

# Southampton to London Pipeline Project

## Deadline 7

Applicant's Comments on the ExA's Draft  
Development Consent Order  
Application Document: 8.92

Planning Inspectorate Reference Number: EN070005

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**Southampton to London Pipeline Project  
Comments on the ExA's Draft Development Consent Order**



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## 1 Comments on the ExA's Draft Development Consent Order

Table 1.1: Comments on the Examining Authority's Consultation Draft Development Consent Order

Reference	Applicant's response
<b>Articles</b>	
<p><b>Part 3</b>  <b>Article 11(1)(g)</b></p> <p><i>Street Works</i></p>	<p>The powers in article 10(2)(i) and article 11(1)(g) are distinct powers and so their separate treatment in the draft DCO is justified.</p> <p>Article 10(2)(i) confers a power to execute works to provide or improve sight lines <u>in the context of streets which are permanently or temporarily altered, with the consent of the street authority, under that article.</u></p> <p>Article 11(1)(g) is a separate power. It allows the Applicant to execute works to provide or improve sight lines but only <u>in relation to those streets listed in Schedule 4 of the draft DCO in respect of which the Applicant is authorised to undertake street works.</u></p> <p>It is not the case, therefore, that the Applicant would be authorised to execute works to improve sight lines to streets in Schedule 4 of the draft DCO in reliance upon the power in article 10(2)(i). That power applies in a different context to altered streets.</p> <p>It would also defy logic, since the exercise of the power in article 10(2)(i) is subject to the consent of the street authority, whereas there is no consent requirement in respect of the exercise of the power in article 11(1)(g).</p>
<p><b>Part 3</b>  <b>Article 13</b></p> <p><i>Temporary stopping up, alteration, diversion or restriction of streets and public rights of way</i></p>	<p>The Applicant has made these changes to the revised draft DCO submitted at Deadline 7 (<b>Document Reference 3.1(8)</b>).</p>



Reference	Applicant's response
<b>SCHEDULE</b>	
<b>Schedule 2 Requirement 3</b>  <i>Stages of the authorised development</i>	<p>The Applicant has adopted this wording in the revised draft DCO submitted at Deadline 7 (<b>Document Reference 3.1(8)</b>).</p>
<b>Schedule 2 Requirement 5</b>  <i>Code of Construction Practice</i>	<p>The Applicant notes that the Examining Authority's suggested changes have materially the same effect as the drafting originally proposed and is therefore happy to incorporate them, with minor amendments, in the revised draft DCO submitted at Deadline 7 (<b>Document Reference 3.1(8)</b>).</p> <p>Tracked against the version submitted at Deadline 6, Requirement 5 now reads as follows:</p> <p><b>Code of construction practice</b></p> <p><i>5. The authorised development must be undertaken in accordance with the code of construction practice, or with such changes to that document as agreed by the relevant planning authority, provided that any such changes must be-</i></p> <p><i><u>(a) be in accordance with the principles set out in the Code of Construction Practice;</u></i></p> <p><i><u>(b) be necessary or desirable to reflect a change or update in legislation, good guidance or practice or confined to a specific location along the route of the authorised development;</u></i></p> <p><i>(c) <del>and in either case such change must</del> not give rise to any materially new or materially different environmental effects to those assessed in the environmental assessment; and</i></p> <p><i>(d) <del>must</del> not result in a variation to the measures set out in the HRA Commitments Schedule <del>which adversely affects the findings of the Habitats Regulations Assessment.</del></i></p>



Reference	Applicant's response
<p><b>Schedule 2</b>  <b>Requirement 6</b></p> <p><i>Construction Environmental Management Plan</i></p>	<p>The Applicant is happy to incorporate this suggestion and has done so, with minor modifications as set out below, in the revised draft DCO submitted at Deadline 7 (<b>Document Reference 3.1(8)</b>).</p> <p>Since only a small number of the commitments included in the HRA Commitments Schedule would actually be secured by the CEMP (including the appendices to the CEMP), the Applicant has modified sub-paragraph (3) of Requirement 6 as follows:</p> <p><i>“The CEMP submitted for approval under sub-paragraph (1) must include the mitigation measures to be secured by the CEMP as set out in the HRA Commitments Schedule.”</i></p>
<p><b>Schedule 2</b>  <b>Requirement 7(1)</b></p> <p><i>Construction traffic</i></p>	<p>Throughout the examination, the Applicant has consistently maintained the view that the construction traffic management plan (“<b>CTMP</b>”) should be approved by the highway authorities.</p> <p>The purpose of the CTMP is to secure mitigation for the impacts of the authorised development on the local road network. The highway authorities, who manage that network within the framework of the existing road traffic management permit schemes, are well placed to consider and understand the appropriateness of measures which are presented in any CTMP submitted for approval.</p> <p>During the issue specific hearing on environmental matters which was held on 26 February 2020, Surrey County Council explained that it would be entirely illogical for one body, the highway authority, to be issuing permits under the traffic management permit schemes and another body, the local planning authority, to be approving the CTMP, given the undoubted scope for overlap between the permit schemes and the CTMP. Hampshire County Council has confirmed that it also agrees with the wording of Requirement 7 [<a href="#">REP6-017</a>].</p> <p>Further, there is in the Applicant's view a clear benefit in providing the framework for a process that will enable the CTMP measures to be applied in a consistent way across roads along the route of the project, given the long, linear nature of this scheme. That framework is far easier to achieve where there are fewer potential approval bodies involved.</p> <p>The Applicant does recognise that measures proposed as part of any CTMP may have local planning implications and that it is therefore important for planning authorities to be engaged in the approval process for the CTMP. It is for this reason that, during the course of the examination, the Applicant made a change to Requirement 7 so that, in relation to any CTMP submitted for approval, the highway authority must consult with the relevant planning</p>



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	<p>authority in relation to the content of the plan, so that any comments by the local planning authorities can, where appropriate, inform the final, approved version of the plan.</p> <p>For these reasons, the Applicant maintains that the current drafting of Requirement 7 is appropriate and that the CTMP should be approved by the highway authorities and asks that the Examining Authority records the Applicant's position in this regard, in its recommendation to the Secretary of State.</p>
<p><b>Schedule 2 Requirement 12</b></p> <p><i>Landscape and Ecological Management Plan</i></p>	<p>The Applicant is happy to incorporate this suggestion and has done so, with minor modifications as set out below, in the revised draft DCO submitted at Deadline 7 (<b>Document Reference 3.1(8)</b>).</p> <p>Since only a small number of the commitments included in the HRA Commitments Schedule would actually be secured by the LEMP, the Applicant has modified sub-paragraph (4) of Requirement 12 as follows:</p> <p><i>"The LEMP submitted for approval under sub-paragraph (1) must include the mitigation measures to be secured by the LEMP as set out in the HRA Commitments Schedule."</i></p>



Reference	Applicant's response
<p><b>Schedule 2 Requirement 14</b></p> <p><i>Construction Hours</i></p>	<p>The Applicant has amended sub-paragraphs (1) and (3) as suggested in the revised draft DCO submitted at Deadline 7 (<b>Document Reference 3.1(8)</b>).</p> <p>The Applicant does not consider that the proposed amendments to sub-paragraph (4) are appropriate.</p> <p>The purpose of limiting the start-up and shut-down activities in sub-paragraph (4)(b) was to acknowledge that these activities, whilst small in scale and not involving the use of plant and machinery, could give rise to some discernible noise outside Order limits. The need to limit disruption to receptors in proximity to those activities therefore provides the rationale for the one-hour window for those works in sub-paragraph (4)(b).</p> <p>That logic does not apply in relation to the activities in sub-paragraph (4)(a).</p> <p>The rationale for seeking powers to receive oversize deliveries at any time outside the core working hours is to minimise disruption to the local road network. That objective would be severely impeded if deliveries were restricted to an hour either side of the core hours (i.e. between 0700 – 0800 and 1800-1900), when traffic on the road network is in any event likely to be at peak levels.</p> <p>As regards non-intrusive activities, these are activities which would not create discernible light, noise or vibration outside the Order limits (see sub-paragraph (5)(b)) and are therefore controlled by their very nature. In the Applicant's view, imposing a time limitation on these works does not make them any more or less acceptable in environmental and planning terms. On the other hand, there is clearly a benefit in the Applicant being able to implement the project in an expedition manner, so that it can move through affected communities quickly and efficiently, particularly where the activities involved are, as they are here, non-intrusive in nature.</p> <p>The Applicant therefore resists the proposed changes to sub-paragraph (4)(a) of Requirement 14 and asks that the Examining Authority records the Applicant's position in this regard, in its recommendation to the Secretary of State.</p>
<p><b>Schedule 2 NEW REQUIREMENT</b></p> <p><i>Queen Elizabeth</i></p>	<p>The Applicant does not accept that the Site Specific Plan for Queen Elizabeth Park ("<b>the SSP</b>") contains insufficient information to enable its certification by the Secretary of State for the purposes of this application for development consent. Like the other Site Specific Plans, it is a comprehensive plan and provides an appropriate, bespoke solution for the construction of the pipeline through the Park, which minimises harm to this sensitive location.</p>



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<p><i>Country Park</i></p>	<p>Later approval by the relevant planning authority is appropriate where further detail will be required to inform the content of a plan, scheme or strategy. That is categorically not the case here. The SSP contains the detail needed to secure an appropriate solution for construction through the Park. The plan would not be materially improved by providing for later approval by the planning authority. It will instead leave open for inevitable debate, and disagreement, matters which the Secretary of State will have an opportunity to settle as part of this application.</p> <p>The Applicant has identified and assessed a route through the Park. That route is, in the Applicant's view, the most appropriate route. The Applicant has explained in detailed terms during this examination, including at Deadline 7 (<b>Document Reference 8.96</b>) why it does not consider that the alternative routes proposed by interested parties are suitable. This includes the engineering factors which the Applicant has had regard to in reaching that conclusion. Very limited information or detail has been submitted by interested parties in support of alternative trenchless proposals. The Applicant cannot, of course, be compelled to adopt solutions proposed by interested parties, particularly in circumstances where its analysis has shown those alternative solutions to be less appropriate and to carry greater risk than its own (see further the Applicant's response to the Neighbours and Users of Queen Elizabeth Park ("<b>NUQEP</b>") Deadline 6 submissions at <b>Document Reference 8.96</b>).</p> <p>The Applicant would also note that it has been discussing the application route through the Borough of Rushmoor with RBC since the Statutory Consultation in Autumn 2019. Further, at a meeting on the 29<sup>th</sup> November 2018, a detailed route walk through was undertaken with RBC's Biodiversity Officer, and at this time the Applicant clearly explained the installation techniques and approach to its Environmental Statement. There has been more than enough time and opportunity for RBC to request or undertake its own investigations into different installation techniques through Queen Elizabeth Park. The Statement of Common Ground shows no less than 6 points where the Applicant and RBC were in dialogue (via correspondence or meetings) before the start of examination and meetings were held on the 29<sup>th</sup> November 2018, 9<sup>th</sup> May 2019, 18<sup>th</sup> July 2019 and 11<sup>th</sup> September 2019, where a request to investigate a different installation method could have been made, even before public hearings had taken place. However, there was no indication of this request and discussion was focused instead on other matters.</p> <p>Later approval of the SSP by the planning authority could also have significant implications for the deliverability of this scheme. There is clearly disagreement between the Applicant and interested parties about the most suitable construction methodology through the Park. As noted, the Applicant has explained in detailed terms why the trenchless method proposed by some interested parties is less appropriate and carries greater risk than its own</p>



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	<p>open-cut solution. Notably, the Applicant does not consider that those interested parties' proposal is capable of being delivered within the Order limits as drawn and this simply underscores the problems associated with deferring approval to a future date.</p> <p>There is no reason to suspect that the present impasse will be resolved now or in the future, given the lack of agreement now following lengthy discussion and debate during examination. RBC has on numerous occasions during this examination asserted its view that a trenchless technique should be used for construction through the Park. It has even said that it “can find no solution other than to HDD through the Park” [REP6-089]. If the final plan is not certified for the purposes of this DCO application, the Secretary of State would therefore simply be deferring a problem to a later date. That would be entirely inappropriate, given there will be a detailed SSP before the Secretary of State to inform their decision-making.</p> <p>Taking each of the numbered points in turn:</p> <ol style="list-style-type: none"> <li>1. Paragraphs 3.3.1 and 3.3.2 of the SSP do not state in terms that the route of the pipeline is not fixed. To be clear, the pipeline route through the Park which is identified in the SSP is fixed, as explained by the Applicant at the Issue Specific Hearing held on 26 February 2020. To the extent that the Applicant sought to depart from that fixed alignment for any reason, it could only do so with the consent of the relevant planning authority, in this case RBC. The Applicant does acknowledge that paragraphs 3.3.1 and 3.3.2 of the SSP may have generated some uncertainty in this regard and has therefore amended at Deadline 7 the specific references cited in order to resolve this uncertainty (<b>Document Reference 8.57 (3)</b>). Further, the Applicant has now also amended the SSP to identify the specific areas of land within the Order limits which would not be used to construct the pipeline through the Park. These areas are indicated on the plan at Appendix B of the SSP. Any areas which are not shown on the plan as working areas may not be used by the Applicant to construct the pipeline through the Park. Again, if the Applicant sought the ability to work in areas which are not currently shown as working areas on the plan, it could only do so with the prior consent of the relevant planning authority (RBC).</li> <li>2. Paragraph 3.4.6 must be read alongside commitment OP05 of the Code of Construction Practice, which makes clear that “... <i>the project would provide an alternative play area for use while the existing play area is out of commission</i>”. Therefore, the temporary alternative facilities would need to be secured <u>before</u> the existing facilities were taken out of commission to construct the pipeline through the Park. The Applicant</li> </ol>



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	<p>has also amended the SSP at Deadline 7 to clarify that this is the case. Further, it is not correct to say that the re-provision of the temporary play facilities sits outside the control of the Secretary of State or that there is no mechanism to secure its re-provision if an agreement with the local planning authority was not forthcoming. Commitment OP05 of the CoCP confirms that <i>“the alternative play area would either be provided by the Project within the Order Limits in the vicinity of the existing play area on land belonging to Rushmoor Borough Council or would be provided in collaboration with Rushmoor Borough Council in accordance with the details agreed.”</i> Therefore, in circumstances where an agreement with Rushmoor Borough Council were not forthcoming, the CoCP secures the re-provision of the play facilities within the Order Limits in the vicinity of the existing facilities. Compliance with the CoCP is secured by Requirement 5 of the draft DCO. The draft DCO also includes appropriate powers to construct those facilities. The Applicant has identified a suitable location for the temporary facilities, within Order Limits, on the drawing at Appendix B of the SSP to illustrate that this commitment is entirely deliverable. In addition, the Applicant's selected supplier for the temporary play area has confirmed that a Locally Equipped Area for Play (LEAP) can be provided in the area identified in the SSP. The Applicant's selected supplier for the temporary play area is a nationally renowned company with over 30 years' experience of building bespoke play spaces, which includes installing equipment in woodland settings. The re-provision of the temporary play facilities at Queen Elizabeth Park is therefore within the control of the Secretary of State and there is an appropriate mechanism in place to secure its re-provision.</p> <p>3. The discreet construction areas are now shown on the plan at Appendix B of the SSP. The principles explained in response to point 1 above would apply to those areas; that is to say that if the Applicant sought to work in areas within the Order limits but outside the construction areas shown on the plan at Appendix B of the SSP, this would result in a change that would be subject to the prior approval of the relevant planning authority, i.e. RBC. Paragraph 3.6.3 of the SSP also describes the way in which works would be constructed in sections through the Park in order to minimise disruption to users of the Park.</p> <p>4. If the number of trees to be removed were to exceed 30, then this would result in a change to the SSP which, in accordance with Requirement 17 of the draft DCO, could only be made with the prior approval of the relevant planning authority. This position is reflected in the SSP submitted at Deadline 7 (<b>Document Reference 8.57(3)</b>).</p>



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	<p>5. The Applicant does not accept that it has advanced little evidence to support its view that the alternative solutions proposed by interested parties are unsuitable. The Applicant has submitted the following responses regarding the feasibility of suggested alternatives <a href="#">REP3-013</a> (Action Point 15 and 17), <a href="#">REP4-031</a> (Rep3-067 item 1.5, Rep 3-059 item 2.2.2.), <a href="#">REP5-021</a> (Rep4 -071 Para 9.5 Rep4-085 para 1.2.8, &amp; 1.2.11) and <a href="#">REP6-075</a> (Rep4-054 para 3.1.2, AS-078 para 2.1.17,). The Applicant has responded to <a href="#">REP6-111</a> at Deadline 7 (<b>Document Reference 8.96</b>) and this includes the provision of Borehole data and a Technical Note by subconsultant Horizontal Drilling International (HDI Entrepose - Vinci Group) to further evidence the Applicant's view. The Applicant's response at Deadline 7 (<b>Document Reference 8.96</b>) highlights the lack of evidence provided by RBC and the NUQEP in support of the trenchless construction method through the Park which they have proposed.</p> <p>In response to the final two paragraphs, the Applicant will of course strive to reach a resolution with RBC and NUQEP but this has not been achieved to date and may not be possible in the final week of the examination.</p> <p>However, the Applicant disagrees that because a very small number of IPs have outstanding concerns, that is sufficient reason to include this requirement. An objector to any project would have the ability to stymie it if that were the case. If the ExA has an outstanding concern, then the Applicant hopes that the text above and changes made to the SSP would allay that to the point that this requirement is not necessary.</p> <p>Although there is an appeal mechanism in the case of dispute it would be likely to take several months to implement, which would have a very serious impact on the project timescale given the seasonal constraints that the Applicant has already offered.</p> <p>The Applicant is grateful that the ExA accepts the need to exclude the route of the pipeline itself from the need for consent, but the requirement as drafted does not appear to do that and therefore needs to be amended if it is to remain in the DCO. As long as the council has the power to approve the SSP, including trees to be removed and construction techniques to be used, it effectively maintains a veto over the project and is steering the route of the pipeline. The Applicant has proposed a reasonable compromise: that a proposed route alignment is authorised via</p>



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	<p>the DCO and if it is to be varied such that any additional or alternative trees would be affected, then this has to be approved by the local planning authority.</p> <p>The Applicant is particularly concerned that RBC should have a say on construction techniques, in particular whether the route through the park is trenchless or not. The Applicant has made its application with certain trenchless areas in it but not including the park. The Applicant's response to <a href="#">REP6-111</a> at Deadline 7 (<b>Document Reference 8.96</b>) confirms why a trenchless crossing through the Park carries significantly more risk than the open trench solution applied for. Even if the ExA considers that constructing the pipeline under the park would be better, that is not enough reason to refuse the application or allow another party to insist that such a change is made. The test in the Planning Act 2008 is that the application should be granted if the benefits outweigh the adverse impacts, which they clearly do, not that the application is the one that causes the fewest adverse impacts.</p>
<p><b>Schedule 2 Requirement 17</b></p> <p><i>Site Specific Plans</i></p>	<p>For the reasons set out above, the Applicant does not agree that the SSP should be treated in a different way to the other Site Specific Plans submitted to the examination and asks that the Examining Authority records the Applicant's position in this regard, in its recommendation to the Secretary of State.</p> <p>The Applicant does however agree that sub-paragraph (b) of this Requirement is not required, since such changes would by definition be confined to a specific location.</p>
<p><b>Schedule 2 Requirement 18(1)</b></p> <p><i>Removal of above-ground infrastructure</i></p>	<p>The Applicant is happy to agree a form of wording which gives effect to this objective. The revised draft DCO submitted at Deadline 7 (<b>Document Reference 3.1(8)</b>) includes the following drafting:</p> <p><i>"The undertaker must as soon as reasonably practicable following the abandonment of the authorised development, <u>and in any event within six months of that date</u>, remove any above-ground infrastructure, including for the avoidance of doubt, any aerial markers, cathodic protection test posts, cathodic protection rectifier cabinets and field boundary markers, to ground level."</i></p> <p>This is to avoid any ambiguity that the obligation to remove above-ground infrastructure only applies following the abandonment of the authorised development.</p>



Reference	Applicant's response
<p><b>Schedule 2 Requirement 25(3)</b></p> <p><i>Further Information</i></p>	<p>Whilst the Applicant remains of the view that the original timings specified in this Requirement are appropriate, it has amended the period in sub-paragraph (3) from two to five business days as requested, in the revised draft DCO submitted at Deadline 7 (<b>Document Reference 3.1(8)</b>).</p>
<p><b>Schedule 5 Part 1</b></p>	<p>The Applicant has made these changes, which flow from the associated amendments to article 13, in the revised draft DCO submitted at Deadline 7 (<b>Document Reference 3.1(8)</b>).</p>
<p><b>Schedule 5 Part 2</b></p>	<p>The Applicant has made these changes, which flow from the associated amendments to article 13, in the revised draft DCO submitted at Deadline 7 (<b>Document Reference 3.1(8)</b>).</p>
<p><b>Schedule 11</b></p> <p><i>Document to be certified</i></p>	<p>The Applicant has updated Schedule 11 of the draft DCO and can confirm that the document references and versions as now stated are correct. The Applicant was awaiting the final deadline in the examination to make these changes, as opposed to updating on an incremental basis.</p>

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