

# **Great Yarmouth Third River Crossing Order 202[\*]**

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## **Document NCC/GY3RC/EX/088: Response to Request for Further Information (Rule 17)**

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**Planning Act 2008**

**Infrastructure Planning**

**The Infrastructure Planning (Examination Procedure) Rules 2010**

Planning Inspectorate Reference Number: TR010043

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## Foreword

This document is the Applicant's Response to the Request for Further Information (Rule 17) and variation to the Examination timetable (Rule 8) made by the Examining Authority ('ExA') on the 10th March 2020 pursuant to the Infrastructure Planning (Examination Procedure) Rules 2010 (Planning Inspectorate Reference PD-014) ("**R17 Request**"). This document, and the R17 Request to which it responds, relate to an application ('the Application') submitted by Norfolk County Council ('the Council' / 'the Applicant') to the Secretary of State for a Development Consent Order ('DCO') under the Planning Act 2008.

If made by the Secretary of State, the DCO would grant development consent for the construction, operation and maintenance of a new bascule bridge highway crossing over the River Yare in Great Yarmouth, and which is referred to in the Application as the Great Yarmouth Third River Crossing (or 'the Scheme').

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## Glossary of Abbreviations and Defined Terms

CoCP	Code of Construction Practice
Cadent	Cadent Gas Limited
DCO	Development Consent Order
Draft DCO	Unless otherwise stated means revision 5 of the DCO (Document Reference NCC/GY3RC/EX/083, Planning Inspectorate Reference REP-7-008)
Drainage Strategy	Means the Drainage Strategy contained in Appendix 12C of the Environmental Statement, (Document Reference 6.2, Planning Inspectorate Reference APP-136)
EPRP	Means the Emergency Preparedness and Response Plan to be prepared in accordance with Requirement 10 of the draft DCO.
ExA	Examining Authority
FRA	Flood Risk Assessment
R17 Request	Means the Request for Further Information (Rule 17) and variation to the Examination timetable (Rule 8) made by the Examining Authority by letter dated 10th March 2020 (Planning Inspectorate Reference PD-014).
Report	This document.
Requirement(s)	Means the requirements of the draft DCO contained in Part 1 of Schedule 2 to the draft DCO.
SUDS	Sustainable Urban Drainage Systems
The Applicant	Norfolk County Council (in its capacity as Highway Authority and promoter of the Scheme)
The Application	An application submitted by Norfolk County Council to the Secretary of State for a Development Consent Order under the Planning Act 2008
The Council	Norfolk County Council
The Scheme	Great Yarmouth Third River Crossing

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# 1 Introduction

## 1.1 Purpose of this Report

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- 1.1.1 This report, submitted for Deadline 8 of the Examination, contains the Applicant's response to the request for Further Information (Rule 17) made by the ExA (Planning Inspectorate Reference PD-014), on 10 March 2020.
- 1.1.2 This report provides the Applicant's response to the issues raised by the ExA. Appended to this document, shown in track changes, are three appendices containing tracked change amendments that could be made to the draft DCO in response to the ExA's Rule 17 Request.
- 1.1.3 In some instances, the Applicant remains of the view that the changes to the DCO drafting invited by the Rule 17 Request are unnecessary or inappropriate. Where this is the case it is clearly indicated and the revised drafting is provided on the basis that is without prejudice to the Applicant's case as to why such changes are unnecessary.
- 1.1.4 In other instances, the Applicant does not object to the proposed drafting and, where this is the case, it is clearly indicated.
- 1.1.5 The Applicant intends to submit a final version of the draft DCO for Deadline 9 (12 noon on 20 March 2020), taking into account the matters addressed in this report and responding to the ExA's preferred DCO/DCO commentary which is due to be published on 16 March 2020.

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## 2 Response to the Request for Further Information (R17)

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### 2.1 Request for Further Information and Applicant's response

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#### Introduction

- 2.1.1 For ease of reference the Applicant has set out each of the requests for further information, made in the ExA's R17 Request, in the sub-headings of the following sections of this part of this Report.
- 2.1.2 The Applicant's response to each request is set out in the text that follows each sub-heading.
- 2.2 To provide an effective fall-back position to the issue of flood risk, the ExA asks the Applicant to look again at the drafting of Requirements 10, 11 and 15 to Part 1 of the dDCO these requirements.**
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#### Applicant's response

- 2.2.1 The Applicant understands that the ExA has noted the Deadline 7 submission of the Environment Agency (Planning Inspectorate Reference REP7-014) which confirms its agreement that the 5% AEP event tidal breach modelled and reported in the Applicant's Response to the Written Representations from the Environment Agency (Document Reference NCC/GY3RC/EX/078, Planning Inspectorate Reference REP7-003), is sufficient to support the Flood Risk Assessment ('FRA') (Document Reference 6.2 Appendix 12A, Planning Inspectorate Reference APP-135) and gives an indication of the likely risks and parties affected in the event of a breach occurring. However, in that Deadline 7 submission the Environment Agency notes it has not completed verification of the Applicant's modelling and hopes to complete this process, and report its conclusions, to the ExA prior to the close of the Examination.
- 2.2.2 The Applicant understands that the ExA, by referring to an "effective fall-back", is seeking to guard against the possibility that the Environment Agency is not able to complete its verification of the tidal residual (breach) analysis before the close of the Examination and is affording the Applicant the opportunity to address this eventuality.
- 2.2.3 The Applicant's position remains as reported in its Deadline 7 submissions, which is to say that it does not consider that the Scheme gives rise to a significant tidal residual (breach) risk.
- 2.2.4 Additionally, the Applicant has understood from the context of the R17 Request that the reference to Requirement 15 (see text transposed in sub-
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heading 2.2 above) is intended to be a reference to Schedule 15 (documents to be certified) to the draft DCO, rather than to Requirement 15 (preliminary Navigational Risk Assessment) and has responded accordingly. The Applicant has reviewed Requirements 10 and 11 and Schedule 15 in the light of the matters raised in the R17 Request and its responses in this regard are set out in the remainder of this Report.

**2.3 Whilst noting the applicant's DL7 comments, the ExA is of the view that it would be more appropriate if the DfT or EA was given overall responsibility of approving the Emergency Preparedness and Response Plan (EPRP), can the applicant provide alternative wording to Requirement 10 in that regard?**

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**Applicant's response**

**2.3.1** The Applicant notes the ExA's indication that, if minded to recommend the approval of the Applicant's application, such a recommendation may be on the basis that either the Secretary of State for Transport or the Environment Agency, would be responsible for approving the Emergency Preparedness and Response Plan ('EPRP') required to be prepared under Requirement 10.

**2.3.2** Respectfully, the Applicant remains of the view that the County Planning Authority would be the appropriate body to be charged with the function of approving the EPRP and is of the view that it would be inappropriate for either the Secretary of State or the Environment Agency to carry out that function.

The Civil Contingencies Act 2004

**2.3.3** The Applicant's view is founded upon the existing legislative framework in place to prepare for, and respond to, civil emergencies. Primarily this can be found in the Civil Contingencies Act 2004 and its associated regulations<sup>1</sup> and guidance<sup>2</sup>.

**2.3.4** In overview the regime focuses on the co-ordination and co-operation of organisations with important public functions at the local level. Such organisations are categorised as either Category 1 or Category 2

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<sup>1</sup> The Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005 (S.I. 2005/2042).

<sup>2</sup> The detailed statutory guidance is published at the following address <https://www.gov.uk/government/publications/emergency-preparedness> further helpful but non-statutory guidance can also be found here <https://www.gov.uk/guidance/preparation-and-planning-for-emergencies-responsibilities-of-responder-agencies-and-others>.

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Responders<sup>3</sup> and imposes emergency preparedness and response duties on those bodies commensurate with their categorisation (with Category 1 Responders' duties being more onerous than those in Category 2 who are referred to as 'co-operating bodies' in the guidance).

2.3.5 The overarching duties on Category 1 Responders are summarised in Government guidance<sup>4</sup> as follows:

- to assess the risk of emergencies occurring and use this to inform contingency planning;
- to put in place emergency plans;
- to put in place business continuity management arrangements;
- to put in place arrangements to make information available to the public about civil protection matters and maintain arrangements to warn, inform and advise the public in the event of an emergency;
- to share information with other local responders to enhance co-ordination;
- to co-operate with other local responders to enhance co-ordination and efficiency;
- to provide advice and assistance to businesses and voluntary organisations about business continuity management (local authorities only).

2.3.6 In Norfolk the co-ordination and co-operation of Category 1 and 2 Responders, and assessment of risk, is managed through the Norfolk Resilience Forum which has prepared co-ordinated plans<sup>5</sup> for the preparation for, and response to, civil emergencies. These plans include both strategic and tactical flood plans.

The Secretary of State for Transport as discharging authority for requirement 10

2.3.7 The Secretaries of State carry out an important but strategic, supervisory, advisory and co-ordination role within the Civil Contingencies Act 2004. In particular, the Minister for the Cabinet Office is charged with reviewing the overall effectiveness of the regime. Senior Ministers of the Crown are entrusted with the emergency powers set out in Part 2 of the Civil

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<sup>3</sup> See Schedule 1 to the Civil Contingencies Act 2004.

<sup>4</sup> <https://www.gov.uk/guidance/preparation-and-planning-for-emergencies-responsibilities-of-responder-agencies-and-others>

<sup>5</sup> Published on its website: <http://www.norfolkprepared.gov.uk/local-risks/plans/>.

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Contingencies Act 2004 to respond to emergencies when existing powers to do so prove inadequate.

2.3.8 However, the emergency preparedness and response regime established under Part 1 of the Civil Contingencies Act 2004 is fundamentally a local regime. This is appropriate because local bodies will have valuable knowledge of the particularities of their areas of geographic, administrative and statutory responsibility and detailed knowledge of the areas of responsibility held by other Category 1 Responders within their areas of responsibility<sup>6</sup>.

2.3.9 Emergency planning is an important function, but it is one that Parliament has largely devolved to a local level. Requiring the Secretary of State to approve the EPRP for the Scheme under Requirement 10 of the draft DCO would be inconsistent with that intent and inconsistent with established procedure and practice.

#### The Environment Agency as discharging authority for the EPRP

2.3.10 The Environment Agency is a Category 1 Responder and plays a vital strategic role in developing, maintaining, applying and monitoring a strategy for managing flood risk and coastal erosion<sup>7</sup> in England, in addition to its wider regulatory functions in respect of the environment.

2.3.11 The Applicant acknowledges the valuable contribution that the Environment Agency can make to the development of the EPRP which is recognised in Requirement 10 through it being named as a consultee, amongst other key Category 1 Responders.

2.3.12 However, the EPRP must cover more than residual tidal (breach) risk and indeed, more than just flood risk. Paragraph (2) of Requirement 10, for sensible reasons, requires the EPRP to also include measures and actions for preparing and responding to a fire event and an incident involving terrorism or other substantial security threat. While the Environment Agency's valuable contributions in respect of these other events is welcomed, they are not the areas of the Environment Agency's primary specialism or responsibility and it would therefore be inappropriate for it to be given the role of discharging authority in respect of all three types of event to be covered by the EPRP. Since the publication of the R17 Request, the Environment Agency has advised the Applicant that it agrees with this conclusion and notes that, even with respect to only the flood risk element of the EPRP, the lead authority will vary depending on the type of flooding that it seeks to address.

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<sup>6</sup> See regulation 4 and 7 of the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005 in respect of the establishment of co-ordination via Local Resilience Forums and the entering into protocols between general responders.

<sup>7</sup> See section 7 Water Management Act 2010.

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2.3.13 While the Applicant has given consideration to "carving out" the approval function relating to the flood event element of the EPRP and allocating it to the Environment Agency, the Applicant has concluded that this would not be an appropriate course of action. From a practical perspective, there is clear merit in having the EPRP contained in a single document such that, should an emergency event occur, there is a single source document setting out the appropriate response, avoiding a 'paper chase' in circumstances where time pressures are likely to be critical. Similarly, while the Environment Agency is a key statutory consultee on planning matters and has extensive experience in carrying out this function, it is not a planning authority and does not have the same level of experience of carrying out the role of discharging planning conditions and requirements possessed by the County Planning Authority, and to a different extent, the Secretary of State.

The County Planning Authority as discharging authority for the EPRP

2.3.14 In contrast, the Applicant considers the County Planning Authority to be ideally positioned (and better positioned than either the Secretary of State or the Environment Agency) to carry out the function of the discharging authority in relation to Requirement 10.

2.3.15 Norfolk County Council carries out a range of important statutory functions across the County. Of relevance to Requirement 10 are its functions as highway authority, traffic authority, street authority, Lead Local Flood Authority and County Planning Authority. It is also a Category 1 Responder.

2.3.16 In its capacity as the Lead Local Flood Authority responsible for preparing the local flood risk management plan<sup>8</sup> the County Planning Authority has detailed knowledge of managing local flood risk and co-ordinating the efforts of the range of risk management authorities within its area. As highway, traffic and street authority it has detailed knowledge of the local circumstances that pertain to the highway network, those who use it and the apparatus placed within it. As County Planning Authority, with experience of acting as discharging authority for a DCO made under the Planning Act 2008<sup>9</sup>, it has the systems, experience and expertise in place to evaluate applications to discharge DCO Requirements, whilst drawing upon, and balancing, the range of local expertise within Norfolk County Council and with key external consultees. The appropriateness of county planning authorities acting as discharging authority for local authority promoted highway DCOs is evidenced

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<sup>8</sup> See section 9 Flood and Water Management Act 2010.

<sup>9</sup> Norfolk County Council is the discharging authority for the Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order 2015.

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in the precedent DCOs<sup>10</sup>. Assigning the discharging function to any other body would be a departure from the weight of such precedents.

**2.3.17** Finally, and importantly, as has been discussed in the summary of the existing Civil Contingencies Act 2004 regime above, at a County level, co-ordinated civil contingency plans are already in place. While it is important that the civil contingency implications of the Scheme are considered and prepared for, the implications of the Scheme are not such as to require a fundamental revision of the existing plans at a County level, let alone at the strategic level upon which the Secretary of State, and to a lesser extent, the Environment Agency, typically operate. As the undertaker of the Scheme Norfolk County Council will already be under a duty to assess, plan and advise on the civil contingency implications of the Scheme and carving out all or part of the approval of this function risks giving rise to inconsistencies of approach. Given the nature of contingency planning, such potential for inconsistencies ought to be avoided.

**2.3.18** In conclusion, in the Applicant's view, the County Planning Authority is the most appropriate body to carry out the function of discharging Requirement 10. It has the expertise, local knowledge, and systems in place at the right tier of decision making. This position is consistent with other local highway authority DCOs where the discharging function is carried out by the relevant county planning authority.

#### The request for alternative drafting

**2.3.19** For the reasons set out in this response the Applicant remains of the view that the County Planning Authority is the appropriate discharging authority for Requirement 10.

**2.3.20** Without prejudice to this position, if the ExA remains minded to depart from this position in making a recommendation to the Secretary of State, the Applicant considers that the Secretary of State would be better positioned than the Environment Agency to accept that function on the basis that the Secretary of State carries out the discharging authority function in respect of Highways England's DCOs<sup>11</sup> and so has in place arrangements for the discharge of requirements.

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<sup>10</sup> See the Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order 2015, the Cornwall Council (A30 Temple to Higher Carblake Improvement) Order 2015, the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013, the Northumberland County Council (A1 – South East Northumberland Link Road (Morpeth Northern Bypass)) Development Consent Order 2015.

<sup>11</sup> See the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016, M20 Junction 10a Development Consent Order 2017, A19/A184 Testo's Junction Alteration Development Consent Order 2018, A30 Chiverton to Carland Cross Development Consent Order 2020.

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2.3.21 On this basis, the Applicant has prepared alternative drafting to assign to the Secretary of State the function of discharging Requirement 10; the alternative drafting is presented in the form of a tracked change mark-up of Schedule 2 to the draft DCO, which is contained in Appendix 1 to this Report. It should be noted that the introduction of a new discharging authority, particularly one in respect of which there is no avenue to appeal, requires extensive modifications to Part 2 of Schedule 2 with consequential amendments to Part 1 of Schedule 2.

**2.4 No draft version of the EPRP has been made available to the Examination, Requirement 10 should therefore contain a list of matters to be covered by the EPRP including the tidal residual (breach) analysis.**

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### **Applicant's response**

2.4.1 The Applicant acknowledges that no draft EPRP has been made available to the Examination. This is because, in the Applicant's view, an EPRP is not necessary at this stage. The key civil contingencies for which the EPRP is intended to address relate to the Scheme's operation, once it is opened for public use. Emergency planning considerations during construction are to be addressed via the full Code of Construction Practice ('CoCP') to be approved under Requirement 6 (see sections 2.10 and 7.2 to 7.4 of the Outline CoCP (Document Reference NCC/GY3RC/EX/073, Planning Inspectorate Reference REP6-014)).

2.4.2 Given the wider context of civil emergency planning (discussed in paragraphs 2.3.3 to 2.3.6 above), co-ordinated plans are already in place to prepare for, and respond to, emergency flood events, both at strategic and tactical levels<sup>12</sup>. Emergency planning duties under the Civil Contingencies Act 2004 are established and well understood by the bodies charged with those duties, including the Applicant. The role of the EPRP needs to be appreciated within this wider context.

2.4.3 The EPRP is deliberately targeted at an even further localised level, focussing on the actions and measures to be *taken in relation to the authorised development*. This is appropriate because as a new piece of infrastructure the Scheme may have implications for emergency planning, both in terms of it being affected by emergencies and in terms of it serving a function in responding to emergencies. As noted in paragraph 2.3.7 above, Norfolk County Council will be required to consider the operation of the Scheme in the context of its existing civil contingency planning duties.

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<sup>12</sup>Available at <http://www.norfolkprepared.gov.uk/wp-content/uploads/2015/07/Norfolk-Strategic-Flood-Plan-2015-Public-Version.pdf> and <http://www.norfolkprepared.gov.uk/wp-content/uploads/2015/07/Norfolk-Tactical-Flood-Plan-2015-Part-One-Public-Version.pdf>.

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- 2.4.4 While the Applicant understands the ExA's rationale behind seeking more detail at this stage on the contents of the EPRP the Applicant is not convinced that a greater degree of prescription would be of assistance at this stage. Such prescription risks unduly hampering the proper functioning of the EPRP within the wider context of the Civil Contingencies Act 2004. Given that the nature of contingency planning involves preparing for events that may arise, but which are relatively unlikely to do so; a prescriptive approach could prove counter-productive. This is reflected in the drafting of the Civil Contingencies Act 2004 and its regulations, which, while specifying clear duties, supported by detailed guidance, afford Category 1 Responders a wide degree of discretion in how they carry out those duties.
- 2.4.5 Without prejudice to this position, the Applicant has prepared additional drafting, set out in a tracked change mark-up of Requirement 10 of the draft DCO, as set out in Appendix 2. As noted, this revised drafting would involve a further degree of prescription as to the contents of the EPRP, which, in the Applicant's view, is neither necessary nor desirable.
- 2.4.6 In respect of the treatment of the tidal residual (breach) analysis in Requirement 10, please see the response at section 2.5 of this Report below.

## 2.5 **Can the wording of Requirement 10 be amended to ensure the tidal residual (breach) analysis forms a central part of the approval of the EPRP rather than an "add-on"?**

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- 2.5.1 The Applicant has carefully considered Requirement 10(3).
- 2.5.2 It should be noted that the information garnered from the tidal residual (breach) analysis will support the preparation of *only part* of the part of the EPRP which deals with flood events. While preparation for flood events is clearly important, it is not the sole purpose of Requirement 10, nor does it reflect the totality of information relevant to the preparation of the EPRP in response to flood events. In preparing the version of Requirement 10(3) that appeared in Revision 5 of the draft DCO (Document Reference NCC/GY3RC/EX/083, Planning Inspectorate Reference REP7-008) the Applicant took care to ensure that this issue did not unduly overshadow other contingencies to be addressed in the EPRP, which are of equal importance.
- 2.5.3 Nonetheless, the Applicant has further reviewed Requirement 10(3) and has proposed further drafting that would require the EPRP to be accompanied by a summary of the tidal residual (breach) analysis *together with* a statement setting out how regard has been had to the results of that analysis in preparing the relevant parts of the EPRP. The revised drafting will make it plain to the discharging authority, and consultees, how the tidal residual (breach) analysis has influenced the EPRP for which approval is sought.
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2.5.4 This drafting is set out in a tracked change mark-up of Requirement 10 in Appendix 3 of this Report. The Applicant does not object to the inclusion in the draft DCO of this revised drafting, and intends to include it in its final revision of the draft DCO, which it intends to submit at Deadline 9.

**2.6 The ExA has concerns that Part 3 of Requirement 10 requires that the EPRP is supported by a summary report of the additional modelling undertaken. However, this appears to sit outside of the FRA**

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### **Applicant's response**

2.6.1 The Applicant has understood the reference to Part 3 of Requirement 10 to be intended to refer to sub-paragraph (3) of Requirement 10 as it appeared in Revision 5 of the draft DCO.

2.6.2 As noted above, the Applicant took care when preparing Requirement 10(3), that it did not overshadow other aspects of the EPRP. For similar reasons it is proposing that the submission of the EPRP be accompanied by a summary report of the findings of that tidal residual (breach) analysis. The simple reason for making provision for a summary of that analysis is that the full reports and outputs of the tidal residual (breach) analysis are expected to be lengthy and technical in nature, requiring particular expertise to interpret. It is likely that only the Environment Agency and the Lead Local Flood Authority, will wish to consider the full reports and outputs of the tidal residual (breach) analysis. As the recognised guidance (to which the analysis is required to have regard) requires the analysis to be prepared in close co-operation with the Environment Agency; as such, the Environment Agency would have the benefit of the full report in any instance and it would be shared with the Lead Local Flood Authority.

2.6.3 The EPRP is required to cover flood, fire and security/terrorism events as *they apply to the authorised development* and, given the diversity of the threats, the requirement has a long list of consultees comprising Great Yarmouth Borough Council, the Lead Local Flood Authority, Norfolk Fire and Rescue, Norfolk Constabulary and the Environment Agency. The provision of a summary of the results is a proportionate means of communicating the key outcomes of the analysis which will enable those consulted to be sufficiently informed so as to provide the Applicant, and the County Planning Authority, with the benefit of their consultation responses. The Applicant is concerned to ensure that consultees are not burdened with technical material which may be of limited value or relevance to their functions and expertise.

2.6.4 Necessarily, the tidal residual (breach) analysis referred to in Requirement 10(3) sits outside of the FRA. This is because the analysis required to be undertaken in Requirement 10(3) has yet to be carried out. The Applicant's competent experts, in preparing the FRA, considered that the Scheme was unlikely to give rise to significant effects in respect of a residual risk of tidal



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breach. This professional judgement has been borne out by the results of the further work submitted at Deadline 7 (Document Reference NCC/GY3RC/EX/078, Planning Inspectorate Reference REP7-003). In terms of the overall flood risk posed by the Scheme, the Applicant's FRA remains accurate and up to date and, subject to the tidal residual (breach) matter, this position is agreed with the Environment Agency (see items 2, 3, of Table 4.1 and item 1 of Table 4.2 of the Statement of Common Ground contained in Appendix C to the Statement of Commonality (Document Reference NCC/GY3RC/EX/085, Planning Inspectorate Reference REP7-010)).

- 2.6.5** The tidal residual (breach) analysis will provide a more granular level of information, for example, revealing which flood compartments would be the first to be affected by a breach at a modelled location or the extent of the effect of the breach at that location, based on the detailed design of the Scheme and in light of the prevailing conditions of the flood defences prior to the Scheme opening. That information can be of assistance in drawing up the flood event element of the EPRP. However, as is noted in the Applicant's deadline 7 submission (Document Reference NCC/GY3RC/EX/078, Planning Inspectorate Reference REP7-003), the Scheme is not likely to have a significant effect in this context.
- 2.6.6** In terms of the efficacy of Requirement 10 in securing compliance, please see the response in section 2.8 below.
- 2.7** **Similarly, Requirement 11 (Surface Water Drainage) has no link with the FRA, its findings and the recommendations made including mitigation.**
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### **Applicant's response**

- 2.7.1** The Applicant respectfully submits that there is in fact a clear link between Requirement 11, which secures compliance with the Drainage Strategy (Document Reference 6.2, Planning Inspectorate Reference APP-136), and the FRA (Document Reference 6.2, Planning Inspectorate Reference APP-135).
- 2.7.2** Both the FRA and the Drainage Strategy are appendices to Chapter 12 of the Environmental Statement, and as such are comprised in the Applicant's Document Reference 6.2 (Environmental Statement Appendices).
- 2.7.3** The Drainage Strategy outlines the key elements of the drainage design that will be taken forward to development in detail and prescribes the outcomes that must be achieved by that detailed design, for example the design run-off rates and the inclusion of Sustainable Urban Drainage Systems ('SUDS'). The Appendix to the Drainage Strategy which considers in detail the run-off rates demonstrates that the desired run-off rates are achievable within the envelope of the Scheme's design.

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2.7.4 However, the detail of the drainage design has yet to be fully developed and it is appropriate for its approval in detail, within the confines of the Drainage Strategy, to be left to Requirement 11 which ensures that the Scheme will conform to the overall parameters established by the Drainage Strategy.

2.7.5 The parameters of the Drainage Strategy have formed a key element of the assessment of flood risk from surface waters and sewers in the FRA which has clearly been prepared with regard to its measures as forming part of the mitigation embedded within the Scheme's design. This is consistent with the Applicant's *Rochdale envelope* approach to the environmental assessment of the Scheme.

2.7.6 For example:

- Paragraph 6.3.4 of the FRA explains that surface water flood risk to the Scheme will be managed through the embedded mitigation comprised in the detailed drainage design of the Scheme, which is addressed in the Drainage Strategy. Taking those measure into account, it concludes the residual surface water flood risk to the Scheme will be **negligible**;
- Paragraph 6.4.2 of the FRA explains how the risk of sewer flooding has been assessed and refers to the agreement with Anglian Water in respect of discharge rates before concluding in paragraph 6.4.3 that the risk of sewer flooding arising from the Scheme will be **negligible**;
- Section 7.3 of the FRA considers the mitigation of flood risk from surface water run-off, acknowledges that the Drainage Strategy, which targets achieving greenfield run-off rates, notwithstanding the fact that a significant proportion of the existing land comprised within the Scheme is not greenfield, such a target if achieved would reflect an improvement over the baseline situation without the Scheme. However, the assessment acknowledges that the Drainage Strategy, whilst targeting an overall improvement, includes fixed commitments not to exceed current run-off rates (see para 2.3.6 of the Drainage Strategy).

**2.8 As drafted, Schedule 15 of the dDCO does not list the FRA or the EPRP as certified documents. This could be amended to ensure that they are fully considered, adhered to and implemented**

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### **Applicant's response**

2.8.1 The FRA forms part of document 6.2 (environmental statement appendices) referred to in Schedule 15 that would be certified by the Secretary of State in accordance with article 64 (certification of plans, etc.). The FRA will therefore be a certified document.

2.8.2 The FRA (Document Reference 6.2, Planning Inspectorate Reference APP-135) is not specifically mentioned in Schedule 15 because it, in the same way

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as the vast majority of the other appendices to the Environmental Statement and its Figures, forms part of the Environmental Statement suite of documents. The mitigation measures recommended by the FRA and Chapter 12 (Flood Risk) of the Environmental Statement are appropriately and adequately secured by the draft DCO, principally through the Scheme's drainage design, secured through Requirement 11, through the implementation of appropriate measures during construction outlined in the Outline CoCP (Document Reference NCC/GY3RC/EX/073, Planning Inspectorate Reference REP6-014) and secured through Requirement 6, and, in respect of residual tidal (breach) risk and other civil contingencies, through Requirement 10.

- 2.8.3** The Applicant considers that on balance, its approach to the presentation of the Environmental Statement in Schedule 15 is preferable to the alternative of listing individually each and every figure and appendix. Little further clarity would be gained by such an exercise and it would give rise to a greater risk of inadvertent omissions from the Schedule.
- 2.8.4** The Applicant has specifically identified both the Outline CoCP and the Drainage Strategy in Schedule 15 to the draft DCO as both of these documents are identified by defined terms within the draft DCO and the additional degree of precision is required in the context of that usage.
- 2.8.5** As discussed in the response at Section 2.6 above, the EPRP cannot be a certified document because it has not yet been produced, nor would it be appropriate for it to be produced at this stage. However, this should not infer that its measures will not be appropriately considered, adhered to and implemented. Its consideration by a wide range of appropriate consultees with relevant expertise and resources is secured through consultation on the ERPR prior to its approval by the County Planning Authority. Its adherence and implementation is secured through the final sub-paragraph in Requirement 10 which unambiguously states that "*The approved plan must be implemented in full*".
- 2.8.6** Finally, it should be noted that while DCO requirements are commonly referred to as being "akin to planning conditions" under the Town and Country Planning Act 1990 there remain important differences. Unlike planning conditions, non-compliance with DCO requirements is a criminal offence. As such, the ExA in making its recommendations to the Secretary of State can have confidence that there will be compliance with draft DCO and its Requirements.

**2.9 The Applicant is asked to please comment on the DL7 response from Cadent Gas and include any subsequent amendments to the dDCO**

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- 2.9.1** The Applicant has carefully considered Cadent Gas Limited's ('**Cadent**') Deadline 7 submission (Planning Inspectorate Reference REP7-013) which accords with the ongoing negotiations taking place between the parties. Those

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negotiations are still ongoing and the outstanding issues between the parties have narrowed considerably. As those negotiations are still ongoing, however, the Applicant considers that it would not be appropriate to include a version of the draft bespoke protective provisions within the draft DCO at this stage.

**2.9.2** Turning to the substance of Cadent's Deadline 7 submission (Planning Inspectorate Reference REP7-013), Cadent suggests that the tests in section 127 of the Planning Act 2008 would not be met on the basis that the standard protective provisions included in Part 1 of Schedule 14 do not provide Cadent with adequate protection. In support of its contention, Cadent states that the provisions in Part 1 of Schedule 14 are inadequate because:

- there is no restriction on the acquisition of Cadent's land or existing rights;
- Cadent require an opportunity to review and consent to the details of works in the proximity of its apparatus;
- Cadent require that no works in the vicinity of its apparatus are to be commenced unless its land or rights are protected; and
- Cadent go on to note the potential consequences of it having insufficient property rights to its apparatus.

**2.9.3** In response the Applicant notes the following elements of the standard protective provisions in Part 1 of Schedule 14:

- Paragraph 5 ensures that the Applicant may not acquire any apparatus otherwise than with the agreement of the statutory undertaker;
- Paragraph 8 ensures that Cadent will be provided with details and the methodology for any works that would affect any retained apparatus and affords it the opportunity to impose reasonable requirements on the carrying out of those works, and to watch and inspect the works being carried out (sub para (2)); and
- Paragraph 11 ensures that if Cadent's access to its apparatus is materially obstructed then the Applicant is required to provide alternative means of access that enables Cadent to use or maintain its apparatus no less effectively than was possible before the obstruction.

**2.9.4** The Applicant is therefore confident that, with the protections in Part 1 of Schedule 14 in place, the Secretary of State can be satisfied that the tests in Section 127(3) and 127(6) of the Planning Act 2008 are satisfied and the Applicant considers that the test set out in Section 138 of the Planning Act 2008 would still be satisfied even without the inclusion in the draft DCO of bespoke protective provisions for the benefit of Cadent. The Applicant holds this view because the protective provisions in Part 1 of Schedule 14 set out appropriate constraints on the exercise of the powers in the draft DCO with a view to safeguarding Cadent's interests whilst enabling the Scheme to proceed.

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- 2.9.5 The Applicant has carefully considered Cadent's "standard" protective provisions appended to its written representation (Planning Inspectorate Reference REP1-020) and appended again to its Deadline 7 submission (Planning Inspectorate Reference REP7-013), and which form the basis of the bespoke protective provisions currently being negotiated. The Applicant has serious concerns that their inclusion in the draft DCO, without further amendment, would risk causing undue delay, or jeopardising the delivery of, the Applicant's nationally significant infrastructure project, and would unduly infringe upon NCC's wider functions beyond the scope of the authorisation that would be granted by the draft DCO.
- 2.9.6 In substance, the Applicant considers Cadent's preferred protective provisions to be inappropriate because they:
- seek to infringe upon the Applicant's functions as a street authority under the New Roads and Street Works Act 1991 beyond the scope of the authorisation within the draft DCO from which the provisions are intended to provide protection, see paragraph 3(2);
  - inappropriately disapply the cost sharing provisions of section 85 New Roads and Street Works Act 1991, see paragraph 3(3);
  - afford Cadent the power to require protective works at any time (i.e. not linked to either ground monitoring or the process for approving plans), without restriction, risking the late imposition of the requirement to carry out protective works delaying and disrupting the construction of the Scheme (see paragraph 9(7)); and
  - the requirements for Cadent to be a beneficiary to an insurance policy or for the provision of security which are wholly inappropriate in relation to a local authority promoted scheme which is funded by the public purse.
- 2.9.7 The Applicant also has concerns regarding the form of Cadent's preferred protective provisions which, in the Applicant's view, are not drafted in a form that is appropriate for inclusion in a statutory instrument. They do not conform with modern statutory instrument drafting practice. For example, they include frequent use of "shall", "and/or", "will", and they are, in places, drafted in impenetrable language. The lack of clarity is inappropriate for inclusion in legislation and risks causing future disagreement when the protective provisions come to be relied upon.
- 2.9.8 In relation to the matters outstanding, which are summarised in section 3 of Cadent's Deadline 7 submission:

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- the Applicant considers that 28 days is a reasonable period of time for Cadent to consider the details of the proposed works and to specify any reasonable requirements, including protective works;
  - the Applicant, as a local authority entrusted with public funds, is concerned that it would not be appropriate for it to be required to pay out of those funds on the basis of Cadent's "anticipated" expenses, although the principle of paying its reasonable expenses is not disputed; and
  - in respect of access, as is noted above, the Applicant is already committed to ensuring that Cadent's access is not materially obstructed.

**2.9.9** In relation to the fourth matter, arbitration, the Applicant has serious concerns in respect of Cadent's proposed "carve outs" from the arbitration article. In the event of the parties not being able to reach agreement on any matter arising from the protective provisions it is of fundamental importance that there is ready access to an appropriate forum for the resolution of such disputes. In the absence of such provision there is a serious risk that any dispute could prevent the implementation of the Scheme, which is a position the Applicant is not able to accept. While Cadent indicates that this is a "standard provision", the Applicant has been unable to identify any made development consent order where this provision has been included. In any event, even were another DCO promoter to have previously accepted the position, the Applicant remains of the view that its inclusion in this case is inappropriate.

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## Appendix 1

### 3.1 Introduction

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- 3.1.1** This Appendix sets out drafting amendments (shown in tracked changes) to Schedule 2 to the draft DCO, in response to the ExA's first bullet point under numbered paragraph 1 of the R17 Request. The changes would have the effect of making the Secretary of State the discharging authority for Requirement 10. The change in discharging authority gives rise to a need to make amendments to the procedures for the determination of applications under Requirements set out in Part 2 of Schedule 2, and other consequential amendments to Part 1 of Schedule 2. Consequently, the whole of Schedule 2 is presented with changes tracked against revision 5 of the draft DCO.
- 3.1.2** For the reasons set out in section 2.3 of this Report the Applicant does not consider this amendment to be necessary or appropriate, and the drafting is provided on the basis that it is without prejudice to this position.

## SCHEDULE 2 REQUIREMENTS

Article 4(1)

### PART 1 REQUIREMENTS

#### Interpretation

1.—(1) In this Schedule the following expressions have the following meanings—

“application” means an application to a discharging authority for a specified consent;

“the archaeological written scheme of investigation” means the document of that description set out in Schedule 15 (documents to be certified) certified by the Secretary of State as the archaeological written scheme of investigation for the purposes of this Order;

“the code of construction practice” means a code of construction practice approved under paragraph 5 of this Schedule;

“the county planning authority” means Norfolk County Council in its capacity as county planning authority for the county of Norfolk under section 1(1)(a) (local planning authorities: general) of the Town and Country Planning Act 1990;

“discharging authority” means the body responsible for determining an application for a specified consent;

“the drainage strategy” means the document of that description set out in Schedule 15 (documents to be certified) certified by the Secretary of State as the drainage strategy for the purposes of this Order;

“emergency event” means the events listed in paragraph 10(2);

“the IDB” means the Waveney, Lower Yare and Lothingland Internal Drainage Board;

“the lead local flood authority” means Norfolk County Council in its capacity as lead local flood authority under section 6(7) (other definitions) of the Flood and Water Management Act 2010(a);

“the outline code of construction practice” means the document of that description set out in Schedule 15 (documents to be certified) certified by the Secretary of State as the outline code of construction practice for the purposes of this Order;

“the landscaping plans” means the plans of that description set out in Schedule 15 (documents to be certified) certified by the Secretary of State as the landscaping plans for the purposes of this Order;

“the lighting report” means the document of that description set out in Schedule 15 (documents to be certified) certified by the Secretary of State as the lighting report for the purposes of this Order;

“the preliminary navigation risk assessment” means the document of that description set out in Schedule 15 (documents to be certified) certified by the Secretary of State as the preliminary navigation risk assessment for the purposes of this Order; and

“specified consent” means any consent, agreement or approval—

(a) required by—

(i) any provision of Part 1 of this Schedule; or



- (ii) any document referred to in such provision; or
- (b) authorised by paragraph 17,
- and includes a consent, agreement or approval discharging a requirement in part only.

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**Time limits**

2. The authorised development must not commence later than the expiration of 5 years beginning with the date that this Order comes into force.

**Commencement of the authorised development**

3. Notice of commencement of the authorised development must be given to the county planning authority in writing within 7 days of the date that the authorised development is commenced.

**Design of the authorised development**

4. The authorised development must be designed and implemented in general accordance with—
- (a) the general arrangement plan; and
  - (b) the approach to detailed design.

**Detailed design of specified structures**

5. Construction of each part of the authorised development specified in column (1) of the table below must not commence until the details of the elements specified in relation to that part in column (2) of that table have been submitted to, and following consultation with Great Yarmouth Borough Council, approved in writing by the county planning authority.

<i>(1)</i> <i>Part of the authorised development</i>	<i>(2)</i> <i>Elements to be approved</i>
Work No. 7A(i)	The external appearance of the control tower
Work No.7B(i)	The external appearance of the plant room
Work No.8A(iv)	The finish and external materials of the bridge deck
Work No. 8B(i)	The finish and external materials of the bridge deck
Work No. 8C(iv)	The finish and external materials of the bridge deck

**Code of construction practice**

6.—(1) 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, following consultation with Great Yarmouth Borough Council, the lead local flood authority, the IDB and the Environment Agency, approved in writing by the county planning authority.

(2) Any submitted code of construction practice must include the following plans and statements—

- (a) an arboricultural method statement;
- (b) a construction traffic management plan;
- (c) a flood management plan;
- (d) a materials management plan (or equivalent);
- (e) a site waste management plan; and

(f) a workforce travel plan.

(3) Any code of construction practice submitted under sub-paragraph (1) must be in accordance with the outline code of construction practice.

(4) Any part of the authorised development must be carried out in accordance with the relevant code of construction practice approved under sub-paragraph (1) for that part.

### **Landscaping and ecological management plan**

7.—(1) No part of the authorised development is to commence until a written landscaping and ecological management plan for that part has been submitted to and, following consultation with Great Yarmouth Borough Council and Natural England, approved in writing by the county planning authority.

(2) Any landscaping and ecological management plan prepared under sub-paragraph (1) must—

- (a) be based on the mitigation measures included in the environmental statement;
- (b) not give rise to any new or materially different environmental effects than those assessed in the environmental statement;
- (c) be in general accordance with the approach to detailed design;
- (d) be in general accordance with the landscaping plans; and
- (e) include the details listed in sub-paragraph (3).

(3) The details referred to in sub-paragraph (2) are—

- (a) details of proposed hard and soft landscaping works, including location, species, size and planting density of any proposed planting;
- (b) details of proposed boundary treatments;
- (c) cultivation, importing of materials and other operations to ensure plant establishment;
- (d) proposed finished ground levels;
- (e) hard surfacing materials;
- (f) any ecological mitigation areas;
- (g) details of any existing trees, hedges and shrubs to be retained
- (h) implementation timetables for the landscaping and ecological management works; and
- (i) details of the maintenance regime for the landscaping and ecological management works, which must—
  - (i) provide for maintenance for a period of 15 years commencing with the date of completion of the relevant landscaping and ecological management works; and
  - (ii) include measures for the replacement in the first available planting season, of any tree or shrub planted as part of that landscaping and ecological management plan which, within the period referred to in paragraph (i), dies, becomes seriously diseased or is seriously damaged.

(4) All landscaping works must be carried out and maintained in accordance with the relevant landscaping scheme approved under sub-paragraph (1) for that part.

### **Existing trees and hedgerows**

8.—(1) All hedges and trees forming part of the boundary of the Order land or situated within it and which are shown to be retained in the landscaping scheme approved under paragraph 6 must be protected from any damage during the construction of the authorised development in accordance with British Standard BS5837 (2012) ‘Trees in relation to design, demolition and construction’.

(2) If any hedge or tree protected under sub-paragraph (1) is removed, uprooted, destroyed or damaged during the construction of the authorised development it must be replaced in the first available planting season and afterwards maintained for a period of 5 years.

(3) No felling, lopping or removal of hedges or trees (“the relevant activity”) is to take place during the bird nesting season unless a written report concerning the relevant activity by a suitably qualified ecologist has been provided to and approved by the county planning authority. The recommendations of the ecologist as set out in the report must be complied with in carrying out the relevant activity.

### **Contamination**

9.—(1) In the event that contaminated materials are found at any time when carrying out the authorised development which have not been identified and addressed in a code of construction practice—

- (a) work in the location affected by such contamination must immediately stop;
- (b) the contamination must be notified in writing to the county planning authority, Great Yarmouth Borough Council and the Environment Agency; and
- (c) the undertaker must complete a risk assessment of the contamination.

(2) Following a notification under sub-paragraph (1), where the county planning authority determines that remediation is necessary, a written scheme and programme for the remedial measures necessary to render the land fit for its intended purpose (including a timetable), must be submitted to and, following consultation with Great Yarmouth Borough Council and the Environment Agency, approved in writing by the county planning authority and afterwards carried out.

### **Emergency Preparedness and Response Plan**

10.—(1) No part of the authorised development is to be opened to the public until an emergency preparedness and response plan has been submitted to and, following consultation with the county planning authority, Great Yarmouth Borough Council, the lead local flood authority, Norfolk Fire and Rescue, Norfolk Constabulary and the Environment Agency, approved in writing by the county planning authority Secretary of State.

(2) The submitted emergency preparedness and response plan must include provision as to the actions and measures to be taken in relation to the authorised development to prepare for and respond to the following emergencies—

- (a) a flood event;
- (b) a fire event; and
- (c) an incident involving terrorism or other substantial threat to security.

(3) Unless otherwise agreed in writing with the ~~county planning authority~~ Secretary of State following consultation with the Environment Agency, an application for the approval of the emergency preparedness and response plan must be accompanied by a summary report of an analysis of the residual tidal flood risk arising from a breach of flood defences, prepared with regard to recognised guidance.

(4) The approved plan must be implemented in full.

### **Surface water drainage**

11.—(1) No part of the authorised development which comprises any part of a surface water drainage system is to commence until written details of that surface water drainage system, including measures for the management of flood risk, for that part has been submitted to and, following consultation with Great Yarmouth Borough Council, the lead local flood authority, Anglian Water (in respect of its sewerage undertaker functions), the Environment Agency and the IDB, approved in writing by the county planning authority.

(2) The surface water drainage system submitted for approval under sub-paragraph (1) must be in accordance with the drainage strategy and include a timetable for implementation.

(3) The surface water drainage system must be constructed in accordance with the surface water drainage system approved under sub-paragraph (1) for that part.

### **Lighting**

12.—(1) No part of the authorised development is to commence until a written scheme of the lighting to be provided for that part on opening for public use (except lighting to be provided to the interior of a building) has been submitted to and, following consultation with Great Yarmouth Borough Council, approved in writing by the county planning authority.

(2) Any written scheme of proposed lighting submitted for approval under sub-paragraph (1) must be in accordance with the lighting report and include a timetable for implementation.

(3) The part of the authorised development in question must be carried out in accordance with the scheme approved under sub-paragraph (1) for that part and the approved lighting must be maintained thereafter.

(4) Nothing in this requirement restricts lighting of the authorised development during its construction or as temporarily required for maintenance.

### **Completion and availability of particular works**

13.—(1) The highway comprised in the new bridge and the new bridge western approach must not be opened for public use until the works specified in sub-paragraph (2) have been completed and made available for use.

(2) The works are—

(a) the vessel waiting facilities;

(b) Work No. 11; and

(c) Work No. 12.

### **Archaeology**

14.—(1) The authorised development must be constructed in accordance with the archaeological written scheme of investigation, including the provisions of any method statement or other document required to be prepared under the terms of the archaeological written scheme of investigation.

(2) Any archaeological remains not identified in the archaeological written scheme of investigation which are revealed when carrying out the authorised development work (“the revealed remains”) must be retained in situ (subject to sub-paragraphs (3) and (4)) and reported to the county planning authority within 3 working days.

(3) No construction operations are to take place within 10 metres of the revealed remains for a period of 14 days from the date of such notification unless otherwise agreed in writing by the county planning authority.

(4) If the county planning authority confirm to the undertaker during the 14 day period referred to in sub-paragraph (3) that the revealed remains require further investigation, then no construction operations are to take place within 10 metres of the revealed remains until the revealed remains have been investigated and recorded in accordance with a scheme, which may provide for the removal of the revealed remains (subject to any direction or determination made under article 55 (removal of human remains)), submitted to and approved in writing by the county planning authority.

### **Preliminary navigation risk assessment**

15. The new bridge must be designed, constructed and operated in accordance with section 7 (Additional Mitigation Measures) of the preliminary navigation risk assessment.

### Signs at vessel waiting facilities

16. Signs instructing masters of vessels utilising the vessel waiting facilities to switch off the vessel engine whilst the vessel is moored must be provided to the satisfaction of the county planning authority prior to the first use of the vessel waiting facilities and maintained thereafter.

### Amendments to approved details

17.—(1) Subject to sub-paragraph (2), where any details, plans or schemes have been approved by the ~~county planning authority~~discharging authority under the provisions of any requirement, the ~~county planning~~discharging authority may at any time if it thinks fit approve amendments to the approved details, plans or schemes and following any further approval by the ~~county planning authority~~discharging authority the approved details, plans or schemes include the amendments approved under this requirement.

(2) In considering any amendment to any details, plans or schemes the ~~county planning~~discharging authority must consult those persons it would have been required to consult before granting approval initially in relation to the details, plans, or schemes.

### Details of consultation

18. With respect to any requirement which requires details to be submitted to the county planning authority or the Secretary of State for approval under this Schedule following consultation with another party, the details submitted to the ~~county planning~~discharging authority must be accompanied by a summary report setting out—

- (a) the consultation undertaken by the undertaker pursuant to that requirement to inform the details submitted to the ~~county planning~~discharging authority for approval; and
- (b) the undertaker's response to that consultation.

## PART 2

### PROCEDURE FOR DISCHARGE OF REQUIREMENTS

#### Interpretation

19.—(1) In this Part of this Schedule—

“the appeal parties” means the ~~discharging county planning~~ authority, the undertaker and any requirement consultees;

~~“application” means an application to a discharging authority for a specified consent;~~

~~“discharging authority” means the body responsible for determining an application for a specified consent;~~

“business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(a);

“requirement consultee” means any person named in a requirement which is the subject of an appeal as a person to be consulted by the discharging authority in discharging that requirement; and

~~“specified consent” means any consent, agreement or approval—~~

~~(a) required by—~~

~~(i) any provision of Part 1 of this Schedule; or~~

~~(ii) any document referred to in such provision; or~~

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(a) 1971 c. 80.

~~(b) authorised by paragraph 17,  
and includes a consent, agreement or approval discharging a requirement in part only.~~

### **Applications made under requirements**

**20.**—(1) Where an application has been made to the relevant discharging authority, the discharging authority must give notice to the undertaker of the discharging authority's decision on the application within—

- (a) a period of 8 weeks beginning with—
  - (i) the day immediately following that on which the application is received by the discharging authority; or
  - (ii) where, further information has been requested by the discharging authority under paragraph 21, the day immediately following—
    - (aa) the day the further information was supplied; or
    - (bb) in cases where the discharging authority is the county planning authority and where an appeal has been made by the undertaker under sub-paragraph 22(1)(d) or (e) and the appeal is allowed, the day on which the appeal was determined by the Secretary of State; or
    - (cc) in cases where the discharging authority is the county planning authority and an appeal has been made by the undertaker under sub-paragraph 22(1)(d) or (e) and the appeal is dismissed, the day on which the relevant further or additional information is supplied; or
- (b) such longer period as the discharging authority and the undertaker may agree in writing.

(2) Subject to sub-paragraph (3), in determining an application for a specified consent, the discharging authority may—

- (a) grant the specified consent, either unconditionally or subject to reasonable conditions; or
- (b) refuse the specified consent,

and where the specified consent, agreement or approval is refused or granted subject to conditions, the discharging authority must provide reasons for the refusal or (as the case may be) conditions in the notice of its decision with the notice of the decision.

(3) In the event that the discharging authority does not give notice of its decision within the period set out in sub-paragraph (1), the discharging authority is taken to have granted the specified consent sought by the application without any condition or qualification at the end of that period.

### **Further information relating to application**

**21.**—(1) A discharging authority in receipt of an application for a specified consent may request the undertaker to provide such further information as is reasonably necessary to enable the discharging authority to consider the application.

(2) A request to provide further information under sub-paragraph (1) must be made within 28 days of receipt of the application by the discharging authority.

(3) A discharging authority may request further information under sub-paragraph (1) on more than one occasion provided that all such requirements are made within the period specified by sub-paragraph (2).

(4) If the discharging authority does not request the undertaker to provide further information in accordance with sub-paragraphs (1) to (3), the discharging authority is thereafter deemed to have sufficient information. The undertaker is under no obligation to provide further information to the discharging authority but may do so if the discharging authority so requests.

## Appeals

22.—(1) Where the undertaker has made an application for a specified consent to the ~~discharging-county planning~~ authority, the undertaker may in writing appeal to the Secretary of State in the event that the ~~discharging-county planning~~ authority—

- (a) refuses the application;
- (b) grants the specified consent subject to conditions;
- (c) has not given notice to the undertaker of the ~~discharging-county planning~~ authority's decision on the expiry of the applicable period specified by paragraph 20(1);
- (d) requests the undertaker to provide further information in accordance with paragraph 21(1) and the undertaker considers that provision of any of the required information is not necessary to determination of the application;
- (e) has—
  - (i) received further information from the undertaker in response to a request made under paragraph 21(1);
  - (ii) notified the undertaker that information provided is inadequate; and
  - (iii) request~~ed~~s additional information which the undertaker considers is not necessary for consideration of the application.

(2) An appeal made under sub-paragraph (1)(a), (b), (d) or (e), must be made within 42 days of the date of the notice of the relevant decision or (as the case may be) request.

(3) An appeal made under sub-paragraph (1)(c) must be made within 42 days of the expiry of the applicable period specified by paragraph 20(1).

(4) The appeal process is as follows:

- (a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the ~~discharging-county planning~~ authority and the requirement consultees;
- (b) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;
- (c) the ~~discharging-county planning~~ authority and the requirement consultees must submit written representations to the appointed person in respect of the appeal within 20 business days of the date on which the appeal parties are notified of the appointment of a person under sub-paragraph (b) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties shall make any counter-submissions to the appointed person within 20 business days of receipt of written representations under sub-paragraph (c);
- (e) The appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(5) The appointment of the person under sub-paragraph (4)(b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(6) If the appointed person considers that further information is necessary to enable consideration of the appeal, the appointed person must, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(7) Any further information required under sub-paragraph (6) is to be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 10 business days of that date.

(8) The appointed person may at any time extend any deadline specified in this Part of this Schedule.

(9) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the ~~discharging-county planning~~ authority (whether the appeal relates to that part of it or not),

and may deal with the appeal as if the relevant application had been made to the appointed person in the first instance.

(10) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed by this Part of this Schedule, or as extended by the appointed person under sub-paragraph (8).

(11) The appointed person may proceed to a decision even though no written representations have been made within the prescribed time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(12) The decision of the appointed person on an appeal is to be final and binding on the appeal parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(13) If an approval is given by the appointed person under this Schedule, it is deemed to be an approval for the purpose of Part 1 of this Schedule as if it had been given by the ~~discharging-county planning~~ authority. The ~~discharging-county planning~~ authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(14) Except where a direction is given under sub-paragraph (15) requiring the costs of the appointed person to be paid by the ~~discharging-county planning~~ authority, the reasonable costs of the appointed person are to be met by the undertaker.

(15) On application by the ~~discharging-county planning~~ authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to any relevant provision of the Planning Practice Guidance as from time to time published by the Ministry of Housing, Communities and Local Government or any circular or guidance which may from time to time replace it.

## PART 3

### SUPPLEMENTARY PROVISIONS

#### Publication of requirements

23.—(1) The undertaker, must, as soon as reasonably practicable following the making of this Order, establish on a website maintained by the undertaker a register of those requirements contained in Part 1 of this Schedule that include provision for a specified consent.

(2) The register must set out in relation to each such requirement—

- (a) whether an application for any specified consent has been made; and
- (b) whether the specified consent has been granted or refused.

(3) Where a specified consent has been granted, the register must provide a copy of it.

(4) The register must be maintained by the undertaker for a period of least 3 years following the opening of the authorised development to public use.



### **Service of documents**

24. Any document required or authorised to be sent to any person under the provisions of this Schedule is to be taken to be a document required or authorised to be served on that person for the purposes of article 65 (service of notices) of the Order.

### **Anticipatory steps relevant to specified consent**

25.—(1) In the discharge of its functions under this Schedule, a discharging authority may treat and take account of any pre-commencement action as if it had occurred after the coming into force of this Order.

(2) in this paragraph “pre-commencement action” means any act of the undertaker or any other person which—

- (a) is of relevance to the seeking or obtaining of a specified consent; and
- (b) occurred before the coming into force of this Order.

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## Appendix 2

### 4.1 Introduction

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- 4.1.1 This Appendix sets out drafting amendments (shown in tracked changes) to Requirement 10 in Schedule 2 to the draft DCO, in response to the ExA's second bullet point under numbered paragraph 1 of the R17 Request. The changes would have the effect of making further provision for the matters to be included in the EPRP.
- 4.1.2 For the reasons set out in section 2.4 of this Report the Applicant does not consider this amendment to be necessary or appropriate, and the drafting is provided on the basis that it is without prejudice to this position.

## Emergency Preparedness and Response Plan

10.—(1) No part of the authorised development is to be opened to the public until an emergency preparedness and response plan has been submitted to and, following consultation with Great Yarmouth Borough Council, the lead local flood authority, Norfolk Fire and Rescue, Norfolk Constabulary and the Environment Agency, approved in writing by the county planning authority.

(2) The submitted emergency preparedness and response plan must include provision as to the actions and measures to be taken in relation to the authorised development to prepare for and respond to the following emergencies—

- (a) a flood event;
- (b) a fire event; and
- (c) an incident involving terrorism or other substantial threat to security.

(3) The emergency preparedness and response plan must include, so far as is relevant to each of the emergency events referred to in sub-paragraph (2), procedures and protocols—

- (a) to be in place prior to the occurrence of an emergency event to reduce the likelihood of its occurrence or to reduce harm arising from it;
- (b) to monitor the likelihood of an emergency event occurring; and
- (c) to apply during the occurrence of an emergency event to reduce the harm arising from it.

~~(3)~~(4) Unless otherwise agreed in writing with the county planning authority following consultation with the Environment Agency, an application for the approval of the emergency preparedness and response plan must be accompanied by a summary report of an analysis of the residual tidal flood risk arising from a breach of flood defences, prepared with regard to recognised guidance.

~~(4)~~(5) The approved plan must be implemented in full.

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## Appendix 3

### 5.1 Introduction

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- 5.1.1** This Appendix sets out (in tracked changes) the drafting amendments which the Applicant considers to be necessary in response to the third bullet under numbered paragraph 1 of the R17 Request and which are discussed in section 2.5 of this Report. The changes have the effect of requiring the EPRP to include a statement explaining how regard has been given to the results of the tidal residual (breach) analysis in preparing the relevant parts of the EPRP.
- 5.1.2** The Applicant does not object to the inclusion of this wording in Requirement 10, and proposes to include the wording in its final iteration of the draft DCO that it intends to submit at Deadline 9.

## Emergency Preparedness and Response Plan

10.—(1) No part of the authorised development is to be opened to the public until an emergency preparedness and response plan has been submitted to and, following consultation with Great Yarmouth Borough Council, the lead local flood authority, Norfolk Fire and Rescue, Norfolk Constabulary and the Environment Agency, approved in writing by the county planning authority.

(2) The submitted emergency preparedness and response plan must include provision as to the actions and measures to be taken in relation to the authorised development to prepare for and respond to the following emergencies—

- (a) a flood event;
- (b) a fire event; and
- (c) an incident involving terrorism or other substantial threat to security.

(3) Unless otherwise agreed in writing with the county planning authority following consultation with the Environment Agency, an application for the approval of the emergency preparedness and response plan must be accompanied by a summary report of an analysis of the residual tidal flood risk arising from a breach of flood defences, prepared with regard to recognised guidance.

(4) The parts of the emergency preparedness and response plan prepared to respond to a flood event must be prepared, so far as is relevant, with regard to the analysis of residual flood risk referred to in sub-paragraph (3) and be accompanied by a statement explaining the regard that has been had to the results of that analysis.

~~(3)~~

~~(4)~~(5) The approved plan must be implemented in full.