

Date: 19 September 2024  
Your ref: EN070008



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**BY EMAIL ONLY**

Dear David Wallace

## **Natural England's Deadline 6 Response**

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

In this letter we have set out:

- 1- A summary of our overall position at Deadline 6
- 2- Our response to the Examining Authorities Request for Further Information, dated 06/09/2024
- 3- An additional update regarding the wording of DCO Article 19

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### **1. Summary of our overall position at Deadline 6**

Natural England have continued to work with the applicant throughout the examination, in particular, NE have been working on the updated SoCG & the applicant's 'HRA & LWNL Key to Latest Updates', which the applicant will be submitting into this deadline.

We have reached a position where there are no outstanding issues between the two parties. Please refer to Our Relevant Representations (RR-073), Written Representations (REP1-079), Deadline 4 Response (REP4-093), and the Applicant's 'HRA & LWNL Key to Latest Updates' document due to be submitted at Deadline 6 (Document ref TBC), for details of each issue and its resolution.

No issues remain **amber** as defined in our representations: *'items where further information is required to determine the effects of the project and allow the Examining Authority to properly undertake its task and or advise that further information is required on mitigation/compensation'*

It should be noted that some items are labelled **yellow** as defined in our representations: *'items where Natural England does not agree with the Applicant's position or approach. We would ideally like this to be addressed but are satisfied that for this particular project it is unlikely to make a material difference to our advice or the outcome of the decision-making process. However, we reserve the right to revise our opinion should further evidence be presented. It should be noted*

by interested parties that whilst these issues/comments are not raised as significant concerns in this instance, it should not be understood or inferred that Natural England would be of the same view in other cases or circumstances'. For clarity, these are as below:

- **NE4 – Non-breeding bird survey frequency along the pipeline route.** Ideally, NE would have recommended two surveys per month, however, Based on the temporary nature of construction works of the pipeline route, Natural England considers that the survey frequency is sufficient to inform the assessment in this case. (See NE's Relevant Representations Response - RR-073)
- **NE12 – Consideration of alternative land availability for Curlew.** Ideally, it would have been beneficial to have further justification around alternative land availability for curlew and potential impacts from displacement from known foraging areas. However, further information on timing and duration of works has been provided & based on the information provided we agree with assessment conclusion. (See NE's Deadline 4 Response - REP4-093)
- **NE26a - Timing of ALC survey.** Ideally, full ALC survey would have been undertaken pre-consent, however, for this development, with the commitment to undertake a detailed ALC survey post consent, and as a result of the small overall permanent land take (10.6.9, APP-052), commitments for restoration of the pipeline corridor (4.7.10, APP-096), and implementation of a soil management plan, undertaking detailed ALC survey post-consent is unlikely to make a material difference to our advice or the outcome of the decision-making process. (See NE's Written Representations Response - REP1-079)
- **NE26d – Handling of soils in wet conditions.** Whilst Natural England's general standpoint must remain that soils should only be handled when dry and friable, where the measures described are successfully implemented, and soils are returned to their pre-development ALC grading as described, with no difference in the restoration outcome between soils handled when wet and those handled when dry, Natural England raise no further concern. (See the Applicant's 'HRA & LWNL Key to Latest Updates' document due to be submitted at Deadline 6 - Document ref TBC).
- **NE29a – Assessment of Alternatives (Landscape).** Ideally, the cable route would avoid the Lincolnshire Wolds National Landscape, however, the Applicant's assessment of alternatives, and the relevant constraints identified, are noted. As significant adverse construction impacts (to the National Landscape) have been clarified as short term (NE29c), and all relevant mitigation/reinstatement plans are secured within the DCO (NE29b), NE agree with the conclusions of the Applicant's impact assessment. (See the Applicant's 'HRA & LWNL Key to Latest Updates' document due to be submitted at Deadline 6 - Document ref TBC).

The remainder of all items raised by Natural England during the examination are 'green' as defined in our representations: '*items which have been successfully resolved (subject always to the appropriate requirements being adequately secured)*'.

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## 2. Natural England's response to the Examining Authorities Request for Further Information, dated 06/09/2024

### Question:

The response given at Deadline 5 in response to ExQ2.12.2 is that an Adverse Effect on Integrity (AEoI) cannot be ruled out, but derogation and compensation is unlikely to be necessary. The ExA query this in relation to the HRA process, on the understanding that if an AEoI cannot be ruled out, the Applicant should make a case for Imperative Reasons of Overriding Public Interest and subsequently set out compensatory measures. Please explain why this is not the case and what enables the HRA process to be deviated from in the event that you conclude, at the end of this Examination, that an AEoI cannot be ruled out.

### Response:

Natural England's advice at Deadline 5 noted that 2 items regarding the HRA were yet to be agreed (NE16 - Acoustic Mitigation, and NE30 – Natterjack Toad Mitigation). Whilst at that time, the

information provided was not suitable to rule out an AEol, Natural England advised that *'The two remaining outstanding issues are considered likely to be agreed subject to the final mitigation design'*, as discussions were ongoing with the applicant & progress was being made. This is the reason we advised that consideration of derogations and compensation were unlikely to be necessary.

NE can now confirm that mitigation proposals have been agreed between the Applicant and NE on both of these matters. As such, NE advise that an AEol can be ruled out, and consideration of derogations and compensation is not required. (See the Applicant's 'HRA & LWNL Key to Latest Updates' document due to be submitted at Deadline 6 - Document ref TBC).

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### **3. Additional update regarding the wording of DCO Article 19**

Since our previous response at D5 relating to ExQ2.8.6, Natural England have received further legal advice in relation to this matter. Whilst the article does not specifically seek to disapply the provisions of the Wildlife and Countryside Act 1981, when utilising the power specified in this article Natural England are concerned that works additional to those assessed in the DCO application could be done within or in close proximity to designated sites without appropriate permissions from Natural England.

Natural England therefore advise that the DCO needs to be clear that any works which may impact a SSSI, SAC or SPA (whether due to being inside these designated areas or in the close vicinity of) should be subject to the usual consenting provisions in the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2017, excepting the works that have been assessed as part of the DCO application.

This matter has been raised with the Applicant, and commitment had been made to update this article accordingly for Deadline 7. An update by D6 was not possible due to the short timescale between receiving this updated advice & D6. Where this item is updated, NE have no further concern.

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For any further advice on this consultation please contact the case officer Robbie Clarey and copy to [consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk).

Yours sincerely

Robbie Clarey  
Senior Sustainable Development Officer

