

Southampton to London Pipeline Project

Deadline 6

Written Summary of Oral Submissions at the Issue Specific Hearing on Environmental Matters on 26 February 2020 (ISH5)

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Southampton to London Pipeline Project EN070005

Applicant's Written Summary of Case made orally at the Issue Specific Hearing on Environmental Matters held at the Village Hotel, Farnborough on Wednesday 26 February 2020 ("ISH5")

1 Introduction

- 1.1 This note summarises the case put forward orally by Esso Petroleum Company, Limited ("the Applicant") at ISH5.
- 1.2 The Applicant was represented at ISH5 by:
- 1.2.1 Alexander Booth QC of Francis Taylor Building;
 - 1.2.2 Angus Walker of BDB Pitmans LLP;
 - 1.2.3 Alison Segun of the Applicant; and
 - 1.2.4 Cheryl White, Phil Shephard, Steve Newman, Pete Hodkin, Humphrey Roberts-Powell and Steve Knott of Jacobs.
- 1.3 This written summary of case follows the order in which items were address by the Examining Authority ("ExA") at ISH5.

2 Agenda item 2: Clarification of matters relating to Ecology and Biodiversity

The appropriateness of the use of the National Joint Utilities Group method of controlling tree protection ("NJUG") as opposed to British Standard 5837:2012 ("BS")

- 2.1 Mr Booth confirmed in relation to this agenda item that the Applicant had listened to interested parties' concerns and, whilst it remained of the view that the NJUG methodology was entirely sound, the Applicant was happy to commit to the BS instead.
- 2.2 Mr Booth confirmed that the Applicant would amend any references to the NJUG in the outline Landscape Ecological Management Plan ("LEMP") and other relevant application documents to reflect this change in approach for Deadline 6.

Clarification of matters of detail regarding ecology and biodiversity arising from submissions at Deadlines 4 and 5

- 2.3 The ExA sought clarification from Rushmoor Borough Council ("RBC") in respect of statements made by RBC in its Deadline 4 and 5 submissions that the scheme would have a direct impact on 48 breeding territories for qualifying features of the Thames Basin Heaths Special Protection Area ("TBH SPA").
- 2.4 Mr Booth noted that RBC have in fact said in their submissions that 48 breeding territories would be *destroyed*. Mr Booth confirmed that the use of this language was simply wrong and was not recognised by the Applicant in that context.

- 2.5 The ExA also sought confirmation as to the area of the TBH SPA which was within the Order Limits and, within that, the area which was potentially supporting the habitat of the qualifying features of the TBH SPA.
- 2.6 Mr Shepherd confirmed that, within the Order Limits, there were approximately 36.2 hectares of supporting habitat for the qualifying features of the TBH SPA. Within this, Mr Shepherd confirmed that the area which stood to be affected by the works, once narrow working and other measures were considered, was 9 hectares of supporting habitat. He confirmed that the figure of 48 breeding territories, representing those inside or within 250m of the Order limits, was correct. *Post-hearing note: in fact, the correct figure is 46 breeding territories and the areas of the Natura 2000 sites discussed are given below in table 1.1.*

Table 1.1 – Areas of Natura 2000 sites

	Thames Basin Heaths SPA	Thursley Ash Pirbright and Chobham SAC
Order Limits	36.95ha	29.30ha
Reduced working area (NW, TC, removal of woodland blocks and mitigation areas)	7.96ha	6.41ha

- 2.7 There was some further questioning at ISH5 regarding the figures quoted in the Habitats Regulations Assessment (“**HRA**”) Report, both in relation to the TBH SPA and the Special Area of Conservation. Mr Booth confirmed that the Applicant would check the figures and confirm the position at Deadline 6.

Environmental mitigation areas (“EM areas”)

- 2.8 The ExA asked the Applicant to confirm how the mitigation measures proposed in Figure 7.5 of the Environmental Statement (“**ES**”) related to particular mitigation needs, given that Section 7.6 of the ES stated that no additional construction mitigation was proposed on the basis that no significant effects on biodiversity or specific ecological receptors were identified.
- 2.9 Mr Booth confirmed that the EM areas shown in Figure 7.5 were often concerned with protected species. Ms White confirmed that that was generally the case, noting that the EM areas included the measures outlined in the protected species licences, in particular for Great Crested Newts, dormice and bats. Ms White also explained that the EM areas included the habitat creation areas referred to in the HRA Report where scrub clearance would be undertaken to encourage re-establishment of heathland or acid grassland. Ms White confirmed that the EM areas therefore referred to a collective grouping of mitigation in the wider sense, bringing together all of the good practice measures outlined in the protected species licences, the HRA and the ES.
- 2.10 In addition, Ms White confirmed that, as a precautionary measure, EM areas had also been identified for tree planting in offsite locations where it would not be possible to relocate TPO trees in situ or in the locality of the works. However, Ms White confirmed that the EM areas would only be used for tree planting where it was not possible to replant trees in situ or in close

proximity to their original location. Ms White also clarified that the purpose associated with each EM area was set out in Appendix E of the Outline LEMP (REP4-035).

- 2.11 The ExA asked whether the EM areas were considered to be additional to the embedded and good practice measures.
- 2.12 Ms White confirmed that the mitigation measures shown on Figure 7.5 (i.e. the EM areas) included good practice measures, where those were relevant to the measures set out in protected species licences. Where the good practice measures were associated with general reinstatement, however, Ms White confirmed that those measures were not shown specifically on Figure 7.5, as they were addressed instead by commitments secured elsewhere in the application. As regards embedded mitigation, Ms White explained that embedded measures such as trenchless crossings and narrow working were not shown specifically on Figure 7.5, but were illustrated on other drawings or were simply reflected in the Order limits as shown, for example where the Applicant had avoided routing through Ancient Woodland or specific watercourses.
- 2.13 The ExA sought clarification about the connection between a number of the EM areas shown on Figure 7.5 and the areas shown on the Works Plans. The ExA referred specifically to EM area references EM01 and EM57 to illustrate this point. The ExA also sought clarity about the link between the Outline LEMP and the EMAs.
- 2.14 Ms White explained that the EM areas were added to the Works Plans to avoid any uncertainty about what those areas related to when one was looking at the Works Plans. However, Ms White confirmed that the Applicant would reflect further on this issue and would seek to provide greater clarity as to the connection between the EM areas, the Works Plans and the outline LEMP, and how that connection could be improved, for Deadline 6.
- 2.15 Finally, the ExA asked the Applicant to provide an update on progress in securing land agreements for the EM areas.
- 2.16 Mr Booth confirmed that an update on securing agreements would be provided for Deadline 6. As regards the ExA's question about how delivery of the EM areas could be secured in the absence of agreement with landowners, Mr Booth confirmed that the Applicant would have powers to take temporary possession of land under articles 29 and 30 of the draft DCO for the purposes of delivering these EM areas. Once the purposes of those EM areas had been fulfilled (including a five-year maintenance period), Mr Booth confirmed that it was correct and appropriate that control of the land should revert to the landowner.

Environmental Investment Programme ("EIP")

- 2.17 There was further discussion at ISH 5 in relation to the EIP.
- 2.18 Mr Booth confirmed that the EIP was a voluntary programme and that it was firmly the Applicant's position that the EIP could not and indeed should not be relied upon by the ExA in forming its recommendation on the application.
- 2.19 There was also some discussion in relation to biodiversity net loss. In particular, it was argued on behalf of RBC that the ExA would not be in a position to report that, overall, there was no net loss of biodiversity in respect of this application.

- 2.20 Mr Booth explained that, on the basis of the evidence set out in the ES, the Applicant did not accept RBC's assertion that there was a net loss of biodiversity. Mr Booth confirmed that the Applicant would set out in writing where in the ES the issue of net loss was addressed for Deadline 6. Mr Booth also noted that it was not clear to the Applicant whether this was a concern shared by other authorities along the route, as RBC appeared to say, or whether RBC was simply the outlier in respect of this issue.

3 Agenda item 3: Habitats Regulations Assessment including Suitable Alternative Natural Greenspace ("SANG")

Overview of submissions at Deadlines 3, 4 and 5

- 3.1 The ExA expressed some concern at ISH 5 that questions relating to the adequacy of the HRA Report were still being asked at that stage in the examination. The ExA noted that the main points of difference were between RBC and the Applicant.
- 3.2 The ExA therefore confirmed that the parties, including if possible Natural England, needed to work together to prepare a Statement of Common Ground for submission at Deadline 6 which confirmed the key matters which were agreed and not agreed in respect of the HRA.
- 3.3 As regards matters not agreed, there were submissions made on behalf of RBC at ISH 5 regarding the conclusions reached in the HRA in respect of:
- 3.3.1 direct habitat loss;
 - 3.3.2 impacts due to displacement of recreational pressure from Suitable Alternative Natural Greenspaces ("SANG"); and
 - 3.3.3 in combination effects of direct habitat loss and displacement of recreational activity.
- 3.4 In respect of direct habitat loss, Mr Turney explained that it was RBC's case that the Applicant was wrong to screen out direct habitat loss from appropriate assessment, since the effect of the Applicant's proposal was to remove breeding territory and that was therefore inconsistent with one of the fundamental conservation objectives of the TBH SPA.
- 3.5 In respect of recreational pressure, Mr Turney submitted that the effect of the scheme was to create additional recreational pressure, which meant that an adverse effect on the integrity of the TBH SPA could not be ruled out. In RBC's view, the Applicant therefore needed to look to ensure that there was alternative green space provided, to prevent the displaced activity from having an adverse impact on the integrity of TBH SPA.
- 3.6 In response, Mr Booth referred to Mr Turney's most recent submissions at Deadline 5 on behalf of RBC and noted that, in those submissions, RBC sought to set the views of its expert against the views of Natural England. Mr Booth said that it was important to recognise the position adopted by other relevant authorities. Mr Booth noted therefore that on one side of the debate in relation to HRA matters, there was RBC. On the other side, there was the Applicant and its team of specialist consultants that have informed and produced the HRA.
- 3.7 Mr Booth added that there were also the wildlife trusts, namely Surrey Wildlife Trust with whom there was a signed SoCG, and also the Hampshire and Isle of Wight Wildlife Trust, who have

expressed no issue with the content of the Applicant's work. There were also the other authorities, such as Hart District Council, Surrey Heath Borough Council and the Ministry of Defence's ecology team. Mr Booth therefore submitted that there was a consensus of opinion, before even coming to Natural England, on one side of the fence and an outlier, namely RBC, on the other.

- 3.8 Mr Booth explained that the Applicant had not worked up this scheme in a vacuum, but through a close working relationship with bodies such as Natural England and also with the individuals who had a direct responsibility for managing these areas of the TBH SPA, in particular with the wildlife trusts and the Ministry of Defence's ecology team, who had an intimate and direct understanding of the areas in question. Mr Booth also noted that RBC has had plenty of opportunity to engage with Natural England and that the Applicant had been doing so over a number of years.
- 3.9 Mr Booth also explained that it was important to note that none of the direct habitat loss cited by RBC was in fact located within Rushmoor, but was within other administrative areas, and those bodies with responsibility for the management of those areas agreed with the Applicant and disagreed with RBC. In any event, Mr Booth confirmed that the Applicant did not accept the use of the term "habitat loss" by RBC in this context.
- 3.10 As regards SANGs, Mr Booth explained that Mr Turney sought to make generalised points about impacts on SANGs and that this was a gross over-simplification of the position. Where Mr Turney referred to the SANGs, Mr Booth explained that caution was needed. Only one of the SANGs was located within Rushmoor; the others were not located within Rushmoor and the other authorities, with planning functions in respect of those SANGs, no longer maintained a concern in relation to them. Mr Booth concluded that the only SANG of direct relevance to RBC was Southwood Country Park SANG.
- 3.11 The ExA asked the Applicant to respond to RBC's submissions regarding the reliance placed by the Applicant upon the small extent of the TBH SPA which was not affected by the works, against the area which was affected, in reaching a negative screening decision in respect of direct habitat loss.
- 3.12 In response, Mr Booth confirmed that it was not simply a question of the Applicant pointing to unaffected habitats elsewhere as the sole factor which led it to conclude that the conservation objectives of the TBH SPA were not offended. However, Mr Shepherd explained that the extent of the area affected by the works was clearly a relevant factor in terms of concluding that the conservation objectives were not offended.
- 3.13 Mr Shepherd also confirmed that the Order Limits could intersect with approximately 48 (*post-hearing note: in fact, the correct figure is 46*) breeding territories (based on five-year mean of annual monitoring surveys) and, in each case, the Applicant was looking at only a narrow corridor of affected habitat. Mr Shepherd confirmed that the territory was in no way lost, in the way that RBC suggested. Mr Booth also noted that, in some cases, the Order Limits would only clip the edge of a territory, so it was not a case of the Order Limits crossing through the middle of 46 breeding territories in all instances. Further, Mr Booth confirmed that the Applicant had committed not to undertake works within the TBH SPA during the breeding season for qualifying features of the TBH SPA and this commitment was recorded in the CoCP and therefore obliged to be followed via requirement 5. *Post-hearing note: in fact, this commitment*

was originally set out in the outline Construction Environmental Management Plan but has been moved to the Code of Construction Practice submitted at Deadline 6.

Direct habitat loss and screening of effects

- 3.14 The ExA referred to the Applicant's legal response to RBC's comments at Deadline 4 and asked the Applicant to confirm the status of the European Commission's methodological guidance regarding the assessment of significance which was referred to in that response. Mr Booth confirmed that the Applicant would take that away and respond at Deadline 6.
- 3.15 Mr Turney confirmed that it was RBC's case that 9 hectares of habitat loss met the "bother to check" threshold which was referred to in case law of the Court of Justice of the European Union. Mr Booth explained however that that was a fundamental misunderstanding. In the Applicant's case, there was no habitat loss but rather an impact on or interaction with that habitat.
- 3.16 Referring to RBC's submissions at Deadline 5, the ExA asked the Applicant whether consideration had been given to the need to undertake further surveys to ascertain the extent of breeding territories for qualifying species within the TBH SPA, and also asked the Applicant to respond to RBC's submissions to the effect that the data relied upon in the assessment was inadequate.
- 3.17 Mr Shepherd confirmed that surveys were carried out in accordance with Natural England guidance by a firm called 2Js Ecology. The Applicant had been provided with data collected between 2008 and 2018 and that it was the data collected through those surveys which were used to inform the Applicant's assessment. Mr Booth confirmed that the Applicant did not accept that further surveys were required or that the data relied upon was not fit for purpose. Mr Booth noted that the data had been accepted by Natural England for a number of years and that the data was entirely sound and robust.
- 3.18 Mr Shepherd also noted that the surveys were carried out over a significant length of time and showed the abundance and distribution of the birds. Mr Shepherd confirmed that those were precisely the two parameters that were widely relied upon to carry out a robust impact assessment. Mr Shepherd concluded therefore that there was no shortcoming in the quality of the data relied upon by the Applicant.

Natural regeneration

- 3.19 The ExA asked the Applicant to clarify what was proposed in terms of natural regeneration for heathland habitat.
- 3.20 Mr Booth confirmed that it was the Applicant's position that, within a short period of completing the works, the area affected by those works would begin to provide a value habitat for qualifying bird species.
- 3.21 Mr Shepherd also explained that, within a well-managed heathland habitat, one would have areas of the habitat at different stages of age and structure. In Mr Shepherd's view, the success of that natural regeneration was likely to be contingent upon two main factors. The first factor was substrate quality. The second factor was the existence of a seed bank to recolonise the strip of land affected by the works.

- 3.22 Mr Shepherd confirmed that the good practice measures which were built into the Applicant's assessments took care of the substrate reinstatement. As regards the existence of a seed bank, Mr Shepherd confirmed that there was a high degree of confidence that this would remain viable and would regenerate shortly after completion of the works. Mr Shepherd confirmed that there were many good examples of successful dry heathland restoration projects, such as Swinley Forest in Surrey, which people could refer to and see that wildlife started to use that corridor within a very short space of time.
- 3.23 Mr Shepherd also noted that one of the qualifying bird species within the TBH SPA, namely the woodlark, did actually nest and feed in bare areas, and would therefore find some benefit from the bare areas that would be opened up as part of the works. Mr Booth added that natural regeneration was specifically requested by the Surrey Wildlife Trust, Natural England, the Ministry of Defence and the Hampshire & Isle of White Wildlife Trust. Mr Cradick on behalf of Spelthorne Borough Council ("**SBC**") also confirmed that SBC agreed with the natural regeneration approach.
- 3.24 RBC accepted that heathland did regenerate but raised a concern about the loss of mature heathland, which would take much longer to regenerate. Mr Shepherd acknowledged that that was the case but the fundamental point was that qualifying bird species were not reliant upon any specific clump of mature heather and that there would be ample resource in the rest of the territory for those birds to find a place to nest.

Appropriate assessment

- 3.25 The ExA also asked the Applicant to confirm which if any measures were relied upon by the Applicant in reaching a decision to screen out direct impacts on the TBH SPA from appropriate assessment. Mr Shepherd clarified that the decision was based upon the absence of any permanent habitat loss, the small-scale and temporary nature of the works and the ability of the affected habitat to regenerate quickly. Mr Shepherd confirmed that these factors were sufficient to reach a decision to screen out effects from appropriate assessment and that the good practice measures and other measures set out in the assessment were not a reason for screening out effects in the first instance.
- 3.26 In the light of questions raised by the ExA about the measures set out in Table 2.1 of the HRA and the extent to which those measures were relied upon by the Applicant at the screening stage, Mr Booth confirmed that the Applicant would clarify the process which lead to a negative screening conclusion in respect of direct impacts on the TBH SPA at Deadline 6.

Limitation on working in the TBH SPA

- 3.27 The ExA asked the Applicant to confirm where in the application the restriction on working in the TBH SPA between 1 October and 31 January was secured and whether the restriction needed to be made explicit on the face of the Order.
- 3.28 Mr Walker confirmed that the condition was set out in the code of construction practice ("**CoCP**") and there was a requirement – Requirement 5 of the draft DCO – to comply with the CoCP, which would be certified by the Secretary of State for the purposes of the Order. Mr Walker therefore confirmed that the commitment was secured. *Post-hearing note: in fact, this commitment was originally found in the outline Construction Environmental Management Plan but has been moved to the Code of Construction Practice submitted at Deadline 6.*

Mitigation measures relied upon for the HRA

- 3.29 The ExA asked the Applicant to confirm which of the measures was relied upon for the purposes of the HRA and how they were secured by the draft DCO.
- 3.30 Mr Walker confirmed that the embedded measures referred to in Table 2.1 of the HRA were carried across to the CoCP, for example Annex A of the CoCP which dealt with narrow working, Annex B of the CoCP which dealt with trenchless working, as well as the commitments to avoiding the bird breeding season and to working in the SANGs for a maximum of 2 years, which were also set out in the CoCP. Mr Walker confirmed that, in each case, those commitments were secured by Requirement 5 of the draft DCO, except the commitment to avoid the bird breeding season, which is secured via Commitment G38 DCO Requirement 6 (CEMP).

The effect of construction on SANGs

- 3.31 It was clarified at the outset that, for practical purposes, there were five SANGs affected by the scheme, those being at Crookham Park QE Barracks, Southwood Country Park, St Catherine's Road, Windlemere, and Chertsey Meads. However, the focus of the debate in relation to concerns about displacement of recreational activity from SANGs related to Southwood Country Park SANG alone and not to the other four SANGs.
- 3.32 As regards Southwood Country Park SANG, it was noted by RBC that that SANG was linked to the regeneration of Farnborough and Aldershot Town Centres and that the planning applications in respect of those developments were at the pre-application stage. Mr Booth noted that Southwood Country Park SANG was designated for housing allocations comprising up to 2,450 dwellings. However, RBC's own housing land supply document of June 2019 stated in terms that at least 750 of those dwellings which the SANG was intended to accommodate would not be delivered during the period 2020-2023 and would not therefore be delivered during the period of construction of the scheme, so spare capacity in housing allocation terms would remain available.
- 3.33 The ExA asked whether, in addition to the commitment to working within SANGs for a maximum of two years, it was possible for the Applicant to commit to a maximum number of weeks of working within that two year period, so that access to the SANGs was not restricted for the full two year window.
- 3.34 Mr Booth confirmed that the Applicant would consider the request and respond at Deadline 6. However, Mr Booth, supported by Mr Hodkin, also clarified that any cap would necessarily need to import a degree of flexibility, since there were for example seasonality and ecological issues which the Applicant would need the ability to respond to.
- 3.35 The ExA also asked the Applicant to respond to the suggestion that works within SANGs could be programmed so that those works did not take place concurrently in more than one of the SANGs. Mr Booth confirmed that the Applicant would consider this request but that again there were necessarily limitations upon what the Applicant could commit to in terms of the programming of the works at this stage of the scheme.

Other HRA matters

3.36 Mr Cradick on behalf of SBC sought clarification as to the routing of the pipeline within Windlemere SANG, which appeared to conflict with the location of an existing pond. Mr Newman confirmed that the pond would not be affected by construction of the pipeline but was included within the Order limits as a potential mitigation area for Great Crested Newts.

4 Agenda item 4: Mitigation of construction impacts

4.1 The ExA sought a number of clarifications in relation to the outline and other updated documents submitted by the Applicant at Deadline 4.

Whether the CoCP provides an appropriate approach to control of construction activities.

4.2 The ExA asked whether any outstanding references in the CoCP to the Register of Environmental Actions and Commitments (“**REAC**”) would be removed. Ms Segun confirmed that there were only two instances of references to the REAC of which the Applicant was aware but that those references could be removed for Deadline 6.

4.3 The ExA also noted that there were unresolved concerns from RBC regarding the proposed construction technique across the landfill site at Blackwater Valley, in particular regarding the potential for pollution of Blackwater River if an open cut construction technique was to be used by the Applicant. The ExA asked the Applicant to confirm when a decision would be taken to use a trenchless or open cut construction method at Blackwater Valley.

4.4 Ms Segun confirmed that due to the complexity of construction in this location, the Applicant had assessed both techniques and that a decision as to which one would be used could not be made at this stage. Ms Segun confirmed that, if an open cut technique was used, then RBC’s concerns regarding pollution would be addressed through the Water Management Plan, which formed part of the Construction Environmental Management Plan (“**CEMP**”) that would need to be approved by the local planning authority.

4.5 Mr Hodkin also confirmed that the Applicant was currently undertaking ground investigations at this location and that RBC’s concerns were noted. Whilst the Applicant’s preference was strongly in favour of a trenchless crossing, Mr Hodkin advised that the Applicant would not be in a position to confirm which approach would be taken as part of this examination. Mr Hodkin also confirmed that the Applicant would set out in writing for Deadline 6 the proposed protection measures that would be used in Blackwater Valley if an open cut technique were used.

4.6 The ExA also asked whether the commitments contained in the CoCP regarding the project methodology for root protection of trees should be bolstered to bring that document into line with the outline LEMP. Ms Segun confirmed that the Applicant’s approach had been to deal with general matters relating to construction methodology in the CoCP, with more detailed matters to be covered in the LEMP. However, Ms Segun confirmed that the Applicant was happy to place those commitments in the CoCP.

Construction Traffic Management Plan (“CTMP”)

4.7 The ExA asked the Applicant to confirm why it considered that it was appropriate for the CTMP to be approved by the highway authority as opposed to the local planning authority, noting the approach taken on other schemes. Mr Booth explained that the CTMP related to measures proposed for reducing the impact of construction on the local highway network and, for that

reason, the Applicant considered that the highway authorities were the appropriate bodies to sign the document off. Mr Jezzard on behalf of Surrey County Council confirmed that the Council agreed with that approach.

- 4.8 Mr Walker also stressed that, whichever approach the ExA was ultimately minded to take, the primary position had to be that only one authority approved the document, to avoid the scope for differences of opinion to arise between decision makers.
- 4.9 The South Downs National Park Authority (“**SDNPA**”) raised a specific question about commitment G111 of the outline CTMP, which stated that information regarding measures for the monitoring of the CTMP and details of appropriate actions in the event of a non-compliance were provided in section 9 of the outline CTMP, but that was not currently included. The Applicant confirmed that that omission would be rectified for Deadline 6.

CEMP

- 4.10 In the light of paragraph 1.14 of the outline CEMP, the ExA asked the Applicant to confirm whether there were any proposals for advance works to be constructed which would be authorised separately to the DCO process.
- 4.11 Mr Hodkin confirmed that there was a potential for some early works, such as setting up of the logistics hubs, and that these would need to be approved by separate planning applications if the Applicant were to adopt that approach.
- 4.12 The ExA also referred to RBC’s concern that the suitable qualified person appointed in accordance with the outline CEMP could be making autonomous decision on working practices. Mr Newman confirmed that those people had to have the power to make decisions on site about the implementation of the commitments the Applicant had made. However, Mr Booth confirmed that the suitably qualified persons would not be cutting across plans and licences approved by other parties and would be required to operate within the constraints of those documents.

Noise

- 4.13 There was lengthy discussion at ISH 5 regarding RBC’s concerns about the appropriateness of the Applicant’s use of average monthly noise level limits in assessing the impacts of noise on residents and the wider community.
- 4.14 Mr Booth noted that the Applicant’s approach to the assessment had been established some time ago and that issues regarding a methodological point were now being raised by RBC for the first time at a late stage in this process.
- 4.15 Mr Roberts-Powell reiterated Mr Booth’s submission, noting that the monthly average had always formed the basis of the assessment and that that was set out in both the Scoping Report and Appendix 13.3 to the Environmental Statement. Mr Roberts-Powell confirmed that the approach set out in the outline Noise and Vibration Management Plan was no different to this.
- 4.16 Mr Roberts-Powell confirmed that the monthly average approach was a standard and commonly understood approach to noise assessment. Mr Roberts-Powell also submitted that the daily average approach advocated by RBC was problematic. First, at a practical level, Mr Roberts-Powell explained that to reliably understand noise levels on any particular day required a level of programme knowledge that was simply not available at that stage. Mr Roberts-Powell

therefore confirmed that the longer monthly average, which took account of all of the works which the Applicant knew would occur and condensed them into a theoretical 20-day window, was a more robust approach.

- 4.17 Mr Roberts-Powell confirmed that the second reason for adopting a longer average was that both BS 5228 and the IEMA guidelines for the assessment of noise and vibration, required the duration of effects to be taken into account. Mr Roberts-Powell explained that the notion that a significant effect should be based on a single day did not properly reflect that guidance.
- 4.18 Mr Booth confirmed that the Applicant was happy to submit a short note at Deadline 6 to clarify the approach taken to the assessment, in light of the further discussion at ISH 5. Mr Booth confirmed that this would note would include reference to the various mitigation measures set out in the outline CEMP, outline CTMP and CoCP.
- 4.19 The ExA also asked the Applicant to comment upon the list of additional roads in respect of which a number of local planning authorities were advocating that acoustic barriers should be deployed.
- 4.20 Ms White confirmed that the Applicant was proposing to include barriers for those roads where the assessment had shown that significant noise effects were likely and that some of those related to roads suggested by local planning authorities. Mr Booth confirmed that there were other roads which appeared on the list provided by the local planning authorities but in respect of which the Applicant did not consider that further measures were required as there was no evidence of significant noise effects at those locations.
- 4.21 Mr Booth confirmed however that the Applicant would review and respond to each of the roads listed in local planning authorities' submissions and respond accordingly at Deadline 6.

Outline LEMP

- 4.22 There was some discussion at ISH 5 regarding the outline LEMP.
- 4.23 The ExA asked the Applicant to confirm whether it was planning, where possible, to replace any tree removed during construction.
- 4.24 Mr Knott confirmed that it was the Applicant's intention to replace all trees removed during construction. Mr Knott confirmed that the starting point was to retain all trees where practicable. If that was not possible, Mr Knott confirmed that the intention was to replant trees in the same location. If there were any practical reasons which meant that this was not possible (such as being over the pipeline), Mr Knott confirmed that the Applicant's intention was to replant in the vicinity of where the trees were removed.
- 4.25 The ExA asked the Applicant to confirm what the position would be if it was not possible to replant trees in the vicinity. Mr Booth clarified that the replacement tree planting was taking place if not in the actual location of removal, then very close to that location. Noting the ExA's concern that this clarification was not provided by the outline LEMP, Mr Booth confirmed that the Applicant would amend the outline LEMP for Deadline 6 to confirm that tree replacement would where possible be on the site of, or within close proximity to, the existing tree loss.

- 4.26 There was a further concern expressed about the wording of commitment G97 of the outline LEMP and the extent to which it allowed the Applicant simply to replace trees with native shrubs over the easement strip.
- 4.27 Mr Booth confirmed that the shrub planting referred to in commitment G97 was not there simply to replace trees. Mr Booth said that the Applicant would be replacing any trees removed elsewhere but would, in addition, be including shrub planting over the pipeline easement, since that was in principle capable of coexisting with the pipeline. Ms Segun explained that the Applicant was seeking to avoid leaving a scar through the pipeline route and this was the purpose of commitment G97.
- 4.28 Mr Booth confirmed that the Applicant would consider the wording of commitment G97 for Deadline 6 in order to seek to provide clarify and to reflect the answers given at ISH 5.

Quantum of replacement tree planting

- 4.29 Reference was made by interested parties to the Woodland Trust Policy paper entitled Local Authority Tree Strategies (July 2016). Mr Turney on behalf of RBC asserted that, to avoid net loss in accordance with the principles set out in that policy paper, there would be a need to look to land outside the Order Limits. Ms Segun disagreed and confirmed that the Applicant had defined the Order Limits so as to encompass the reinstatement tree planting that was necessary.
- 4.30 Mr Booth also confirmed that the Applicant would respond at Deadline 6 confirming how it was proposed to reinstate vegetation in circumstances where the Order Limits had been drawn narrowly, for example to reflect areas of narrow working.

NJUG vs British Standard

- 4.31 Mr Booth reiterated the confirmation provided at the start of ISH 5 that the British Standard would be used in place of the NJUG and that this meant full compliance with the British Standard.

5 Site specific matters

- 5.1 The ExA asked the Applicant to set out the approach taken to the preparation of a number of the Site Specific Plans (“**SSPs**”) submitted at Deadline 4.

Queen Elizabeth Park (“QE Park”)

- 5.2 Mr Hodkin provided an overview of the structure of the SSP for QE Park and the factors which had influenced its drafting. Mr Hodkin confirmed that the SSP was informed by discussions with some of those in attendance at ISH 5 and also by comments received from other Interested Parties. Mr Hodkin confirmed that the Applicant had treated the document as a site specific methodology and had sought to include as much detail as was reasonably practicable at that stage.
- 5.3 Mr Hodkin explained that the Applicant’s intention was to move through QE Park in sections, in much the same way as street works. Mr Hodkin confirmed that further clarification could be

added about the open trench construction practice which was proposed at QE Park as part of an updated SSP which would be provided at Deadline 6.

- 5.4 Mr Newman confirmed that the SSP included information regarding vegetation retention, most notably a commitment that only 30 non-mature trees within QE Park would be removed during construction. Mr Newman confirmed that this commitment included the stringing out area in respect of trenchless crossing TC018.
- 5.5 The ExA asked why the full QE Park tree survey submitted by the Applicant as part of its submission at Deadline 4 was not included in the SSP for QE Park. Mr Newman confirmed that the full survey had not been included as the Applicant had sought to keep the SSPs as user-friendly as possible. However, Mr Newman confirmed that the full survey could be added to the next iteration of the SSP for QE Park if the ExA deemed that appropriate.
- 5.6 In the light of Mr Jarman's submission that there was a viable trenchless construction solution through QE Park, the ExA asked the Applicant to confirm whether a trenchless solution had in fact been ruled out. Mr Booth confirmed that this was correct and that it was very firmly the Applicant's case that a trenchless solution was not feasible through the Park.
- 5.7 Referring to comments made in the context of ISH 4 on Tuesday 25 February 2020, the ExA asked the Applicant to respond to the suggestion that the outline SSPs should be submitted and certified by the Secretary of State in outline form, with provision made for their later approval by the local planning authority before commencement of the works.
- 5.8 Mr Booth confirmed that:
- 5.8.1 it was the Applicant's case that the SSPs would be in a form that could be certified by the Secretary of State before the end of the examination;
- 5.8.2 the SSPs would identify a route alignment through sensitive locations and, to the extent that that route alignment could not be followed, there was provision made for subsequent amendment of the SSPs with the approval of the local planning authority; and
- 5.8.3 the difficulty of having to seek local authority approval to the SSPs was underscored by the fact that, at that late stage in examination, interested parties were still advocating alternative solutions such as trenchless construction through QE Park, which had long since been discarded by the Applicant as inappropriate and which moreover had not been assessed. The Applicant was therefore very concerned that any future requirement for approval of the SSPs could reopen debates such as those and thereby frustrate the delivery of the scheme.
- 5.9 As a result, Mr Booth confirmed that the Applicant strongly resisted any requirement for the future approval of the SSPs by the local planning authority.

Turf Hill

- 5.10 In the same way as QE Park, Mr Hodkin provided a brief overview of the structure and content of the SSP for Turf Hill.

- 5.11 Mr Booth also reiterated that it was the Applicant's intention that the SSP would be certified by the Secretary of State as part of this application. The Applicant would then be held to constructing the pipeline along the alignment identified in the SSP, with scope to seek the local planning authority's approval for any changes to that alignment, to the extent that any such changes may be required as a result of further design work or complexities encountered during construction of the pipeline.
- 5.12 As regards tree surveys, Mr Newman confirmed that there was a fully compliant BS 5837 survey ongoing in relation to trees in Turf Hill (including those along the Guildford Road) and that the results of that survey would be available before the end of examination.
- 5.13 There were further concerns raised at ISH 5 by interested parties regarding route selection at Turf Hill. Mr Booth confirmed that the Applicant had addressed that question at the first Issue Specific Hearing on environmental matters in December 2019 and also noted that Natural England's position was now before the examination.

Other SSPs

- 5.14 Concerns were raised by Mr Cradick on behalf of SBC at ISH 5 in relation to the Ashford Road SSP regarding a perceived lack of detail and protection for potential impacts in respect of TPO trees. Mr Newman confirmed that the Applicant would review that SSP for Deadline 6. Mr Hodkin noted that the focus of further work in relation to the SSP would be on the section of TPO trees referred to by the Council and not the whole of the road which was some one mile in length.
- 5.15 SBC confirmed that it was content with and welcomed the proposals put forward by the Applicant in the SSPs for Fordbridge Park, Ashford Town Centre and St James' School. Mr Hodkin also confirmed that the Applicant was in discussion with St James' School regarding the proposed SSP for that location.
- 5.16 Mr Hodkin clarified that all the SSPs would updated at Deadline 6 to reflect the discussion at ISH 5.

South Downs National Park

- 5.17 There was some discussion as to whether an SSP should be secured by the draft DCO in respect of the South Downs National Park. Mr Turney on behalf of the SDNPA expressed the view that provision should be made for an SSP in respect of the National Park and secured by the draft DCO.
- 5.18 In response, Mr Booth submitted that the South Downs National Park comprised a very large area indeed and it was not correct to refer to the National Park as a specific site, in the same way as those other locations in respect of which an SSP was proposed. Mr Booth explained that the Applicant was well aware of the statutory designation of the National Park, however the SSPs did not deal with landscape quality but rather engineering complexity.
- 5.19 On that basis, Mr Booth confirmed that the Applicant did not consider that an SSP for the National Park was necessary. That notwithstanding, Mr Booth agreed that there was a need to consider how commitments given to the SDNPA in the course of examination could be secured and the Applicant would provide an update in that regard for Deadline 6.

QE Park play facilities

- 5.20 The ExA asked for an update regarding the provision of temporary alternative play facilities at QE Park.
- 5.21 Mr Booth explained that the Applicant had now identified an area within the Park outside the Order Limits where a temporary facility could be installed during construction. Mr Booth explained that the Applicant was seeking to conclude a land agreement with RBC which would enable the temporary play area to be located there. Mr Walker also explained that, if it were not possible to relocate the play facilities to that location for whatever reason, the fall-back position was that temporary alternative facilities would be provided within the Order limits in accordance with commitment OP05 of the CoCP.
- 5.22 Mr Booth confirmed that a note setting out where the facilities would be provided and how they were proposed to be secured would be provided by the Applicant at Deadline 6.