

Southampton to London Pipeline Project

Deadline 5

Applicants Response to Interested Parties
Comments on the Draft DCO at Deadline 4
Application Document: 8.76

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ESSO PETROLEUM COMPANY, LIMITED

THE SOUTHAMPTON TO LONDON PIPELINE PROJECT (EN070005)

APPLICANT'S RESPONSES TO INTERESTED PARTIES' COMMENTS ON THE DRAFT DCO AT DEADLINE 4

- 1.1 This document provides the Applicant's responses to interested parties' comments on the draft DCO submitted at Deadline 4.
- 1.2 This document should be read alongside:
 - 1.2.1 The revised draft DCO submitted at Deadline 5 (**Document Reference 3.1(6)**);
 - 1.2.2 The revised Explanatory Memorandum submitted at Deadline 5 (**Document Reference 3.2(6)**); and
 - 1.2.3 The note explaining changes made to the draft DCO at Deadline 5 (**Document Reference 8.77**).

Party and link	Reference	DCO provision (A: article, R: requirement, S: schedule)	Comment	Response
Rushmoor Borough Council South Downs National Park Authority	Response to FWQ DCO.2.1	A14	Local planning authority should approve any additional accesses under A14.	<p>The Applicant considers that the highway authority is the appropriate body to determine any application for consent under A14.</p> <p>Recognising the concerns raised by some interested parties, the Applicant is happy in principle to make provision in A14 for consultation between the highway authority and the relevant planning authority, and has modified A14 in the revised draft DCO at Deadline 5 to accommodate this. The Applicant understands that the wording is subject to ongoing discussion between the highway and planning authorities. However, it remains the Applicant's view that the highway authority alone is the appropriate body to determine an application.</p>
Rushmoor Borough Council	Response to FWQ DCO.2.1	A17	Safeguards need to be built into the DCO to ensure no contamination or hydrological changes as a result of the pipeline	<p>The Applicant remains of the view that the draft DCO (Document Reference 3.1(6)) contains appropriate safeguards in relation to the drainage of water to sewers and watercourses.</p> <p>To be clear:</p> <ul style="list-style-type: none"> • A17(6) confirms that the undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain is as free as may be from gravel, soil or other solid substance, oil or other matter in suspension. The Applicant understands Rushmoor to be saying that the inclusion of the words "<i>reasonably practicable</i>" in this article is

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				<p>unacceptable. The Applicant does not agree. The standard is a fair one. The drafting (which has been consistently approved by the Secretary of State) recognises that there are limits to what the Applicant can reasonably achieve in practice. It would be inappropriate to impose a situation whereby the Applicant could be in breach of this provision in circumstances where it has taken all reasonable precautions to avoid the breach from occurring in the first place.</p> <ul style="list-style-type: none"> • Within the Code of Construction Practice (Application Document 6.4, Appendix 16.1(3)), there are numerous commitments to the implementation of good practice measures relating to the water environment. These include commitments G11, G12, G117 and G121. The Applicant would be required to deliver these commitments under R05 of the draft DCO (Document Reference 3.1(6)) and they are an important way in which potential impacts on the water environment are controlled by the application. • R09(3) confirms that no discharge may take place under A17 until details of the location and rate of discharge have been submitted for prior approval. This ensures that there is proper oversight and scrutiny of discharges into sewers and watercourses by those bodies which have the relevant expertise to consider these matters.

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				<ul style="list-style-type: none"> The Applicant is also engaged in very positive discussions with both the Environment Agency and the lead local flood authorities on the terms of protective provisions for those bodies. The concerns raised by Rushmoor have not been raised by either the EA or the lead local flood authorities during the course of those discussions. <p>Rushmoor do not confirm in their submission the nature of any drafting changes which they would propose to address the concerns cited. It is the Applicant's position that no such changes are required.</p>
Surrey County Council	Response to FWQ DCO.2.1	A19	A19(8) should make clear exactly which post holder in the authority should receive an application for consent under this article.	<p>The notice provisions in A45 are clear and precedented; the Applicant does not consider that it would be appropriate for this detail to be recorded in the terms of the article itself, noting in particular that post holders / responsibilities within organisations are liable to change over time.</p> <p>There is also a process in place, through the South East Permit Scheme, to ensure that communications are channelled to the correct department / post holder.</p>
Rushmoor Borough Council	Paragraph 8.5	A29	Notice periods in A29 and A30 should be 3 months not 14/28 days	<p>The notice provisions in A29 and A30 ensure that the Applicant is able expeditiously to take access to the Order land to construct and maintain the authorised development. To provide for a three month period instead would impede that process, particularly where the Applicant requires access to land to carry out important maintenance to the pipeline during the 5 year maintenance period under A30.</p>

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				<p>The Applicant is aware that Part 2 of the Neighbourhood Planning Act 2017 would require an acquiring authority to give three months' prior notice of intended entry before taking temporary possession of land. However, Part 2 of the 2017 Act is not in force. Moreover, Parliament is still to designate the date upon which Part 2 will enter into force, nearly three years after it was enacted.</p> <p>That being the case, the Applicant considers that recent DCO precedent is informative and persuasive. Notably, in respect of the Drax Re-power, Abergelli Power and Northampton Gateway Rail Freight Interchange schemes approved by the Secretary of State in 2019, the same notice periods as those contained in articles 29 and 30 of the draft DCO (Document Reference 3.1(6)) were approved by the Secretary of State.</p> <p>The Applicant therefore considers that the notice periods in A29 and A30 are appropriate.</p>
Surrey County Council	Response to FWQ DCO.2.1	A35	SCC to provide suggested wording for Part 3 (streets) to make reference to the Permit Scheme	The Applicant notes the comment but has provided some drafting in the draft DCO submitted at Deadline 4 (Application Document 3.1(5)). The Applicant considers that this wording is appropriate.

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South Downs National Park Authority	DCO.2.13	A41	Concerns about scope of A41 and mitigation of tree loss.	<p>The Applicant is not, at this stage in the development of scheme design, able definitively to confirm the extent of vegetation that would need to be removed or lopped under A41. However, the Applicant does not agree that the power in A41 is unregulated. The power itself is subject to a number of conditions and must also be read alongside the Requirements in Schedule 2.</p> <p>Following changes made to the draft DCO at Deadline 4 (Document Reference 3.1(5)), it is now the case that the Applicant would under R8 (vegetation), prior to the commencement of any stage of the authorised development, be required to submit to the relevant planning authority a written vegetation retention and removal plan showing the vegetation proposed to be retained or removed. These plans must reflect the commitments and measures set out in the LEMP; an outline LEMP has been submitted at Deadline 4 and the LEMP submitted to the relevant planning authority for approval must accord with that outline LEMP. As regards those “hotspot sites” identified during the examination process where the Applicant’s proposed construction methodology is set out in the Site Specific Plans secured by Requirement 17, the retention and removal of vegetation must be undertaken with those plans save as otherwise agreed with the relevant planning authority.</p>

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Surrey County Council	Response to FWQ DCO.2.1	A47	Mechanism for agreeing appointment of an arbitrator and costs	The reference to “ <i>agreed between the parties</i> ” in A47 means that the parties are free to agree the mechanism and terms (including apportionment of the costs of the arbitration) upon which any arbitrator is appointed, as they see fit.
Rushmoor Borough Council South Downs National Park Authority Spelthorne Borough Council Surrey Heath Borough Council	Response to FWQ DCO.2.15	R03	Alternative drafting for R03 (stages of the authorised development) to include approval of the written scheme by relevant planning authorities.	<p>The Applicant amended R03 in the revised draft DCO submitted at Deadline 4 (Application Document 3.1(6)) in response to the Examining Authority’s request at Part (ii) of Further Written Question DCO.2.15.</p> <p>The Applicant notes that the changes requested by the Examining Authority did not include a requirement for local planning authorities to approve the written scheme under R03, which is the consequence of the drafting now proposed by Rushmoor, South Downs, Spelthorne and Surrey Heath.</p> <p>The Applicant has previously confirmed why it considers that R03 should not be subject to the prior approval of the local planning authorities (see Appendix 1 to Application Document 8.17).</p>

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				<p>The Applicant is concerned that, if R03 were to be amended to provide for the prior approval of the written scheme by local planning authorities, the Applicant would lose all meaningful control over how the authorised development is implemented. The Applicant considers that this is a practical matter, to be informed by expert input and engagement from contractors and consultants. Moreover, the Applicant is concerned that it may be forced into protracted discussions and negotiations with local planning authorities on the content of the written scheme, thus delaying the discharge of the other Requirements in Schedule 2 and, ultimately, the delivery of this important infrastructure project.</p> <p>The Applicant would also emphasise that the written scheme required by R03 does not itself secure mitigation for impacts associated with the construction of the authorised development. This is the function of the other schemes and management plans required under Schedule 2 and which must, for any stage, be submitted for the approval of the local planning authority prior to the commencement of that stage of the authorised development.</p> <p>For these reasons, the Applicant does not consider that the amended wording for R03 proposed by these authorities at Deadline 4 is appropriate.</p>

Party and link	Reference	DCO provision (A: article, R: requirement, S: schedule)	Comment	Response
Rushmoor Borough Council	Paragraph 8.1	R07	Provision should be made for approval of the CTMP by the local planning authority as well as the highway authority.	<p>The purpose of the CTMP is to manage impacts on the highway network as a result of the construction of the authorised development. The highway authority – in this case Surrey County Council for local roads located in Surrey – is responsible for the management of that network and is therefore the appropriate body to approve the plan under R07.</p> <p>The Applicant recognises that local planning authorities may have a role to play in considering the appropriateness of measures put forward as part of any CTMP submitted to the highway authority for approval under R07. It is for this reason that the Applicant amended the draft DCO at Deadline 3 (Application Document 3.1(4)) to provide for local planning authority consultation on any proposed CTMP. The Applicant considers that this is sufficient to ensure that legitimate concerns expressed by local planning authorities' as part of the discharge process under R07 would be considered and dealt with appropriately by the highway authority. The Applicant also notes that the vast majority of planning authorities along the route appear to be satisfied with the drafting of R07 as it now stands.</p> <p>Finally, it should also be noted that much of the mechanics of the CTMP would in practice be addressed and implemented through the Hampshire and Surrey permit schemes, which the Applicant understands would include a level of engagement between the highway and planning authorities.</p>

Party and link	Reference	DCO provision (A: article, R: requirement, S: schedule)	Comment	Response
South Downs National Park Authority	Response to FWQ DCO.2.1		SDNPA should approve the CTMP instead of the highway authority	<p>The Applicant notes that the SDNPA is the only planning authority along the 90km route advocating this approach.</p> <p>As set out in response to Rushmoor’s comments on R07 above, the function of the CTMP is to manage impacts to the highway network as a result of the construction of the authorised development. This is a matter for the highway authority. To the extent that a local planning authority, such as the SDNPA, has comments on the CTMP, it will be able to communicate them as part of the consultation process provided for in R07.</p> <p>The SDNPA state that there are local planning impacts arising from the proposals, for example on tranquillity. However, those impacts are addressed comprehensively by other Requirements in Schedule 2. For example, as regards tranquillity, the Applicant has committed to producing a noise and vibration management plan (“NVMP”), the overarching aim of which is to reduce noise and vibration impacts at local receptors during the construction of the pipeline, including noise generated by construction vehicles. The NVMP would form part of the construction environmental management plan to be prepared and submitted for the approval of the local planning authority for each stage of the authorised development. The SDNPA would, therefore, exercise control over the approval of the NVMP for any stage of the authorised development which relates to its area.</p> <p>The Applicant does not therefore agree that the CTMP should be approved by the SDNPA, whether in addition to or instead of the highway authority.</p>

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Spelthorne Borough Council	Response to FWQ DCO.2.14		An ingredient list should be added to R07	<p>The Applicant has provided an outline CTMP at Deadline 4 (Application Document 8.51) and now awaits comments on that document from Interested Parties. As a result of drafting changes made to the draft DCO by the Applicant at Deadline 4 (Application Document 3.1(5)), any CTMP submitted for the approval of the highway authority under R07 must be in accordance with the outline CTMP. Since the outline CTMP provides outline details of the matters which would form part of any final CTMP, it is not necessary to list matters individually in R07 in the way that Spelthorne proposes.</p> <p>For the avoidance of doubt, the Applicant had regard to interested parties' suggestions in drafting the outline CTMP and incorporated those which properly relate to the function performed by the CTMP.</p>
South Downs National Park Authority	Response to FWQ DCO.2.1	R08	Clarification sought that a LEMP would be produced for the whole of pipeline route through the National Park, given the wording in R12(3)	The Applicant can confirm that a LEMP would be produced for the whole of the route through the National Park. The Applicant would be happy to confirm that this is the case in the next iteration of the outline LEMP.
Rushmoor Borough Council	Response to FWQ DCO.2.1	R09	The local authority should approve drainage plans along with the LLFA	The Applicant considers that the LLFA is the appropriate body with the relevant legislative competence to sign off on this plan. The Council has not explained why it seeks that approval function as well.

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Highways England	Response to FWQ DCO.2.24	R14	Amend R14(2) to include requirement to notify HE in the event of an emergency.	The Applicant is happy with the suggestion and has made the change to the revised draft DCO submitted at Deadline 5 (Document Reference 3.1(6)). Note however that the reference is to the “relevant highway authority” as opposed to the “Highway Authority”.
Rushmoor Borough Council	Response to FWQ DCO.2.24		Amend hours of operation	<p>The activities in sub-paragraph (4)(a) are not subject to the one hour limitation which applies to the activities in sub-paragraph (4)(b) because, as regards the receipt of oversize deliveries, the Applicant considers that any disruption to local communities, in particular disruption to the local road network, is capable of being minimised or managed more effectively if deliveries can be effected outside the general working hour restrictions in R14. Any such deliveries would remain subject to the controls imposed by the construction environmental management plan (“CEMP”), under R05, and construction traffic management plan (“CTMP”), under R07.</p> <p>As regards non-intrusive activities, the Applicant does not consider that there is a need to impose a timing restriction on the carrying out of those activities. It is already made clear that these are “<i>activities which would not create any discernible light, noise or vibration outside the Order limits</i>” (sub-paragraph (5)(b)). Again, these activities would also remain subject to any controls imposed by the CEMP under R05.</p> <p>As such, these activities are, in the Applicant’s view, subject to appropriate controls.</p>

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Surrey County Council	Response to FWQ DCO.2.24		Further drafting to enable expedited working on highways	The Applicant is grateful for this suggested wording and has added a new sub-paragraph (4)(c) to the revised draft DCO submitted at Deadline 5 (Document Reference 3.1(6)). Whilst the Applicant understands that the highway authorities are content with this wording, it is also understood that it remains subject to ongoing discussion between the highway and planning authorities.
South Downs National Park Authority	Response to FWQ DCO.2.1		No construction works on Saturday afternoons in the National Park	<p>The Applicant remains of the view that the construction hours sought under R14 are appropriate and commensurate with the nationally significant designation of this infrastructure project. The Applicant has, of course, already reduced these core hours in response to comments received from interested parties, in the revised draft DCO submitted at Deadline 3 (Application Document 3.1(4)).</p> <p>The Applicant is sensitive to the landscape and communities through which the pipeline routes, but also needs to be able to deliver this project in a timely manner, having regard to the numerous engineering challenges and ecological constraints that it will encounter in installing the pipeline.</p> <p>The Applicant is also conscious that, the more restrictive its working hours are, the longer the interface with local communities will be. The Applicant attaches significant weight to the ability to move through affected areas quickly.</p> <p>For those reasons, the Applicant does not propose making further changes to the core construction hours in R14.</p>

Party and link	Reference	DCO provision (A: article, R: requirement, S: schedule)	Comment	Response
South Downs National Park Authority Surrey Heath Borough Council	Response to FWQ DCO.2.24		Further comments on R14, including meaning of the words “where reasonably necessary continue on an exceptional basis” in subparagraph (3).	<p>The additional words in sub-paragraph (3) clarify:</p> <ul style="list-style-type: none"> • first, that it must reasonably be necessary, as opposed to convenient or advantageous, to carry out any of the works in sub-paragraphs (a) to (e) outside the core working hours in sub-paragraph (1); and • second, that any departure from the core working hours must be exceptional, that is to say that the Applicant may not in any location seek to depart on a frequent basis from the core hours in sub-paragraph (1) and must instead look to limit such departures to the very minimum necessary. <p>The Applicant has made these changes in order to provide greater comfort to interested parties about the parameters within which the power in sub-paragraph (3) may be exercised.</p> <p>The Applicant is happy to provide further clarity regarding the definition of “<i>start-up and shut-down activities</i>” in R14. Rather than amend the draft DCO, the Applicant thinks that it would be more appropriate to add a definition / list of activities to the next iteration of the outline CEMP to reflect this. This is because any such activities must be “undertaken in compliance with the CEMP”.</p> <p>Finally, on the third issue regarding the reference to “<i>dewatering activities</i>” in sub-paragraph (3)(c) of R14, the Applicant confirms that this is a duplication and has therefore been removed from the revised draft DCO submitted at Deadline 5 (Document Reference 3.1(6)).</p>

Party and link	Reference	DCO provision (A: article, R: requirement, S: schedule)	Comment	Response
Spelthorne Borough Council	Response to FWQ DCO.2.24		Construction hours to be agreed with the local planning authority in each case	<p>The Applicant does not consider that the approach suggested is viable. The construction hours defined in R14 provide confidence that the Applicant will be able to deliver this scheme in a timely and consistent manner across the whole route, noting the linked nature of works for a long linear scheme such as this. This provides the rationale for the “core construction hours” approach adopted by the Applicant.</p> <p>If the Applicant were only able to secure very restrictive working hours in one location, this could have significant implications for works later on in another location along the route, in particular where there are seasonal / ecological constraints to working in that other location which mean that it is critical that the Applicant is able to undertake its works at a specific time.</p> <p>The Applicant recognises that there are constraints and sensitivities at particular locations along the route. It is for this reason that the application includes commitments to restricted working during animal breeding or hibernation seasons, by way of example.</p> <p>The Applicant does not therefore agree that the approach proposed by Spelthorne is appropriate.</p>
South Downs National Park Authority	Response to FWQ DCO.2.1	R16	New requirement to remove above-ground infrastructure when proposed pipeline decommissioned	The Applicant provided a response in relation to this issue at Deadline 4 (please see the Applicant’s response to further written question DCO.2.30 in Application Document 8.37).

Party and link	Reference	DCO provision (A: article, R: requirement, S: schedule)	Comment	Response
Rushmoor Borough Council South Downs National Park Authority	Response to FWQ DCO.2.27	R19 (now R22)	Notice periods in various articles and requirements should be 56 days rather than 42 days	<p>The 42 period is reasonable and adequate, in the Applicant's view, and appears to be acceptable to the large majority of interested parties.</p> <p>The Applicant would emphasise that the 42 day period is in line with the recommended discharge period for approvals set out in PINS' Advice Note 15. The Applicant does not consider that there is any compelling reason to depart from that advice.</p>
Rushmoor Borough Council South Downs National Park Authority Surrey Heath Borough Council	Response to FWQ DCO.2.17	R20 (now R21)	Proposed amendments to R20 (register)	<p>As regards comments advocating the use of alternative words to "<i>as soon as practicable following the making of the Order</i>" in sub-paragraph (1), the Applicant considers that the current wording is appropriate and that it would require positive steps to be taken to establish and publish the register in an expeditious manner if and when the Order is made.</p> <p>The Applicant does not agree that the reference in sub-paragraph (1) to "<i>in an electronic form</i>" would allow the register to be maintained in the form of an e-mail, as the SDNPA suggests. The Requirement is for the register to be kept "<i>in an electronic form suitable for inspection by members of the public</i>". An email is not available to the public at large, which is the intention here, but to named individuals. Further, at this stage, the Applicant cannot state with certainty at which site the register will be hosted. A degree of flexibility is therefore sought at this early stage.</p>

Party and link	Reference	DCO provision (A: article, R: requirement, S: schedule)	Comment	Response
				<p>Finally, the Applicant considers that the three year period for maintaining the register is appropriate. There is no genuine relationship between this three year period and the five year period for replacement planting under R08, as the SDNPA and Surrey Heath suggest. The Applicant considers that interested parties can be satisfied that the register would have fulfilled its intended purpose by the end of the 3 year period following completion of the authorised development.</p> <p>The drafting of this Requirement reflects that approved by the Secretary of State in the context of the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016. That Order also contained a 5 year replanting obligation in the same way as the draft DCO (Document Reference 3.1(6)).</p>
<p>Surrey Heath Borough Council</p> <p>Spelthorne Borough Council</p> <p>Rushmoor Borough Council</p>	DCO.2.28	R21 (now R24)	Longer response periods sought under R24 and addition of “business days” definition.	<p>Noting concerns raised by interested parties, the Applicant increased this period from 2 business days to 5 business days in the revised draft DCO submitted at Deadline 3 (Application Document 3.1(4)). The Applicant considers that this is a reasonable period and provides sufficient time for discharging authorities to consider whether further information is required to give full consideration to any application under S2. To be clear, the period for determining an application is 42 days (see R22). The 5 business days in R24(2) only relates to requests for further information. The majority of discharging authorities have not raised a concern about these timings.</p>

Party and link	Reference	DCO provision (A: article, R: requirement, S: schedule)	Comment	Response
				An appropriate definition of “business days” was also added to the draft DCO at Deadline 3 (Application Document 3.1(4)).
Rushmoor Borough Council	8.9	Rnew	New requirement to approve impacts in open spaces	The Applicant has confirmed that it does not consider a Requirement in these terms to be necessary or appropriate in its response to interested parties’ comments on the draft DCO submitted at Deadline 3 (Document Reference 3.1(4)).
Spelthorne Borough Council	DCO.2.13	Rnew	New requirement on tree protection	<p>The Applicant notes that these comments were made prior to the submission of the revised draft DCO at Deadline 4 (Document Reference 3.1(5)).</p> <p>Requirement 8 of the draft DCO now confirms that, for any stage of the authorised development, the retention and removal of all vegetation must be undertaken in accordance with a written vegetation and removal plan which has been submitted to the relevant planning authority prior to the commencement of that stage which implements the requirements of the LEMP. The LEMP would need to be drafted in accordance with the outline LEMP and would be approved by the relevant planning authority under R12.</p> <p>As regards those “hotspot sites” identified during the examination process where the Applicant’s proposed construction methodology is set out in the Site Specific Plans secured by Requirement 17, the retention and removal of vegetation must be undertaken with those plans save as otherwise agreed with the relevant planning authority.</p>

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				The Applicant does not therefore consider that a further Requirement over and above R8 is needed.
Surrey County Council	CA.2.5	S01	Concerns about culverting etc.	<p>As SCC note, discussions are ongoing on the terms of protective provisions for the protection of SCC as the lead local flood authority. The intention is that SCC's concerns regarding the creation of culverts or bridges across ordinary watercourses would be addressed through those protective provisions.</p> <p>Discussions are progressing well and the Applicant remains confident that an agreement on the protective provisions will be reached with SCC before the end of the examination.</p>
Environment Agency	PP doc	S11	Amendments proposed to protective provisions	The Applicant notes the request and will respond as part of the ongoing discussions which are taking place on the terms of the EA's proposed protective provisions. Those discussions are progressing well and the Applicant remains confident that an agreement will be reached with the EA before the end of the examination.
All	Various	Various	The wording of the Requirements in Schedule 2 should require plans to be 'in accordance with' instead of 'based on' the relevant outline document	This change was made to the draft DCO submitted at Deadline 4 (Document Reference 3.1(5)).