

Issue Specific Hearing 2

Lincolnshire County Councils (LCC) Response to Hearing Action Points

Action	LCC Response
<p>1 Provide position statement on articles 8 and 9, as well as the situation with New Roads and Street Works Act (NRSWA), and whether objections are retained as to the principle and/or wording of these Articles.</p>	<p>LCC has previously made representations in relation to the wording of articles 8 and 9 in so far as they permit highway works or traffic regulation without authorisation from LCC as Highway Authority.</p> <p>The applicant’s legal advisors, as part of on-going discussions, have provided LCC with a summary description of how it views the mechanics of Articles 8 and 9 in conjunction with other articles and requirements of the draft Development Consent Order (dDCO) [AS-064] to LCC, as set out below:</p> <p><i>Part 3 of the DCO sets out the streets powers that the undertaker is seeking. Article 8(1) and Article 9(1) give the undertaker powers to carry out works within the streets, as are specified in Schedule 3 of the DCO.</i></p> <p><i>The authority given by article 8 is a statutory right for the purposes of section 48(3) (streets, street works and undertakers) and section 51(1) (prohibition of unauthorised street works) of the New Roads and Street Works Act 1991 (the “NRSWA”), which means that the DCO replaces the need to apply for a street works licence under that Act. This puts the undertaker in a similar position to an electricity undertaker, or sewerage undertaker, for example, when they undertake street works under their own statutory powers.</i></p> <p><i>The powers within articles 8 and 9 are drafted in broad terms, but they are restricted by other provisions of the DCO:</i></p> <ul style="list-style-type: none"> • <i>Article 10 provides for application of NRSWA, subject to certain disapplications on provisions primarily designed to regulate the carrying out of</i>

		<p><i>street works by utility companies in respect of their apparatus. The undertaker therefore has to give notice and to co-operate with the street authority in undertaking the works in the usual manner. They also have to comply with the relevant code of practice.</i></p> <ul style="list-style-type: none"><i>Requirement 8 (highway accesses) prevents Construction of any new permanent or temporary means of access to a highway, or alteration must not commence until an access plan for that access has been submitted to and approved by the relevant highway authority. This states that the access plan must include details of the siting, design, layout, visibility splays, access management measures and a maintenance programme relevant to the access it relates to.</i><i>The third column in parts 1 and 2 of schedule 3 sets out the scope of street works that are proposed to be authorised through article 9 of the DCO without further consent of the street authority. These make reference to the access and rights of way plan. It is noted that a large number of these relate to accesses onto the working corridor, the design of which would need to be approved under requirement 8.</i> <p><i>In addition, article 14 (agreements with street authorities) allows the street authorities and the undertaker to enter into agreements relating to various street works activities, any stopping up, alteration or diversion of a street and the carrying out of any works referred to in Article 8(1). This provision could be used to put in place specific agreements for works in a similar manner to an agreement under section 278 of the Highways Act 1980. It could also be used to add in more detail on the notification procedure and practicalities that the undertaker will comply with before undertaking works where Lincolnshire County Council are the streets authority.</i></p> <p>Whilst LCC are of the view that the applicant's legal advisors description of the mechanics are accurate it does not change the position that the first part of Article 8 and 9 still allow works to be carried out without consent, other than</p>
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		<p>the general approval of highway access details as part of Schedule 2, requirement 7 (Highway Accesses).</p> <p>It is LCC's opinion that Articles 8 and 9 would still require the Highway Authority to be notified of works, rather than ask for consent and this is further backed by Article 10 (2) a-h. Article 10 (4) however removes the powers to direct on timing and placement of apparatus. This is needed, when appropriate, to be able to ensure that any works taking place do not unjustifiably impede others.</p> <p>LCC would point out that the noticing requirements under the 1991 NRSWA, sections 55 and 57, were replaced by powers provided in Part 3 of the Traffic Management Act 2004 ("TMA") and the Traffic Management Permit Scheme (England) Regulations 2007 ("the 2007 Regulations"), Statutory Instrument 2007 No. 3372 made on 28 November 2007, as amended by the Traffic Management Permit Scheme (England) (Amendment) Regulations 2015, Statutory Instrument 2015 No. 958 made on 26 March 2015 ("the Amendment Regulations"), which resulted in the development of the Lincolnshire Permit Scheme (referred to as LiPS), further details of which are provided under LCC's response to action point 2 below.</p> <p>LCC are not seeking to unduly restrict the development but seek to ensure that certain details are provided upfront and that a mechanism is in place for recording works in the highway. We need to be clear regarding the level of development in order to understand the impact, be given the ability to co-ordinate it with other activities taking place and to protect the safety and longevity of assets through robust recording mechanisms post-installation.</p> <p>LCC are of the opinion that the detail of the notification requirements and any necessary approvals for streetworks that would not be caught by requirement 7 (Highway Accesses) could potentially be addressed through a side</p>
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		<p>agreement as suggested by the applicant’s legal advisers, however, LCC would wish to see ‘without the consent of the street authority’ removed from article 8(1). On the basis that a satisfactory head of terms can be agreed for a side agreement and an amendment to the wording of article 8 (1) then LCC would not object to the principle and/or wording of Articles 8 and 9.</p>
<p>2</p>	<p>Provide further detail on the Council’s road permitting scheme and how/ why it should be applicable to the Development Consent Order (DCO).</p>	<p>The Lincolnshire Permit Scheme applies to the whole of the Lincolnshire road network. Anyone who wants to carry out highways works in Lincolnshire must apply for a permit. This includes:</p> <ul style="list-style-type: none"> • utility companies (telephone, gas, electricity, water) • the council itself • anyone working on a permitted development that affects the highway <p>The scheme’s primary objectives are:</p> <ul style="list-style-type: none"> • to increase the efficient running of the highway network by minimising the disruption and inconvenience caused by road works and other highway events and activities through proactive management of activities on the highway • to improve the quality and timeliness of information received from all activity promoters to increase and improve the publicly available data for integration into the Council-wide travel information • to encourage a proactive approach to planning and undertaking of works on the highway from promoters and thus lessen the impact of activities on road users • to protect the structure of the street and the integrity of the apparatus in it • to improve the level of on-site compliance by works promoters ensuring works are correctly permitted and conditions adhered to • to ensure safety of those using the street and those working on activities that fall under the Scheme, with particular emphasis on people with disabilities • to ensure parity of treatment for all activity promoters particularly between statutory undertakers and highway authority works and activities

		<p>A full copy of the Council’s permitting scheme is available on the Council’s website https://www.lincolnshire.gov.uk/licences-permits/lincolnshire-permit-scheme</p> <p>In line with the aims of the permitting scheme as set out above, the Council are of the opinion that the scheme should apply to the DCO, as it does for statutory undertakers, which is the power sought by the applicant in the DCO.</p> <p>As stated above the application of the permitting scheme could potentially be incorporated into a side agreement.</p>
3	Provide commentary on whether a mechanism needs to be written into the DCO for the application of s278 of the Highways Act 1980, or whether a separate side agreement is sufficient	As stated in LCC’s response to action point 1 above this could potentially be addressed through a side agreement.
7	To review the wording of the ‘without prejudice’ requirement in respect of biodiversity net gain and provide any comments on the drafting.	The applicant’s commitment to deliver biodiversity net gain (BNG) as part of the development is welcomed. LCC understand that BNG is not mandatory for NSIPs but are of the view that it should be applied to the installation of the pipeline itself (rather than just AGIs and BVSs) in order to deliver ecological enhancements wherever possible. LCC are of the opinion that this should not be particularly difficult to achieve e.g. reinstatement of hedgerows in a better condition than those removed (albeit this would take time for establishment), potential for enhancing reinstated field margins by introduction of appropriate seed mixes where appropriate and/or subsoil inversion to promote the establishment of species which require nutrient poor conditions such as wildflowers. These sorts of measure would be localised in their impact but still fall within the spirit of what is intended for BNG. On that basis LCC are of the view that the suggested wording of the ‘without prejudice’ requirement in

		<p>respect of BNG is too restrictive, as currently drafted it would only require delivery of BNG to the AGIs and BVSs areas only.</p> <p>The wording should also refer to the "Statutory Biodiversity Metric" rather than "Natural England Biodiversity Metric 4.0"</p> <p>Clarification will also be required as to who the "relevant planning authority" is for determination purposes. LCC would wish to be a consultee for the determination of any such requirement.</p>
<p>9</p>	<p>To refine or otherwise agree on the scope and limitation of articles 38 and 39, or whether a separate tree/hedge removal schedule is required for the DCO.</p>	<p>LCC reiterates its concerns raised in respect of the wording of these articles (which LCC notes are articles 39 and 40) at ISH1.</p> <p>LCC understand the applicant's position that articles 39 and 40 would in practice be restricted by the requirements to approve a detailed CEMP and LEMP. The current detail provided in the Arboricultural Report [APP-086] regarding hedgerows and trees that would be impacted is also noted.</p> <p>However, as Advice Note 15 says, if there is a general power of removal the powers themselves should be subject to later consent, so therefore LCC are of the opinion that the same ought to be included in the articles. In other words, Advice Note 15 is clear that the powers should be limited and that it is preferable that is also in the drafting of the articles rather than solely through the approval of other plans/ requirements so it is clear on the fact of the DCO itself.</p> <p>LCC notes that this is an action for both the applicant and LCC and we have approached the applicant for a meeting to see if agreement can be reached.</p>