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East Northants Resource Management Facility Western Extension

Request for a Non-Material Change

Augean South Limited

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EXECUTIVE SUMMARY

This is a request for the Examining Authority to allow a non-material change to the East Northants Resource Management Facility DCO application.

The proposed non-material change is to introduce an element of flexibility to the boundary principles set out in Appendix DEC B of the DEC and introduce a possible range for the standoff in relation to the Anglian Water pipeline apparatus from 7 metres up to 30 metres, as opposed to a fixed distance of 7 metres as presented in the original application documents.

This proposed change is non-material. It is minor in nature, produces no new or different environmental effects, and does not require any compulsory acquisition powers or any change to the order limits.

NON-MATERIAL CHANGE REQUEST

1. INTRODUCTION

- 1.1 The Applicant, (Augean South Limited), requests that the Examining Authority (**ExA**) allows a change to the draft Development Consent Order (**dDCO**) and associated application documentation for the East Northants Resource Management Facility Development Consent Order application.

2. FULL DETAILS OF THE PROPOSED CHANGE

- 2.1 This document is accompanied by the supporting documents set out in the Schedule of Changes at Schedule 1. The following application documents need to be updated to reflect the proposed change:

- 2.1.1 Restoration Profile Contour Plan (**APP-012**);
- 2.1.2 Works Plan (**APP-006**);
- 2.1.3 General Arrangement Plan - Work No. 1A and Work No. 1B (**APP-007**);
- 2.1.4 DCO Environmental Commitments (**DEC**) (**APP-110**);
- 2.1.5 Draft DCO (**REP4-005**); and
- 2.1.6 Explanatory Memorandum (**REP3-006**).

- 2.2 The Applicant has prepared the supporting documentation to detail the proposed change relating to the introduction of a range for the standoff distance from the Anglian Water apparatus between 7 metres and 30 metres.
- 2.3 Following continued engagement with Anglian Water (a statutory undertaker pursuant to section 127(8) of the Planning Act 2008), the Applicant is proposing to include the ability to extend the standoffs in relation to the Anglian Water pipeline apparatus. This is to be achieved by the inclusion of a new requirement (and associated definition) which requires the final standoffs to be approved by the relevant planning authority prior to development of the relevant adjacent phases of the landfill (18, 19 and 20). The range proposed for the standoffs will be between 7 metres to 30 metres, whereas the original application proposed a fixed distance of 7 metres.
- 2.4 There are consequential changes required to the Restoration Profile Contour Plan (**APP-012**) for the proposed development. Although the majority of the contours on the Restoration Profile Contour Plan remain unchanged, the contours for the area of the restoration profile affected by the water pipe standoff distances will no longer be fixed. In the current dDCO (**REP4-005**), all final restoration contours must accord with the Restoration Profile Contour Plan and are subject to approval under Requirement 4(3). However additional wording has been included in Requirement 3 (detailed design) of the dDCO to clarify that the final contours must lie between the two sets of contours shown in grey and in green for the water pipe standoff area. Outside of this area, the final contours must accord with the Restoration Profile Contour Plan subject to the limits of deviation set out in article 5.
- 2.5 Appendix DEC B (boundary principles) of the DEC (**APP-110**) has been updated to show a range of 7 to 30 metres for the water pipe standoff and wording has been included to clarify that the types of protection fencing necessary will be finalised in the phasing, landscaping and restoration scheme. This is because the standoff distance may impact the types of protection fencing required due to the species present at the time of construction. The plan in Appendix DEC C has also been updated to show the revised Works Plan layout.
- 2.6 The Works Plan (**APP-006**) and General Arrangement Plan – Work No. 1A and Work No. 1B (**APP-007**) have been amended to show a widened limit of deviation for Work No. 5, the diversion of the

overhead electricity cable. This is to ensure that this diversion can still be accommodated to the north of the northern water pipe with an increased water pipe standoff distance.

3. EXPLANATION AND RATIONALE FOR THE CHANGE

- 3.1 Due to concerns raised by Anglian Water in relation to the initially agreed standoffs of 7 metres, the Applicant proposes to include an element of flexibility to allow the standoffs to be approved by the relevant planning authority following consultation with Anglian Water before development of the relevant landfill phases (18, 19 and 20) commence. This is secured by including an additional requirement in the dDCO, but also requires some consequential amendments to various other application documents as set out in Section 2 above.
- 3.2 The Applicant is mindful that the Secretary of State needs to be confident that there is no impediment to the proposed development being delivered and also that weight should be attributed to an objection made by a statutory undertaker, albeit Sections 127(2) to (6) of the Planning Act 2008 do not apply to this application as no powers of compulsory acquisition are being applied for.
- 3.3 As the concerns raised by Anglian Water were raised relatively late in the examination process, the Applicant has not yet been able to reach an agreement with Anglian Water on the proposed standoffs. However, additional risk assessment work carried out by the Applicant shows that a standoff of 20 metres is more than sufficient and exceeds the industry standard for water pipe standoffs. For these reasons, the Applicant is proposing a non-material change to this application.
- 3.4 The range for the water pipe standoff has been set between 7 metres, the original standoff distance agreed with Anglian Water, and 30 metres. 30 metres is derived from additional risk assessments which have been carried out and is considered the greatest distance likely to be necessary including an allowance for the diverted electricity cable and uncertainties in reaching agreement. The proposed change provides certainty that adequate standoffs for the protection of Anglian Water's apparatus can be accommodated within the proposed development, whilst also ensuring the deliverability of other phases of the proposed development pending an agreement on the water pipe standoffs.
- 3.5 The development of landfill phases 18, 19 and 20 is not anticipated to commence for another eight to ten years, so the Applicant is confident this leaves sufficient time to reach an agreement with Anglian Water on the standoff distances or proceed to arbitration to have the standoffs determined before these phases come forward.
- 3.6 Given the national need for this type of facility as summarised in paragraph 3.1 of the National Policy Statement for Hazardous Waste, the Applicant is of the view that the proposed change is a suitable solution to the issues raised by Anglian Water. It adequately addresses the concerns raised by Anglian Water, whilst ensuring the deliverability of the proposed development.
- 3.7 Accordingly, the Applicant is requesting a non-material change to the application documentation associated with the draft order.

4. IS THE PROPOSED CHANGE A MATERIAL CHANGE?

- 4.1 The approach to changes to the draft order is set out in the detailed examination Guidance (Guidance for Examination of Applications for Development Consent, DCLG, March 2015) and AN16. The decision on materiality rests with the ExA.
- 4.2 There is no legal definition of the term "material" but the guidance differentiates between material changes and changes that amount to an entirely different project. Paragraph 2.1 of AN16 states:

"There is no legal definition of 'material' but the tests to apply are whether the change is substantial or whether the development now being proposed is not in substance that which was originally applied for. The former constitutes a material change which provided there is sufficient time remaining in the Examination stage can be accommodated as part of the Planning Act 2008 process. The latter constitutes a different project for which a new application would be required"

- 4.3 The change proposed does not constitute a different project. It follows that the issue which falls to be considered is whether the change is sufficiently substantial to result in a material change. The question of whether the change is "material" is a question of planning judgment for the ExA (see paragraphs 2.1 and 2.3 of AN16).
- 4.4 The Applicant submits the proposed change is not material, and this section of this document sets out why it has reached this conclusion in order to assist the ExA in exercising its planning judgment.
- 4.5 The following factors are relevant:
- 4.5.1 All of the land required in respect of the change falls within the existing Order limits. AN16 states that the extension of the Order land and the addition of new plots of land or interests for compulsory acquisition may be factors suggesting a material change. This test of materiality is not met, as there is no existing compulsory acquisition being consented as part of this scheme and no new compulsory acquisition proposed.
- 4.5.2 Moreover, the procedure under the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 is not engaged as the proposed change does not provide for the acquisition of land.
- 4.5.3 The wording of the dDCO (**REP4-005**) (submitted at Deadline 4), requires only minor alteration to accommodate the proposed change in the form of a new Requirement 19, associated definitions and an addition to Requirement 3.
- 4.5.4 Furthermore, the effect of the proposed change on the evaluation contained in the Environmental Impact Assessment (**EIA**) has been considered. The Applicant has assessed the proposed change and the only potential changes in likely significant effects as a result of the proposed changes to the standoffs are impacts associated with the landscape and visual assessment and the potential changes to the Biodiversity Net Gain calculation. The Supplementary Environmental Statement (**Document Reference 14.4**) submitted as part of the change request concludes there are no new or different likely significant environmental effects as a result of the change and subsequently no deviation from the initial assessment provided with the Application. This is further indication that the proposed amendments are not material.
- 4.6 For the reasons set out, the Applicant submits that the change requested does not amount to a material change, nor an entirely different project, as there is no change to the fundamentals of the underlying project or its objectives.
- 4.7 Having regard to sections 2 and 3 of this document and the guidance of December 2015 "*guidance changes to development consent orders*", paragraphs 9-17, the Applicant submits that:
- 4.7.1 the environmental impacts are not so significant as to suggest that this change is a material change (paragraphs 12-13 of the 2015 Guidance);
- 4.7.2 no change to the Regulations assessment or European protective species licence is relevant to the DCO scheme are such that new or additional considerations are invoked (paragraph 14 of the 2015 Guidance).
- 4.8 In all the circumstances therefore, the ExA is asked to accept this amendment as a non-material change to the Scheme.
- 5. CONSULTATION PROPOSALS**
- 5.1 Initial informal consultation with Anglian Water has taken place as the standoffs are being amended to address their concerns.
- 5.2 Although no consultation is required as the change is non-material, in the interests of fairness, a targeted consultation exercise is proposed by the Applicant to ensure that the proposed amendment to the application can be considered by any parties that are entitled to or could reasonably expect to

be consulted with to enable them to have the opportunity to make representations on the changes if they wish.

- 5.3 It is proposed that all previous Section 44 consultees will be consulted but that a more targeted approach is to be taken regarding those prescribed in Section 42 to limit the consultation to those who may be affected by the proposed non-material change. Section 42 bodies that will not be consulted are those whose function will not be affected by the change and a detailed justification of this approach will be set out in the supplemental consultation report.
- 5.4 The Applicant has a long-standing principle of openness with local communities in the vicinity of ENRMF and those who have taken an interest in the site and any applications made relating to the site. However, a proportionate approach to consultation in this instance will be taken rather than the extensive community consultation previously undertaken. It will be targeted at elected representatives at all levels, Parish and Town Councils and individuals who responded to the formal Section 47 consultation or who are on the Applicant's Register of Stakeholders.

6. CONCLUSIONS AND FORMAL REQUEST FOR PROPOSED CHANGE TO BE MADE

- 6.1 The Applicant submits that its application can be accepted by the ExA as a non-material change and without additional consultation being required. The ExA is asked to accept the proposed change. This is because the proposed change:
- 6.1.1 is minor in nature;
 - 6.1.2 is within the Order land;
 - 6.1.3 does not require any powers of compulsory acquisition and therefore no further steps are necessary under the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 since, as demonstrated above, those regulations are not engaged;
 - 6.1.4 only requires minor amendments to the dDCO (**REP4-005**) in the form of the new Requirement 19, a new associated definition and an addition to Requirement 3; and
 - 6.1.5 does not generate new or different likely significant environmental effects.

SCHEDULE 1

Schedule of Changes

Schedule 1 to the NMC Request document

Main changes to the ENRMF DCO Application as a result of the Non Material Change request on 16 June 2022

Document title (PINS document reference)	Schedule of amendments
Volume 1	
Guide to the Application (1.4)	Updated to reflect the amendments listed below where appropriate.
Volume 2	
Works Plan (AU/KCW/07-21/22655revA) (2.3)	Extent of Work No 5 amended to provide flexibility for the location of the diverted electricity cable.
General arrangement plan - Work No 1A and Work No 1B (AU/KCW/07-21/22656revA) (2.4)	Extent of Work No 5 amended to provide flexibility for the location of the diverted electricity cable.
Restoration Profile Contour Plan (AU/KCW/07-21/22660revA) (2.9)	The plan has been amended to show the changes which would result from the addition of the 30m restoration contours.
Volume 3	
Draft Development Consent Order v3 (3.1)	The draft DCO (v3) has been revised to take into account the necessary changes associated with this Non Material Change
Draft DCO validation report v3 (3.2)	A new validation report is provided for the draft DCO.
Draft Explanatory Memorandum v2 (3.3)	A number of changes have been made to the Explanatory Memorandum to explain the aspects associated with this Non Material Change.
Schedule of changes to the dDCO v2 (3.5)	Schedule of changes between the submission dDCO and v1, between v1 and v2 and between v2 and v3 of the dDCO
Volume 6	
DCO Environmental Comittments V1 (6.5)	
Appendix DEC B	The standoff for Boundary H and Boundary I have been updated to provide a range for the water pipeline standoff. The review of the fencing requirements has been linked to Requirement 4 (3) of the draft DCO.
Figure DEC C1 Work Areas AU/KCW/07-21/22691revA	Extent of Work No 5 amended to provide flexibility for the location of the diverted electricity cable.
Volume 14	
Cover letter (14.1)	
NMC Request document (14.2)	
Non technical summary of the Non Material Change (14.3)	
Supplementary Environmental Statement (14.4)	

Document title (PINS document reference)	Schedule of amendments
Figure SES2.1 Restoration profile contour plan (drawing reference AU/KCW/06-22/23196) (14.5.2.1)	
Figure SES2.2 Indicative Restoration Concept Scheme for a 30m standoff from the water pipelines (drawing reference ENORTH039) (14.5.2.2)	
Appendix SES2.1 Supplementary Statement of Competence (14.6.2.1)	
Appendix SES2.2 Pipeline Risk Assessment (14.6.2.2)	
Appendix SES2.3 Report on issues concerning the Anglian Water Services water mains crossing the Augean site (14.6.2.3)	
Appendix SES4.1 BNG review (14.6.4.1)	
Appendix SES5.1 Supplementary LVIA (14.6.5.1)	