

# **Applicant's Comments on Responses submitted for Deadline 5 & Action Points for Issue Specific hearings**

**Application by ESSO Petroleum Company Ltd  
for an Order Granting Development  
Consent for the Southampton to London  
Pipeline Project**

**Application Reference EN070005**

**Interested Party Reference 20022787**

**Internal Reference 19/00432/PINS**

## **Applicant's Comments on Responses submitted for Deadline 5, excluding comments on the HRA**

### **1. Comments appertaining to ESSO's Outline CEMP**

- 1.1.1 **Ecological Clerk of Works** – RBC is pleased to note that a team of ECOW and an arboriculture expert will supervise the works, however regarding decisions in relation to vegetation removal and tree works on our land, RBC would expect to be consulted before any works outside that agreed within the CEMP or LEMP were undertaken.
- 1.1.2 **Protected and Priority Species Surveys and Mitigation** – RBC refers the ExA to comments submitted at Deadline 5
- 1.1.3 **G36 Mammal Breeding Season** – There is a need for an otter camera survey as
- two spraints were found either side of the bridge proving that otter are using the bridge to at least commute.
  - No further surveys were undertaken to assess the use of the bridge and whether otter were using it to rest up
  - Bridges are often used as resting up areas
  - It is an offence to disturb an otter resting place under the Habitats Directive
  - As HDD is being undertaken under the bridge there is a danger that an otter resting place could be disturbed over a protracted period as a result of the works.
  - Appropriate mitigation such as a watching brief and provision of an alternative resting place maybe required if otter are using the bridge
- 1.1.4 **Reptile Translocation** – Although reptile translocation is best practice when large areas of habitat are being disturbed, we have listened to the applicant's case for not translocating and would agree to a two stage habitat manipulation providing there is a fingertip search of the order limits after the final cut. We request that the applicant is required to prepare a reptile mitigation strategy to include the methodology for exclusion to be submitted to and agreed by RBC at the detailed stage.
- 1.1.5 **Protected Species Surveys** - RBC refers the ExA to comments submitted at Deadline 5
- 1.1.6 **Phase 1 Habitat Survey** – RBC is pleased to note that a full Phase 2 botanical survey will be undertaken to assess the condition and quality of acidic grassland and marsh habitats within the eastern section of SCP
- 1.1.7 **Groundwater** – Please see CIRIA SuDS manual 2015 CH4 for best practice guidance on water filtration using multiple forms of filtration to preserve water quality.

*The wide range and levels of contaminants in surface runoff, together with the natural variability associated with SuDS pollution removal processes means that water quality needs to be managed using a robust, risk-based approach. This is usually facilitated via a SuDS Management Train of a number of components in series that provide a range of treatment processes delivering gradual improvement in water quality and providing an environmental buffer for accidental spills or unexpected high pollutant loadings from the site. (4.2.2)*

- 1.1.8 **Reinstatement** – RBC did not receive an offer under the EIP in September. The council has been discussing mitigation in respect of the Cove Brook Habitat Restoration Project, to provide additional suitable alternative natural greenspace to accommodate visitors from the country park during the works, and in regards to habitat mitigation in respect of SCP and QEP. *Please see documents submitted for Issues appertaining to the HRA, Southwood Country Park and Queen Elizabeth Park for further details of costed plans.* However the council continues to be of the view that this mitigation should be provided as part of the planning system, and be agreed through a s106 agreement rather than to be funded via the EIP.
- 1.1.9 **Farnborough Air show** – RBC welcomes the commitment within the CEMP submitted at Deadline 6 in relation to these issues. However we would expect there to be no disruption of traffic rather than that the disruption be limited.
- 1.1.10 **Project Roles** – RBC is pleased to note that the topic areas will be included within the detailed CEMP and LEMP however the point the council was making was that the detailed works need to be agreed with the determining authority rather than on site with the ECOW or the arboriculture expert.
- 1.1.11 **Pollution** – RBC has discussed natural regeneration with the EA and they agree this would be preferable to seeding with an industrial seed stock. If the banks require seeding for stability then some of the seed stock collected from the SINC's for marsh habitat restoration could be used as this is of local provenance.
- 1.1.12 **Arboriculture Expert** – RBC welcomes the commitment to securing this expertise.
- 1.1.13 **Blackwater Crossing** – RBC thanks the applicant for the information contained within appendix B1. Although this gives us some comfort regarding safety measures, to endeavour to contain any contaminants, it does introduce an engineered feature into the SINC which could interfere with the functioning of the wetland habitat. Therefore the council continues to argue that HDD would be the safest form of construction on this sensitive site.
- 1.1.14 **Discharge** – RBC acknowledges that we misunderstood this section.
- 1.1.15 **Construction Program** – RBC did not state that work should be undertaken within the Flood Storage Area during the winter what was actually said was work should not be undertaken within the bird breeding season. This allows the autumn period to undertake this work.
- 1.1.16 We would like to again clarify that we did not say we wished for no work to be undertaken within the Country Park within the winter months in the meeting on 27<sup>th</sup> February, this is a misunderstanding of our position. In minutes taken by Rushmoor Borough Council the council queried whether the applicant would agree to work within the winter months. Throughout the examination we have promoted autumn and winter working as this would help to avoid disturbance to the ground nesting SPA birds.
- 1.1.17 In regards to the applicant's comments that the council is viewing the situation from an ecological point of view, SCP is a SANG and therefore its entire function is to alleviate ecological impacts. The natural habitats present on site have a specific role to act as

alternative natural space to that contained within the SPA. Therefore for the council it is of paramount importance that the impact to the natural habitats is limited as much as possible and that the site continues to be able to act as a SANG.

- 1.1.18 **Pollution and Erosion Prevention Measures** – Within the EA's submission at Deadline 4 to Question CA.2.5 they stated that

*1.1.1 We would have **particular concerns with the maintenance or erection of bridges or culverts (and potentially gates) either in areas of fluvial flood risk or affecting Main Rivers.** It is unclear whether these powers would override any requirement on the applicant to obtain a Flood Risk Activity Permit (or exemption as appropriate) for such activities. If this were the case, we would have major concerns with this broad power. If not - and a Permit would need to be applied for – we would be generally satisfied that we could control these activities through permitting.*

*1.1.2 For bridges, we would have concerns that structures could be built in flood risk areas without providing appropriate floodplain compensation or appropriate freeboard above flood levels and may impact on river habitats, such as through shading. In the most extreme case in theory, a new bridge could be built over the River Thames, which would also have separate requirements for issues such as navigable heights.*

*1.1.3 For culverts, we would be concerned in particular about new culverts being constructed on Main Rivers. Our general position is to avoid new culverts on Main Rivers and we also seek to remove existing Main River culverts where this is feasible. Culverts can have a devastating impact on river ecology and can also lead to increased flood risk issues if not appropriately designed. Again, thinking about a worst-case scenario, this power could theoretically allow the applicant to culvert an entire stretch of Main River through any land where they are seeking permanent acquisition rights.*

*1.1.4 If the applicant can confirm that such powers do not override any requirement to obtain a Flood Risk Activity Permit from us, this should be sufficient to address our concerns above.*

- 1.1.19 If this issue has indeed been resolved with the EA then the council would value conformation of this from the EA. In recent discussions working within the fish breeding period on Ively brook was still an outstanding issue.
- 1.1.20 **G7** – RBC requests that all vermin control proposed within our landholdings is first agreed by the council.
- 1.1.21 **Blackwater Valley Crossing** See response above
- 1.1.22 **Outline Dust management** – SANGS comprise natural habitats at least in the case of SCP and are therefore ecological receptors. A number of other receptors were listed within our

response however no comment has been made by the applicant as to whether these will be included.

1.1.23 **Soil management** – comment noted and welcomed

1.1.24 **Noise and vibration impacts on Cove Brook** – In respect of otter this is the first record of otter found along the Cove Brook. It is likely that this species is investigating the waterway with a view to colonisation. Therefore disturbance is likely to *affect significantly their local distribution or abundance* if colonisation is deterred as a result of disturbance due to HDD.

1.1.25 **Noise and vibration impacts on fish** – Within our last update with the EA timing for crossings at Ively Brook still had not been agreed. The council hopes this issue is now resolved. *For further comments on noise and vibration in relation to residents please see section 2 below*

1.1.26 **Soil storage and watercourse buffer zones** – *See RBC comments at deadline 5 regarding 15m buffer zones*

1.1.27 **G61 Natura 2000** – *See Information Submitted in relation to the Thames Basin Heaths and Southwood Country Park SANG at Deadline 6 and 6a and previous representations regarding RBC's position on this issue.*

1.1.28 **Tree protection fencing** – RBC agrees that fencing forms a protective barrier but this is only relevant if no works such as branch removal and working within the RPZ's is undertaken. As this application is littered with references to works on trees within and outside the order limits, with work being carried out if onsite personnel agree, the council is concerned that protection has not been provided for trees to be retained within this application.

1.1.29 RBC does not agree that the approach to Ancient Woodland and Veteran Trees in Appendix C of the Outline LEMP will adequately protect important trees along the route.

1.1.30 **G25 Lighting** – RBC continues to promote lighting always being directed away from sensitive receptors. It is the council's view that there is unlikely to be an event when light spill cannot be minimised.

1.1.31 **Dark Skies** – RBC regrets ESSO's refusal to work with the council to maintain dark skies on our ecological sites.

## **2. Comments on the revised Appendix E: Outline noise and vibration Management Plan (V2.0 dated March 2020).**

2.1.1 RBC notes that there are no material differences from the previous version of this Plan and therefore our comments generally mirror those submitted previously, however to clarify, we are not satisfied with the daytime limit being defined as the highest monthly average noise level and therefore wish to comment as follows:

2.1.2 **Table 3.2:** Noise and Vibration Thresholds proposes adopted noise and vibration levels that will be used in any additional assessment. The day time noise limit for residential receptors in Table 3.2 is quoted as being a monthly average of 70 dB  $L_{Aeq,T}$ . This monthly average noise

level is defined as the logarithmic average of the  $L_{Aeq,T}$  values averaged over each working day during the four-week period with the highest levels of construction activity. The Council does not consider this metric to be reasonable, practicable or capable of protecting residents and the wider community from excessive noise. In keeping with Section 6.2 of BS 5228-1:2009, RBC would wish to see an appropriate time period, T, stated as part of the equivalent continuous A-weighted sound pressure level. Given that normal working hours will be between 0800 to 1800 hours Monday to Saturday, it is considered that a more appropriate daytime limit value should be 70 dB  $L_{Aeq,10hr}$ . This would certainly be more in keeping with Annex E of BS 5228-1:2009.

- 2.1.3 The same is true for the noise limit proposed for educational, religious, health and other noise sensitive community facilities which the Council considers should be 65 dB  $L_{Aeq,10hr}$ .
- 2.1.4 The relevant location for the proposed noise thresholds is given as a 'Free Field' location 1m from the facade of any residential receptors. However, for all calculations, and in accordance with Annex F of BS 5228-1:2009, it is expected that an allowance is made for reflection by adding 3 dB to the calculated (free field) levels.

#### **Comments on Entry 28 of document 8.85**

- 2.1.5 BS 5228 provides various approaches that an assessor may draw on to assess the significance of noise from a construction project. However, it has already been established in Appendix 13.3: Noise and Vibration Technical Note, that the method for the assessment of noise in this case is based on absolute thresholds (fixed limits) rather on those set in relation to ambient noise levels (a noise change).
- 2.1.6 The example approaches referred to (E.3.2 and E.3.3) in the applicant's response (entry 28 of document 8.85) all relate to threshold levels set relative to existing ambient noise levels. In other words, existing ambient noise levels are measured and then this is used to determine the appropriate noise impact threshold. Significance is based on the change in ambient noise with the construction noise added. There are two main methods described in BS 5228 (E.3.2 and E.3.3) but generally, the higher the ambient noise level the higher the threshold value set. Whilst the two approaches differ, effectively both consider a significant impact to arise where the total noise (pre-construction ambient plus construction noise) exceeds the preconstruction ambient noise by 5dB or more.
- 2.1.7 The approach taken by the applicant has been to set absolute thresholds (based on those provided in E.2 of BS 5228-1: 2009) and therefore it was considered that existing baseline noise levels were not required and no noise surveys were undertaken. This approach does not consider the existing ambient noise level, which may be significantly below the absolute threshold level set.
- 2.1.8 The examples of other NSI projects provided, where a monthly average noise level has been adopted, have set noise thresholds values with reference to ambient noise levels. It is stated that one NSI project took the approach that noise from construction lasting less than one month was not considered to be significant. However, it actually took the approach that noise levels generated by construction activity was significant if the construction noise level

exceeded the pre-construction ambient noise by 5dB or more for a duration of one month or more. However, this was caveated 'unless works of a shorter duration are likely to result in significant impact'.

- 2.1.9 As part of their assessment of noise, Esso are proposing use of a monthly average of 70 dB LAeq,T as a day time noise limit for residential receptors. Exceedances of this, be it a medium or large magnitude of change, prompts provision of additional noise mitigation measures.
- 2.1.10 This monthly average noise level is defined as the logarithmic average of the LAeq,T values averaged over each working day during the four-week period with the highest levels of construction activity. Such a long averaging period runs a risk of masking a substantial increase in noise over a few days. So, some residents could be exposed to noise levels well in excess of 70 dB LAeq,10hr for a number of days but because noise levels on other days of the month are significantly lower, Esso's noise threshold value would not trigger the need for mitigation.
- 2.1.11 For this reason, RBC would consider a more appropriate daytime limit value to be 70dB LAeq,10hr. This should be considered against what we could estimate ambient daytime noise levels to be for much of the pipeline route in Rushmoor. Noise surveys submitted in support of numerous planning applications, typically show ambient noise levels to be in the region of 50-55dB LAeq,16hr at the façade of properties away from main roads, and only along main roads would one expect levels in the region of 60dB LAeq,16hr or more.
- 2.1.12 Esso have not provided any information on the variability of the average daily LAeq,T values that have been used to derive the monthly average LAeq,T value. It may be useful to have some insight into the distribution of these average daily values. If the variation can be seen to be not overly significant then RBC may be minded to reconsider our objection to the approach taken.

*Due to the extensive comments provided by the applicant to our comments in relation to the CEMP RBC would request that the above comments are viewed as the council's response to the revised CEMP*

### **3. Comments appertaining to ESSO's Outline LEMP and CEMP**

*For further details regarding our views on the outline LEMP please see RBC's comments on the Outline Landscape and Ecological Management Plan (LEMP)*

- 3.1.1 **Natura 2000** - *See Information Submitted in relation to the Thames Basin Heaths and Southwood Country Park SANG at Deadline 6 and 6a and previous representations regarding RBC's position on this issue.*
- 3.1.2 **Tree Protection Fencing** – *See 1.1.28 for further details of RBC's position*
- 3.1.3 **G88 & G94 Reinstatement** – RBC welcomes the opportunity to agree provenance and reinstatement within the detailed phases.
- 3.1.4 **G95 NJUG** – RBC welcomes the applicant's commitment to the British Standards 2012.

- 3.1.5 **G97 shrub planting** – The applicant appears to have misunderstood our argument in regards to shrub planting. Where trees are lost the requirement still specifies shrub planting rather than alternative vegetation should be provided. Although in some cases shrubs will be entirely appropriate, in areas such as QEP where the beech woodland has no understory this form of planting would further impact on the habitat present. Alternative planting enables the flexibility to provide bespoke solutions on each site at the detailed stage.
- 3.1.6 **HRA1** - *See Information Submitted in relation to the Thames Basin Heaths and Southwood Country Park SANG at Deadline 6 and 6a and previous representations regarding RBC's position on this issue.*
- 3.1.7 **Landscape and Ecological Features** – RBC welcome the inclusion of the Southwood Golf Course West SINC. The council believes that there could be impact to Ball Hill and Ship Lane SINC's due to runoff.
- 3.1.8 **Summary of Main Land Uses** – If only examples of land uses this needs to be made clear within the script as it reads as a definitive list.
- 3.1.9 **Old Ively Road** – The applicant themselves identified this habitat as potential Ancient Woodland within their EIA. Is the applicant now questioning the findings of the EIA?
- 3.1.10 **G59** – As the majority of ponds have not been investigated for amphibian presence, as evidenced by the lack of information regarding amphibians within the Country Park, it is RBC's view that either the precautionary approach should be used with all ponds assumed to contain amphibians or all appropriate ponds should be surveyed.
- 3.1.11 Our apologies for assuming ESSO was obligated to conserve biodiversity under the NERC Act as all other utility companies are. That does not however negate the obligation to conserve species on the s41 list within the planning system.
- 3.1.12 **G196 Common Reptiles** – *Please see 1.1.4 for further details in relation to common reptiles*
- 3.1.13 **Tree reinstatement in Cove Brook Grassland SINC, and Cove Valley, Southern Grassland SINC** – For clarity the above SINC's are designated for their marsh and wetland and so will need to be restored to these habitats.
- 3.1.14 **Table 5.2 – 5.5 species mix** – RBC welcomes the opportunity to select the most appropriate species mix
- 3.1.15 **Restoration of Lowland Heathland** - *See Information Submitted in relation to the Thames Basin Heaths and Southwood Country Park SANG at Deadline 6 and 6a and previous representations regarding RBC's position on this issue.*
- 3.1.16 **Reinstatement Grassland** – *Please see previous comments in relation to this issue.* RBC agrees that natural regeneration is an acceptable restoration method where ground has not been too disturbed. However open trenching and storage of soils could make the seeds unviable. Therefore the council requests that seed is collected to ensure a seed stock of local provenance if natural regeneration proves unsuccessful.

- 3.1.17 **Aftercare** – We welcome the commitment not to use weed killer in natural habitats.
- 3.1.18 **Vegetation removal SCP** – A formal response has been submitted to the EIP however the council do not agree with the EIA conclusions and feel that mitigation of damage to habitats and disturbance of species within our landholdings, should be mitigated through a s106 agreement, not as part of the EIP.
- 3.1.19 **Site Specific Plan QEP trees** – RBC are surprised that the applicant feels the council have not provided evidence of impact to trees and root zones within QEP, considering the council have submitted representations throughout the examination process in relation to impacts likely due to open trenching. However we believe our concerns have been clear and are understood by the ExA.
- 3.1.20 **Durations** – It is acknowledged that QEP will not be entirely closed, however there will be no car park, no permanent playground, the foot path/ cycleway will be severely impacted and all peace and tranquillity will be lost from the site. Maybe severely impacted would have been a more appropriate phrase to use.

#### **4. Comments appertaining to ESSO's CTMP**

- 4.4.1 RBC is happy with the CTMP other than in respect to Farnborough Air show. Rather than disruption being minimised RBC requires no traffic disruption at all when the Air Show is being held.

#### **5. Comments appertaining to ESSO's CEP**

- 5.1.1 RBC is happy with the CEP

#### **6. Comments appertaining to the ExA questions Deadline 5**

- 6.1.1 **DCO 2.31 Habitats and Species Protection and Mitigation** – RBC would request that the suggested requirement in relation to habitats and protected species is incorporated within the DCO. *(See previous comments for further details)*
- 6.1.2 **Article 41 and 42 Veteran and Notable trees** – RBC's concerns in relation to impact of veteran and notable trees has been well documented throughout the examination process. It is the council's view that in the light of these concerns Article 41 and 42 provide the applicant with too wide powers and that all tree works should first be agreed with the Local Authority.
- 6.1.3 **Noise and Vibration** – RBC continues to request that residents be rehoused if the noise from HDD is likely to continue for more than 24hrs.

#### **7. Action Points from Issue Specific Hearings on Environmental Matters**

##### **7.1 Biodiversity Net Loss**

- 7.1.1 Biodiversity Net Loss is a concept introduced to Britain within the Lawton Review. It was acknowledged that all planning applications appeared to be causing residual losses to biodiversity, whether the mitigation was resilient or not. It was felt that if no net loss, and

preferably net gain could be achieved, the planning process would no longer have an impact on biodiversity on a wider scale and endangered habitats and species may start to recover.

7.1.2 Within the green paper prepared to accompany the Environment Bill it was indicated that no net loss would be required within all applications. For any applications that did not provide national infrastructure the default position was to provide a net gain. In the last year County Councils throughout the country have been preparing strategies and identifying projects to deliver net gain once the Environment bill is passed. In Hampshire mapping has been undertaken and strategies are being formulated. All Local Authorities have signed up to this scheme with Local Plan policies within RBC requiring no net loss and if possible a net gain in all development.

7.1.3 RBC cannot agree with the applicant's claim that there is no net loss as a result development for the following reasons:-

- Significant areas of SAC habitat and SPA supporting habitat are to be lost in the short to medium term
- A number of naturalised sites including SCP and QEP will lose habitats in the short to medium term due to open trenching, with only natural regeneration provided as mitigation. In the case of QEP there is likely to be long term damage with semi mature and early mature trees being lost and impacts to RPZ of notable and veteran trees.
- Little to no protected species mitigation is provided. Within RBC, despite the records available for protected species within SCP, mitigation is in the form of a few bat boxes at Cove Brook Greenways.

## **7.2 Embedded Measures**

7.2.1 It is RBC opinion that the embedded measures within the application constitute avoidance rather than mitigation measures. As avoidance is the first step within the mitigation hierarchy, it is right that any avoidance mechanisms were first considered before moving onto mitigation. However despite the avoidance measures designed into the project there remained significant losses of qualifying habitat, supporting habitat and bird nesting areas. In this scenario, using the mitigation hierarchy consideration needs to be assessed within the HRA process as to how these losses could be mitigated or compensated. However this assessment was not carried out with the losses ignored and direct habitat loss excluded from further assessment within the HRA process.

## **7.3 Protection measures for Blackwater Valley if open cut were used**

7.3.1 RBC welcomes the note prepared to formulate protection measures for the Blackwater valley, however RBC is concerned that a hard structure within the Frimley Bridge, Blackwater Valley SINC could impact on the sensitive hydrology of the wetland and compromise the site's biodiversity value.