



Department for  
Energy Security  
& Net Zero

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09/05/2023

Your ref: 190915

Dear Mr Hollings,

**REQUEST FOR SCREENING OPINION BY THE SECRETARY OF STATE UNDER THE PROVISIONS OF REGULATIONS 3, 4 AND 6 OF THE PUBLIC GAS TRANSPORTER PIPELINE WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 1999 (AS AMENDED).**

**SGN Ltd. PROPOSED WORKS TO INSTALL A NEW GAS PIPELINE AND DECOMMISSION AN EXISTING GAS PIPELINE AT LAND SOUTH OF KINGSFERRY BRIDGE, SWALE, KENT.**

Thank you for your email of 13 March 2023, in which you requested an environmental determination by the Secretary of State in accordance with Regulation 6 of the Public Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999 (as amended) (“the 1999 Regulations”), on behalf of SGN Ltd (“the Applicant”). This email was supplemented with a plan sufficient to identify the proposed works and documents containing information which details the works to be undertaken, the predicted effects on the environment and mitigation to be put in place, and consultation undertaken by the Applicant to date (“the Application”). This includes:

- Request for Environmental Determination (dated March 2023, ref. 015);
- Screening Opinion Request Report: Town and Country Planning (EIA) Regulations 2017 (dated March 2022, ref. 012). Including:
  - A Preliminary Ecological Appraisal (dated May 2021, ref. 010); and
  - An Archaeological Desk-Based Assessment (dated November 2021, ref. 008).

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- Habitats Regulations Assessment report (dated March 2022, ref. 013 v0.2).

### **Project background:**

Department for Energy Security and Net Zero officials, acting on behalf of the Secretary of State, met with the Applicant online on 10 December 2021. The purpose of the meeting was to provide the Applicant with the opportunity to introduce the works to be undertaken prior to submitting a formal request for an environmental determination.

The request for a determination is made by the Applicant under Regulation 6 of the 1999 Regulations for the construction of a new pipeline and decommissioning of the existing gas pipeline which is located within the superstructure of the Kingsferry Bridge (“the Development”). The existing pipeline is in poor condition and requires immediate replacement. The Development is located on land south of Kingsferry Bridge, Sheppey Way, Queenborough, Swale, Kent, ME9 8SS.

It is noted that the Development involves the undertaking of the following works:

- installation of up to 550m of new 400mm diameter nominal bore polyethylene pipeline and associated tie-ins;
- installation using horizontal directional drilling (“HDD”) beneath the Swale. The pipeline will be connected to the gas supply network at the existing governor on the Isle of Sheppey, and to the existing pipeline on land west of the adjacent Kingsferry Bridge, providing a bypass of the existing pipeline;
- establishment of two works compounds either side of the Swale to allow for the delivery and management of construction materials and the installation and connection works. The HDD launch and reception pits will be located within the boundary of the works compounds;
- a temporary laydown area for the pipeline on the Isle of Sheppey, required for the initial setting out and welding of the pipeline sections;
- following completion of the installation of the pipeline, the compounds will be removed and land fully reinstated; and
- decommissioning and removal of the redundant section of existing pipeline which is suspended beneath the Kingsferry Bridge, to avoid potential health and safety risks associated with leaving the ageing pipeline in place.

The Applicant has sought to engage with consultees prior to submitting this request for determination, including: Swale Borough Council; Historic England; Natural England; the Environment Agency (“EA”); and the Marine Management Organisation. A previous request for an environmental determination was made to the Secretary of State for the Department for Levelling Up, Housing and Communities (“DLUHC”) under Regulation 7 of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017. In response to consultation undertaken by DLUHC, the EA requested a full Environmental Impact Assessment to be carried out. On 27 September 2022, the Secretary of State for DLUHC issued a screening determination that the Development was EIA development.

### **Local Planning Authority response:**

The Development affects one Local Planning Authority (“LPA”), Swale Borough Council. The LPA was contacted by officials acting on behalf of the Secretary of State as per Regulation 6(2)(b) of the 1999 Regulations on 21 March 2023. The LPA responded on 17 and 18 April

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2023. It considered the Development against all matters contained in Schedule 2 of the 1999 Regulations, and concluded that the Development is not EIA development.

### Secretary of State considerations and decision:

The Secretary of State has considered the information submitted, including the views of the LPA and all consultees.

The Development does not meet the criteria in Part 1 of Schedule 3 to the 1999 Regulations. However, it is for a pipeline for which the whole or any part, or the whole or any part of any working width, will be within a sensitive area under Part 2 of Schedule 3 to the 1999 Regulations. Consequently, an environmental determination is required from the Secretary of State as to whether the Development is EIA development under the 1999 Regulations.

In considering the request and whether the Development is likely to have significant effects on the environment, the Secretary of State has had regard to the matters contained in Schedule 2 of the 1999 Regulations. The Secretary of State's conclusion is that the Development **is not EIA** development under the 1999 Regulations, due to the evidence that the Development would be unlikely to have significant effects on the environment. In coming to his decision, the Secretary of State particularly notes the following matters:

- The Development is located within the Swale site of special scientific interest (“SSSI”), SPA and Ramsar, and the Medway Estuary and Marshes SSSI, SPA and Ramsar. The Swale is a tidal channel of the Thames Estuary and works either side would be located in the floodplain;
- The Secretary of State notes that the Applicant must comply with its duties<sup>1</sup> under Section 28H of the Wildlife and Countryside Act 1981, to seek assent from Natural England for the proposal to carry out operations within SSSIs;
- The Applicant has undertaken baseline surveys and provided technical assessments for a range of environmental receptors;
- Ecological field surveys identified areas providing suitable habitat for protected species. Translocation of Great Crested Newts and reptiles during establishment of the construction compound on the mainland side of the Swale may be required. The Secretary of State notes that the Applicant must comply with its ongoing duties<sup>2</sup> with regards protected species and obtaining licences from Natural England where relevant, including under the Conservation of Habitats and Species Regulations 2017 and the Wildlife and Countryside Act 1981;
- The Applicant provides a Habitats Regulations Assessment report which concludes that, with the adoption of identified mitigation and avoidance measures (section 7.2), the Development will not have any adverse effects on the integrity of the Swale SPA and Ramsar and the Medway Estuary and Marshes SPA and Ramsar. Mitigation, avoidance and monitoring measures committed to by the Applicant include:
  - site location and scheme layout to avoid qualifying features and features of ecological value as much as possible;
  - sensitive timing and phasing of the construction programme to avoid breeding and core wintering bird season;
  - ecological supervision throughout the works and preconstruction checks by a suitably qualified ecologist;
  - use of temporary bog mats and rollers in the laydown area;

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<sup>1</sup> <https://www.gov.uk/guidance/sites-of-special-scientific-interest-public-body-responsibilities>

<sup>2</sup> <https://www.gov.uk/guidance/wildlife-licences>

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- use of temporary ditch crossings in the laydown area;
- protection of waterbodies and trees;
- biosecurity measures;
- best practice construction methods to avoid risk of pollution from refuelling and other construction machinery, as well as working within day light hours as much possible and limiting vehicle speeds; and
- habitat reinstatement, post-works monitoring and remedial measures;
- Prior to the laying of the bog-matting in the temporary laydown area on the Isle of Sheppey, a suitably qualified ecologist will undertake pre-works checks of the entire area to be impacted to ensure no late-nesting birds, such as Skylarks, are present on the Site;
- The Secretary of State notes that the Applicant commits to agreeing a reinstatement strategy with Natural England and the Landowner, including re-seeding of land and monitoring and remedial measures, to restore ground to pre-works conditions;
- The construction programme will be phased to accommodate environmental sensitivities, for example to include inactivity to accommodate protected species including breeding and over-wintering birds;
- Assessments indicate that whilst the Development is recognised to potentially harm sensitive areas which support protected flora and fauna, this has informed the construction programme and mitigation measures to ensure that disturbance of species and habitats are minimised such that residual impacts are considered not significant;
- In response to previous consultation issued by the LPA, Natural England stated (email dated 14 April 2022, ref. 388861) that there are potential likely significant effects on statutorily designated sites or landscapes and further assessments were required. It stated that: "Should you [Swale Borough Council] determine that an EIA is not required in this case, you should ensure that the application is supported by sufficient biodiversity, landscape and other environmental information in order for you to assess the weight to give these material considerations when determining the planning application.". Swale Borough Council have subsequently responded to the Secretary of State's consultation, that it considers the Development is not EIA development;
- In subsequent correspondence with the Applicant, Natural England stated (email dated 26 July 2022, ref. 400254) that the Development does not require an EIA on ecological grounds;
- Kent County Council's Ecological Advice Service (email dated 13 May 2022) advised the LPA that there are unlikely to be any significant impacts resulting from the Development, and therefore recommend that an EIA for Ecology is not required;
- The Applicant expects that there are no likely significant impacts on the water quality or morphology of the Swale or the integrity of the existing flood defences, due to the use of HDD. The Secretary of State notes that the Applicant must comply with its duties<sup>3</sup> with regard to obtaining any necessary environmental permits;
- The Secretary of State contacted the Applicant on 27 April 2023 asking for further evidence regarding the Applicant's consultation undertaken with the EA and the Applicant provided this evidence on 28 April 2023. Subsequent to the environmental determination made by the Secretary of State for DLUHC, through consultation with the EA, the EA's local advisor for Flood and Coastal Risk Management confirmed that the Development is an exempt activity which does not require an environmental permit for works within a floodplain (email dated 26 October 2022, ref. 220216/SRI07). Following further consultation, including the provision by the EA of advice and requirements for the carrying out of the Development, the EA stated that it does not object to the Development in principle, although it states that the Applicant must provide a risk assessment for the proposed HDD works (email dated 05 January 2023, ref. ENVPAC/1/KSL/00596 (KT/2022/130284/01));

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<sup>3</sup> <https://www.gov.uk/topic/environmental-management/environmental-permits>

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- In its latest response to the Applicant, the EA stated that it has no further comments to make at this stage (email dated 22 February 2023, ref. ENVPAC/1/KSL/00596 (KT/2022/130284/01));
- Subject to the adherence of the measures requested by the EA and the provision of a risk assessment for the HDD works to the EA, the Secretary of State is satisfied that significant effects on the water environment are unlikely;
- An archaeological desk-based assessment concludes that there are no anticipated likely significant effects in relation to heritage and archaeological assets;
- Any landscape visual impacts will be during construction and decommissioning works. The only visible permanent evidence of construction will be flush to the ground such as manhole covers, or insignificant such as marker posts. Given the baseline environment and short term, temporary nature of landscape and visual impacts, there are no anticipated likely significant effects on the landscape;
- Construction traffic will utilise the existing road network to access the construction compound;
- Construction of the Development is not expected to use significant natural resources. Where appropriate, topsoil will be stripped, stored and reinstated following completion. The size of both working areas either side of the Swale have been minimised as far as possible;
- The Development is not anticipated to release pollutants or any hazardous, toxic or noxious substances to the air or generate any likely significant nuisance; and
- Southern Water is currently undertaking a utility replacement scheme in land directly adjacent to the Development site. This involves installing two water pipelines using a similar construction methodology beneath the Swale. The Applicant has consulted with Southern Water, and intends to utilise shared construction spaces thereby minimising the footprint of both works and facilitating a quicker reinstatement of land following completion of the Development. The Applicant considers that Southern Water's proposals have increased cumulative impacts on the local environment, but that these are not considered significant.

Taking account of the above matters and having regard to schedule 2 of the 1999 Regulations, the Secretary of State concludes that the documents provided with your email of 13 March 2023 and the evidence supplied by the relevant LPA are sufficient, and that he can conclude that the Development **is not EIA** development, as it is unlikely to have significant effects on the environment due to its nature, size or location.

A copy of this letter is sent to the following for information:

Swale Borough Council: Megan Harris

Yours sincerely,

*John McKenna*

John McKenna  
Head of Networks and Policy  
Energy Infrastructure Planning  
Energy Development Directorate