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Environment Agency

Planning Inspectorate

[via Planning Inspectorate website]

Our ref: XA/2024/100105/01-L01
Your ref: TR010065
Date: 12 July 2024

Dear Sir/Madam,

A46 Newark Bypass – Development Consent Order Application

A46 from Farndon Roundabout to Winthorpe Roundabout, near Newark-On-Trent

Registration as Interested Party and Submission of Relevant Representations

We are advised that on 23 May 2024 an application (reference: TR010065) for a Development Consent Order (DCO) was accepted by the Planning Inspectorate for examination.

These Relevant Representations contain an overview of the project issues which fall within our remit. They are given without prejudice to any future detailed representations that we may make throughout the examination process. We may also have further representations to make when supplementary information becomes available in relation to the project.

We have reviewed the draft DCO, Environmental Statement (ES) and supporting documents submitted to the Planning Inspectorate as part of the above-mentioned application.

Summary of Environment Agency position

1) The flood risk has not been appropriately assessed. Therefore, there is a risk that the proposed mitigation measures are not appropriate. As proposed, the development is shown to increase flood risk elsewhere.

2) Insufficient information has been submitted in relation to the realignment of Slough Dyke (main river).

3) Insufficient information has been submitted in relation to the Scheme's interaction with Environment Agency flood defences.

4) There are missed opportunities for environmental and ecological improvements in relation to the aquatic environment, including biodiversity net gain for watercourses.

5) There is insufficient commitment to addressing invasive species impacting the aquatic environment, principally Himalayan Balsam.

6) Water quality matters have not been adequately addressed. The Water Framework Directive Compliance Assessment has not been satisfactorily carried out. There is a risk that surface water run-off associated with diffuse highways run-off, combined with other sources, is not adequately addressed. Further mitigation for water quality and watercourses is likely to be required.

7) Surface water and groundwater quality monitoring requirements are not adequate.

8) The presence of the British Sugar authorised landfill site in relation to the development has not been adequately assessed.

9) Further commitment and additional plans are required in relation to the Environmental Management Plan. This includes the requirement for a Dewatering Management Plan, securing site-specific piling risk assessments and method statements, and surface water and groundwater monitoring commitments. Further information is also needed in relation to waste disposal options.

10) Consumptive water usage has not been adequately considered.

11) Several DCO Requirements need to be amended, and the Environment Agency included as a consultee. We have also requested an additional Requirement in relation to piling.

12) The legislation for Environment Agency permits and licences is not being disapplied in the DCO. However, we acknowledge the Applicant's intention to pursue the disapplication of the Environmental Permitting Regulations in relation to flood risk activities, which if agreed by us will require a protective provision for our benefit to be included in the DCO.

We will continue to work with the Applicant to address the issues we have identified as we move towards the Examination stage.

Appendix 1 – Environmental Statement and supporting documents - key issues and advice

Appendix 2 – Draft Development Consent Order and other documents - key issues and advice

Appendix 3 – Supplementary advice to the Applicant

Yours faithfully

Mr Alex Hazel
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Appendices

Appendix 1 – Environmental Statement and supporting documents – key issues and advice

Flood risk

Topic	Flood risk exception test (part 2) – fluvial flood risk
Document references	APP-177 – 6.3 Environmental Statement - Appendix 13.2 Flood Risk Assessment (ref. TR010065/APP/6.3, Revision 1, April 2024)
Issue reference	EAFR-001
Issue	The submitted flood risk assessment (FRA) fails to satisfy the second part of the flood risk exception test, insofar as it relates to fluvial flood risk.
Impact	• As submitted, the FRA shows the Scheme would increase flood risk elsewhere over the lifetime of the development. Despite acknowledging the increases in flood risk, the FRA does not consider any additional mitigation measures to offset these increases. • The FRA also fails to consider any opportunities presented by the Scheme for reducing fluvial flood risk overall.
Solution	• The Applicant needs to ensure the Scheme does not result in an increase in flood risk elsewhere, regardless of how minor this increase may be. Where an increase in flood risk is unavoidable then additional flood risk mitigation needs to be considered for offsetting this increase, with the affected landowners being consulted. • The Applicant should also demonstrate that opportunities to reduce flood risk overall have been considered and incorporated where achievable.
Additional comments	• The Scheme lies within Flood Zone 3a, on the Flood Map for Planning (rivers and sea), which is land defined by the planning practice guidance (PPG) for flood risk and coastal change as having a high probability of flooding. In accordance with table 2 of the PPG, development classified as 'essential infrastructure' under Annex 3 of the National Planning Policy Framework (NPPF) is only appropriate in these areas if the exception test is passed alongside the sequential test. • Paragraph 171 of the NPPF makes clear that both elements of the exception test must be passed for development to be permitted. Part 2 of the test requires the Applicant to demonstrate, via a site-specific flood risk assessment (FRA), that the development will be safe, without increasing flood risk elsewhere and, where possible, the development should reduce flood risk overall. This is further supported by paragraphs 5.107 and 5.108 of the 2015 National Networks National Policy

	Statement (NNNPS) and paragraph 5.128 of the 2024 NNPS, which was designated on 24 May 2024.
	
	• Paragraphs 5.108 of the 2015 NNNPS and 5.128 of the 2024 NNNPS state that "For the Exception Test to be passed:
	  • it must be demonstrated that the project provides wider sustainability benefits to the community that outweigh flood risk; and
	  • an FRA must demonstrate that the project will be safe for its lifetime, without increasing flood risk elsewhere and, where possible, will reduce flood risk overall."

Topic	**Increase in fluvial flood risk elsewhere**
Document references	APP-177 – 6.3 Environmental Statement - Appendix 13.2 Flood Risk Assessment (ref. TR010065/APP/6.3, Revision 1, April 2024)
Issue reference	EAFR-002
Issue	The FRA indicates that fluvial flood risk will be increased elsewhere as result of the development over its lifetime.
Impact	• Section 8 of the FRA sets out various instances where an increase in flood risk is expected as a result of the operational phase of the Scheme. • Furthermore, Figure 10.1 of the FRA shows a minor increase in flood risk to Tolney Lane during the construction phase; we are particularly concerned by any increase in flood risk to this specific area. These increases are considered within the FRA to be 'minor' or 'negligible', but do still result in failure to pass part 2 of the flood risk exception test.
Solution	Reconsider the compensatory flood storage proposals to ensure flood risk is not increased elsewhere. If this is not achievable, it must be demonstrated in the FRA that the Applicant has considered all options to address this issue.
Topic	**Overall reduction in fluvial flood risk**
Document references	APP-177 – 6.3 Environmental Statement - Appendix 13.2 Flood Risk Assessment (ref. TR010065/APP/6.3, Revision 1, April 2024)
Issue reference	EAFR-003
Issue	The FRA fails to demonstrate that opportunities to reduce flood risk overall have been considered.
Impact	There is a missed opportunity for the Scheme to provide wider flood risk benefits at the same time as ensuring flood risk is not increased as result of the development. The FRA therefore fails to adequately address the second part of the exception test.

Solution	The FRA should consider opportunities for the Scheme to reduce flood risk overall. For example, paragraph 11.1.5 of the FRA acknowledges the existing flood risk to Brownshill Roundabout and the Central Market Junction; although the risk is existing, it is unclear if opportunities to reduce the flood risk to these areas been considered. Given their link to the proposed scheme, it would be sensible to explore opportunities to increase their resilience to fluvial flood risk in line with the proposed scheme.
Topic	**Compensatory flood storage**
Document references	APP-177 – 6.3 Environmental Statement - Appendix 13.2 Flood Risk Assessment (ref. TR010065/APP/6.3, Revision 1, April 2024)
Issue reference	EAFR-004
Issue	The FRA fails to provide details on the amount and location of the flood storage being displaced, compared to the amount and location of flood storage being provided, demonstrating that any flood storage provided will become effective at the same point in a flood event as the lost storage would have done.
Impact	This information is important because if the compensation volumes are provided at the wrong elevation, then flood waters can still be displaced even though the overall volume provided may be the same as what was there before. The provision of this information is essential in being able to justify the floodplain compensation strategy proposed and determine whether opportunities for reducing flood risk overall have been maximised. In the absence of this detail, we are unable to validate the impacts of the Scheme and its proposed flood risk mitigation. As such, there remains a risk.
Solution	Provide details in the FRA of where exact volumes of flood storage are being lost at each level, and subsequently compensated for, to demonstrate the proposed compensatory flood storage is sufficient, and where possible can provide additional storage to reduce flood risk to the local area and Scheme overall.
Additional comments	• The best way to compensate for flood storage loss is to recreate an area of floodplain that mimics the area, shape and volume of the section of floodplain that has been lost by the development. • If it is not possible to provide level-for-level and volume-for-volume compensation then the FRA should demonstrate that this option has been considered and explain why it has not been possible, whilst detailing how any associated risks from the chosen form of mitigation can be minimised. For example, the current proposal does not provide level-for-level floodplain compensation at the lower flood heights of 8.6metres above Ordnance Datum (mAOD) to 9.06mAOD, so it is important to have

	a thorough understanding of the impact of this. Therefore, it may be appropriate for the Applicant to consider simulating the 1-year flood event to address the impacts on third parties of not providing this lower-level floodplain compensation.
Topic	**Compensatory flood storage – phasing of works**
Document references	APP-177 – 6.3 Environmental Statement - Appendix 13.2 Flood Risk Assessment (ref. TR010065/APP/6.3, Revision 1, April 2024)
Issue reference	EAFR-005
Issue	No consideration is given within the FRA to the phasing of works and when certain areas of floodplain compensation will become available to ensure that there is no loss in flood storage capacity at any point during the construction of the Scheme.
Impact	Without a commitment to precise timings, there is a risk that development could take place in areas defined as being at risk of flooding from fluvial sources, which could displace floodwaters and impact third parties if compensatory flood storage is not operational at the time of flooding.
Solution	The FRA should provide further detail on timing/phasing arrangements for the floodplain compensation scheme in relation to the wider Scheme to ensure there is no increase in flood risk at any point during construction. Requirement 14 should also be revised to specify that the implementation of the compensatory flood storage must be in accordance with the Scheme's agreed timing/phasing arrangements.
Topic	**Compensatory flood storage – maintenance**
Document references	APP-177 – 6.3 Environmental Statement - Appendix 13.2 Flood Risk Assessment (ref. TR010065/APP/6.3, Revision 1, April 2024)
Issue reference	EAFR-006
Issue	The maintenance of proposed flood compensation has not been considered. Further justification and reassurance are required before we can be satisfied with the appropriateness of the proposals.
Impact	• Paragraph 3.3.17 of the FRA refers to a series of culverts beneath the A617 to enable flood water conveyance to the floodplain compensation area. Reliance on culverts for floodplain conveyance is not usually recommended as they can become blocked or infilled, which would restrict flood flows reaching the compensation area, resulting in an increase in flood risk elsewhere. • Additionally, paragraph 8.2.5 of the FRA refers to the widening of the carriageway resulting in additional piers 'causing a restriction to water flowing from west to east on the right bank of the River Trent', which has resulted in local flood levels increasing by up to 26mm. Debris

	can build-up and cause blockages around the piers, which would reduce the flood storage potential of the land and also increase the risk of flooding elsewhere.
Solution	• The FRA should consider the impact on flood risk should the culverts beneath the A617 become blocked and flood water be unable to reach the floodplain compensation area. We would expect the assessment to be informed by blockage modelling, a rationale for the culvert sizes chosen, and how the risk of culvert failure or blockage can be mitigated. The latter should be addressed through a maintenance plan, outlining who would be responsible for culvert maintenance and how frequently it will be undertaken. The maintenance plan should be maintained in perpetuity. • Similarly, the FRA should consider the maintenance strategy for the carriageway piers proposed within the floodplain, in order to demonstrate that there will not be any debris build up between the piers that could result in a blockage risk and the subsequent in loss of flood storage capacity.
Topic	**Slough Dyke (main river) realignment**
Document references	• APP-177 – 6.3 Environmental Statement - Appendix 13.2 Flood Risk Assessment (ref. TR010065/APP/6.3, Revision 1, April 2024) • 6.3 Environmental Statement - Appendix 13.2 Flood Risk Assessment - Appendix A – Fluvial Hydraulic Modelling Report (ref. TR010065/APP/6.3, Revision 1, March 2024)
Issue reference	EAFR-007
Issue	No detailed drawings for the Slough Dyke realignment have been provided and the realignment has also not been represented within the hydraulic modelling undertaken.
Impact	• The realignment of the Slough Dyke (as mentioned in paragraph 3.3.28 and shown in Figure 3-2 of the FRA) is necessary to facilitate the proposed scheme's layout. However, no detailed plans for the realignment have been provided to enable a more thorough assessment of the flood risk implications of the realignment. • Although FRA paragraph 3.3.29 states the realignment is 'not predicted to alter the current hydraulics, and therefore flooding regime of this watercourse in the local area', further evidence is required to support this. Currently paragraph 6.1.5 of the 'A46 Newark Trent 2023 Fluvial Hydraulic Modelling Report' (FRA Appendix A) states "the Slough Dyke watercourse alignment was retained from its original hydraulic model", but we would expect the updated hydraulic modelling to account for this realigned channel to give a more accurate representation of the proposed scheme and to better

	understand the flood implications. Without this information we cannot be confident in our assessment of the flood risks, both to the development and to third parties, resulting from the realignment, and what could be done to mitigate any potential flood risks.
Solution	Detailed drawings should be provided and with-mitigation scheme modelling re-run with the realignment to understand the flood risk impacts.
Topic	**Interaction with Environment Agency flood defences**
Document references	APP-177 – 6.3 Environmental Statement - Appendix 13.2 Flood Risk Assessment (ref. TR010065/APP/6.3, Revision 1, April 2024)
Issue reference	EAFR-008
Issue	There is limited information available on the Scheme's interaction with the existing Environment Agency flood defences. The FRA mentions that the Scheme will 'tie-in' with existing Environment Agency flood defences (see paragraphs 3.4.2 and 7.7.2), but there is no explanation for how this will occur, or how it will be ensured that there will be no detriment to the defences.
Impact	• FRA paragraph 7.7.2 states that the "scheme design directly interfaces with these flood defences and suitable measures have been put in place in order that the existing defences are not structurally compromised or altered in terms of crest height". However, without further details of how this interface will be managed, we cannot confirm whether proposals are acceptable. • There is no evidence to demonstrate that the proposal will not restrict essential maintenance and emergency access to the defences (the permanent retention of a continuous unobstructed area is an essential requirement for future maintenance and/or improvement works), or whether the proposed development is likely to adversely affect the construction and stability of the flood defences, which will compromise their function.
Solution	• Further information should be provided on the current Standard of Protection (SoP) of the existing defences, their composition, current condition, and inspection regime. • Detailed plans for areas around the defences, showing tie-in with the Scheme, should be provided. The lifetime of the defences should ideally be commensurate with the lifetime of the Scheme, so if this is not the case then the Applicant should consider opportunities to ensure they are brought up to the Scheme's lifetime.
Additional comments	• Although the detailed construction approach to works in/around the Environment Agency defences would be addressed under a flood risk activity permit, we still

	expect the DCO submission to be supported by the outline construction principles for how it will be ensured that the flood defences are not negatively impacted by the proposed scheme works. • The Environment Agency would be keen to engage in further discussions on flood defences as soon as information is available.
Topic	**Climate change allowances sensitivity test**
Document references	APP-177 – 6.3 Environmental Statement - Appendix 13.2 Flood Risk Assessment (ref. TR010065/APP/6.3, Revision 1, April 2024)
Issue reference	EAFR-009
Issue	The FRA has not assessed a credible maximum peak river flow climate change scenario, in line with GOV.UK guidance on climate change allowances for flood risk assessments. This is expected given the Scheme's status as a Nationally Significant Infrastructure Project (NSIP) and its proposed 120-year lifespan.
Impact	Without assessing a credible maximum scenario, it is unclear how sensitive the Scheme is to changes in the climate for different future scenarios, so consideration for how the Scheme can be adapted to large-scale climate change over its lifetime has not been considered.
Solution	The FRA should include a sensitivity assessment of the Upper End (62%) climate change allowance for peak river flow.
Additional comments	• For information, please refer to: https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances • Paragraph 4.10 of the 2024 NNNPS states that the "applicant should also be able to demonstrate how proposals can be adapted over their predicted lifetimes to remain resilient to a credible maximum climate change scenario."

Fisheries, biodiversity and geomorphology

Topic	**Use of borrow pits for fry refuge**
Document references	• APP-046 – 6.1 Environmental Statement - Chapter 2 The Scheme (ref. TR010065/APP/6.1, Revision 1, April 2024) • APP-052 – 6.1 Environmental Statement - Chapter 8 Biodiversity (ref. TR010065/APP/6.1, Revision 1, April 2024)
Issue reference	EAFBG-001

Issue	The use of borrow pits for fisheries benefits by converting them into permanent fry refuge areas after use in construction. In particular, the Brownhills borrow pit.
Impact	Although the Brownhills borrow pit is no longer required as a floodplain compensation area, there is a missed opportunity to provide fisheries improvements as part of the Scheme.
Solution	Consideration should be given to converting suitable borrow pits into fry refuges as part of the Scheme's ecological enhancements.
Additional comments	• Converting borrow pits into fry refuge after construction use would benefit fisheries. This would go towards Environmental Targets Regulations 2022 by reducing the risk of species extinction through increasing refuge sites for juvenile fish, giving refuge from floods to migratory fish such as Eels and lamprey and increasing wildlife rich habitats. • The fry refuges can also go towards improving Water Framework Directive (WFD) status by helping improve status with a designed wetland. This can also help mitigate road run off impacts by utilising the surrounding reedbeds and other flora as buffers to main rivers, to deal with any adverse influence from the proposed A46 works that could negatively affect water quality parameters. • Benefits could also be delivered in relation to The Eels Regulations 2009, to halt and reverse the decline of in eel stocks by providing safe refuge and feeding grounds for the European Eel during its migration. It is recorded that this site is part of the migratory route (desk study data) and the provision of a refuge could be a valued conservation measure. We note there is a provision of mitigation in compliance with the Eels Regulations (detailed in section 8.10 of the Environmental Statement - Chapter 8 Biodiversity).
Topic	**Water Framework Directive (WFD) – water body mitigation**
Document references	APP-176 – 6.3 Environmental Statement - Appendix 13.1 Water Framework Directive Compliance Assessment (ref. TR010065/APP/6.3, Revision 1, April 2024)
Issue reference	EAFBG-002
Issue	Not all works impacting water bodies will be mitigated.
Impact	Whilst a WFD deterioration from this Scheme is unlikely, given the WFD assessment results, if the relatively minor impacts that the Scheme is introducing are not mitigated, then there is a risk of there being a cumulative impact on the water body when combined with other schemes. Therefore, it would stand to benefit the water body to mitigate all impacts.
Solution	• We suggest that all works impacting WFD Water Bodies should be mitigated to avoid cumulative impacts. • Opportunities for further mitigation should be

	incorporated into the Scheme, such as looking to naturalise areas of artificial banks, so that the Scheme does not add to any cumulative pressure on the water body. This could be combined with considerations about BNG concerning the water bodies.
Additional comments	• In particular, the scheme intends to mitigate impacts to the bank of the River Trent (Trent from the Soar to the Beck - Water Body ID: GB104028053110) through restoring the natural banks impacted by the works where possible. However, it is not clear if this includes the sheet piling and supporting riprap installed in the construction of the Scheme. If not, there may be a risk of cumulative impact that ideally would be best to mitigate. • There is also no mitigation proposed for the 10-metre culvert extension on Old Trent Dyke (ordinary watercourse).
Topic	**Biodiversity net gain – missed opportunity for watercourse improvements**
Document references	APP-159 – 6.3 Environmental Statement - Appendix 8.14 Biodiversity Net Gain Technical Report (ref. TR010065/APP/6.3, Revision 1, April 2024)
Issue reference	EAFBG-003
Issue	There is a lack of watercourse improvements as a part of the Scheme
Impact	There is a missed opportunity to provide some improvements to river habitats and geomorphology as a part of the Scheme.
Solution	Further consideration should be given to opportunities to enhance the natural processes and habitats of local waterbodies, this could include reconnecting the waterway with the floodplain, removing artificial structures and barriers, introduce woody material into rivers, and so on.
Additional comments	• Based on the physical habitat surveys, there appears to be a prevalent issue of siltation in the waterbodies, this could look to be addressed with more natural geometries, flow deflectors and catchment-based silt management, for example. • Other issues potentially that could be addressed to deliver a net gain include, non-native invasive plant species (NNIPS) cover, reinforcement and artificial features on banks, bed and margin, and groundcover management.
Topic	**Biodiversity net gain – improvements to river units**
Document references	APP-159 – 6.3 Environmental Statement - Appendix 8.14 Biodiversity Net Gain Technical Report (ref. TR010065/APP/6.3, Revision 1, April 2024)
Issue reference	EAFBG-004

Issue	The BNG strategy does not appear to incorporate improvements to river units. The BNG Technical Report lists river units in the pre-development baseline, but not in post-development improvements.
Impact	As submitted, the proposals result in a lost opportunity to affect river habitat and geomorphology improvements to achieve net gains for biodiversity. Improvements to the geomorphology of rivers is positively connected with water quality improvements and resilience to water quality impacts, which could be achieved through this development.
Solution	The Applicant should reconsider increased BNG in relation to river units and reconnecting rivers to their floodplains within the environmental management and BNG plans, particularly in relation to Slough Dyke.
Additional comments	• We would also welcome the consideration of removing off-site barriers to upstream fish migration at the following location: • Pingley / Car Dyke, Staythorpe Road Bridge (British National Grid reference: SK7599454140) – WFD Waterbody: Pingley/Rundell Dyke Catch Upper (trib of Trent) (Water Body ID: GB104028053420). • As Car Dyke is openly connected to the River Trent at Averham, this is the first obstruction that fish migrating further upstream are likely to encounter. This would complement the ambition to improve fish passage on the River Trent. The Applicant should be aware that there may be for funding options (community fund program) or in-kind support with access or temporary works locations for access to the waterbody.
Topic	**Invasive species – Himalayan Balsam**
Document references	• APP-184 – 6.5 Environmental Statement - First Iteration Environmental Management Plan (ref. TR010065/APP/6.5, Revision 1, April 2024) • APP-158 – 6.3 Environmental Statement - Appendix 8.13 River Physical Habitat Technical Report (ref. TR010065/APP/6.3, Revision 1, April 2024) • APP-153 – 6.3 Environmental Statement - Appendix 8.8 Aquatic Ecology Technical Report (ref. TR010065/APP/6.3, Revision 1, April 2024)
Issue reference	EAFBG-005
Issue	There is insufficient commitment to addressing spread of the non-native species, Himalayan Balsam, which is identified as impacting the development site (documented in the River Physical Habitat Technical Report).
Impact	Insufficiently dealing with the presence of Himalayan Balsam can severely impact on habitat availability, biodiversity and loss for water-dependent species, increases erosion, and increases

	the ability to contain and stop its spread further up and down the catchments within the vicinity of the project area.
Solution	• The First Iteration Environmental Management Plan (EMP) should be updated to ensure commitment to adequately addressing the spread of Himalayan Balsam. • We recommend that an Invasive Non-native Species (INNS) Management Plan for Himalayan Balsam is prepared. This should include the eradication of existing upstream and downstream sections of waterbodies outside the DCO limits where possible*. This is important, otherwise Himalayan Balsam upstream and downstream will continue to greatly impact waterbodies within the project area. • To ensure we are consulted on the INNS Management Plan in relation to the discharge of Requirement 3 (Second Iteration EMP), we should be named as consultee on the Requirement in the DCO. In the absence of our involvement in developing the documents which form part of the Second Iteration EMP, there is a risk that the spread of invasive species, such as Himalayan Balsam, is not adequately addressed.
Additional comments	• *A similar proactive approach was adopted for the Cocker Beck prior to construction on the new reservoir at Lowdham. • We recommend the information within the River Physical Habitat Technical Report is incorporated within the INNS Management Plan. • A list of all non-native species identified by their surveys has been included in the Aquatic Ecology Technical Report (Table 4-2). This list incorporates all INNS in a single list with no consideration to the different risks posed by each species. If INNS management is proposed, the Applicant may wish to provide a method for prioritising different species.

Water quality

Topic	**Water quality – surface water run-off**
Document references	• APP-057 – 6.1 Environmental Statement - Chapter 13 Road Drainage and Water Environment (ref. TR010065/APP/6.1, Revision 1, April 2024) • APP-176 – 6.3 Environmental Statement - Appendix 13.1 Water Framework Directive Compliance Assessment (ref. TR010065/APP/6.3, Revision 1, April 2024)
Issue reference	EAWQ-001
Issue	• Surface water run-off associated with diffuse highways run-off, combined with other sources.

	• There is a need to protect and improve water quality of WFD catchments where they have 'Moderate' to 'Poor' ecological WFD status. Reasons for Not Achieving Good (RNAGS) in relation to existing highways diffuse pollution appears to not be adequately addressed.
Impact	• There are identified existing impacts from highways diffuse run-off, in accordance with WFD catchment data. Due to the proposed road widening and increased highways surfaces, diffuse run-off if likely to increase. This will likely have increased negative impacts on water quality. Additionally, where this is combined with other sources of pollution (e.g. urban surface water, sewerage) this is likely to have cumulative impacts on water quality and WFD status. These have not been addressed. • It is not clear how water quality improvements to existing issues of diffuse pollution and any cumulative impacts from the proposed development (construction and operational phases) will be positively addressed.
Solution	• There is a need to further explore existing flow pathways and existing highways outfalls to better understand existing and cumulative water quality impacts from any increases in surface water runoff. Opportunities should be identified and incorporated to improve existing surface water diffuse highways pathways. This should be combined with the water quality monitoring scheme. • Opportunities should also be explored to set back culverts and incorporate with Sustainable Drainage Systems (SuDS) and constructed wetlands. We note the one near Farndon roundabout, which is positive, but it only addresses the proposed construction and not existing and cumulative issues, which is a missed opportunity. Stepped improvements are required.
Additional comments	Water bodies impacted include: Devon from Cotham to Trent Water Body (Water Body ID: GB104028052632) • WFD status is overall Poor Slough Dyke Catchment (trib of Trent) Water Body (Water Body ID: GB104028053111) • Overall Moderate, but classed 'Bad' for Dissolved Oxygen (DO), 'Bad' for invertebrates, 'Poor' for Ammonia and 'Poor' for Phosphate. • RNAGS relate to diffuse pollution from highways runoff Trent Bifurcation Pingley Dyke to Winthorpe Water Body (Water Body ID: GB104028053390) • WFD status is overall 'Moderate'

	• RNAGS are associated with highways diffuse pollution, i.e. Phosphate (Poor), Macrophytes and Phytobenthos Combined (Moderate) and Invertebrates (Moderate) Trent from Soar to The Beck Water Body (Water Body ID: GB104028053110) • WFD status is overall 'Moderate' • RNAGS related to diffuse pollution from highways especially Phosphate (Poor) and Physical Modification.
Topic	**Water quality – surface water sensitivity**
Document references	APP-057 – 6.1 Environmental Statement - Chapter 13 Road Drainage and Water Environment (ref. TR010065/APP/6.1, Revision 1, April 2024)
Issue reference	EAWQ-002
Issue	In the assessment of significance (section 13.5.8), the sensitivity of surface waters is derived from the importance of surface waters as detailed in Table 13-1. Importance has been assessed using WFD classification and the Q95 flow, with high importance equalling a higher Q95. The sensitivity of a watercourse to water quality impacts is the reverse, with less dilution meaning a watercourse is more sensitive.
Impact	This approach risks underestimating the sensitivity of waterbodies and therefore underestimating the significance of an affect.
Solution	Professional judgment should also be exercised when determining the sensitivity of a watercourse to water quality impacts. If this has been done it is not currently clear within the description provided.
Topic	**Water Framework Directive (WFD) – detailed assessment**
Document references	APP-176 – 6.3 Environmental Statement - Appendix 13.1 Water Framework Directive Compliance Assessment (ref. TR010065/APP/6.3, Revision 1, April 2024)
Issue reference	EAWQ-003
Issue	Table 5-1 states that upgrades to the existing drainage for the road would prevent contaminated runoff from entering the 'Trent from Soar to The Beck' (water body). The detailed assessment has deemed that WFD compliance is achieved in this catchment as a result.
Impact	This is potentially misleading, as several outfalls are confirmed to discharge directly into this waterbody. This statement gives the impression that there will be no discharge of road runoff into this catchment. As a result, it is unclear whether the detailed assessment is accurate.
Solution	This section should not state that contaminated runoff will be prevented.

Topic	**Water Framework Directive (WFD) – detailed assessment**
Document references	APP-176 – 6.3 Environmental Statement - Appendix 13.1 Water Framework Directive Compliance Assessment (ref. TR010065/APP/6.3, Revision 1, April 2024)
Issue reference	EAWQ-004
Issue	The detailed assessment described in Tables 5-1 to 5-4 does not confirm whether a comparison of the proposed drainage impacts shows an improvement or deterioration from the existing baseline.
Impact	Without making this assessment clear, it cannot be deemed that the Scheme achieves compliance with WFD for Physico-Chemical, Specific Pollutant or Chemical elements.
Solution	The detailed assessment should reference the Highways England Water Risk Assessment Tool (HEWRAT) assessment and confirm whether the proposed drainage strategy offers an improvement on the existing baseline. This is particularly pertinent, as transport drainage has been identified as a RNAG status for almost all of the assessed waterbodies. The mitigation must ensure that the proposed development does not increase the contribution from this RNAG.
Topic	**Highways England Water Risk Assessment Tool (HEWRAT) – baseline**
Document references	APP-178 – 6.3 Environmental Statement - Appendix 13.3 HEWRAT Assessment (ref. TR010065/APP/6.3, Revision 1, April 2024)
Issue reference	EAWQ-005
Issue	The HEWRAT results do not offer the results from the existing baseline for comparison.
Impact	Without these results for comparison, it is unclear whether the Scheme offers an improvement or deterioration from the existing baseline.
Solution	A HEWRAT assessment should be completed for the existing baseline conditions and the results offered for comparison. This will make it clear whether the Scheme will reduce or increase the contribution from the Reason for Not Achieving Good (RNAG) listed above.
Topic	**Surface water quality monitoring – frequency**
Document references	• APP-184 – 6.5 Environmental Statement - First Iteration Environmental Management Plan (ref. TR010065/APP/6.5, Revision 1, April 2024) • APP-180 – 6.3 Environmental Statement - Appendix 13.5 Surface Water Quality Monitoring Report (ref. TR010065/APP/6.3, Revision 1, April 2024)
Issue reference	EAWQ-006

Issue	The Surface Water Quality Monitoring Report proposes quarterly monitoring of water quality during the construction phase.
Impact	Quarterly monitoring may be insufficient for identifying significant but short-term impacts. Additionally, it risks impacts to the water environment not being detected for prolonged periods of time.
Solution	The Applicant should increase the frequency of monitoring to at least monthly, or to reflect the monitoring conditions of any environmental permits that they may apply for.
Additional comments	This requirement should be secured within the Surface Water Quality Monitoring Report as part of Second Iteration EMP.
Topic	**Surface water quality monitoring – ecological monitoring**
Document references	• APP-184 – 6.5 Environmental Statement - First Iteration Environmental Management Plan (ref. TR010065/APP/6.5, Revision 1, April 2024) • APP-180 – 6.3 Environmental Statement - Appendix 13.5 Surface Water Quality Monitoring Report (ref. TR010065/APP/6.3, Revision 1, April 2024)
Issue reference	EAWQ-007
Issue	The Surface Water Quality Monitoring Report does not propose any ecological monitoring.
Impact	A lack of ecological monitoring means that the Applicant will not have any oversight on the ecological impact of their activities, and therefore will be unable to manage them accordingly.
Solution	Ecological monitoring should be incorporated into the monitoring of the water environment to ensure that ecological impacts can be appropriately managed.
Additional comments	This requirement should be secured within the Surface Water Quality Monitoring Report as part of Second Iteration EMP.
Topic	**Surface water quality monitoring – baseline**
Document references	APP-180 – 6.3 Environmental Statement - Appendix 13.5 Surface Water Quality Monitoring Report (ref. TR010065/APP/6.3, Revision 1, April 2024)
Issue reference	EAWQ-008
Issue	In section 4.1.1, Table 4-1 provides the results from the surface water quality monitoring to date. Sampling has only been completed on 3 occasions and has returned some extreme results (i.e. 62.1 mg/l Biochemical Oxygen Demand).
Impact	This current level of monitoring is unlikely to provide a representative picture of the baseline environment. Any assessment that utilises this data risks underestimating the quality of the existing baseline and therefore could also underestimate the likely impacts of the Scheme.
Solution	Any assessment that relies on this data should be reconsidered to ensure impacts are not being underestimated. If the Applicant

	does not believe the results of these assessments are impacted by relying on this data, they should provide a clear explanation on why they believe this is so.
Additional comments	If the Applicant deems an assessment needs to be completed with more accurate data, they may wish to consider requesting Environment Agency data as a proxy.
Topic	**DCO Requirement 3 – Second Iteration Environmental Management Plan (EMP)**
Document references	APP-021 – 3.1 draft Development Consent Order (ref. TR010065/APP/3.1, Revision 1, April 2024)
Issue reference	EAWQ-009
Issue	The Environment Agency is not listed as a consultee for the Second Iteration EMP.
Impact	The Second Iteration EMP is an essential tool for controlling impacts to the water environment and ensuring compliance with environmental permits. The EMP could be less effective if it has been developed without consultation from the Environment Agency.
Solution	The Environment Agency should be listed as a consultee for the Second Iteration EMP.
Additional comments	Please also refer to Appendix 2 – Issue ref. EAREQ-001.

Groundwater and contaminated land

Topic	**British Sugar authorised (active) landfill site**
Document references	• APP-053 – 6.1 Environmental Statement - Chapter 9 Geology and Soils (ref. TR010065/APP/6.1, Revision 1, April 2024) • APP-064 – 6.2 Environmental Statement - Figure 2.2 - Environmental Constraints Plan Superseded by AS-025 [Sheet 3 of 4]
Issue reference	EAGWCL-001
Issue	The presence of the British Sugar authorised (active) landfill site within the Order Limits (red line boundary) and environmental and permit-related impacts associated with the development proposal have not been adequately addressed.
Impact	• There remains the potential for the development proposal to impact on controlled waters through the mobilisation of contaminants during construction, if the issue is not satisfactorily assessed. • The authorised landfill is regulated by the Environment Agency through the Environmental Permitting regime. In this regard, it is unclear as to:

	• how the development may impact the active permit boundary; • whether the proposed works extend onto the landfill site, and if they may affect the locations of existing monitoring boreholes on or around the site.
Solution	• Clarification should be provided by the Applicant on the issues detailed above. The Applicant should demonstrate the proposed development will not detrimentally impact controlled waters or the authorised landfill. • The existing boreholes must be identified, protected and not damaged by any of the proposed works. The boreholes are critical for ongoing monitoring, risk assessment and environmental protection and must not be damaged or affected by the proposed works. As such, we require confirmation that the boreholes will be retained and protected from damage. • If the boundaries (i.e. authorised landfill site boundary / Order Limits), as shown on the submitted plans, are incorrect then these should be amended to the correct boundary to avoid confusion and unnecessary concerns.
Additional comments	Approximate location where the authorised landfill is shown to encroach within the Order Limits: National Grid Reference SK7976654750 (X: 479766, Y: 354750). This is shown on Sheet 3 of 4 of the submitted Environmental Constraints Plan (Figure 2.2) [AS-025].
Topic	**Dewatering Management Plan (DWMP)**
Document references	APP-184 – 6.5 Environmental Statement - First Iteration Environmental Management Plan (ref. TR010065/APP/6.5, Revision 1, April 2024)
Issue reference	EAGWCL-002
Issue	The requirement for a dewatering management plan (DWMP) to be submitted as part of the Second Iteration EMP has not been included.
Impact	For a project of this nature and scale, without a DWMP to set out the approach to dewatering, there is a risk that unexpected dewatering may be necessary and associated delays to the delivery of the Scheme, particularly where Environment Agency permits and/or licences may be required.
Solution	The Applicant should commit to preparing and putting a dewatering management plan in place.
Additional comments	• An effective DWMP should ensure that good practice relating to the site is adhered to throughout the development, and that there is a pre-planned procedure for dealing with any unexpected challenges or issues that occur which require dewatering in certain areas of the site. A DWMP will also aiding the permitting process and contribute to timely decision making.

	• The provision of a dewatering management plan should be included in the First Iteration EMP and reflected in the Consents and Agreements Position Statement. The requirement for DWMP should also be listed in Requirement 3 (Second Iteration EMP) of the DCO.
Topic	**Piling method statements and risk assessments**
Document references	APP-184 – 6.5 Environmental Statement - First Iteration Environmental Management Plan (ref. TR010065/APP/6.5, Revision 1, April 2024)
Issue reference	EAGWCL-003
Issue	There is a lack of clarity regarding the specificity of piling method statements and piling risk assessments. Piling method statements and piling risk assessments need to be site-specific, and the risks assessed based on the site hydrogeology and potential for contamination.
Impact	• Method statements must demonstrate that the piling risk assessment which has been undertaken assesses site-specific site investigation and hydrogeological information, in order to justify the selected piling method, and which clearly demonstrate that there are no risks or impacts to controlled waters arising from the proposed piling works. Without this there is a risk of groundwater impacts. • Furthermore, site-specific piling method statement and risk assessments must be submitted to the Local Planning Authority (LPA) in consultation with the Environment Agency for approval *prior* to commencing piling works on the site. It is not acceptable to submit these documents for approval after the piling works have started or have been completed on the site. In this case, we will not agree the documents until further site investigation works and risk assessment is undertaken on the site to ensure that no adverse impacts have occurred, which risks project delays. • Given the above, there is the potential for environmental impacts if works carried out before approval is sought and delays to project delivery until any issues are resolved.
Solution	• The Applicant should update the First Iteration EMP to address the above issue and identify the requirement for site-specific piling method statements and risk assessments, which are to be submitted to the LPA in consultation with the Environment Agency prior to piling activities commencing. • We would also request a DCO Requirement to be included in relation to piling and will work with the developer to agree this.
Additional	Please refer to Appendix 2 – Issue ref. EAREQ-007.

comments	
Topic	**Surface water and groundwater monitoring**
Document references	APP-184 – 6.5 Environmental Statement - First Iteration Environmental Management Plan (ref. TR010065/APP/6.5, Revision 1, April 2024)
Issue reference	EAGWCL-004
Issue	There is a lack of clarity in relation to surface water and groundwater monitoring commitments.
Impact	• The document states in the Record of Environmental Actions and Commitments (REAC) table (actions RDWE6 and RDWE7) that "surface water monitoring to be carried out before, during and after construction to ensure no adverse impact on water quality" and "groundwater monitoring to be undertaken preconstruction for at least 12 months, during construction and post construction". • Due to the size and complexity of the project, the Environment Agency request that the surface and groundwater monitoring results are sent to us monthly for the duration of the project (i.e. before, during and after construction). This is so we have sufficient time to review the data and identify any arising impacts in a timely manner.
Solution	The First Iteration EMP should be amended to reflect the above position and confirm that the monitoring results are to be sent to the Environment Agency on a monthly basis.
Additional comments	We will separately confirm with the Applicant where the information should be submitted (i.e. appropriate email address).
Topic	**DCO Requirement 8 - Contaminated land and groundwater**
Document references	APP-021 – 3.1 draft Development Consent Order (ref. TR010065/APP/3.1, Revision 1, April 2024)
Comments	Please refer to Appendix 2 – Issue ref. EAREQ-004.

Waste

Topic	**Disposal of waste – British Sugar landfill**
Document references	APP-184 – 6.5 Environmental Statement - First Iteration Environmental Management Plan (ref. TR010065/APP/6.5, Revision 1, April 2024)
Issue reference	EAWA-001

Issue	It is not clear if the Applicant intends to pursue an option to deposit any waste arisings at the British Sugar authorised landfill site.
Impact	If the Applicant approaches British Sugar with a proposal to deposit waste arisings at their landfill site, the Environment Agency would need to be satisfied that such waste was allowed under the existing environmental permit. This therefore has implications for the waste management strategy and potential delays to the project.
Solution	The Applicant should confirm their intentions regarding waste disposal and the British Sugar authorised landfill site, and discuss any permit implications with our National Permitting Service (NPS).
Additional comments	• Our understanding is that this is not allowed as the existing environmental permit only allows the deposit of wastes arising from British Sugar's production process. • British Sugar may consider varying their permit to allow deposition of waste arisings from the development works, but this may prove problematic given the current limits on the permit for the deposit of production process waste.

Water resources

Topic	**Water usage – abstraction licencing**
Document references	APP-023 – 3.3 Consents and Agreements Position Statement (ref. TR010065/APP/3.3, Revision 1, April 2024)
Issue reference	EAWR-001
Issue	The documentation submitted acknowledges the requirement for abstraction licences for de-watering and anticipates short term low risk (being exempt) and longer term (requiring a licence) needs. However, there is inadequate information on other consumptive uses of water required for the construction phase of the development.
Impact	• In the absence of further information on other consumptive uses of water, the abstraction licencing requirements are not clear, which impacts our understanding of this issue and therefore how it could impact the Scheme. • The impact of licence restrictions (see comment below) may therefore affect design and on-site operations during construction. There could also be in delays to the implementation of the Scheme where licences are required from the Environment Agency post-decision.
Solution	We recommend considering potential consumptive demands for water in more detail and a further investigation of options for

	different sources of supply as this may affect the project design (e.g. if site storage is needed for times of unavailability).
Additional comments	• Wheel washing and dust suppression are identified in sections of the ES in the context of water quality risks and within the First Iteration EMP. However, the impacts on water resources have not been evaluated thus far and options for the use of different sources of supply have not yet been considered. • Abstraction licence requirements for dust suppression is included in the Consents and Agreements Position Statement, however it is assumed that this can be included in the dewatering licence. • Whether a licence can be granted for de-watering will depend on the nature of the source of supply, it is likely that this will be a groundwater unit, some of which are closed to new consumptive abstraction. If the water can be returned to the same source of supply, this may be deemed non-consumptive for which an application is more likely to be accepted. • Incorporating an intervening use into this process (e.g. dust suppression) would subsequently incur a loss which then makes this a consumptive use. • Surface water sources of supply in this catchment are licensed with hands off flow restrictions which protect the downstream catchment. This is likely to make water unavailable for periods of the year when flows are low. Often water demand increases in these periods (e.g. increased need for dust suppression in hot dry weather). • Problem solving supply issues should not be underestimated and should be considered as early as possible in the planning process. • More information about water availability can be found in the Lower Trent and Erewash Abstraction Licensing Strategy (https://assets.publishing.service.gov.uk/media/5f5f6d5e8fa8f51064e88a22/Lower-Trent-and-Erewash-Abstraction-Licensing-Strategy.pdf). • We welcome engagement with the Environment Agency, as described in the Consents and Agreements Position Statement, either through thematic meetings and/or via our NPS pre-application route.

General / cross-cutting comments

Topic	**Required Environment Agency permits and licences**
Document	APP-023 – 3.3 Consents and Agreements Position Statement

references	(ref. TR010065/APP/3.3, Revision 1, April 2024)
Issue reference	EAGCC-001
Issue	The list of consents and agreements may not be conclusive and, depending on situations encountered, others may be needed that have yet to be identified, for example, relating to water resources licencing, water discharge permits and waste management.
Impact	There is a risk of delays to the delivery of the Scheme where consents and agreements are insufficiently comprehensive to allow the Environment Agency to effectively deal with permit applications, queries and fully understand what the project requires.
Solution	• The Applicant should review the Consents and Agreements Position Statement document and further consider what is required. • To avoid any delays during the project the Applicant should ensure that the Consents and Agreements Position Statement comprehensively covers a range of scenarios that may, or may not occur, insofar as it is possible.
Additional comments	We recommend early engagement and pre-application advice is sought to ensure that all the consents, agreements and supporting management strategies are in place and issued without undue delay.

Appendix 2 – Draft Development Consent Order and other documents – key issues and advice.

Disapplication of other Environment Agency permits and licences

Document references	• APP-021 – 3.1 draft Development Consent Order (ref. TR010065/APP/3.1, Revision 1, April 2024) • APP-023 – 3.3 Consents and Agreements Position Statement (ref. TR010065/APP/3.3, Revision 1, April 2024)
Comments	**Disapplication of flood risk activity permits (FRAPs)** • We acknowledge that the Applicant is not currently seeking to disapply the Environmental Permitting Regulations (EPR) for flood risk activities in the draft Development Consent Order (DCO) but, it is indicated in the Consents and Agreements Position Statement that they may seek to do so. The applicant should therefore confirm if they are indeed seeking the disapplication of the EPR for flood risk activities. • It should be noted that the EPR for flood risk activities cannot be disapplied without our consent. Should we agree to disapplication following further discussions with the Applicant, the draft DCO will need to be updated to include our protective provisions. **Disapplication of other Environment Agency permits and licences** We acknowledge that the Applicant is not seeking to disapply any other Environment Agency permits and licences, as confirmed in the Consents and Agreements Position Statement.

Development Consent Order (DCO) Requirements

Document reference: APP-021 – 3.1 draft Development Consent Order (ref. TR010065/APP/3.1, Revision 1, April 2024)

Topic	**Requirement 3 – Second Iteration Environmental Management Plan (EMP)**
Document references	Draft DCO, Schedule 2, Requirements, Part 1 Requirements, page 61
Issue reference	EAREQ-001
Issue	The Environment Agency is not listed as a consultee for the Second Iteration EMP.

Impact	Where the Second Iteration EMP is developed without consultation with the Environment Agency, it could be less effective and the range of environmental matters (such as surface water and groundwater quality, water resources, aquatic ecology, flood risk and waste management, for example) within our remit may not be adequately addressed, which could lead to avoidable impacts if not satisfactorily managed.
Solution	The Environment Agency should be listed as a consultee for the Second Iteration EMP.
Topic	**Requirement 4 – Third Iteration Environmental Management Plan (EMP)**
Document references	Draft DCO, Schedule 2, Requirements, Part 1 Requirements, page 61
Issue reference	EAREQ-002
Issue	The Environment Agency is not listed as a consultee for the Third Iteration EMP.
Impact	Where the Third Iteration EMP is developed without consultation with the Environment Agency, it could be less effective and environmental matters within our remit may not be adequately addressed.
Solution	The Environment Agency should be listed as a consultee for the Third Iteration EMP.
Topic	**Requirement 6 – Landscaping**
Document references	Draft DCO, Schedule 2, Requirements, Part 1 Requirements, page 62
Issue reference	EAREQ-003
Issue	The Environment Agency is not listed as a consultee for landscaping details.
Impact	Where we are not listed as a consultee, there is a risk that matters within our remit are not adequately address. Principally, our concerns in this regard relate to potential impacts on main rivers, flood defences and works in flood risk areas (Flood Zone 3).
Solution	The Environment Agency should be listed as a consultee to ensure that we are consulted on matters related to our functions.
Topic	**Requirement 8 - Contaminated land and groundwater**
Document references	Draft DCO, Schedule 2, Requirements, Part 1 Requirements, page 63
Issue reference	EAREQ-004
Issue	The current wording of Requirement 8 does not require construction to stop if unsuspected contamination is discovered pending investigation and remediation where required.

Impact	There is a risk that contaminants are mobilised if construction continues without appropriate investigation and remediation where required, which could impact on controlled waters.
Solution	To address the above, the wording of the Requirement should be amended. We have the following suggested wording (to be agreed): • *If contamination is found, the construction activity should stop in the affected area, pending the undertaking of risk assessment, production of a remediation scheme/programme and undertaking of the remediation itself.*
Topic	**Requirement 13 – Surface and foul water drainage**
Document references	Draft DCO, Schedule 2, Requirements, Part 1 Requirements, page 65
Comments	We note that the Lead Local Flood Authority (LLFA) is not listed as a consultee in relation to its lead role in surface water flood risk and managing surface water run-off, as such we would recommend their inclusion in this Requirement. This is to be discussed between the Applicant and the relevant LLFA.
Topic	**Requirement 14 – Flood compensatory storage**
Document references	Draft DCO, Schedule 2, Requirements, Part 1 Requirements, page 65
Issue reference	EAREQ-005
Issue	Sub-paragraph 2 states the climate change allowance as 35%, which is not correct for this location and does not accord with the flood risk assessment.
Impact	The Requirement wording does not align with the submitted flood risk assessment, which is based on the correct 39% climate change allowance for this location, therefore there is a risk of misinterpretation and a lack of clarity.
Solution	The wording of this Requirement should be amended to address the above issue.
Additional comments	Rather than correcting the error, we would however recommend that the percentage reference is removed and reworded as per the following suggestion (to be agreed), to ensure the flood risk assessment is the point of reference: • *2) The schemes prepared under paragraph (1) must provide suitable flood storage for any flood waters that would be displaced by the authorised development in the 1 in 100 year plus ~~35%~~ appropriate climate change allowance ~~event,~~ in line with the approved flood risk assessment.*
Topic	**Requirement 15 – Flood risk assessment**
Document	Draft DCO, Schedule 2, Requirements, Part 1 Requirements,

references	page 65
Issue reference	EAREQ-006
Issue	We currently do not agree with the wording in sub-paragraph 2, as we have unresolved issues with the flood risk assessment in relation to increases in flood risk elsewhere.
Impact	We defer to agreeing the wording of the Requirement, subject to the Applicant satisfactorily addressing the issues we have identified with the flood risk assessment in relation to increases in flood risk elsewhere as a result of the development.
Solution	The wording of the Requirement will need to be agreed with us pending a resolution of the flood risk issues we have identified and may need to be amended. We will continue to work with the Applicant to address this issue.
Topic	**Additional Requirement – Piling**
Document references	Draft DCO, Schedule 2, Requirements, Part 1 Requirements
Issue reference	EAREQ-007
Issue	We request the inclusion of a DCO Requirement for piling risk assessments.
Impact	This is to secure the completion of piling risk assessments to be agreed with the Environment Agency *prior* to commencing any piling activities.
Solution	Include a suitably worded Requirement in the DCO.
Comments	• Please refer to Appendix 1 – Issue ref. EAGWCL-003. • Suggested wording for the piling DCO Requirement (to be agreed): 1. *No part of the authorised development may be commenced until a piling risk assessment for that part has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.* 2. *Construction works for the authorised development must be carried out in accordance with the approved piling risk assessment.*

Book of Reference

Document references	APP-027 – 4.3 Book of Reference (ref. TR010065/APP/4.3, Revision 1, April 2024)
Comments	We confirm that the Environment Agency does not have any land interests that fall within the limits of the DCO.

Appendix 3 – Supplementary advice to the Applicant

Flood risk activity permit (FRAP) requirements

The Environmental Permitting (England and Wales) Regulations 2016 require a permit or exemption to be obtained for any activities which will take place:

- on or within 8 metres of a main river (16 metres if tidal)
- on or within 8 metres of a flood defence structure or culverted main river (16 metres if tidal)
- on or within 16 metres of a sea defence
- involving quarrying or excavation within 16 metres of any main river, flood defence (including a remote defence) or culvert
- in the floodplain of a main river if the activity could affect flood flow or storage and potential impacts are not controlled by a planning permission

For further guidance please visit https://www.gov.uk/guidance/flood-risk-activities-environmental-permits or contact our National Customer Contact Centre on 03708 506 506 (Monday to Friday, 8am to 6pm) or by emailing enquiries@environment-agency.gov.uk.

The Applicant should not assume that a permit will automatically be forthcoming once planning permission has been granted, and we advise them to consult with us at the earliest opportunity.

Dewatering – abstraction licence requirements

Dewatering is the removal/abstraction of water (predominantly, but not confined to, groundwater) in order to locally lower water levels near the excavation. This can allow operations to take place, such as mining, quarrying, building, engineering works or other operations, whether underground or on the surface.

The dewatering activities on-site could have an impact upon local wells, water supplies and/or nearby watercourses and environmental interests.

This activity was previously exempt from requiring an abstraction licence. Since 1 January 2018, most cases of new planned dewatering operations above 20 cubic metres a day will require a water abstraction licence from us prior to the commencement of dewatering activities at the site.

More information is available on gov.uk: https://www.gov.uk/guidance/water-management-apply-for-a-water-abstraction-or-impoundment-licence#apply-for-a-licence-for-a-previously-exempt-abstraction.

CL:AIRE Definition of Waste: Development Industry Code of Practice (DoWCoP)

CL:AIRE DoWCoP guidance can be found via the following link: http://www.claire.co.uk/projects-and-initiatives/dow-cop/28-framework-and-

guidance/111-dow-cop-main-document. The DoWCoP sets out the lines of evidence that are needed to demonstrate that the excavated materials are not or have ceased to be waste. These are based on four factors:

- Protection of human health and the environment (acceptable risk assessment of pollution).
- Suitability for use without further treatment (no further processing and/or treatment, as demonstrated by a specification and a site-specific risk assessment including chemical, geotechnical properties and biological aspects).
- Certainty of Use (outlined in the Remediation Strategy and Material Management Plan).
- Quantity of Material (outlined in the Remediation Strategy and Material Management Plan).

To demonstrate the factors a Materials Management Plan (MMP) needs to be produced to ensure all factors are considered and the correct determination is made. A Verification Plan needs to be set out in the MMP and must identify the recording method of materials being placed, as well as the quantity of materials to be used. It should also contain a statement on how the use of the materials relates to the remediation or design objectives.

In general, any material that has to be treated in order to render it suitable for its intended use is considered to be a waste and waste controls apply.

To demonstrate this to the Environment Agency's satisfaction, the processes and requirements detailed in the DoWCoP need to be followed in full. The requirements include:

- desktop study of the site
- conceptual modelling of the site(s) concerned
- site investigation details (if appropriate)
- and any details of contamination (if relevant)

Regardless of whether the site is contaminated or not there the following documents should be produced:

- Risk Assessments
- Options Appraisal Report
- Remediation Strategy (Contaminated soils) or Design Statement (Clean naturally occurring soils)
- Materials Management Plan
- Verification Report once the work is completed.

The decision to use the CL:AIRE DoWCoP is the responsibility of the holder of the materials. The project manager should collate all relevant documents; permissions, site reports, MMP etc. and consult with an independent Qualified Person (QP) to confirm that the site meets the requirements and tests for use of the DoWCoP. The Qualified Person must review the documentation and let the developer know that a Verification Report will be required before signing a Declaration. If the site meets the tests that materials are suitable for re-use, certain to be re-used, are not excessive in

volume and pose no risk to the environment or harm to human health then the QP can make a formal Declaration to CL:AIRE.

The formal Declaration must be submitted to CL:AIRE and the Environment Agency by a Qualified Person before any excavation activities or transfer of materials occurs. In these circumstances the QP is meeting the requirements of the Regulator to ensure appropriate environmental and human health protection is in place for the development to go ahead.

Materials not used in accordance with the DoWCoP process in full may be deemed waste and will require a relevant permit for deposit. Materials illegally deposited or deposited at inappropriate sites may be subject to relevant landfill taxes, payable by all parties. Only robust due diligence is a defense against joint liability.

For clarification, it is important to note that DoWCoP declarations cannot be made retrospectively. In addition to this if you wish to re-use material under the 'site of origin scenario' and this material has previously been imported to that site as waste without authorisation, for example a historical illegal deposit, then it does not originate at that site. It is not site derived material, and you cannot use DoWCoP site of origin scenario for this activity, you will require an appropriate waste authorisation such as an environmental permit.

Control of emissions from Non-Road Going Mobile Machinery (NRMM)

Where development involves the use of any non-road going mobile machinery with a net rated power of 37kW and up to 560kW, that is used during site preparation, construction, demolition, and/ or operation, at that site, we strongly recommend that the machinery used shall meet or exceed the latest emissions standards set out in Regulation (EU) 2016/1628 (as amended). This shall apply to the point that the machinery arrives on site, regardless of it being hired or purchased, unless agreed in writing with the Local Planning Authority.

This is particularly important for major residential, commercial, or industrial development located in or within 2km of an Air Quality Management Area for oxides of Nitrogen (NOx), and or particulate matter that has an aerodynamic diameter of 10 or 2.5 microns (PM10 and PM2.5). Use of low emission technology will improve or maintain air quality and support LPAs and developers in improving and maintaining local air quality standards and support their net zero objectives.

We also advise, the item(s) of machinery must also be registered (where a register is available) for inspection by the appropriate Competent Authority (CA), which is usually the local authority.

The requirement to include this may already be required by a policy in the local plan or strategic spatial strategy document. The Environment Agency can also require this same standard to be applied to sites which it regulates. To avoid dual regulation this informative should only be applied to the site preparation, construction, and demolition phases at sites that may require an environmental permit.

Non-Road Mobile Machinery includes items of plant such as bucket loaders, forklift trucks, excavators, 360 grab, mobile cranes, machine lifts, generators, static pumps, piling rigs etc. The Applicant should be able to state or confirm the use of such machinery in their application to which this then can be applied.

END