

# **Summary of Oral Submissions at Issue Specific Hearings**

**Application by ESSO Petroleum Company Ltd  
for an Order Granting Development Consent  
for the Southampton to London Pipeline  
Project**

**Application Reference EN070005**

**Interested Party Reference 20022787**

**Internal Reference 19/00432/PINS**

## RUSHMOOR BOROUGH COUNCIL

### SUMMARY OF ORAL SUBMISSIONS AT HEARINGS

#### Compulsory Acquisition on 24 February 2020

1. The key points made on behalf of Rushmoor Borough Council were as follows:
  - a. That the negotiations relating to Cove Cricket Club are separate to the rest of the land owned by Rushmoor.
  - b. That in relation to that land, it is optimistic to think that the Heads of Terms as presently drafted will be agreed prior to the end of the examination period.

#### Draft DCO ISH on 25 February 2020

2. The key points made on behalf of Rushmoor Borough Council were as follows:
  - a. Part 6, Article 41 (felling or lopping) provides a broad power which might give rise to a risk to trees, including veteran trees. A requirement is needed to constrain this power. The local planning authority should be consulted and an arboriculture report prepared.
  - b. In respect of Requirement 8 (Vegetation), the Local Authority seeks provision for approval and stated that it is not an additional burden for the Applicant to submit plans for approval. Furthermore, that there needs to be strict environmental controls. The Order Limits are relatively wide and there are areas other than those covered by the Site Specific Plans (SSP) where there is substantial vegetation. *[Post hearing note: for example, Old Ively Road and the two railway corridors].*
  - c. In relation to Requirement 12 (LEMP) and commitment G86, the provision is inadequate as drafted. It should be supervised by an arboriculture expert. It is a good example of where local authority input is needed to limit the scope of damage. Furthermore, in relation to commitment G97, shrub planting might not be deemed appropriate and

indeed this commitment might not be necessary. The Applicant confirmed that they would revisit this.

- d. Regarding Requirement 17 (Site Specific Plans – SSP), it was noted that the SSP's have been submitted very late in the examination process. The plans are welcomed but they require further detail and further work. The SSP's should be subject to approval by the local authority. The aim is not to govern route selection but to control environmental impacts.
- e. In relation to Requirement 3 (Stages of authorised development) there is a need for local authority approval because the "stages" determine the scope of the LEMPs and other submissions pursuant to the requirements. At present the applicant can determine the scope of the LEMP by the way in which it defines a stage.
- f. In Requirement 14 (construction hours) there is a lack of clarity of judgment of what is "reasonably necessary" and "exceptional basis". It is unclear how any disputes would be resolved. In relation to 24 hours working in a sensitive area, this will be controlled by the permit scheme which has been agreed with Surrey and Hampshire County Council, and we are content that there might be a need for this to take place on occasion, with our consultation. *[Post hearing note: for clarity, the Council remains concerned about the disturbance caused by 24 hour working to residents in Nash Close, Cove Road, Stakes Lane and Ship's Lane. The Council would encourage provision in requirement 14 to allow for temporary relocation where working will extend into the night time period].*
- g. There was a discussion about Requirement 6 (CEMP) and what measures apply to pre-commencement works. RBC is concerned that pre-commencement works could be decided on the Council's land especially within SCP and QEP with no consultation with the council. The Applicant confirmed that they would consider this. There remains a concern on behalf of the local authority about the contents of the CEMP as summarised in the Council's Deadline 4 submissions.
- h. In relation to protected species (Requirement 13) there remain serious concerns about the lack of survey. As the baseline information is lacking a proper assessment of impacts

and consideration of mitigation is not possible. A proposed draft requirement was submitted at D4 and D5 to ensure that adequate surveys are completed in advance and to enable protection and mitigation to be negotiated between RBC and ESSO after examination to ensure conformity with the law.

- i. Submissions were made in relation to Requirement 21 (Register of Requirements). This Register will be the most useful reference form and it needs to be in place prior to the submission of applications under requirements. The Applicant confirmed that they would re-visit this.

### **Environmental ISH (26 February 2020)**

3. The particular concerns raised were as follows:

#### **Clarification of Matters Relating to Ecology and Biodiversity**

- a. It was confirmed that the figure of 48 breeding territories to be impacted was taken from the Habitat Regulation Assessment (HRA) itself which identifies breeding territories. The specific reference within the HRA to this will be supplied at D6 as will confirmation as to how the 48 breeding territories are divided across the Sites of Special Scientific Interest (SSSI).
- b. In relation to Environmental Investment Programme– scope and delivery, there was confirmation that the proposed specific mitigation at QEP was the provision of a pond which would have required further tree works and therefore was not agreeable. Furthermore, it was clarified that the Environmental Improvement Plan (EIP) is not secured within the draft DCO and therefore cannot be relied upon by the ExA, a point which was accepted by the Applicant.
- c. In relation to biodiversity, the ExA needs to be in a position to report to the Secretary of State that there is no net loss in biodiversity. This cannot be confirmed unless the well-established mechanism is used to confirm whether biodiversity is off-set. RBC believe here will be a loss and the Applicant cannot ascertain of the extent without undertaking an assessment of the habitats to be impacted and calculations using the Defra or another

metrix. The Applicant was asked to show where in the Environmental Assessment (EA) it has established that there is no net loss.

### **Habitats Regulations Assessment including Suitable Alternative Natural Greenspace (SANG)**

#### **Consideration of the Applicant's HRA**

- d. In relation to legal submissions at D3, D4 and D5, the position was summarised based on the earlier legal submissions. There are two principal issues: (1) the Applicant cannot demonstrate that there is no likely significant effect from direct impacts on the SPA (2) the Applicant cannot demonstrate that there would be no adverse effect on integrity from the displacement of recreational users from SANGs to the SPA. There is a further issue about the cumulative/in-combination impact of these two factors. The impacts need to be considered by reference to the conservation objectives which include the "extent and distribution of the *habitats* of the qualifying features" which must be "maintained".
- e. The direct impacts on the SPA will fail to "maintain" the extent and distribution of those habitats. The negative screening decision cannot be justified: there must be an appropriate assessment of the impacts given the temporary loss of a substantial amount of habitat. The "temporary" nature of that impact is relevant to the appropriate assessment but not a reason to not carry it out, particularly when the habitat will take some years to regenerate. The applicant is wrong to contend that only the impact on the birds needs to be assessed in the SPA: the habitat is protected, and the conservation objectives make that clear beyond doubt.
- f. It was confirmed that the legal submissions made are based on facts provided by the Council's Ecologist. The representations made put them into lens of legislation and do not speak for any other statutory body on this point. The submissions were made by Rushmoor Borough Council, for Rushmoor Borough Council. The point was made that Hampshire Wildlife Trust have not expressed agreement with the Applicant's position. Instead they have informed RBC they do not have the resources to consider the proposals. RBC is deeply disappointed with the position taken by Natural England given that they are the relevant statutory body. The council's view is that strategies to protect the Thames Basin Heaths from indirect recreational pressure were rightly required to ensure protection of the breeding birds and have now been in force for over a decade.

- g. In relation to the query regarding the time period of works in the SANGS and whether if this was limited it could reduce the impact, this would indeed limit the impact due to indirect recreational pressure due to displacement from the Southwood Country Park SANG, which would limit the in-combination impacts from displacement and direct habitat loss. The stipulation not to undertake works within the SANGs network, during the summer breeding period would help to ensure that recreational pressure was kept to a minimum. *[Post hearing note: For works which cannot be scheduled outside the breeding season, such as in the Flood Alleviation Area, RBC is advocating that the applicant fund the Cove Brook Enhancement Project to provide additional Suitable Alternative Natural Green Space (SANGS) along the Cove Brook Greenways, which run through Farnborough. RBC is of the opinion that if the above measures were specified within the DCO there would be no significant in-combination impact on the Thames Basin Heaths SPA as a result of recreational pressure, within the Rushmoor Borough.]*
- h. In relation to the direct impact on the European Sites, the conservation objectives measure the integrity of the site by protecting the breeding habitats, with three out of five objectives ensuring that the extent, distribution, structure, function and supporting processes of the habitat are preserved. If there is a loss of habitat then that is an adverse effect on integrity in its own right. There is also a risk to the breeding success of the SPA qualifying features.
- i. RBC is concerned that no breeding bird surveys were undertaken by the applicant with only previous monitoring surveys accessed. As these surveys were undertaken to assess the success of the mitigation strategy in relation to recreational pressure, they were not designed to assess either the extent of the breeding territories or provide information as to how the birds may react to habitat loss. No information was collected about available territories within the SSSI or whether there was carrying capacity across the heathland to be affected. What is required is a bespoke baseline survey that provides the above information and enables the HRA to fully assess impact and informs any mitigation or compensation measures required. .
- j. In relation to the question of heathland regeneration, seedlings will appear within a few years with pioneer heather, large seedlings being present within 5. Dartford Warbler and Nightjar require much more mature heather in which to breed. There are four stages of

heather and stage 3 is mature. The heathland will not reach the mature stage for at least 15 years and more likely 25 years. *[Post hearing note: RBC's view is that further mitigation and possibly compensation measures are required to ensure that existing heathland within the SPA or areas of supporting habitat outside the SPA are enhanced and managed to ensure additional areas are available for the displaced birds.]*

- k. To clarify the term “beyond reasonable scientific doubt” this term originates from European case law. The ExA, as the determining authority must be sure that there will not be an adverse impact on integrity of the SPA qualifying species. If there is any doubt that there could be significant impact within the screening stage, then the impact must be taken forward to full assessment. . In the case before us there is to be habitat loss of at least 9ha across the SPA, therefore there is a risk that the qualifying birds could suffer from a loss of breeding habitat. In respect of visitor displacement, it is RBC's view, that the significant habitat taken for the works within SCP, and other SANGS, coupled with the disruption caused by the works is likely to lead to displacement of at least a proportion of the visitors onto the SPA. Due to the above uncertainty one would screen in both habitats loss and visitor displacement.
  
- l. In relation to the impacts on the aquatic environment, since the outline CEMP has been issued and due to the assurances being sought by the EA, our concerns have lessened. *[Post hearing note: The surface water drainage measures are fairly rigorous, although RBC would promote three forms of drainage before water is released onto the designated sites. RBC are concerned that any structure such as lagoons dug into the ground would cause further habitat impacts within the SPA and would promote the use of free standing bowlers and other mechanisms for filtration purposes.]*
  
- m. RBC awaits sight of the Appropriate Assessment undertaken by the ExA and hope that further mitigation and compensation measures can be incorporated within the assessment and delivered and secured through the dDCO to ensure no significant impact on the breeding bird population.

**The Effect of the Proposed Development on the SANG Network/ any consequential effect on the Thames Basin Heath SPA**

- n. Confirmation was given that Southwood Country Park is now open. The site has been designated by NE as a SANG. It will be allocated shortly for the Farnborough and Aldershot regeneration. The SSP provided for Southwood Country Park is helpful however in terms of management of the works, we ask that:
1. There is limited working,
  2. The work is seasonal and does not impact on breeding birds, and
  3. That the Cove Brook Greenways linear corridor is enhanced to attract more visitors and provide further SANG capacity to accommodate the displacement of visitors.

If these factors can be adhered to then impact on our SANG would be mitigated. This only applies to the SPA and further mitigation is required for impacts on habitats and species within the park.

#### **Mitigation of Construction Impacts**

- o. RBC is very concerned that the works as proposed trench through Blackwater Valley (Frimley Bridge) SINC which is known to be an unofficial landfill. Both HCC and the applicant have no knowledge of the contaminated waste present within the landfill and the applicant has undertaken no testing and therefore the risk is unknown. RBC have concerns regarding the risk of widespread pollution into the waterways within the Lodden catchment from these proposals and feels that HDD should be undertaken in this sensitive area.
- p. In relation to the sign off for works under the CTMP, the local authority is concerned with the impact on the residents and would wish to agree the final plan, as it would under a normal planning condition.
- q. RBC would not agree that suitably qualified personnel on site should agree changes to any authorised plans or mitigation on site, but would advocate that the relevant Local Authority's approval should be required.
- r. Currently noise is assessed using a monthly average. A daily average should be undertaken for noise assessment. The explanation of the monthly average proposed by the Applicant will be put to our expert for consideration and RBC will comment at the next deadline.



- s. In relation to commitment G97 in the LEMP, the use of native shrubs might be inappropriate in certain locations. It may be more appropriate to plant flora rich grassland or restore marsh habitat in some areas. RBC also require clarity that any planting within the order limits is in addition to the tree planting and that tree planting to mitigate net loss will be undertaken within the borough. Furthermore the general point regarding net loss was made (see above). A one for one mitigation strategy for trees would lead to net loss. In order to avoid net loss the applicant would need to look outside the order limits. RBC would be happy to work with ESSO to identify areas in which additional habitats and trees can be provided.

**Queen Elizabeth Park (QEP)**

- t. In the SSP the work to the trees uses the NJUG guidance. This needs to be updated to the British Standard (BS) since the Applicant has now committed to comply fully with the BS. If the BS standards were used it will not be possible to trench in QEP as the BS requires HDD within all veteran tree Root Protection Zones for utilities projects. Therefore, trenchless methods will need to be used in QEP.
- u. Regarding the play area that there seems to be an agreed solution however presently there are no means to secure it and this needs to be provided by the applicant.
- v. RBC would like to clarify that the local authority is promoting trenchless working in QEP. This might result in a temporary impact in Farnborough Hill School grounds and the conservation area, which is accepted.
- w. Representations were made by the local residents that they are willing to assist the Applicant in finding possible solutions to allow trenchless working to be done in QEP.