

The Planning Inspectorate
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Our ref: AC/2021/130461/01-L01
Your ref: TR010044
Date: 31 August 2021

Dear Sir/Madam

A428 BLACK CAT TO CAXTON GIBBET IMPROVEMENT SCHEME THE EXAMINING AUTHORITY'S 1ST WRITTEN QUESTIONS AND REQUESTS FOR INFORMATION

Thank you for your correspondence regarding the above mentioned scheme. Our answer to your questions are provided below:

Q1.3. BIODIVERSITY AND ECOLOGICAL CONSERVATION

Q1.3.1.1 - Protecting and improving biodiversity

Providing principals of the mitigation hierarchy are adopted (avoid, mitigate, enhance), and biodiversity net gain is delivered, these will help to protect and improve biodiversity.

Q1.3.6 AQUATIC ENVIRONMENT AND BIODIVERSITY

Q1.3.6.1 - Mitigation measures

a) Given the duration of the project, it is likely that further ecological assessments will be required as the scheme progresses to ensure plans and works are based on up to date ecological information. The Chartered Institute of Ecology and Environmental Management (CIEEM) have produced an advice note on the lifespan of ecological reports and surveys (<https://cieem.net/resource/advice-note-on-the-lifespan-of-ecological-reports-and-surveys/>).

b) The river Great Ouse in this area supports a coarse fishery. The annual statutory close season for coarse fish is 15th March – 15th June, inclusive. Works that could affect spawning coarse fish and their habitat should be timed to avoid this period. Alternative timings would apply if fish surveys should identify brown trout populations in any of the affected watercourses. The annual statutory close season for non-migratory trout in Anglian region is 30th October – 31st March, inclusive. If trout are found to be present then works that could affect spawning trout and their habitat should be timed to avoid this period (<https://www.gov.uk/guidance/regional-rod-fishing-byelaws-anglian-region>).

Q1.7.3 ARTICLES

Q1.7.3.2 - Article 3 – Disapplication of legislative provisions

'We set out below the disapplication provisions relevant to the Environment Agency, with a brief explanation of the current position. With the exception of section 15 of the Anglian Water Authority Act 1977, these legislative provisions are provided for under section 150 Planning Act 2008, *which means* Environment Agency consent is required before they can be dis-applied.

Article 3(2)(a) - we do not have concerns with regards to dis-application of regulation 12 (requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016 ("EPR 2016") in relation to the carrying on of a flood risk activity only, subject to agreeing satisfactory protective provisions. We have not yet reached agreement *on a form of* protective provisions in relation to flood risk activity, but we are hopeful that we will reach agreement within the Examination period.

We do not wish to dis-apply the requirement for an environmental permit for the carrying out of a water discharge activity. A water discharge activity is a continuing activity, which requires ongoing monitoring. The permitting regime under EPR 2016 provides *an appropriate* regulatory regime for this.

Article 3(2)(b) - *we do not wish to dis-apply* section 24 (restrictions on abstraction) and section 25 (restrictions on impounding) of the Water Resources Act 1991 ("WRA 1991") as it would not be possible to import the full statutory regime of the WRA 1991 into a form of suitable protective provisions, particularly as we could not incorporate equivalent enforcement powers. An attempt to incorporate the WRA 1991 provisions into protective provisions would be complex to achieve and would be a disproportionate use of time in comparison to the Applicant applying under the WRA 1991, especially as it would not speed up the consenting process.

Article 3(2)(c) - we do not have concerns with regard to dis-application of the provisions of any byelaws made under or having effect under paragraphs 5, 6 or 6A of Schedule 25 of the Water Resources Act 1991. We do however notice a typographical error -- between 6 and 6A should read "or" and between 6A and Schedule 25 should read "of".

Article 3(2)(f) - we do not have concerns with regards dis-application of section 15 (temporary closure of recreational waterways) of the Anglian Water Authority Act 1977, subject to agreeing the wording of Article 58. We are in principle in agreement with the wording, subject to minor changes which we believe can be agreed within the examination period'.

Q1.7.3.7 Article 9(1) – Limits of deviation

We are concerned if any deviation encroaches horizontal or vertically into Flood Zone 3 for example compounds and Soil Storage Areas. This could have huge implications on flood risk mitigation proposed, flood paths, floodplain compensation areas and increased flood risk unless these issues can be addressed if any deviations are required. Therefore, we request that appropriate provisions are included in the DCO to ensure we are consulted upon (and agree proposals) for any deviation where they are over or within:

i) Flood Zone 3 (where floodplain is impacted or encroached into)

ii) Main River – River Great Ouse and any existing or new structures associated with it and encroachment into all proposed floodplain compensations areas.

Whilst we expect these issues to be addressed through the detailed design stage we need these to be secured as a protective provision or requirement within the DCO.

Q1.7.5.4 Requirement 12 – Detailed design

We would like the applicant to demonstrate how, at detailed design phase, they will ensure that there is no exceedance of flood levels as set out in the Flood Risk Assessment (FRA); where at detailed design phase amendments needs to be made and that there is no materially new or materially different environmental effect? The FRA mentions in several places that some increases in flood levels can easily be eliminated in the detailed design phase such as viaduct or flood compensation (FRA section 8.2.7), how? We would like this process to be explained.

The Following Requirement is suggested, as used in the A14 DCO, to secure any flood risk amendments required at detailed design stage:

(1) Subject to sub-paragraph (2), the authorised development must be carried out in accordance with the flood risk assessment, including the mitigation measures detailed in it, so that no part of the authorised development is predicated to result in any exceedance of the flood levels to properties and land shown in the flood risk assessment.

(2) Sub-paragraph (1) does not apply in any circumstance where the undertaker proposes to carry out a part of the authorised development otherwise than in accordance with the flood risk assessment and either demonstrates to the Environment Agency's satisfaction that the part of the authorised development concerned would not result in an exceedance of the flood levels shown in the flood risk assessment or demonstrates that all affected landowners accept the predicated exceedance of the flood levels shown in the flood risk assessment.

Notwithstanding this, the FRA, as submitted, is not acceptable to us. There are a number of outstanding issues that need to be addressed, as set out in our Relevant Representations.

Q1.7.3.24 - Article 58 – Works in the River Great Ouse

We are in discussion with the Applicant with regards the wording of Article 58. With relatively minor changes, we are hopeful that we can agree Article 58.

In terms of detail, we have asked that a definition of “emergency” is included in Article 58 and understand that the Applicant is amenable to this. Emergency is relevant in the context of enabling the Applicant to temporarily suspend navigation rights without separate approval from the EA and upon giving such public notice as is reasonably practicable.

Q1.9. FLOOD RISK

Q1.9.1 Sequential approach to route selection and design

Q1.9.1.1 - General

c) With regard to point (a): the selection of the preferred route option, each of the original three original options involved crossing the River Great Ouse south of St Neots, so all of these options would have had a similar impact on main river flood risk. All these routes would have crossed the ordinary watercourse floodplains at some point. In the absence of detailed modelling of ordinary watercourses at the stage when we were consulted on these options, we were unable to assess which of the different options would have been better in terms of flood risk.

With regard to the River Great Ouse crossing design, four options were presented to us, which are detailed in Annex A of the FRA. The preferred option was the one resulting in the smallest increase flood levels so was considered to be the best option in terms of flood risk. We were informed that other options were also considered but these all showed greater increases in flood risk. Although we asked to see details of these other options, this information was not provided to us. This information would have been useful for us to see whether there were any further net gain opportunities when crossing the River Great Ouse and its floodplain.

With regard to point (b) we still need to confirm regarding the opportunities regarding biodiversity as part of the flood risk management of the scheme. The FRA does not mention this and therefore we welcome the applicant to give further details on this. With regard to scheme drainage the Lead Local Flood Authorities have assessed the surface water drainage of the scheme and may be able to comment on this element.

Q1.9.1.2 - ADDITIONAL QUESTION (Flood Risk)

a) We consider that the correct climate change allowances (CCAs) for the Anglian River Basin District have been used in the FRA. When the FRA was produced, the Environment Agency's climate change guidance indicated that the Upper End allowance should be used to assess the impact of climate change on peak river flows for essential infrastructure. In the Anglian River Basin District, the Upper End allowance for the 2080s was 65% while the Higher Central allowance was 35%. A 65% allowance has been used in the ordinary watercourse modelling and a 35% allowance has been used in the River Great Ouse modelling to determine flood risk impacts. However, the River Great Ouse modelling includes a 65% allowance as part of sensitivity testing.

The new EA climate change guidance published on 27 July 2021 includes a refinement of allowances into smaller areas than before and are now based on river management catchments. It stipulates that the Higher Central allowance should now be used for essential infrastructure to assess the impact of climate change on peak river flow allowances. The new 'peak river flow climate change allowances by management catchment' table indicates that the Higher Central allowance for the Upper and Bedford Ouse catchment (western section of the scheme) for the 2080s is 30% and for Cam and Ely Ouse catchment (eastern section of the scheme) for 2080s is 19%. As such, the CCAs used for both the ordinary watercourses and the River Great Ouse are considered to be adequate and precautionary based on the new climate change allowances guidance.

b) and c) Taking into account the precautionary climate change allowances used in the FRA, we will not be requesting any update to the FRA with regard to CCAs. Notwithstanding the CCAs agreement, we do not find the submitted FRA, dated 26th February 2021 Appendix 13.4, acceptable, as we still have a number of flood risk issues that need to be addressed as set out in our relevant representation. However the FRA does make mention of requirement 3 as set out in the dDCO and suggests that changes as part of the detailed design phase can be dealt with in the second iteration of the Environmental Management Plan. Yet we note we are not listed as a consultee within requirement 3 for any relevant changes. Given the FRA suggestion, we would like the Environment Agency to be added as a consultee for requirement 3(1).

Q1.9.2 INTERACTIONS BETWEEN DIFFERENT SOURCES OF FLOODING

Q1.9.2.1 - Grade separated junctions

The submitted FRA has considered surface water flooding and groundwater flooding but it has not included an assessment of the interaction of groundwater and surface water.

The applicant has presented assessments of the potential flood risks from groundwater and surface water in the Environmental Statement. However, it is proposed to discharge dewatering water from the scheme to surface waters during both the construction and operational phases. The likely magnitudes of groundwater ingresses requiring dewatering are currently subject to further assessment for some locations, and as far as we are aware there has been no formal quantitative assessment of the potential dewatering requirements based upon integration of groundwater and surface water ingresses.

The Lead Local Flood Authorities may also be able to assist with this.

Q1.9.2.2 Black Cat Quarry

We would like to comment on this as we have concerns. The submitted FRA assumes that the Black Cat Quarry restoration works will be complete before commencement of the scheme. We understand restoration works are ongoing. However, if there is a delay to the completed quarry restoration and commencement of the road scheme starts within the floodplain then there could be implications as that scenario has not been modelled. We have an Issue on this matter within our Relevant Representation (Issue 1.7). It is paramount that either the restoration works are complete prior to commencement of the scheme or the FRA needs to be updated with the new scenarios and agreed with us prior to commencement.

Q1.9.4 CLIMATE CHANGE RESILIENCE

Q1.9.4.1 - Climate Change

a) Section Q1.9.1.2 (a) has hopefully answered this. The FRA used epoch 2080s (including years 2070 to 2115) so we find this acceptable in terms of the lifetime of the development.

b) The River Great Ouse CCA assessment did do 65% scenario run as a sensitivity test and the 35% allowance was acceptable at the time. The ordinary watercourses decided to be precautionary and use 65%. But given the new guidance is now 30% to 19% we find the 35% allowances used adequate.

Q1.9.4.2 - Flood Risk and Pollution Control

a) The FRA demonstrates that the risk of flooding to the scheme from fluvial sources is low providing the mitigation measures detailed in the FRA are adhered to. We have assessed the scheme from fluvial flood risk source only. Lead Local Flood Authority partners may wish to comment on the assessment from other sources of flood risk. As such, we are unable to comment on whether the FRA demonstrates that the project will be safe for its lifetime from all sources. The FRA demonstrates that in most places the development will not increase fluvial flood risk providing adequate floodplain compensation is provided prior to the construction of the relevant road sections. However, there is an exception of an area of agricultural land where flood depths are predicted to increase by up to 16mm. These issues have been raised in our Relevant Representation under issue 1.3 and 1.4.

b) Similar to above, the flood risk from fluvial has been assessed within the FRA and used precautionary climate change allowances which demonstrate from this source the risk of flooding for the design events to be low, where the proposed flood mitigation measures are implemented. There will remain a residual flood risk where greater events, above the design criteria for a development, pose a risk.

c) Answer to Question Q1.9.2.2 Black Cat Quarry may assist but we have concerns over the restoration of the Quarry as this is paramount to the flood mitigation put forward as part of the scheme. Our concerns are detailed under issue 1.7 of our relevant representation. If it cannot be confirmed that the quarry restoration works will be completed prior to the commencement of works, we will need to see evidence that the proposed floodplain compensation area will function as detailed in the FRA.

d) We have assessed the scheme from fluvial flood risk source only. The mitigation measures proposed in the FRA and the climate change allowances are considered adequate. However, we still have flood risk related concerns as set out in our relevant representation and overall the FRA is not acceptable. Lead Local Flood Authority partners may wish to comment on the assessment from other sources of flood risk.

e) Opportunities to reduce flood risk to St Neots as part of the design of ordinary watercourse crossings for the scheme have been investigated as part of an Environment Agency net gain project, which Highways England is aware of. Opportunities to reduce flood risk overall should be further considered at the detailed design stage. We welcome the opportunity to work with Highways England and other Risk Management Authority partners to investigate flood risk net gain as part of this scheme.

f) With regard to pollution control the FRA does not mention this. However, the proposed mechanisms in other documentation are satisfactory with regard pollution prevention measures. As long as the Sustainable Drainage Systems can cope with the additional volume of water allowing for climate change (the LLFA will need to agree to this) then no additional pollution prevention issues should occur when considering climate change

Q1.19. WATER QUALITY AND RESOURCES

Q1.19.1 General

Q1.19.1.1 - General

a) and b). Yes, we are satisfied that the risk of pollution from the scheme, both during construction and operation and both direct and indirect, would not cause harm to the water environment

Should you wish for further clarification on any of these answers please do not hesitate to contact me.

Yours faithfully

Neville Benn
Sustainable Places

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