>Report on Implications for European Sites (RIES) ExA's Draft DCO</p>
1 February 2016	<p>Issue by ExA of:</p> <p>A Rule 17 request for further information and procedural decision</p>
17 February 2016	<p>Deadline 7:</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on Report on Implications for European Sites (RIES)</li> <li>• Comments on ExA's draft DCO</li> <li>• Comments on SOCG where updated</li> <li>• Executed final version SOCGs (If these contain remaining points of contention then final position statements for each signatory required for ExA judgement)</li> <li>• Comments on any other information submitted at Deadline 6</li> <li>• Revised Book of Reference taking into account all issues raised at hearings and in RRs/WRs (including both clean and track-change versions)</li> <li>• Any other information requested by the ExA</li> </ul>



24 February 2016	<p>Deadline 8</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on the responses to the RIES</li> <li>• Comments on the responses to the ExA Draft DCO</li> <li>• Comments on the executed final version SOCG from parties who are not signatories, or from the parties if document is not executed</li> <li>• Responses to revised Book of Reference</li> </ul>
26 February 2016	<p>Issue by ExA of:</p> <p>Rule 17 request for further information</p>
4 March 2016	<p>Deadline 9</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Responses to any further information requested as required at item 20 (if required)</li> <li>• Comments on responses to revised Book of Reference</li> </ul>
7 March 2016	<p>Close of Examination</p>
8 March 2016	<p>Issue by ExA of:</p> <p>Notification of Close of Examination</p>

## **APPENDIX B: EXAMINATION LIBRARY INCLUDING RIES**

# **River Humber Pipeline Replacement Project**

## **Examination Library**

**Updated 23/05/16**

This Examination library relates to the River Humber Pipeline Replacement Project application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructures pages of the Planning Portal and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- This is a working document and will be updated periodically as the examination progresses.
- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate is published to the National Infrastructure Website but is not included within the document library as such advice is not an examination document.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

**EN060004 – River Humber Pipeline Replacement Project****Examination Library – Index**

<b>Category</b>	<b>Reference</b>
<a href="#">Application Documents</a>  (as submitted, any amended version to be saved under the deadline received)	APP-xxx
<a href="#">Adequacy of Consultation responses</a>	AoC-xxx
<a href="#">Relevant Representations</a>	RR-xxx
<a href="#">Procedural Decisions and Notifications from the ExA</a> (includes Examining Authority's questions (ExA), s55, and post acceptance s51)	PD-xxx
<a href="#">Additional Submissions</a>  (this includes anything accepted at the PM, correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination)	AS-xxx
<a href="#">Events and Hearings</a>  (includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant's hearing notices, and responses to R6 and R8)	EV-xxx
<a href="#">Representations – by Deadline</a>	
<a href="#">Deadline 1:</a>  Deadline for the receipt of the following documents requested by ExA - <ul style="list-style-type: none"><li>• Statements of Common Ground (Drafts) and summary schedule</li><li>• Updated plans</li><li>• Updated Schedule of Mitigation Measures</li><li>• Updated Schedule of Progress of Voluntary negotiations</li><li>• In-combination assessment evidence</li></ul>	REP1-xxx

<p>for Humber Estuary SAC; survey data summary table; and updated Habitats Regulations Assessment (HRA) screening and integrity matrices</p>	
<p><a href="#">Deadline 2:</a></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on relevant representations (RRs)</li> <li>• Summaries of all RRs exceeding 1500 words</li> <li>• Written Representations (WRs) by all interested parties.</li> </ul> <p><i>All parties should submit their full written case and supporting evidence at this stage, as any representations to be heard at a hearing should be based on RR or WR</i></p> <ul style="list-style-type: none"> <li>• Summaries of all WRs exceeding 1500 words</li> <li>• Local Impact Reports (LIRs) from any local authorities</li> <li>• Responses to ExA's first written questions (ExQ1)</li> <li>• Updated ES chapters</li> </ul> <p><i>Note: Where ExQ1 responses are relevant to matters contained in the SOCGs please ensure that SOCGs are updated</i></p> <ul style="list-style-type: none"> <li>• Comments on Statements of Common Ground (Drafts) from Deadline 1</li> <li>• Notification of wish to speak at a Compulsory Acquisition hearing</li> <li>• Notification of wish to speak at the Issue Specific Hearing on the draft Development Consent Order (DCO)</li> <li>• Notification of wish to speak at any other Issue Specific Hearing</li> <li>• Notification of wish to speak at an Open Floor Hearing</li> <li>• Notification from statutory parties, or a local authority without direct responsibility in the proposed development area, of a wish to be considered an interested party</li> <li>• Nominations of locations to be inspected during unaccompanied site inspections, the features to be observed there, with reasons for each</li> </ul>	<p>REP2-xxx</p>

<p>nomination; and</p> <ul style="list-style-type: none"> <li>• Nominations of locations to be inspected during accompanied site inspections, the features to be observed there, with reasons for each nomination.</li> </ul> <p><i>The ExA has already undertaken USVs from public areas and will publish a site note of these visits.</i></p> <ul style="list-style-type: none"> <li>• Any other information requested by the ExA</li> </ul>	
<p><a href="#">Deadline 3:</a></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on Written representations and responses to comments on relevant representations.</li> <li>• Comments on Local Impact Reports.</li> <li>• Comments on responses to ExA's first written questions.</li> <li>• Progress report on draft statements of common ground and updated summary schedule.</li> <li>• Comments on any other documents submitted at Deadline 1.</li> <li>• Any other information requested by the ExA.</li> </ul>	REP3-XXX
<p><a href="#">Deadline 4:</a></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Post-hearing documents including written summaries of oral cases, of any evidence or documents presented, or amendments requested by the ExA</li> <li>• Revised draft DCO from the applicant taking into account all issues raised at hearings and in RRs/WRs (including both clean and track-change versions)</li> <li>• Response to comments from documents received at Deadline 3</li> <li>• Updated SoCGs and summary schedule</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>	REP4-XXX
<p><a href="#">Deadline 5:</a></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Responses to second written questions</li> </ul>	REP5-XXX

<a href="#">Deadline 6</a> Deadline for receipt by the ExA of: <ul style="list-style-type: none"> <li>• Applicant's revised draft DCO taking account of issues and comments raised, clean and track-change</li> <li>• Updated SOCGs (where progress has been made since Deadline 4) and summary schedule</li> <li>• Comments on responses to the second round of questions (if issued) ExQ2 made since Deadline 4) and summary schedule</li> <li>• Response to Rule 17 issued Thursday 17 January 2016</li> </ul>	REP6-XXX
<a href="#">Deadline 6a</a> Deadline for receipt by the ExA of: <ul style="list-style-type: none"> <li>• Responses to Rule 17 request dated 15 January 2016</li> </ul>	REP6a-XXX
<a href="#">Deadline 6b</a> Deadline for receipt by the ExA of: <ul style="list-style-type: none"> <li>• Comments on responses to Rule 17 request dated 15 January 2016</li> </ul>	REP6b-XXX
<a href="#">Deadline 7</a> Deadline for receipt by the ExA of: <ul style="list-style-type: none"> <li>• Comments on Report on Implications for European Sites (RIES)</li> <li>• Comments on ExA's draft DCO</li> <li>• Comments on SOCG where updated</li> <li>• Executed final version SOCGs (If these contain remaining points of contention then final position statements for each signatory required for ExA judgement)</li> <li>• Comments on any other information submitted at Deadline 6</li> <li>• Revised Book of Reference taking into account all issues raised at hearings and in RRs/WRs (including both clean and track-change versions)</li> <li>• Responses to the Rule 17 request issued 1 February 2016</li> <li>• Any other information requested by the ExA</li> </ul>	REP7-XXX
<a href="#">Deadline 8</a> Deadline for receipt by the ExA of: <ul style="list-style-type: none"> <li>• Comments on the responses to the RIES</li> <li>• Comments on the responses to the ExA Draft DCO</li> <li>• Comments on the executed final</li> </ul>	REP8-XXX

<p>version SOCG from parties who are not signatories, or from the parties if document is not executed</p> <ul style="list-style-type: none"> <li>• Responses to revised Book of Reference</li> </ul>	
<p><a href="#">Deadline 9</a></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Responses to any further information requested as required at item 20 (if required)</li> <li>• comments on responses to revised Book of Reference</li> </ul>	REP9-XXX
<p><a href="#">Other Documents</a></p> <p>(includes s127/131/138 information, applicant's hearing notices, includes s56, s58 and s59 certificates, and transboundary documents)</p>	OD-xxx



**EN060004 – River Humber Pipeline Replacement Project****Examination Library****Application Documents**

APP-01	<a href="#">1.1 Covering Letter</a>
APP-02	<a href="#">1.2 Application Form</a>
APP-03	<a href="#">1.3 Copies of Newspaper Notices</a>
APP-04	<a href="#">1.4 Electronic Application Index</a>
APP-05	<a href="#">1.5 Navigation Document</a>
APP-06	<a href="#">2.1 Land Plans</a>
APP-07	<a href="#">2.2 Works Plans</a>
APP-08	<a href="#">2.3 Access and Rights of Way Plans</a>
APP-09	<a href="#">2.4 Site Layout Plans</a>
APP-010	<a href="#">2.5 Elevations (Tunnel Long Section)</a>
APP-011	<a href="#">2.6 Images of the Works</a>
APP-012	<a href="#">2.7 Crown Land Plans</a>
APP-013	<a href="#">2.8 Environmental Features and Heritage Designations Plans Part 1</a>
APP-014	<a href="#">2.8 Environmental Features and Heritage Designations Plans Part 2</a>
APP-015	<a href="#">2.8 Environmental Features and Heritage Designations Plans Part 3</a>
APP-016	<a href="#">3.1 Draft Development Consent Order</a>
APP-017	<a href="#">3.2 Explanatory Memorandum</a>
APP-018	<a href="#">3.3 Comparison of DCO Against Model Provisions</a>
APP-019	<a href="#">4.1 Statement of Reasons</a>
APP-020	<a href="#">4.2 Funding Statement</a>
APP-021	<a href="#">4.3 Book of Reference (Parts 1 - 5)</a>
APP-022	<a href="#">5.1 Consultation Report</a>
APP-023	<a href="#">5.1.1 Consultation Report - Appendices Part 1</a>
APP-024	<a href="#">5.1.2 Consultation Report - Appendices Part 2</a>
APP-025	<a href="#">5.2 Flood Risk Assessment</a>

APP-026	<a href="#">5.3 Statement of Statutory Nuisance</a>
APP-027	<a href="#">5.4 Habitats Regulations Assessment Part 1</a>
APP-028	<a href="#">5.4 Habitats Regulations Assessment Part 2</a>
APP-029	<a href="#">5.5 Details of Other Consents and Licences</a>
APP-030	<a href="#">6.1 Introduction</a>
APP-031	<a href="#">6.2 Scheme Description</a>
APP-032	<a href="#">6.3 Design Iterations and Alternatives Considered</a>
APP-033	<a href="#">6.3.1 Appendix 3.1 Strategic Options Report</a>
APP-034	<a href="#">6.3.2 Appendix 3.2 Alternatives - Route Corridor Investigation Study</a>
APP-035	<a href="#">6.3.3 Appendix 3.3 Alternatives - Crossing Options Report</a>
APP-036	<a href="#">6.4 EIA Methodology and Construction Environmental Management</a>
APP-037	<a href="#">6.4.1 Appendix 4.1 PINS Scoping Opinion Comments</a>
APP-038	<a href="#">6.4.2 Appendix 4.2 Section 42 Consultation Comments</a>
APP-039	<a href="#">6.5 Air Quality</a>
APP-040	<a href="#">6.5.1 Appendix 5.1 Dust Risk Assessment</a>
APP-041	<a href="#">6.6 Cultural Heritage</a>
APP-042	<a href="#">6.6.1 Appendix 6.1 Desk-Based Assessment</a>
APP-043	<a href="#">6.6.2 Appendix 6.2 Aerial Photograph Analysis at Paull</a>
APP-044	<a href="#">6.6.3 Appendix 6.3 Geophysical Surveys Undertaken at Paull</a>
APP-045	<a href="#">6.6.4 Appendix 6.4 Geophysical Surveys Undertaken at Goxhill</a>
APP-046	<a href="#">6.6.5 Appendix 6.5 South End Bypass Geophysical Survey</a>
APP-047	<a href="#">6.7 Ecology and Nature Conservation</a>
APP-048	<a href="#">6.7.1 Appendix 7.1 Technical Appendix</a>
APP-049	<a href="#">6.8 Geology and Soils</a>
APP-050	<a href="#">6.8.1 Appendix 8.1 Environment Agency and Local Authority Responses</a>
APP-051	<a href="#">6.8.2 Appendix 8.2 Desk Study Report Part 1</a>
APP-052	<a href="#">6.8.2 Appendix 8.2 Desk Study Report Part 2</a>
APP-053	<a href="#">6.8.2 Appendix 8.2 Desk Study Report Part 3</a>

APP-054	<a href="#">6.8.3 Appendix 8.3 Ground Investigation Report</a>
APP-055	<a href="#">6.8.4 Appendix 8.4 Paull Holme Strays Investigation Report</a>
APP-056	<a href="#">6.8.5 Appendix 8.5 Chalk Report</a>
APP-057	<a href="#">6.8.6 Appendix 8.6 Geophysical Survey Report Part 1</a>
APP-058	<a href="#">6.8.6 Appendix 8.6 Geophysical Survey Report Part 2</a>
APP-059	<a href="#">6.8.6 Appendix 8.6 Geophysical Survey Report Part 3</a>
APP-060	<a href="#">6.8.7 Appendix 8.7 Information Relating to Stoneledge Field Investigation</a>
APP-061	<a href="#">6.8.8 Appendix 8.8 Responses from Lincolnshire Environmental Records Centre East Yorkshire RIGS Group</a>
APP-062	<a href="#">6.8.9 Appendix 8.9 Unexploded Ordnance Report</a>
APP-063	<a href="#">6.9 Landscape and Visual Amenity</a>
APP-064	<a href="#">6.10 Noise and Vibration</a>
APP-065	<a href="#">6.10.1 Appendix 10.1 Noise Monitoring Installation Sheets and Time History</a>
APP-066	<a href="#">6.10.2 Appendix 10.2 Noise Model Inputs</a>
APP-067	<a href="#">6.10.3 Appendix 10.3 Noise Model Outputs</a>
APP-068	<a href="#">6.11 Socio-Economics and Land Use</a>
APP-069	<a href="#">6.11.1 Appendix 11.1 Agricultural Land Survey</a>
APP-070	<a href="#">6.12 Traffic and Transport</a>
APP-071	<a href="#">6.13 Water Resources</a>
APP-072	<a href="#">6.13.1 Appendix 13.1 Water Framework Directive Assessment</a>
APP-073	<a href="#">6.13.2 Appendix 13.2 Initial Site Water Management Plan</a>
APP-074	<a href="#">6.13.3 Appendix 13.3 Hydrogeological Impact Assessment</a>
APP-075	<a href="#">6.14 Cumulative Effects</a>
APP-076	<a href="#">6.15 Glossary</a>
APP-077	<a href="#">6.16 Screening Opinions</a>
APP-078	<a href="#">6.17 Scoping Opinion</a>
APP-079	<a href="#">6.18 EIA Regulations Publicity Requirements</a>

APP-080	<a href="#">6.19 Non-Technical Summary</a>
APP-081	<a href="#">7.1 Planning Statement</a>
APP-082	<a href="#">7.2 Transport Assessment</a>
APP-083	<a href="#">7.2.1 Initial Traffic Management Plan</a>
APP-084	<a href="#">7.3 Initial Construction Environmental Management Plan</a>
APP-085	<a href="#">7.4 Need Case</a>
APP-086	<a href="#">7.5 Additional Information for Specific Types of Infrastructure (Regulation 6(4))</a>
APP-087	<a href="#">7.6 Drainage Report</a>
APP-088	<a href="#">7.7 Environmental Mitigation Commitments Document</a>
APP-089	<a href="#">7.8 Schedule of Progress on Voluntary Negotiations</a>
APP-090	<a href="#">7.9 Statement of Common Ground Schedule</a>
<b>Adequacy of Consultation Responses</b>	
AoC-001	<a href="#">City of York Council</a>
AoC-002	<a href="#">Doncaster Metropolitan Borough Council</a>
AoC-003	<a href="#">East Riding of Yorkshire Council</a>
AoC-004	<a href="#">North Lincolnshire Council</a>
AoC-005	<a href="#">Selby District Council</a>
<b>Relevant Representations</b>	
RR-001	<a href="#">Anglian Water Services Ltd</a>
RR-002	<a href="#">Barton-upon-Humber Town Council</a>
RR-003	<a href="#">Cllr David Wells</a>
RR-004	<a href="#">Cllr Peter Clark</a>
RR-005	<a href="#">Cllr Richard Hannigan</a>
RR-006	<a href="#">Corporation of Trinity House</a>
RR-007	<a href="#">DONG Energy</a>
RR-008	<a href="#">East Riding of Yorkshire Council</a>
RR-009	<a href="#">EDF Energy</a>

RR-010	<a href="#">Environment Agency</a>
RR-011	<a href="#">Mr G J Winchester</a>
RR-012	<a href="#">Mr Gordon Carr</a>
RR-013	<a href="#">Goxhill Parish Council</a>
RR-014	<a href="#">Goxhill PCC.</a>
RR-015	<a href="#">Highways England</a>
RR-016	<a href="#">Historic England</a>
RR-017	<a href="#">Jeff Teasdale</a>
RR-018	<a href="#">Mr JW Burn</a>
RR-019	<a href="#">Lincolnshire Wildlife Trust</a>
RR-020	<a href="#">Marine Management Organisation</a>
RR-021	<a href="#">Mr Peter Stancer</a>
RR-022	<a href="#">Mrs Burn</a>
RR-023	<a href="#">Natural England</a>
RR-024	<a href="#">North Lincolnshire Council</a>
RR-025	<a href="#">North Yorkshire County Council</a>
RR-026	<a href="#">Northern Powergrid (Yorkshire) plc</a>
RR-027	<a href="#">Office of Rail and Road</a>
RR-028	<a href="#">Public Health England</a>
RR-029	<a href="#">Royal Society for the Protection of Birds (RSPB)</a>
RR-030	<a href="#">Yorkshire Wildlife Trust</a>
<b>Procedural Decisions and Notifications from the Examining Authority</b>	
PD-001	<a href="#">Appointment of an Examining Authority</a>
PD-002	<a href="#">Notification of Decision to Accept Application</a>
PD-003	<a href="#">River Humber Section 55 Acceptance Checklist</a>
PD-004	<a href="#">Rule 6 Letter</a>
PD-005	<a href="#">Rule 8 Letter</a>

PD-006	<a href="#">ExA's First Written Questions</a>
PD-007	<a href="#">Notification of hearings- 17- 18 November 2015 and 5-6 January 2016</a>
PD-008	<a href="#">Letter to the applicant 28 October 2015- Notification sent to the applicant by Pins confirming that an individual has become an interested party under s102a of the Planning Act 2008</a>
PD-009	<a href="#">Letter to the Applicant 02 November 2015- Notification sent to the applicant by Pins confirming that an individual has become an interested party under s102a of the Planning Act 2008</a>
PD-010	<a href="#">ExA's second Written Questions</a>
PD-011	<a href="#">Rule 8(3) cancellation of January hearings</a>
PD-012	<a href="#">Rule 17 Letter - 7 January 2016</a>
PD-013	<a href="#">Rule 17 and 8(3) –15 January 2016</a>
PD-014	<a href="#">Rule 17 and Procedural Decision- 1 February 2016</a>
PD-015	<a href="#">The ExA's draft DCO- 1 February 2016</a>
PD-016	<a href="#">Report on the Implications for European Sites</a>
PD-017	<a href="#">Rule 17 request issued 26 February 2016</a>
PD-018	<a href="#">Notification of completion of ExA Examination- S99 Letter</a>
<b>Additional Submissions</b>	
AS-001	<a href="#">Office for Nuclear Regulation- Response to the Rule 6</a>
AS-002	<a href="#">Yorkshire Wildlife Trust- Response to the Rule 6</a>
AS-003	<a href="#">Equality and Human Rights Commission- Response to the Rule 6</a>
AS-004	<a href="#">Utility Grid Installations, Independent Pipelines GTC, Electric Network Company, Quadrant Pipelines and Independent Power Networks- Response to the Rule 6</a>
AS-005	<a href="#">Environment Agency-Response to the Rule 6</a>
AS-006	<a href="#">EDF Energy -Letter withdrawing an objection and Response to the Rule 6</a>
AS-007	<a href="#">Office of Rail and Road-Response to the Rule 6 - This was accepted at the discretion of the Examining Authority</a>
AS-008	<a href="#">BP Exploration Operating Company Limited-Response to the Rule 6 - This was accepted at the discretion of the Examining Authority</a>
AS-009	<a href="#">NHS England- Response to the Rule 6 - This was accepted at the discretion of the Examining Authority</a>

AS-010	<a href="#">Paul and Gaynor Taylor- Response to the Rule 6 - This was accepted at the discretion of the Examining Authority</a>
AS-011	<a href="#">Mr and Mrs Wathen- Written representation submitted with a request to become an interested party under s102a and accepted by the Examining Authority.</a>
AS-012	<a href="#">Mr Leech- Written representation submitted with a request to become an interested party under s102a and accepted by the Examining Authority.</a>
AS-013	<a href="#">Mr J Harrison- Written representation submitted with a request to become an interested party under s102a and accepted by the Examining Authority.</a>
AS-014	<a href="#">Mr B Tull- Written representation submitted with a request to become an interested party under s102a and accepted by the Examining Authority.</a>
AS-015	<a href="#">Forsters LLP- Submission accepted by the Examining Authority</a>
AS-016	<a href="#">The Inspectorate's response to Forsters LLP</a>
<b>Events and Hearings</b>	
<b>Preliminary Meeting – 9 September 2015</b>	
EV-001	<a href="#">Preliminary meeting Audio recording</a>
EV-002	<a href="#">Preliminary Meeting note</a>
<b>Unaccompanied Site Inspection - 28 July and 8 September 2015</b>	
EV-003	<a href="#">Unaccompanied Site Inspection note</a>
<b>Hearings 17 and 18 November 2015</b>	
EV-004	<a href="#">Agenda for the issue specific hearings 17 and 18 November 2015</a>
EV-005	<a href="#">HRA-EIA agenda accompanying hearing Schedule</a>
EV-006	<a href="#">DCO agenda accompanying hearing Schedule</a>
EV-007	<a href="#">Yorkshire Wildlife Trust - Correspondence submitted in advance of the Issue Specific Hearing</a>
EV-008	<a href="#">Audio recording of the Issue Specific hearing, held on 17 November 2015 - Session 1</a>
EV-009	<a href="#">Audio recording of the Issue Specific hearing, held on 17 November 2015 - Session 2</a>
EV-010	<a href="#">Audio recording of the Issue Specific hearing, held on 17 November 2015 - Session 3</a>
EV-011	<a href="#">Audio recording of the Issue Specific hearing, held on 18 November 2015 - Session 1</a>

EV-012	<a href="#">Audio recording of the Issue Specific hearing, held on 18 November 2015 - Session 2</a>
EV-013	<a href="#">Audio recording of the Compulsory Acquisition hearing, held on 18 November 2015 - Session 3</a>
EV-014	<a href="#">Action Points Arising from day one of the Issue Specific Hearings</a>
EV-015	<a href="#">Action Points Arising from day two of the Issue Specific Hearings</a>
<b>Representations</b>	
<b>Deadline 1 – 23 September 2015</b> <ul style="list-style-type: none"> <li>• Statements of Common Ground (Drafts) and summary schedule</li> <li>• Updated Schedule of Mitigation Measures</li> <li>• In-combination assessment evidence for Humber Estuary SAC; survey data summary table; and updated Habitats Regulations Assessment (HRA) screening and integrity matrices</li> <li>• Updated plans</li> <li>• Updated Schedule of Progress of Voluntary negotiations</li> </ul>	
REP1-001	<a href="#">National Grid Gas- 1.6 Master Version Control Document</a>
REP1-002	<a href="#">National Grid Gas- 2.1A- Land Plans (Part 1)</a>
REP1-003	<a href="#">National Grid Gas- 2.1A- Land Plans (Part 2)</a>
REP1-004	<a href="#">National Grid Gas- 2.1A- Land Plans (Part 3)</a>
REP1-005	<a href="#">National Grid Gas- 2.1A- Land Plans (Part 4)</a>
REP1-006	<a href="#">National Grid Gas- 2.2A- Works Plans</a>
REP1-007	<a href="#">National Grid Gas- 2.3A- Access and Rights of Way Plan</a>
REP1-008	<a href="#">National Grid Gas- 2.4A- Site Layout Plans- G</a>
REP1-009	<a href="#">National Grid Gas- 2.4A- Site Layout Plans- P</a>
REP1-010	<a href="#">National Grid Gas- 2.5A- Elevations (Tunnel Long section)</a>
REP1-011	<a href="#">National Grid Gas- 4.3A- Book of Reference (Parts 1-5)</a>
REP1-012	<a href="#">National Grid Gas- 4.4-Schedule of Variation to Book of Reference 4.3A</a>
REP1-013	<a href="#">National Grid Gas-5.2.1- Flood Risk Assessment Addendum</a>
REP1-014	<a href="#">National Grid Gas- 5.4.1- Habitats Regulations Assessment Screening Matrix(updates appendix 3 of Habitats Regulations Assessment)</a>
REP1-015	<a href="#">National Grid Gas- 5.4.2- Habitats Regulations Assessment Screening Matrix(updates appendix 3 of Habitats Regulations Assessment) Comparison between document 5.4 and 5.4.1</a>



REP1-016	<a href="#">National Grid Gas- 7.7A- Environmental Mitigation Commitments Document</a>
REP1-017	<a href="#">National Grid Gas- 7.7.1- Environmental Mitigation Commitments Document -Comparison between versions 7.7 and 7.7A</a>
REP1-018	<a href="#">National Grid Gas- 7.8A-Schedule of progress on voluntary negotiations</a>
REP1-019	<a href="#">National Grid Gas- 7.9A- Statement of Common Ground Schedule</a>
REP1-020	<a href="#">National Grid Gas- 8.1.1-Draft Statement of Common Ground with the Environment Agency</a>
REP1-021	<a href="#">National Grid Gas- 8.1.2-Draft Statement of Common Ground with North Lincolnshire Council</a>
REP1-022	<a href="#">National Grid Gas- 8.1.3-Draft Statement of Common Ground with East Riding of York Council</a>
REP1-023	<a href="#">National Grid Gas- 8.1.4- Draft Statement of Common Ground with Natural England</a>
REP1-024	<a href="#">National Grid Gas- 8.1.5- Draft Statement of Common Ground with the Marine Management Organisation</a>
REP1-025	<a href="#">National Grid Gas- 8.1.6- Draft Statement of Common Ground with The Royal Society for the Protection of Birds</a>
REP1-026	<a href="#">National Grid Gas- 8.1.7- Draft Statement of Common Ground with Lincolnshire Wildlife Trust</a>
REP1-027	<a href="#">National Grid Gas- 8.1.8- Draft Statement of Common Ground with Yorkshire Wildlife Trust</a>
REP1-028	<a href="#">National Grid Gas- 8.1.9- Statement of Common Ground with Historic England</a>
REP1-029	<a href="#">National Grid Gas- 8.1.10- Draft Statement of Common Ground with Goxhill Parish Council and North Lincolnshire Council</a>
REP1-030	<a href="#">National Grid Gas- 8.1.11- Statement of Common Ground with North Lindsay Drainage Board</a>
REP1-031	<a href="#">National Grid Gas- 8.1.12- Statement of Common Ground with South Holderness Internal Drainage Board</a>
REP1-032	<a href="#">National Grid Gas- 8.1.13- Draft Statement of Common Ground with Anglian Water</a>
REP1-033	<a href="#">National Grid Gas- 8.1.14- Draft Statement of Common Ground with Centrica</a>
REP1-034	<a href="#">National Grid Gas- 8.1.15- Draft Statement of Common Ground with Kingston Comms</a>

REP1-035	<a href="#">National Grid Gas- 8.1.16- Draft Statement of Common Ground with Yorkshire Water</a>
REP1-036	<a href="#">National Grid Gas- 8.1.17- Draft Statement of Common Ground with Network Rail</a>
REP1-037	<a href="#">National Grid Gas- 8.1.18- Draft Statement of Common Ground with Northern Powergrid</a>
REP1-038	<a href="#">National Grid Gas- 8.2- Summary of Bird Survey Data</a>
REP1-039	<a href="#">National Grid Gas- 8.3- Tunnel Long Section with Limits of Deviation</a>
REP1-040	<a href="#">National Grid Gas- 8.4-Deadline one covering letter 23 September 2015</a>
REP1-041	<a href="#">National Grid Gas- 8.5-Schedule of Amendments to plans</a>
REP1-042	<a href="#">National Grid Gas- 8.6- Environmental statement Errata and Amendments document</a>
<p><b>Deadline 2 – 12 October 2015</b></p> <ul style="list-style-type: none"> <li>Summaries of all RRs exceeding 1500 words</li> <li><i>All parties should submit their full written case and supporting evidence at this stage, as any representations to be heard at a hearing should be based on RR or WR</i></li> <li>Updated ES chapters</li> <li><i>Note: Where ExO1 responses are relevant to matters contained in the SOCGs please ensure that SOCGs are updated</i></li> <li>Notification of wish to speak at a Compulsory Acquisition hearing</li> <li>Notification of wish to speak at any other Issue Specific Hearing</li> <li>Nominations of locations to be inspected during unaccompanied site inspections. the features to be observed there, with reasons for each nomination: and</li> <li>Nominations of locations to be inspected during accompanied site inspections. the features to be observed there, with reasons for each nomination.</li> <li>Comments on relevant representations (RRs)</li> <li>Written Representations (WRs) by all interested parties.</li> <li>Summaries of all WRs exceeding 1500 words</li> <li>Local Impact Reports (LIRs) from any local authorities</li> <li>Responses to ExA's first written questions (ExQ1)</li> <li>Comments on Statements of Common Ground (Drafts) from Deadline 1</li> <li>Notification of wish to speak at the Issue Specific Hearing on the draft Development Consent Order (DCO)</li> <li>Notification of wish to speak at an Open Floor Hearing</li> <li><i>The ExA has already undertaken USVs from public areas and will publish a site note of these visits.</i></li> <li>Any other information requested by the ExA</li> <li>Notification from statutory parties, or a local authority without direct responsibility in the proposed development area, of a wish to be considered an interested party</li> </ul>	
REP2-001	<a href="#">The Crown Estate- Comments on the ExAs first written questions</a>

REP2-002	<a href="#">Highways England- Comments on the ExAs first written questions</a>
REP2-003	<a href="#">Trinity House- Response to the ExA's first written questions</a>
REP2-004	<a href="#">East Riding of Yorkshire Council- Local Impact Report</a>
REP2-005	<a href="#">The Royal Society for the Protection of Birds- Written Representation</a>
REP2-006	<a href="#">The Royal Society for the Protection of Birds - Response to the ExA's first written questions</a>
REP2-007	<a href="#">Mr and Mrs Burn- Written Representation</a>
REP2-008	<a href="#">Lincolnshire Wildlife Trust- Response to the ExA's first written questions</a>
REP2-009	<a href="#">DDM Agriculture- Written Representation</a>
REP2-010	<a href="#">Royal Mail Group Ltd- Written Representation</a>
REP2-011	<a href="#">Yorkshire Wildlife Trust- Written Representation and Response to the ExA's first written questions</a>
REP2-012	<a href="#">East riding of Yorkshire council- Response to the ExA's first written questions- Late submission accepted at the discretion of the Examining Authority</a>
REP2-013	<a href="#">Environment Agency- Relevant representation summary</a>
REP2-014	<a href="#">Environment Agency- Notifications</a>
REP2-015	<a href="#">Environment Agency- Written Representation</a>
REP2-016	<a href="#">Environment Agency- Response to the ExA's first written questions</a>
REP2-017	<a href="#">Natural England- Written Representation and Response to the ExA's first written questions</a>
REP2-018	<a href="#">North Lincolnshire Council- Local Impact Report</a>
REP2-019	<a href="#">North Lincolnshire Council- Response to the ExA's first written questions</a>
REP2-020	<a href="#">Anglian Water- Response to the ExA's first written questions</a>
REP2-021	<a href="#">Marine Management Organisation- Response to the ExA's first written questions</a>
REP2-022	<a href="#">National Grid Gas plc- 1.6A- Master Version Control Document</a>
REP2-023	<a href="#">National Grid Gas plc- 2.4B- Site Layout Plans G</a>
REP2-024	<a href="#">National Grid Gas plc- 2.4B- Site Layout Plans P</a>
REP2-025	<a href="#">National Grid Gas plc- 6.8.3.1- Appendix 8.3 Addendum – Phase I Test</a>

	<a href="#">Results and Factual Report Volume 1</a>
REP2-026	<a href="#">National Grid Gas plc- 6.8.3.2 Appendix 8.3 Addendum - Phase I Test Results and Factual Report Volume 2</a>
REP2-027	<a href="#">National Grid Gas plc- 6.8.3.3 Appendix 8.3 Addendum - Phase I Test Results and Factual Report Volume 3</a>
REP2-028	<a href="#">National Grid Gas plc- 6.8.3.4 Appendix 8.3 Addendum - Phase I Test Results and Factual Report Volume 4</a>
REP2-029	<a href="#">National Grid Gas plc- 6.8.3.5 Appendix 8.3 Addendum - Phase I Test Results and Factual Report Volume 5</a>
REP2-030	<a href="#">National Grid Gas plc- 6.8.3.6 Appendix 8.3 Addendum - Phase I Test Results and Factual Report Volume 6</a>
REP2-031	<a href="#">National Grid Gas plc- 6.8.3.7 Appendix 8.3 Addendum - Phase I Test Results and Factual Report Volume 7</a>
REP2-032	<a href="#">National Grid Gas plc- 6.8.3.8 Appendix 8.3 Addendum - Phase I Test Results and Factual Report Volume 8</a>
REP2-033	<a href="#">National Grid Gas plc- 6.8.3.9 Appendix 8.3 Addendum - Phase I Test Results and Factual Report Volume 9</a>
REP2-034	<a href="#">National Grid Gas plc- 6.8.3.10 Appendix 8.3 Addendum - Phase I Test Results and Factual Report Volume 10</a>
REP2-035	<a href="#">National Grid Gas plc- 6.13.3.1 Appendix 13.3 Addendum - Mini-Pumping Test Results and Factual Report</a>
REP2-036	<a href="#">National Grid Gas plc- 6.13.3.2 Appendix 13.3 Addendum Report to Hydrogeological Impact Assessment</a>
REP2-037	<a href="#">National Grid Gas plc- 8.1.3A - Signed Statement of Common Ground with East Riding of Yorkshire Council</a>
REP2-038	<a href="#">National Grid Gas plc- 8.1.7A - Signed Statement of Common Ground with the Lincolnshire Wildlife Trust</a>
REP2-039	<a href="#">National Grid Gas plc- 8.1.9A - Signed Statement of Common Ground with Historic England</a>
REP2-040	<a href="#">National Grid Gas plc- 8.6A- Environmental Statement Errata and Amendments Document</a>
REP2-041	<a href="#">National Grid Gas plc- 8.7- Deadline 2 Covering Letter 12 October 2015</a>
REP2-042	<a href="#">National Grid Gas plc- 8.8- Comments on Relevant Representations</a>
REP2-043	<a href="#">National Grid Gas plc- 8.9- Response to the ExA's first written questions</a>

REP2-040a	<a href="#">National Grid Gas plc- 8.9.1- Annexure 1 to Response to First Written Questions – Q4.10 Pond Location Plan</a>
REP2-044	<a href="#">National Grid Gas plc- 8.9.2- Annexure 2 to Response to First Written Questions – Q5.5 Areas Plan</a>
REP2-045	<a href="#">National Grid Gas plc- 8.9.3- Annexure 3 to Response to First Written Questions – Q10.1 Written Scheme of Archaeological Investigation</a>
REP2-046	<a href="#">National Grid Gas plc- 8.9.4- Annexure 4 to Response to First Written Questions – Q8.34 Summary of Traffic Mitigation Assessments</a>
REP2-047	<a href="#">National Grid Gas plc- 8.9.5- Annexure 5 to Response to First Written Questions – Q14.1 Hierarchy of Plans</a>
REP2-048	<a href="#">East Riding of Yorkshire council- Response to the ExA's first written questions-Late submission accepted at the discretion of the Examining Authority</a>
<b>Deadline 3- 2 November 2015</b> <ul style="list-style-type: none"> <li>• Comments on Written representations and responses to comments on relevant representations</li> <li>• Comments on Local Impact Reports</li> <li>• Comments on responses to ExA's first written questions</li> <li>• Progress report on draft statements of common ground and updated summary schedule</li> <li>• Comments on any other documents submitted at Deadline 1</li> <li>• Any other information requested by the ExA</li> </ul>	
REP3-001	<a href="#">DDM Agriculture- Written representation</a>
REP3-002	<a href="#">Environment Agency- Deadline 3 submissions and notifications</a>
REP3-003	<a href="#">Highways England- Comments on responses to ExA's first written questions</a>
REP3-004	<a href="#">National grid gas Plc- Deadline 3 Covering Letter</a>
REP3-005	<a href="#">National grid gas Plc- Master Version Control Document</a>
REP3-006	<a href="#">National grid gas Plc- Draft Development Consent Order</a>
REP3-007	<a href="#">National grid gas Plc- Comparison between DCO Versions 3.1 and 3.1A</a>
REP3-008	<a href="#">National grid gas Plc- Appendix 8 3 Addendum - Phase II Factual Report</a>
REP3-009	<a href="#">National grid gas Plc- Initial Traffic Management Plan</a>
REP3-010	<a href="#">National grid gas Plc- Initial Construction Environmental Management Plan</a>
REP3-011	<a href="#">National grid gas Plc- Initial Construction Environmental Management Plan - Comparison between versions 7.3 and 7.3A</a>

REP3-012	<a href="#">National grid gas Plc- Environmental Mitigation Commitments Document</a>
REP3-013	<a href="#">National grid gas Plc- Environmental Mitigation Commitments Document – Comparison between versions 7.7A and 7.7B</a>
REP3-014	<a href="#">National grid gas Plc- Schedule of Progress on Voluntary Negotiations</a>
REP3-015	<a href="#">National grid gas Plc- Statement of Common Ground Schedule</a>
REP3-016	<a href="#">Draft Statement of Common Ground with Environment Agency</a>
REP3-017	<a href="#">National grid gas Plc- Draft Statement of Common Ground with North Lincolnshire Council</a>
REP3-018	<a href="#">National grid gas Plc- Draft Statement of Common Ground with North Lincolnshire Council (Highways Matters)</a>
REP3-019	<a href="#">National grid gas Plc- Draft Statement of Common Ground with Natural England</a>
REP3-020	<a href="#">National grid gas Plc- Draft Statement of Common Ground with RSPB</a>
REP3-021	<a href="#">National grid gas Plc- Draft Statement of Common Ground with Goxhill Parish Council</a>
REP3-022	<a href="#">National grid gas Plc- Schedule of Amendments to DCO and Plans</a>
REP3-023	<a href="#">National grid gas Plc- Environmental Statement Errata and Amendments Document</a>
REP3-024	<a href="#">National grid gas Plc- Annexure 6 to First Written Questions – Q2.1 Indicative Programme</a>
REP3-025	<a href="#">National grid gas Plc- Annexure 7 to Response to First Written Questions – Q4.7 Updated Risk Register</a>
REP3-026	<a href="#">National grid gas Plc- Comments on Written Representations</a>
REP3-027	<a href="#">National grid gas Plc- Comments on Local Impact Reports</a>
REP3-028	<a href="#">National grid gas Plc- Comments on Response to First Written Questions</a>
REP3-029	<a href="#">The Royal Society for the Protection of Birds</a>
REP3-030	<a href="#">Wilkin Chapman LLP on behalf of John H Finch</a>
REP3-031	<a href="#">Associated British Ports-Letter outlining the Harbour Master Humber's current position -Late Submission for deadline 3 accepted at the discretion of the Examining Authority</a>

#### **Deadline 4- 27 November 2015**

- Post-hearing documents including written summaries of oral cases, of any evidence or documents presented, or amendments requested by the ExA
- Revised draft DCO from the applicant taking into account all issues raised at hearings and in RRs/WRs (including both clean and track-change versions)
- Response to comments from documents received at Deadline 3

<ul style="list-style-type: none"> <li>• Updated SoCGs and summary schedule</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>	
REP4-001	<a href="#">Forsters LLP - Post hearing submission</a>
REP4-002	<a href="#">DDM Agriculture - Post hearing submission</a>
REP4-003	<a href="#">Natural England - Post hearing submission</a>
REP4-004	<a href="#">RSPB - Post Hearing Submission</a>
REP4-005	<a href="#">North Lincolnshire Council - Post Hearing Submission</a>
REP4-006	<a href="#">North Lincolnshire Council on behalf of Ferry Ward Councillors - Post Hearing Submission</a>
REP4-007	<a href="#">GD &amp; JC Faulding and J Finch - Post hearing submission</a>
REP4-008	<a href="#">Environment Agency - Post hearing submission</a>
REP4-009	<a href="#">National Grid Gas plc - Applicant's attendance at the hearings list</a>
REP4-010	<a href="#">National Grid Gas plc - Deadline 4 Covering Letter</a>
REP4-011	<a href="#">National Grid Gas plc - Master Version Control Document</a>
REP4-012	<a href="#">National Grid Gas plc - Land Plans Part 1</a>
REP4-013	<a href="#">National Grid Gas plc - Land Plans Part 2</a>
REP4-014	<a href="#">National Grid Gas plc - Works Plans</a>
REP4-015	<a href="#">National Grid Gas plc - Access and Rights of Way Plans</a>
REP4-016	<a href="#">National Grid Gas plc - Crown Land Plans</a>
REP4-017	<a href="#">National Grid Gas plc - Draft Development Consent Order</a>
REP4-018	<a href="#">National Grid Gas plc - Comparison between DCO versions 3.1B and 3.1A</a>
REP4-019	<a href="#">National Grid Gas plc - Book of Reference Parts 1-5</a>
REP4-020	<a href="#">National Grid Gas plc - Schedule of Variation to Book of Reference 4.3A</a>
REP4-021	<a href="#">National Grid Gas plc - HRA Screening Matrix (updates appendix 3 of Habitats Regulations Assessment)</a>
REP4-022	<a href="#">National Grid Gas plc - HRA Screening Matrix (updates appendix 3 of Habitats Regulations Assessment). Comparison between document 5.4.1 and 5.4.1A</a>
REP4-023	<a href="#">National Grid Gas plc - Initial Traffic Management Plan- Comparison between versions 7.2.1 and 7.2.1A</a>
REP4-024	<a href="#">National Grid Gas plc - Initial Construction Environmental Management Plan</a>

REP4-025	<a href="#">National Grid Gas plc - Initial Construction Environmental Management Plan – Comparison between versions 7.3A and 7.3B</a>
REP4-026	<a href="#">National Grid Gas plc - Environmental Mitigation Commitments Document</a>
REP4-027	<a href="#">National Grid Gas plc - Environmental Mitigation Commitments Document – Comparison version between versions 7.7B and 7.7C</a>
REP4-028	<a href="#">National Grid Gas plc - Schedule of Progress on Voluntary Negotiations</a>
REP4-029	<a href="#">National Grid Gas plc - Statement of Common Ground Schedule</a>
REP4-030	<a href="#">National Grid Gas plc - Draft Statement of Common Ground with Network Rail</a>
REP4-031	<a href="#">National Grid Gas plc - Schedule of Amendments to DCO and Plans</a>
REP4-032	<a href="#">National Grid Gas plc - Environmental Statement Errata and Amendments</a>
REP4-033	<a href="#">National Grid Gas plc - Annexure 5 to Response to First Written Questions -Q14.1 Hierarchy of Plans</a>
REP4-034	<a href="#">National Grid Gas plc - Responses to Comments on Documents Received at Deadline 3</a>
REP4-035	<a href="#">National Grid Gas plc - Written Summary of Oral Case at Issue Specific Hearings on 17-18 November 2015</a>
REP4-036	<a href="#">National Grid Gas plc - Hearing Action Checklist 17 and 18 November 2015</a>
REP4-037	<a href="#">National Grid Gas plc - Annexure 1 to Hearing Action Checklist - Action 1 HSE/MAH Consultation Note</a>
REP4-038	<a href="#">National Grid Gas plc - Annexure 2 to Hearing Action Checklist - Action 2 Traffic and Waste Summary Plans</a>
REP4-039	<a href="#">National Grid Gas plc - Annexure 3 to Hearing Action Checklist - Action 2 HGV Noise Clarification Note</a>
REP4-040	<a href="#">National Grid Gas plc - Annexure 4 to Hearing Action Checklist - Action 3 Construction Presentation</a>
REP4-041	<a href="#">National Grid Gas plc - Annexure 5 to Hearing Action Checklist - Action 7 HEPS Correspondence</a>
REP4-042	<a href="#">National Grid Gas plc - Annexure 6 to Hearing Action Checklist - Actions 18 and 19 - Technical Note on NLC Traffic Proposals</a>
REP4-043	<a href="#">National Grid Gas plc - Annexure 7 to Hearing Action Checklist - DCO Action 6 Redline Reduction Plans</a>
REP4-044	<a href="#">Goxhill Parish Council -Post hearing submission-Late Submission for</a>



	<a href="#">deadline 4 accepted at the discretion of the Examining Authority</a>
REP4-045	<a href="#">P. Stancer - Letter to the Planning Inspectorate -Late Submission for deadline 4 accepted at the discretion of the Examining Authority</a>
<b>Deadline 5- 22 December 2015</b> • Responses to second written questions	
REP5-001	<a href="#">Anglian Water - Response to the ExA's second written questions</a>
REP5-002	<a href="#">DDM Agriculture - Response to the ExA's second written questions</a>
REP5-003	<a href="#">Environment Agency - Response to the ExA's second written questions</a>
REP5-004	<a href="#">Forsters LLP - Response to the ExA's second written questions</a>
REP5-005	<a href="#">Joint Nature Conservation Committee - Response to the ExA's second written questions</a>
REP5-006	<a href="#">Lincolnshire Wildlife Trust - Response to the ExA's second written questions</a>
REP5-007	<a href="#">Natural England - Response to the ExA's second written questions</a>
REP5-008	<a href="#">National Grid Gas plc - 8.18- Deadline 5 Covering Letter</a>
REP5-009	<a href="#">National Grid Gas plc - 1.6D- Master Version Control Document</a>
REP5-010	<a href="#">National Grid Gas plc - 8.19- Responses to ExA's Second Written Questions</a>
REP5-011	<a href="#">National Grid Gas plc - 8.17.1A- Annexure 1 to Hearing Action Checklist – Action 1 HSE/MAH Consultation Note</a>
REP5-012	<a href="#">National Grid Gas plc - 8.19.1- Annexure 1 to Response to Second Written Questions – Q3 Responses to Goxhill Parish Council</a>
REP5-013	<a href="#">The Royal Society for the Protection of Birds - Response to the ExA's second written questions</a>
REP5-014	<a href="#">Utility Grid Installations, Independent Pipelines, GTC, Electric Network Company, Quadrant Pipelines and Independent Power Networks - Response to the ExA's second written questions</a>
REP5-015	<a href="#">Yorkshire Water - Response to the ExA's second written questions</a>
REP5-016	<a href="#">Yorkshire Wildlife Trust - Response to the ExA's second written questions</a>
REP5-017	<a href="#">North Lincolnshire Council - Response to the ExA's second written questions- Late Submission for deadline 5 accepted at the discretion of the Examining Authority</a>
<b>Deadline 6- 13 January 2016</b> • Applicant's revised draft DCO taking account of issues and comments raised, clean and track-change	

<ul style="list-style-type: none"> <li>• Updated SOCGs (where progress has been made since Deadline 4) and summary schedule</li> <li>• Comments on responses to the second round of questions (if issued) ExQ2 made since Deadline 4) and summary schedule</li> <li>• Response to Rule 17 issued Thursday 17 January 2016</li> </ul>	
REP6-001	<a href="#">Environment Agency - Position on providing deadline 6 update on the Statement Of Common Ground</a>
REP6-002	<a href="#">National Grid Gas plc - 8.20 – Deadline 6 Covering letter 13 January 2016</a>
REP6-003	<a href="#">National Grid Gas plc - 8.21-Comments on Responses to Second Written Questions</a>
REP6-004	<a href="#">National Grid Gas plc - 8.22-Response to Rule 17 Letter dated 7 January 2016 and Request for Non-Material Change</a>
REP6-005	<a href="#">National Grid Gas plc - 1.6E- Master Version Control Document</a>
REP6-006	<a href="#">National Grid Gas plc - 3.1C -Draft Development Consent Order</a>
REP6-007	<a href="#">National Grid Gas plc - 3.4B -Comparison between DCO versions 3.1C and 3.1B</a>
REP6-008	<a href="#">National Grid Gas plc -6.13.2A- Appendix 13.2 Initial Site Water Management Plan</a>
REP6-009	<a href="#">National Grid Gas plc - 6.13.2.1- Comparison between Initial Site Water Management Plan versions 6.13.2 and 6.13.2A</a>
REP6-010	<a href="#">National Grid Gas plc - 7.3C - Initial Construction Environmental Management Plan</a>
REP6-011	<a href="#">National Grid Gas plc -7.3.3- Initial Construction Environmental Management Plan – Comparison between versions 7.3B and 7.3C</a>
REP6-012	<a href="#">National Grid Gas plc - 7.7D -Environmental Mitigation Commitments Document</a>
REP6-013	<a href="#">National Grid Gas plc - 7.7.4- Environmental Mitigation Commitments Document – Comparison between versions 7.7C and 7.7D</a>
REP6-014	<a href="#">National Grid Gas plc - 7.8D -Schedule of Progress on Voluntary Negotiations</a>
REP6-015	<a href="#">National Grid Gas plc - 7.9D -Statement of Common Ground Schedule</a>
REP6-016	<a href="#">National Grid Gas plc - 8.1.1B- Signed SoCG with the Environment Agency</a>
REP6-017	<a href="#">National Grid Gas plc - 8.1.5A- Signed SoCG with Marine Management Organisation</a>
REP6-018	<a href="#">National Grid Gas plc - 8.1.8A- Signed SoCG with the Yorkshire Wildlife Trust</a>

REP6-019	<a href="#">National Grid Gas plc -8.5C -Schedule of Amendments to DCO and Plans</a>
REP6-020	<a href="#">Natural England- Response to Rule 17 issued Thursday 17 January 2016</a>
REP6-021	<a href="#">The Royal Society for the Protection of Birds - Response to Rule 17 issued Thursday 17 January 2016</a>
REP6-022	<a href="#">National Grid Gas Plc- letter making a correction to the information provided in Document 8.22- Late submission for Deadline 6 accepted at the discretion of the Examining Authority</a>
REP6-023	<a href="#">Environment Agency- Late Response to the ExA's second written question number 18 for deadline 6- This document was not published due to an error.</a>
<b>Deadline 6a- 22 January 2016</b> <ul style="list-style-type: none"> <li>Responses to Rule 17 request dated 15 January 2016</li> </ul>	
REP6a-001	<a href="#">East Riding of Yorkshire- Response to Rule 17 letter published 15 January 2016</a>
REP6a-002	<a href="#">Environment Agency- Response to Rule 17 letter published 15 January 2016</a>
REP6a-003	<a href="#">Forsters LLP- Submission regarding ongoing negotiations</a>
REP6a-004	<a href="#">Historic England- Response to Rule 17 letter published 15 January 2016</a>
REP6a-005	<a href="#">Humberside Fire and Rescue Service- Response to Rule 17 letter published 15 January 2016</a>
REP6a-006	<a href="#">National Grid Gas plc- Response to Rule 17 letter published 15 January 2016</a>
REP6a-007	<a href="#">Natural England- Response to Rule 17 letter published 15 January 2016</a>
REP6a-008	<a href="#">Utility Grid Installations- Response to Rule 17 letter published 15 January 2016</a>
REP6a-009	<a href="#">Ministry of Defence- Response to Rule 17 letter published 15 January 2016- Late submission accepted at the discretion of the ExA</a>
<b>Deadline 6b- 29 January 2016</b> <ul style="list-style-type: none"> <li>Comments on responses to Rule 17 request dated 15 January 2016</li> </ul>	
REP6b-001	<a href="#">National Grid Gas plc- Comments on Responses to Rule 17 Request dated 15 January 2016</a>
<b>Deadline 7- 17 February 2016</b> <ul style="list-style-type: none"> <li>Comments on Report on Implications for European Sites (RIES)</li> <li>Comments on ExA's draft DCO</li> <li>Comments on SOCG where updated</li> <li>Executed final version SOCGs (If these contain remaining points of contention)</li> </ul>	

then final position statements for each signatory required for ExA judgement)

- Comments on any other information submitted at Deadline 6
- Revised Book of Reference taking into account all issues raised at hearings and in RRs/WRs (including both clean and track-change versions)
- Responses to the Rule 17 request issued 1 February 2016
- Any other information requested by the ExA

REP7-001	<a href="#">Anglian Water- Comments on ExA's draft DCO</a>
REP7-002	<a href="#">DDM Agriculture- Response to the Rule 17 request issued 1 February 2016</a>
REP7-003	<a href="#">Environment Agency- Comments on ExA's draft DCO</a>
REP7-004	<a href="#">Forsters LLP- Comments on ExA's draft DCO</a>
REP7-005	<a href="#">Marine Management Organisation- Comments on ExA's draft DCO</a>
REP7-006	<a href="#">National Grid Gas plc -Deadline 7 Covering Letter 17 February 2016</a>
REP7-007	<a href="#">National Grid Gas plc -Responses to Rule 17 Request dated 1 February 2016</a>
REP7-008	<a href="#">National Grid Gas plc- 1.6F- Master Version Control Document</a>
REP7-009	<a href="#">National Grid Gas plc- 2.1C Land Plans (Parts 1 to 3)</a>
REP7-010	<a href="#">National Grid Gas plc -2.2C- Works Plans</a>
REP7-011	<a href="#">National Grid Gas plc - 2.3C- Access and Rights of Way Plans</a>
REP7-012	<a href="#">National Grid Gas plc - 2.7B- Crown Land Plans</a>
REP7-013	<a href="#">National Grid Gas plc -3.1D- Draft Development Consent Order</a>
REP7-014	<a href="#">National Grid Gas plc -3.2A- Explanatory Memorandum</a>
REP7-015	<a href="#">National Grid Gas plc - 3.2.1- Comparison between Explanatory Memorandum versions 3.2A and 3.2</a>
REP7-016	<a href="#">National Grid Gas plc - 3.4C- Comparison between DCO versions 3.1D and 3.1C</a>
REP7-017	<a href="#">National Grid Gas plc - 4.3C- Book of Reference (Parts 1-5)</a>
REP7-018	<a href="#">National Grid Gas plc - 4.4B- Schedule of Variation to Book of Reference 4.3B</a>
REP7-019	<a href="#">National Grid Gas plc - 7.3D- Initial Construction Environmental Management Plan</a>
REP7-020	<a href="#">National Grid Gas plc - 7.3.4- Initial Construction Environmental Management Plan – Comparison between versions 7.3C and 7.3D</a>
REP7-021	<a href="#">National Grid Gas plc - 7.7E- Environmental Mitigation Commitments Document</a>

REP7-022	<a href="#">National Grid Gas plc - 7.7.5- Environmental Mitigation Commitments Document – Comparison between versions 7.7D and 7.7E</a>
REP7-023	<a href="#">National Grid Gas plc - 7.8E- Schedule of Progress on Voluntary Negotiations</a>
REP7-024	<a href="#">National Grid Gas plc - 7.9E- Statement of Common Ground Schedule</a>
REP7-025	<a href="#">National Grid Gas plc - 8.1.2B- Signed SoCG with North Lincolnshire Council</a>
REP7-026	<a href="#">National Grid Gas plc - 8.1.2.1A- Signed SoCG with North Lincolnshire Council (Highways Matters)</a>
REP7-027	<a href="#">National Grid Gas plc - 8.1.4B- Signed SoCG with Natural England</a>
REP7-028	<a href="#">National Grid Gas plc - 8.1.6B- Signed SoCG with RSPB</a>
REP7-029	<a href="#">National Grid Gas plc - 8.1.10B- Signed SoCG with Goxhill Parish Council</a>
REP7-030	<a href="#">National Grid Gas plc - 8.1.14A- Signed SoCG with Centrica</a>
REP7-031	<a href="#">National Grid Gas plc - 8.1.18A- Signed SoCG with Northern Powergrid</a>
REP7-032	<a href="#">National Grid Gas plc - 8.5D- Schedule of Amendments to DCO and Plans</a>
REP7-033	<a href="#">National Grid Gas plc - 8.26- Applicant's Comments on ExA's draft DCO</a>
REP7-035	<a href="#">National Grid Gas plc - 8.27- Joint Position Statement on Provision of Permanent Highways Works</a>
REP7-036	<a href="#">National Grid Gas plc - 8.28- Position on Negotiations with ABP and Crown Estate (section 135 consent)</a>
REP7-037	<a href="#">National Grid Gas plc - 8.30- Summary of Consultation on Non-Material Change for Mitigation Land</a>
REP7-038	<a href="#">National Grid Gas plc - 8.31- Archaeological Mitigation Strategy (part 1 and 2)</a>
REP7-039	<a href="#">Natural England- Comments on ExA's draft DCO</a>
REP7-040	<a href="#">North Lincolnshire Council- Deadline 7 submission</a>
REP7-041	<a href="#">The Royal Society for the Protection of Birds- Response to the Rule 17 request issued 1 February 2016</a>
REP7-042	<a href="#">The Royal Society for the Protection of Birds- Comments on ExA's draft DCO</a>
REP7-043	<a href="#">The Royal Society for the Protection of Birds- Updated Statement Of Common Ground</a>

REP7-044	<a href="#">Trinity House- Comments on ExA's draft DCO</a>
<b>Deadline 8- 24 February 2016</b> <ul style="list-style-type: none"> <li>• Comments on the responses to the RIES</li> <li>• Comments on the responses to the ExA Draft DCO</li> <li>• Comments on the executed final version SOCG from parties who are not signatories, or from the parties if document is not executed</li> <li>• Responses to revised Book of Reference</li> </ul>	
REP8-001	<a href="#">Environment Agency- Deadline 8 submission</a>
REP8-002	<a href="#">National Grid Gas Plc-8.32- Deadline 8 Covering Letter 24 February 2016</a>
REP8-003	<a href="#">National Grid Gas Plc- 1.6G- Master Version Control Document</a>
REP8-004	<a href="#">National Grid Gas Plc-4.1A- Statement of Reasons</a>
REP8-005	<a href="#">National Grid Gas Plc-4.1.1- Comparison between Statement of Reasons versions 4.1A and 4.1</a>
REP8-006	<a href="#">National Grid Gas Plc-8.1.13A- Signed SoCG with Anglian Water</a>
REP8-007	<a href="#">National Grid Gas Plc-8.33- Comments on Responses to ExA draft DCO</a>
REP8-008	<a href="#">National Grid Gas Plc-8.34- Comments on DDM Agriculture Responses to Rule 17 Letters</a>
REP8-009	<a href="#">National Grid Gas Plc-8.35- Position Statement on Representations Received</a>
REP8-010	<a href="#">National Grid Gas Plc-8.36- Refined Master Version Control Document</a>
REP8-011	<a href="#">North Lincolnshire council- Comments on the Councils deadline 7 submission- Late Submission for deadline 8 -accepted at the discretion of the Examining Authority</a>
<b>Deadline 9- 4 March 2016</b> <ul style="list-style-type: none"> <li>• Responses to any further information requested</li> <li>• Comments on responses to revised Book of Reference</li> </ul>	
REP9-001	<a href="#">Anglian Water Services Ltd- Deadline 9 Submission - response to the request for further information</a>
REP9-002	<a href="#">Crown Estate- Deadline 9 Submission - response to the request for further information</a>
REP9-003	<a href="#">DDM Agriculture (J Finch, JC Faulding&amp; Reeve Brothers) - Deadline 9 Submission - response to the request for further information</a>
REP9-004	<a href="#">DDM Agriculture (JC &amp; JD Faulding)- Comments relating to Applicants '8.35 Position Statement on Representations Received' document</a>
REP9-005	<a href="#">DDM Agriculture (J Finch)- Comments relating to Applicants '8.35 Position Statement on Representations Received' document</a>

REP9-006	<a href="#">DDM Agriculture (C Mills, W Tull, J Harrison and I &amp; V Wathen) - Comments relating to Applicants '8.35 Position Statement on Representations Received' document</a>
REP9-007	<a href="#">Environment Agency- Deadline 9 Submission - response to the request for further information</a>
REP9-008	<a href="#">Forsters LLP- Deadline 9 Submission - response to the request for further information</a>
REP9-009	<a href="#">National Grid Gas Plc- 1.6H-Master Version Control Document</a>
REP9-010	<a href="#">National Grid Gas Plc- 3.1E-Draft Development Consent Order</a>
REP9-011	<a href="#">National Grid Gas Plc- 3.4D-Comparison between DCO versions 3.1E and 3.1D</a>
REP9-012	<a href="#">National Grid Gas Plc- 4.3C-Book of Reference with correction notice</a>
REP9-013	<a href="#">National Grid Gas Plc- 7.8F-Schedule of Progress on Voluntary Negotiations</a>
REP9-014	<a href="#">National Grid Gas Plc- 8.5E-Schedule of Amendments to DCO and Plans</a>
REP9-015	<a href="#">National Grid Gas Plc- 8.36A-Refined Master Version Control Document</a>
REP9-016	<a href="#">National Grid Gas Plc- 8.37-Deadline 9 Covering Letter 4 March 2016</a>
REP9-017	<a href="#">National Grid Gas Plc- 8.38-Responses to Rule 17 Letter dated 26 February 2016</a>
REP9-018	<a href="#">National Grid Gas Plc- Response to Royal Mail's representation dated 12 October 2015</a>
REP9-019	<a href="#">Natural England- Deadline 9 Submission - response to the request for further information</a>
REP9-020	<a href="#">Paul and Gaynor Taylor- Deadline 9 Submission - response to the request for further information</a>
REP9-021	<a href="#">The Royal Society for the Protection of Birds- Deadline 9 Submission - response to the request for further information</a>
<b>Other Documents</b>	
OD-001	<a href="#">Regulation 24 Transboundary Screening document</a>
OD-002	<a href="#">Applicant response to request for consultation responses</a>
OD-003	<a href="#">Certificate of compliance with Regulation 13</a>
OD-004	<a href="#">Certificate of compliance with Section 56</a>

OD-005	<a href="#">Certificate of compliance with Section 59</a>
OD-006	<a href="#">Certificates of compliance covering letter</a>
OD-007	<a href="#">Schedule of Variation for s59 - Updated Book of Reference</a>
OD-008	<a href="#">S51 advice given to National Grid Gas plc</a>
OD-009	<a href="#">Mr Dale- Information requested by the ExA at the Preliminary Meeting</a>
OD-0010	<a href="#">National Grid Gas plc- Notification of hearings</a>



## APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
AA	Appropriate Assessment
ABP	Associated British Ports
ABP Mer	Associated British Ports Marine Environmental Research
ACM	Asbestos Containing Materials
AEP	Annual Exceedance Probability
AGI	Above Ground Installation
AHA	Agricultural Holdings Act
AHP	Able Humber Ports
AOD	Above Ordnance datum
AONB	Area of Outstanding Natural Beauty
Application draft DCO	The Applicant's draft DCO submitted with the application
BoR	Book of Reference
CA	Compulsory Acquisition
CE	Crown Estate
CEMP	Construction and Environmental Management Plan
CIA	Cumulative Impact Assessment
COMAH	Control of Major Accident Hazard
Compensation Code	No 'code' exists as such, but it is generally taken to mean the law as set out in the Land Compensation Acts 1961 and 1973 and the Compulsory Purchase Act 1965, as amended by subsequent legislation and supplemented by case law. An established legal process for settling matters of land compensation.
dB	Decibel
DBA	Desk Based Assessment
DCLG	Department for Communities and Local Government
DCLG compulsory acquisition guidance	Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land, Department of Communities and Local Government, September 2013
DCO	Development consent order (made or proposed to be made under the Planning Act 2008 (as amended))
DECC	Department of Energy and Climate Change
DEFRA	Department for Environment, Food and Rural Affairs
DML	Deemed Marine Licence
EA	Environment Agency
ECHR	European Convention of Human Rights
EEA	European Economic Area
EH	English Heritage
EIA	Environmental Impact Assessment
EM	Explanatory Memorandum
EN-1	National Policy Statement EN1: Overarching National Policy Statement for Energy, 19 July 2011, DCLG

Abbreviation or usage	Reference
EN-4	National Policy Statement EN4: National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines, 19 July 2011, DCLG
Environmental Design Measures	measures introduced during the design development of a project to reduce environmental impacts during construction
EPR	Examination Procedure Rules
EPS	European Protected Species
ERYC	East Riding of Yorkshire Council
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
Final draft DCO	The Applicant's Final draft DCO version 3.1E at the Examination close
FIRP	Flood Incident Response Plan
FRA	Flood Risk Assessment
HDD	Horizontal Directional Drilling
HE	Historic England
HGV	Heavy Goods Vehicle
HIA	Hydraulic Impact Assessment
HoTs	Heads of Terms (non legally binding agreement)
HRA	Habitat Regulations Assessment
HSE	Health and Safety Executive
IBA	Important Bird Area
IEMA	Institute of Environmental Management and Assessment
IPs	Interested Parties
ISH	Issue Specific Hearing
JCOP	Joint Code of Practice
JNCC	Joint Nature Conservation Committee
KER	Key Ecological Receptors
LA	Local Authority
LAm <sub>ax</sub>	The maximum A - weighted sound pressure level recorded over the period stated
LA <sub>eq</sub>	The notional steady sound level over a stated period of time
LDF	Local Development Framework
LDO	Local Development Order
LIR	Local Impact Report
LoW	List of Wastes
LPA	Local Planning Authority
LSE	Likely Significant Effects
LVIA	Landscape and Visual Impact Assessment
LWT	Lincolnshire Wildlife Trust
MACAA2009	Marine and Coastal Access Act 2009
MPA	Marine Protected Areas
MCA	Marine and Coastal Access Act 2009
MCZ	Marine Conservation Zone

Abbreviation or usage	Reference
MHWS	Mean High Water Springs
MMO	Marine Management Organisation
MMP	Materials Management Plan
MoD	Ministry of Defence
MPS	Marine Policy Statement
NE	Natural England
NELDB	North East Lindsay Drainage Board
NERC	The Natural Environment and Rural Communities Act 2006
NGG	National Grid Gas Plc
NGN	Northern Gas Networks
NLC	North Lincolnshire Council
NP	Northern Powergrid
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance
NPPW	National Planning Policy for Waste
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
NTS	National Transmission System
OFGEM	The independent regulator and competition authority for UK gas and electricity markets
PA2008	Planning Act 2008
PEIR	Preliminary Environmental Impact Report
PEMP	Project Environmental Management Plan
PHE	Public Health England
PI	Principal Issue
PM	Preliminary Meeting
PRoW	Public Rights of Way
Ramsar	The Ramsar Convention on Wetlands
Recommended DCO	The Development Consent Order (DCO) in Appendix D based on the Applicant's Final draft DCO
RIES	Report on the Implications for European Sites
RR	Relevant Representation
RSPB	Royal Society for the Protection of Birds
SAC	Special Area of Conservation
SNCB	Statutory Nature Conservation Body
SNCBs	Statutory Nature Conservation bodies – a collective reference
SoCG	Statement of Common Ground
Soff Lane diversion	The proposed construction haul route diversion identified by plots 115, 116.1, 116.2, 117 and 119 (Land Plans sheet 12 of 17 [REP7-009])
Secretary of State	Secretary of State
SHIDB	South Holderness Internal Drainage Board
SM	Scheduled Monument
SPA	Humber Estuary Special Protected Area (SPA)
SPVN	Schedule of Progress on Voluntary Negotiations
SSSI	Sites of Special Scientific Interest

Abbreviation or usage	Reference
SWMP	Site Waste Management Plan
TB	Transboundary
TMP	Traffic Management Plan
TP	Temporary Possession
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UK	United Kingdom
USI	Unaccompanied Site Inspection
WFD	Water Framework Directive
WMPE	Waste Management Plan for England
WSI	Written Scheme of Investigation
YWT	Yorkshire Wildlife Trust

## **APPENDIX D: RECOMMENDED DCO**

**201[X] No. [X]**

**INFRASTRUCTURE PLANNING**

**The River Humber (Gas Pipeline Replacement) Order 201[X]**

*Made* - - - - - \*\*\*

*Laid before Parliament* \*\*\*

*Coming into force* - - - \*\*\*

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An application was made to the Secretary of State in accordance with section 37 of the Planning Act 2008(a) for an order under sections 37, 114, 115, 120 and 122 of that Act.

The Examining authority(b) appointed by the Secretary of State examined the application in accordance with Chapter 4 of Part 6 of that Act(c) and made a recommendation under section 83 of that Act(d) that the application should be granted.

The Secretary of State, having the function of deciding the application(e), in exercise of the powers conferred by sections 103, 114, 115, 120 and 122 of that Act, makes the following Order—

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(a) 2008 c.29; section 37 is amended by the Localism Act 2011 (c.20) s.137 and Sch.13, para.5(2), (3).  
 (b) See Section 86 of the Planning Act 2008 as amended by the Localism Act 2011, Sch.13, para.37.  
 (c) The provisions of that Part are amended by the Localism Act 2011.  
 (d) Section 74 is amended by the Localism Act 2011, Sch.13  
 (e) See section 103 of the Planning Act 2008 as amended by the Localism Act 2011 Sch.13, 25.



# PART 1

## PRELIMINARY

### Citation and Commencement

1. This Order may be cited as the River Humber (Gas Pipeline Replacement) Order 201[X] and comes into force on [ ] 201[X].

### Interpretation

2.—(1) In this Order, unless the context requires otherwise—

“the 1961 Act” means the Land Compensation Act 1961(a);

“the 1965 Act” means the Compulsory Purchase Act 1965(b);

“the 1980 Act” means the Highways Act 1980(c);

“the 1984 Act” means the Road Traffic Regulation Act 1984(d);

“the 1990 Act” means the Town and Country Planning Act 1990(e);

“the 1991 Act” means the New Roads and Street Works Act 1991(f);

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009(g);

“access and rights of way plans” means the plans certified as the access and rights of way by the Secretary of State for the purposes of this Order and listed in Part 3 of Schedule 2 (plans);

“address” includes any number or address used for the purposes of electronic transmission;

“AGI” means an Above Ground Installation facility for the safe operation and maintenance of a pipeline;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“cathodic protection” means a technique used to control corrosion of a metal surface by making the metal surface a cathode of an electrochemical cell;

“commence” means the carrying out of a material operation, as defined in section 155 of the 2008 Act (when development begins), comprised in or carried out for the purposes of the authorised development, but does not include any remediation, environmental (including archaeological) surveys and investigation, site or soil survey, erection of site office, erection of fencing to site boundaries or marking out of site boundaries, the diversion or laying of services or environmental mitigation measures;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“drainage works” means that part of the authorised development comprised in sub-paragraph 2(j) (further associated development) of Schedule 1 (authorised development) and such other

- 
- (a) 1961 c.33.
  - (b) 1965 c.56.
  - (c) 1980 c.66.
  - (d) 1984 c.27.
  - (e) 1990 c.8.
  - (f) 1991 c.22.
  - (g) 2009 c.23.

further associated development in connection with that paragraph as is listed at sub-paragraphs 2 (a), (c), (d), (e), (f), (g), (h), (i) and (k) of that Schedule;

“drivers pack” the collection of measures defined in the initial TMP at Paull (4.4.3) and at Goxhill (3.5.10) to mitigate the effects of construction traffic;

“environmental statement” means the statement certified as the environmental statement by the Secretary of State for the purposes of this Order, together with any supplemental or additional environmental statement submitted for the purposes of complying with and/or discharging the requirements in Schedule 3 (requirements) or conditions in Schedule 9 (deemed marine licence) and listed in Part 4 of Schedule 2 (plans);

“Goxhill AGI” means the existing National Grid Gas AGI at Goxhill in North Lincolnshire as indicated on works plan 5;

“highway” has the same meaning as in the 1980 Act;

“highway authority” means North Lincolnshire Council or East Riding of Yorkshire Council as the case may be including their successor and where the relevant matter is located in the administrative areas of both then it means both;

“initial CEMP” means the construction environmental management plan certified by the Secretary of State for the purposes of this Order;

“initial TMP” means the traffic management plan certified by the Secretary of State for the purposes of this Order;

“the land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order and listed in Part 2 of Schedule 2 (plans);

“maintain” (except as provided in Part 5 of Schedule 9) includes inspect, maintain, adjust, alter, repair, test, cleanse, re-lay, divert (in accordance with articles 5 (maintenance of authorised development) and 6 (limits of deviation)), make safe, reconstruct, abandon, replace, remove and improve the authorised development or any of its parts (but not so as to vary from the description of the authorised development in Schedule 1); and any derivative of “maintain” must be construed accordingly;

“National Grid Gas” means National Grid Gas Plc (company number 2006000) whose registered office is at 1 - 3 Strand, London, WC2N 5EH or any successor company performing the same functions;

“Order land” means the land shown on the land plans which is within the limits of land, and interests in or rights over land, to be acquired and/or used and described in the book of reference;

“the Order limits” means the limits shown on the works plans within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

“Paull AGI” means the existing National Grid Gas AGI at Paull in the East Riding of Yorkshire as indicated on works plan 7;

“relevant planning authority” means North Lincolnshire Council or East Riding of Yorkshire Council as the case may be including their successor and where the relevant matter is located in the administrative areas of both then it means both;

“statutory undertaker” means any person falling within section 127(8) and 138(4A) of the 2008 Act or who has the benefit of the protective provisions in Schedule 10 (protective provisions);

“stopple” means a device inserted into a pipeline and opened to achieve the isolation or stopping of flow in a live pipeline;

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(a) 1981 c.67; the definition of “owner” is amended by the Planning and Compensation Act 1991 (c.34), Sch.15(I) para.9.

“stopple and bypass pit” means an excavation around the existing gas pipeline for the purposes of fitting a series of stopple tees to allow the tie-in of Work No. 1 to the existing gas pipeline, and a temporary bypass to maintain the supply of gas during tie-in works;

“stopple tee” means an encirclement device to allow insertion of a stopple into a pipeline;

“street” means a street within the meaning of section 48 of the 1991 Act<sup>(a)</sup>, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“traffic authority” has the meaning given in section 121A (traffic authorities) of the 1984 Act;

“true clean bed” means the interface between accumulated deposits and the underlying drift or solid geology of the Humber Estuary;

“UK marine area” has the same meaning as in section 42 of the 2009 Act<sup>(b)</sup>;

“undertaker” means the person who has the benefit of this Order in accordance with article 8 of this Order;

“watercourse” includes rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means the plans certified as the works plans by the Secretary of State for the purposes of this Order and listed in Part 1 of Schedule 2 (plans).

(2) Save for the definition of the “undertaker”, the definitions in paragraph (1) do not apply to Schedule 9 (deemed marine licence under Part 4 (marine licensing) of the Marine and Coastal Access Act 2009).

(3) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(4) All distances, directions and lengths referred to in this Order and any document referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work (and in particular in respect of scheduled linear works referred to in this Order all distances are measured along the indicative pipeline route as shown on the works plans for that work).

(5) All areas described in square metres in the book of reference are approximate.

(6) A reference in this Order to a work designated by a number, or by a combination of letters and numbers (for example, “Work No. 2”), is a reference to the work so designated in Schedule 1 (authorised development).

(7) A reference in this Order to a document or plan required to be submitted for certification under article 43 (certification of plans etc.) is a reference to the version of that document or plan that has been certified under article 43.

### **Application, modification and disapplication of legislative provisions**

**3.—**(1) The following provisions do not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised development—

- (a) Section 109 (structures in, over or under a main river of the Water Resources Act 1991)<sup>(c)</sup>; and
- (b) The provisions of any byelaws made under paragraphs 5, 6 or 6a of Schedule 25 to the Water Resources Act 1991, which require consent or approval for the carrying out of the works.

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(a) Section 48 is amended by the Local Transport Act 2008 (c.26), Pt 7 s.124(2).

(b) 2009 c.23.

(c) 1992 c.57.

(2) A power conferred by this Order may be exercised despite, and without having regard to, any provision of byelaws made by the East Riding of Yorkshire Council in its capacity as lead local flood authority; but this paragraph does not apply to a provision which permits the taking of any action with the consent of East Riding of Yorkshire Council, of an internal drainage board or of the Environment Agency.

## PART 2

### WORKS PROVISIONS

#### *Principal powers*

#### **Development consent etc. granted by the Order**

**4.** Subject to the provisions of this Order and to the requirements in Schedule 3 (requirements) the undertaker is granted—

- (a) development consent for the authorised development to be carried out within the Order limits; and
- (b) consent to use the authorised development for the purposes for which it is designed.

#### **Maintenance of the authorised development**

**5.**—(1) The undertaker may at any time maintain the authorised development within the Order limits.

(2) No maintenance works whose likely significant effects on the environment are not described in the environmental statement may take place, except for the maintenance works associated with an emergency.

#### **Limits of deviation**

**6.**—(1) Save in relation to the drainage works (in which case paragraph (2) applies), the undertaker may—

- (a) in respect of the location of any work comprised in the authorised development deviate laterally from the lines or situations shown on the works plans to the extent of the limits of deviation for that work shown on those plans; and
- (b) in respect of Work No.1 deviate vertically;
  - (i) for each or any part of Work No. 1 referred to in column 1 of the table below, to the limit upwards specified in relation to that part of Work No.1 in column 2 of that table;
  - (ii) to any extent downwards as may be found necessary or practical to a maximum depth of 70 metres below the surface of the ground; and
  - (iii) except that subparagraph (i) does not apply to those parts of Work No.1 that are built within the Goxhill AGI and the Paull AGI.

<i>(1)</i> <i>Scheduled Work</i>	<i>(2)</i> <i>Upwards Vertical Deviation Limits</i>			
	Below ground level (m)	Below watercourses (m)	Below true clean bed (m)	Below highways (m)
1A	1.2	1.7	Not applicable	Not applicable
1B	4.0	1.7	7.0	Not applicable
1C	1.2	1.7	Not applicable	2.0

- (c) deviate or place Work Nos. 2, 3, 4, 7 and 8 laterally and vertically to the limits set for these works in paragraph 1 of Schedule 1.

- (d) carry out construction activities for the purposes of the authorised development anywhere within the Order limits.
- (2) The undertaker may construct the drainage works anywhere within the Order limits.

### **Defence to proceedings in respect of statutory nuisance**

7.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (*summary proceedings by person aggrieved by statutory nuisance*) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (*noise emitted from premises so as to be prejudicial to health or a nuisance*) no order may be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (*prior consent for work on construction site*) or 65 (*noise exceeding registered level*), of the Control of Pollution Act 1974(b); or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with paragraph 13 of Schedule 3 (*requirements*); or
  - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (*consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990*) of the Control of Pollution Act 1974 and section 65(8) of that Act (*corresponding provision in relation to consent for registered noise level to be exceeded*), do not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### *Benefit of Order*

### **Benefit of Order**

8.—(1) Subject to article 9 (*Transfer of benefit of Order*), the provisions of this Order have effect solely for the benefit of National Grid Gas.

(2) Paragraph (1) does not apply to the benefit of the consent granted by this Order for works carried out by the undertaker for the benefit or protection of land or persons (including statutory undertakers) affected by the authorised development.

### **Transfer of benefit of Order**

9.—(1) The undertaker may with the consent of the Secretary of State—

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(a) 1990 c.43; section 82 is amended by section 5 of the Noise and Statutory Nuisance Act 1993 (c.40), Schedule 17 to the Environmental Act 1995 (c.25) and section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16).  
 (b) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions in this Order and such related rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

### *Streets*

#### **Street Works**

**10.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (*streets subject to street works*) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it (including for the purposes of carrying out surveys to ascertain the location of apparatus);
- (b) tunnel or bore under the street;
- (c) place apparatus in or under the street;
- (d) maintain apparatus in or under the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d) above.

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act<sup>(a)</sup>.

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1) save that—

- (a) section 61(1) of the 1991 Act (*under which the consent of the street authority is required for the placing of apparatus in a protected street*) does not apply to the placing of apparatus in the course of the authorised development;
- (b) section 62(2) of the 1991 Act (*power following the designation of a protected street to require removal or repositioning of apparatus already placed in the street*) does not, unless otherwise agreed with the undertaker, apply in relation to apparatus placed in the course of the authorised development; and
- (c) section 62(4) of the 1991 Act (*power when a designation as a protected street commences or ceases to give directions with respect to works in progress*) does not, unless otherwise agreed with the undertaker, apply in relation to the authorised development.

(4) In this article “apparatus” and “street works” have the same meanings as in Part 3 of the 1991 Act save that “apparatus” further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, monitoring kiosks and electricity cabinets.

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<sup>(a)</sup> Section 48 is amended by the Local Transport Act 2008 (c.26) s.124(2); section 51 is amended by Schedule 1 to the Traffic Management Act 2004 (c.18).

### **Power to alter layout, etc. of streets**

**11.**—(1) The undertaker may alter the layout of a street specified in column (2) of Schedule 5 (*streets subject to alteration of layout*) in the manner specified in relation to that street in column (3).

(2) Without prejudice to the specific powers conferred by article 4 (*development consent etc. granted by the Order*) or paragraph (4) but subject to paragraph (3), the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limiting the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track, verge or central reservation within the street;
- (b) alter the level or increase the width of any such kerb, footpath, footway, cycle track, verge or central reservation;
- (c) reduce the width of the carriageway of the street;
- (d) make crossovers and passing places;
- (e) carry out works for the provision or alteration of parking places, loading bays and cycle tracks; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (e) above.

(3) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority but such consent must not be unreasonably withheld or delayed.

(4) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (*streets subject to street works*) and Schedule 5 (*streets subject to alteration of layout*) as is within the Order limits and may—

- (a) execute any works to provide or improve sight lines required by the highway authority;
- (b) remove and replace kerbs and flume ditches for the purposes of creating permanent and temporary accesses;
- (c) execute and maintain any works to provide hard and soft landscaping;
- (d) carry out re-lining and placement of new temporary markings; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d) above.

### **Construction and maintenance of new, altered or diverted streets**

**12.**—(1) Any street to be constructed under this Order in respect of which the undertaker has given the highway authority notice that this paragraph applies must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed with the highway authority, must be maintained by and at the expense of the undertaker for a period of 24 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed with the street authority, be maintained by and at the expense of the undertaker for a period of 24 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) Where any street not previously part of the public highway is constructed pursuant to this Order it will on the undertaker giving notice to the highway authority (and street authority if different) that this paragraph applies be deemed to be dedicated for public use as highway on the completion of that street.

(4) Paragraphs (1) to (3) do not apply in relation to the structure of any bridge carrying a street.

(5) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it will be a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(6) For the purposes of a defence under paragraph (5), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

(7) Nothing in this article—

- (a) prejudices the operation of section 87 of the 1991 Act (*prospectively maintainable highways*); and the undertaker is not by reason of any duty under that section to maintain a street to be taken to be a street authority in relating to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to the street works with regard to which the provisions of Part 3 of the 1991 Act apply.

### **Temporary stopping up of streets and public rights of way**

**13.**—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street or any public right of way and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street or public right of way; and
- (b) subject to paragraph (2), prevent all persons from passing along the street or public right of way.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street or public right of way affected by the temporary stopping up, alteration or diversion of a street or public right of way under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets or public rights of way specified in Schedule 6 (*streets and public rights of way to be temporarily stopped up*) to the extent specified, by reference to the letters and numbers shown on the access and rights of way plans, in column 3.

(4) The undertaker may not temporarily stop up, alter or divert—

- (a) any street or public right of way specified as mentioned in paragraph (3) without first consulting the highway authority; and



- (b) any other street or public right of way without the consent of the highway authority, which must not be unreasonably withheld or delayed but the highway authority may attach reasonable conditions to any such consent.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

### Access to works

**14.**—(1) The undertaker may, for the purposes of the construction and/or the maintenance of the authorised development—

- (a) form and lay out means of access, or improve existing means of access, as specified in columns (1) and (2) of Schedule 7 (*access to works*); and
- (b) with the approval of the relevant planning authority, which is not to be unreasonably withheld or delayed, after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

### Traffic Regulation

**15.**—(1) Subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld or delayed, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with construction, operation, or maintenance of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road;

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker may not exercise the powers in paragraph (1) unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the undertaker's intention under sub-paragraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under paragraph (1)—

- (a) has effect as if duly made by, as the case may be—
  - (i) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
  - (ii) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act; and
- (b) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004<sup>(a)</sup> (*road traffic contraventions subject to civil enforcement*).

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(a) 2004 c.18.

(4) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (1) at any time.

(5) Before complying with the provisions of paragraph (2) the undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated.

(6) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

### **Agreements with street authorities**

**16.**—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the construction of any new street including any structure carrying the street over or under any part of the authorised development;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) any stopping up, alteration or diversion of a street authorised by this Order; or
- (d) the carrying out in the street of any of the works referred to in article 10(1) (*street works*).

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

#### *Supplemental powers*

### **Discharge of water**

**17.**—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits make opening into, and connections with, that watercourse, public sewer or drain.

(2) Any dispute arising from the making of connection to or the use of public sewer or drain by the undertaker pursuant to paragraph (1) must be determined as if it were a question arising under section 106 of the Water Industry Act 1991<sup>(a)</sup> (*right to communicate with public sewers*).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to observe the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river unless otherwise authorised under the provisions of Part 3 (*for the protection of the Environment Agency*) of Schedule 10 (*protective provisions*) of this Order.

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(a) 1991 c.56. Section 106 was amended by section 35(8)(a) of the Competition and Service (Utilities) Act 1992 (c.43) and by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise a groundwater activity or a water discharge activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2010(a).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environmental Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(b) (*interpretation*), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker(c) or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in those Regulations.

### **Authority to survey and investigate the land**

**18.**—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey and/or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and/or subsoil and/or to remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological, hydrogeological and/or archaeological investigations on the land; and/or
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and/or investigation of land, the making of trial holes.

(2) The power conferred by sub-paragraph (1)(c) includes without prejudice to the generality of that sub-paragraph the power to take, and process, samples of or from any of the following found on, in or over the land—

- (a) water;
- (b) air;
- (c) soil or rock;
- (d) its flora;
- (e) bodily excretions, or dead bodies, of non-human creatures; or
- (f) any non-living thing present as a result of human action.

(3) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(4) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey, investigation, monitoring, or to make the trial holes.

(5) No trial holes may be made under this article—

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(a) S.I.2010/675. “Groundwater activity” is defined in paragraph 3 of Schedule 22; and “water discharge activity” in paragraph 3 of Schedule 21.  
(b) 1964 c.40.  
(c) “Sewerage undertaker” is defined in Schedule 1 to the Interpretation Act 1978 (c.30).

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority, but such consent must not be unreasonably withheld or delayed.

(6) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

### **Removal of human remains**

**19.**—(1) In this article “the specified land” means any land within the Order limits.

(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the relevant planning authority.

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (4).

(12) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(14) Section 25 of the Burial Act 1857(a) ( *bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State*) does not apply to a removal carried out in accordance with this article.

(15) Sections 238 and 239 of the 1990 Act (*use and development of consecrated land and burial grounds*) apply—

- (a) in relation to land, other than a right over land, acquired for the purposes of the authorised development (whether or not by agreement), so as to permit use by the undertaker in accordance with the provisions of this Order; and
- (b) in relation to a right over land so acquired (whether or not by agreement), or the temporary use of land pursuant to articles 26 (*temporary use of land for carrying out the authorised development*) and 27 (*temporary use of land for maintaining the authorised development*), so as to permit the exercise of that right or the temporary use by the undertaker in accordance with the provisions of this Order, without prejudice to the status of the land over which the right is exercised as consecrated land,

and in section 238(1)(b) of the 1990 Act reference to a “planning permission” includes this Order, in section 240(1) of the 1990 Act reference to “regulations made for the purposes of sections 238(3) and (4) and 239(2)” means, so far as applicable to land or a right over land acquired under this Order, paragraphs (2) to (13) of this article and in section 240(3) of the 1990 Act reference to a “statutory undertaker” includes the undertaker and reference to “any other enactment” includes this Order.

(16) The Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950(b) do not apply to the authorised development.

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(a) 1857 c.81; section 25 is amended by the Criminal Justice Act 1982 (c.48) s.46.

(b) S.I. 1950/792.

**PART 3**  
**ACQUISITION AND POSSESSION OF LAND**  
*Powers of acquisition*

**Compulsory acquisition of land**

**20.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or is incidental to it.

(2) This article is subject to article 23 (*acquisition of subsoil only*) and article 26 (*temporary use of land for carrying out the development*).

**Compulsory acquisition of rights**

**21.**—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the land plans .

(2) Subject to section 8 of the 1965 Act, as substituted by article 31 (*acquisition of part of certain properties*), where the undertaker acquires an existing right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(3) Schedule 11 (*modification of compensation and compulsory purchase enactments for creation of new rights*) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

**Extinguishment and suspension of private rights**

**22.**—(1) Subject to the provision of this article, all private rights and restrictive covenants over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition by the undertaker of the land whether compulsorily or by agreement; or
- (b) on the date of entry, on the land by the undertaker under section 11(1) of the 1965 Act (*power of entry*),

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictive covenants over land owned by the undertaker which, being within the Order limits, is required for the purposes of this Order, are extinguished on the commencement of any activity authorised by this Order which interferes with or breaches such rights or such restrictive covenants.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition of rights or the imposition of restrictions under the Order shall be extinguished in so far as their continuance would be inconsistent with the exercise of the right acquired or the burden of the restriction imposed—

- (a) as from the date of the acquisition of the right or the benefit of the restriction by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right;

whichever is the earliest.

(4) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (*extinguishment of rights, and removal of apparatus, of statutory undertakers etc.*) or article 32 (*statutory undertakers*) applies.

(7) Paragraphs (1) to (3) and (5) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of it;

(iii) the undertaker's entry onto it; or

(iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made, in so far as it relates to the authorised development, at any time between the undertaker and the person in or to whom the right or restrictive covenant in question is vested, belongs or benefits.

(8) If any such agreement as is referred to in paragraph 7(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) Reference in this article to private rights and restrictive covenants over land includes any trust, incident, easement, wayleave, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

### **Acquisition of subsoil only**

**23.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph 20(1) of article 20 (*compulsory acquisition of land*) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent article 31 (*acquisition of part of certain properties*) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

### **Power to override easements and other rights**

**24.**—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

(a) an interference with an interest or right to which this article applies; or

(b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article “authorised activity” means—

(a) the erection, construction or carrying out, operation or maintenance of any part of the authorised development;

(b) the exercise of any power authorised by this Order; or

(c) the use of any land (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

- (a) is payable under section 7 or 10 of the 1965 Act<sup>(a)</sup>; and
- (b) must be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
  - (i) the compensation is to be estimated in connection with a purchase under that Act; or
  - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Nothing in this article may be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

**25.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981<sup>(b)</sup> applies as if this Order were a compulsory purchase order and as if the undertaker were a public authority under section 1(2) of that Act.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, has effect with the following modifications.

(3) In section 3 (*preliminary notices*), for subsection (1) there is substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.

(4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.

(5) In that section, for subsections (5) and (6) there is substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

(7) In section 7 (*constructive notice to treat*), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” are omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are to be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

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<sup>(a)</sup> There are amendments that are not relevant to this Order.

<sup>(b)</sup> 1981 c.66.



**Temporary use of land for carrying out the authorised development**

**26.**—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of—
  - (i) the land specified in columns (1) and (2) of Schedule 8 (*land of which temporary possession may be taken*) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule;
  - (ii) any Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (*powers of entry*) (other than in connection with the requisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 (*execution of declaration*) for the purposes of constructing and carrying out the authorised development;
- (b) remove any buildings and vegetation from that land referred to in paragraphs (1)(a)(i) and (a)(ii);
- (c) construct temporary works (including the provision of means of access) and buildings on that land referred to in paragraphs (1)(a)(i) and (a)(ii); and
- (d) construct and carry out any mitigation works on that land referred to in paragraphs (a)(i) and (a)(ii).

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of two years beginning with the date of completion of the authorised development; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the authorised development unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declaration) Act 1981,

and in this paragraph the date on which the authorised development is completed means the date on which the undertaker has certified that it is first capable of being brought into operational use for the purpose for which it was designed.

(4) Before giving up possession of land of which temporary possession has been taken under this article, unless otherwise agreed by the owners of the land, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under sub-paragraph (1)(d); or
- (c) remove any ground-strengthening works which have been placed in that land to facilitate construction of the authorised development.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act by the tribunal

using established relevant valuation principles under the Act notwithstanding that paragraph (5) relates to temporary possession rather than the compulsory acquisition of land.

(7) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from—

- (a) acquiring new rights over any part of that land under article 21 (*compulsory acquisition of rights*); or
- (b) acquiring any part of the subsoil or of the airspace over (or rights in the subsoil or of the airspace over) that land (other than plot 132 on the land plans) under article 23 (*acquisition of subsoil only*).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act<sup>(a)</sup> (*refusal to give possession to acquiring authority*) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (*application of compulsory acquisition provisions*).

(11) Subject to paragraph (3), nothing in this article prevents the taking of temporary possession pursuant to it more than once in relation to any land specified in paragraph (1).

### **Temporary use of land for maintaining the authorised development**

**27.**—(1) Subject to paragraph (2) the undertaker may during the maintenance period—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order limits for the purpose of gaining access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land, except as provided in paragraph (11).

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

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<sup>(a)</sup> Section 13 is amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15).

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (*further provisions as to compensation for injurious affection*) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (*refusal to give possession to acquiring authority*) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (*application of compulsory acquisition provisions*).

(11) Where the undertaker has identified a potential risk to the safety of—

- (a) the authorised development or any part of it; or
- (b) the public; or
- (c) the surrounding environment,

the requirement to serve not less than 28 days' notice under paragraph (3) does not apply and the undertaker may enter the land pursuant to paragraph (1) subject to giving such period of notice (if any) as is reasonably practicable in all the circumstances.

(12) In this article the "maintenance period" means in relation to any part of the authorised development the period of five years beginning with the date on which the authorised development is first brought into operational use for the purpose for which it was designed.

#### *Compensation*

#### **Disregard of certain interests and improvements**

**28.**—(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal must not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration as part of the authorised development was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) "relevant land" means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made as part of the authorised development, directly or indirectly concerned.

#### **Set-off for enhancement in value of retained land**

**29.**—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil), under article 21 (*compulsory acquisition of rights*), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and

- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,
- which will accrue to that person by reason of the construction of the authorised development.
- (3) The 1961 Act has effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

### **No double recovery**

**30.** Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions under this Order.

### *Supplementary*

### **Acquisition of part of certain properties**

**31.**—(1) This article applies instead of section 8(1) of the 1965 Act (*other provisions as divided land*) (as applied by section 125 of the 2008 Act) where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner is required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner is required to sell only the land subject to the notice to treat must, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner must sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

### **Statutory undertakers**

**32.**—(1) Subject to the provisions of Schedule 10 (*protective provisions*), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers shown on the land plans within the limits of the land to be acquired and described in the book of reference;
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers where such apparatus is anywhere within the Order limits; and
- (c) acquire compulsorily the new rights over land belonging to statutory undertakers described in the book of reference and shown on the land plans.

### **Recovery of costs of new connections**

**33.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 32 (*statutory undertakers*) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 32 (*statutory undertakers*) any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(a); and

“public utility undertaker” has the same meaning as in the 1980 Act.

### **Time limit for exercise of authority to acquire land compulsorily**

**34.**—(1) After the end of the period of five years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(b) as applied by article 25 (*application of the Compulsory Purchase (Vesting Declarations) Act 1981*).

(2) The authority conferred by article 26 (*temporary use of land for carrying out the authorised development*) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Rights under or over streets**

**35.**—(1) The undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### **Incorporation of the mineral code**

**36.** Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981(c) (*minerals*) are incorporated in this Order subject to the modifications that—

- (a) for “the acquiring authority” substitute “the undertaker”;
- (b) for “undertaking” substitute “authorised development”; and
- (c) for “compulsory purchase order” substitute “this Order”.

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(a) 2003 c.21; there are amendments to section 151 that are not relevant to this Order.  
(b) 1981 c.66.  
(c) 1981 c.67.

## PART 4

### MISCELLANEOUS AND GENERAL

#### **Application of landlord and tenant law 37.—**

- (1) This article applies to—
- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
  - (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,
- so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.
- (2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.
- (3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—
- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
  - (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
  - (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

#### **Deemed consent under Part 4 (marine licensing) of the Marine and Coastal Access Act 2009**

- 38.—**(1) A marine licence is deemed to have been issued to the undertaker under Part 4 (*marine licensing*) of the Marine and Coastal Access Act 2009(a).
- (2) The marine licence deemed to have been issued under this article is set out at Schedule 9 (*deemed marine licence under Part 4 (marine licensing) of the Marine and Coastal Access Act 2009*).

#### **Operational land for purposes of the 1990 Act**

**39.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(b) of the 1990 Act (*cases in which land is to be treated as not being operational land for the purposes of that Act*).

#### **Felling or lopping of trees or shrubs**

- 40.—**(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—
- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
  - (b) from constituting a danger to persons constructing, maintaining, operating or using the authorised development.

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(a) 2009 c.23; there are amendments that are not relevant to this Order.  
(b) 2009 c.23; there are amendments that are not relevant to this Order.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) The undertaker may remove—

- (a) hedgerows shown on the works plans; and
- (b) with the approval of the relevant planning authority, which is not to be unreasonably withheld or delayed, any other hedgerow within the Order limits if the undertaker reasonably believes it to be necessary to do so for the purposes of the construction and/or carrying out of the authorised development.

(4) The undertaker is not required to obtain any consent to remove a hedgerow referred to in paragraph (3) under the Hedgerows Regulations 1997<sup>(a)</sup>.

(5) Reference to “planning permission” in regulation 6 (permitted work) of the Hedgerows Regulations 1997 includes this Order.

(6) In this article—

- (a) “hedgerow” includes—
  - (i) hedgerows to which the Hedgerows Regulations 1997 apply; and
  - (ii) any part of a hedgerow.

(7) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

### **Protective provisions**

41. Schedule 10 (*protective provisions*) to this Order has effect.

### **Crown Rights**

42.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee—

- (a) to take, use, enter upon or in any matter interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—
  - (i) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
  - (ii) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
  - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown Land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without consent in writing of the appropriate Crown authority (as defined in the 2009 Act).

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and must be deemed to have been given in writing where it is sent electronically.

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(a) S.I. 2010/948.



### **Certification of plans etc.**

**43.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the access and rights of way plans;
- (b) the book of reference;
- (c) the environmental statement;
- (d) the land plans;
- (e) the works plans;
- (f) the initial CEMP; and
- (g) the initial TMP

for certification that they are true copies of the plans or documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Service of notices**

**44.**—(1) A notice or other document required or authorised to be served, given or supplied under this Order may be served, given or supplied in any of these ways—

- (a) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied;
- (b) by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address;
- (c) by sending it by post, addressed to that person at that person's usual or last known place of abode or, in a case where an address for service has been given by that person, at that address;
- (d) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at that person's usual or last known place of abode or, in a case where an address for service has been given by that person, at that address;
- (e) in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition set out in paragraph (2), to that person at that address;
- (f) in the case of an incorporated company or body—
  - (i) by delivering it to the secretary or clerk of the company or body at their registered or principal office;
  - (ii) by sending it by post, addressed to the secretary or clerk of the company or body at that office; or
  - (iii) by sending it in a prepaid registered letter or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office.

(2) The condition mentioned in sub-paragraph (e) is that the notice or other document must be -

- (a) capable of being accessed by the person mentioned in that provision;
- (b) legible in all material respects; and
- (c) in a form sufficiently permanent to be used for subsequent reference.

(3) For the purposes of paragraph (2), “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

### **Arbitration**

**45.** Any difference or dispute under any provision of this Order (other than a difference or dispute which falls to be determined by the tribunal) must, unless otherwise provided for in this Order or unless otherwise agreed between the parties, be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

### **Requirements**

**46.** Schedule 3 (requirements) to this Order has effect.

### **Procedure in relation to certain approvals etc.**

**47.** Schedule 12 (procedure in relation to certain approvals etc) to this Order has effect.

Signatory by authority of the Secretary of State

Date

*[Name of Secretary of State]*  
Department of [ ]

# SCHEDULES

## SCHEDULE 1

### AUTHORISED DEVELOPMENT

1. A nationally significant infrastructure project as defined in sections 14 and 20 of the 2008 Act and associated development within the meaning of section 115 of the 2008 Act comprising the works described below.

#### **In North Lincolnshire and the East Riding of Yorkshire—**

**Work No. 1** – A high-pressure gas transporter pipeline up to 6 kilometres in length and up to 1050 millimetres in diameter between the Goxhill AGI and Paull AGI and comprised of the following:

**Work No. 1A** – A high-pressure gas pipeline approximately 1,100 metres in length—

- (a) starting at the Goxhill AGI and ending at the indicative start point of Work No. 1B, with the indicative route shown by the blue line on works plans sheet 5 and subject to the limits of deviation in article 6 (*limits of deviation*); and
- (b) construction and installation of the pipeline by trenched and trenchless methods which may include the installation of a concrete-lined sleeve tunnel, drive shaft, backfilling of permanent structures.

**Work No. 1B** – A high-pressure gas pipeline approximately 3,800 metres in length—

- (a) starting at the indicative end point of Work No. 1A and ending at the indicative start point of Work No. 1C, with the indicative route shown by the pink line on works plans sheets 5 to 7 and subject to the limits of deviation in article 6 (*limits of deviation*); and
- (b) construction and installation of the pipeline by trenchless methods which may include the installation of a concrete-lined sleeve tunnel, backfilling of permanent structures.

**Work No. 1C** – A high-pressure gas pipeline approximately 750 metres in length—

- (a) starting at the indicative end point of Work No. 1B and ending at the Paull AGI, with the indicative route shown by the blue line on works plans sheet 7 and subject to the limits of deviation in article 6 (*limits of deviation*);
- (b) construction and installation of the pipeline by trenched and trenchless methods which may include the installation of a concrete-lined sleeve tunnel, reception shaft, backfilling of permanent structures; and
- (c) reinforcement of existing high-pressure gas pipeline within the Paull AGI.

#### **In North Lincolnshire—**

**Work No. 2A** – A buried array of cathodic protection anode canisters with relevant associated equipment, at the indicative location shown on works plans sheet 5, comprising an area not greater than 1,536 square metres at a depth not less than 1 metre below ground.

**Work No. 2B** – Underground cathodic protection cables connecting Work Nos. 2A and 2C to Work No. 1, at the indicative location shown on works plans sheet 5, comprising a strip not greater than 10 metres in width and not less than 1 metre below ground.

**Work No. 2C** – Works for the connection of Work No 1A into the Goxhill AGI and associated capping works to the existing Feeder 09 pipeline comprising an area no greater than 792 square metres at the indicative location shown in works plan sheet 5 —

- (a) temporary stopple and bypass pit;

- (b) buried permanent stopple tees deviating vertically to a depth no greater than 4 metres;
- (c) permanent above-ground nitrogen monitoring kiosk with dimensions not greater than 1 metre x 2 metres and not greater than 2 metres in height;
- (d) cathodic protection facility including up to four transformer rectifier kiosks each comprised of control cabinet and junction box on a concrete plinth with dimensions not greater than 1 metre x 2 metres and not greater than 2 metres in height; and
- (e) permanent post and rail fencing not greater than 1.5 metres in height.

**In the East Riding of Yorkshire—**

**Work No. 3A** – Works within the Paull AGI for the installation of above and below ground piping, and relevant associated insulation joints, valves, actuators and vents for the purposes of connecting Work No. 1C into the Paull AGI at the location shown on works plan sheet 7, such works not to be greater than 4 metres in height;

**Work No. 3B** – A cathodic protection facility including up to four transformer rectifier kiosks and distribution network operator kiosk, each comprised of control cabinet and junction box on a concrete plinth with dimensions not greater than 1 metre x 2 metres and not greater than 2 metres in height, surrounded by a post and rail fence, at the indicative location on works plan sheet 7.

**Work No. 3C** – Underground cathodic protection cables connecting Works No. 3B to Work No. 1, at the indicative location shown on works plans sheet 7, comprising a strip not greater than 6 metres in width and not less than 1 metre below ground.

**Work No. 3D** – Isolation works for the existing Feeder 09 pipeline at the indicative location shown in works plan sheet 7, comprising an area no greater than 154 square metres and—

- (a) temporary stopple and bypass pit;
- (b) buried permanent stopple tees deviating vertically to depth no greater than 4 metres; and
- (c) permanent above-ground nitrogen monitoring kiosk with dimensions not greater than 1 metre x 2 metres and not greater than 2 metres in height.

**Work No. 3E –**

- (a) a buried array of cathodic protection anode canisters with relevant associated equipment at the indicative location on works plan sheet 7 shown coloured blue, comprising an area not greater than 99 square metres at a depth not less than 1 metre below ground;
- (b) associated temporary construction areas for the installation of Work No. 3E(a) shown hatched green; and
- (c) temporary widening and improvement works for construction access for the authorised development.

**Associated development** in connection with the authorised development within the Order limits:

**In North Lincolnshire—**

**Work No. 4** – Temporary construction and work areas for use during the construction of the authorised development shown hatched green on sheet 5 of the works plans described as **Work Nos. 4A, 4B and 4C** to include—

- (a) office, staff training, welfare and security facilities;
- (b) power supplies and temporary lighting;
- (c) enclosures;
- (d) pipeline construction and pre-testing;
- (e) pipe equipment and fittings storage;
- (f) tunnel construction and drive pit, equipment and fittings storage;
- (g) plant storage;
- (h) fabrication area;

- (i) waste processing and management areas;
- (j) spoil treatment and storage areas;
- (k) installation of drainage, drainage attenuation and land drainage including outfalls;
- (l) internal haul roads;
- (m) access, parking and the installation of a temporary marshalled vehicular gate on East Marsh Road south of Fir Tree Farm, to be maintained during the construction of the authorised development;
- (n) vehicle maintenance area including washing facilities;
- (o) de-watering, recharging and water management areas including settlement lagoons; and
- (p) grout batching plant and up to four silos for the storage of grout (not greater than 15 metres in height),

**Work No. 4D** to include—

- (a) de-watering pipes, pumps and temporary groundwater discharge point at East Halton Beck (Skitter Drain);
- (b) safety ramps at the point/s where the hoses will cross Footpath 50 on the Goxhill side of the Humber Estuary;
- (c) temporary telemetry gauge for monitoring water levels;
- (d) demarcation fencing, access and laydown; and
- (e) the installation and maintenance for the operational lifespan of Work No.1 of a permanent vehicular gate at East Halton Skitter

together with any works required in connection with the above.

**In the East Riding of Yorkshire—**

**Work No. 5** – Temporary construction and work areas for use during the construction of the authorised development shown hatched green on sheet 7 of the works plans described as Work No. 5A to include—

- (a) office, welfare and security facilities;
- (b) power supplies and temporary lighting;
- (c) enclosures;
- (d) pipeline construction;
- (e) pipe equipment and fittings storage;
- (f) tunnel construction and reception pit, equipment and fittings storage;
- (g) plant storage;
- (h) fabrication area;
- (i) waste storage areas;
- (j) installation of drainage, drainage attenuation and land drainage including outfalls,
- (k) internal haul roads;
- (l) access and parking;
- (m) vehicle maintenance area including washing facilities;
- (n) de-watering and water management areas including settlement lagoons; and
- (o) spoil treatment and storage

**Work No. 5B** to include—

- (a) de-watering pipes and temporary groundwater discharge point to the Humber Estuary,
- (b) enclosures and pipe, equipment and fittings storage for the purposes of Work No 3D; and
- (c) access and laydown.

together with any works required in connection with the above.

**In North Lincolnshire—**

**Work No. 6** –Access works for use during the construction of the authorised development at the indicative locations shown in Schedule 5 described below:

**Work No. 6A** – Temporary widening of the junction of Thornton Road and College Road at the location shown on sheet 1 of the works plans.

**Work No. 6B** – Temporary widening of Soff Lane and an existing private access to be improved to provide temporary construction access at the location shown on sheet 1 of the works plans connecting with Work No. 6C.

**Work No. 6C** – Temporary construction access to the east of Brantwood at the location shown on sheet 1 of the works plans.

**Work No. 6D** – Widening of Chapel Field Road at the location shown on sheet 1 of the works plans.

**Work No. 6E** – Temporary widening of Chapel Field Road at the location shown on sheet 1 of the works plans.

**Work No. 6F** – Widening of Chapel Field Road at the location shown on sheet 2 of the works plans.

**Work No. 6G** – Widening of Chapel Field Road at the location shown on sheet 2 of the works plans.

**Work No. 6H** – Widening of Ferry Road at the location shown on sheet 3 of the works plans.

**Work No. 6I** – Widening of Ferry Road at the location shown on sheet 3 of the works plans.

**Work No. 6J** – Widening of Ferry Road at the location shown on sheet 3 of the works plans.

**Work No. 6K** – Widening of Ferry Road at the location shown on sheet 4 of the works plans.

**Work No. 6L** – Widening of Ferry Road at the location shown on sheet 4 of the works plans.

**Work No. 6M** –Widening of the junction of Ferry Road and East Marsh Road at the location shown on sheet 4 of the works plans.

**Work No. 6N** - Widening of East Marsh Road at the location shown on sheet 4 of the works plans.

**Work No. 6O** - Widening of East Marsh Road at the location shown on sheet 4 of the works plans.

**Work No. 6P** - Widening of East Marsh Road at the location shown on sheet 5 of the works plans.

**Work No. 6Q** – Widening and reinforcing of the junction of East Marsh Road and Chapel Field Road at the location shown on sheet 5 of the works plans.

**Work No. 6R** - Temporary widening of Chapel Field Road at the location shown on sheet 5 of the works plans.

**In the East Riding of Yorkshire—**

**Work No. 7** – Temporary settlement monitoring areas for Work No 1 shown hatched blue on sheet 7 of the works plans to include demarcation fencing, marker posts and monitoring pegs no greater than 2.4 metres in height.

**In North Lincolnshire—**

**Work No. 8** – Temporary settlement monitoring areas for Work No 1 shown hatched blue on sheet 5 of the works plans to include demarcation fencing, marker posts and monitoring pegs no greater than 1 metre in height.

**In the East Riding of Yorkshire—**

**Work No. 9** – Temporary access works for use during the construction of the authorised development at the locations shown below:

**Work No. 9A** – Temporary widening of Thorngumbald Road at the location shown on sheet 7 of the works plans.

**Work No. 9B** – Temporary widening of and improvement works of the private track at Rose Hill Farm at the location shown on sheets 7 and 8 of the works plans.

**Work No. 9C** – Temporary widening of Farbridge Lane and the junction with Paull Road at the location shown on sheet 8 of the works plans.

**In North Lincolnshire—**

**Work No. 10** – Temporary spoil storage area shown dotted black on sheet 5 of the works plans to include spoil handling and storage bunds, re-grading of soil and earthworks (bunds not to be greater than 4 metres in height).

**Work No. 11** – Temporary environmental management and mitigation area shown cross-hatched grey on works plans sheet 5 to be set aside during the construction of the authorised development for alternative roosting or foraging for birds associated with the Humber Estuary Special Protection Area.

**Work No. 12** – Temporary abstraction hoses connected to temporary caged high head pumps shown hatched green on works plans sheet 5.

**Work No.13** –

- (a) Temporary environmental management and mitigation area shown cross-hatched grey on works plans sheet 5 to be managed during the construction of the authorised development for alternative roosting or foraging for birds associated with the Humber Estuary Special Protection Area and Ramsar site; and
- (b) the installation and maintenance for the operational lifespan of Work No.1 of a permanent vehicular gate on private land off East Marsh Road.

**Further Associated Development**

2. Such associated development within the Order limits as may be necessary or expedient for the purposes of or in connection with the construction of the above Work Nos. or any of them (which fall within the scope of the works assessed by the environmental statement) consisting of—

- (a) site preparation works, site clearance (including fencing and vegetation removal), earthworks (including soil stripping and storage) and site levelling, pre-construction drainage;
- (b) in relation to Work Nos. 1, 2, 3, 4, 5 and 10 pipeline construction works including:
  - (i) surveying and setting-out;
  - (ii) tunnel boring, drive and reception pits, hydraulic rams, rollers and brackets, pipe thrusters and winch;
  - (iii) topsoil and subsoil stripping and storage;
  - (iv) archaeological surveys/investigations and watching brief;
  - (v) pipeline installation including pipe stringing, pipe bending, end preparation, front end welding, back end welding, fabrication welding, pipeline coating, pipeline trench excavation, trenchless crossings, lower and lay, sand padding, backfilling, pipeline

- tie-ins, re-grading of soil, post construction drainage, cross-ripping and reinstatement of top-soil, internally swab and gauge pipeline test sections;
- (vi) filling, testing and dewatering test sections;
  - (vii) aerial markers, cathodic protection test posts and field boundary markers;
  - (viii) reinstating test locations;
  - (ix) removing demarcation fencing;
  - (x) reinstating boundary walls, hedges, and fencing;
  - (xi) final gauge plate and calliper surveys;
  - (xii) drying and commissioning pipelines;
  - (xiii) isolating the existing gas pipeline;
  - (xiv) demobilisation from site; and
  - (xv) works to enable power supplies;
  - (xvi) de-watering systems and water management areas;
  - (xvii) power supplies and temporary lighting; and
  - (xviii) installation of wires, cables, conductors, pipes and ducts
- (c) works to remove or alter the position of apparatus including mains, sewers, drains and cables;
  - (d) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
  - (e) works for the benefit or protection of land affected by the authorised development;
  - (f) temporary access tracks;
  - (g) works required for the strengthening, improvement, maintenance or reconstruction of any streets;
  - (h) the carrying out of street works pursuant to article 10 (street works), works to alter the layout of streets pursuant to article 11 (power to alter layout, etc., of streets) and the alteration or removal of road furniture;
  - (i) ramps, means of access;
  - (j) installation of drainage, drainage attenuation and land drainage including outfalls; and
  - (k) such other works as may be necessary for the purposes of or in connection with the construction, operation or maintenance of the authorised development and which do not give rise to any materially different effects from those assessed in the environmental statement.

## SCHEDULE 2

### PLANS

#### PART 1

Article 2

#### WORKS PLANS

<i>Drawing Title</i>	<i>Sheet Number</i>	<i>Drawing Number</i>
Works plans – Key plan	Key Plan	W001
Works plans	Sheet 1 of 8	W002
	Sheet 2 of 8	W003
	Sheet 3 of 8	W004
	Sheet 4 of 8	W005



Sheet 5 of 8	W006
Sheet 6 of 8	W007
Sheet 7 of 8	W008
Sheet 8 of 8	W009

## PART 2

### LAND PLANS

Article 2

<i>Drawing Title</i>	<i>Sheet Number</i>	<i>Drawing Number</i>
Land plans – Key Plan	Key Plan	L001
Land plans	Sheet 1 of 17	L002
	Sheet 2 of 17	L003
	Sheet 3 of 17	L004
	Sheet 4 of 17	L005
	Sheet 5 of 17	L006
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	Sheet 7 of 17	L008
	Sheet 8 of 17	L009
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	Sheet 11 of 17	L012
	Sheet 12 of 17	L013
	Sheet 13 of 17	L014
	Sheet 14 of 17	L015
	Sheet 15 of 17	L016
	Sheet 16 of 17	L017
	Sheet 17 of 17	L018

## PART 3

### ACCESS AND RIGHTS OF WAY PLANS

Article 2

<i>Drawing Title</i>	<i>Sheet Number</i>	<i>Drawing Number</i>
Access and rights of way plans – Key plan	Key Plan	A001
Access and rights of way plans	Sheet 1 of 8	A002
	Sheet 2 of 8	A003
	Sheet 3 of 8	A004
	Sheet 4 of 8	A005
	Sheet 5 of 8	A006
	Sheet 6 of 8	A007
	Sheet 7 of 8	A008
	Sheet 8 of 8	A009

## PART 4

### ENVIRONMENTAL STATEMENT

Article 2

Document	Date	Document Title
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6.1	15 April 2015	Introduction
6.2	15 April 2015	Scheme Description
6.3	15 April 2015	Design Iterations and Alternatives Considered
6.3.1	15 April 2015	Appendix 3.1 Strategic Options Report
6.3.2	15 April 2015	Appendix 3.2 Alternatives - Route Corridor Investigation Study
6.4	15 April 2015	Appendix 3.3 Alternatives - Crossing Options Report A
6.4.1	15 April 2015	EIA Methodology and Construction Environmental Management
6.4.2	15 April 2015	Appendix 4.1 PINS Scoping Opinion Comments
6.5	15 April 2015	Air Quality
6.5.1	15 April 2015	Appendix 5.1 Dust risk Assessment
6.6	15 April 2015	Cultural Heritage
6.6.1	15 April 2015	Appendix 6.1 Desk-Based Assessment
6.6.2	15 April 2015	Appendix 6.2 Aerial Photograph Analysis at Paull
6.6.3	15 April 2015	Appendix 6.3 Geophysical Surveys Undertaken at Paull
6.6.4	15 April 2015	Appendix 6.4 Geophysical surveys Undertaken at Goxhill
6.6.5	15 April 2015	Appendix 6.5 Southend Bypass Geophysical Survey
6.7	15 April 2015	Ecology and Nature Conservation
6.7.1	15 April 2015	Appendix 7.1 Technical Appendix
6.7.2	15 April 2015	Appendix 7.2 Potentially Excepted Information
6.8	15 April 2015	Update Deadline 8?
6.8.1	15 April 2015	Geology and Soils
6.8.2	15 April 2015	Appendix 8.1 Environmental Agency and Local Authority Responses
6.8.2	15 April 2015	Appendix 8.2 Desk Study Report Plan 1
6.8.2	15 April 2015	Appendix 8.2 Desk Study Report Plan 2
6.8.3.2	15 April 2015	Appendix 8.2 Desk Study Report Plan 3
6.8.3	15 April 2015	Appendix 8.3 Ground Investigation Report
6.8.3.1	12 October 2015	Appendix 8.3 Addendum - Phase I Test Results and Factual Report Volume 1
6.8.3.2	12 October 2015	Appendix 8.3 Addendum - Phase I Test Results and Factual Report Volume 2
6.8.3.3	12 October 2015	Appendix 8.3 Addendum - Phase I Test Results and Factual Report Volume 3
6.8.3.4	12 October 2015	Appendix 8.3 Addendum - Phase I Test Results and Factual Report Volume 4
6.8.3.5	12 October 2015	Appendix 8.3 Addendum - Phase I Test Results and Factual

		Report Volume 5
6.8.3.6	12 October 2015	Appendix 8.3 Addendum - Phase I Test Results and Factual Report Volume 6
6.8.3.7	12 October 2015	Appendix 8.3 Addendum - Phase I Test Results and Factual Report Volume 7
6.8.3.8	12 October 2015	Appendix 8.3 Addendum - Phase I Test Results and Factual Report Volume 8
6.8.3.9	12 October 2015	Appendix 8.3 Addendum - Phase I Test Results and Factual Report Volume 9
6.8.3.10	12 October 2015	Appendix 8.3 Addendum - Phase I Test Results and Factual Report Volume 10
6.8.3.11	02 November 2015	Appendix 8.3 Addendum - Phase II Test Results and Factual Report
6.8.4	15 April 2015	Appendix 8.4 Paull Holme Strays Investigation Report
6.8.5	15 April 2015	Appendix 8.5 Chalk Report
6.8.6	15 April 2015	Appendix 8.6 Geophysical Survey Report 1
6.8.6	15 April 2015	Appendix 8.6 Geophysical Survey Report 2
6.8.6	15 April 2015	Appendix 8.6 Geophysical Survey Report 3
6.8.7	15 April 2015	Appendix 8.7 Information Relating to Stoneledge Field Investigation
6.8.8	15 April 2015	Appendix 8.8 Responses from Lincolnshire Environmental Records Centre East Yorkshire RIGS Group
6.8.9	15 April 2015	Appendix 8.9 Unexploded Ordnance Report
6.9	15 April 2015	Landscape and Visual Amenity
6.10	15 April 2015	Noise and Vibration
6.10.1	15 April 2015	Appendix 10.1 Noise Monitoring Installation Sheets and Time History
6.10.2	15 April 2015	Appendix 10.2 Noise Model Inputs
6.10.3	15 April 2015	Appendix 10.3 Noise Model Outputs
6.11	15 April 2015	Socio-Economics and Land Use
6.11.1	15 April 2015	Appendix 11.1 Agricultural Land Survey
6.12	15 April 2015	Traffic and Transport
6.13	15 April 2015	Water Resources
6.13.1	15 April 2015	Appendix 13.1 Water Framework Directive Assessment
6.13.2A	13 January 2016	Appendix 13.2 Initial Site Water Management Plan
6.13.2.1	13 January 2016	Comparison between Initial Site Water Management Plan versions 6.13.2 and 6.13.2A
16.13.3	15 April 2015	Appendix 13.3 Hydrogeological Impact Assessment
6.13.3.1	12 October 2015	Appendix 13.3 Addendum - Mini-Pumping Test Results and

		Factual Report
6.13.3.2	12 October 2015	Appendix 13.3 Addendum Report to Hydrogeological Impact Assessment
6.14	15 April 2015	Cumulative Effects
6.15	15 April 2015	Cumulative Effects
6.16	15 April 2015	Screening Opinions
6.17	15 April 2015	Scoping Opinion
6.18	15 April 2015	EIA Regulations Publicity Requirements
6.19	15 April 2015	Non-Technical Summary

## SCHEDULE 3 REQUIREMENTS

Article 46

### Interpretation

**1.** In this Schedule—

“the 2010 Regulations” means the Conservation of Habitats and Species Regulations 2010(a);

“AGIs” means Above Ground Installations, namely those parts of the authorised development that are the existing Paull and Goxhill AGIs;

“construction work” means works to construct the authorised development, or relevant part of it, excluding mobilisation of plant and equipment into, out of or within the Order limits;

“flood defence area” means the embankment bunds at Paull Holme Strays and Goxhill;

“initial site water management plan” means the site water management plan contained in the environmental statement;

“Requirement” means the appropriate numbered paragraph or paragraphs in this Schedule to which reference is made, for example “Requirement 6” or “these Requirements”;

“reinstatement” means the restoration of land within the Order limits for future use after construction of the authorised development;

“relevant highway authority” means North Lincolnshire Council or East Riding of Yorkshire Council as the case may be including their successor and where the relevant matter is located in the administrative areas of both then it means both;

“relevant planning authority” means North Lincolnshire Council or East Riding of Yorkshire Council as the case may be including their successor and where the relevant matter is located in the administrative areas of both then it means both; and

“stage” means part of the authorised development as approved under Requirement 3.

### Time limits

**2.** The authorised development must be commenced within five years of the date of this Order.

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(a) S.I. 2010/490.

## **Stages of the authorised development**

**3.**—No authorised development may commence until a written scheme setting out all stages of the authorised development has been submitted to and approved in writing by the relevant planning authority.

## **Detailed design approval**

**4.**—(1) No stage of the authorised development may commence until details of the layout, scale and external appearance of the following works within that stage (including any consultation responses from the Environment Agency for those parts of the authorised development within the flood defence area) have been submitted to and approved, in writing, by the relevant planning authority—

- (a) Works No. 1, 2 and 3 (the pipeline and associated permanent infrastructure);
- (b) Works No. 4, 5, 7, 8, 10 and 12 (temporary construction and work areas);
- (c) the detailed pipeline route alignment; and
- (d) additional lay down, storage and working areas.

(2) The works described in sub-paragraph (1)(a) to (d) must be carried out in accordance with the approved details or any subsequent revisions that have been submitted to and approved, in writing, by the relevant planning authority.

## **Site Water Management Plan**

**5.**—(1) No stage of the authorised development may commence until, for that stage, a site water management plan substantially in accordance with the initial site water management plan has been submitted to and approved by the relevant planning authority, in consultation with the Environment Agency.

(2) The site water management plan must include the following—

- (a) an updated hydrogeological impact assessment of the detailed design approved under Requirement 4;
- (b) details of further pump tests to confirm ground conditions (including anisotropy) at the drive pit (as indicated on works plan sheet 5);
- (c) details of the recharge/reinjection measures to ensure that net abstraction is minimised and groundwater is discharged to a location agreed with the Environment Agency;
- (d) details of any discharge to the Humber Estuary to a location agreed with the Environment Agency;
- (e) details of the groundwater implications of decommissioning the drive and reception pits and proposals for any necessary ongoing groundwater management;
- (f) a pre-, during and post-construction groundwater monitoring strategy to include the following:
  - (i) details of monitoring of groundwater levels adjacent to the proposed at the drive pit (as indicated on works plan sheet 5) and reception shaft (as indicated on works plan sheet 7);
  - (ii) net groundwater abstraction rates;
  - (iii) flow gauging in relevant surface water features;
  - (iv) baseline water chemical analysis; and
  - (v) a monthly review of monitoring data for the first six months post-construction followed by quarterly reviews until the Environment Agency has confirmed that it is satisfied that no further groundwater impacts will be identified (such confirmation not to be unreasonably withheld).
- (g) details of measures to ensure discharge from dewatering is non-polluting and will not exacerbate flood risk;

- (h) details of areas at risk of water pollution from surface water run-off, and any special control measures required in those areas;
- (i) details of measures to minimise suspension of and pollution due to sediment;
- (j) where it is considered necessary to store material in the flood plain, the requirements for mitigation will be agreed with the Environment Agency before construction commences;
- (k) details of hydrostatic testing requirements, including water sources and discharge points, and water quality monitoring of test water discharged; and
- (l) all necessary licenses and consents will be obtained.

(3) The construction works for each stage of the authorised development must be carried out in accordance with the approved site water management plan.

(4) The method of crossing main rivers and ordinary watercourses (including land drains) shall be undertaken in a manner which will not cause an increase in flood risk to any area upstream, downstream or surrounding the crossing.

### **Site Waste Management Plan**

**6.—**(1) No stage of authorised development may commence until a written site waste management plan has been submitted to and approved in writing, by the relevant planning authority in consultation with the Environment Agency and each stage of the authorised development must be carried out in accordance with the site waste management plan.

(2) The site waste management plan must include the following:

- (a) details of resource efficiency methods to be adopted;
- (b) register of resource efficiencies secured;
- (c) responsibilities for management of waste;
- (d) details of audits of the site waste management plan;
- (e) details of all waste to be generated on-site including quantities, EWC code, waste type and disposal route; and
- (f) details of all waste facilities to be used including the site name, address and site code.

### **Removal of trees and hedgerows**

**7.—**(1) No stage of the authorised development involving the felling or lopping of trees or hedgerows under article 40 (*felling or lopping of trees or shrubs*) as shown on works plans sheets 5 and 7 may commence until, for that stage, details (if any) identifying the trees, groups of trees and hedgerows to be removed and, where appropriate reinstated during that stage have been submitted to and approved by the relevant planning authority.

(2) Each stage of the authorised development must be carried out in accordance with the approved details (if any) for that stage.

(3) Any hedge or tree planting which is part of the approved details that, within 2 years after planting, is removed, dies or (in the opinion of the relevant planning authority) becomes seriously damaged or diseased, must be replaced in the first available planting season with planting material of the same specification as that originally planted.

### **Hard landscaping and drainage**

**8.—**(1) No stage of the authorised development may commence until, for that stage, details of drainage methods for both temporary and permanent works have after consultation with the drainage authority and the Environment Agency been submitted to and approved by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved details.

### **Agricultural land drainage**

**9.**—(1) No stage of the authorised development may commence until a written scheme, applicable to that stage, to deal with agricultural land drainage within the Order limits has been submitted to and approved, in writing, by the relevant planning authority.

(2) The purpose of the scheme is to ensure that, during and following construction, the efficiency of drainage is maintained within and outside the works limits.

(3) The scheme must include an investigation and assessment report giving details of existing drainage arrangements and requirements for pre-construction works and post-construction reinstatement to be agreed with the relevant planning authority.

(4) Works must be carried out in accordance with the approved scheme.

### **Archaeology**

**10.**—(1) No stage of the authorised development may commence until a written scheme of archaeological investigation for that stage has been submitted to and approved by the relevant planning authority.

(2) The written scheme must identify areas where a programme of archaeological investigation is required and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found; the written scheme must accord with the document *River Humber Gas Pipeline Replacement Project Archaeological Mitigation Strategy and Written Scheme of Investigation*, Arcadis, February 2016, and any subsequent updates, to be agreed by the relevant planning authority.

(3) Any archaeological works or watching brief for a stage of the authorised development must be carried out in accordance with the approved written scheme for that stage.

(4) Any archaeological works carried out under the approved written scheme must be by a suitably qualified person or body approved by the local planning authority.

(5) A copy of any analysis, reporting, publication or archiving required as part of the written scheme must be deposited with the Historic Environment Record of the relevant planning authority within one year of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority.

### **Construction hours**

**11.**—(1) Subject to Requirements 11(3) and 11(4), construction work must not take place outside the following hours—

- (a) 07:00 and 19:00 from Monday to Friday; and
- (b) 08:00 and 16:00 on Saturdays

except in the event of an emergency.

(2) In the event of an emergency, notification of that emergency must be given to the relevant planning authority as soon as practicable.

(3) The following operations may take place outside the working hours referred to in Requirement 11(1)—

- (a) tunnel boring (including associated spoil movement within the Order limits, segment installation and slurry batching);
- (b) filling, testing, dewatering and drying;
- (c) dewatering activities; and
- (d) commissioning of Work No 1 and isolation of the existing gas pipeline.

(4) Nothing in Requirement 11(1) above precludes—

- (a) start-up and shut-down activities up to an hour either side of core working hours; and

- (b) maintenance at any time of plant and machinery engaged in the construction of the authorised development.

(5) In this Requirement “emergency” means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable opinion of the undertaker would outweigh the adverse effects to the public (whether individuals, classes or generally as the case may be) of taking that action.

### **Construction Environmental Management Plan**

**12.**—(1) No stage of the authorised development may commence until a construction environmental management plan relating to the works has been submitted to and approved by the relevant planning authority.

(2) The construction environmental management plan must be substantially in accordance with, and include the following plans and strategies, from the initial CEMP—

- (a) details of fencing and enclosures;
- (b) a pollution prevention and control plan;
- (c) a sustainable procurement plan;
- (d) a materials management plan;
- (e) a reinstatement plan, including soil handling and restoration measures;
- (f) an energy reduction plan;
- (g) an emergency response/ spill response plan;
- (h) a refuelling procedure;
- (i) a flood risk management plan;
- (j) flood incident response plan; and
- (k) marsh harrier monitoring and mitigation strategy.

(3) All construction works must be undertaken in accordance with the approved construction environmental management plan.

(4) Any works carried out pursuant to the plans, scheme and strategy referred to in subparagraph (2) must be carried out in accordance with the approved plan, scheme or strategy.

### **Noise**

**13.**—(1) No stage of the authorised development may commence until a written scheme for noise management during construction and maintenance of that stage has been submitted to and approved, in writing, by the relevant planning authority.

(2) The scheme must set out the particulars of—

- (a) the works, and the method by which they are to be carried out;
- (b) the noise attenuation measures to be taken to minimise noise resulting from the works, including any noise limits; and
- (c) monitoring to be undertaken at identified sensitive receptors pre- and during construction.

(3) The approved noise management scheme must be implemented before and maintained during construction and maintenance of the relevant stage of the authorised development.

(4) The construction and maintenance works must be undertaken in accordance with the approved noise management scheme.

### **Contaminated land and groundwater**

**14.**—(1) In the event that contamination is found at any time when carrying out the authorised development that has not been previously identified it must be reported in writing immediately to the relevant planning authority.



(2) An investigation and risk assessment must be completed in accordance with a scheme to assess the nature and extent of any contamination on the part of the Order limits within which works are being carried out, whether or not that contamination originates on that part of the Order limits; and—

- (a) the contents of that scheme are subject to the approval in writing of the relevant planning authority; and
- (b) that investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced.

(3) Where remediation is required a detailed remediation scheme to bring a part of the Order limits within which works are being carried out to a condition suitable for the intended use must be prepared and submitted for the written approval of the relevant planning authority; and—

- (a) the approved remediation scheme must be carried out in accordance with its terms; and
- (b) following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced and approved in writing by the relevant planning authority.

### **Construction traffic and accesses**

**15.**—(1) No stage of the authorised development may commence until a traffic management plan, substantially in accordance with the initial TMP, has been submitted to and, following consultation with the highway authority and Highways England, been approved by the relevant planning authority.

(2) The plan must include details of:

- (a) siting, design and layout of works to the public highway for the purposes of construction traffic and access;
- (b) construction vehicle routeing;
- (c) the scheduling and timing of movements and details of abnormal load movements;
- (d) pre and post condition surveys of the construction traffic routes, the methodology used for assessing the need for improvements and the funding provision of required highway works;
- (e) management of junctions and crossings of public rights of way;
- (f) marking and identification of construction vehicles;
- (g) driver information packs;
- (h) planned monthly inspections of the access roads and associated verges to establish temporary works/repairs and the funding provision; and
- (i) temporary vehicle parking, loading, off-loading and manoeuvring facilities for contractors which will be in operation during the lifespan of the construction works.

(3) Each stage of the authorised development must be carried out in accordance with the traffic management plan for that stage.

(4) Unless otherwise approved by the relevant planning authority in the traffic management plan, or in case of emergency, the following restrictions on the movement of vehicles will apply:

- (a) Construction vehicles must not enter the site except between the hours of 0900 and 1515 during term time of North Lincolnshire Council district school(s)
- (b) Construction vehicles must leave the site using the outbound construction route identified in the initial TMP
- (c) Construction vehicles must not leave the site between 1900 hours and 0700 hours the following day
- (d) All site-related traffic must follow the designated route identified within the Drivers Information Pack in the initial TMP

## **Restoration of land used temporarily for construction**

**16.** Subject to article 26(4) (*temporary use of land for carrying out the authorised development*), any land within the Order limits which is used temporarily for or in connection with construction must be reinstated to a condition fit for its former use, or such other condition as the relevant planning authority may approve, within 12 months of completion of the authorised development.

## **Temporary external lighting**

**17.**—(1) No stage of the authorised development may commence until details of any temporary external lighting to be installed at that stage, including measures to prevent light spillage, have been submitted to and approved, in writing, by the relevant planning authority.

(2) The details must include and take account of any consultation responses from the local highway authority.

(3) The temporary external lighting must be installed in accordance with the approved details.

(4) Any submission to vary the approved details must include copies of and take account of any consultation responses from the local highway authority.

## **Environmental mitigation land**

**18.**—(1) During the construction of the authorised development:

- (a) no storage, use of plant, construction work or other authorised development may take place above ground within Work No. 11 or Work No. 13;
- (b) Work No.11 must be maintained as short sward pasture suitable for foraging by golden plover, lapwing and curlew;
- (c) no gas guns for the scaring of birds may be used within Work No. 13;
- (d) prior to the cultivation of land within Work No.13 each year, 20 tonnes of organic matter per hectare must be applied to the soil, or such other amount and/or frequency as may be agreed in writing by Natural England in consultation with the Royal Society for the Protection of Birds; and
- (e) during winter the height of vegetation on land within Work No.11 and Work No.13 must not exceed a height of 15cm.

## **Ecological Surveys**

**19.**—(1) No stage of the authorised development may commence until it has been established by survey work whether any water voles or badgers are present within the Order limits or may be affected by the works.

(2) Where water voles or badgers are shown to be present or may be affected, that stage must only be commenced following appropriate consultation with Natural England and after any necessary licence has been obtained from Natural England pursuant to regulation 53 (*licences for certain activities relating to animals or plants*) of the Conservation of Habitats and Species Regulations 2010(a).

## **Requirement for written approval**

**20.** Where under any of the Requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be given in writing.

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(a) S.I. 2010/490.

### Amendments to approved details

21.—(1) With respect to any Requirement which requires the authorised development to be carried out in accordance with details approved by the relevant planning authority, the approved details include any amendments that may subsequently be approved in writing by the relevant planning authority to the extent that the authority may lawfully do so.

(2) Any amendment or variation from the approved details must be in accordance with the principles and assessment set out in the environmental statement.

## SCHEDULE 4

Article 10

### STREETS SUBJECT TO STREET WORKS

(1) <i>Area</i>	(2) <i>Street subject to Street Works</i>
East Riding of Yorkshire	Thorngumbald Road – Work No. 3E on sheet 7 of the works plans

## SCHEDULE 5

Article 11

### STREETS SUBJECT TO ALTERATION OF LAYOUT

(1) <i>Area</i>	(2) <i>Street subject to Alteration of Layout</i>	(3) <i>Description of Alteration</i>
North Lincolnshire	Thornton Road and College Road	Temporary construction access. Temporary widening of the junction of the roads at the location shown as Work No. 6A on sheet 1 of the access and rights of way plans.
North Lincolnshire	Soff Lane	Temporary construction access. Temporary widening of the junction of Soff Lane and the existing private access at location 6B on sheet 1 of the access and rights of way plans.
North Lincolnshire	Chapel Field Road	Temporary construction access. Widening of the road at points shown as Work Nos. 6D, 6F and 6G and temporary widening of Work Nos. 6E and 6R on sheets 2 and 5 of the access and rights of way plans.
North Lincolnshire	Ferry Road	Temporary construction access. Widening of the road at points shown as Work Nos. 6H, 6I, 6J, 6K and 6L on sheets 3 and 4 of the access and rights of way plans.
North Lincolnshire	Ferry Road and East Marsh Road	Temporary construction access. Widening of the junction of the roads at the point shown as Work No. 6M on sheet 4 of the access and rights of way plans.

North Lincolnshire	East Marsh Road	Temporary construction access. Widening of the road and junction with the existing private track at Rose Hill Farm at the locations marked as Work Nos. 6N, 6O and 6P on sheets 4 and 5 of the access and rights of way plans.
North Lincolnshire	East Marsh Road and Chapel Field Road	Temporary construction access. Widening of the junction of the roads at the point marked as Work No. 6Q on sheet 5 of the access and rights of way plans.
East Riding of Yorkshire	Thorngumbald Road	Temporary construction access. Temporary widening of the road at the location marked as Work No. 9A on sheet 7 of the access and rights of way plans.
East Riding of Yorkshire	Farbridge Lane and the Junction with Paull Road	Temporary construction access. Temporary widening at the location marked as Work No. 9C on sheet 8 of the access and rights of way plans.

## SCHEDULE 6

Article 13

### STREETS AND PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street/Footpath subject to Temporary Stopping Up</i>	<i>(3)</i> <i>Extent of Temporary Stopping Up</i>
East Riding of Yorkshire	Footpath 1	Between points A and B as shown on the access and rights of way plans.
East Riding of Yorkshire	Footpath 6	Between points C and D as shown on the access and rights of way plans.

## SCHEDULE 7

Article 14

### ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Access Details</i>
North Lincolnshire	Temporary construction access to the east of Brantwood at the location shown as Work No 6C on sheet 1 of the access and rights of way plans.
North Lincolnshire	Improvement of existing private access off Soff Lane to provide temporary construction access at Work No. 6B on sheet 1 of the access and rights of way plans.
East Riding of Yorkshire	Improvement works to the private track at Rose Hill Farm at the location shown as Work No. 9B

on sheets 7 and 8 of the access and rights of way plans.

## SCHEDULE 8

Article 26

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) <i>Area</i>	(2) <i>Plot number of land shown on land plans</i>	(3) <i>Purpose for which temporary possession may be taken</i>	(4) <i>Relevant part of the authorised development</i>
North Lincolnshire; East Riding of Yorkshire	31, 32, 33, 35.1, 35.2, 39.2, 42, 44, 50, 51, 52, 53, 54.1, 54.2, 55, 56, 57, 58, 59, 60, 72, 74, 78, 79, 86	Construction and carrying out of the authorised development and purposes ancillary hereto.	Work No. 1A Work No. 1B Work No. 1C
North Lincolnshire	74, 75, 77, 78, 80, 82, 84, 85, 86	Construction and carrying out of the authorised development and purposes ancillary hereto.	Work No. 2A Work No. 2B Work No. 2C
East Riding of Yorkshire	9, 12, 13, 14, 15, 17, 18, 35.1, 35.2, 44	Construction and carrying out of the authorised development and purposes ancillary hereto.	Work No. 3C Work No. 3E
North Lincolnshire	60, 61, 62, 64, 65, 66, 67, 68, 69, 70, 73, 74, 76, 77, 78, 79, 80, 81, 82, 83, 84, 88, 89, 91, 100, 101, 102, 105, 106	Temporary construction, laydown and work areas for the construction and carrying out of the authorised development and purposes ancillary or incidental thereto.	Work No. 4A Work No. 4B Work No. 4C Work No. 4D
East Riding of Yorkshire	19, 20.1, 20.2., 21, 22, 23, 24, 25, 27.1, 27.2, 28, 31, 32, 33, 34, 38, 39.2, 42, 43	Temporary construction, laydown and work areas for the construction and carrying out of the authorised development and purposes ancillary or incidental thereto.	Work No. 3E Work No. 5A Work No. 5B
East Riding of Yorkshire	46	Construction access for the construction and varying out of the authorised development and purposes ancillary and incidental hereto.	Work No. 1C Work No. 5A

North Lincolnshire	91, 92, 93, 94, 107, 108, 109, 110, 111, 112, 115, 116.1, 116.2, 117, 119, 121, 122, 123, 124, 125, 126, 127, 129, 130, 131	Construction access works for the construction and carrying out of the authorised development and purposes ancillary or incidental thereto.	Work No. 6
East Riding of Yorkshire	47, 48, 49, 50, 51, 52, 53, 54.1	Settlement monitoring in relation to Work No. 1 and purposes ancillary or incidental thereto.	Work No. 7
North Lincolnshire	60, 69	Settlement monitoring in relation to Work No. 1 and purposes ancillary or incidental thereto.	Work No. 8
East Riding of Yorkshire	1, 2, 3, 6, 7, 8, 9, 10, 16	Construction access works for the construction and carrying out of the authorised development and purposes ancillary or incidental thereto.	Work No. 9
North Lincolnshire	102, 103, 104	The storage of spoil in relation to the construction and carrying out of the authorised development and purposes ancillary or incidental thereto.	Work No. 10
	67, 71, 72, 132, 133	Environmental management and mitigation for alternative roosting or foraging for birds during the construction of the authorised development and purposes ancillary or incidental thereto.	Work No. 11 and Work No.13
	62, 63, 64	Construction and carrying out of the authorised development, temporary abstraction hoses, temporary caged high head pumps and purposes ancillary or incidental thereto.	Work No. 12

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## DEEMED MARINE LICENCE UNDER PART 4 (MARINE LICENSING) OF THE MARINE AND COASTAL ACCESS ACT 2009

### PART 1 INTRODUCTION

#### Interpretation

1.—(1) In this Schedule—

“the 2008 Act” means the Planning Act 2008(a);

“the 2009 Act” means the Marine and Coastal Access Act 2009(b);

“authorised development” means the development and associated development described in Schedule 1 (*authorised development*) to the Order, and any other development authorised by the Order, which is development within the meaning of section 32 of the 2008 Act;

“licence holder” means the undertaker and any agent, contractor sub-contractor acting on its behalf;

“licensable activity” means an activity licensable under section 66 of the 2009 Act;

“licensed activity” means any activity described in Part 2 of this Schedule;

“MMO” means the Marine Management Organisation, the body created under the Marine and Coastal Access Act 2009 which is responsible for the monitoring and enforcement of this licence;

“the Order” means the River Humber (Gas Pipeline Replacement) Order 201[X](c);

“the undertaker” means National Grid Gas plc (registered company number 2006000); and

“Work No. 12” means temporary abstraction hoses connected to temporary caged high head pumps shown hatched green on works plans sheet 5.

(2) Unless otherwise specified, all geographical co-ordinates given in this Schedule are in latitude and longitude degrees and minutes to two decimal places.

#### Addresses

2.—(1) Unless otherwise advised in writing by the MMO, the address for postal correspondence with the MMO for the purposes of this Schedule is the Marine Management Organisation, Marine Licensing Team, Lancaster House, Newcastle Business Park, Newcastle upon Tyne, NE4 7YH, telephone 0300 123 1032, and where contact to the local MMO office is required, the following contact details should be used: Eastern Marine Area, Marine Management Organisation, Estuary House, Wharnccliffe Road, Grimsby, Lincolnshire DN31 3QL, telephone 01472 355 112, email Grimsby@marinemanagement.org.uk.

(2) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this Schedule is marine.consent@marinemanagement.org.uk.

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(a) 2008 c.29.  
 (b) 2009 c.23.  
 (c) S.I. 201[ ]/ [ ].

## PART 2

### LICENSED ACTIVITIES

3.—(1) Subject to the licence conditions in Part 4 of this Schedule, this licence authorises the licence holder to carry out any licensable marine activities under section 66(1) of the 2009 Act which—

- (a) form part of, or are related to, the authorised development; and
  - (b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 of the 2009 Act.
- (2) Such activities are authorised in relation to the construction maintenance and operation of—  
**Work No. 12** – the construction of works in or over the sea and/or on or under the sea bed by the temporary placing of caged high head pumps and suction hoses in the River Humber at Goxhill, North Lincolnshire;

(3) The grid coordinates for the offshore Order limits in Work No. 12 are specified below and more particularly shown on sheet 5 of the works plans:

<i>Point</i>	<i>Degrees</i>	<i>Minutes</i>	<i>Seconds</i>
A	N53	41	44
	W-0	15	51
B	N53	41	42
	W-0	15	51
C	N53	41	41
	W-0	15	57
D	N53	41	40
	W-0	15	56

## PART 3

### ENFORCEMENT

4. Any breach of this Schedule does not constitute a breach of this Order but is subject to the enforcement regime in Chapter 3 of Part 4 of the 2009 Act as if this Schedule were a licence granted under that Act.

## PART 4

### CONDITIONS

5. The conditions set out at paragraphs 6 to 11 of this Schedule are licence conditions attached to the deemed marine licence granted by article 38 (*deemed marine licence*).

6. The licence holder must inform the MMO in writing of the intended start date and the likely duration of licensed activities on a site at least 10 working days prior to the commencement of the first licensed activity on that site.

7. Should the licence holder become aware that any of the information on which the granting of this deemed marine licence was based has changed or is likely to change, the licence holder must notify the MMO at the earliest opportunity.

8. The licence holder must ensure that any coatings and treatments used are approved by the Health and Safety Executive as suitable for use in the marine environment and are used in accordance with Environment Agency Pollution Prevention Control Guidelines.



9. The licence holder must ensure that any equipment, temporary structures, waste and debris associated with the works are removed within 6 weeks of completion of the licensed activity.

10. The licence holder must ensure that the MMO local Marine Office is notified of the completion of works and operations at least 10 days following the completion of the works.

11. The licence holder must notify the MMO in writing of any agents, contractors or sub-contractors that will carry on any licensed activity listed in this licence on behalf of the licence holder. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity. The licence holder must ensure that a copy of this licence and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors or sub-contractors that will carry on the licensed activity on behalf of the licence holder.

## SCHEDULE 10 PROTECTIVE PROVISIONS

Article 41

### PART 1 FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

#### **Application**

1. For the protection of the statutory undertakers referred to in this Part of this Schedule (save for Anglian Water and Centrica which are protected by Parts 4 and 5 of this Schedule) the following provisions, unless otherwise agreed in writing at any time between the undertaker and the statutory undertaker concerned, have effect.

#### **Interpretation**

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the statutory undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity statutory undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a), belonging to or maintained by that electricity statutory undertaker for the purposes of electricity supply;
- (b) in the case of a gas statutory undertaker, any mains, pipes or other apparatus belonging to or maintained by that gas transporter for the purposes of gas supply;
- (c) in the case of a water statutory undertaker, mains, pipes or other apparatus belonging to or maintained by that water statutory undertaker for the purposes of water supply; and
- (d) in the case of a sewerage statutory undertaker—
  - (i) any drain or works vested in the statutory undertaker under the Water Industry Act 1991(b) and Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011(c); and

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(a) 1989 c.29.  
(b) 1991 c.56.  
(c) S.I. 2011/1566.

- (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and in each case includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“commence” has the same meaning as in article 2 (*Interpretation*);

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“pipeline” means the whole or any part of a pipeline belonging to or maintained by an statutory undertaker and includes any ancillary works and apparatus;

“plan” includes a section and description of the works to be executed;

“statutory undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);
- (c) a water statutory undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage statutory undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the statutory undertaker to whom it belongs or by whom it is maintained.

### **On-street apparatus**

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

### **Acquisition of apparatus**

4. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

### **Removal of apparatus**

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of a statutory undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give the statutory undertaker in question written notice of that requirement, together with a plan of the work proposed.

(3) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed on the land referred to in sub-paragraph (2), the statutory undertaker in question must, on receipt of a written notice to that effect from the undertaker, as

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(a) 1986 c.44.

soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in other land in which the alternative apparatus is to be constructed.

(4) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 45 (*arbitration*), and after the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to the statutory undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus, that work, instead of being executed by the statutory undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the statutory undertaker.

### **Retained apparatus: protection**

6.—(1) Not less than 28 days before starting the execution of any works of the type referred to in sub-paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under sub-paragraph 5(2), the statutory undertaker must submit to the undertaker in question a plan of the works to be executed.

(2) Those works are to be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and the statutory undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by an statutory undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a statutory undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraph 5 applies as if the removal of the apparatus had been required by the undertaker under sub-paragraph 5(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub- paragraph (2) in so far as is reasonably practicable in the circumstances.

### **Cathodic protection testing**

7. Where in the reasonable opinion of the statutory undertaker—

- (a) the authorised development might interfere with the existing cathodic protection forming part of a pipeline; or
- (b) a pipeline might interfere with the proposed or existing cathodic protection forming part of the authorised development,

the statutory undertaker to whom the pipeline belongs, or who maintains that pipeline, and the undertaker must co-operate in undertaking the tests which the statutory undertaker considers reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

## Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a statutory undertaker the reasonable expenses reasonably incurred by that statutory undertaker in, or in connection with—

- (a) the inspection, removal, alteration or protection of any apparatus; or
- (b) the construction of any new apparatus, which may be required in consequence of the execution of any such works as are required under this Part of this Schedule.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 45 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a statutory undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## Co-operation

9. Where in consequence of the proposed construction of any of the authorised development, the undertaker requires the removal of apparatus under sub-paragraph 5(2)) or a statutory undertaker makes requirements for the protection or alteration of apparatus under paragraph 6(2), the undertaker must use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development; and each statutory undertaker must use its reasonable endeavours to co-operate with the undertaker for that purpose.

## Arbitration

10. Any difference or dispute arising between the undertaker and a statutory undertaker under this Schedule is, unless otherwise agreed in writing between the undertaker and that statutory undertaker, to be determined by arbitration in accordance with article 45 (*arbitration*).

## PART 2

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

#### Effect

**11.** For the protection of any operator, the following provisions, unless otherwise agreed in writing between the undertaker and the operator, have effect.

#### Interpretation

**12.** In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system is to be construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(b);

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

#### On-street apparatus

**13.** The exercise of the powers of article 32 (statutory undertakers) are subject to paragraph 23 of Schedule 2 to the Telecommunication Act 1984(c) as if the undertaker were a “relevant undertaker” for the purposes of that paragraph.

#### Enactments and agreements in respect of apparatus in the undertaker’s land

**14.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

#### Arbitration

**15.** Any difference or dispute arising between the undertaker and an operator under this Part of this Schedule is, unless otherwise agreed in writing between the undertaker and that operator, to be referred to and settled by arbitration under article 45 (*arbitration*).

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(a) 2003 c.21.  
(b) See section 106.  
(c) 1984 c.12.

## PART 3

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

**16.**—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this Part of this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” are construed accordingly;

“drainage work” for the purposes of this part means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence, sea defence or tidal monitoring and any ancillary works constructed as a consequence of works carried out for drainage purposes;

“a main river” and “ordinary watercourse” have the meanings given by respectively the Water Resources Act 1991 and the Land Drainage Act 1991;

“plans” includes sections, drawings, specifications and method statements;

“realignment scheme” means the future realignment of the flood defences at Goxhill by the Agency;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or 8 metres of a main river, or is otherwise likely to:

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or groundwater; or
- (c) affect the conservation, distribution or use of water resources

**17.**—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 25.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval, or submission of further particulars if required by the Agency under sub-paragraph (1), and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the Agency may make for the protection of any drainage work or water resources for the prevention of pollution or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

**18.** Without limiting the scope of paragraph 17, the requirements which the Agency may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

**19.**—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 3, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and an officer of the Agency is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than seven days after the date on which it is brought into use.

(3) If the Agency shall reasonably require, the undertaker shall construct all or part of the protective works so that they are in place prior to the construction of specific works.

(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(5) Subject to sub-paragraph (6), if within a reasonable period, except in emergency, being not less than 28 days from the date when a notice under sub-paragraph (4) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not except in emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined.

**20.**—(1) Subject to sub-paragraph (5) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the relevant undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) If, within a reasonable period, except in emergency, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not prescribed by the powers of the Order from doing so.

**21.** If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

**22.—**(1) The undertaker must indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

(2) The Agency must give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

**23.**(1) Without prejudice to the other provisions of this part of this Schedule, the relevant undertaker must indemnify the Agency from all claims, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the Agency by reason of the construction of any of the specified works or any act or omission of the relevant undertaker, its contractors, agents or employees whilst engaged upon the work.

(2) The relevant undertaker shall not be liable under sub-paragraph 2(1) to the limited extent that the liability is a result of negligence on the part of the Agency or its duly authorised representative, employee, contractor or agent.

(3) The Agency must give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

**24.** The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

**25.—**(1) The undertaker will not in the exercise of any powers conferred by this Order interfere with the Agency's access to or maintenance of any drainage work unless a suitable alternative access is provided prior to and for the duration of any such interference.

(2) The undertaker must not exercise the power conferred by articles 14 (*access to works*), 26 (*temporary use of land for carrying out the authorised development*) and 27 (*temporary use of land for maintaining the authorised development*) so as to interfere with any drainage work unless the exercise of such powers is with the consent of the Agency and in accordance with paragraphs 17 to 24 of this Part of this Schedule.

**26.** Any dispute arising between the undertaker and the Agency under this Part of this Schedule, is to be determined by arbitration under article 45 (*arbitration*).

**27.—**(1) Any specified work capable of interfering with or risking damage to any drainage work for flood defence must not commence until a scheme for monitoring ground subsidence



(referred to in this paragraph as “the monitoring scheme”) has been submitted to and approved by the Agency, such approval not to be unreasonably withheld or delayed.

(2) The monitoring scheme described in sub-paragraph (1) must set out—

- (a) the drainage work which is to be subject to such monitoring;
- (b) the extent of land to be monitored;
- (c) the manner in which ground levels are to be monitored;
- (d) the timescales of any monitoring activities; and
- (e) the extent of ground subsidence which, if exceeded, will require the undertaker to submit for the Agency’s approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (5).

(3) The Agency must give notice of its decision as to whether or not it approves the monitoring scheme within 21 days beginning with—

- (a) where no further information is requested under sub-paragraph (4), the day immediately following that on which the application is received by the discharging authority; and
- (b) where further information is requested under sub-paragraph (4), the day immediately following that on which further information has been supplied by the undertaker.

(4) Where an application has been made under sub-paragraph (1) the Agency may request such reasonable further information from the undertaker as it considers necessary to enable it to consider the application.

(5) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a “mitigation scheme”) must be submitted to the Agency for approval, such approval not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the Agency.

**28.** Within the Order limits on the south bank of the estuary, from the crest of the flood defences to a point 750 metres landward (measured perpendicular to the flood defences) of the crest of the said defences, the pipeline shall be laid with a minimum cover of 1.7 metres above the pipeline.

## PART 4

### FOR THE PROTECTION OF ANGLIAN WATER

**29.**—(1) For the protection of Anglian Water, the following provisions shall, unless otherwise agreed in writing between the undertaker and Anglian Water, have effect.

(2) In this Part of this Schedule—

“apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage and—

- (a) any drain or works vested in Anglian Water under The Water Industry Act 1991; and
- (b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102 (4) of The Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 of that Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in not less efficient a manner than previously;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“plan” includes sections, drawings, specifications and method statements.

(3) The undertaker shall not interfere with, build over or near to any apparatus within the Order land or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips which are the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus; 2.25metres where the diameter of the pipe is less than 150 millimetres, 3 metres where the diameter of the pipe is between 150 and 450 millimetres, 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres and 6 metres where the diameter of the pipe exceeds 750 millimetres unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker.

(4) The alteration, extension, removal or re-location of any apparatus shall not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting Regulations 2010 or other legislations and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

(5) In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension shall take place until Anglian Water has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

(6) Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker shall, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 45 (*arbitration*).

(7) If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker shall provide such alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

(8) If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the company, notification of the location of such assets will immediately be given to Anglian Water and afforded the same protection of other Anglian Water assets.

(9) If for any reason or in consequence of the construction of any of the works referred to in paragraphs (4) to (6) and (8) above any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker shall—

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by Anglian Water by reason or in consequence of any such damage or interruption.

## PART 5

### FOR THE PROTECTION OF CENTRICA

**30.** For the protection of Centrica the following provisions, unless otherwise agreed in writing between the undertaker and Centrica, have effect.

#### **Interpretation**

**31.** In this Part of this Schedule—

“apparatus” means Centrica’s pipelines, cables, structures or other electrical, gas or telecommunication infrastructure owned, occupied or maintained by Centrica for the purposes of its undertaking including the pipeline;

“Centrica” means Centrica Plc and all of its subsidiaries and group companies, including but not limited to Centrica Storage Limited, or any successor company performing the same functions; and

“pipeline” means the Centrica condensate pipeline 200NB.

#### **Creation of rights and access for Centrica**

**32.—**(1) Before extinguishing any existing rights for Centrica to keep, inspect, renew, maintain and decommission its apparatus on, over or in the Order land or to cross the Order land to access its apparatus, the undertaker at its expense, with the agreement of Centrica, must create a new right, which is consistent with the existing right being extinguished, to keep, inspect, renew, maintain and decommission the apparatus in the same location or a new right of access that it reasonably convenient for Centrica, such agreement not to be unreasonably withheld or delayed.

(2) The undertaker will not in the exercise of any powers conferred by this Order unreasonably interfere with Centrica’s access to inspect, renew, maintain or decommission the pipeline unless a suitable alternative access is provided at the undertaker’s expense prior to and for the duration of any such interference.

#### **Apparatus**

**33.—**(1) Save where paragraph 36 of this Part applies, no works are to commence within 10 metres of apparatus until a construction method statement to protect the apparatus has been prepared by the undertaker and submitted to and agreed with Centrica (such agreement not to be unreasonably withheld or delayed).

(2) The construction method statement must include provisions in respect of—

- (a) the location and methods of reinforcement of crossing points over the apparatus and restrictions on building and altering the ground level over the apparatus elsewhere.
- (b) a mechanism for the enforcement of the relevant undertaker’s use of designated crossing points over the apparatus and the agreed reinforcement methods; and
- (c) adoption of a prior notification and consent regime which would require the relevant undertaker to—
  - (i) obtain Centrica’s consent to the carrying out of the proposed development within the vicinity of the apparatus, such consent not to be unreasonably withheld; and

- (ii) notify Centrica of its intention to carry out any development within the vicinity of the apparatus, such notification to be provided at least 7 days prior to any such development occurring; and

the authorised development must be carried out in accordance with the approved construction method statement.

(3) At all times when carrying out any works authorised under the Order the undertaker must comply with the undertaker's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid high pressure gas pipelines and associated installation requirements for third parties T/SP/SSW22".

(4) Prior to any works authorised under the Order within 50 yards of the pipeline being carried out, a crossing agreement shall be entered into between the undertaker and Centrica governing the works to be undertaken, and any future works undertaken in the Notification Area (as defined in the crossing agreement) by the undertaker, in a form acceptable to and to be approved by Centrica.

### **Ground Subsidence Monitoring Scheme**

**34.**—(1) Any authorised works within 100 metres of any apparatus or alternative apparatus capable of interfering with or risking damage to the apparatus or alternative apparatus must not commence until a scheme for monitoring ground subsidence ("referred to in this paragraph as the monitoring scheme") has been submitted to and approved by Centrica, such approval not to be unreasonably withheld or delayed.

(2) The monitoring scheme described in sub-paragraph (1) must set out—

- (a) the apparatus which is to be subject to such monitoring;
- (b) the extent of land to be monitored;
- (c) the manner in which ground levels are to be monitored;
- (d) the timescales of any monitoring activities; and
- (e) the extent of ground subsidence which, if exceeded, will require the undertaker to submit for Centrica's approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (3).

(3) The monitoring scheme required by sub paragraphs (1) and (2) must be submitted at least 28 days prior to the commencement of any works authorised by this Order or comprised within the authorised development to which sub-paragraph (1) applies. Any requirements of Centrica will be notified within 10 days of receipt of the monitoring scheme. Thereafter the monitoring scheme must be implemented at the cost of the undertaker as approved, unless otherwise agreed in writing with Centrica.

(4) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a "mitigation scheme") must be submitted to Centrica for approval, such approval not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented at the cost of the undertaker as approved, unless otherwise agreed in writing with Centrica save that Centrica retains the right to carry out any further necessary protective works for the safeguarding of their apparatus.

(5) If the monitoring scheme or mitigation scheme would conflict with any aspect of any ground subsidence monitoring scheme or ground subsidence mitigation scheme approved by the relevant planning authority pursuant to Schedule 3 (requirements) the undertaker may submit a revised monitoring scheme or mitigation scheme to Centrica for its approval, such approval not to be unreasonably withheld or delayed; and the revised monitoring scheme or mitigation scheme must be implemented as approved, unless otherwise agreed in writing with Centrica.

### **Cathodic Protection Testing**

**35.**—(1) Where in the reasonable opinion of Centrica—

- (a) the authorised development might interfere with the existing cathodic protection forming part of a pipeline; or
- (b) a pipeline might interfere with the proposed or existing cathodic protection forming part of the authorised development,

Centrica and the undertaker must co-operate in undertaking the tests which Centrica considers reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection. Such tests shall be at the cost of the undertaker.

(2) The undertaker shall at its cost implement any measures identified for providing or preserving cathodic protection as soon as reasonably practicable.

**36.—**(1) In the event that the undertaker uses an alternative cathodic protection design for the authorised works to that shown on the works plans, not less than 56 days before the commencement of any authorised works, the undertaker shall submit to Centrica plans detailing alterations to the cathodic protection design and setting out a pre- and post- construction monitoring scheme to assess any interactions with apparatus or alternative apparatus.

(2) The undertaker must not commence any works to which sub-paragraph (1) applies until Centrica has given written approval of the plans and monitoring scheme submitted.

(3) Any approval of Centrica required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for the protection of apparatus; and
- (b) must not be unreasonably withheld.

(4) The undertaker must implement the works and the monitoring scheme as approved under sub-paragraph (1) in the construction and maintenance of the authorised works.

### **Removal of apparatus**

**37.—**(1) If the undertaker acquires or overrides any interest in the land in which apparatus is laid, the apparatus shall not be removed under this Part of this Schedule and any right of Centrica to keep, inspect, renew or maintain the apparatus in that land shall not be extinguished until alternative apparatus has been constructed at the undertaker's expense, and is in operation to the reasonable satisfaction of Centrica in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker required the removal of apparatus in that land, it shall give Centrica 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any powers conferred by this Order Centrica reasonably needs to remove any apparatus) the relevant undertaker shall, subject to sub-paragraph (3), afford to Centrica to their satisfaction, (taking into account paragraph 37(1) below) the necessary facilities and rights for—

- (a) the construction of an alternative apparatus in other land of the undertaker or Centrica; and
- (b) subsequently for the operation or maintenance of that alternative apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker or Centrica, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Centrica shall, on receipt of written notice to that effect from the undertaker and at the undertakers cost, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Centrica to seek compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of the relevant undertaker or Centrica under this Part of this Schedule must be constructed in such a manner and in such line or situation as may be agreed between Centrica and the undertaker.

(5) Centrica shall, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to Centrica of any such facilities and rights as are referred to in subparagraph (2) or (3), proceed without unnecessary delay, at the cost of the undertaker, construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under this Part of this Schedule.

### **Facilities and rights for alternative apparatus**

**38.**—(1) Where in accordance with the provisions of this Part of this Schedule, the undertaker affords to Centrica facilities and rights for the construction, operation and maintenance in land of the undertaker of alternative apparatus in substitution for the apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and Centrica and shall be no less favourable on the whole than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by Centrica.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Centrica under (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Centrica than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter must be referred to arbitration and, the arbitrator must make such provision for the payment of compensation by the relevant undertaker to Centrica as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Costs**

**39.** If for any reason or in consequence of the construction, operation or maintenance of the authorised development, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Centrica, the undertaker must bear and pay the cost reasonably incurred by Centrica in making good any damage by reason or in consequence of such damage.

### **Requirement for agreement**

**40.** Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not acquire any apparatus or override any easement or other interest of Centrica or acquire any land or other interest of Centrica or create any new rights over the same otherwise than by agreement of Centrica, which agreement must not be unreasonably withheld.

### **Disputes**

**41.** Any dispute arising between the undertaker and Centrica under this Part of this Schedule must be determined by arbitration as provided in article 45 (*arbitration*).

## **SCHEDULE 11**

Article 21

### **MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS**

#### *Compensation enactments*

**1.** The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

**2.—**(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973<sup>(a)</sup> has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there are substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there are substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

(3) In section 58(1) (*determination of material detriment where part of house etc. proposed for compulsory acquisition*), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there are substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there is substituted the words “right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there are substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there are substituted the words “right or restrictive covenant is”.

#### *Application of the 1965 Act*

**3.—**(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

**4.** For section 7 of the 1965 Act (measure of compensation) there is substituted the following section—

“**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

**5.** The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

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(a) 1973 c.26.

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

6. Section 11 of the 1965 Act (*powers of entry*) is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (*penalty for unauthorised entry*) and 13 (*entry on warrant in the event of obstruction*) of the 1965 Act are modified correspondingly.

7. Section 20 of the 1965 Act (*protection for interests of tenants at will, etc.*) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

8. Section 22 of the 1965 Act (*protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in*) is modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

## SCHEDULE 12

Article 47

### PROCEDURE IN RELATION TO CERTAIN APPROVALS ETC.

#### *Determination of applications for specified consents*

9.—(1) Where an application has been made to the discharging authority for any specified consent, the discharging authority must give notice to the undertaker of its decision on the application within a period of 8 weeks beginning with—

- (a) where no further information is requested under sub-paragraph (2), the day immediately following that on which the application is received by the discharging authority;
- (b) where further information is requested under sub-paragraph (2), the day immediately following that on which further information has been supplied by the undertaker; or
- (c) such longer period as may be agreed in writing by the undertaker and the discharging authority.

(2) Where an application has been made under sub-paragraph (1) the discharging authority may request such reasonable further information from the undertaker as it considers is necessary to enable it to consider the application.

(3) If the discharging authority considers further information is necessary and this Order does not specify that consultation with a consultee is required, the discharging authority must, within 7 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(4) If a provision of this Order relating to a specified consent specifies that consultation with a consultee is required, the discharging authority must issue the consultation to the consultee within 1 business day of receipt of the application and must notify the undertaker in writing specifying any further information requested by the consultee within 1 business day of receipt of such a request and in any event within 21 business days of receipt of the application.



(5) If the discharging authority does not give the notification mentioned in sub-paragraph (3) or (4) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

#### *Fees*

(6) Where an application is made to a relevant planning authority for any consent, agreement or approval required by a requirement listed in Schedule 3 (*requirements*) to this Order, a fee of £97 (or such other fee as may be prescribed in regulations made pursuant to sections 303 (*fees for planning applications etc.*) and 333(2A) (*regulations and orders*) of the 1990 Act for the confirmation by a local planning authority of compliance with a condition attached to a planning permission) must be paid to the discharging authority.

(7) Any fee paid under this Schedule must be refunded to the undertaker within 4 weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the discharging authority failing to determine the application within 8 weeks from the date on which it is received,

unless within that period the undertaker agrees in writing that the fee may be retained by the discharging authority and credited in respect of a future application.

#### *Appeals*

**10.**—(1) The undertaker may appeal if—

- (a) the discharging authority refuses an application for any specified consent or grants it subject to conditions;
- (b) the discharging authority does not give notice of its decision to the undertaker within the period specified in sub-paragraph 1(1);
- (c) having received a request for further information under paragraph 1(3) the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
- (d) having received any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The procedure for appeals is as follows—

- (a) the undertaker must submit to the Secretary of State a copy of the application submitted to the discharging authority and any supporting documents which the undertaker may wish to provide (“the appeal documents”);
- (b) the undertaker must on the same day provide copies of the appeal documents to the discharging authority and (if applicable) the consultee;
- (c) as soon as is practicable after receiving the appeals documents the Secretary of State must appoint a person to determine the appeal (“the appointed person”) and notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person should be sent;
- (d) the discharging authority and (if applicable) the consultee may submit any written representations in respect of the appeal to the appointed person within 10 business days beginning with the first day immediately following the date on which the appeal parties are notified of the appointment of the appointed person and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the appeal parties may make any counter-submissions to the appointed person within 10 business days beginning with the first day immediately following the date of receipt of written representations pursuant to paragraph (d) above; and
- (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(3) If the appointed person considers that further information is necessary to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information must be submitted.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person.

(5) The appeal parties may submit written representations to the appointed person concerning matters contained in the further information.

(6) Any such representations must be submitted to the appointed person and made available to all appeal parties within 10 business days of the date mentioned in sub-paragraph (3).

#### *Outcome of Appeals*

**11.—**(1) On an appeal under paragraph 2, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(2) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed or set by the appointed person under this paragraph.

(3) The appointed person may proceed to a decision even though no written representations have been made within those time limits if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(4) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review within 6 weeks of the date of the decision.

(5) Any approval given by the appointed person pursuant to this Schedule is deemed to be an approval for the purposes of this Order and any other enactment which required the specified consent as if it had been given by the discharging authority.

(6) The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) does not affect or invalidate the effect of the appointed person's determination.

(7) Except where a direction is given pursuant to sub-paragraph (8) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person must be met by the undertaker.

(8) On application by the discharging authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid.

(9) In considering whether to make any such direction and the terms on which it is made, the appointed person must have regard to Communities and Local Government Circular 03/2009 or any circular or guidance which may from time to time replace it.

(10) Where the undertaker appeals under paragraph 2—

- (a) this Schedule applies instead of article 45 (arbitration); and
- (b) in respect of any specified consent required pursuant to sections 54 to 106 of the 1991 act, this Schedule applies instead of section 99 (arbitration) of that Act.

#### *Interpretation of this Schedule*

**12.** In this Schedule—

“the appeal parties” means the discharging authority, the consultee and the undertaker;

“business day” means Monday to Friday excluding bank holidays;

“consultee” means any body named in a provision of this Order relating to a specified consent which is the subject of an appeal as a body to be consulted by the discharging authority in determining that specified consent;

“discharging authority” means the body responsible for determining whether a specified consent should be given or the local authority in the exercise of functions set out in sections 60 or 61 of the 1974 Act;

“specified consent” means any—

- (a) agreement, certificate, consent, permission, expression of satisfaction or other approval required by—
  - (i) a requirement listed in Schedule 3 (*requirements*) of this Order;
  - (ii) a document referred to in any requirement listed in Schedule 3 to this Order; and
  - (iii) article 40(3)(b) (*felling or lopping of trees or shrubs*); or
- (b) agreement, certificate, consent, permission, expression of satisfaction or other approval of the highway authority, street authority (where it is also the highway authority for the same area) or traffic authority required pursuant to articles—
  - (i) 10 (*street works*) (including pursuant to sections 54 to 106 of the 1991 Act as applied by article 11(3));
  - (ii) 11 (*power to alter layout, etc. of streets*);
  - (iii) 12 (*construction and maintenance of new, altered or diverted streets*);
  - (iv) 13 (*temporary stopping up of streets and public rights of way*);
  - (v) 15 (*traffic regulation*); or
  - (vi) 18 (*authority to survey and investigate the land*).

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises National Grid Gas plc (referred to as “the undertaker”) to construct and operate a high-pressure gas transmission pipeline and associated infrastructure from Paull Above Ground Installation (AGI) to Goxhill AGI within the authorities of East Riding of Yorkshire and North Lincolnshire

The Order permits the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose. The Order also makes provision in connection with the maintenance of the network

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 43 of this Order (*certification of plans, etc.*) may be inspected free of charge during working hours at the [insert address].

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STATUTORY INSTRUMENTS

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**201[X] No. [X]**

**INFRASTRUCTURE PLANNING**

**The River Humber (Gas Pipeline Replacement) Order 201[X]**

*Made* - - - -

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*Laid before Parliament*

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*Coming into force* - -

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