



The Planning
Inspectorate

River Humber Gas Pipeline Replacement Project

Meeting Purpose: Pre-application Draft Documents Meeting

Date: 12 February 2015

Applicant: National Grid Gas

Venue: Temple Quay House, Bristol

Author: John Pingstone

Attendees:

<u>National Grid Gas (NGG)</u> Yohanna Weber Nicholas Dexter Merlin Floate	<u>Planning Inspectorate</u> Ken Taylor (Infrastructure Planning Lead) Jackie Anderson (Case Manager) John Pingstone (Case Officer) Vicki Hodgson (Lawyer) Hannah Pratt (Senior EIA Advisor) Karen Wilkinson (EIA Advisor)
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Welcome and introductions (all)

Summary of key points discussed and advice given:

The Planning Inspectorate (the Inspectorate) explained that a note of the meeting would be produced and published as advice under s51 of the Planning Act 2008 (PA 2008).

Project Update

NGG gave a summary of progress to date. Statutory consultation had yielded a moderate response, with 129 people attending exhibitions and 75 feedback forms received.

NGG explained that as a result of the proposed traffic route on the south side of the River Humber (Goxhill) being narrow with tight bends, they had carried out an additional localized consultation on an alternative traffic route which would comprise a temporary haul route within fields. This consultation had yielded 24 responses, 19 of which supported the proposed alternative route. As a result of this the alternative route had been incorporated into the scheme.

The Inspectorate asked how negotiations were advancing with stakeholders. NGG explained that they had been in discussions with all key stakeholders, including local authorities, Natural England, the Environment Agency, English Heritage, the internal

drainage boards, and landowners. Statements of common ground are progressing with several of these bodies.

Feedback on Draft Documents

The Inspectorate provided feedback on the following draft documents:

- Plans (Land and Works)
- Consultation report
- Development Consent Order and Explanatory Memorandum
- Book of Reference/ Statement of Reasons
- Habitats Regulations Assessment documents

See annexes for details.

Anticipated Timescales and Next Steps

With regards submission timing, NGG explained that as this is a critical asset they intend to submit within Q1 2015.

Any Other Business

NGG enquired about the acceptance process and what the Inspectorate assesses. It was explained that both the legal tests and the overall quality of the application is assessed. It may be that cumulative issues could weigh upon the acceptance decision.

When submitting the application 3 hard copies should be submitted and 3 electronic copies, the electronic copies may be on CD/DVD or a USB drive.

As several draft documents were not submitted to the Inspectorate (due to their unavailability at the time) the Inspectorate asked that NGG submit further draft documents before the submission of the application. It was agreed that the following would be submitted:

- A list of s42 consultees
- Draft CEMP
- Deemed Marine Licence
- Access and Rights of Way Plans
- Schedule of non-DCO consents

It was agreed that NGG would inform the Planning Inspectorate when these would be available.

It was also agreed that the GIS shapefile should be submitted as soon as possible and preferably simultaneously with the list of s42 consultees.

Annex 1 – Comments on the draft HRA documents

Please see below the Planning Inspectorate's comments on the applicant's draft HRA Report. For ease of reference the comments are prepared following the order of the draft HRA. Please note that the comments provided are without prejudice to any

decisions taken by the Secretary of State during acceptance or the Examining Authority during examination, if the proposed development is accepted for examination. These comments are not intended to be a detailed review of the draft HRA and its findings, but are a high level review intended to provide helpful comments/observations as appropriate.

The Planning Inspectorate considers that the draft HRA Report is generally clear and well presented. However, the Planning Inspectorate notes the omission of the 'Potential Scheme Impacts' which is detailed in the contents page as section 6 and considers that it would be useful for such a section to be included within the HRA Report.

The clarity of the document could be improved if a number of points are addressed, as detailed below. Please note all paragraph and section references are to the draft HRA Report.

Section 1: The Habitats Regulations Assessment Process

1.1 Paragraph 2.1.3 refers to Article 6 of the Habitats Directive. It would be useful if the HRA Report could provide a statement to confirm whether or not the project is directly connected with or necessary to the management of the site.

Section 3: The Scheme and Site Settings

1.2 It would be useful if the locations identified for water extraction were shown on figures and cross-reference included at the relevant sections of the HRA Report (e.g. paragraphs 3.3.24).

1.3 Paragraph 3.3.40 refers to the intention to construct the pipeline elements of the project between April and September in a single season. If the assessment relies upon this measure for the purposes of the assessment, this restriction should be secured. The Planning Inspectorate is also interested to know what measures would be put in place should pipeline construction in a single season not be feasible.

1.4 Paragraph 3.3.41 notes that below ground works may be undertaken on a 24-hour basis from 0700 on Monday to 1600 on Saturday and that there may be a requirement to occasionally undertake construction activities on Sunday. However, the Planning Inspectorate notes that Requirement 9 of the draft DCO does not place any restrictions on some construction activities (tunnel boring, filling, testing, dewatering and drying locations and dewatering activities) and recommends that the HRA Report clearly reflects this.

1.5 The Planning Inspectorate acknowledges the 40+ year operational lifetime and that decommissioning would be the subject of a separate application (paragraph 3.3.71). Nevertheless, it is recommended that the HRA Report covers the life span of the proposed development, including construction, operation and decommissioning, and clearly set out the activities that would likely be required for decommissioning.

Section 4: Screening Stage for the Scheme

1.6 The draft HRA Report identifies European sites located within 20km of the scheme (paragraph 4.2.2). It is recommended that this study area is justified with reference to relevant guidance. It would also be useful to cross reference this to 'Section 5.2: Study Area'.

1.7 Table 4 identifies European sites to be considered in the assessment. It is noted that the features of these sites are listed in Appendix 2: Updated Screening Exercise and contained in the matrices (Appendices 3 and 4); however it would be useful to the reader if these were also identified in section 4 of the report to avoid the need to search through the remainder of the document.

1.8 Paragraph 4.3.6 refers to *'very localised disruption to the intertidal habitat'*. It would be useful if this statement was further explained and quantified.

1.9 Paragraph 4.3.10 states that *'it is not anticipated that airborne pollutants and/or dust arising from construction activities and vehicles using the access route, or vehicle movements during the construction phase of the Scheme, would give rise to any significant effects on the qualifying features of the SAC'*. It would be useful if the distance of the SAC from the access routes was identified, in a similar way that distance from the SPA is identified in paragraph 7.3.22.

1.10 Paragraph 4.3.12 states that no works would take place within the intertidal habitat adjacent to the river. The Planning Inspectorate notes that such a restriction is not secured within the DCO and advises a suitable mechanism is provided to ensure such a restriction.

1.11 Paragraph 4.3.12 goes on to state that *'any slight localised increase in noise and vibration levels (from background noise and vibration levels) during the construction phase would be temporary in nature. Therefore, given the strong compulsion of migratory species to reach their spawning grounds, it is considered unlikely that there would be any significant adverse impacts on the fish populations associated with the SAC. This conclusion has been agreed in consultation with Natural England.'* The Planning Inspectorate suggests that further assessment should be provided to quantify the increase in noise and vibration.

1.12 For the sake of clarity, the Planning Inspectorate recommends that paragraph 4.3.14 is amended to confirm that no construction works would take place in the SPA itself (as stated later in paragraph 7.3.9).

1.13 Paragraph 4.3.15 states that it *'is normally considered by Statutory Nature Conservation Bodies (SNCBs) that if an area of functionally-linked land supports more than 1% of the total of an SPA qualifying species then this is considered to be significant'* (Planning Inspectorate emphasis). It would be useful if the HRA Report could clarify whether this screening criteria has been specifically agreed with Natural England for this assessment.

Section 5: Overview of Baseline Environment

1.14 The Planning Inspectorate considers that it would be useful for details of the baseline environment (e.g. sections 5.1 to 5.4) to be placed before 'Section 4.3: HRA Screening' so that the reader can better understand the baseline prior to consideration of screening in or out of features. This will also aid in the understanding of the surveys referred to in paragraphs 4.3.17 and 4.3.19

1.15 Section 5.2: Study Area states that the *'study area for the bird surveys included the fields and estuarine habitats within and adjacent to the Scheme and within the likely extent of biophysical change associated with the proposed works (e.g. as far as noise was considered likely to be experienced)'*. It would be useful if the HRA Report explained how this distance for noise to be experienced was defined, for example by reference to the modelling undertaken.

1.16 Section 5.5 details the results of noise monitoring and Appendix 6 shows the predicted noise levels by month for the duration of the construction phase. However, no information is provided on the methodologies used for noise modelling. The HRA should either provide this information or cross-refer to the relevant sections of the environmental statement. The same applies to the light modelling referred to in paragraph 7.3.13. Figures 12 and 13 show the noise contours associated with the

project; it would be helpful if a similar diagram could be provided showing the light spill from the construction lighting to provide justification to the conclusion that light levels would be minimal.

1.17 Paragraph 5.7.1 states that the land will be re-instated to its existing condition following completion of the construction works. There does not seem to be any estimate of the likely length of time that reinstatement will take. Without this it is difficult to establish how long some of the effects of construction will last. Indicative timescales for restoration and re-establishment of different features should be provided.

1.18 Section 5.9 details the projects and plans considered in the in-combination assessment and a useful figure is provided to identify their locations. The Planning Inspectorate notes from paragraph 3.3.65 and from previous meetings with the applicant that the Environment Agency are undertaking flood defence works in the area, however these have not been considered in the in-combination assessment. The Planning Inspectorate advises that this omission is addressed.

1.19 It is not clear whether there is potential for different project elements to interact. For example, the construction phases for the works at Goxhill and Paull could overlap according to Figure 3 of the HRA. The HRA should demonstrate that these effects have been considered and explain whether or not they are likely to be significant.

Section 6: Design envelope

1.20 Table 9 is very helpful in understanding the basis of the HRA but it is unclear where some of the maximum adverse scenarios have come from. For instance, 700m has been identified as the zone with the maximum disturbance for bird species and the table refers to section 8.3 for further details. Section 8.3 describes escape distances derived from literature (Table 10), and it is assumed the 700m distance referred to in Table 9 has been derived from the maximum escape distance for shelduck. However, the assessment of visual disturbance in paragraphs 7.3.9-7.3.11 has not applied this worst case scenario.

1.21 Likewise, paragraph 7.3.6 states that there are no specific disturbance distances set for foraging marsh harrier although confirms that previous studies have identified disturbance distance of between 300m and 500m for the species. Paragraph 7.2.10 goes on to state that '*Given that the construction area is more than 400m from where the birds have been recorded, it is considered unlikely that any commuting or foraging marsh harrier would be disturbed by the construction activities.*' This does not accord with the disturbance distance identified in paragraph 7.3.6 or the worst case scenario of 700m for disturbance identified in Table 9.

1.22 The Planning Inspectorate advises that the justification for the worst case scenarios is clearly explained and appropriate cross-referencing with other parts of the HRA or other application documents is utilised. It would also be useful if the HRA Report explains how the 700m worst case disturbance distance aligns with the distance at which noise disturbance has been predicted through the use of noise modelling. If the applicant intends to utilise the worst case scenario approach presented in Table 9, then this should be reflected in the assessment undertaken in the subsequent paragraphs.

1.23 Paragraphs 7.1.4-7.1.6 summarises the results of the updated screening exercise. It would aid the clarity of the document if these paragraphs were moved so that they come before the section on appropriate assessment. This makes it obvious how the need for appropriate assessment has been identified.

1.24 The draft HRA Report explains that new conservation objectives for the Humber Estuary SPA are currently in the process of being produced but it is unlikely that these will be available before early 2015; therefore the draft HRA Report states that the existing objectives have been used for the purposes of this assessment (paragraph 7.2.1). The Planning Inspectorate acknowledges this, however recommends that the applicant monitors the progress of the new conservation objectives prior to submission of the application and, if updated prior to acceptance, the HRA Report should reflect this. The applicant should also note that should the conservation objectives change during the examination stage, the examining authority may ask questions about this during the examination.

1.25 Paragraph 7.3.4 states that '*disturbance distances for other SPA species recorded during the surveys, such as golden plover, are likely to be similar to those listed in Table 10*'. The Planning Inspectorate advises that justification for this assertion is provided, particularly given the differences in distances provided in Table 10 for different species.

1.26 The assessment refers to 3m high bunds to be installed during the initial phases of the construction to minimise potential visual disturbance on birds. Paragraphs 7.3.9, 7.3.10 and 7.3.26 state these are identified on Figure 2. The Planning Inspectorate assumes these are the bunds coloured in brown on the figures, however advises this is clarified.

1.27 Paragraph 7.3.31 refers to approximately 40ha of arable land to be effectively sterilised by noise disturbance during the construction period. It would be useful if this area was identified on a figure, and for further details to be provided to explain how this area has been determined.

1.28 Combined effects with the Hedon Haven Key Employment Site have been excluded partly on the grounds that it is considered unlikely that any large scale development would take place at the site at the same time as work on the River Humber pipeline project (paragraph 7.6.4). If however the draft DCO for the River Humber pipeline contains a provision that would allow the project to begin 5 years or more after the DCO has been granted, then at least in theory the construction phases could overlap. The HRA needs to consider whether any provisions in the draft DCO could affect the basis of the assessments in the HRA.

1.29 Paragraph 7.6.5 refers to the combined area of land-take associated with various other plans and projects being relatively minor. It would be helpful if this was quantified so that it is clear what evidence supports this statement.

1.30 It is not clear what the evidence is behind the statement that significant combined effects of the project with the Able Logistics Park and Able Marine Energy Park are unlikely to occur (paragraph 7.6.6). There may be residual effects from the two Able projects that could interact with the effects from the River Humber pipeline. A more detailed explanation of the reasoning and evidence behind this statement should be provided.

Section 7: Appropriate Assessment of Potential Effects on Humber Estuary SPA/ Ramsar site

1.31 The Planning Inspectorate notes the intention of the applicant to rescreen the project to draw a final conclusion regarding the consenting route to follow and assumes this will take place prior to submission. Should the applicant continue to pursue the project under the Planning Act 2008 (as amended), the Planning

Inspectorate assumes any such references to alternative consenting regimes will be removed from the HRA Report to avoid confusion for readers.

Section 8: Proposed Mitigation Measures and Monitoring

1.32 The Planning Inspectorate notes the intention for all mitigation and monitoring commitments (set out in both the HRA and the EIA) to be incorporated into a Register of Environmental Commitments within the Construction Environmental Management Plan (CEMP). As such, the Planning Inspectorate recommends that a draft CEMP is provided with the application. It would also be useful for the HRA Report to identify where mitigation measures are included in the draft CEMP (e.g. by paragraph cross references) as this would provide assurances that all mitigation is secured appropriately.

Agreement with Natural England

1.33 There are several references in the document to Natural England having agreed to survey methodologies and the overall HRA conclusions. It would be useful to include evidence in the HRA or other application documents that supports these statements and identifies any other points that have been agreed with Natural England. This could be a copy of a letter or email or a preliminary Statement of Common Ground.

Figures

1.34 The table of contents only refers to 'Figures' – the actual list of figures is on page 146 of the HRA. Incorporating this list into the table of contents would help considerably with finding the right figure, especially for users of electronic documents.

1.35 A number of figures have been provided with the draft HRA Report. It would be easier for users to access these as a single document rather than a number of separate documents therefore it is recommended these are combined into a single file (subject to the recommendations set out in Planning Inspectorate Advice Note 6 regarding the size of electronic files).

Appendices 3 and 4: Planning Inspectorate Matrices

1.36 The Planning Inspectorate welcomes the inclusion of screening and integrity matrices in Appendices 3 and 4. The purpose of the matrices is to identify where in the application documents evidence is provided to support the conclusions on likely significant effect and adverse effects on integrity. The footnotes should include the document title and paragraph numbers which contain the supporting evidence for each statement e.g. '*No works taking place within the boundaries of the designated site*' should read '*No works taking place within the boundaries of the designated site (see HRA, paragraph 4.3.5)*'. It should be noted that, should the application be accepted, the Examining Authority may request that the matrices be re-submitted with the footnotes updated to include the relevant references.

Annex 2 – Comments on the Consultation Report

Please note that the comments relate solely to the draft document and are to assist in preparing the document for its final submission.

General comments

The overall structure of the report appears logical, including good use of tables to display information. It may be useful to provide a list of these tables and what they show in the index to the report.

The text of the report should correctly refer to all the relevant appendices and tables throughout the whole document, and the applicant should ensure that all cross-

referencing is correct. Given that PINS has not seen any of the appendices referred to in the document, this is simply a comment to make the applicant aware that clarity is important.

Best Practice: we suggest that you view the example application documents on our website. The example Consultation Report given is for Triton Knoll Offshore Wind Farm and we have provided this as it is very clearly laid out and easy to navigate. It may be particularly useful to see how the tables that they have been used within the report are documented in the index. You will also note that the index for this document also provides a very detailed breakdown of what is contained within each appendix, for example under Appendix A, the applicant lists every letter that was sent out, who it was sent to and in relation to what. This detail makes the document very easy to navigate and therefore may be useful to you when finalising your documents for submission.

Contents page

This is not very detailed. More detail could be included, for example a breakdown of all the tables within the report could be listed to make them easier to locate, as referred to above as an example of 'best practice'.

The appendices listed in the contents page have not been submitted for review, so any checks undertaken have been done without these and confirming various statements within the report has therefore not been possible. If the applicant wishes for PINS to review their draft documents again prior to submission, they could submit the appendices to enable a more thorough review.

Executive Summary

This section is incomplete and does not give the full details of the proposed development as it will be in the DCO. There are other points within this section where information is missing, presumably dependant on the outcome of the latest supplementary consultation that ended on 23 January 2015.

Section 42: duty to consult

It is noted that Appendix 8 is to include a list of prescribed consultees contacted during s42 consultation as per Schedule 1, The Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 (as amended). This appendix has not been provided to us, however if a second round of draft documents are submitted to PINS which includes this appendix, we can check the list ahead of submission.

It would be useful to refer to **Advice Note 3 and its Annex**. The purpose of this advice note is to explain the approach taken to identifying consultation bodies to be notified by the Secretary of State under Regulation 9 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ('the EIA Regulations') and where relevant, consulted on the scope of the Environmental Statement (ES) under Regulation 8 of the EIA Regulations.

Timetable for Consultation: The consultation timescales provided within the report are inconsistent. For example, section 9.5.2 of the report states that 39 days were given for responses and section 1.3.2 says that 35 were given. These inconsistencies need to be removed, and where there are discrepancies the reasons why these exist need to be clearly stated to avoid confusion.

Section 49: duty to take account of responses to consultation and publicity

Clarity needs to be provided as to where it will be shown that regard has been had to consultation responses received under s49. Is it intended that the information will be divided by issue/name, and will the full responses be shown or just a summary? These are points for the applicant's consideration.

PILS

Late additions to the Book of Reference need to be listed separately so that we can be clear about who has or has not been consulted under Section 44. The applicant will need to make this clear when submitting.

Supplementary Stage 2 Consultation

It may be necessary to rename this latest round of consultation. In order for a consultation to be 'statutory' it would have to consult all consultees in Schedule 1 of The Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 (as amended) and this does not appear to be the case. Once the results of the latest round of consultation are known, the applicant may wish to submit a more up to date version of their draft documents including this information. Presumably this will influence the wording of the development in the DCO and therefore mean that various incomplete sections of the report can also be completed.

Annex 3 – Comments on Statement of Reasons and Book of Reference

Statement of Reasons

4.0.4 – 50m limits of deviation. The ExA may question why 50m is necessary, rather than say 40m or 30m. To say that it is 'within the standard limit of deviation rationale' may not be sufficient. A detailed engineering justification may not be appropriate in the SoR but could be cross-referenced from another document. If this isn't supplied within the application documents it would likely be asked as a written question during the examination.

6.2.5 The final strip of land in respect of which new rights are compulsorily acquired for the pipeline will be 24.4m wide and not the width of the land shown coloured dark grey on the Land Plans. – The 24.4m width doesn't appear to be secured/fix in the DCO. The ExA may wish to understand whether this should be secured, and how it could be secured. With the DCO as written the easement could be exercised over the whole 50m width.

7.4 (Alternatives) – This section covers the two separate tests, ie whether there are any alternatives to CA (such as private agreements) and whether an alternative scheme could have removed the need for CA. It would help if those two related tests were more clearly divided. With regards to alternatives to CA there appears to be strong justification, however the discussion of alternative schemes only cross-refers to other documents and doesn't provide a clear statement to say "the scheme put forward in this application was the only practical option, or was the optimal option.. etc".

Book of Reference

Could be useful to list the type of right/interest that category 2 persons possess. For example banks may be mortgagees.

For category 3 persons in part 2 it would be helpful if the applicant could explain the rationale for their inclusion, for example were homeowners within a certain distance of the order limits included, or was it based on other criteria (for example proximity to roads or other areas likely to cause nuisance).

Annex 4 – Comments on Works and Land Plans

Works plans

- 'Permanent Access' and 'Cathodic Protection Cable' are very similar colours and appear merged together when looking at the plan as a whole (particularly on screen).
- Work 2a – appears to be outside the order limit.
- It may be helpful to show the existing pipeline on the plans (both land and works plans).

- In DCO Work 9a references a pink hatched area, but on the plan shows as a black hatched area.
- Sheet 9 has no works on it.
- Provide access and rights of way plans.

Land Plans

- 'Land within existing freehold ownership of applicant' and 'no rights required' are similar colours.
- Why are there no rights required on land that is within the order limits?
- Difficult to see the 'no rights required' yellow colour underneath the other various colours – would suggest an insert to show a close up view of that particular area.
- Provide clarity on the difference between the pink and blue sections of indicative pipeline alignment?
- There is a spelling mistake on the key – 'acquired'

Annex 5 – Comments on the draft DCO

Contents/structure/intro

The 'laid before parliament' in the title is unnecessary, other 'made' DCO's don't have this.

Article 7 – query whether this should be moved from "Works Provisions" to "Miscellaneous and General"

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 74 of that Act(d) that the application should be granted. – s74 only applies to Panels. In the event that this application is determined by a Single appointed person, s83 will apply and it may be necessary for this to be amended during the examination.

Articles

Art 2 (Interpretation)

The Marine and Coastal Access Act 2009 should be listed and footnoted.

"approved plans" means the plans listed in part 3 of Schedule 2 (plans) and such revised or supplemental plans as may be approved pursuant to Schedule 3 (requirements); - Query whether the approved plans should/will be listed separately or will these be the certified Works and Land plans in parts 1 and 2?

Goxhill AGI and Paull AGI – a more specific reference to work plans (i.e. relevant sheet number 5/10) would be helpful.

No definition of 'commence' or 'commencement' in this article? (note it is defined in Part 1 of Schedule 3).

"maintain" includes inspect, examine, monitor, repair, set up, configure, clear, dismantle and/or reconstruct the authorised development and/or replace part or a section of the authorised development with a part or section which materially serves the same purpose; and "maintaining" and "maintenance" must be construed

accordingly; - is the definition of maintain appears too wide. Should it be limited to operations that are within the scope of the works assessed in the ES? (also relates to Art 5). Consideration could also be given to a clause that would say "...must be limited to works assessed in the ES except in an emergency..". This would then allow flexibility so that the DCO does not conflict with the HSE's duty as regulator under the Pipeline Safety Regulations 1996.

(3) (The definition of the "undertaker" in paragraph (1) does not apply to Schedule 11 (protective provisions). - It is noted that in the Protective Provisions the term 'promoter' is used rather than 'undertaker', presumably because the term 'undertaker' is used to mean the statutory undertaker that the provisions apply to. However it may be clearer and more consistent if the definition of 'undertaker' was retained throughout the DCO, and the term 'statutory undertaker' was used in relation to the party that the provisions apply to. This is how it was done in the HPCC DCO. In some DCOs the definition of 'statutory undertaker' has been widened to include operators of Electronic Communications Networks (under s138(4)). If there are any PP's involving operators of ECN's the applicant could consider widening the definition beyond that in s127(8).

Para 8 - reference to article 40 (twice) should be ref to article 41.

Art 3 (application, modification)

If legislation is modified, this should be justified in the EM (Hedgerow Regulations). Also this appears to be a s150 consent (as detailed by the Miscellaneous Prescribed Provisions Regulations) therefore consent will be required from the relevant local authority. It would be helpful if this was addressed in the draft SoCG submitted with the application.

Art 5 (maintenance of authorised project)

It is recommended that the scope of maintenance be limited to that assessed in the ES? i.e. "No maintenance works whose likely significant effects on the environment are not described in the environmental statement may take place".

Art 6 (limits of deviation)

Is 6(2) - possibly too broad - consider drainage locations be more defined - or details be approved through a requirement?

6(4) - this seems too broad - recommend that vertical limits of deviation are added. Sections with the pipeline route and vertical limits of deviation should be submitted.

Article 7 (defence to proceedings ...)

7(1) (b) - reference to "... paragraph 15 of schedule 3 (*requirements*) appears to be incorrect.

Art 8 (Benefit of the Order)

There is no transfer of benefit article, the applicant should be satisfied that there is no possibility that another undertaker may need to take on the project?

Article 9 (street works)

9 (1) (c) and (d) - consider expanding to "place apparatus in or under the street" and "maintain apparatus in or under the street ..."

Article 10 (power to alter layout etc)

The power given by 10(2)(f) to execute any incidental works should be sufficiently defined and restricted.

Art 13 (access to works)

This article permits accesses to be laid out etc. for the purpose of construction and maintenance. If this article is to include future maintenance, then the creation/alteration of accesses for maintenance should be fully addressed in the ES.

Art 11, 12, 13, 14, 15

Three different terms are used in these articles. Traffic Authority, Highway Authority, Street Authority. If these are distinct terms then they should all be defined in the Interpretation article (only Street Authority and Highway Authority are defined).

Should Traffic Authority be defined i.e. that it has the same meaning as in the 1984 Act. Consideration could also be given to whether three distinct definitions are necessary.

Art 19

Query whether the reference to the s134 notice is correct. Should this simply be a reference to compulsory acquisition notice?

19(1) – add "... as described in BoR and shown on the land plans".

19(3) - is reference to "private right of way" correct – should this just be private right?

19(5) – as above

Article 23 (application of the compulsory purchase)

23(5) – query sub paragraphs (c) and (d) – should it be (a) and (b)

Art 25 (Temporary use of land)

25(12) limits the 'maintenance period' to 2 years, the period should be justified and to ensure it is sufficient but not excessive? Note that up to 5 years is common.

Arts 26 (disregard of certain interests)

Query whether this article serves to override/modify the powers of the Lands Tribunal? Would this be beyond the scope of the powers of the DCO? If it does not override/modify the powers of the Lands Tribunal, then why is it necessary?

Art 30 (Statutory Undertakers)

30(2) - This should refer to Schedule 8, not Schedule 9.

30(3) – Query why does this refer to the 1990 Act, and why is it necessary?

Article 31 (recovery of costs ...)

31(4) – change "paragraph" to "article".

Article 33 (Private Rights of Way)

33(6)(a) – add "provided" after "(iv) ...possession of it, ..." and before "... that any or all ..."

Remove square brackets from this article.

Art 40

This should read Schedule 8 not Schedule 9

Art 41

Individual plans should all be listed here, and the list updated if any plans are amended during the examination.

(g) Consider removing 'any other plans' as it is unclear and may be unnecessary.

Art 45

This should read Schedule 12, not Schedule 11

Schedule 1

Work No. 1A

(a) – set a maximum depth or add reference to vertical limits of deviation.

Work No. 1B

(a) – as above

(b) – Should reference to 1.7m and 2m be added, to deal with watercourses and roads?

Should more specific parameters regarding the tunnel construction be added?

Work No. 1.C

Add reference to plan/ sheet number as with other descriptions of works.

(a) – add max depth/limits of deviation

(b) – is it necessary to refer to the 1.7m and 2m depths to deal with watercourses and roads?

Work 2A

Work 2A appears to be outside the order limits?

Should more detail be added for clarity, i.e. max numbers / max parameters (note max height is controlled by article 6(3))? Is there justification to retain the degree of flexibility? It may be necessary for the relevant LPA to approve the final design via a requirement)¹.

Work 2C

Add reference to indicate work sheet.

(b) – maximum parameters?

(d) – is this necessary?

Work 3

Add reference to sheet number.

There is a 3E on the works plans but not mentioned here.

Query whether there will be more specificity in revised version i.e. that office/staff facilities provided in work 3A, Pipe equipment storage in Work 3C etc. ? If flexibility is required this should be justified and adequate controls over the final design secured via the DCO.

Work 4

Add reference to sheet number

Work 4A runs into 4N on the plans – more specific and clearer plan would be beneficial?

There is a work 4N on the work plans but missing in the DCO

Work 5

Add reference to plan/sheet.

Should there be more detail, or will this be controlled via a requirement for details to be approved by the relevant LPA?

Work 6

Works 6A and 6B not shown on the plans as separate works

Work 7

See comment on Work 3.

Work 9

Reference to a pink hatched area, however it is a black hatched area on sheet 5.

Consider setting a maximum storage height for this? Note it would not be caught by the 3m restriction in article 4.

Work 11

Should there be more detail, or will this be controlled via a requirement for details to be approved by the relevant LPA?

Work 12

Location of this is currently unclear? Will there need to be parameters for the to limit the nature/scope of this Work?

Work No. X

Locations of hedgerows to be removed are not currently shown on the works plans.

Further Associated Development

(b) (xiX) – Clarification as to what does this will entail is required. The areas of work must be in the Order limits.

(d) – This appears to be very general, can greater certainty be provided?

Other

Note a car park shown on sheet 7 – is this proposed or existing – should this be listed as a Work?

Schedule 2

Note currently sheet 9 has no works shown on it.

What is the difference between the works plans and the approved plans? A separate schedule of approved plans is probably unnecessary.

¹ This also applies to Work 2B, 2C(b), 2D, 2E, Work 3, Work 7

Requirements

Requirement 1 (Interpretation)

There are a significant amount of exemptions to the definition of commence, i.e. site clearance, demolition, deliveries. This could have a significant impact in terms of controlling impacts such as noise. It should be clear how all impacts are controlled and mitigated at each phase of the development, careful consideration of definitions will be required.

Definition of "construction work" excludes the mobilisation of plant – this could result in impacts through noise etc.

Requirement 2 (Time Limits)

Suggest this is changed to the date the order comes into force.

Requirement 3 (Approved Details)

Is it possible to be more specific than "in general accordance with ..."

Note reference to vertical limits in this requirement but there isn't currently any in the description of works or on the plans.

Add close bracket at end of this requirement.

Requirement 5 (Water)

(1) Note reference to "constriction environmental management plan" – This is different to the CEMP approved by the SoS referred to in requiring 1. There could be confusion if this is another document – consider renaming?

(5) In the current wording there is actually no requirement for the relevant LPA (in consultation with the EA) to approved the crossing method. Consider rewording.

Requirement 6 (Removal of Trees and Hedgerows)

The current wording may require details to be submitted for a stage of development even if there are no trees etc. to be removed in that stage of development. Consider rewording.

This requirement does not cover reinstatement (i.e. of removed sections of hedges)

This requirement doesn't provide for protection to retained trees etc. (nor is it covered in another requirement). Provide clarity as to whether this is secured elsewhere (i.e. in the CEMP) or consider expanding this requirement or adding a separate requirement.

Requirement 7 (Hard landscaping and drainage)

This is called Hard landscaping and drainage – but it doesn't actually cover drainage.

Requirement 8 (Archaeology)

Will a draft WSI be submitted with the application? – has there been discussion/agreement with the LPAs and EH? Ideally this should be covered in the draft SoCG submitted with the application.

Condition doesn't require the identification of a qualified person/ body to carry out the archaeological works as per the model provision and other DCO requirements.

Consider rewording.

Requirement 9 (Construction Hours)

Note most similar requirements in other DCOs are worded negatively.

Remove tail piece – this tailpiece could allow changes to the DCO not just to details that are left to be approved by the LPA.

(4)(a) "reasonable" start up/shut down period should be better defined.

(4) (b) This could be problematic – i.e. it could involve noisy work.

For the above 2 points – consideration will need to be given as to how to minimise impact of these potentially noisy works and how this is secured through DCO.

Some of these activities fall outside the scope of the definition of "commence" and "construction works". However given the potential impact, it will be necessary to ensure that activities are adequately controlled.

Requirement 10 (Construction Environmental Management Plan)

It would be helpful to have clarity as to what this covers as it may alleviate the need for some additional/expanded requirements, referred to above and below.

Requirement 11 (Noise)

Is there a need to add monitoring or will monitoring form part of the written scheme for noise management?

Will a draft scheme for noise management be submitted with the application, and has there been consultation/agreement with the relevant LPAs? ? Ideally this should be covered in the draft SoCG submitted with the application.

Requirement 12 (Contaminated Land and Groundwater)

This requirement does not require a general ground investigation scheme to be prepared and approved by the relevant LPAs. Will one be submitted with the application or form part of the CEMP? Ideally this should be covered in the draft SoCG with each LPA.

(2) (b) – As currently worded there is no requirement to submit the report anywhere.

(3) – Consider adding “in consultation with the Environment Agency”?

Requirement 13 (Construction Traffic Plan)

Concern regarding use of “commence” here – many activities can occur (i.e. deliveries, construction of compounds) before this requirement is complied with, some of which ought to be controlled through the traffic plan.

Requirement 14 (Restoration of Land Used Temporarily for Construction)

It will be necessary to justify why 12 months is needed, 6 is more normal (i.e. it's used in the model provisions).

Requirement 16 (Amendments to Approved Details)

This requirement is a ‘general tailpiece’. This should be removed as it duplicates the specific powers contained in Requirement 10, 13 etc. If specific powers to vary an approved plan are required for all plans, they should be specified in each requirement and justified in the EM.

Other requirements

There is no detailed design approval requirement – this is probably necessary, such a requirement may also eliminate need for requirement 3.

There is no requirement for the approval of landscaping – is any new landscaping/mitigation proposed? If so a requirement will be necessary.

A soil handling requirement is probably necessary.

It may be necessary to have a requirement for the drainage works to be approved by the LPA. Note the drainage article doesn't cover field drainage.

It may be necessary for there to be a requirement that deals with ecological mitigation and protected species issues.

It is probably necessary for there to be a requirement to control the temporary external lighting (unless this is adequately dealt with in the CEMP). This may be necessary from a landscape, residential amenity and/or ecological perspective.

It may be necessary for there to be a requirement to minimise dust etc, although this may be within the scope of the CEMP.

Tail pieces

A number of requirements contain “tail pieces”. It is essential to ensure that these only allow variation of documents/plans which the LPA has already approved as part of that requirement. This must not allow variation of matters secured explicitly in the DCO. The necessity for each “tail piece” should be justified on a case by case basis in the EM.

Schedule 9 (DML)

It would be helpful to review the DML and associated conditions, once this is available.

Schedule 10 (Protective provisions)

Part 1

2(b) Consider broadening the scope to include mains, pipes etc. where there is an agreement to adopt.

Query whether appropriate for commence to have the same definition as para 1 of schedule 3 given the nature of exclusions within the definition.

8(3) (b) ref to article 51 should be 43

8(3) (5) - Are damage clauses necessary?

10 - ref to article 51 should be 43

Part 2

3 - ref to article 34 should be 30

This is actually missing the protective provisions.

5 - ref to article 51 should be 43.

Schedule 12

Ideally the content of this Schedule should be agreed with the relevant LPAs and this issue dealt with in the SoCG.

1(4) - is 1 working day reasonable - consider a longer period.

1(7) (b) note 8 weeks for return of fee - this is based on fees for conditions in 1990 TCPA apps. In which case, although there is a requirement/target to discharge the condition in 8 weeks the return of the fee only applies if there is no decision in 12 weeks - consider revising.

1(7) - this does not allow for the discharging authority to keep the fee where they take longer than 8 weeks to reach a decision but where an extension of time has been agreed. In such circumstances it would be reasonable that the fee is retained provided there is a decision within the agreed extended period.

2(2) (a) which Secretary of State - presumably DCLG - consider being specific.

2(2)(b) - "(if applicable)" is repeated unnecessarily.

2(2)(d) - "(if applicable)" is repeated unnecessarily.

2(2)(d) - is 10 working days too short for preparing appeal statements?

3(2) - should this be amended to allow the decision maker the discretion to allow late submission to be taken into account. This would be in line with S78 etc. appeals and would safeguard against a JR claim made on the basis that submission which amounted to a material consideration were unreasonably discounted.

3(9) - ref to circular 03/2009 should be removed and replaced with reference to the relevant section of the National Planning Policy Guidance (Circular 03/2009 has been superseded).

3(10)(a) - ref to article 51 should be 43.

4 - "business day" need to start on its own line

4(a) (iv) - ref to article 38 should be to article 39.

This schedule is made to apply to the DML, however the procedure for ML appeals (and by extension DMLs) are already covered in The Marine Licensing (Licence Application Appeals) Regulations 2011. This schedule would appear to unnecessarily override those regulations.