

Great Yarmouth Third River Crossing Order 202[*]

Document NCC/GY3RC/EX/107: Addendum to Closing Statement

Planning Act 2008

Infrastructure Planning

The Infrastructure Planning (Examination Procedure) Rules 2010

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Foreword

This document is an Addendum to the Applicant's Closing Statement, which was submitted at Deadline 9 of the Examination (20 March 2020) (Document Reference NCC/GY3RC/EX/100, Planning Inspectorate Reference REP9-010). The Addendum to the Closing Statement provides the Examining Authority with the Applicant's final position at the close of the Examination in relation to negotiations with a small number of key stakeholders.

Both the Closing Statement and the Addendum thereto 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

AEP	Annual Exceedance Probability
Cadent	Cadent Gas Limited
CPA	Norfolk County Council (County Planning Authority)
DCO	Development Consent Order
GYPA	Great Yarmouth Port Authority
GYPC	Great Yarmouth Port Company
SoCG	Statement of Common Ground
The Agency	Environment Agency
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 Addendum to the Closing Statement

1.1 Purpose of this Document

- 1.1.1 This document, submitted at the close of the Examination (24 March 2020) is an **Addendum** to the **Applicant's Closing Statement**, which was submitted to the Examining Authority at Deadline 9 of the Examination (20 March 2020) (Document Reference NCC/GY3RC/EX/100, Planning Inspectorate Reference REP9-010).
- 1.1.2 The Addendum to the Closing Statement provides the Examining Authority with an update on matters which the Applicant had hoped to be able to conclude by the close of the Examination, but which are currently still in the process of being definitively resolved. Those matters relate to the Applicant's engagement with the following parties:
- **Great Yarmouth Port Authority ('GYPA') / Great Yarmouth Port Company ('GYPC')** – in respect of the completion of a Construction Liaison Agreement and the related settling of DCO drafting points in connection with Protective Provisions and Byelaws;
 - **the Environment Agency ('the Agency')** – in relation to the Agency's currently unconfirmed position on the matter of the Applicant's tidal residual (breach) modelling; and contingent upon the Agency's position on that matter are the precise terms of the Agency's bespoke Protective Provisions, and the related principle of the Agency's consent under section 150 of the Planning Act 2008 to the disapplication of a suite of consents in article 3 of the draft DCO.
 - **Cadent Gas Limited ('Cadent')** – in respect of negotiations relating to a draft side agreement and the terms of bespoke Protective Provisions for the benefit of Cadent.
- 1.1.3 The Addendum therefore provides clarity on the parties' current positions and explains what the Applicant anticipates will be the likely next steps in moving forward to resolve and conclude matters, albeit that this will necessarily be after the close of the Examination.

2 Great Yarmouth Port Authority / Great Yarmouth Port Company

2.1 Update on recent progress in negotiations

- 2.1.1 As reported in the Applicant's Closing Statement (Document Reference NCC/GY3RC/EX/100, Planning Inspectorate Reference REP9-010) at paragraphs 5.3.2 to 5.3.4, and as confirmed in correspondence submitted to the Examining Authority by BDB Pitmans LLP on behalf of GYPC and GYPA at Deadline 9 (Planning Inspectorate Reference REP9-011), the Applicant has concluded its negotiations with GYPC and GYPA and a side agreement (referred to by the parties as the 'construction liaison agreement') is now in an agreed form and is currently being circulated for execution by GYPC, GYPA and the Applicant. Given the logistics of the execution process, however, it will unfortunately not be possible for the construction liaison agreement to be entered into prior to the close of the Examination. The intended date of completion is 3 April 2020.

2.2 Next steps and conclusion

- 2.2.1 Once the construction liaison agreement has been completed, the Applicant will provide written confirmation of this settled position to the Secretary of State for Transport, via the Planning Inspectorate's case officer team (noting of course, that such update will not be provided to the Examining Authority).
- 2.2.2 The construction liaison agreement itself will remain confidential to the parties involved; however, a number of drafting amendments proposed to be made to the draft DCO are contingent upon the completion of the construction liaison agreement. Therefore, once the agreement has been completed, the Applicant will prepare a further version of the draft DCO, taking in the relevant amendments, which, as noted above, relate to the Protective Provisions in Part 6 of Schedule 14 (For the protection of the Great Yarmouth Port Authority), and to article 3 of the draft DCO, which makes provision for the disapplication of certain byelaws contained in the Great Yarmouth Port Authority Navigation (Haven) Byelaws 1997.

2.3 Submission of signed SoCG prior to close of the Examination

Since Deadline 9 (20 March 2020) the Applicant, GYPC and GYPA have also produced and signed an updated version of their Statement of Common Ground. The updated signed Statement of Common Ground ('SoCG') will be submitted to the Examining Authority by the Applicant prior to the close of the Examination – please refer to the Applicant's Document Reference NCC/GY3RC/EX/106.

3 The Environment Agency

3.1 Recap on recent progress in relation to tidal residual (breach) analysis

- 3.1.1** As reported in the Applicant's Closing Statement (Document Reference NCC/GY3RC/EX/100, Planning Inspectorate Reference REP9-010), the Applicant has engaged extensively with the Agency and has responded comprehensively on a range of technical points raised by the Agency, most particularly during the latter half of the Examination. Whilst this process has led to confirmation from the Agency that it is content with the Applicant's responses and findings on the majority of those points, the Agency's position currently remains to be confirmed on one key issue – that of tidal residual (breach) analysis.
- 3.1.2** The Applicant has carried out tidal residual (breach) analysis at the request of the Agency; the scope and results of that analysis were presented by the Applicant in its Deadline 7 submission (Applicant's Response to Written Representations submitted by the Environment Agency at Deadline 6 (Document Reference NCC/GY3RC/EX/078, Planning Inspectorate Reference REP7-003)).
- 3.1.3** As was noted in paragraph 4.3.6 of the Applicant's Closing Statement, the tidal residual (breach) analysis confirmed the judgments made on the Applicant's behalf by its competent expert in the preparation of the Flood Risk Assessment submitted by the Applicant in support of its application for development consent for the Scheme (Document Reference 6.2, Planning Inspectorate Reference APP-135).
- 3.1.4** As was confirmed by the Agency at Deadline 7 in its Response to Further Information requested by the Examining Authority (Planning Inspectorate Reference REP7-014), that the breach locations and the 5% Annual Exceedance Probability ('AEP') event, on which the Applicant's tidal residual (breach) modelling were based, were sufficient to support the Applicant's Flood Risk Assessment.
- 3.1.5** Whilst acknowledging, at Deadline 7, that "there had been progress", the Agency insisted that it "must verify the modelling outputs and supporting data provided [by the Applicant] before [the Agency's] final position is settled".
- 3.1.6** The Agency assured the Examining Authority (at Deadline 7 – REP7-014) that it would "make every effort to advise the ExA of [its] findings before the close of Examination".
- 3.1.7** At Deadline 8, however, the Agency made a further written submission (Planning Inspectorate Reference REP8-004) which raised two further technical queries relating to the Applicant's tidal residual (breach) analysis. In

one query the Agency sought further information about the flood depth difference and extents in the event of a breach of flood defences; and in the second, it requested identification of the indicative number of properties which may be affected by flooding in the event of a breach of flood defences.

- 3.1.8** The Applicant responded to these two further queries at Deadline 9, in sections 2 and 3 respectively, of its Response to Written Submissions made by the Environment Agency at Deadline 8 (Document Reference NCC/GY3RC/EX/099, Planning Inspectorate Reference REP9-009). Section 4 of that response sets out the Applicant's findings and the implications thereof in full detail. In summary, however, the figures showing maximum flood depth (which are included in Appendix A to the Applicant's Deadline 9 submission) do not affect the results or the conclusions drawn from the Applicant's tidal residual (breach) analysis presented at Deadline 7. These findings are consistent with the Flood Risk Assessment (Document Reference 6.2, Planning Inspectorate Reference APP-135) as the maximum flood depth, maximum velocity and flood hazard remain unchanged. Furthermore, these findings confirm the original judgments made in the preparation of the Applicant's Flood Risk Assessment submitted in support of its application for development consent for the Scheme.
- 3.1.9** Mitigation to address tidal residual (breach) risks will be provided through the Applicant's Emergency Preparedness and Response Plan, the preparation and delivery of which is secured by Requirement 10 in the draft DCO (Document Reference NCC/GY3RC/EX/102).
- 3.1.10** In order to provide the Examining Authority with confirmation, at the close of the Examination and following provision of the further information at Deadline 9, that – in the light of the findings reported above – this matter is now settled and agreed between the Agency and the Applicant, the Applicant sought confirmation from the Agency of its position. In response, the Agency indicated that it was still not in a position to provide that confirmation, and that it would not be in a position to do so prior to the close of the examination.

3.2 Environment Agency's Protective Provisions and grant of consent under section 150 of the Planning Act 2008

- 3.2.1** As reported in the Applicant's Closing Statement (Document Reference NCC/GY3RC/EX/100, Planning Inspectorate Reference REP9-010) at paragraph 9.4, the Applicant and the Agency have made good progress towards agreeing Protective Provisions on terms that would enable the Agency to grant its consent under section 150 of the Planning Act 2008 to the disapplication of the suite of relevant consents identified in article 3 to the draft DCO (Document Reference NCC/GY3RC/EX/102). The Applicant had hoped to be able to conclude these matters by the close of the Examination.

3.2.2 However, until the Agency's position on the Applicant's tidal residual (breach) analysis is confirmed, the Agency continues to reserve its position on the terms of the Protective Provisions and the related section 150 consent to the article 3 disapplication of relevant consents (e.g. consents under the Environmental Permitting (England and Wales) Regulations 2016, including in respect of flood risk activity).

3.2.3 The consequence of this is that these matters currently remain outstanding:

- The draft DCO submitted by the Applicant at the close of the Examination (Document Reference NCC/GY3RC/EX/102) includes Protective Provisions for the benefit of the Environment Agency at Part 4 of Schedule 14, but these are standard form Protective Provisions and do not reflect the discussions or include the terms agreed to date between the Applicant and the Agency in relation to the Scheme and the application for development consent.
- The Agency's consent under section 150 of the Planning Act (the context for which is explained in the Applicant's Consents and Agreements Position Statement (Document Reference 7.3, Planning Inspectorate Reference APP-194) – see paragraph 4.1.4 thereof) also remains outstanding.

3.3 Position at the close of the Examination and necessary next steps

3.3.1 As foreshadowed in the Applicant's Closing Statement (at paragraph 9.4.2), the Applicant will provide the Secretary of State with confirmation of the Agency's section 150 consent, and with the agreed form of bespoke Protective Provisions (as preferred by the Agency), as soon as it is in a position to do so.

3.3.2 The Agency's bespoke Protective Provisions, once settled and agreed, would need to be substituted into the draft DCO (replacing the standard Protective Provisions for the protection of the Environment Agency, which are currently in Part 4 of Schedule 14 to the draft DCO) prior to any grant of development consent and prior to the making of the DCO by the Secretary of State.

3.3.3 As was also explained in the Applicant's Closing Statement (at paragraph 9.4.3), in the event that agreement cannot ultimately be reached between the Applicant and the Agency, such that the Agency does not grant consent under section 150 and the disapplications set out in article 3 of the draft DCO are not agreed by the Agency, then:

- it would be necessary for the Secretary of State to delete the drafting in article 3(d) (disapplication of byelaws made under the Water Resources Act 1991) and article 3(f) (requirement to obtain flood risk activity permits) of the draft DCO (Document Reference NCC/GY3RC/EX/102);

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- in this scenario, if development consent for the Scheme was granted, the Applicant would be required to apply for and obtain consent for those two above matters in the ordinary fashion (i.e. outside of the DCO);
 - the matters that remain outstanding in relation to the Agency's bespoke Protective Provisions do not relate to the principle of the matters that would be regulated under the consent regimes relevant to the disapplication. Accordingly, the outstanding matters in the bespoke Protective Provisions do not present any impediment to the delivery of the Scheme.

3.3.4 The Applicant will continue to engage with the Agency following the close of the Examination and will seek to achieve:

- confirmation of the Agency's position on the Applicant's tidal residual (breach) analysis;
- agreement on the remaining drafting points relating to the Agency's bespoke Protective Provisions; and
- confirmation that the Agency is content to grant consent under section 150 of the Planning Act 2008 to the disapplication of the requirement for the consents identified in article 3(d) and (f) in the draft DCO (Document Reference NCC/GY3RC/EX/102).

3.3.5 As soon as the Applicant is able to, it will provide the Secretary of State with an update in writing on the above matters (such update to be provided via the Planning Inspectorate's case officer team, noting of course, that such update would not be provided to the Examining Authority).

4 Cadent Gas

4.1 Update on recent progress in negotiations

4.1.1 As reported in the Applicant's Closing Statement (Document Reference NCC/GY3RC/EX/100, Planning Inspectorate Reference REP9-010) at paragraph 5.2.2 and paragraphs 9.2.1 to 9.2.4, the Applicant has been engaging in negotiations with Cadent regarding the terms of bespoke Protective Provisions for the benefit of Cadent. The Applicant was previously of the view that there was potential for these to be agreed, together with the terms of a supporting side agreement (between the Applicant and Cadent) by the close of the Examination.

4.1.2 Notwithstanding the fact that negotiations have continued at pace between the Applicant and Cadent since Deadline 9 (on Friday 20 March 2020), it has not yet been possible for agreement to be reached on the remaining outstanding issues of relevance to the terms of Cadent's bespoke Protective Provisions.

4.2 Position at the close of the Examination

4.2.1 The Applicant accepts that the position at the close of the Examination will therefore be as follows:

- Negotiations between the Applicant and Cadent will continue with the shared objective of agreeing the side agreement and bespoke draft Protective Provisions as soon as is reasonably practicable. The Applicant remains committed to achieving this objective in the interests of maintaining a positive working relationship with Cadent, building on the progress recorded in the Applicant's Negotiations Tracker (see Revision 3 as updated for Deadline 7) (Document Reference NCC/GY3RC/EX/086, Planning Inspectorate Reference REP7-011), which notes:

"Cadent Gas Limited have confirmed that they are content with the permanent acquisition proposals and will work with the Applicant regarding the rights requirements. Cadent advised that they will be appointing external surveyors to deal with compensation issues; [next steps will be] to agree financial terms for acquisition of land and rights and access to retained land during construction."

- In the meantime, the final version of the draft DCO (Document Reference NCC/GY3RC/EX/102), which the Applicant is submitting alongside this Addendum at the close of the Examination, will include – by way of default position – the standard Protective Provisions for the protection of

electricity, gas, water and sewerage undertakers which are set out in Part 1 of Schedule 14 (Protective Provisions) to the draft DCO.

- 4.2.2 As noted in the Applicant's Closing Statement (at paragraph 9.2.4), the Applicant is confident that the standard Protective Provisions in Part 1 of Schedule 14 provide a level of protection for Cadent which is sufficient to enable the Secretary of State to satisfy himself that the tests in sections 127(3), 127(6) and 138 of the Planning Act 2008 are met. The Applicant notes that the Examining Authority shared this view, as was noted in the Examining Authority's commentary on his preferred draft DCO, published on 16 March 2020 (Planning Inspectorate Reference PD-015).

4.3 Next steps necessary to conclude matters

- 4.3.1 In the event that the Applicant is in due course successful in agreeing the terms of the bespoke Protective Provisions and entering into the side agreement with Cadent, the Applicant will provide written confirmation of fact of this settled position to the Secretary of State for Transport, via the Planning Inspectorate's case officer team (noting of course, that such update would not be provided to the Examining Authority).
- 4.3.2 The Applicant confirms that it does not expect bespoke Protective Provisions (if ultimately agreed) to appear within Schedule 14 to the draft DCO, which are likely to be secured by way of a private agreement between the parties. As such, a post-Examination agreement between the Applicant and Cadent is not expected to result in any further changes to the terms of the current draft DCO (Document Reference NCC/GY3RC/EX/102).

5 Conclusion

- 5.1.1 Despite the Applicant's best efforts, and for the reasons outlined above, it has not been possible to resolve conclusively the matters noted above. The Applicant will continue to engage with the relevant parties and will seek to progress these matters to their respective conclusions, following which the Applicant will report directly to the Secretary of State on the bases outlined in this Addendum to the Applicant's Closing Statement.