

Great Yarmouth Third River Crossing Order 202[*]

Document NCC/GY3RC/EX/038: Written summaries of oral submissions made at Issue Specific Hearing 2 on the draft Development Consent Order (ISH2) held on 20 November 2019

Planning Act 2008

Infrastructure Planning

The Infrastructure Planning (Examination Procedure) Rules 2010

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Introduction

This note summarises the submissions made by Norfolk County Council (in its capacity as local highway authority and promoter of the Great Yarmouth Third River Crossing ("**the Scheme**")) ("**the Applicant**") at the Issue Specific Hearing on the draft Development Consent Order ("**dDCO**") which was held on 20 November 2019 ("**the Hearing**") in relation to the Applicant's application for development consent for the Scheme.

Where the Examining Authority ("**the ExA**") requested further information from the Applicant on particular matters, or the Applicant undertook to provide further information during the Hearing, the Applicant's response is set out in this document or, if so stated in this document, will be provided in other documentation (e.g. the revised draft DCO) either at Deadline 3 (28 November 2019), or, where necessary (to allow full and proper consideration) at a subsequent Examination Deadline.

This document does not purport to summarise the oral submissions of parties other than the Applicant, and summaries of submissions made by other parties are only included where necessary in order to give context to the Applicant's submissions in response.

The structure of this document follows the order of items in the agenda for the Hearing, as published by the ExA on 13 November 2019 ("**the Agenda**"). Numbered Agenda items referred to in this document are references to the numbered items on the Agenda. The Applicant's substantive oral submissions commenced at item 3 of the Agenda, therefore this note does not cover items 1 and 2 on the Agenda which were procedural and administrative in nature.

ExA's Agenda Item	Summary of the Applicant's Oral Submissions made in the Issue Specific Hearing on the draft Development Consent Order held on 20 November 2019	Relevant document references
3. The structure of the dDCO		
The Applicant to summarise the structure of the draft Order and the key revisions in its updates	<p>The Applicant explained that the Order is divided into seven parts and structured as follows:</p> <ul style="list-style-type: none"> • Part 1 – deals with preliminary matters including the name by which the Order may be cited, interpretation of terms used in the Order, and the disapplication of legislation which is proposed to be effected by the Order. • Part 2 – sets out the principal powers including the grant of development consent and the power to maintain the authorised development, the limits of deviation that delineate the parameters of the development consent and provisions relating to the transfer of the benefit of the Order. • Part 3 – deals with streets, including street works, classification of roads, temporary and permanent stopping up of streets and traffic regulation measures to integrate the Scheme within the existing highway network. • Part 4 – includes supplemental powers necessary to construct and operate the Scheme, including provisions relating to the discharge of water to existing drainage systems, power to carry out protective works and to survey land, and provisions relating to the temporary suspension of 	<p>Draft DCO Revision 1 (Document Reference NCC/GY3RC/EX/023, Planning Inspectorate Reference REP2-009 (clean) and Document Reference NCC/GY3RC/EX/024, Planning Inspectorate Reference REP2-010 (tracked changes))</p> <p>Explanation of Changes to the draft Development Consent Order (Document Reference NCC/GY3RC/EX/025, Planning Inspectorate Reference REP2-011)</p>

	<p>navigation and the removal of vessels in connection with facilitating the delivery of the Scheme.</p> <ul style="list-style-type: none"> • Part 5 – sets out powers to acquire and possess land compulsorily, including powers to acquire land (compulsorily or by agreement), powers to create and acquire rights over land and powers to temporarily possess land for both the construction and maintenance of the authorised development. • Part 6 – contains operational provisions. Broadly, these provisions regulate how the Scheme interacts with the navigation of the river, prescribe the conduct of persons using the new bridge, and provide the powers required to keep the Scheme operating efficiently (e.g. including powers permitting the removal of vehicles and loads). • Part 7 – deals with miscellaneous and general provisions which are necessary, but which do not sit comfortably elsewhere in the Order. These include provisions in relation to trees and protected trees, the removal of human remains, the deemed grant of a marine licence, protective provisions and savings, service of notice and certification of plans, etc. <p>The Applicant also drew the ExA's attention to the Explanatory Memorandum, which summarises each of the key provisions in the Order and explains why they are required.</p> <p>The Applicant explained that the key changes made to the draft DCO since the submission of the Application (i.e. changes included in Revision 1 of the dDCO which was submitted at Deadline 2 in both clean (Document Reference NCC/GY3RC/EX/023, Planning Inspectorate Reference REP2-009) and tracked</p>	<p>Update to Draft Explanatory Memorandum (Revision 1) (Document Reference NCC/GY3RC/EX/006, Planning Inspectorate Reference AS-009)</p>
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	<p>(Document Reference NCC/GY3RC/EX/24, Planning Inspectorate Reference REP2-010 versions) were set out in the Applicant's accompanying Deadline 2 submission entitled 'Explanation of Changes to the Draft DCO (Revision 1)' (Document Reference NCC/GY3RC/EX/025, Planning Inspectorate Reference REP2-011).</p> <p>In summary, those changes were as follows:</p> <ul style="list-style-type: none"> • Article 8 (benefit of Order) and article 28 (compulsory acquisition of rights) have been amended to provide a mechanism for statutory undertakers to exercise the power to acquire rights for the benefit of their (respective) undertakings, with the Applicant's consent. The changes, which address comments made previously by statutory undertakers, are necessary to ensure that statutory undertakers can directly benefit from the rights which are proposed to be acquired for the purpose of carrying out utility diversions necessary to enable the Scheme to proceed. • Article 51(5)(b) (byelaws) – a minor amendment has been made to the byelaws (byelaw 44F(1)) to be inserted by the DCO into the Great Yarmouth Port Authority Navigation (Haven) Byelaws 1997. The purpose of the change is to ensure the consistency of the DCO with those byelaws – a reference to a 7 knot speed limit inserted by the Order is to be measured by reference to the vessels' speed over the ground, consistent with other such speed limits in those byelaws. • Article 55 (removal of human remains) – a minor clarification has been made to require the undertaker to seek a direction from the Secretary of State as to the treatment of human remains, where those remains were interred more than 100 years ago. The intention is to provide a mechanism 	
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	<p>for a direction for remains of archaeological interest to be appropriately and sensitively treated for academic purposes, rather than being re-interred or cremated.</p> <ul style="list-style-type: none"> • Requirements 5, 6, 10 and 11 – minor amendments to express more clearly that requirements may be discharged in part. • Requirements 11 and 15 – removal of redundant references to lighting and signs at vessel waiting facilities being "permanently" maintained. "Maintained" alone is sufficient. • Requirement 13 (archaeology) – a minor amendment was made for consistency with article 55 (removal of human remains). As originally drafted, sub-paragraph (4) could be construed as prohibiting the removal of the revealed remains. The amendment makes clear that, subject to a direction from the Secretary of State under article 55, the scheme to be approved under this requirement may provide for the removal of those remains. • Schedule 10 (scheme of operation) was updated to include a definition of "communication facilities" for drafting expediency; the defined term was then applied as appropriate throughout Schedule 10. • Schedule 13 (deemed marine licence) ('DML') – amendments were made to the DML following further discussions with the Marine Management Organisation ('MMO'). The Applicant is discussing with the MMO (including in a meeting held on the day of the Hearing) further amendments to the DML for inclusion in the revised draft DCO which is to 	
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	be submitted at Deadline 3. The amendments under discussion relate, in the main, to the scope of the description of the licensable activities and the wording of some conditions.	
Is the Order in a form that allows all parties to understand the fundamental parameters, structure, approach and limitations of the consent sought?	The Applicant confirmed that the structure of the draft DCO (as described above) is consistent with the general approach of similar DCOs and TWAOs and includes information about the fundamental parameters, structure, approach and limitations of the consent sought.	Draft DCO Revision 1 (Document Reference NCC/GY3RC/EX/023, Planning Inspectorate Reference REP2-009 (clean) and Document Reference NCC/GY3RC/EX/024, Planning Inspectorate Reference REP2-010 (tracked changes)) Update to Draft Explanatory Memorandum (Revision 1) (Document Reference NCC/GY3RC/EX/006, Planning Inspectorate Reference AS-009)

<p>Applicant to describe the extent of the Works, provisions and powers sought, and the implications or proportionality of rights sought over any land on a permanent or temporary basis</p>	<p>In terms of the extent of the Works and provisions and powers sought:</p> <ul style="list-style-type: none"> • The key parameters of the consent are set out in article 6 (limits of deviation) which was considered in the Hearing under Agenda item 4 (under Part 2) (see below). • The provisions and powers sought are as outlined in the Applicant's submissions on Agenda item 3 (above) and as set out in the Applicant's Draft Explanatory Memorandum. <p>In terms of the proportionality of the land and rights over land, these are addressed in detail in the Statement of Reasons ("SoR") (in sections 6 and 9):</p> <ul style="list-style-type: none"> • As is explained in the SoR (in section 5.3), the Applicant requires a degree of flexibility as to where certain elements of the Scheme will be constructed, whilst always operating within the limits of deviation that are provided for in the draft DCO (REP2-009) – see article 6 in particular. • The Applicant has completed a significant amount of investigative, survey and design works as part of the design and consenting process, but the final detailed design and further investigative works will not be completed until after such time as the DCO is made (should the Application be successful) (see SoR paragraph 5.3.1). • However, flexibility is nevertheless required within the Order limits to ensure that the final detailed design is not unduly constrained and delivery of the Scheme to required timescales is not substantially hindered (see SoR paragraph 5.3.1). 	<p>Update to Draft Explanatory Memorandum (Revision 1) (Document Reference NCC/GY3RC/EX/006, Planning Inspectorate Reference AS-009)</p> <p>Statement of Reasons (sections 5, 6 and 9) (Document Reference 4.1, Planning Inspectorate Reference APP-022)</p>
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- All the land included in the Order limits is currently considered to be necessary to enable the construction, operation and maintenance of the Scheme (see SoR paragraph 5.3.2).
- However, should it transpire that any part of the land within the Order limits is not required (for instance as a result of the detailed design process or because a parcel of land has been acquired by agreement as a result of successful negotiations), in those circumstances compulsory acquisition powers would not be exercised in respect of such land because such exercise would not be necessary or justified (see SoR paragraph 5.3.2).

In summary, the DCO provides for a flexible exercise of the land use and acquisition powers. Temporary possession powers are required in respect of all of the land within the Order limits. This is to enable the undertaker to take temporary possession of the land prior to exercising the compulsory acquisition powers. This would enable the undertaker to refine its proposals to acquire land as more detailed design information becomes available and would facilitate the Applicant being able to acquire only the land that is required in light of that information. This enables a proportionate exercise of those powers.

4. Issues and questions in regard to the dDCO raised by the ExA

Part 1

Article 3 - Disapplication of legislation

The Applicant explained that article 3 has three main effects, which are as follows:

- It disapplies the requirement to obtain further ancillary consents (which would otherwise be required under other legislation before the Scheme was consented) and, as such, is in line with the single consent philosophy underpinning the Planning Act 2008 regime;
- It has the effect of disapplying the Community Infrastructure Levy ("**CIL**"), should it be implemented in the future by Great Yarmouth Borough Council; and
- It would disapply the provisions of the Neighbourhood Planning Act 2017 (which are not yet in force) in respect of the temporary possession of land.

It was confirmed in the Hearing that (in relation to article 3(2)) Great Yarmouth Borough Council is not currently a CIL charging authority and that the CIL disapplication provision included in article 3(2) is standard form drafting, reflecting the fact that the Scheme comprises infrastructure itself such that it would not be appropriate for it to be subject to CIL charging.

In relation to the temporary possession provisions in the Neighbourhood Planning Act 2017 ("**NPA 2017**"), the Applicant explained that the disapplication provision in article 3(1)(g) of the dDCO is necessary because it is not currently clear when

Draft DCO Revision 1

(Document Reference NCC/GY3RC/EX/023, Planning Inspectorate Reference REP2-009 (clean) and Document Reference NCC/GY3RC/EX/024, Planning Inspectorate Reference REP2-010 (tracked changes))

or whether the temporary possession regime in the NPA 2017 will ever come into force; disapplication of the regime is therefore prudent to enable both the Applicant and affected persons to have certainty about how powers of temporary possession would be exercised in the event that the Order is made.

In relation to the provisions in article 3 which disapply the requirement to obtain ancillary consents which would otherwise be required under other legislation, the Applicant explained in summary that such disapplications would apply to ordinary watercourse consents, main river consents, and existing byelaws.

In terms of existing byelaws, article 3(1)(e) currently proposes the disapplication of the Great Yarmouth Port Authority Navigation (Haven) Byelaws 1997 (i.e. Byelaws 20 (launching and recovery of vessels), 48 (dumping in port area prohibited) and 56 (diving operations)). However, the Applicant reported that it is currently in discussions with the Great Yarmouth Port Authority (“GYPA”) with the objective of finding a way forward in relation to those three byelaws, aiming to deal through the DCO with the mechanisms to which they relate, without amending the byelaws themselves.

GYPA confirmed, in the Hearing, that this was correct and that the parties were close to reaching agreement on matters relating to the byelaws.

Part 2

Article 4 - Development consent granted by the Order

The Applicant explained that article 4 is the main article granting development consent for the Scheme. More particularly:

- Article 4(1) grants development consent for the authorised development, defined by reference to the detailed description in Schedule 1, subject to the provisions of the Order including the requirements in Schedule 2.
- Article 4(2) is a common provision included in many other highways DCOs, including A14, Silvertown Tunnel and Testo's Junction. Its effect is to clarify that existing *local* legislation takes effect subject to the provisions of the DCO. It does not affect legislation of general application. The Applicant noted that further, more detailed explanation of this point is set out in its response to the ExA's First Written Questions, reference ExQ1, question 1.4.2 [REP2-008].

Draft DCO Revision 1

(Document Reference NCC/GY3RC/EX/023, Planning Inspectorate Reference REP2-009 (clean) and Document Reference NCC/GY3RC/EX/024, Planning Inspectorate Reference REP2-010 (tracked changes))

Update to Draft Explanatory Memorandum

(Revision 1) (Document Reference NCC/GY3RC/EX/006, Planning Inspectorate Reference AS-009)

Applicant's Response to Examining Authority's Written Questions ExQ1 1.4.2

		(Document Reference NCC/GY3RC/EX/022, Planning Inspectorate Reference REP2-008)
Article 5 - Maintenance of authorised development	<p>The Applicant explained that article 5 authorises the maintenance of the authorised development. It is appropriate for a DCO authorising a scheme with a 120+ year operational life to also authorise its maintenance.</p> <p>The Applicant noted that:</p> <ul style="list-style-type: none"> the term “maintain” is defined in article 2(1) and includes (to the extent it would not give rise to materially different environmental effects from those assessed), “inspect, repair, adjust, alter, remove, replace, or reconstruct”; and that this scope of “maintenance”, and the impact of using this power, has been assessed in the Environmental Statement (see paragraphs 3.7.1 to 3.7.5 of the ES). <p>Furthermore, the Applicant confirmed that it has carefully considered the maintenance activities anticipated to be required for the authorised development where, for example, elements of the lifting mechanism may need to be replaced during the lifetime of the bridge.</p> <p>The Applicant noted that the power is limited to maintenance of the “authorised development” so any alteration or reconstruction would still be required to be within the limits of deviation provided for in the Order.</p>	<p>Draft DCO Revision 1 (Document Reference NCC/GY3RC/EX/023, Planning Inspectorate Reference REP2-009 (clean) and Document Reference NCC/GY3RC/EX/024, Planning Inspectorate Reference REP2-010 (tracked changes))</p> <p>Update to Draft Explanatory Memorandum (Revision 1) (Document Reference NCC/GY3RC/EX/006, Planning Inspectorate Reference AS-009)</p>

	<p>In response to the ExA's questions in the Hearing, the Applicant confirmed that the 120 year 'design life' of the Scheme is not referenced in the Order itself but was used as a benchmark for consideration of the powers likely to be required over such period. The Applicant also confirmed that it had no expectation that the new bridge would be decommissioned after 120 years.</p>	<p>Environmental Statement (paragraphs 3.7.1 to 3.7.5) (Document Reference 6.1, Planning Inspectorate Reference APP-096)</p>
<p>Article 6 - Limits of deviation</p>	<p>The Applicant explained the purpose of the limits of deviation provided for in article 6 and provided a summary of the key features of that article, as follows:</p> <ul style="list-style-type: none"> the term "limits of deviation" is commonly used in statutory instruments, including DCOs, and in relation to linear transport projects such as the Scheme, where it is necessary for the Order to include a proportionate degree of flexibility within which to design the Scheme in detail and then to construct and operate it (given that it is common practice for development consent to be applied for on the basis of a reference design, which precedes the detailed design stage); article 6 establishes the parameters for the authorised development and sets the lateral and vertical limits of deviation for the Scheme by reference (respectively) to the Works Plans and the Engineering Plans, Drawings and Sections. <p>The Applicant confirmed that the limits of deviation have been assessed in the ES (see paragraphs 2.4.4. and 2.4.5 of the Environmental Statement) in accordance with the <i>Rochdale Envelope</i> approach.</p>	<p>Draft DCO Revision 1 (Document Reference NCC/GY3RC/EX/023, Planning Inspectorate Reference REP2-009 (clean) and Document Reference NCC/GY3RC/EX/024, Planning Inspectorate Reference REP2-010 (tracked changes))</p> <p>Environmental Statement (paragraphs 2.4.4. and 2.4.5) (Document Reference 6.1, Planning Inspectorate Reference APP-096)</p>

	<p>The Applicant highlighted the following key elements of article 6:</p> <ul style="list-style-type: none"> • 50m width of navigable channel – article 6(4) requires the undertaker to safeguard a navigable channel of no less than 50 metres in width, between the outer edges of the vessel impact protection systems (part of Work Nos. 6A, 6B and 8B). • Minimum headroom – article 6(8) provides for a minimum headroom on bridge structures identified as follows: <ul style="list-style-type: none"> ○ 5.3m above finished road level beneath the Southtown Road bridge (western side of the Yare) part of Work No.8A) ○ 4.9m above finished road level of the new PMA comprising part of Work No.8C (eastern side of the Yare). • Minimum air draft - article 6(8)(c) preserves a minimum air draft of 5.36m AOD when the new bridge is in the closed position. 	<p>Works Plans (update / Revision 1) (Document Reference NCC/GY3RC/EX/005, Planning Inspectorate Reference AS-008)</p> <p>Engineering Plans, Drawings and Sections (Document Reference 2.10, Planning Inspectorate Reference APP-015)</p>
Part 4		
Article 20 - Discharge of water	<p>The Applicant explained that article 20 closely follows the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (SI 2009/2265) (now repealed) and that it has been included in substantially the same form in almost all development consent orders made under the Planning Act 2008 to date.</p> <p>The drafting in article 20 broadly mirrors the existing rights of highway authorities contained in section 299 of the Highways Act 1980.</p>	<p>Draft DCO Revision 1 (Document Reference NCC/GY3RC/EX/023, Planning Inspectorate Reference REP2-009 (clean) and Document Reference NCC/GY3RC/EX/024,</p>

	<p>Its purpose is to give the undertaker a right, as against the third-party owner of a drainage system, to connect to that drainage system. That right is subject to a duty on the undertaker not to discharge water in a state that would interfere with the efficacy of that drainage system (article 20(6)). The owner of the drainage system may impose conditions (article 20(3)) on the connection and must approve the plans for the connection (article 20(4)).</p> <p>The article is not concerned with pollution control or other environmental regulations which are preserved by para (5) and which, where relevant, are subject to the Protective Provisions for the benefit of the Internal Drainage Board set out in Part 5 of Schedule 14.</p> <p>Norfolk County Council, in its capacity as the County Planning Authority (“CPA”) proposed some drafting amendments in relation to article 20, which the Applicant is currently considering. It is anticipated that no change will be made to the wording of article 20 in the revised version of the draft DCO which is to be submitted at Deadline 3 (28 November 2019), given that the Applicant’s consideration of the suggested amendments, and related discussions with the CPA, are currently ongoing.</p> <p><i>Post hearing note: the Applicant is continuing to consider the need for amendments to the relevant controls in the draft DCO in the light of ongoing discussions with the CPA and Anglian Water.</i></p>	Planning Inspectorate Reference REP2-010 (tracked changes)
Article 23 - Temporary	By way of introduction, the Applicant explained that article 23 provides for the temporary suspension of public rights of navigation over the part of the river Yare	Draft DCO Revision 1

<p>suspension of navigation in connection with the authorised</p>	<p>that lies within the Order limits, and that the suspension of those public rights of navigation is necessary to enable the construction and maintenance of the authorised development.</p> <p>More particularly, the Applicant explained that article 23 provides for:</p> <ul style="list-style-type: none"> • a limited number and limited duration of closures of the width of the navigation within the Order limits, for the purposes of constructing the Scheme – paragraph (2); and • a general power to suspend part of the navigation – paragraph (4), which is subject to constraints – paragraph (5). <p>The Applicant also explained that article 23 includes procedural requirements governing the exercise of the power to suspend navigation. For example:</p> <ul style="list-style-type: none"> • With regard to suspension of the navigation during construction – paragraph (2), article 23 provides a limited power to close the width of the navigation for the purposes of construction. Where this power is exercised: <ul style="list-style-type: none"> ○ the undertaker must first consult GYPA – paragraph (2); and ○ there must be no more than 3 closures, each of a duration not exceeding 72 hours – paragraph (3). • The general power to suspend public rights of navigation – paragraph (4), is constrained by paragraph (5) which provides that: 	<p>(Document Reference NCC/GY3RC/EX/023, Planning Inspectorate Reference REP2-009 (clean) and Document Reference NCC/GY3RC/EX/024, Planning Inspectorate Reference REP2-010 (tracked changes))</p> <p>Update to Draft Explanatory Memorandum (Revision 1) (Document Reference NCC/GY3RC/EX/006, Planning Inspectorate Reference AS-009)</p>
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- for the purposes of **construction**, the undertaker may only close part of the navigation;
- for the purposes of **maintenance**, the undertaker may close part of the navigation or, *where there is no reasonable alternative*, the full width of the navigation; and
- the general power of suspension is only exercisable **with GYPA's consent**, which is not to be unreasonably withheld or delayed, and which may be given subject to reasonable conditions.
- Paragraph (6) outlines a non-exhaustive list of the matters to which the undertaker and GYPA must have regard in the application of paragraph (5) and paragraph (7) sets out procedures governing the exercise of temporary suspensions carried out under paragraphs (2) or (4).

In response to the ExA's query raised in the Hearing, the Applicant confirmed that the power of temporary suspension of navigation for maintenance purposes was not envisaged to be exercised by the Applicant on a regular or cyclical basis; rather it would be used to facilitate exceptional maintenance events occurring as and when necessary, for example where repainting of the bridge was required, possibly every 20-25 years.

In response to a question from Goodchild Marine, the Applicant explained that whether maintenance would be carried out with the bridge in the open or the closed position would depend on the type of maintenance works needing to be carried out. Repainting, for instance, would likely need to be done whilst the

	bridge was in the closed position, as would resurfacing of the highway traversing the bridge.	
Article 24 - Removal of vessels	<p>The Applicant explained that article 24 authorises the undertaker to direct GYPA to move any vessel that is sunk, stranded, abandoned, moored or laid up, where such removal is required to facilitate the construction or maintenance of the Scheme, or to enable vessels to navigate through the new bridge.</p> <p>The power is necessary to ensure that the construction, maintenance and operation of the Scheme is not unduly impeded.</p> <p>Article 24 includes provisions setting out the procedures which are to be followed where the power to remove vessels is exercised. Such procedures are prescribed in paragraphs (3) and (4) and include publicity and consultation with GYPA prior to any removal. Paragraph (5) provides for the recovery by GYPA of costs incurred by it in facilitating the exercise of this power at the direction of the undertaker. The undertaker is required to meet GYPA's reasonable costs (paragraph (5)) but may recover those costs from the owner of the vessel so removed.</p> <p>The Applicant noted that article 24 has precedent in other statutory Orders (confirmed in this post-hearing submission as the Borough of Poole (Poole Harbour Opening Bridges) Order 2006 and the River Mersey (Mersey Gateway Bridge Order 2011), both Transport and Works Act orders).</p>	<p>Draft DCO Revision 1 (Document Reference NCC/GY3RC/EX/023, Planning Inspectorate Reference REP2-009 (clean) and Document Reference NCC/GY3RC/EX/024, Planning Inspectorate Reference REP2-010 (tracked changes))</p>

	The Applicant explained, and GYPA confirmed, that the parties are currently discussing a potential solution to address by agreement GYPA's concerns relating to the exercise of this power, which would retain the power in the Order but would make its exercise subject to controls set out in a 'construction liaison agreement' to be entered into by the parties.	
Part 5		
Article 25 - Compulsory acquisition of land & Article 35 - Temporary use of land for carrying out the authorised development	<p>The Applicant noted that articles 25 (compulsory acquisition of land) and 35 (temporary use of land for carrying out the authorised development) were summarised and discussed in the Compulsory Acquisition Hearing (CAH1) held during the morning of 20 November 2019 (prior to ISH2/the Hearing).</p> <p>Accordingly, it was agreed (between the ExA and all parties attending the Hearing) that further discussion of these articles was not required and therefore no further submissions were made in relation to Part 5 of the draft DCO.</p>	Draft DCO Revision 1 (Document Reference NCC/GY3RC/EX/023, Planning Inspectorate Reference REP2-009 (clean) and Document Reference NCC/GY3RC/EX/024, Planning Inspectorate Reference REP2-010 (tracked changes))
Part 6		
Article 43 - Operation of new bridge	The Applicant explained that article 43 authorises the operation of the new bridge and introduces Schedule 10 (scheme of operation) which sets out the initially proposed scheme of operation (article 43(4)), which was discussed in Issue	Draft DCO Revision 1 (Document Reference NCC/GY3RC/EX/023,

	<p>Specific Hearing 1 (Effects on Port Operations) held on 19 November 2019 (“ISH1”).</p> <p>The Applicant highlighted the mechanism in article 43(5) which provides for the scheme of operation to be updated or amended, with the agreement of GYPA. In justifying this provision, the Applicant commented that its inclusion in the Order was sensible, given the anticipated duration of the operational life of the Scheme, which might conceivably require the scheme of operation to be updated to reflect future changes in port operations, technology and other developments. The Applicant pointed out that the updating mechanism provided for in paragraph (5) would be subject to the controls in paragraph (6), the purpose of which is to ensure that the essential characteristics of the scheme of operation are preserved notwithstanding any amendments to it.</p> <p>The Applicant also noted that it was currently giving consideration to potential drafting amendments to both article 43 and to Schedule 10 (scheme of operation) to reflect the protocol for providing mitigation obviating the need for an emergency layby berth for large commercial vessels, through a commitment (given by the Applicant) to open the bridge prior to such vessels entering the port, should an existing berth not be available to them for contingency purposes (as discussed in ISH1, and as set out in the preliminary Navigation Risk Assessment (Revision 1, submitted at Deadline 2) (REP2-015)).</p> <p>The Applicant articulated its view that the addition of drafting in article 43 and in the scheme of operation in Schedule 10 (as opposed to the addition of a requirement in Schedule 2) together with the addition (in the Order) of a definition of ‘large commercial vessel’ (such definition to be agreed with GYPA) would be</p>	<p>Planning Inspectorate Reference REP2-009 (clean) and Document Reference NCC/GY3RC/EX/024, Planning Inspectorate Reference REP2-010 (tracked changes))</p> <p>Update to Draft Explanatory Memorandum (Revision 1) (Document Reference NCC/GY3RC/EX/006, Planning Inspectorate Reference AS-009)</p>
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	<p>the optimum way of addressing the issue, and indicated it would aim to include proposed drafting amendments in the revised draft DCO to be submitted at Deadline 3 (28 November 2019) (or at a subsequent Examination Deadline if more time was required to collaborate with GYPA on the proposed amendments).</p> <p>In response to the ExA's request for clarification of the definition of a "recreational vessel", the Applicant committed to clarify the relevant drafting in article 43 and Schedule 10. The ExA noted that any definition of "recreational vessel" would need to accommodate adequately a scenario in which recreational vessels were navigating the river for commercial purposes (e.g. vessels subject to repair and subsequent testing).</p> <p><i>Post hearing note: the Applicant is continuing to consider amendments to article 43 and Schedule 10 and aims to provide an update at Deadline 4.</i></p>	
Article 44 - Extinguishment of rights	<p>The Applicant explained that article 44 provides for the permanent extinguishment of public rights of navigation in the parts of the river Yare that would be occupied by the bridge "knuckles" (comprising part of the bridge structure).</p> <p>The areas in question are identified by reference to the Rights of Navigation Plan (APP-017). The power is justified by the fact that the presence of the "knuckles" within the river Yare would be inconsistent with the continued public right of navigation; it is therefore necessary for the DCO to provide for the extinguishment of such rights in those areas.</p>	Draft DCO Revision 1 (Document Reference NCC/GY3RC/EX/023, Planning Inspectorate Reference REP2-009 (clean) and Document Reference NCC/GY3RC/EX/024, Planning Inspectorate Reference REP2-010 (tracked changes))

	<p>Paragraph (3) provides for notice of the extinguishment to be given and paragraph (4) provides for the extinguishment to take effect no earlier than 14 days after the last notice is published under paragraph 3(b).</p> <p>To the extent that it is still physically possible and necessary for a vessel to enter into any part of the areas where rights of navigation have been extinguished, paragraphs (6) and (7) provide a mechanism for this to happen with the consent of the undertaker (e.g. for surveys and other construction activities).</p> <p>In terms of identifying the areas in which rights of navigation are proposed to be extinguished, the Applicant explained that these areas are shown “indicatively” on the Rights of Navigation Plan, which shows (hatched brown) the maximum potential extent of the extinguishment. It may be that, during the detailed design of the Scheme, less than that extent is required. Where this is the case, the particulars notified to the GYPA, to be issued as a notice to mariners, will include definitive confirmation of the exact area over which rights of public navigation are required to be extinguished.</p>	<p>Update to Draft Explanatory Memorandum (Revision 1) (Document Reference NCC/GY3RC/EX/006, Planning Inspectorate Reference AS-009)</p> <p>Rights of Navigation Plan (Document Reference 2.12, Planning Inspectorate Reference APP-017).</p>
Article 50 - Protection against dredging	<p>The Applicant explained that article 50 controls dredging in the vicinity of the new bridge.</p> <p>This provision is necessary because such dredging, if carried out inappropriately, could result in damage to the structure of the new bridge. The terms of paragraphs (1) and (2) serve to limit the restrictions imposed to the minimum necessary. They distinguish between an area where any dredging would be wholly inappropriate and unacceptable, and an area where dredging may be</p>	<p>Draft DCO Revision 1 (Document Reference NCC/GY3RC/EX/023, Planning Inspectorate Reference REP2-009 (clean) and Document Reference NCC/GY3RC/EX/024, Planning Inspectorate</p>

	<p>acceptable (subject to approval), depending on what is proposed and the prevailing circumstances.</p> <p>The Applicant explained that this distinction was referred to in article 50 and represented on the Limits of Dredging Plan, where the areas in which dredging is proposed to be prohibited are hatched yellow and the area in which dredging may be permitted subject to approval is hatched blue.</p> <p>In response to the ExA's query, the Applicant confirmed that the proposed restrictions on dredging were not intended to make any change to the existing dredging regime within the river, but were necessary purely to take into account the existence of the bridge, once built.</p> <p>The Applicant confirmed that the restriction on dredging would not take effect until the bridge had been built; it also commented that the restriction was not unusual in Orders such as this one, where such provision is required to protect a new structure in the waterway.</p>	<p>Reference REP2-010 (tracked changes))</p> <p>Update to Draft Explanatory Memorandum (Revision 1) (Document Reference NCC/GY3RC/EX/006, Planning Inspectorate Reference AS-009)</p> <p>Limits of Dredging Plan (Document Reference 2.11, Planning Inspectorate Reference APP-016)</p>
Part 7		
Article 62 – Protective Provisions	<p>The Applicant explained that article 62 brings in Schedule 14 (protective provisions) and explained which Parts of Schedule 14 related to which statutory undertakers, for the protection of their respective undertakings (which would</p>	<p>Draft DCO Revision 1 (Document Reference NCC/GY3RC/EX/023, Planning Inspectorate</p>

	<p>otherwise be affected by the construction and operation of the Scheme) as follows:</p> <ul style="list-style-type: none"> • Part 1 – for the protection of electricity, gas, water and sewerage undertakers • Part 2 – for the protection of operators of electronic communications code networks • Part 3 – for the protection of Anglian Water • Part 4 – for the protection of the Environment Agency • Part 5 – for the protection of the Waveney, Lower Yare and Lothingland Internal Drainage Board • Part 6 – for the protection of the Great Yarmouth Port Authority (and through GYPC, Great Yarmouth Port Company). 	<p>Reference REP2-009 (clean) and Document Reference NCC/GY3RC/EX/024, Planning Inspectorate Reference REP2-010 (tracked changes))</p>
<p>Article 67 – Arbitration</p>	<p>By way of introduction, the Applicant commented that the vast majority of DCOs and similar statutory instruments provide for arbitration in the event of a dispute on their terms, and noted that this draft Order follows that convention and is drafted in very standard terms.</p> <p>More particularly, the Applicant explained that article 67 affords the parties to any dispute (e.g. between the Applicant and any of the parties having the benefit of the Protective Provisions in Schedule 14) the flexibility to agree:</p> <ul style="list-style-type: none"> • to resolve the disputes through an arbitrator, or otherwise than through arbitration; • to the appointment of a single arbitrator. 	<p>Draft DCO Revision 1 (Document Reference NCC/GY3RC/EX/023, Planning Inspectorate Reference REP2-009 (clean) and Document Reference NCC/GY3RC/EX/024, Planning Inspectorate Reference REP2-010 (tracked changes))</p>

	<p>In default of agreement on the appointment of a single arbitrator, article 67 provides for the President of the Institution of Civil Engineers to appoint a single arbitrator to resolve the matter in dispute.</p> <p>The Applicant highlighted the fact that article 67 does not apply to disputes relating to the discharge of the requirements in Schedule 2; as is made clear in paragraph 18 of Schedule 2, such disputes are to be determined (in accordance with common practice) through a separate appeal mechanism, i.e. they are required to be determined by the Secretary of State on appeal (see paragraph 20 in Part 2 of Schedule 2).</p> <p>In response to the Marine Management Organisation's ("MMO") observation that it had understood, from previous discussions with the Applicant, that the arbitration provision would be deleted, the Applicant confirmed that such amendment had indeed been made to the arbitration provisions previously included in the Deemed Marine Licence ("DML") (in Schedule 13 to the draft DCO). However, it was necessary for the arbitration provisions in article 67, having wider application than those in the DML, to remain. That said, the Applicant confirmed that it would add drafting to the DCO to ensure that it was clear, on the face of it, that the arbitration provisions in article 67 were not applicable to the MMO.</p> <p>The MMO also requested that article 49 should be amended to exclude reference to dredging. In response, the Applicant confirmed that it would review the relevant drafting and confirm its position on that at Deadline 3.</p> <p><i>Post hearing note: the Applicant has amended revision 2 of the draft DCO to exclude the operation of article 67 to the deemed marine licence. This has been</i></p>	<p>Update to Draft Explanatory Memorandum (Revision 1) (Document Reference NCC/GY3RC/EX/006, Planning Inspectorate Reference AS-009)</p>
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	<p><i>achieved by introducing a new paragraph 20 to Schedule 13. As article 67 applies "except where otherwise expressly provided for in this Order..." this express provision within the new paragraph 20 of Schedule 13 takes precedence and is effective at excluding the operation of article 67 to the DML.</i></p>	
5. Discharge of Requirements and amended details		
<p>The ExA will ask IPs, whether they have any concerns in regard to the discharge of Requirements.</p>	<p>By way of introduction, the Applicant explained that Part 1 of Schedule 2 sets out a number of 'requirements', essentially the equivalent of planning conditions, dealing with a wide variety of issues. For example:</p> <ul style="list-style-type: none"> • requirement 4 (at paragraph 4 of Schedule 2) deals with the detailed design of the development, requiring it to be designed in general accordance with the General Arrangement Plans and the Approach to Detailed Design document; • paragraph 5 deals with the Code of Construction Practice, and (by way of an example of the procedure for discharge of requirements) provides that no part of the authorised development is to commence until a code of construction practice for that part (of the authorised development) has been submitted to and approved in writing by the County Planning Authority ("CPA"), following consultation with Great Yarmouth Borough Council, the lead local flood authority, the Internal Drainage Board and the Environment Agency; • there are a number of other requirements dealing with matters such as landscaping, contamination, lighting, trees and hedgerows, all of which 	<p>Draft DCO Revision 1 (Document Reference NCC/GY3RC/EX/023, Planning Inspectorate Reference REP2-009 (clean) and Document Reference NCC/GY3RC/EX/024, Planning Inspectorate Reference REP2-010 (tracked changes))</p> <p>General Arrangement Plans (Document Reference 2.2, Planning Inspectorate Reference APP-007)</p>

	<p>require, to various degrees, steps to be taken (or in essence, complied with) by the undertaker prior to approval by the CPA (in consultation with other bodies), thereby triggering discharge of the requirement and permitting the commencement of construction.</p> <p>Procedure for discharge of requirements</p> <p>At the ExA's request, the Applicant explained the procedure (in terms of time limits, further information being required by the approving authority, and appeals to the Secretary of State), for the discharge of requirements, as set out in Part 2 of Schedule 2 to the draft DCO.</p> <p>In particular, it was noted that paragraph 18 in Part 2 of Schedule 2 prescribes a six-week period for approvals to be given or refused, or, in the absence of determination at the end of that period, to be deemed to be approved.</p> <p>With reference to the six-week approval period, the CPA expressed its view that:</p> <ul style="list-style-type: none"> • deemed approval is not compliant with EIA, which imposes a duty to give reasoned conclusions when granting development consent; • the time periods for determination are too short and as such are not practicable – they should be extended to 12 weeks; • the discharge process should be subject to a fee payable by the Applicant. <p>In response, whilst the Applicant suggested that this matter would be best dealt with between the parties outwith the Examination, it commented as follows:</p>	<p>Approach to Detailed Design (Appendix A to the Design Report) (Document Reference 7.4, Planning Inspectorate Reference APP-196)</p> <p>County Planning Authority's Local Impact Report (REP2-018)</p>
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	<ul style="list-style-type: none"> • There has always been a requirement for a decision on a subsequent application to state that decisions have taken into account environmental information (see regulation 3(2) IP (EIA) Regs 2009 now in regulation 4(2) IP (EIA) Regs 2017. This is not a new requirement of the EIA Directive. • Deemed approval provisions have been included in numerous DCOs under both the 2009 and 2017 EIA regulations, see for example: <ul style="list-style-type: none"> ○ Drax Power (Generating Stations) Order 2019 (2017 EIA Regs); ○ A19/A184 Testo's Junction Alteration Development Consent Order 2018 (2009 EIA Regs); and ○ M20 Junction 10a Development Consent Order 2017 (2009 EIA Regs). • Part 2 of Schedule 2 affords the CPA every opportunity to engage with the process for the discharge of requirements: <ul style="list-style-type: none"> ○ it may request further information under paragraph 19, and such a request would extend the determination period; ○ it is open to the parties to agree a longer determination period; ○ failing that, if it remains concerned, the CPA may refuse the application. • Notwithstanding the availability of the above-mentioned mechanisms, the Applicant would be prepared to assist the CPA in facilitating the discharge process and has therefore offered to move the consultation obligation from the CPA to itself (as promoters of other highways DCOs, e.g. Highways England, have done) in order to help reduce the CPA's attendant handling time by submitting a mini-consultation report alongside its application(s) for discharge of requirements. 	
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Post hearing note: the Applicant has introduced a new requirement 17 (details of consultation) in revision 2 of the draft DCO, submitted at Deadline 3, that requires the Applicant to include a summary consultation report with any application for approval under a requirement, where that requirement also requires another party to be consulted on those details.

The summary report must set out the consultation carried out by the Applicant pursuant to that requirement to inform the details to be submitted to the County Planning Authority for approval and detail the Applicant's response to that consultation.

- The duty to give reasons is met by sub-paragraph (2) in paragraph 18.
- In terms of time periods for determination:
 - Paragraph 18 provides for a 6-week determination, which is consistent with the advice given in the Annex to the Planning Inspectorate's Advice Note 15.
 - 6 weeks is a reasonable period for determination for an application.
- In relation to fees, this is a matter that the Applicant and the CPA are discussing and expect an accommodation can best be reached in further discussions outwith the Hearing.

Post hearing note: the Applicant is continuing to discuss with the CPA its concerns regarding the procedures for the discharge of requirements and aims to report an agreed position at Deadline 4.

Requirement 4 – design of the authorised development

The CPA revealed that it wanted to treat the Approach to Detailed Design as an ‘interim’ document, and to impose a new / additional requirement in the dDCO for a final version of the Approach to Detailed Design to be submitted to the CPA for approval. In addition, the CPA stated that it wished to be provided with written details of certain key architectural elements of the Scheme design for approval prior to the discharge of requirement 4. The CPA indicated that it was preparing a revised version of requirement 4.

In response, the Applicant indicated that following its meeting with the CPA (in the week preceding the Hearing) it had understood that the parties had reached agreement in relation to the wording of requirement 4; however, that was clearly not the case. That said, the Applicant expressed the view that any changes to the wording or scope of requirement 4 were unnecessary because both the General Arrangement Plans and the Approach to Detailed Design would, in the event that the DCO was made, be documents certified by the Secretary of State (pursuant to article 64 and Schedule 15).

In addition, the wording ‘in general accordance with’ has precedent in equivalent requirements in other highways scheme DCOs and provides an appropriate degree of flexibility to enable the detailed design of the Scheme to be developed within the limits of deviation provided for in article 6 of the DCO (discussed above under Agenda item 4, Part 2).

The Applicant recommended that any discussion about – and any further work required in relation to – the content of the Approach to Detailed Design document should be carried out during the remainder of the Examination period and should not be postponed to any later stage. The Applicant's contractor has already been appointed and is engaged in developing the detailed design of the Scheme, so the appropriate time to seek to influence that design is now.

It was agreed that the Applicant and the CPA would discuss the matter outwith the Hearing with the objective of reaching an agreed position as soon as possible, ideally by Deadline 3.

Post hearing note: the Applicant and the CPA are continuing to discuss the drafting of requirement 4 and aim to report an agreed position by Deadline 4.

Requirement 5 – code of construction practice

In response to comments made by the CPA in its Local Impact Report, the Applicant had (prior to the Hearing) provided the CPA with proposed amended drafting. Whilst the amended drafting is understood to be agreed in principle, detailed discussions related to it are ongoing between the parties and will be settled as soon as possible outwith the Hearing, with outcomes being reported to the ExA at a subsequent Examination Deadline.

Post hearing note: the revised drafting discussed at the hearing has been included in revision 2 of the draft DCO submitted at Deadline 3. The Applicant and the CPA are continuing to discuss the detailed drafting and aim to report an agreed position at Deadline 4.

Requirement 6 – landscaping scheme

The Applicant has considered the CPA's comments (made in its Local Impact Report) in relation to the landscaping requirement. Alternative drafting has been shared with the CPA and it is hoped that agreement will be reached, such that an agreed form of drafting can be included in the next revision of the draft DCO which is to be submitted at Deadline 3.

Post hearing note: the revised drafting discussed at the hearing has not been included in revision 2 of the draft DCO submitted at Deadline 3. The Applicant and the CPA are continuing to discuss the detailed drafting and aim to report an agreed position at Deadline 4.

Requirements 8 – contamination, 9 – emergency response and preparedness plan, and 10 – surface water drainage

Reiterating the requests made in its Local Impact Report, the CPA requested that a small number of minor drafting amendments be made to requirements 8, 9 and 10. The Applicant has agreed to make these amendments which will be included in the next revision of the draft DCO which is to be submitted at Deadline 3.

Post hearing note: the Applicant has made the minor drafting amendments discussed which are included in Revision 2 of the draft DCO submitted at Deadline 3.

	<p>Requirement 13 – archaeology</p> <p>The CPA proposed that the 10-metre zone restricting construction activities should be extended to 25 metres. Justification and supporting evidence of the need for such an extension (including examples of previous precedents supporting a 25-metre zone) is to be provided by the CPA as soon as possible for consideration by the Applicant and the ExA.</p> <p><i>Post hearing note: the Applicant understands that the CPA is now content with the 10 metre zone and consequently this amendment has not been made in Revision 2 of the draft DCO submitted at Deadline 3.</i></p>	
<p>This includes the Arbitration mechanism that is set out in Article 67 of the dDCO</p>	<p>As noted above, in relation to Agenda item 4 (Part 7, article 67), the Applicant confirmed that the arbitration mechanism provided for in article 67 does not apply to the discharge of requirements.</p>	
<p>In addition, the ExA will ask questions regarding the mechanisms for discharging the various schemes and plans that are to be submitted before</p>	<p>No additional oral submissions were specifically made under this Agenda item.</p>	

the authorised development could commence		
6. Review and actions arising		
The ExA will discuss how any actions placed on the Applicant are to be met and the need for any changes to the dDCO, having regard to the Examination timetable that is set out in the Rule 8 letter dated 1 Oct 2019	No additional oral submissions were specifically made under this Agenda item.	

7. Any other business

There were no additional issues raised for discussion in the Hearing.