

ENVIRONMENT AGENCY

COMMENTS ON THE EXAMINING AUTHORITY’S SECOND WRITTEN QUESTIONS

HIGHWAYS ENGLAND'S RESPONSE

Question Ref	Environment Agency Response	Highways England Response
4.3.1	<p><i>Can the applicant confirm that the following documents (updated flood risk assessment and updated drainage strategy report) will be submitted at Deadline V without fail, or sooner if possible? These documents should be discussed and agreed with the relevant statutory authorities.</i></p>	
	<p>We can confirm that following the November 2015 issue specific hearings we held a further meeting with Highways England and their flood risk consultants on 23 November 2015. We further discussed the outstanding matters and the work required to address the flood risk concerns. Several issues including those noted in question 4.3.3 (below) of the ExA’s second round of written questions were deliberated. At the meeting it was agreed that Highways England would undertake further assessment work and revise the existing FRA to address the concerns noted.</p> <p>We understand that a revised FRA will be submitted for deadline 5. The Environment Agency provided further flood modelling data to Highways England to assist with this work but we have not been provided with a copy of the amended FRA. A meeting between the parties is scheduled to take place before deadline 6 (29 January 2016) to discuss any feedback following our review of the document.</p>	<p>A copy of the Flood Risk Assessment (“FRA”) and Drainage Strategy reports (REP5-002) were issued at Deadline V.</p> <p>The main updates to the FRA report are:</p> <ul style="list-style-type: none"> • Supplementary description of hydraulic links to floodplain compensation storage areas and a new set of plans (Annex I) illustrating these links in outline; • Assessment of flood risk to construction compound sites and mitigation proposals for the two compounds (Nos. 5 and 7) found to be partially located in the floodplain defined by the 1 in 100 year flood event plus an allowance for climate change; and • Additional information regarding securing flood mitigation works, including reference to a new Requirement (No. 26) in Schedule 2 of the draft DCO. <p>A further meeting was held between Highways England and the Environment Agency ("EA") on 26th January which confirmed the following with regard to the FRA :</p> <ul style="list-style-type: none"> • Highways England confirmed that the floodplain extents and compensation was not shown on the Deadline V Flood Risk Assessment (FRA) drawings at R28 and E3-B1 as the volumes of compensation were only 0.6m³, and 0.1 m³,

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		<p>which can easily be accommodated by minor adjustments to existing or proposed embankments during the detailed design stage. EA confirmed they were content with this approach given the very low volumes.</p> <ul style="list-style-type: none"> • Highways England advised that since Deadline V the FRA had been updated to include the assessment of ERA E6-B1 (EB) (10m3) and suitable compensation provided (assessment using the latest 1m LIDAR data) and that the new version would be submitted at Deadline VII. • Highways England advised that Compound 7 is partly located in the flood plain and noted that a small section of the northern and eastern part of compound 5 was also in the flood plain. It was agreed that these sections within the compounds were small amounts and on perimeters of the flood extents. Therefore, Highways England’s contractor would be required to not increase ground levels in the flood plain, not to store materials or machinery in these locations and to only use open fencing in this area, so as not to impede flood water flows or increase flood risk. • Highways England advised that they were reviewing the details of the flood compensation near Monkey Island Lane in order to minimise the loss of vegetation screening and that details (possibly including below ground storage culverts) would be included in the next issue of the FRA at Deadline VII. • Highways England confirmed that further assessment works had been undertaken at sites RA18 and 19, which showed that the previously proposed westbound compensation area would not be required. However, this area would still be indicated as an alternative option. • On the review of the information to date, it was agreed

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		<p>between Highways England and the Environment Agency that the FRA submitted at Deadline V was deemed to be satisfactory subject to the modifications detailed above. It is agreed that a detailed flood compensation design/scheme would be created and implemented as set out in the DCO requirements prior to the commencement of the authorised works.</p> <p>Following the meeting, four drawings were issued to the Environment Agency consisting of:</p> <ol style="list-style-type: none"> 1. Two updated drawings from Annex H of the FRA submitted at Deadline V to confirm the extent of flooding on compound 5 and 7 (TR010019-2.3-v-20 sheet 8 and 9) (attached to this submission at Appendix A). 2. Two flood compensation maps missing from the FRA submitted at Deadline V (514451-MUH-00-ZZ-DR-DR-400203 and 400204) (attached to this submission at Appendix B). <p>These drawings will be included with the updated FRA to be provided at Deadline VII.</p> <p>The Drainage Strategy Report submitted at Deadline V has been updated to provide, at Section 3.1, an assessment of the feasibility of the provision of above ground SUDS both within the Order limits, and on land outside of the Order limits, which has been offered for this purpose by the London Borough of Hillingdon and Buckinghamshire County Council.</p>
	<p><i>A SoCG has still not been agreed between the applicant and the Environment Agency (EA). The Examining Authority (ExA) expects that this will be submitted at Deadline V, detailing matters agreed and matters not agreed. Where</i></p>	

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	<p><i>matters are not agreed an update on the discussions should be provided giving specific actions being taken and a date when the matters will be resolved.</i></p>	
	<p>As noted in section 2.0 of our written summaries of oral submission presented at the issue specific hearings in November 2015 (Rep4-28) we apologise to the ExA that we have been unable to submit a statement of Common Ground (SoCG) between ourselves and Highways England by Deadline 4 as previously hoped.</p> <p>This has been as a result of new and revised information seeking to address our concerns being submitted and these potentially changing our position. This has included the reviewing of several iterations of the Flood Risk Assessment with the most recent version provided by Highways England prior to the hearings on the afternoon of Thursday 12 November, 2015. Consequently this impacted the existing wording of the draft SoCG.</p> <p>As previously confirmed to the Examining Authority we have been liaising regularly with Highways England on the outstanding issues and have exchanged further drafts of the SoCG. Below is a factual summary of the exchanges of the SoCG between the parties (please note several other meetings, discussions and emails relating to the application are not noted here but these were also ongoing during these months):</p> <ul style="list-style-type: none"> • 13 September 2015 – Highways England (HE) provide a 1st draft of the SoCG to the Environment Agency (EA); 	<p>A SoCG between Highways England and the Environment Agency was submitted at Deadline V.</p> <p>Matters not agreed are now limited to the following points.</p> <ul style="list-style-type: none"> • The wording of a number of the draft DCO Requirements, linked to the topics of floodplain compensation and maintenance, water quality, biodiversity management and the Construction Environmental Management Plan ("CEMP"). The EA also wishes to reserve its position on the potential mechanism for discharging the DCO requirements. Discussions regarding these matters are ongoing. Highways England has written to the Environment Agency suggesting that a meeting is arranged to address any outstanding concerns the Environment Agency may have. • Flood risk and mitigation. However, as detailed above, following the meeting between the parties on 26th January 2016 it was agreed between Highways England and the EA that the FRA submitted at Deadline V was deemed to be satisfactory subject to the modifications in Highways England's response to 4.3.1 detailed above.

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	<ul style="list-style-type: none"> • 2 October 2015 – EA provided initial verbal feedback and comments on SoCG to HE; • 8 October 2015 – EA provided new draft SoCG to HE; • 2 November 2015 – HE provided revised draft SoCG to EA; • 5 November 2015 – EA provided statement to HE informing ExA of progression of SoCG. Unable to agree document for deadline 3 as new information was submitted; • 24 November 2015 – EA provided revised draft SoCG to HE. This was based on information presented at the issue specific hearings (17 to 19 November 2015); • 4 December 2015 – HE provided comments on the draft SoCG provided by the EA on 24 November; • 5 January 2016 – EA provided comments on the revisions proposed by HE on 4 December 2015. 	
	<p>It is expected that a SoCG between the parties will be submitted for deadline 5 (8 January 2016). However, not all matters have been resolved. We await the provision of a new/revised FRA by Highways England and understand that this will be submitted for deadline 5 (8 January 2015). We can confirm that following the November 2015 issue specific hearings we held a further meeting with Highways England and their flood risk consultants</p>	<p>As noted above, a SoCG between Highways England and the Environment Agency was submitted at Deadline V and discussions are proceeding to close out any remaining matters. As detailed in the Highways England response to 4.3.1 above, at the meeting between the parties on 26th January 2016 it was agreed that the FRA submitted at Deadline V was deemed to be satisfactory subject to the modifications detailed above.</p>

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	<p>on 23 November 2015. We further discussed the outstanding matters and the work required to address the flood risk concerns. Several issues including those noted in question 4.3.3 of the ExA’s second round of written questions were deliberated. At the meeting it was agreed that Highways England would undertake further assessment work and revise the existing FRA to address the concerns noted.</p>	
	<p>With regards to the individual matters not agreed identified in the ExA second round of written questions we wish to note the following:</p> <p>4.3.3i – This position remains unchanged. We await the new/revised FRA to be provided by Highways England.</p>	<p>The FRA submitted at Deadline V includes the additional information and clarifications requested by the EA with regards to the flood risk impacts of the Scheme and the mitigation of these impacts. Further discussions took place between Highways England and the EA on 26 January at which it was agreed that the FRA submitted at Deadline V was deemed to be satisfactory subject to the modifications detailed above.</p>
	<p>4.3.3ii – This issue (relating to the different figures quoted in the table of mitigation, draft SoCG and the current FRA) was discussed at the meeting on 23 November 2015. Highways England agreed to review the information and provide clarification on this matter. We await this clarification.</p>	<p>Clarification was provided within Annex D - Table D.1 of the Deadline V FRA submission regarding the precise number of work sites that require the provision of a floodplain storage compensation scheme. Floodplain compensation mitigation has been demonstrated for 16 sites of the 19 sites as summarized within Annex D -Table D2. Three sites with a calculated floodplain compensation of 5m³ or less were not assessed for compensation in the Deadline V FRA as these can be easily accommodated by minor adjustments to existing or proposed embankments during the detailed design stage (Section 1.5.6 of the Deadline V FRA).</p> <p>Highways England advised that since Deadline V the FRA has been updated to include the assessment of ERA E6-B1 (eastbound) (10m³) and suitable compensation provided (assessment using the latest 1m LIDAR data) and that the new version would be submitted at Deadline VII</p>

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		<p>As detailed above, the floodplain extents and compensation was not shown on the FRA drawings submitted at Deadline V for R28 and E3-B1 as the volumes of compensation were only 0.6m³, and 0.1 m³, which can easily be accommodated by minor adjustments to existing or proposed embankments during the detailed design stage. The EA has confirmed that it is content with this approach given the very low volumes involved.</p> <p>The table of mitigation and the signed SoCG were also updated to ensure consistency with the latest information in the FRA and the drainage strategy in relation to the quoted number of sites requiring floodplain storage compensation schemes.</p>
	<p>4.3.3iii - Annex IV of the Design Manual for Roads and Bridges ("DMRB") notes that an increase in 10mm of flood levels may be acceptable or that such an increase could be assessed as having negligible impact within an submitted Environmental Statement. However, the main text of the DMRB including paragraphs 2.37, 3.29 and 5.46 refer to 'the compensation storage [being] designed to provide at least the same volume at every level as is occupied in the existing situation'. Paragraph 5.99 of the NPSNN state that 'the Secretary of State should be satisfied that flood risk will not be increase elsewhere...' and we support this position.</p>	<p>The FRA submitted at Deadline V (REP5-002) clarifies this matter in paragraph 4.2.9 and commits to the provision of mitigation measures that would deliver no increase in flood risk, in line with the requirements of paragraph 5.99 of the National Policy Statement for National Networks.</p>
	<p>It has been acknowledged by Highways England at the issue specific hearings on 18 November 2015 and in a meeting between the parties on 23 November 2015 that they are seeking no increase in flood risk. This position is welcomed by the Environment Agency and it is hoped that the revised FRA to be submitted for deadline 5 (8 January 2016) will reflect this position and may subsequently change the Environment</p>	<p>Please see the response above.</p>

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	Agency's stance.	
	4.3.3iv – During a meeting between the parties on 23 November 2015 it request was further emphasised as there are discrepancies between the figures quoted in the FRA (including revisions up to November 2015), the table of mitigation measures and the draft Statements of Common Ground with the Environment Agency.. Highways England have agreed to provide clarification on this matter and we look forward to reviewing this information.	<p>The FRA submitted at Deadline V notes the flood risk status of construction compounds and confirms that two compounds (No 5 and 7) are partially at risk of fluvial flooding (see paragraphs 5.1.17 to 5.1.18 and 5.1.41 to 5.1.42 of the FRA). The FRA details mitigation to ensure a neutral flood risk impact associated with use of these compounds. These mitigation measures have also been added to the Table of Mitigation and the CEMP, revised versions of which were submitted at Deadline V.</p> <p>The revised FRA, table of mitigation and signed SoCG submitted at Deadline V have been updated to ensure consistency in relation to the number of works sites that require the provision of a floodplain storage compensation scheme (19 in total). A further update of the FRA will be provided at Deadline VII to include the modifications detailed in the Highways England response to 4.3.1 detailed above.</p>
	4.3.3v – Following a meeting with Highways England on 23 November 2015 we await further information and calculations on this matter. We understand that new details will be included in the revised FRA due to be submitted for deadline 5.	Further information regarding the connectivity of the floodplain compensation sites was provided in section 6.4 of the FRA submitted at Deadline V.
	4.3.3vi – Please refer to comments under sub-point 4.3.3iv (above).	Further information regarding the connectivity of the floodplain compensation Schemes at R18 and R16 (mainline carriageway widening sites), E9-A1 ERA and at the Wood Lane Road, Ascot Road and Riding Court Road side road works sites was provided in the FRA submitted at Deadline V (see paragraphs 6.5.1, 6.5.6,6.5.11, 6.5.19 and 6.5.35).
	<p>UPDATE - 8 January 2016</p> <p>We can confirm that a signed Statement of Common Ground between Highways England and the Environment Agency will</p>	

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	be included with the submissions for deadline 5).	
	<p><i>Biodiversity and water quality. It is noted that matters are still not agreed with the EA REP4-028. These include the following:</i></p> <p><i>i. The EA states that it is content that the proposed development will not adversely impact their biodiversity or water quality issues subject to appropriate requirements and other wording in other documents such as the Construction Environmental Management Plan (CEMP). Can the EA identify where such changes are required and suggest appropriate wording?</i></p> <p><i>ii. The EA does not believe that the lengthening of the two culverts will result in a neutral ecological outcome as concluded by HE, but does believe that wording in the dDCO could resolve this issue. The EA should give suggested wording for an appropriate requirement.</i></p> <p><i>The EA is reviewing the wording of R24. Suggested wording should be submitted.</i></p>	
	<p>Point i – We are satisfied that our biodiversity and/or water quality interests are appropriately covered within requirements 11 (ecological mitigation), 12 (contaminated land and groundwater), 13 (protected species), 24 (biodiversity management strategy) and confirmation from Highways England that they are not seeking to dis- apply the consents, licences and notifications required under the Water Resources Act 1991 (as amended), the Thames</p>	Noted

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	Water Authority Land Drainage Byelaws 1981 (as amended) and the Thames Conservancy Act 1932 (as amended). We welcome the revised wording for requirement 8 (CEMP) as suggested by the ExA – please refer to question/answer 8.25 (below).	
	Point ii – We are satisfied that requirement 24 (biodiversity management strategy) and the confirmation from Highways England that they are not seeking to dis-apply the consents, licences and notifications required under the Water Resources Act 1991 (as amended), the Thames Water Authority Land Drainage Byelaws 1981 (as amended) and the Thames Conservancy Act 1932 (as amended) will enable us to secure satisfactory mitigation relating to this matter. We have no further concerns at present regarding sub-point ii and iii.	Noted
	Point iii – please refer to answer for 4.4.1 point ii above.	Noted
8.25	<i>Draft DCO, requirement 8 - Construction environmental management plan - Having regard to concerns raised in written submissions and at the issue specific hearing dealing with matters relating to the environment by local authorities about the lack of detail in the early version of the CEMP, can the applicant consider incorporating further detail into R9? The ExA’s suggested requirement is largely based on that adopted in R8 of The Cornwall Council (A30 Temple to Higher Carblake Improvement) Order February 2015.</i>	
	We welcome the Examining Authority’s approach and suggested amended wording for requirement 8 (CEMP). We	Highways England has commented on the Examining Authority's suggested wording for requirement 8 in its response to question 8.25

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	<p>acknowledge that fluvial floodplain compensation has not been specifically noted within the requirement. However, we accept that this is not essential as we are liaising with Highways England on the specific requirement wording relating to floodplain compensation and maintenance (requirement 23). Providing suitable wording for requirement 23 (flood risk) can be agreed we would be satisfied with the suggested revised wording for requirement 8.</p>	<p>of the Examining Authority's Second Written Questions, submitted at Deadline V.</p> <p>Highways England explained that the suggested drafting for requirement 8(2) is not appropriate in this case. The measures listed in the Examining Authority's proposed drafting will be included in the outline CEMP and to include them in the statutory instrument would be otiose. Their inclusion in the DCO would be poor drafting practice since the effect is duplication. It is sufficient that the outline CEMP provides certainty as to its own content.</p> <p>The CEMP is required to be substantially in accordance with the outline CEMP. That requirement is more stringent than the drafting of requirement 18 (Construction environmental management plan) in The Norfolk County Council (Norwich Northern Distributor Road (A1607 to A47 (T)) Order 2015, which merely requires that the CEMP reflects the draft CEMP, and represents the most recent drafting of a CEMP requirement for a highways scheme that has been found to be acceptable to the Secretary of State.</p> <p>Furthermore, the CEMP is required to be approved by the Secretary of State, in consultation with the Environment Agency and the relevant local planning authorities. Therefore, the Secretary of State, Environment Agency and relevant local planning authorities all have an opportunity to ensure that the measures detailed in the outline CEMP are included in the CEMP. Any aggrieved regulator could judicially review the decision of the Secretary of State to approve the CEMP if they felt it did not substantially accord with the outline CEMP.</p> <p>The requirement for the CEMP to be "substantially in accordance" with the Outline CEMP is a well precedented approach, which has been accepted by the Environment Agency and other bodies on</p>

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		<p>recent DCOs, such as the North Killingholme (Generating Station) Order 2014.</p> <p>If the drafting proposed by the Examining Authority for requirement 8 were to be adopted, if any of the measures listed in sub-paragraph 8(2) were not covered by the CEMP, Highways England would be in breach of the terms of the DCO, which is a punishable offence. This would be despite the fact that some of the measures listed were provided, but were secured by way of requirement, as opposed to the provisions of the CEMP. This is the case with many of the mitigation measures listed in the proposed drafting, many of which are subject to requirements in Schedule 2 of the DCO.</p>