

Date: 21 August 2019
Our ref: 291692
Your ref: TR010035



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Dear Sir or Madam

A585 Windy Harbour to Skippool Improvement Scheme
NSIP Reference Code: TR010035
User Code: 20021773

Deadline 6

Comments on Applicant's revised draft Development Consent Order (DCO).
Comments on any additional information/submissions received by D5.

Thank you for your consultation via the Rule 8 letter, on the above, dated and received by Natural England on 16 April 2019.

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.

1. Comments on Applicant's first revised draft Development Consent Order (DCO).

- 1.1. We have been in ongoing discussions with Highways England regarding the Requirements contained within the draft DCO for some time now and have failed to reach agreement.
- 1.2. Our concerns are set out below in detail.
- 1.3. Highways England have declined to make any changes to the draft DCO, for the reason that all the matters we raised, have been included within the draft Record of Environmental Actions and Commitments (REAC) document which is appended to the Outline Construction Environmental Management Plan (CEMP).
- 1.4. Natural England is concerned that the various provisions in the draft REAC, which we have an interest in, are not currently included within the draft DCO as specific obligations that have compliance mechanisms and can be enforced if they are not implemented.
- 1.5. Therefore we have suggested that the draft DCO includes additional Requirements, and that some existing Requirements include more detail.

1.6. Habitats Regulations Assessment Mitigation – Bird Mitigation Strategy.

- 1.6.1 We acknowledge that the current draft DCO, Requirement 2 of Schedule 2 Part 4 secures the need for a Construction Environmental Management Plan (CEMP) which must reflect the mitigation measures set out in the draft Record of Environmental Actions and Commitments (REAC) however, Natural England does not consider that this adequately secures the mitigation included within the HRA which justifies the conclusion of no adverse effects on the integrity of European sites.
- 1.6.2 We consider that the implementation of the HRA mitigation needs to be secured within the DCO in its own right.
- 1.6.3 Paragraph 4(3) of Schedule 3 to the draft DCO states:
- ‘The construction of the authorised development must be carried out in accordance with the approved CEMP’.
- 1.6.4 Whilst this is fine in itself, some of the measures in the CEMP which Natural England is interested in, like management of cropping regime in fields and supplementary bird feeding, will not be part of “the authorised development” as these activities would not amount to ‘development’ for the purpose of the Order (as per s.32 of the Planning Act 2008). To address this, a new sub-paragraph should be inserted as (3A):
- ‘(3A) The undertaker must implement the mitigation, monitoring and adaptive management measures contained in or provided for by the approved CEMP, in accordance with the approved CEMP.’
- 1.6.5 The CEMP is required by paragraph 4(2)(a) of the Schedule to “reflect the mitigation measures set out in the REAC”. The word “reflect” is potentially ambiguous; reflections can be more or less faithful or distorted. It would be preferable to use the word “incorporate” or “include” rather than “reflect”, at least in relation to bird mitigation.

1.7. Bats and endoscope survey.

- 1.7.1 To comply with the letter of no impediment issued for bats (on 03.06.19), an additional Requirement should be added to require an endoscope survey of Skippool Bridge (B5) prior to demolition (when bats are likely to be active).
- 1.7.2 This survey would comprise (as a minimum), an endoscope survey of all the features having some potential to be used by bats, more likely in an opportunistic manner. If the results of the survey show bats are present and a protected species licence is required, further survey work would be required and subsequently sufficient mitigation and compensation measures will need to be provided.
- 1.7.3 We have previously suggested that this could be included in Schedule 2, Part 1 Requirements, 7. Protected Species.

1.8. Agricultural Land Classification (ALC) / Soil Survey.

- 1.8.1 As mentioned in paragraph 3.14.5 of our written representations, a Requirement should be added under Schedule 2, for an Agricultural Land Classification (ALC) / Soil survey to be undertaken prior to construction works commencing, and that survey should be submitted to Natural England for comment before the Requirement is discharged.
- 1.8.2 This survey will then inform the development of the soil management plan prior to

construction.

1.9. Soil Management Plan

1.9.1 As mentioned in paragraph 3.14.6 of our written representations, an additional Requirement should be added under Schedule 2 for the creation of a soil mitigation plan (as per the National Policy Statement for National Networks paragraph 5.179). This should be produced following the completion of the ALC / soil surveys and submitted to Natural England for comment before the Requirement is discharged. If found acceptable, the project should proceed in accordance with the approved mitigation.

1.10 Soil Resource Plan

1.10.1 As mentioned in paragraph 3.15.4 of our written representations, we note the commitment to producing a Soil Resource Plan as part of the outline CEMP, which is already included in the draft DCO under Schedule 2, Part 1, 4.(2)(d), however, more detail should be included within the Requirement to say that the Plan should be written prior to construction and submitted to Natural England for comment before the Requirement is discharged.

1.11 Detail around plans and strategies

1.11.1 As mentioned in paragraph 3.15.3 of our written representations, Under Schedule 2, Part 1, 4.(2)(d), we consider that more detail is needed, in particular, for the plans which haven't yet been written eg:

- When each plan should be written, finalised and agreed by,
- Details around what the plan should contain (could include some of the detail included in the REAC),
- Details of any additional requirements as a result of the plan ie. Consultation with Natural England to agree management strategy.

1.11.2 This would make it clear which plans are required prior to construction and what level of information is expected.

1.11.3 We note that some detail has now been included within the draft REAC however, we consider that this doesn't go far enough and is still not clear as to what would be expected in each document and when.

1.11.4 We feel this is especially important given the limited timescales given to the Secretary of State when discharging these requirements (under Schedule 2, Part 2, paragraphs 15(2) and 16(2)).

1.12 General comment

1.12.1 We have raised this point before, but the draft DCO hasn't been amended in-line with our previous comments.

1.12.2 Under Schedule 2, Part 1, 1. Interpretation, the reference numbers quoted are wrong and the legislation now needs to be listed 'as amended':

"European protected species" has the same meaning as in regulation ~~40~~ 42 (European protected species of animals) and ~~44~~ 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017 (as amended) (b);'

2 Comments on any additional information/submissions received by D5 – Record of Environmental Actions and Commitments (REAC).

- 2.1 We have the following comments and suggestions with regards to the contents of the draft REAC.
- 2.2 Similar to the whole of section 4, Row 4X is worded inappropriately in the conditional tense rather than the imperative. It also leaves some room for doubt about what measures would be required.
- 2.3 Row 4X should be reworded along the following lines:

‘During the construction phase an adequate area of temporary, alternative habitat shall be provided to mitigate for potential disturbance or displacement effects on the SPA/ Ramsar site qualifying species - pink-footed geese, lapwing and curlew, in accordance with detailed specifications, methods and timescales that shall be contained in the Bird Mitigation Strategy forming part of the CEMP to be approved pursuant to paragraph 4(2)(d)(i) of Schedule 2 to the DCO, which must be in [full] accordance with the outline Bird Mitigation Strategy appended to the Outline CEMP. Management of the temporary habitat shall thereafter be varied or supplemented where this has been determined appropriate in accordance with a legally enforceable monitoring and adaptive management protocol which must be contained in the approved CEMP. Adaptive management may include any or all of supplementary feeding, retention of crop stubble, cutting hedgerows and managing crop rotation. Further detail is provided within the Bird Mitigation Strategy appended to the Outline CEMP (document reference TR010035/APP/7.2).’

- 2.4 Row 4AI states: ‘Bird monitoring would be undertaken during the construction phase of the Scheme. Specifically looking at the response of targeted bird species; pink-footed geese, lapwing, curlew and little egret to the alternative temporary habitat provided. This is to ensure the mitigation measures for the Scheme continue to be appropriate and effective. Further detail is provided within the Bird Mitigation Strategy appended to the Outline CEMP (document reference TR010035/APP/7.2 – Rev 1).’
- 2.5 However, there is no protocol for monitoring in the Bird Mitigation Strategy. Unless this is rectified at this stage, we would propose changing the wording along these lines:

‘Bird monitoring shall be undertaken during the construction phase of the Scheme. Specifically, this shall monitor the response of targeted bird species; pink-footed geese, lapwing, curlew and little egret to the alternative temporary habitat provided to ensure the mitigation measures for the Scheme continue to be appropriate and effective. A monitoring and adaptive management protocol must be included as part of the Bird Mitigation Strategy that will be submitted as part of the CEMP to be approved pursuant to paragraph 4(2)(d)(i) of Schedule 2 to the DCO, to include:

- the independence, expertise, experience and qualifications of persons conducting the monitoring;
- questions and indicators to be addressed by the monitoring;
- the locations, number, frequency and duration of surveys or observations;
- methods;
- data to be collected and the manner in which results are to be reported;
- thresholds or criteria for recommending supplementary mitigation measures or different management of the birds and their habitat;
- timescales for reporting;
- an enforceable protocol for binding determination, following receipt of the monitoring reports, of the changes to mitigation measures that will be implemented.

Further detail is provided within the Bird Mitigation Strategy appended to the Outline CEMP (document reference TR010035/APP/7.2 – Rev 1).'

- 2.6 Row 4AM is expressed in the conditional as “would”. This should be re-worded as “shall”. It also vaguely says “may” be necessary to cut hedgerows. The procedure for determining this should be dealt with in the monitoring/management protocol. We would therefore propose re-wording 4A along these lines:

‘Hedgerows between fields within the bird mitigation area would shall be cut short for the duration of the construction works (1 to 1.5m) (shown as green lines on Figure 2, Annex A within the Bird Mitigation Strategy appended to the Outline CEMP (document reference TR010035/APP/7.2)) Hedgerows shall would be cut in late summer (August / September) of 2020 to avoid the bird nesting season, and to ensure that they are cut prior to the birds returning in autumn /winter. Detailed specifications and timescales shall be set out in the CEMP submitted pursuant to paragraph 4 of Schedule 2 to the DCO. It may be necessary to re-cut the hedgerows prior to second winter of the construction phase, which shall be considered and determined under the monitoring and adaptive management protocol forming part of the CEMP approved pursuant to paragraph 4(1) of Schedule 2 to the DCO.

Following completion of the construction works, the hedgerows would shall be allowed to regenerate. Any significant gaps would shall be replanted to ensure the hedgerows are returned to their pre-construction state.’

3 Update on Bird Mitigation Strategy.

- 3.1 We are still in discussions with Highways England regarding the Bird Mitigation Strategy and hope to provide formal comments on this revised document at the next appropriate deadline.

Natural England
21 August 2019

For further information please contact:

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