

Date: 11 July 2024
Our ref: 479704
Your ref: TR010065



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Dear Inspector

NSIP Reference Code: TR010065

Natural England's comments in respect of the A46 Newark Bypass

Examining Authority's submission deadline with a date of 14 July 2024

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

For any further advice on this consultation please contact the case officer Rachel Navin ([REDACTED]) and copy to consultations@naturalengland.org.uk.

Yours faithfully

Rachel Navin
Senior Sustainable Development Officer - NSIPs & High Risk Casework
East Midlands Area Team

Natural England's Relevant Representations

PART I: Summary and conclusions of Natural England's advice
PART II: Natural England's detailed advice (starting on page 7)
PART III: Natural England's detailed comments on the Development Consent Order (DCO) (starting on page 25)

Summary of Natural England's advice

Overall, Natural England are satisfied that the proposals address the majority of potential impacts to the natural environment. The only areas of concern where we consider further assessment and/or information is required to enable to examining authority to make an informed decision are: Internationally Designated Sites and Soils & Best and Most Versatile Agricultural Land.

The key concerns we have regarding Internationally Designated Sites are:

- Omission of construction pollution and silt management measures in the Drainage Strategy
- Reference to 'loss of lamprey individuals' in the HRA report
- Limited explanation regarding the 'de minimis' impact of construction piling on key species (lamprey)
- Omission of consideration of Operational Highway Light Spill
- Prevention of light spill impact on migrating lamprey does not follow the mitigation hierarchy
- HRA in-combination assessment is insufficient and scheme location criteria require review

The key concerns we have regarding Soils and Best and Most Versatile (BMV) Agricultural Land are:

- Lack of clear commitment to reinstate all temporarily lost BMV land to its original classification after construction
- Lack of clear commitment to ensure soils are not handled when wet
- Lack of ALC Survey at land south of Farndon Roundabout

Part I: Summary and conclusions of Natural England's advice

Natural England's advice in these relevant representations is based on information submitted by National Highways in support of its application for a Development Consent Order ('DCO') in relation to the A46 Newark Bypass (*the project*).

Part I of these representations summarises what Natural England considers the main issues¹ to be in relation to the DCO application and indicate the principal submissions that it wishes to make at this point. Natural England will develop these points further as appropriate during the examination process. Natural England may have further or additional points to make, particularly if further information about the project becomes available.

Our comments are set out against the following sub-headings which represent our key areas of remit:

- Internationally designated sites
- Nationally designated sites
- Protected species
- Biodiversity net gain
- Nationally designated landscapes
- Soils and best and most versatile agricultural land
- Ancient woodland and ancient/veteran trees

¹ PINS NSIP Advice Note 11 Annex C sets out Natural England's role in infrastructure planning.

- Connecting people with nature (National Trails, open access land and England Coast Path)

Our comments are flagged as red, amber or green:

- **RED** are those where there are fundamental concerns which it may not be possible to overcome in their current form.
- **AMBER** are those where further information is required to determine the effects of the project and allow the Examining Authority to properly undertake its task and or advise that further information is required on mitigation/compensation proposals in order to provide a sufficient degree of confidence as to their efficacy.
- **GREEN** are those which have been successfully resolved (subject always to the appropriate requirements being adequately secured).

Natural England have not identified any red concerns based on the documents reviewed to date.

Natural England has been working closely with National Highways to provide advice and guidance since 06 November 2020. This has included discussions around: protected species licencing (and provision of a Letter of No Impediment with caveats in response to the applicant's draft bat mitigation licence), biodiversity net gain, habitat compensation, survey methodology, and other issues. Further information will be provided in the Statement of Common Ground which is currently being reviewed and development between National Highways and Natural England.

Part I of these representations provides an overview of the issues and a summary of Natural England's advice. Section 2 identifies the natural features relevant to this application. Section 3 summarises Natural England's overall view of the application and the main issues which it considers need to be addressed by the Secretary of State.

Part II of these representations sets out all the significant issues which remain outstanding, and which Natural England advises should be addressed by National Highways and the Examining Authority as part of the examination process in order to ensure that the project can properly be consented. These are primarily issues on which further information would be required in order to allow the Examining Authority properly to undertake its task or where further work is required to determine the effects of the project.

Natural England will continue discussions with National Highways to seek to resolve these concerns and agree outstanding matters in the Statement of Common Ground. Failing satisfactory agreement, Natural England advises that the matters set out in Section 4 will require consideration by the Examining Authority as part of the examination process.

The Examining Authority may wish to ensure that the matters set out in these relevant representations are addressed as part of the Examining Authority's first set of questions to ensure the provision of information early in the examination process.

2. The natural features potentially affected by this application

Internationally designated sites

In relation to Internationally Designated Sites (Special Areas of Conservation, Special Protection Areas, and Ramsar sites) the assessment provisions of the Conservation of Habitats and Species Regulations 2017 (and the Offshore Habitat Regulations) require that a competent authority may only agree to a plan or project of this nature after having ascertained, on the basis of an appropriate assessment, that it will not affect the integrity of the site(s). By this it is meant that such a plan or project may be granted authorisation only on the condition that the competent authority is certain, beyond reasonable scientific doubt, that it will not adversely affect the integrity of the site(s) concerned².

On the basis of the information submitted, Natural England is not yet satisfied for 'amber' issues identified in the text below that it can be ascertained beyond reasonable scientific doubt that the project would not have an adverse effect on the integrity of the following internationally designated sites:

- Humber Estuary SAC
- Humber Estuary Ramsar

Further information is required to assess the following impact pathways for the Humber Estuary designated sites:

- Construction silt and other water quality pathways during construction (NE1)
- Direct loss of key species (lamprey) individuals (NE2)
- Construction piling disturbance to key species (lamprey) (NE3)
- Omission of consideration of Operational Highway Light Spill (NE4)
- In-combination assessment (NE5, NE6)
- Construction light spill disturbance to key species (lamprey) (NE7)
- Impact of climate change and more frequent flood events on entrapment/isolation of key species (lamprey) (NE8)

Further detail on our reasoning for this is given against each impact pathway in Part II, Table 1.

Natural England has not identified any 'red' issues based on the documents submitted and reviewed to date.

Natural England is satisfied that 'green' issues are unlikely to result in adverse effects on the integrity of the Humber Estuary SAC/ Ramsar internationally designated sites, subject always to the appropriate mitigation/ compensation as outlined in the application documents being secured adequately. Further detail on our reasoning for assigning green issues is detailed in Part II, Table 1.

Nationally designated sites

The site is not located close to any nationally designated sites for biodiversity or geodiversity conservation, nor is it within any Site of Special Scientific Interest (SSSI) Impact Risk Zones. Any relevant impacts to features of the Humber Estuary SSSI are encompassed by our comments on impacts to the Humber Estuary SAC & Ramsar. Natural England has no further comments.

Protected species

Natural England has received submission of draft bat mitigation licence application for review, due to the presence of a confirmed bat roost in one of the buildings due to be demolished. Natural England has provided a Letter of No Impediment (dated 08/05/2024) with caveats which relate to additional surveys, consents and planning conditions.

Further information is provided in Part II, Table 1 (see NE11).

² CJEU Case no. C-127/02. Landelijke Vereniging tot Behoud van de Waddenzee & Nederlandse Vereniging tot Bescherming van Vogels –v- Staatssecretaris van andbouw, Natuurbeheer en Visserij [2004].

Biodiversity net gain

The Environment Act 2021 includes NSIPs in the requirement for biodiversity net gain (BNG) which will come into force in November 2025. Until that time, BNG is not mandatory, however, some projects are delivering BNG on a voluntary basis.

As BNG is not yet a mandatory requirement on the project Natural England has not assigned a RAG category and our comments at this stage should be considered as advisory only. Due to a loss of lowland meadow, a bespoke compensation agreement has been included within the DCO documentation.

Further detail regarding our comments on BNG is given in Part II, Table 1 (see NE12).

Nationally designated landscapes

The site is not located within, or within the setting of, any nationally designated landscapes. As a result, Natural England has no specific comments to make on the landscape implications of this development. The examining authority should have regard for the landscape character of the area and we welcome the reference to Natural England's National Character Areas within the Environmental Statement (ES). Natural England has no further comments.

Soils and best and most versatile agricultural land

Natural England's position regarding soils and the best and most versatile agricultural land is summarised below.

Overall, Natural England welcome the approach to ALC survey and soil management, however, we request some clarity regarding wet soil handling, reinstatement of agricultural land and the area of agricultural land not subject to ALC survey south of Farndon Roundabout

Further detail on our reasoning for this is given in Part II, Table 1 (see NE14, NE15 & NE16).

Ancient woodland and ancient/veteran trees

Our advice on ancient woodland and ancient/ veteran trees is limited to the Natural England and Forestry Commission's ['Standing Advice'](#).

Further detail on our reasoning for this is given in Part II, Table 1 (see NE18).

Connecting people with nature (National Trails, open access land and England Coast Path)

Natural England welcomes the proposals for new walking, cycling and horse-riding provision included in the project, as well as the control measures to minimise adverse effects on these users during the construction phase. The applicant should continue to consider connectivity with nature throughout the planning, construction and operational stages of the project.

Further detail on our reasoning for this is given in Part II, Table 1 (see NE19).

3. Natural England's overall conclusions

The main issues raised by this application are in relation to the Humber Estuary SAC/Ramsar internationally designated sites, and soils & BMV agricultural land. Further detail is given in Part II.

Our key comments in relation to internationally designated sites include:

- Omission of construction silt management measures in the Drainage Strategy
- Reference to 'loss of lamprey individuals' in the HRA report
- Limited explanation regarding the 'de minimis' impact of construction piling on key species (lamprey)
- Omission of consideration of Operational Highway Light Spill

- Prevention of light spill impact on migrating lamprey does not follow the mitigation hierarchy
- HRA in-combination assessment is insufficient and scheme location criteria require review

The key comments regarding Soils and Best and Most Versatile (BMV) Agricultural Land are:

- Lack of clear commitment to reinstate all temporarily lost BMV land to its original classification after construction
- Lack of clear commitment to ensure soils are not handled when wet
- Lack of ALC Survey at land south of Farndon Roundabout

Natural England's Relevant Representations

4. Part II: Natural England's detailed advice

Part II, Table 1 of these representations expands upon the detail of all the significant issues ('red' and 'amber' issues) which, in our view, remain outstanding and includes our advice on pathways to their resolution where possible. Table 1 also shows 'green' issues where a resolution has been reached and subject always to the appropriate requirements being adequately secured.

Natural England will continue engaging with the applicant to seek to resolve outstanding concerns throughout the examination. Natural England advises that the matters indicated as 'amber' will require consideration by the Examining Authority during the examination.

Natural England's Relevant Representations, Part II, Table 1

NE key issue ref	Topic	Issue summary and phase (Construction/ Operation/ Decommissioning)	Natural England commentary and advice on: <ul style="list-style-type: none"> • Further details about the project to enable assessment • Further evidence or assessment work required 	Natural England comment on the mechanism for securing mitigation/ compensation measures	Risk Red/ Amber/ Green
NE1	International designated sites <ul style="list-style-type: none"> • Humber Estuary SAC • Humber Estuary Ramsar 	Construction silt management measures are not specified in the Drainage Strategy Report (Construction phase)	<p>The Drainage Strategy Report does not include any measures to prevent silt and water quality impacts during construction, as the document relates to the operational phase of the project only. This contradicts the statement in Table 8-9 of ES Chapter 8: Biodiversity that states 'temporary drainage and silt management techniques are outlined in Appendix 13.4 (Drainage Strategy Report)'. The First Iteration EMP Table 3-2 (REAC) also repeats this statement.</p> <p>The HRA report (p30-31) includes reference to embedded construction mitigation measures for works close to the River Trent, namely silt fencing and protective fencing. However, the reference is brief and lacks detail around the measures that will be implemented.</p> <p>Construction silt is a key impact pathway that could cause direct harm to river and sea lamprey in the River Trent and</p>	Further information required.	Amber

NE key issue ref	Topic	Issue summary and phase (Construction/ Operation/ Decommissioning)	Natural England commentary and advice on: <ul style="list-style-type: none"> • Further details about the project to enable assessment • Further evidence or assessment work required 	Natural England comment on the mechanism for securing mitigation/ compensation measures	Risk Red/ Amber/ Green
			<p>the Humber, for example creating a barrier to migration and/or smothering gravel beds which may be used as breeding habitat. Further details on temporary drainage and silt management techniques need to be provided to assess the likely impact of construction works on international designated sites (Humber Estuary SAC and Humber Estuary Ramsar) and their qualifying features.</p> <p>The Environment Agency’s Pollution Prevention Guidelines should be adhered to, including: PPG1: Basic good environmental practices; PPG5: Works in, near or over watercourses; and PPG6: Construction and demolition sites. CIRIA Guidance C532 ‘Control of water pollution from construction sites - Guidance for consultants and contractors’ should also be adhered to.</p>		
NE2	International designated sites <ul style="list-style-type: none"> • Humber Estuary SAC • Humber Estuary Ramsar 	HRA screening: Omission of discussion regarding the ‘loss of lamprey individuals’	<p>Page 39 of the HRA report (Stage 1: Screening) refers to the possibility for likely significant effects (LSEs) ‘through the loss of lamprey individuals’. There is no other reference to direct loss of lamprey individuals in the report and it is not discussed further. It should be clarified whether this statement was included in error.</p> <p>The First Iteration EMP table 3-2 (REAC) reference B9 states ‘<i>Electro-fishing will be undertaken as part of fish rescue prior to sheet piling at Windmill Viaduct and works to Slough Dyke to mitigate injury and death of fish. The screening aperture across the abstraction pump inlets during dewatering works at Slough Dyke would be small enough to prevent access of European eel (yellow eel life stage) (no greater than 3mm).</i>’ These works have not been</p>	Further information required.	Amber

NE key issue ref	Topic	Issue summary and phase (Construction/ Operation/ Decommissioning)	Natural England commentary and advice on: <ul style="list-style-type: none"> • Further details about the project to enable assessment • Further evidence or assessment work required 	Natural England comment on the mechanism for securing mitigation/ compensation measures	Risk Red/ Amber/ Green
			<p>discussed in the HRA yet may have the potential to cause direct loss of lamprey individuals and thus a likely significant effect to Lamprey associated with the Humber Estuary.</p> <p>Further clarity on this impact pathway is required. If there is any possibility of direct harm or loss to be caused to lamprey individuals this needs to be clearly set out within the report, along with associated prevention measures.</p>		
NE3	International designated sites <ul style="list-style-type: none"> • Humber Estuary SAC • Humber Estuary Ramsar 	HRA Screening: Limited explanation provided regarding 'de minimis' impact of construction piling on key species (lamprey) (Construction phase)	<p>The HRA report (Stage 1: Screening; p37) refers to a potential 'de-minimis level impact upon resting lamprey or larval lamprey (if present)' due to daytime piling works. 'De-minimis', as defined in the HRA report glossary, relates to 'effects considered to be 'trivial' and those that have no appreciable effect on the site', and these effects are excluded from further assessment (para. 3.2.7).</p> <p>It is unclear whether a detailed appraisal has been undertaken to conclude a 'de-minimis' level impact on resting and larval lamprey. Regarding resting lamprey, there is reference to lamprey being a low hearing sensitivity fish species and it is explained that any impact would be localised and temporary (p31); however, it is not clear whether this would equate to a de-minimis impact. Regarding Spawning Lamprey, it is stated that habitat at the sites of piling works are considered sub-optimal for spawning, due to the slow water flow and no favourable area for spawning observed in or adjacent to these areas; it is unclear in the HRA how this habitat appraisal was been undertaken.</p>	Further information required.	Amber

NE key issue ref	Topic	Issue summary and phase (Construction/ Operation/ Decommissioning)	Natural England commentary and advice on: <ul style="list-style-type: none"> • Further details about the project to enable assessment • Further evidence or assessment work required 	Natural England comment on the mechanism for securing mitigation/ compensation measures	Risk Red/ Amber/ Green
			<p>Given that lamprey are a qualifying feature for the Humber Estuary SAC and Humber Estuary Ramsar, further explanation is required to rule out potential adverse impacts on resting and larval lamprey.</p>		
NE4	International designated sites <ul style="list-style-type: none"> • Humber Estuary SAC Humber Estuary Ramsar 	HRA Screening – Operational Lighting (Highway Lighting) (Operational Phase)	<p>The HRA does not make reference to operational light spill and it's possible effects on migrating lamprey. Natural England consider that the changes to the highway lighting scheme could introduce additional light spill and subsequently have a likely significant effect on migrating Lamprey.</p> <p>Whilst it is noted that operational highway lighting will be managed via a Highway Lighting Scheme (secured by DCO requirement 18), operational lighting should still be considered via the HRA. The highway lighting scheme may constitute embedded mitigation to avoid an LSE, but this should be considered within the HRA.</p>	Further Information Required	Amber
NE5	International designated sites <ul style="list-style-type: none"> • Humber Estuary SAC • Humber Estuary Ramsar 	HRA screening in-combination: Assessment of scheme location criteria (Construction and operational phases)	<p>Within the HRA in-combination assessment table (Stage 1: Screening; p40-48), projects are listed by distance from the SAC/ Ramsar. It is suggested that distance from the project is also an important factor for consideration. This is due to the River Trent's functional linkage to the designated sites, therefore in-combination effects of projects upstream of the Humber Estuary have the potential to impact the international sites.</p> <p>It is recommended that a further review is undertaken to ensure no further projects located close to the development require assessment.</p>	Further information required.	Amber

NE key issue ref	Topic	Issue summary and phase (Construction/ Operation/ Decommissioning)	Natural England commentary and advice on: <ul style="list-style-type: none"> • Further details about the project to enable assessment • Further evidence or assessment work required 	Natural England comment on the mechanism for securing mitigation/ compensation measures	Risk Red/ Amber/ Green
NE6	International designated sites <ul style="list-style-type: none"> • Humber Estuary SAC • Humber Estuary Ramsar 	HRA screening in-combination: Assessment lacks sufficient detail (Construction and operational phases)	<p>The HRA report notes that 16 developments have scope for in-combination effects with the project, plus a further four developments have ‘possible’ or ‘potential’ scope for in-combination effects (Stage 1: Screening; p40-48).</p> <p>Relevant impact pathways (to lamprey) that are identified include but are not limited to: noise and vibration disturbance, toxic and non-toxic contamination, changes in water and sediment quality during operation, entrapment, visual disturbance, entrapment, hydrological changes (quality/ flow), direct loss of intertidal habitat, indirect damage from construction activities, and direct loss/ damage to habitat.</p> <p>Given the scope for in-combination effects with up to 20 projects, it is considered that the HRA in-combination assessment (p40) is too brief and lacks sufficient detail. Based on the current information provided, it is difficult to rule out the possibility of significant in-combination effects.</p> <p>Further assessment and consideration of these in-combination effects is required to determine the likely significance.</p> <p>In addition, it is unclear whether non-NSIP projects are included in the in-combination assessment, as they are listed in the table (p42-48) but the report states on p40 that ‘non-NSIPs have not been detailed within the below table as the potential for in-combination effects is considered Unlikely’. Clarification is required.</p>	Further information required.	Amber

NE key issue ref	Topic	Issue summary and phase (Construction/ Operation/ Decommissioning)	Natural England commentary and advice on: <ul style="list-style-type: none"> • Further details about the project to enable assessment • Further evidence or assessment work required 	Natural England comment on the mechanism for securing mitigation/ compensation measures	Risk Red/ Amber/ Green
NE7	International designated sites <ul style="list-style-type: none"> • Humber Estuary SAC • Humber Estuary Ramsar 	HRA Appropriate Assessment: prevention of light spill impact on migrating lamprey does not follow mitigation hierarchy (Construction phase)	<p>The HRA report identifies ‘temporary severance of migratory routes along the river for breeding (as a result of artificial light spill)’ as a likely significant effect which is taken through to Stage 2: Appropriate Assessment. As noted in Section 5.3, bridge beam installation is planned during May 2026, which is within the lamprey migration season as noted within the HRA report. This may contravene conservation objectives associated with maintaining the population and distribution of qualifying species (river and sea lamprey) of the Humber Estuary SAC/ Ramsar.</p> <p>Following the mitigation hierarchy (avoid, mitigate, compensate), the applicant should first explore whether the bridge beam installation works could be programmed to avoid lamprey migration season, and/or to avoid nighttime works. If this is not possible, a rationale should be stated as to why the works are scheduled for May.</p> <p>If avoiding the lamprey migration season is not possible, stronger commitment should be made in regards the recommended mitigation measures to prevent light spill. Mitigation to minimise light spill impacts is recommended, which is welcomed, but there is no strong commitment to make sure all mitigation is followed throughout the duration of bridge beam installation works. Imprecise language, such as ‘where possible’, is used (para. 5.3.5). Production of a construction lighting strategy, containing further details of the light spill measures to be implemented, and with stronger commitment to their implementation would increase certainty around their effectiveness.</p>	Further information required.	Amber

NE key issue ref	Topic	Issue summary and phase (Construction/ Operation/ Decommissioning)	Natural England commentary and advice on: <ul style="list-style-type: none"> • Further details about the project to enable assessment • Further evidence or assessment work required 	Natural England comment on the mechanism for securing mitigation/ compensation measures	Risk Red/ Amber/ Green
			<p>In addition, the terminology used within the HRA Appropriate Assessment Section 5.3.7 is incorrect. It is concluded that an <i>LSE</i> can be ruled out after considering the effect of mitigation. Any mitigation required must be considered in the Appropriate Assessment to demonstrate '<i>no Adverse Effect On Integrity</i>'. Section 5 of the HRA should be reviewed to ensure impacts are considered with regard to site integrity.</p>		
NE8	International designated sites <ul style="list-style-type: none"> • Humber Estuary SAC • Humber Estuary Ramsar 	<p>HRA Appropriate Assessment: Mitigation to prevent entrapment/isolation of lamprey during flooding – consideration of climate change and more frequent flooding</p> <p>(Operational phase)</p>	<p>The mitigation measures set out in the Appropriate Assessment (Section 5 of the HRA report) to prevent entrapment/isolation of lamprey during flooding of the Farndon East flood compensation area (FCA) and Farndon West FCA include provision of fish escape passages and excavation of pools to sufficient depths to provide stable thermal properties.</p> <p>HRA section 5.2.3 states '<i>The specific number, location and design of fish escape passages will be finalised during detailed design</i>'. Natural England consider the principle of the proposed mitigation to be appropriate, however, the details of the design are important for their success. The commitment to provide this detailed design in collaboration with the EA is included within the First iteration EMP Table 3-2 (REAC), however, NE consider this commitment must be strengthened. At present, the wording at REAC Reference B9 says '<i>Following consultation with the Environment Agency...</i>'. Alteration to include a requirement for <i>agreement with the environment agency</i> would increase the level of certainty within the HRA that the proposed mitigation measures would be designed and implemented appropriately.</p>	Further information required.	Amber

NE key issue ref	Topic	Issue summary and phase (Construction/ Operation/ Decommissioning)	Natural England commentary and advice on: <ul style="list-style-type: none"> • Further details about the project to enable assessment • Further evidence or assessment work required 	Natural England comment on the mechanism for securing mitigation/ compensation measures	Risk Red/ Amber/ Green
			<p>The wording within HRA section 5.2.3 also states that the environment agency's recommendations regarding the fish escape passage design would be incorporated '<i>where possible</i>'. The use of imprecise language such as this introduce uncertainty around the implementation of these mitigation measures & should be amended.</p> <p>Natural England also note that the design of these measures must include consideration for changes to flood events caused by climate change.</p> <p>In addition, the terminology used within the HRA Appropriate Assessment Section 5.2.4 is incorrect. It is concluded that an <i>LSE</i> can be ruled out after considering the effect of mitigation. Any mitigation required must be considered in the Appropriate Assessment to demonstrate '<i>no Adverse Effect On Integrity</i>'. Section 5 of the HRA should be reviewed to ensure impacts are considered with regard to site integrity.</p>		
NE9	International designated sites <ul style="list-style-type: none"> • Humber Estuary SAC • Humber Estuary Ramsar 	HRA Screening: Reduction in habitat area, fragmentation, disruption and disturbance of international sites, and changes to key elements of the site (Construction and operational phases)	Natural England agrees with the conclusion of no likely significant effects on international designated sites regarding reduction in habitat area, changes to key elements of the site, and fragmentation, disruption and disturbance of the SAC or the Ramsar sites.	No further information required.	Green

NE key issue ref	Topic	Issue summary and phase (Construction/ Operation/ Decommissioning)	Natural England commentary and advice on: <ul style="list-style-type: none"> • Further details about the project to enable assessment • Further evidence or assessment work required 	Natural England comment on the mechanism for securing mitigation/ compensation measures	Risk Red/ Amber/ Green
NE10	National designated sites (biodiversity & geodiversity)	Location of nationally designated sites (Construction and operational phases)	The site is not located close to any nationally designated sites for biodiversity or geodiversity conservation, nor is it within a Site of Special Scientific Interest (SSSI) Impact Risk Zone. We note that the features of the Humber Estuary SSSI nationally designated site that are affected by this proposal are the same as the internationally designated site features. Please refer to the points in the 'Internationally designated sites' issues above for all 'amber' issues, that also apply to the Humber Estuary SSSI. Natural England has no further comments.	No further information required.	Green
NE11	Protected species	Protected species licenses (Construction phase)	<p>Based on the information provided in ES Chapter 8: Biodiversity, there is a requirement for a protected species licence to be obtained from Natural England for bats (ES 8.9.16).</p> <p>Natural England has received a draft bat mitigation licence application from the applicant on 13/03/2024. As stated in our published guidance, once Natural England is content that the draft licence application is of the required standard, we will issue a 'Letter of No Impediment'. This is designed to provide the Planning Inspectorate and the Secretary of State with confidence that the competent licensing authority sees no impediment to issuing a licence in future, based on information assessed to date in respect of these proposals.</p> <p>A Letter of No Impediment was provided by Natural England to the applicant on 08/05/2024. As set out in the letter, based on the information and proposals provided, Natural England sees no impediment to a licence being issued, should a DCO be granted. However, Natural England notes the following comments and caveats:</p>	No further information required.	Green

NE key issue ref	Topic	Issue summary and phase (Construction/ Operation/ Decommissioning)	Natural England commentary and advice on: <ul style="list-style-type: none"> • Further details about the project to enable assessment • Further evidence or assessment work required 	Natural England comment on the mechanism for securing mitigation/ compensation measures	Risk Red/ Amber/ Green
			<ul style="list-style-type: none"> • Prior to submission of the formal application, the applicant should ensure all necessary consents have been obtained and that all relevant planning conditions relating to wildlife have been discharged. • The current survey levels are deemed sufficient for Natural England to provide the Letter of No Impediment; however, we would expect pre-construction/ top up surveys be conducted to confirm the status of the bat roost in question, taking into consideration that suitability for hibernating bats may increase over time. • For a formal EPS Bat mitigation licence Natural England would expect the licence application to be based on survey data from the current or most recent optimal survey season. <p>Should the DCO be granted then the mitigation licence application must be formally submitted to Natural England. At this stage any modifications to the timings of the proposed works, e.g. due to ecological requirements of the species concerned, must be made and agreed with Natural England before a licence is granted.</p> <p>If other minor changes to the application are subsequently necessary, e.g. amendments to the work schedule/s then these should be outlined in a covering letter and must be reflected in the formal submission of the licence application. These changes must be agreed by Natural England before a licence can be granted. If changes are made to proposals or timings which do not enable us to meet reach a 'satisfied' decision, we will issue correspondence outlining why the</p>		

NE key issue ref	Topic	Issue summary and phase (Construction/ Operation/ Decommissioning)	Natural England commentary and advice on: <ul style="list-style-type: none"> • Further details about the project to enable assessment • Further evidence or assessment work required 	Natural England comment on the mechanism for securing mitigation/ compensation measures	Risk Red/ Amber/ Green
			<p>proposals are not acceptable and what further information is required. These issues will need to be addressed before any licence can be granted.</p> <p>Further information relating to wildlife licencing and NSIPs is provided within the Planning Inspectorate's Advice Note 11, Annex C – Natural England and the Planning Inspectorate. Specifically, at the bottom of page 6 and within Appendix I. See also Natural England's Standing Advice.</p>		
NE12	Biodiversity net gain	Biodiversity net gain	<p>Biodiversity Net Gain (BNG) is not mandatory for NSIPs until November 2025, therefore Natural England's comments at this stage should be considered as advisory only.</p> <p>Natural England has reviewed the Biodiversity Net Gain Technical Report (Appendix 8.14 to the ES), and the following is noted:</p> <ul style="list-style-type: none"> • The Biodiversity Metric 3.1 has been used. Natural England raise no concern with this and welcome that the version of the metric used throughout the project is consistent. It should be noted that following November 2025, use of the Statutory Biodiversity Metric is expected to be a legal requirement. • The mitigation hierarchy appears to have been applied. • The project demonstrates achievement of measurable net gain (4.99% net gain in habitat units, 8.17% net gain in hedgerow units, 36.93% net gain in river units). 	No further information required.	BNG not yet mandatory for NSIPs

NE key issue ref	Topic	Issue summary and phase (Construction/ Operation/ Decommissioning)	Natural England commentary and advice on: <ul style="list-style-type: none"> • Further details about the project to enable assessment • Further evidence or assessment work required 	Natural England comment on the mechanism for securing mitigation/ compensation measures	Risk Red/ Amber/ Green
			<ul style="list-style-type: none"> • Whilst the measurable net gain is noted and welcomed, the project does not achieve the recommended minimum 10% net gain – it is suggested that a commitment could be included within the DCO to achieve a minimum of 10% net gain. This is expected to become mandatory from November 2025. • The applicant proposes off-site habitat creation/enhancement at Doddington Hall, although it is noted that a legal agreement for this is yet to be finalised. • The scheme includes a ‘trading down’ in river units, with high distinctiveness habitat being compensated for with habitats of medium distinctiveness, and a reduction in the area of high distinctiveness ‘other rivers and streams’ (1.62ha lost and 0.86ha provided Biodiversity Net Gain Technical Report, para 5.1.18). Natural England would encourage habitat of high distinctiveness to be avoided or replaced with the same habitat of high distinctiveness. • Due to a loss of lowland meadow, a bespoke compensation agreement is stated to be required with Natural England (Biodiversity Net Gain Technical Report, para 5.1.15). It should be noted that in the absence of mandatory Biodiversity Net Gain, this is not currently a mandatory requirement. Nonetheless, an outline compensation agreement is included (Appendix A.6). It is noted that 0.1032ha of lowland meadow would be affected, 118m² of which would be permanent loss. Proposals set out in the outline compensation agreement include lowland 		

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			meadow compensation totalling 0.7505ha. In principle, Natural England considers the compensation proposed to be appropriate, subject to appropriate ongoing management.		
NE13	National designated landscapes	Location of site in relation to nationally designated landscapes (Construction and operational phases)	The site is not located within, or within the setting of, any nationally designated landscapes. As a result, Natural England has no specific comments to make on the landscape implications of this development. The examining authority should have regard for the landscape character of the area; we welcome the reference to Natural England's National Character Areas within ES Chapter 7: Landscape and Visual Effects.	No further information required.	Green
NE14	Soils and best and most versatile agricultural land	Agricultural Land Classification (ALC) survey (Construction and operational phases)	Natural England generally welcome the approach to the ALC survey, with a survey density of 1 auger per hectare applied across all agricultural land within the red line boundary. However, section 9.6.4 of ES Chapter 9 (Geology and Soils) states that access constraints meant that no ALC survey has been undertaken in a small area of the site south of Farndon Roundabout. Natural England would request clarity regarding any plans for post-consent ALC survey of this area, to inform the detailed Soil Management Plan (SMP). However, given the scale and location of this surveyed area, it may alternatively be suitable to apply a commitment where works in this area are undertaken under the supervision of a suitably qualified scientist to make on the spot judgements when handling soils.	Further information required.	Amber

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NE15	Soils and best and most versatile agricultural land	Reinstatement of temporarily lost agricultural land (Construction and operational phases)	<p>It is stated in Table 9-9 of ES Chapter 9: Geology and Soils that temporary loss of best and most versatile (BMV) agricultural land totals 9.4ha (5.9ha of Grade 2 and 3.5ha of Grade 3a agricultural land).</p> <p>Natural England welcomes the measures set out in the Outline Soil Management Plan (Appendix B.3 to ES Volume 2: First Iteration Environmental Management Plan), which includes a section on soil reinstatement and reuse (Section 4.6).</p> <p>However, it is suggested that a firm commitment is added to the DCO that all agricultural land subject to temporary losses will be reinstated to the same ALC grade (as surveyed pre-construction). In the absence of this statement, Natural England may consider the temporary losses to be 'permanent'.</p>	Further information required.	Amber
NE16	Soils and best and most versatile agricultural land	Handling of wet soils (Construction phase)	<p>Natural England welcomes the measures set out in the Outline Soil Management Plan (Appendix B.3 to ES Volume 2: First Iteration Environmental Management Plan), which is based upon Defra guidance (Code of Practice on Sustainable Soils on Construction Sites, 2009). The Outline Soil Management Plan (OSMP) includes a section on soil handling constraints (Section 4.3). It is apparent from the OSMP that the applicant understands that soil should only be handled when in a sufficiently dry state. Natural England welcome this but request a firm commitment that this practice is followed throughout the entire construction phase. This is particularly important given that the project is within a floodplain and subject to a high-water table and seasonal waterlogging (para. 4.3.3).</p>	Further information required.	Amber

NE key issue ref	Topic	Issue summary and phase (Construction/ Operation/ Decommissioning)	Natural England commentary and advice on: <ul style="list-style-type: none"> • Further details about the project to enable assessment • Further evidence or assessment work required 	Natural England comment on the mechanism for securing mitigation/ compensation measures	Risk Red/ Amber/ Green
			<p>The soil tests* listed below should be undertaken by a qualified soil scientist, with the rate of testing to increase closer to winter months. This information is provided as advice only.</p> <p>*Soil Tests <i>Soil tests are to be undertaken in the field. Samples shall be taken from at least five locations in the soil handling area. The tests shall include visual examination of the soil and physical assessment of soil consistency.</i></p> <p><u>Examination Test:</u></p> <ul style="list-style-type: none"> • <i>If the soil is wet, films of water are visible on the surface of soil particles or aggregates (e.g. clods or peds) and/or when a clod or ped is squeezed in the hand it readily deforms into a cohesive ‘ball’ – NO HANDLING should take place</i> • <i>If the sample is moist (i.e. there is a slight dampness when squeezed in the hand) but it does not significantly change colour (darken) on further wetting, and clods break up/crumble readily when squeezed in the hand rather than forming into a ball – HANDLING OK.</i> • <i>If the sample is dry, it looks dry and changes colour (darkens) if water is added, and it is brittle – HANDLING OK.</i> <p><u>Consistency Test</u> <i>First Test – Attempt to mould soil sample into a ball by hand:</i></p>		

NE key issue ref	Topic	Issue summary and phase (Construction/ Operation/ Decommissioning)	Natural England commentary and advice on: <ul style="list-style-type: none"> • Further details about the project to enable assessment • Further evidence or assessment work required 	Natural England comment on the mechanism for securing mitigation/ compensation measures	Risk Red/ Amber/ Green
			<ul style="list-style-type: none"> • Impossible because soil is too dry and hard – HANDLING OK • Impossible because the soil is too loose and dry – HANDLING OK • Impossible because the soil is too loose and wet – NO HANDLING • Possible – GO TO NEXT TEST <p>Second Test – Attempt to roll ball into a 3mm diameter thread by hand:</p> <ul style="list-style-type: none"> • Impossible because soil crumbles or collapses – HANDLING OK • Possible – NO HANDLING <p>NB: It is impossible to roll most coarse loamy and sandy soils into a thread even when they are wet. For these soils, the result of the Examination test alone must be adhered to.</p> <p>Weather and ground conditions Soil handling shall cease during rain, sleet or snow. The following criteria shall be applied:</p> <ul style="list-style-type: none"> • In light drizzle soil handling may continue for up to 4 hours unless the soils are already too moist • In light rain soil handling must cease after 15 minutes • In heavy rain and intense showers, handling shall cease immediately • After rain has ceased, soil tests shall be applied to determine when handling may restart, provided that the ground is free from puddles. 		
NE17	Soils and best and most versatile	Permanent loss of BMV land <20ha	It is stated in Table 9-9 of ES Chapter 9: Geology and Soils that permanent loss of best and most versatile (BMV) agricultural land totals up to 15.7ha (>1ha of Grade 2 and	No further information required.	Green

NE key issue ref	Topic	Issue summary and phase (Construction/ Operation/ Decommissioning)	Natural England commentary and advice on: <ul style="list-style-type: none"> • Further details about the project to enable assessment • Further evidence or assessment work required 	Natural England comment on the mechanism for securing mitigation/ compensation measures	Risk Red/ Amber/ Green
	agricultural land	(Operational Phase)	<p>14.7ha of Grade 3a agricultural land). Assuming all temporarily lost BMV land is reinstated to its original condition (see NE15), the total permanent loss of BMV is below 20ha; falls outside the scope of the Development Management Procedure Order (as amended) consultation arrangements.</p> <p>If there is a change to the amount of BMV agricultural land to be lost, it is requested that Natural England be re-consulted.</p>		
NE18	Ancient woodland and ancient/ veteran trees	Potential air quality impacts on ancient woodland and veteran trees	<p>As noted in ES Chapter 8: Biodiversity, there is one ancient woodland (also designated Spring Wood, Kelham LWS) located within 200m of the affected road network (para. 8.8.15). There are also several veteran trees located within 200m of the affected road network. Given their proximity, these receptors may experience changes to air quality due to the project.</p> <p>Where Ancient Woodland and Ancient/Veteran Trees do not form part of a SSSI, Natural England will only provide bespoke advice in exceptional circumstances. As a result, our advice in this instance is limited to the Natural England and Forestry Commission ‘Standing Advice’ for ancient woodland, ancient trees and veteran trees.</p>	No further information required.	Green
NE19	Connecting people with nature	Opportunities to connect people with nature	Transport schemes such as the A46 Newark Bypass have the potential to generate positive impacts regarding connecting people with nature, for example by creating new access routes such as footpaths, cycle paths and bridleways, and reducing route fragmentation. There is also potential for adverse impacts, for example route severance,	No further information required.	Green

NE key issue ref	Topic	Issue summary and phase (Construction/ Operation/ Decommissioning)	Natural England commentary and advice on: <ul style="list-style-type: none"> • Further details about the project to enable assessment • Further evidence or assessment work required 	Natural England comment on the mechanism for securing mitigation/ compensation measures	Risk Red/ Amber/ Green
			<p>closures and diversions during construction works and operational phases.</p> <p>Natural England welcomes the proposals for new walking, cycling and horse-riding provision, including a new combined footway/ cycleway at Winthorpe, and new connections between existing severed routes (ES Chapter 2: The Scheme, para. 2.5.58 to 2.5.65).</p> <p>It is also noted that the applicant proposes a number of diversions and control measures to minimise adverse effects on walking, cycling and horse-riding routes during construction (ES Chapter 2, Table 2-7).</p> <p>Natural England welcomes the measures to improve and increase people’s connectivity with nature. The applicant should continue to consider connectivity with nature throughout the planning, construction and operational stages of the project.</p>		

Natural England's Relevant Representations

PART III: Natural England's detailed comments on the Development Consent Order (DCO) and associated documents

Page	DCO/DML or omission ref	Natural England's comments	Risk (Red/Amber/Green)
61	Requirement 3 – Second Iteration EMP: Register of Environmental Actions and Commitments (REAC)	Natural England note the inclusion of Table 3-2 within the First Iteration EMP, the REAC (Register of environmental actions and commitments), which sets out all of the required actions and commitments to avoid environmental harm, along with how these have been secured through the DCO. Natural England welcome the wording of Requirement 3, which includes the requirement that the Second Iteration EMP must reflect the mitigation measures required by the REAC and set out in the Environmental Statement.	GREEN
61 & 65	Requirement 3 – Second Iteration EMP & Requirement 13 – Surface and Foul Water Drainage: Construction surface water management	Natural England refer to our comments at NE1, regarding the need for construction surface water management to avoid impacts to Lamprey associated with the Humber Estuary SAC/Ramsar. The DCO sets out at requirement 3 the need for production of a Pollution prevention Plan (also committed to within REAC ref RDWE2) and an Erosion & Sediment Management Plan (also committed to within REAC ref RDWE3). Requirement 13 also specifies that no development shall commence until such time as ' <i>...means of pollution control</i> ' have been submitted and approved. Natural England welcome the commitment to the production of these plans and consider that they have been suitably secured through the DCO. We raise no issue with the wording of the DCO with regard to these plans. Nonetheless, at present, the submission documents lack clarity on how surface water pollution will be managed during construction, and further detail is required to provide certainty within the HRA that the proposed plans will include the required measures to avoid a likely significant effect on the Humber Estuary SAC/Ramsar.	GREEN
61	Requirement 3 – Second Iteration EMP:	The wording of requirement 3 including the need for the piling works method statement is welcomed. Natural England refer to our comments at NE3, regarding	GREEN

Page	DCO/DML or omission ref	Natural England's comments	Risk (Red/Amber/Green)
	Pling Works Method Statement	<p>the conclusion of no LSE from piling works on Lamprey associated with the Humber Estuary SAC/Ramsar. The HRA relies upon the piling methods as embedded mitigation to avoid this impact; as such it is important that the piling works method statement is secured within the DCO.</p> <p>As noted in our comments at NE3, clarity is sought on the rationale behind the conclusion of no LSE from piling works, however, we raise no issue with the wording of the DCO with regard to this method statement.</p>	
61	Requirement 3: Second Iteration EMP: Biodiversity Net Gain	<p>Natural England welcome the commitment in requirement 3 to produce the Biodiversity Net Gain Management and Monitoring Plan and Biodiversity Net Gain Audit Report.</p> <p>With reference to our comments at NE12, whilst there is not mandatory requirement, Natural England would encourage the commitment to the delivery of a minimum of 10% Biodiversity Net Gain.</p>	As BNG is not yet a mandatory requirement on the project Natural England has not assigned a RAG category and our comments at this stage should be considered as advisory only.
61	Requirement 3: Second Iteration EMP Soil Management Plan	<p>Natural England welcome the commitment in requirement 3 to produce the Soil Management Plan.</p> <p>With reference to our comments at NE14, 15 &16, Natural England would welcome further clarity on these points being included within the oSMP, or REAC, to ensure they are reflected in the detailed SMP, however, we raise no issue with the wording of the DCO with regard to this Management Plan.</p>	GREEN
64	Requirement 10: Protected Species	Natural England welcomes the inclusion of requirement 10. We also welcome the wording specifying that work must cease if any protected species are found beyond those identified in the environmental statement, and work must not re-commence until any necessary licences are obtained.	GREEN
65	Requirement 14: Flood Compensation Storage	Natural England reference our comments on NE8. Flood Compensation works may have a likely significant effect to Lamprey Associated with the Humber	AMBER

Page	DCO/DML or omission ref	Natural England's comments	Risk (Red/Amber/Green)
		<p>Estuary SAC/Ramsar. Detailed Design of the Flood Compensation Areas is key to ensuring this impact is avoided.</p> <p>Requirement 14 secures the production of the Flood Compensation Scheme, and includes wording to ensure the Environment Agency are consulted, which is welcomed. Nonetheless, Natural England consider this wording could be strengthened to reference the need for this scheme to include fish escape passages and refuge areas, and/or to require agreement with the Environment Agency regarding the detail of the Flood Compensation Scheme, as opposed to the current commitment only to consult with the Environment Agency.</p>	
66	Requirement 18: Highway Lighting:	<p>Natural England refer to our comments at NE4. The implementation of highway lighting scheme may be required to avoid impacts to migratory Lamprey associated with the Humber estuary SAC/Ramsar.</p> <p>Requirement 18 includes the need for the highway lighting scheme to reflect the relevant mitigation measures included in Chapter 8 (Biodiversity), which is welcomed. Consideration of the impact of highway lighting on Lamprey is required within the HRA, however, we raise no issue with the wording of the DCO with regard to the lighting scheme.</p>	GREEN
N/A	Omission: Construction Lighting Strategy	<p>Natural England refer to our comments at NE7. There is a likely significant effect from construction light spill on migratory lamprey.</p> <p>Currently, the ES documents and DCO make no reference to a specific lighting strategy for construction. Whilst reference is made to construction light spill mitigation measures in REAC ref B9, Natural England consider that where these mitigation measures are relied upon within the HRA for the effective mitigation of this impact, commitment should be made to the production of a construction lighting strategy, to ensure the proposed measures are implemented effectively.</p>	AMBER

