

# Southampton to London Pipeline Project

## Deadline 6

Written Summary of Oral Submissions at the Issue Specific Hearing on the Draft Development Consent Order on 25 February 2020 (ISH4)

Application Document: 8.82

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## Southampton to London Pipeline Project EN070005

### Applicant's Written Summary of Case at the Issue Specific Hearing

on the draft Development Consent Order (ISH 4) held at the Village Hotel, Farnborough

on the morning of Tuesday 25 February 2020

#### 1 Introduction

- 1.1 This document summarises the case put forward orally by Esso Petroleum Company, Limited (“**the Applicant**”), at the Issue Specific Hearing on the draft Development Consent Order (“**draft DCO**”) which took place at the Village Hotel, Pinehurst Road, Farnborough from 10am on Tuesday 25 February 2020.
- 1.2 The Applicant was represented at ISH 4 by:
  - 1.2.1 Alexander Booth QC of Francis Taylor Building; and
  - 1.2.2 Angus Walker and Tom McNamara of BDB Pitmans LLP.
- 1.3 This written summary of case follows the order in which items were address by the Examining Authority (“**ExA**”) at ISH 4.
- 1.4 The Applicant's responses to the post-hearing actions published by the Inspectorate following ISH 4 can be found at **Document Reference 8.83**, which has been submitted by the Applicant at Deadline 6. Reference should also be made to the revised draft DCO submitted at Deadline 6 (**Document Reference 3.1(7)**).

#### 2 **Agenda Item 2: Part 3 Articles 9 (Power to alter layout etc. of streets); 10 (street works); 12 (Temporary stopping up, alteration, diversion or restriction of streets and public rights of way); 14 (Access to works) and 15 (Traffic regulation)**

- 2.1 The ExA requested an update from the Applicant and interested parties regarding the Hampshire and Surrey Permit Schemes and how they were applied in the context of the draft DCO.
- 2.2 As regards matters of principle, Mr Walker confirmed that an agreement had been reached between the Applicant and Hampshire and Surrey County Councils regarding the application of the permit schemes to this DCO. In this regard, Mr Walker confirmed that the draft DCO was amended at Deadline 4 (**Document Reference 3.1(5)**) to make clear that the permit schemes applied to the construction and maintenance of the authorised development.
- 2.3 Mr Walker confirmed that the Applicant was continuing to work with the Councils to alight upon a settled form of wording to be incorporated into the draft DCO for Deadline 6. Mr Walker explained that this was a novel area for DCO drafting and that there was, as a consequence, still some ongoing debate regarding the most suitable form of drafting for the DCO. These discussions were progressing positively, however, and there was an expectation that an agreed position would be reflected in the draft DCO for submission at Deadline 6.

- 2.4 In light of the modifications made to the draft DCO at Deadline 5, the ExA requested some clarification about the status of the permit schemes and whether they did, in effect, supersede the powers conferred upon the Applicant by Part 3 of the draft DCO. If that were the case, the ExA asked whether Part 3 of the draft DCO need be included at all.
- 2.5 In response, Mr McNamara confirmed that the permit schemes provided a booking and notification system for street works which effectively superseded the notice requirement in section 54 of the New Roads and Street Works Act 1991. Importantly, however, a permit scheme was no substitute for the Applicant's statutory right to undertake those street works in the first place and it was on that basis that it remained necessary to retain the powers in Part 3 of the draft DCO. This summary of the legal position was agreed by Surrey County Council.
- 2.6 On that basis Mr Walker explained that, following further consideration and subsequent discussions with the highway authorities, the Applicant was going to revisit the modifications made to Part 3 of the draft DCO at Deadline 5 to ensure that the drafting accurately reflected the legal position summarised at ISH 4 and was where possible agreed with the county councils. Mr Walker noted that the entire route was within Hampshire and Surrey, except for a very small length in the London Borough of Hounslow where no streets were affected.
- 2.7 Turning to matters of detailed drafting, the ExA expressed concern about the nature and extent of the powers sought in articles 9 and 10 of the draft DCO. In particular, there was a concern specifically in relation to the power sought in article 9 of the draft DCO to alter the level or reduce the width of a kerb under article 9(2)(b) of the draft DCO. Mr Walker confirmed that the Applicant was happy to strike out that power in relation to kerbs in the revised draft DCO for submission at Deadline 6.
- 2.8 Referencing the Applicant's response to further written question DCO.2.7 at Deadline 4, the ExA questioned why articles 12 and 15 were treated separately in the draft DCO and could not simply be combined by using traffic regulation instead of temporary stopping up. Mr Walker confirmed that, whilst the Applicant stood by its response to written question DCO.2.7 that each article was seeking to address distinct matters, the Applicant was content to look again at this question and would provide a further response at Deadline 6.
- 2.9 Finally, in relation to agenda item 2, the ExA requested that:
- 2.9.1 Farnborough Road be added to the list of street works in Schedule 4 of the draft DCO; and
- 2.9.2 the headings in Parts 1 and 2 of Schedule 5 be amended to aid clarity.
- 2.10 Mr Walker confirmed that the Applicant would deal with these requests and make any relevant amendments to the draft DCO for submission at Deadline 6.

### **3 Agenda Item 3: Part 6, Article 41 (Felling or lopping) and Requirement 8 (Vegetation)**

- 3.1 The ExA expressed some concern about the broad nature of the power in article 41 of the draft DCO and whether it was clear from the current drafting that this power was moderated appropriately by the Requirements in Schedule 2.

- 3.2 Mr Walker confirmed that the fact that article 41, and indeed all articles, took effect subject to the Requirements was not in doubt and this position was made clear in article 3(1) of the draft DCO, which confirmed that development consent was granted *subject to the Requirements*. Mr Booth (and Mr Turney) endorsed Mr Walker's summary of the position.
- 3.3 In terms of the detailed drafting of article 41, the ExA asked whether the reference to "Order land" in the context of the power to cut back the roots of trees was correct or should instead refer to "Order limits". Mr Walker confirmed that the reference was legally correct, since the "Order land" was defined in article 2 as "*the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily*" and, on balance, the Applicant considered that it was more appropriate to refer to the roots of trees extending into the Order land as opposed to the Order limits.
- 3.4 The ExA also asked the Applicant to clarify the meaning of the words "*reasonably believes it to be necessary*" in the context of the Applicant's power to fell, lop, etc. trees in article 41(1). The ExA was concerned that this wording gave the Applicant a significant degree of latitude to carry out works to trees and was not subject to any apparent control or oversight.
- 3.5 Mr Walker confirmed that the power to carry out works to trees was a necessary component of the Applicant's ability to deliver the scheme. Without the power, delivery of the scheme would not be possible. However, Mr Walker explained that it was not the case that the power was unmoderated or devoid of any controls. Mr Walker reiterated that article 41 took effect subject to the conditions in paragraph (2) of that article and also to the Requirements, in particular Requirement 8, which dealt with vegetation removal and reinstatement, and Requirement 12, which required the Applicant to prepare and submit a landscape ecological management plan for the approval of the local authority in relation to each stage of the authorised development. The obligation that the Applicant had to have a reasonable belief that the felling or lopping was necessary operated within those constraints.
- 3.6 Mr Booth also explained that, where a Requirement specified that a specific tree or group of trees must not be cut down, which was the case in relation to a number of trees at Queen Elizabeth Park under the terms of the Site Specific Plan for the Park which was now secured, article 41(1) did not allow the Applicant to make a reasonable judgement to remove that tree in any event. Mr Walker confirmed that the same principle applied to the powers in article 42 in respect of trees subject to Tree Preservation Orders.

*Requirement 8 (Vegetation)*

- 3.7 The ExA asked a number of questions at ISH 4 in relation to vegetation removal, retention and reinstatement under Requirement 8 of the draft DCO.
- 3.8 First, the ExA asked the Applicant to clarify whether the term 'vegetation' needed to be defined by the draft DCO. Mr Walker explained that the Applicant did not consider that the term needed to be defined and that the ordinary meaning was clear and would apply. Mr Walker cited the Applicant's response to the ExA's written question LV 1.3 at Deadline 3, in which the Applicant referenced the dictionary definition of the term. Mr Walker confirmed that this definition was appropriate, in the Applicant's view, and in that context there was no need for the draft DCO to define the term.

- 3.9 Second, the ExA asked the Applicant to confirm that the reference to the relevant planning authority in Requirement 8 included the South Downs National Park Authority (“**SDNPA**”). Mr Walker confirmed that it did. Mr Walker explained that “relevant planning authority” meant the local planning authority for the land in question with the relevant legislative competence under the Town and Country Planning Act 1990 for the matter to which a provision related. Since the SDNPA is the local planning authority for the area of the South Downs National Park and was charged in relation to that area with the same functions as any planning authority would be, by virtue of section 4A of the 1990 Act, Mr Walker confirmed that the SDNPA was a relevant planning authority for the purposes of Requirement 8 of the draft DCO.
- 3.10 The ExA asked the Applicant to summarise the position regarding the removal and retention of trees and the written plan which was required to be submitted by the Applicant under Requirement 8(1)(a)(i) of the draft DCO in relation to any stage of the authorised development that would affect vegetation.
- 3.11 Mr Walker explained that the retention and removal of all vegetation would need to be undertaken in accordance with a written vegetation retention and removal plan under Requirement 8(1)(a)(i) of the draft DCO. This plan would need to be submitted to the relevant planning authority prior to the commencement of any stage of the authorised development that would affect vegetation. Mr Walker clarified that the Applicant resisted any requirement for the approval of this plan by relevant planning authorities. This was on the basis that the Applicant’s requirement to determine the final route of the pipeline and to remove vegetation within the Order limits to deliver that final alignment would be devoid of any value if a power to veto vegetation removal and retention was conferred upon local planning authorities.
- 3.12 Mr Walker also explained that the approach to the drafting of Requirement 8 had been informed by the ExA’s written questions, submissions made by interested parties during examination and discussions held at the hearings. In that regard, the Applicant had produced Site Specific Plans (“**SSPs**”) for a number of locations along the route and in many instances, these contained specific provisions regarding vegetation retention and removal in these areas. Mr Walker confirmed that it was the Applicant’s intention that these plans would be certified by the Secretary of State and that the Applicant would be required as a matter of law to observe the commitments made in them, since compliance with the SSPs was secured by Requirement 8(1)(a)(ii) and Requirement 17 of the draft DCO. In particular, any variation to the SSPs would have to be approved by the relevant planning authority.
- 3.13 Notwithstanding Mr Walker’s explanation, the local authorities present expressed concern that the written vegetation retention and removal plan required under Requirement 8(1)(a)(i) was not subject to later approval by them.
- 3.14 In response, it was submitted by Mr Booth that:
- 3.14.1 the concerns raised in relation to Requirement 8(1)(a)(i) were not concerns shared by all of the planning authorities and it was important that they were not characterised as such;
- 3.14.2 this was a 90 km pipeline for which there was a specific consenting process set out in the Planning Act 2008. One of the overarching functions of a DCO was to provide a one stop shop for the consents required to deliver a nationally significant infrastructure project (“**NSIP**”). If the Applicant’s power to remove vegetation in

respect of the full 90km route was subject to the prior approval of local planning authorities, then this overarching function would be undermined. Mr Walker went further in this regard, noting that if a matter so fundamental to the delivery of the project was subject to further approval by local planning authorities across the whole of the route, then the DCO was effectively not authorising the NSIP at all, in breach of section 31 of the Planning Act 2008; and

- 3.14.3 it was important to recognise that there were more sensitive locations along the route and others which were less sensitive. Mr Booth explained that certainty was being provided by the Applicant through the DCO process as regards the sensitive locations, in the form of the SSPs. However, Mr Booth submitted that it was not appropriate to apply the same approach to the totality of the pipeline route, since to do so would denude the DCO of all practical value. Giving local planning authorities a right of veto in relation to vegetation removal would effectively enable those authorities to steer the route of the pipeline. Mr Booth submitted that the Applicant should therefore be given the latitude of limits of deviation typical for linear DCOs in respect of those non-sensitive locations.
- 3.15 For those reasons, Mr Booth confirmed that it was the Applicant's firm position that a Requirement providing for the approval of any written vegetation removal and retention plan under Requirement 8(1)(a)(i) would be entirely inappropriate and would impose a serious and potentially fatal impediment upon the Applicant's ability to deliver this scheme. Mr Booth concluded that any such drafting was therefore resisted the strongest terms by the Applicant.

*Requirement 12 (landscape ecological management plan)*

- 3.16 The ExA asked the Applicant to explain what the position was in relation to the reinstatement of vegetation.
- 3.17 Mr Booth confirmed that reinstatement of vegetation was part of the landscape ecological management plan ("**LEMP**") and that any reinstatement proposals were to be signed off by local planning authorities under Requirement 8(1)(a)(ii) and Requirement 12 of the draft DCO. Mr Booth reiterated that, in contrast, the removal and retention of trees was not part of the LEMP and would not therefore be subject to local planning authorities' approval, for the reasons explained previously.
- 3.18 The ExA referred to a number of specific commitments in the outline LEMP. In particular, with reference to commitment G86 of the outline LEMP and without prejudice to the Applicant's stated position that vegetation removal should not be subject to local planning authority approval under Requirement 8, the ExA asked whether it would nevertheless be appropriate to amend the draft DCO so that any works to notable, TPO and veteran trees were subject to the prior approval of the local planning authority.
- 3.19 Mr Walker confirmed that the Applicant would consider the ExA's comments in relation to commitment G86 and would, in addition, consider where in the draft DCO or related document any commitment would be located if the Secretary of State deemed it appropriate to impose such a Requirement. In principle, Mr Walker confirmed that the Applicant's preference was that commitments should sit within the outline LEMP as opposed to the DCO itself and this was common practice for detailed commitments of this nature.

- 3.20 Turning to commitment G87 of the outline LEMP, the ExA requested that a reference should be made to Requirement 8 in the wording of commitment G87 to make clear the link between the draft DCO and the outline LEMP. Mr Walker confirmed that this change would be made for Deadline 6.
- 3.21 As regards commitment G91, Mr Walker clarified that the Applicant would retain responsibility for compliance by the contractor with any vegetation retention and removal plan under Requirement 8. Mr Walker confirmed that the wording of commitment G91 was not to be taken to mean that the duty to comply was transferred to the contractor; that duty would remain the Applicant's.
- 3.22 Finally, in relation to commitment G97, Mr Walker confirmed that the purpose of that commitment was to acknowledge that, following construction of the pipeline, there would be a pipeline easement that needed to be protected going forwards. As a result, Mr Walker explained that it would not be possible in every case to replace trees *in situ* given the need to protect the pipeline easement. Where that was the case, Mr Walker explained that the Applicant has committed to native shrub planting over the pipeline easement instead under commitment G97, since this planting was capable of coexisting with the pipeline. Mr Walker clarified that any reinstatement planting referred to in commitment G97 would need to be approved by the local planning authority and that this was secured under Requirement 8(1)(b) of the draft DCO.

*Requirement 17 (SSPs)*

- 3.23 The ExA asked the Applicant to comment on the suggestion that the SSPs should be approved by the Secretary of State in outline form only as part of this application and subject to later approval by local planning authorities prior to the commencement of the works. This was on the basis that the precise route of the pipeline was currently unknown, which meant there were limits on the extent to which the SSPs were capable of providing a definitive position at this stage.
- 3.24 It was submitted on behalf of Rushmoor and Spelthorne Borough Councils and the SDNPA that there was work to do in relation to a number of the SSPs and that there was not sufficient time within this examination to bring them all into alignment with each other.
- 3.25 Mr Booth explained that it was the Applicant's position that the Secretary of State could and indeed should proceed on the basis that the pipeline alignment described in the SSPs was the alignment being promoted by the Applicant and that any departure from that alignment was subject to appropriate control, since it would need to be approved by the local planning authority. Mr Booth also confirmed that the Applicant did not accept that the SSPs were not or were not capable of being in a form which could be certified by the Secretary of State by the end of the examination (and Mr Hodkin confirmed at ISH 5 that all the SSPs would be updated by Deadline 6).
- 3.26 Mr Walker added that it was on this basis that the Applicant has sought to include a mechanism to vary the SSPs in future with the approval of local planning authorities under Requirements 8 and 17 of the draft DCO. Mr Walker also explained that, if the SSPs themselves were subject to later approval, and not simply changes to the SSPs, then this gave rise to the same concerns about local planning authorities, as opposed to the Applicant, steering the route of the pipeline

in future. This was further illustrated by the discussion at ISH 5 where Rushmoor Borough Council supported the whole of Queen Elizabeth Park being subject to trenchless construction.

*Schedule 2, Requirement 3 (Stages of the authorised development)*

- 3.27 There was further discussion at ISH 4 in relation to Requirement 3 of the draft DCO and the staging of the authorised development.
- 3.28 Mr Walker confirmed that the staging of the authorised development was a matter for the Applicant. Requirement 3 was simply about dividing the project into geographical stages for the purposes of discharging other Requirements in Schedule 2; it was not, unlike those other Requirements, about securing mitigation. Mr Walker also explained that there might be scope for authorities to disagree with the Applicant and with each other on what the stages were or should be and that this could hold the Applicant up before it was able to take any steps towards discharging the Requirements before implementing the project.

*Schedule 2, Requirement 14 (Construction hours)*

- 3.29 The ExA sought a number of clarifications in respect of the wording of Requirement 14 of the draft DCO.
- 3.30 First, the ExA asked whether Requirement 14(1) needed to be amended to make clear that there would be no working on Bank Holidays except in cases of emergency. Mr Walker confirmed that the Applicant would amend article 14 so that normal working does not include Bank Holidays in the draft DCO to be submitted at Deadline 6.
- 3.31 Second, the ExA sought clarification about the meaning of the wording of Requirement 14(3) of the draft DCO, which enabled the Applicant to carry out specific works where “*reasonably necessary ... on an exceptional basis*”. There was a concern that these words were subjective and that there was no definition of what the phrases meant.
- 3.32 Mr Walker confirmed that this wording was added at a previous deadline to clarify that the exceptions to working outside the core working hours in Requirement 14(1) were limited and could not be deployed by the Applicant as a matter of course. Mr Walker added that the words “*reasonably necessary*” added objectivity to the exercise; it was not simply a case of whether the Applicant considered it necessary to carry out works outside the core working hours in Requirement 14(1) but whether it was reasonable for the Applicant to reach that conclusion.
- 3.33 Mr Walker also confirmed that the Applicant strongly resisted the suggestion that the carrying out of works under Requirement 14(3) outside the core working hours should be subject to the prior consent of the local planning authority. Mr Walker explained that the activities in Requirement 14(3), such as trenchless working, were those which, once started, were not easy to stop. It was on this basis that the Applicant was seeking the ability to continue working beyond the core hours until that limited range of works were complete. If that was subject to the prior consent of the local planning authority, Mr Walker explained that this might jeopardise the Applicant’s ability to carry out those essential works at all.
- 3.34 Third, the ExA sought clarification from the Applicant about the meaning of the reference to start-up and shut-down activities in Requirement 14(4) of the draft DCO. Mr Walker confirmed that those would be low noise generating activities as set out in the Applicant’s responses to the ExA’s written questions. Mr Walker also confirmed that the Applicant was happy to provide



further clarity about the meaning of these terms in a revised draft construction environment management plan (“**CEMP**”) for submission at Deadline 6. The Applicant would consider whether to restrict start-up and shut-down activities to non-intrusive ones or similar wording for Deadline 6.

- 3.35 Fourth, the ExA noted that there were instances of inconsistency between the working hours described in some of the application documents, such as the outline CEMP, and those set out in Requirement 14. Mr Walker confirmed that the Applicant would look at this and make any corrections as part of the process of updating documents for submission at Deadline 6, but that in any event the DCO prevailed.
- 3.36 Fifth, the ExA asked the Applicant to comment upon the suggestion that the SSPs should include bespoke working hours and if that was the case whether Requirement 14(1) needed to be amended to refer to Requirement 17. Notwithstanding the Applicant’s view that the approach to the issue of construction hours in Requirement 14 was appropriate, Mr Walker confirmed that the Applicant would consider the suggestion and respond at Deadline 6.
- 3.37 Finally, Mr Walker confirmed that the Applicant would amend the draft DCO at Deadline 6 to amend the reference to “traffic sensitive highways” in Requirement 14(4)(c) to read “traffic sensitive streets” in response to Surrey County Council’s comments.

#### **4 Agenda Item 3: Matters for clarification**

- 4.1 The ExA sought clarification from the Applicant and interested parties in relation to a number of points of the drafting in the draft DCO.

##### *Part 2, Article 6 (Limits of deviation)*

- 4.2 The ExA expressed ongoing concern about the appropriateness of the power sought under article 6(2) of the draft to deviate from the limits of deviation specified in article 6(1). In particular, the ExA asked the Applicant to justify this power given that the 2008 Act prescribed a process for seeking changes to a DCO.
- 4.3 In response, Mr Walker submitted that it was appropriate that the Applicant should have this power, subject to appropriate controls. Whilst the Applicant was confident that the limits of deviation described in article 6(1) were sufficient, Mr Walker explained that there was a need for flexibility, so that the Applicant was able to respond in an agile way to as yet unknown complications, such as ground conditions in a particular location which meant that it was impractical to lay the pipeline within the parameters described in article 6(1).
- 4.4 Mr Walker confirmed that the power was subject to appropriate controls. Any deviation in excess of the limits stated in article 6(1) would need to be approved by the Secretary of State following consultation with the local planning authority. The Secretary of State would also need to be satisfied that such deviation did not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement. Mr Walker also noted that the power in article 6(2) only applied as regards the vertical limits of deviation, not the lateral limits.
- 4.5 Whilst Mr Walker acknowledged that there was a process in place under the 2008 Act for seeking changes to a DCO, that was a cumbersome and time consuming process and did not

provide a viable solution in circumstances where construction works were taking place and the Applicant needed a way of ensuring that a variation could be sought quickly so that those works could continue. Article 6(2) was therefore drafted with this flexibility in mind and that flexibility was not provided by the DCO change process.

*Article 38 (operational land)*

- 4.6 The ExA asked the Applicant to clarify the purpose of this article and the permitted development rights which it conferred.
- 4.7 Mr Walker confirmed that the purpose of this article was not to confer permitted development rights upon the Applicant but to preserve the position of other undertakers who may have apparatus diverted or realigned as a result of the Applicant's works, so that those undertakers continued to enjoy permitted development rights in relation to that diverted or realigned apparatus under the Town and Country Planning Act 1990. That Act already did the same for planning permission.

*Requirement 1 (definitions)*

- 4.8 Mr Walker confirmed that the Applicant would amend the definition of the SSSI working plans in Requirement 1 so that the reference was to Appendix B of the Habitats Regulations Assessment as opposed to Annex B.

*Requirement 5 (code of construction practice)*

- 4.9 The ExA explained that it still had some concern about the wording of Requirement 5, which currently allowed the Applicant to seek amendments to the Code of Construction Practice ("**CoCP**"). This was on the basis that the ExA considered that there were commitments made in the CoCP which should effectively be unamendable and not subject to variation at a later date, even with the consent of the local planning authority.
- 4.10 Mr Walker clarified that the words which were now used in Requirement 5 were in fact made at the request of the ExA in further written question DCO 2.7. However, Mr Walker confirmed that the Applicant understood the ExA's concern and would reflect upon the wording of the Requirement 5 in updating the draft DCO for Deadline 6 so as to ensure that the conclusions of the Environmental Statement or Habitats Regulations assessment would not be invalidated.

*Requirement 6 (construction environmental management plan)*

- 4.11 The ExA sought clarity from the Applicant about which of the pre-commencement works and activities set out in para 2.3.1 of the outline CEMP would need to be undertaken in compliance with the CEMP as approved. Mr Walker confirmed that the Applicant would consider those activities against the definition of "commence" in the draft DCO and confirm the position for Deadline 6.
- 4.12 As regards the ExA's question whether there was still a need for a list of ingredients to be included in any final CEMP to be listed in Requirement 6, Mr Walker confirmed that the Applicant did not consider that that was necessary. The ingredient list which was included in previous iterations of the draft DCO reflected the absence of any outline document, but Mr Walker confirmed that an outline CEMP had now been provided by the Applicant and contained details of the matters which would need to be included in any CEMP submitted for approval,

save for an Arboricultural Management Plan, which is now covered by the outline LEMP that had been provided at Deadline 4. On that basis, there was no need for the Requirement itself to contain this level of detail.

*Requirement 7 (construction traffic management plan)*

- 4.13 Similar to Requirement 6, the ExA asked whether it would be appropriate for an ingredients list to be included in Requirement 7, which any final construction traffic management (“**CTMP**”) plan would need to conform with.
- 4.14 Again, Mr Walker explained that an outline CTMP had now been submitted by the Applicant and that this had been informed by interested parties’ suggestions as to the content of the final CTMP. Mr Walker noted that Spelthorne Borough Council had previously advocated the inclusion of an ingredients list in Requirement 7, but that it appeared from their Deadline 5 submissions that they were no longer advocating it following a review of the outline CTMP, suggesting it did have the requisite contents, which were obliged to be carried forward into the final CTMP.

*Requirement 11 (archaeology)*

- 4.15 Mr Walker confirmed that the Applicant would amend that Requirement for Deadline 6 to clarify that the suitably qualified person in paragraph (5) was also registered with an appropriate body, further to the Applicant’s response to written question DCO 2.22.

*Requirement 16 (commercial operation of the existing fuel pipeline)*

- 4.16 There was some brief discussion at ISH 4 regarding the purpose of Requirement 16 of the draft DCO.
- 4.17 Mr Walker confirmed that the purpose of Requirement 16 was to prevent the existing and replacement pipeline operating concurrently and had been added to the draft DCO at the ExA’s request.

*Requirement 21 (Register of requirements)*

- 4.18 A number of interested parties advocated the inclusion of alternative wording in Requirement 21 to clarify that the duty to establish the register of Requirements would apply prior to any applications being made under the Requirements.
- 4.19 Mr Walker confirmed that, notwithstanding the Applicant’s position that the wording was appropriate, the Applicant was happy to consider the Requirement further and would include revised wording in the updated draft DCO for submission at Deadline 6 either to give a fixed deadline by which the register had to be set up or to provide that the register had to be set up before any approvals were sought after the coming into force of the DCO, or both.

*Requirement 24 (Further information)*

- 4.20 A number of interested parties expressed concern about the definition of “business days” in the context of that Requirement and sought assurance that time would not be counted on days where local and general elections were held.

- 4.21 Mr Walker confirmed that the Applicant was happy to agree that and would amend the draft DCO accordingly for Deadline 6.

*Decommissioning activities*

- 4.22 The ExA asked the Applicant to comment upon the SDNPA's suggestion that a Requirement should be imposed requiring the Applicant to remove any above ground infrastructure ("AGI") in the event that the replacement pipeline is taken out of use.

- 4.23 Mr Walker confirmed that the Applicant was content in principle to agree a form of wording, but that it would need to be made clear that any such Requirement applied only as regards the 'abandonment', as opposed to the decommissioning, of the replacement pipeline. This was because the pipeline could in principle be recommissioned after it was decommissioned, in which case any AGI could continue to serve a function in respect of the recommissioned pipeline. Mr Walker confirmed that this would not be the case if the pipeline was permanently abandoned.

*Schedule 11*

- 4.24 Mr Walker confirmed that the Crown Land Plans would be added to the list of certified documents in Schedule 11 for Deadline 6.

- 4.25 As regards the ExA's suggestion that the Navigation Document be added to Schedule 11, Mr Walker confirmed that the Applicant did not consider that it was necessary or appropriate that this document should be certified. This was because the Navigation Document made reference to a number of documents which were not themselves certified documents and also because it contained links to documents currently on the Inspectorate's website which would be removed after a period of time and therefore no longer remain in the public domain.

- 4.26 Mr Walker therefore confirmed that the Applicant was not minded to include the Navigation Document in Schedule 11, but would do so if the ExA insisted upon it.