

West Midlands Interchange NSIP – TR050005 - Examination

Natural England responses to Examining Authority’s first batch of questions (ref Rule 8 letter dated 4.3.19)

Parties	Question	Natural England response
1.5.4. The Applicant and NE - Soil Resources	<p>NE (RR-1289) expresses concern about the maintenance of soil functionality as part of the proposal's landscaping provisions.</p> <p>i) What mechanisms are proposed to be put into place to ensure that soil functionality is maintained during the processes of soil stripping and removal, storage and reuse?</p> <p>ii) Will these mechanisms be secured through the CEMP/ dDCO/ DCO?</p>	<p>Please see DCO Schedule 2 requirements for detail –</p> <p>DCEMP -</p> <p>(i) See - Proposed requirement 4 sub-section (k) ‘<i>details for management of soils during the construction phases in accordance with the DEFRA Code of Practice for the Sustainable Use of Soil on Construction Sites 2009</i>’ [To ensure suitable application of the Defra code of practice]</p> <p>(ii) DCO requirement.</p>
1.10.2. The Applicant, NE and SCC	<p>APP-027] ES Chapter 7 paragraphs 7.188 & 7.190 conclude that the impact of the Proposed Development in terms of NOx concentrations would exceed the 1% critical level for 10m across the assessed transect at Belvide Reservoir SSSI. In considering the effect of this on the SSSI, paragraph 10.306 concludes that the resultant changes to the water chemistry of the reservoir are unlikely to affect the ecological structure or function of the SSSI and that a significant adverse effect at a National Scale is unlikely.</p> <p>Are these findings and conclusions accepted and agreed by NE and SCC?</p>	<p>Yes , Natural England accepts and agrees with these findings and conclusions. Please refer to our written representations sections 5.36-5.38.</p>
1.10.3. The Applicant and NE	<p>i) Has agreement been reached between the Applicant and NE with regard to the cumulative effects of the proposal in combination with other developments on both the Belvide Reservoir and Doxey and Tillington Marshes SSSIs?</p> <p>(ii) In light of the comments made by NE in its RR, does the Applicant propose any additional mitigation (on-site or off-site) to conserve the SSSIs?</p>	<p>(i) Yes – Please refer to our written representations sections 5.3.4 and 5.3.5 (Belvide Reservoir) and 5.3.10-5.3.11 (Doxey & Tillington Marshes).</p> <p>(ii) No – Please refer to our written representations sections 5.3.16-5.3.22.</p>
1.10.4. The Applicant, NE and SCC	<p>Paragraph 10.202 states that noise from construction activities near to Calf Heath Reservoir (which is part of Gailey Reservoirs LWS) is “likely to cause a degree of temporary disturbance for the duration of the construction”. As noted in Q1.9.1 above it is unclear as to what time period is meant by the term “temporary” as used in Chapter 10. In light of importance of the reservoir and LWS for breeding and wintering birds has the ES conclusion that conservation status of birds</p>	<p>Natural England has not been involved in discussions regarding Local Wildlife Sites. This is consistent with our operational standard on ‘Responding to consultations on development’.</p>

	using the LWS would not be affected (paragraph 10.204) been accepted and agreed by NE and/ or SCC?	
1.10.5. The Applicant, NE and SCC	<p>Paragraph 10.205 states that the provisions within the ODCEMP would reduce the risk of pollution of Gailey Reservoirs LWS but the ODCEMP and Framework Ecological Mitigation and Management Plan (FEMMP) do not appear to include any specific measures to prevent noise, AQ or other pollution for birds or other ecological receptors.</p> <p>(i) Can the Applicant clarify which measures included in the ODCEMP/ FEMMP would operate to reduce the potential impact of construction activities on ecologically sensitive receptors including (but not limited to) Gailey Reservoirs LWS within the Zone of Influence?</p> <p>(ii) Does NE/ SCC agree that measures within the ODCEMP would provide adequate mitigation for the potential effects on such receptors?</p>	<p>(i) This is within the applicant's remit.</p> <p>(ii) As stated in response to 1.10.4 Natural England has not been involved in discussions regarding Local Wildlife Sites.</p>
1.10.6. The Applicant, NE and SCC	<p>Paragraph 10.222 states that the loss of semi-natural and managed farmland across the site would have an adverse effect and result in the loss of ecosystem integrity, but paragraph 10.390 states that the "retention of habitat, creation of new habitat and enhancement of existing habitat will offset the habitat lost with respect to woodlands, hedgerows, woodland, semi-improved grassland and open water" but omits reference to semi-natural and managed farmland.</p> <p>(i) Can the Applicant provide evidence that the new habitats created, as stated in paragraph 10.390, will appropriately mitigate for the adverse effect of the loss of semi-natural and managed farmland?</p> <p>(ii) Can the Applicant provide evidence that NE and SCC are in agreement that the new habitats will appropriately mitigate for the loss of semi-natural and managed farmland?</p>	<p>(i) Applicant's remit.</p> <p>(ii) No dialogue has taken place between the applicant and NE on this theme.</p>
1.10.12. The Applicant, NE and SCC	<p>Paragraphs 10.428–10.437 identify potential cumulative construction and operational effects with other committed development in the locality of the site. Paragraphs 10.432 and 10.438 conclude that these other development proposals would have limited residual effects because of the mitigation and controls built into their relevant consents and that the significance of the effects of the Proposed Development as identified in the Chapter 10 assessment would not be affected by these other development schemes. Are these conclusions accepted and agreed by NE and SCC</p>	<p>Yes. Our written representations on air quality impact assessment in relation to designated sites (SSSI) are relevant here (reference to NEA001 guidance and approach to cumulative and in combination effects of aerial emissions). Please see section 5.3 'Progress since relevant representations'.</p>
1.10.19. The Applicant, NE and SCC		

	<p>Although Section 3.3 of the FEMMP expressly identifies the 'Important' hedgerows to be retained it does not similarly identify veteran and future veteran trees or specify the additional protection measures that are recommended in Appendix 12.7. Neither does the FEMMP refer to the need for continued appraisal of long-term management operations in relation to these retained trees in order to ensure their long term survival as recommended at paragraph 5.31 of Appendix 12.7. Can the Applicant explain why these measures have not been included within the FEEMP, and can the Applicant state whether these measures will be included within the EMMP when completed?</p>	<p>Natural England notes that this question is posed directly to applicant. We would advise that provision for the long term management of irreplaceable habitats including veteran trees should be referenced in the FEMMP such that phase specific arrangements (EMMP) are secured.</p>
<p>1.10.20. The Applicant, NE and SCC</p>	<p>Paragraph 5.64 of the Arboriculture Assessment recommends that all vegetation and, particularly, woody vegetation proposed for clearance should be removed outside of the bird-breeding season. Is an additional requirement needed to set out this stipulation or would it be adequately covered in R11 relating to the FEMMP?</p>	<p>We would anticipate that R11 will serve as intended provided that the FEMMP is amended to make such issues clearer.</p>
<p>1.10.21. NE and SCC</p>	<p>NE and SCC are requested to comment on the scope and content of the FEMMP and to give their views as to whether this provides a robust basis for agreeing Phase specific EMMPs which would be capable of securing all the necessary mitigation measures.</p>	<p>In principle we believe the scope of FEMMP is satisfactory. With regard to content, in order to address some of the detailed aspects emerging from this first batch of questions (veteran trees, deadwood habitats and clearance of woody vegetation) the FEMMP is likely to need suitable revision.</p>
<p>1.10.24. The Applicant, NE and SCC</p>	<p>Paragraph 10.365 lists a number of parameters which have been used within the assessment of operational lighting effects on foraging bats. There is a cross reference to the Lighting Strategy [APP-106] but Section 5.3 of that document does not list the parameters set out in the bullet points within paragraph 10.365. Neither do these appear to be shown on the Parameter Plans.</p> <ul style="list-style-type: none"> (i) As these appear to be a critical component of the mitigation of potential effects how are these secured through the DCO? (ii) Are there other specific details of constraints/ parameters for the on-site lighting that need to be specified in a Requirement within Schedule 2 of the DCO or by other means? (iii) Do NE and SCC agree with the proposed bat mitigation measures and consider these to be adequate? 	<ul style="list-style-type: none"> (i) We anticipate that the FEMMP (R11) and details of lighting (R19) will form the key mechanisms here, subject to any revisions deemed necessary to address detail. (ii) In terms of relevant guidelines for the bats and lighting subject area we would draw attention to the recently published BCT Guidelines on Bats and Artificial Lighting - https://www.theilp.org.uk/documents/guidance-note-8-bats-and-artificial-lighting/ <p>The following are examples of points from these guidelines, that would help to address the questions posed:</p> <ul style="list-style-type: none"> • The "Design and pre-planning phase" suggests that a horizontal illuminance contour plan could be prepared to model the extent of light spill from the proposed and, possibly, existing luminaires – further details can be found on page 21 • Page 22 discusses the requirement for Baseline and post-completion light monitoring surveys. We note that a baseline survey has been carried out. It would be worthwhile seeking feedback from the applicant to ensure this is in accordance with these guidelines • Page 23 details Post-construction/operational phase compliance-checking, a key element of this project, to ensure that the dark corridors are

		<p>operating as anticipated, with mechanisms put in place to be able to make adjustments where necessary.</p> <p>(iii) Our relevant representations have highlighted the need for several of the requirements to work together to deliver effective biodiversity mitigation and long term management (Section 5 – DCO and 5.1.3 ‘Protected species and wider biodiversity’ refer). We note the FEMMP reference to a benchmark of ‘<i>light levels below 1 lux at ground level</i>’. We would seek the applicant’s feedback regarding the updated BCT guidelines detailed above in order to ensure the chosen approach is effective..</p>
1.10.25. The Applicant, NE and SCC	Are the relevant consultees satisfied that dark corridors can be maintained in the locations shown on Figure A1.1 of the FEMMP, given that the Illustrative Masterplan [APP-206A-D] shows that these are likely to be immediately adjacent to buildings, car parks and service areas?	Please see our response to Q 1.10.24 above.
1.10.26. NE and SCC – Badgers	<p>(i) Can NE and SCC confirm that they have received and reviewed the Confidential Badger Report?</p> <p>(ii) Based on the information in that report, are NE and SCC satisfied with the assessment of construction and operational effects on badgers and their habitats as set out in ES Chapter 10?</p> <p>(iii) Is the mitigation proposed in relation to badgers adequate to offset any significant harm to this species and their habitats?</p>	<p>(i) Yes we have.</p> <p>(ii) Yes.</p> <p>(iii) The report predicts the likelihood of a ‘significant residual effect at the local level’ due to the likelihood of individuals attempting to cross the A449 and A5. In order to optimise the proposed mitigation consideration should be given to:</p> <ul style="list-style-type: none"> • Low level scrub planting should be considered over the artificial sett to screen it from members of the public and other disturbances. • Any under-passes and crossing points need to be designed to make them suitable for badgers, e.g. badgers won’t cross if there is standing water in an underpass. Well considered fencing and planting should lead badgers to the crossing points.