

Great Yarmouth Third River Crossing Order 202[*]

Document NCC/GY3RC/EX/101: Response to Written Submissions Received at Deadline 9

Planning Act 2008

Infrastructure Planning

The Infrastructure Planning (Examination Procedure) Rules 2010

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Foreword

This Response to the Written Submissions Received at Deadline 9 relates 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

CPA	Norfolk County Council (in its capacity as County Planning Authority)
DCO	Development Consent Order
RYA	Royal Yachting Association
SoCG	Statement of Common Ground
The Applicant	Norfolk County Council (in its capacity as Highway Authority and promoter of the Scheme)
The Scheme	The Great Yarmouth Third River Crossing Project for which the Applicant seeks development consent

1 Applicant's Responses to Written Submissions made at Deadline 9

1.1 Purpose of this Report

1.1.1 This response, submitted for the close of the Examination, contains the Applicant's responses to the Written Submissions received at Deadline 9 (20 March 2020). These submissions were made by:

- Norfolk County Council (in its capacity as County Planning Authority);
- Cadent Gas;
- Natural England;
- BDB Pitmans LLP on behalf of Great Yarmouth Port Company (Peel Ports);
- Royal Yachting Association.

1.1.2 The Written Submissions and the Applicant's response to the comments made are contained in the following sections 2 to 6 of this Report.

2 Norfolk County Council (County Planning Authority) (REP9-014)

Written Submission

- 2.1.1 Norfolk County Council in its role as County Planning Authority ('CPA') is content with the current draft of the DCO, subject to a review of the numbering of the paragraphs and footnotes, which in some cases appears to be out of sync. The drafting of the DCO should accord with the guidance set out in Planning Inspectorate Advice Note Fifteen: Drafting Development Consent Orders (v2, 2018) and the Statutory Instrument Practice Guidance.
- 2.1.2 Should the outstanding matter relating to tidal residual breach risk not be satisfactorily addressed by Deadline 9 or the close of the examination, it is considered that this should be reflected in the wording of the draft DCO.

Applicant's Response

- 2.1.3 The Applicant notes that the CPA is content with the current draft of the DCO, subject to a review of the numbering of the paragraphs and footnotes discussed below. The Applicant considers that the draft DCO appropriately addresses tidal residual (breach) risk through Requirement 10, which requires the preparation of an emergency preparedness and response plan to address, among other matters, flood events. The Applicant's submissions in explanation and support of its approach are set out in its Deadline 8 submission – Response to Request for Further Information (Rule 17) (Document Reference NCC/GY3RC/EX/088, Planning Inspectorate Reference REP8-002).

Written Submission

- 2.1.4 The CPA query whether the Code of Construction Practice referred to in Schedule 2 Requirements 'Interpretation' should refer to Paragraph 6 of the Schedule rather than Paragraph 5. See recommended amendment to text below:
- “the code of construction practice” means a code of construction practice approved under paragraph 5 6 of this Schedule;
- 2.1.5 In addition, the CPA query whether the Requirement relating to existing trees and hedgerows should refer to Paragraph 7 rather than Paragraph 6. See recommended text below:
- 2.1.6 —(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 7 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'.

Applicant's Response

- 2.1.7** The CPA had made the Applicant aware of these minor drafting clarifications in advance of Deadline 9, and the Applicant took the opportunity to make these corrections in Revision 6 of the draft DCO (Document Reference NCC/GY3RC/EX/090, Planning Inspectorate Reference REP9-002) which was submitted at Deadline 9. The updated drafting has been carried forward into Revision 7 of the draft DCO (Document Reference NCC/GY3RC/EX/102), which was submitted to the Examining Authority at the close of the Examination (24 March 2020).

3 Cadent Gas (REP9-012)

Written Submission

- 3.1.1 (2.1) Cadent and National Grid Gas have never accepted that the standard protective provisions included in Part 1 of Schedule 14 provide adequate safeguards. Cadent and National Grid always seek to negotiate bespoke protective provisions which usually sit in a side agreement and occasionally appear on the face of the DCO. Cadent has sought to negotiate bespoke protective provisions having regard to the specifics of the Project and Cadent will continue discussions with the Applicant.
- 3.1.2 (2.2) We note that it has become common practice for the Secretary of State to seek further representations on negotiations with statutory undertakers and we suggest that this would be appropriate in this instance.
- 3.1.3 (2.3) There are a number of reasons why the standard protective provisions in Part 1 of Schedule 14 do not set out appropriate constraints on the exercise of the powers in the draft DCO and we sought to set out some of these in our previous representation [REP7-013].

Applicant's Response

- 3.1.4 As has previously been noted, the Applicant and Cadent are continuing to negotiate appropriate terms that would enable Cadent to withdraw its objection to the compulsory acquisition of its interests.

Written Submission

- 3.1.5 (2.4) One of the reasons cited [by Cadent] is that there is no restriction on the acquisition of Cadent's land or existing rights in the standard protective provisions. The Applicant notes that Paragraph 5 ensures that the Applicant may not acquire any apparatus other than with the agreement of the statutory undertaker and access to apparatus is also ensured. This is fine for apparatus but the Applicant is still entitled to acquire Cadent's land and extinguish rights and acquire new rights.
- 3.1.6 (2.5) We have explained in REP7-013 that part of the land which is to be acquired forms part of Cadent's gas depot and Cadent require unimpeded access to the depot. The depot is operational land and land is wider than apparatus. Under Cadent's bespoke protective provisions Cadent need to agree the acquisition of any interest in or right over land, or any apparatus, belonging to Cadent which enables Cadent to agree the terms of that acquisition and ensures that access to operational land is unimpeded.

Applicant's Response

- 3.1.7 The Applicant acknowledges that Part 1 of Schedule 14 to the draft DCO would not restrain the acquisition of land that does not host apparatus. In relation to Cadent, the only plots of land that the Applicant requires for outright acquisition and which do not contain apparatus are plots 2-09, 2-10, 2-13 and 2-16. These plots are to the south of the existing William Adams Way forming part of Cadent's gas depot and its access.
- 3.1.8 As is noted in Cadent's Written Representation (Planning Inspectorate Reference REP1-021) Cadent and the Applicant have agreed, subject to contract, the sale of the part of gas depot site required by the Applicant in connection with the Scheme. The Applicant's Negotiations Tracker (see Revision 3 as updated for Deadline 7) (Document Reference NCC/GY3RC/EX/086, Planning Inspectorate Reference REP7-011), records this fact, noting that: *"Cadent Gas Limited have confirmed that they are content with the permanent acquisition proposals and will work with the Applicant regarding the rights requirements"*.
- 3.1.9 Given that the land in question relates to a small strip of the existing site, which Cadent has indicated it is prepared to sell subject to contract, the Applicant considers that the land can be purchased and not replaced without causing serious detriment to the carrying out of Cadent's undertaking, in satisfaction of the test in section 127(3)(a) of the Planning Act 2008.
- 3.1.10 Similarly, the Applicant considers that no serious detriment would be caused to Cadent's undertaking through the acquisition of plot 2-10 (land comprising verge adjacent to private access road (on the east side of Suffolk Road and on the south side of William Adams Way)). The Applicant is continuing to work with Cadent with a view to agreeing the purchase of the land required on a negotiated basis but requires the compulsory acquisition powers in parallel to ensure delivery of its Scheme.
- 3.1.11 With respect to the access to Cadent's depot (plots 2-11, 2-12, 2-13 and 2-15) the Applicant seeks the acquisition of rights over this access for the purpose of constructing, protecting, accessing and maintaining the improved William Adams Way. Article 29 of the draft DCO is clear that, where the Applicant acquires rights, existing rights are only extinguished to the extent that they conflict with those acquired under the DCO. Quite clearly the rights the Applicant seeks could co-exist with Cadent's continued use of its access. The Applicant considers therefore that the Secretary of State can be satisfied that the new rights which the Applicant seeks can be purchased without causing serious detriment to Cadent's undertaking and the condition in section 127(6)(a) of the Planning Act 2008 is satisfied.

Written Submission

- 3.1.12** (2.6) The Applicant also notes that 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)).
- 3.1.13** (2.7) Paragraph 8 is insufficient for a number of reasons, including: (a) Cadent may also require the submission of a ground monitoring scheme. (b) The provisions in what was paragraph 8 impose an extremely short window (28 days) for Cadent to respond with its requirements. Protective works take time to design and may take months to design not days. (c) There is no restriction on the Applicant to have Cadent's approval of the plan and methodology before works are commenced. (d) Cadent's standard protective provisions also include a requirement that at all times when carrying out any works authorised under the Order the undertaker must comply with Cadent's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of Cadent High pressure Gas pipelines and associated installation requirements for third parties SPGD/SP /SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services" There is no acknowledgment or requirement to comply with this document.

Applicant's Response

- 3.1.14** The Applicant maintains that paragraph 8 of Part 1 of Schedule 14 to the draft DCO reflects an appropriate restriction on its exercise of powers under the Order to protect Cadent's undertaking. Taking each of the above points in turn:
- 3.1.15** (a) If the imposition of a ground monitoring scheme is reasonable in the circumstances then one could be imposed as a reasonable requirement under paragraph 8(2).
- 3.1.16** (b) The Applicant considers 28 days to be a reasonable period for Cadent to respond with its requirements and Cadent should expedite the design of protective works, particularly noting that the Applicant under paragraph 9 would be responsible for meeting its reasonable expenses in doing so.
- 3.1.17** (c) There is no restriction on the Applicant to have Cadent's approval of the plan or methodology before works are commenced. However, the Applicant is obliged to provide Cadent with details of its proposals and Cadent is afforded the opportunity to impose reasonable requirements to address any concerns it may have regarding those proposals.
- 3.1.18** (d) Part 1 of Schedule 14 does not expressly refer to the two documents mentioned in Cadent's representation. This is necessarily the case given that Part 1 covers a range of different types of statutory utility. However, the key

point is that paragraph 8(1) bites on works “that will or may affect any apparatus”. As a responsible authority the Applicant would in any event have regard to those documents when considering which works would or might affect Cadent's apparatus.

Written Submission

3.1.19 (2.8) Further Cadent’s standard protective provisions include a requirement for the relevant undertaker (and any contractor(s) working near Cadent’s assets), to hold third party liability insurance for the period of the works, with sufficient coverage on a per-claim and aggregate basis as is relevant to the nature of the activities and the risks to Cadent. This is a fundamental requirement for Cadent, to ensure that it is properly protected against any damage caused by the Applicant or its contractors, and in particular to provide a guaranteed credit line during the entire period of construction of the works.

Applicant’s response

3.1.20 As set out in paragraph 2.9.6 of the Applicant’s Response to Request for Further Information (Rule 17) (Document Reference GY3RC/EX/088, Planning Inspectorate Reference REP8-002), the Applicant considers that it is inappropriate to require it, as a local authority entrusted with public funds, to make Cadent a beneficiary of an insurance policy or to provide a credit guarantee.

4 Natural England (REP9-013)

Written Submission

- 4.1.1 Natural England have no additional comments to make regarding the draft DCO at Deadline 9.

Applicant's Response

- 4.1.2 The Applicant acknowledges that Natural England has no additional comments to make regarding the draft DCO at Deadline 9 and thanks Natural England for confirming the same.

5 BDB Pitmans LLP on behalf of Great Yarmouth Port Company (Peel Ports) (REP9-011)

Written Submission

- 5.1.1 I am pleased to report that GYPC have come to an agreement with NCC. The document has yet to be executed by the parties but is in the course of being signed. As soon it has been signed we will let the Secretary of State know so that matters can be finalised. GYPC and NCC have also agreed the wording of an updated SoCG, a copy of which will be sent to the Examining Authority as soon as practicable.

Applicant's Response

- 5.1.2 The Applicant can confirm that it has come to an agreement with Great Yarmouth Port Company and Great Yarmouth Port Authority. The terms of this agreement are settled, but the agreement itself will not be signed by both parties in time for the close of Examination. However, the Applicant will inform the Secretary of State once it has been signed.
- 5.1.3 For further detail on the Applicant's proposed next steps, following the parties' execution of this agreement, please refer to the Addendum to the Applicant's Closing Statement, submitted at the close of the Examination (24 March 2020) (Document Reference NCC/GY3RC/EX/107).
- 5.1.4 The Applicant can also confirm that the wording of an updated Statement of Common Ground ('SoCG') has been agreed. The updated SoCG, now signed by both parties, has been submitted to the Examining Authority prior to close of the Examination (Document Reference NCC/GY3RC/EX/106). This document replaces the previous SoCG that was presented as Appendix F to the Statement of Commonality for Statements of Common Ground at Deadline 7 (Document Reference NCC/GY3RC/EX/085, Planning inspectorate Reference REP7-010).

6 Royal Yachting Association (AS-014)

Written Submission

6.1.1 References:

- A. NCC/GY3RC/EX/085 (05-Mar-2020), Appendix-K SoCG Applicant/RYA Item-5;
- B. pNRA Appendix 12B Flood Risk Assessment, Art. 6.2.43;
- C. pNRA Appendix 12B Flood Risk Assessment, Art. 6.2.39.

6.1.2 At Reference-A (Matters Not Agreed) RYA has still not heard mitigatory assessment neither by Applicant nor Environment Agency regarding the Fluvial (river) Flood Risk due to excessive Pluvial (i.e. rain) events as direct result of the 'necking' introduced at the new crossing with the Scheme in place. This was first raised during 2018 Consultation, followed by warm reception by EA during January 2019, with indication in July 2019 that this might be a consideration; Applicant appeared not to liaise with EA on this addressing, hence the issue still remains "Not Agreed". The issue of concern is that while there is submitted evidence that during a Maritime flood-risk event (Tidal Surge) there will be raised water-level to South of the bridge as waters make way to sweep inland, with reduced level to North, the converse is simply not considered: the RYA's concern for boaters' navigation is that the vast Broads Basin could collect enough rainwater that the 36% 'necking' at the new bridge will Not allow rapid enough emptying into the North Sea; this resulting in potential flooding of upper reaches. Indeed there was exactly such a "Warning" put out by EA during the week of Inspection Issue-Specific-Hearing of 19-Nov-2019 for potential flooding above Beccles on the River Waveney, and this without the new constriction (i.e. 'necking') in place. The contra-evidence is presented in for example

6.1.3 Reference-B where for a potential incoming flood event from seaward, "... to the south of the Scheme, water levels are anticipated raised by up to 0.12m with the largest increase at the location of the bridge (moderate adverse impact) ...", and at

6.1.4 Reference-C that "... some areas [to the north] are moved to a lower hazard category At no stage in the pNRA or subsequent discussion, despite some supportive verbal statements for anticipated consideration, is the cited scenario of concern addressed, viz: ... to the north of the Scheme, water levels are anticipated raised because of the 36% 'necking' at the bridge (restricted ability to empty to seaward) resulting in backup standstill or flooding within the higher reaches of the Broads Basin. While at this very late stage in Inspection, RYA must assume that all flood risks have been addressed with due rigour, there remains considerable disappointment that

this issue repeatedly raised, would appear not to have been explicitly addressed and referred back to RYA as being explicitly satisfactory.

Applicant's Response

- 6.1.5** A record of the continued engagement undertaken with the Environment Agency is provided in Table 2.1 of the Applicant's SoCG with the Environment Agency, the latest version of which was submitted at Deadline 7 of the Examination (Document Reference NCC/GY3RC/EX/085, Planning Inspectorate Reference REP7-010). Only two specific matters remained under discussion with the Environment Agency at Deadline 7, these related to breach modelling and the disapplication of consent requirements and Protective Provisions, further details of which are provided in Table 5.1 of the aforementioned Statement of Common Ground.
- 6.1.6** With specific regard to tidal surges (as raised by the Royal Yachting Association ('RYA') in its post-Deadline 9 submission (Planning Inspectorate Reference AS-014), the Applicant acknowledges that Great Yarmouth has a history of documented flood events with the main source being tidal surges. As noted in Paragraph 4.9.2 and 6.2.9 of the Flood Risk Assessment (Environmental Statement - Appendix 12B (Document Reference 6.2, Planning Inspectorate Reference APP-135)) the modelling which underpins the assessment included the 5th and 6th December 2013 tidal surge event. The event caused widespread flooding due to a tidal surge in the North Sea. The surge, combined with the high tide, tracked down the east coast of England and caused damage to properties near the coastline. Due to the size of the 2013 event, and its relatively recent occurrence, the Applicant was able to draw on a range of data and anecdotal evidence for the event and has included this in the modelling.
- 6.1.7** In addition, as detailed in the Applicant's Responses to Written Representations submitted by Interested Parties at Deadline 3 (Document NCC/GY3RC/EX/045, Planning Inspectorate Reference REP4-002), the Flood Risk Assessment (Document Reference 6.2, Planning Inspectorate Reference APP-135) presents a robust assessment which was informed by a hydraulic model appropriate to the Scheme. With specific regard to the effects referred to as 'throttling' or 'necking', the Applicant can confirm that the hydraulic model does account for the 'throttling' / 'necking' effect and the resulting impact on water levels upstream of the Scheme. Tables 6.9 and 6.11 in the Flood Risk Assessment (Document Reference 6.2, Planning Inspectorate Reference APP-135) and Appendix B of the Applicant's response to the Request for Further Information (Rule 17) (Document Reference NCC/GY3RC/EX/077) provide details of the changes in water level as a result of the Scheme for the 200 year and 200 year plus climate change events.
- 6.1.8** These results collectively show that the general effect of the Scheme in the channel is to increase water levels south of the Scheme and to decrease

water levels north of the Scheme. This is because of the constriction in the channel caused by the knuckles which form an integral part of the design of the Scheme, in that they support, and provide landing points for, the bridge deck. The presence of the 'knuckles' reduces the overall capacity of the channel between these supports, slowing the flow rate through the area and reducing the amount of water that can transit up the channel from the tidal boundary. As outlined in Table 6.3 of the Flood Risk Assessment (Document Reference 6.2, Planning Inspectorate Reference APP-135) the reduction in water level at the upstream limit of the model (US1) is minor for the 200-year event and therefore there is no risk of freshwater flooding of higher reaches within the Broads basin as a result of the Scheme.

- 6.1.9** Regarding the potential effect of the Scheme on water levels north of the Scheme during a river flood event, the Applicant's Flood Risk Assessment (in section 6.2.18 of Document Reference 6.2, Planning Inspectorate APP-135) notes that the impact of fluvial flows were considered as part of the hydraulic assessment, but as these flows were found to have a negligible impact on flooding, it was agreed between the Applicant and the Environment Agency that it was sufficient to model tidal flooding for the purposes of the Flood Risk Assessment. In this context, the Applicant notes that the Environment Agency did not request a river flood scenario; the risk arising from tidal flooding has been assessed; and, as explained earlier in this response to the RYA's submissions, there is no risk of river flooding of higher reaches within the Broads basin as a result of the Scheme.