



Department for  
Communities and  
Local Government

Gene Wilson  
Augean South Ltd  
East Northants Resource Management Facility  
Stamford Road  
Kings Cliffe  
Northamptonshire  
PE8 6XX

Our Ref: WS010001

11 July 2013

Dear Sir,

**PLANNING ACT 2008  
APPLICATION FOR THE PROPOSED EAST NORTHAMPTONSHIRE RESOURCE  
MANAGEMENT FACILITY (ENRMF) ORDER**

1. I am directed by the Secretary of State for Communities and Local Government (the "Secretary of State") to advise you that consideration has been given to:
  - the report of the Examining Authority, Jonathan Green ("the ExA"), who conducted an examination into the application ("the Application") made on 7 March 2012 by Augean South Limited ("Augean") under section 37 of the Planning Act 2008 ("the 2008 Act") for a development consent order ("the Order") under the 2008 Act for the East Northamptonshire Resource Management Facility ("the Development"); and
  - representations received by the Secretary of State and not withdrawn in respect of the Application including those received following the close of the examination.
2. The examination of the Application by the ExA began on 26 July 2012 and was completed on 22 January 2013. The examination was conducted on the basis of written evidence submitted to the ExA and discussed at hearings held on 18 and 19 October 2012, and 7 December 2012 at Kings Cliffe Active, Kings Cliffe and 6 December 2012 at Kings Cliffe Memorial Hall (Kings Cliffe Village Hall), Kings Cliffe.
3. The Order, if made, would grant development consent for the alteration of existing and the construction of new facilities for the recovery and disposal of hazardous waste and the disposal of low level radioactive waste at the East

Northamptonshire Resource Management Facility, Stamford Road, Kings Cliffe, Northamptonshire.

4. Enclosed with this letter is a copy of the ExA's report ("the Report" or "ER"). The findings are set out in section 5 of the Report while the conclusions and recommendations are at section 7.

### **Summary of the ExA's Recommendation**

5. The ExA recommended that the Order be made, in the form set out in Appendix E of the Report.

### **Summary of the Secretary of State's Decision**

6. The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an order granting development consent for the proposals in the Application. This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("the 2009 Regulations").

### **Secretary of State's consideration**

7. The Secretary of State agrees with the ExA's reasoning at ER 2.23 and his conclusion at 7.1 that the Development is a nationally significant infrastructure project in accordance with section 14(1)(p) and section 30 of the 2008 Act. Subject to the qualifications explained in paragraph 29 below about minor drafting modifications to the Order, the Secretary of State agrees with the ExA's conclusions on the matters discussed in the report (ER 7.1- 7.24).
8. The Secretary of State has carefully considered the Report, the local impact reports submitted, the representations made known to him in respect of the Application and all other matters which the Secretary of State thinks are both important and relevant to his decision. The Secretary of State's consideration of these matters is set out in the following paragraphs. His consideration of the representations received after the close of the examination (i.e. post 22 January 2013) is also set out below. All paragraph references, unless otherwise stated, are to the Report and references to requirements are to the requirements in Schedule 2 to the Order.
9. The Secretary of State has taken into account the Environmental Statement dated March 2012 which was submitted with the Application, the 2009 Regulations, and the ExA's comments at ER 1.5. The Secretary of State agrees with the ExA that the Environmental Statement meets the definition given in regulation 2(1) of the 2009 Regulations. Overall he is satisfied that sufficient information has been provided for him to assess the environmental impact of the Application.
10. The Secretary of State has carefully considered the local impact reports submitted by Northamptonshire County Council (NCC), East Northamptonshire Council and the joint local impact report submitted by Cambridgeshire County

Council and Peterborough City Council which are outlined by the ExA at ER 4.15 – 4.20. He notes that NCC have stated that subject to the proposed draft Order it is considered that there are no Northamptonshire Minerals and Waste Development Framework (MWDF) policies that would justify objection to the principle of hazardous waste treatment and disposal at the site.

11. For the avoidance of doubt, the Secretary of State has taken 'provide for landscaping and restoration plans, ecological management and management of stockpiles' in ER 6.16 to read 'provide for landscaping and restoration plans, implementation and maintenance of landscaping and restoration works, and ecological management'.
12. The ExA reports at ER 3.17 that following the close of the examination the Regional Strategy for the East Midlands (Revocation) Order 2013 came into force on 12 April 2013 and has revoked the East Midlands Regional Strategy (the RS). In considering the Application, the Secretary of State attaches no weight to the policies of the RS. Given the basis on which he has made his decision as set out in this Statement of Reasons the Secretary of State does not consider that the revocation of the RS raises any matters that would require him to refer back to parties for further representations prior to reaching his decision. In reaching this view, he has had regard to the ExA's assessment that the Northamptonshire MWDF has been prepared in accordance with the RS and would remain in place after the RS has been revoked (ER 3.18).

### Consideration of Policy

#### *The National Policy Statement*

13. The ExA notes at ER 3.1 that the Department for Environment, Food and Rural Affairs (DEFRA) issued a draft National Policy Statement (NPS) for hazardous waste in July 2011. The draft NPS was subject to public consultation, a debate in the Grand Committee of the House of Lords and an Environment, Food and Rural Affairs Committee report. The ExA had regard to this draft in carrying out the examination and in reaching his recommendations and conclusions. The Report was prepared on the basis that the Secretary of State's decision in relation to the Application falls to be made under section 105 of the 2008 Act. The Secretary of State agrees with that approach.
14. Following the closure of the Examination, the Government's National Policy Statement (NPS) for hazardous waste was laid before Parliament on 6 June 2013. The Secretary of State has taken into account the NPS as laid in Parliament. He has carefully considered whether or not there should be consultation of parties on the implications of this to the cases they put to the examiner. The Secretary of State has considered the changes to the draft NPS. These include the NPS now making reference to the National Planning Policy Framework which itself has been taken into account by the ExA as part of the policy context. Overall he has concluded that the changes to the draft NPS are not significant to his decision such that they warrant a further consultation. He is satisfied that the policies in the draft NPS of July 2011 which was considered at the Examination as they relate to these proposals are sufficiently carried forward in the NPS laid before Parliament, including in respect of the need for hazardous

waste infrastructure and hazardous waste landfill (Part 3 of the NPS). The Secretary of State is satisfied that the need for new hazardous waste disposal facilities was adequately assessed by the ExA through the Examination process (ER 4.1 – 4.5). He agrees with the ExA that this supports the draft NPS policy that need has been established and notes that this policy is unchanged in the NPS as laid before Parliament. Regarding the Assessment Principles (Part 4) and Generic Impacts (Part 5) of the NPS, the Secretary of State considers that the impacts of the proposals before him were adequately considered during the examination process in light of the draft NPS of July 2011. He does not consider that any prejudice or unfairness would be caused to any party by proceeding on this basis.

15. The Secretary of State has also taken into account those policy and strategy documents identified by the ExA at ER 3.7 – 3.30, with the exception of the RS for the reasons set out at paragraph 12 above. He accepts the ExA's conclusion at ER 7.3 that the Development is in accordance with national and local policies.

#### *Hazardous Waste*

16. The Secretary of State has considered the ExA's reasons outlined in ER 7.3 and agrees with the ExA that the proposed development of the site for hazardous waste treatment and landfill is in accordance with policies on hazardous waste. The ExA looked at the evidence in support of need for the proposed development and concludes that there is a significant continuing level of demand for hazardous waste landfill capacity (ER 7.4). The Secretary of State notes that there would be a significant gap in the availability of disposal and soil treatment capacity after 2016 if the proposed development did not take place and shares the ExA's conclusions (ER 7.4) that the need for the proposed hazardous waste facilities has been established.

#### *Low level (radioactive) waste*

17. The Secretary of State has considered the ExA's reasons outlined in ER 7.5 and agrees with the ExA's conclusion that the proposal to dispose of low level radioactive waste (LLW) in landfill along with hazardous waste is in accordance with national policy on the disposal of LLW. The ExA notes that the UK will generate significantly more LLW than the potential disposal capacity at the existing LLW repository at Drigg in Cumbria (ER 7.6). He also notes that there is a need for alternative waste management routes, including landfill disposal, for wastes diverted from that facility (ER 7.6). The ExA also notes that there are few alternative sites accepting LLW and, for the reasons outlined in ER 7.7, concludes that there will be a continuing requirement for LLW landfill disposal facilities in the period up to 2026 and that the use of the ENRMF site for this purpose would contribute to meeting that need. The Secretary of State agrees.

#### *The proximity principle*

18. The ExA outlined the policy background relating to the proximity principle (ER 7.8 to 7.10). He concludes, at ER 7.11, that the proximity principle is a relevant consideration in planning policy for both hazardous waste and LLW but it is not

an overriding one. The Secretary of State agrees that allowing a balance between the proximity principle and other factors is established policy in the field of waste management, including LLW and notes that it is applied in practice in the assessments required for individual consignments of waste (ER 7.11). The Secretary of State accepts the ExA's conclusion that the proximity principle does not require the Application to be refused just because waste may travel some distance from its origin (ER 7.11).

### Examination Issues

#### *Direct impact on health*

19. The Secretary of State accepts the ExA's conclusions that potential releases can be adequately regulated and monitored under the pollution control framework (ER 7.14). He is also satisfied, like the ExA, that if changes are sought to increase the radiological capacity of the site it will be necessary to apply for a new permit, and that any new or revised environmental permits will only be granted if the Environment Agency and its statutory consultees, including the Health Protection Agency, are satisfied that there are no unacceptable risks to human health and the environment (ER 7.14). The Secretary of State agrees that, apart from noise management which is the subject of a separate noise management scheme, there is no need for requirements to be included in the development consent order relating to control of emissions or the direct impact on health because those are or will be set out in environmental permits (ER 7.15).

#### *Transport*

20. The Secretary of State accepts the ExA's conclusions that the requirements proposed for inclusion in the Order in respect of hours of operation, access to the site, vehicle routing, traffic management and wheel washing facilities are necessary and appropriate to provide mitigation of the impact of transport generated by the proposed development (ER 7.16). The ExA concludes that it is appropriate and necessary for an annual contribution of £5,000 to be made by Augean to the highways authority for highway maintenance in recognition of the impact of the proposed development on roads and for this to be included in a section 106 agreement. The Secretary of State agrees.

#### *Safety*

21. For the reasons outlined in ER 7.17 the Secretary of State agrees with the ExA's conclusions that the safety provisions, including the site security measures required in the Order, are adequate.

#### *Ecology, landscape and cultural heritage*

22. The Secretary of State agrees with the ExA that there are no European sites that may be affected by the proposed development and is satisfied that an appropriate assessment is not required to be carried out under the Conservation of Species and Habitats Regulations 2010 (ER 7.18). Whilst he notes that the proposed development will have a visual impact during its years of operation, the Secretary of State accepts that the landscaping and restoration elements of the

Application will have a positive effect and are ensured through requirements in the Order (ER 7.18). He notes that there is no direct or indirect effect on cultural heritage assets or archaeology (ER 7.18).

### *Social and economic impact*

23. The Secretary of State notes that the operation of the site brings benefits to the local economy and that Augean also contributes financially to local community activities (ER 7.19). He also notes that there is a real and strongly held belief amongst many people in the local community of harm to health and to the social and economic fabric of the area (ER 7.19). Whilst their belief is not supported by specific evidence, the ExA's view is that such concerns can influence behaviour, and that the proposed extension of the operation of the site to 2026 adds to perception that the risk of harm will be permanent (ER 7.19). The Secretary of State agrees with and accepts the ExA's conclusion that the continuing perception of harm is an adverse effect of the proposed development and actions to address such perceptions should be included in the development consent order (ER 7.19). He also agrees with the ExA's conclusions that it is appropriate for Augean's contribution of £5 per tonne of LLW to a Community Fund set up by Northamptonshire County Council to continue and be included in a section 106 agreement (ER 7.20).

### Other considerations

24. The ExA notes at ER 5.134 that a hazardous waste facility is classified as a Nationally Significant Infrastructure Project (NSIP) if, *inter alia*, 'the main purpose of the facility is expected to be the final disposal or recovery of hazardous waste' (section 30(1)(b) Planning Act 2008). The Secretary of State has carefully considered the ExA's reasoning at ER 2.24 – 2.27 and agrees with his conclusion at ER 5.134 that it is reasonable for disposal of LLW to be included as part of the proposed development for which development consent is being sought as long as that does not prevent the NSIP from being used for its 'main purpose'. He further notes that the NPS, as laid before Parliament on 6 June, indicates at paragraph 2.2.1 that 'proposals for hazardous waste facilities that might handle a relatively small proportion of low level radioactive waste alongside hazardous waste are within the scope of this NPS where those facilities are NSIPs' and the Secretary of State is satisfied that the proposals comply with the NPS in this respect. His conclusions on the need for LLW land disposal facilities are set out at paragraph 17 above. The ExA has considered whether there should be a limit on the quantity of LLW disposed of at the site (ER 7.21). He concludes that in order to ensure that the site continues to qualify as a hazardous waste NSIP, a limit of 448,000 tonnes over the life of the development to 31 December 2026 should be included in the Order. The Secretary of State agrees.

25. The ExA also considered whether the granting of consent in this case would lead to the UK being in breach of any of its international obligations concerning protected sites and species or waste management, or be in breach of any duty imposed on him under any enactment or whether deciding to grant consent in this case would be unlawful under any enactment and was not aware of any international obligations or other duties that would be breached or of reasons why deciding to grant consent in this case would be unlawful (ER 7.22). The

Secretary of State considers that no international obligations or other duties would be breached by his decision.

### **Representations received after the close of the Examination Phase**

26. The Secretary of State has received representations from Ed Vaizey MP (dated 10 June 2013), Neil Carmichael MP (dated 12 June 2013) and the Rt. Hon. Cheryl Gillan MP (dated 18 June 2013) since the Examination closed. He considers that none of the representations constitutes new evidence, or raises a new issue, which needs to be referred to parties before he proceeds to a decision. They do not cause him to take a different view of the matters before him. Copies of these representations are available on request from the addresses at the foot of the first page of this letter. They are also available to view at:- <http://infrastructure.planningportal.gov.uk/projects/east-midlands/east-northants-resource-management-facility/>.

### **Secretary of State's Conclusions and Decision**

27. For the reasons given in this statement of reasons, the Secretary of State considers that there is a compelling case for authorising the ENRMF scheme, particularly given the significant continuing level of demand for hazardous waste landfill capacity and the requirement for low level radioactive waste landfill facilities in the period up to 2026 covered by the Application and that this case is not outweighed by the potential adverse local impacts of the Development as mitigated by the proposed terms of the Order and the section 106 agreement (Appendix F to the ER).

28. The Secretary of State has therefore decided to accept the ExA's recommendation at ER 7.24 to make the Order granting development consent on the basis of the provisions set out in the draft Order proposed by the ExA (in Appendix E to the ER), subject to the modifications outlined in paragraph 29 below. He confirms that, in reaching this decision, he has had regard to the local impact reports referred to in paragraph 10 above, and to all other matters which he considers important and relevant to his decision, including the NPS for hazardous waste as laid before Parliament on 6 June 2013 and those policy and strategy documents identified by the ExA at ER 3.7 – 3.30 (with the exception of the RS for the reasons set out at paragraph 12 above), as required by section 105 of the 2008 Act. The Secretary of State confirms for the purposes of regulation 3(2) of the 2009 Regulations that he has taken into consideration the environmental information as defined in regulation 2(1) of those Regulations.

### **Modifications to the Order**

29. The Secretary of State has decided to make the following modifications to the form of the Order set out in Appendix E of the ER:

- in requirement 4, to include the mitigation measures proposed by Augean in respect of perceptions of harm and the socio-economic impact, as set out in section 10 of the environmental document;

- in requirement 10, to include a limit on the amount of low level radioactive waste to be allowed to be put into landfill at the site;
- to make various minor drafting changes which do not materially alter the effect of the Order, including changes to conform with current practice for Statutory Instruments, changes in the interests of clarity and consistency, and changes to ensure that the Order has the intended effect.

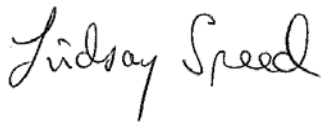
### **Challenge to Decision**

30. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached as an Annex to this letter.

### **Publicity for Decision**

31. The Secretary of State's decision on the Application is being published as required by section 116 of the 2008 Act and regulation 23 of the 2009 Regulations.

Yours faithfully

A handwritten signature in cursive script that reads "Lindsay Speed".

**Lindsay Speed**

Authorised by Secretary of State to sign in that behalf



## **LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the former Infrastructure Planning Commission, the Planning Inspectorate or the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the high court during the period of six weeks from the date when the Order is published. The East Northamptonshire Resource Management Order as made is being published on the date of this letter on the Planning Inspectorate web-site at the following address:

<http://infrastructure.planningportal.gov.uk/projects/east-midlands/east-northants-resource-management-facility/>

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London WC2A 2LL (0207 947 6655).**