



**APPLICANT'S FINAL POSITION STATEMENT**

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### 1. INTRODUCTION

- 1.1 This document has been prepared by Augean South Limited (**the Applicant**) in relation to the East Northants Resource Management Facility (**ENRMF**) Western Extension Development Consent Order (**DCO**) application (**the Application**). The purpose of this document is to provide a final position statement on key matters arising from the Examination. It does not seek to introduce new material or to raise any new issues. It signposts and reflects the material that has already been submitted to the Examination.
- 1.2 This document concludes that having full regard to the relevant policies and the submissions set out below, the positive benefits of the Project outweigh any potential adverse impacts and consent should be granted.
- 1.3 Extensive consultation has been undertaken prior to the submission of the application and further consultation has been undertaken during the Examination. While of necessity the consultation has been undertaken using virtual and electronic means, it is evident from the records of access of the documentation provided that there has been wide engagement in the process. There have been limited objections to the proposals from both the statutory and non-statutory consultees including the members of the local community. The matters underpinning the objections raised and comments from consultees have been addressed and, in the opinion of the Applicant, resolved during the Examination.
- 1.4 This document is set out in the following sections:
- 1.4.1 Section 2 will consider the need case set out in National Policy Statement for Hazardous Waste.
  - 1.4.2 Section 3 will consider the principal issues identified by the Examining Authority in Annex C of the Rule 6 letter (PD-005). This will be considered under the following topic matters:
    - (a) Air quality and emissions
    - (b) Biodiversity
    - (c) Climate change
    - (d) Draft Development Consent Order
    - (e) Environmental Impact Assessment
    - (f) Ground conditions
    - (g) Historic environment
    - (h) Human health
    - (i) Infrastructure
    - (j) Landscape and visual
    - (k) Land use, soils and socio-economics

- (l) Noise and vibration
  - (m) Safety
  - (n) Traffic and transport
  - (o) Water quality and resources
- 1.4.3 Section 4 will examine the decision making framework including the National Policy Statements and the balancing duty.
- 1.4.4 Section 5 provides a conclusion.

## **2. NATIONAL POLICY STATEMENT FOR HAZARDOUS WASTE**

- 2.1 The National Policy Statement for Hazardous Waste (hereafter referred to as '**the NPS**'), approved by Parliament and designated by the Secretary of State (Defra) on 18 July 2013, sets out Government policy for hazardous waste infrastructure. Pursuant to Section 104(3) of the 2008 Planning Act, it will be used by the Secretary of State as the primary basis for decisions on development consent applications for hazardous waste infrastructure that fall within the definition of an NSIP, as defined in the 2008 Act.
- 2.2 At paragraph 1.5.3, the NPS states that: "*New infrastructure is needed both to ensure sufficient capacity to meet expected hazardous waste arisings and to meet the requirement of the EU's Waste Directive (2008/98/EC) to push the management of waste up the waste hierarchy so that more is sent for reuse recycling and recovery and amounts sent for disposal are minimised. Hazardous wastes pose an inherent threat to human health and the environment and it is important that there are sufficient facilities to allow the waste to be managed in a way which minimises this risk.*"
- 2.3 Paragraph 2.4.2 of the NPS states that "... *Government looks to the market to provide the infrastructure to implement the Strategy. Government's role is to provide the right framework and encouragement to the private sector to bring the necessary infrastructure forward. This is because the waste industry has the greatest level of expertise in hazardous waste management issues and is best placed to consider where facilities are needed and the most appropriate types of technologies to use.*"
- 2.4 Part 3 of the NPS deals with the need for large scale hazardous waste infrastructure, which is summarised at paragraph 3.1 of that document. Among other things, this indicates that hazardous waste management infrastructure is essential for public health and a clean environment. There will be a demand for new and improved large scale hazardous waste infrastructure due to a number of main drivers, which include:
- 2.4.1 changes to the list of hazardous properties in revisions to the Waste Framework Directive and changes to the European Waste List, which lead to further increases in the amount of waste that must be managed as 'hazardous', and
  - 2.4.2 increases in the volumes of wastes being treated in order to recover wastes which commonly results in the concentration of hazardous components in the non-recoverable residues of that treatment.
- 2.5 Paragraph 3.4.1 of the NPS identifies the types of infrastructure that are needed including treatment plant for air pollution control residues, bioremediation/soil washing and hazardous waste landfill. It concludes by confirming that the Secretary of State will assess applications for infrastructure covered by the NPS on the basis that need has been demonstrated.

- 2.6 Paragraph 3.4.14 of the NPS goes on to make it clear that the Government has concluded that there is a need for such hazardous waste infrastructure facilities, and that:
- “The Examining Authority should examine applications for infrastructure covered by this NPS on the basis that need has been demonstrated”*
- 2.7 Part 4 sets out the assessment principles and general policies in accordance with which an application should be decided. Of particular relevance is paragraph 4.1.2 which sets out the **presumption in favour of granting consent**. This applies unless a more specific and relevant policy clearly indicates that consent should be refused.
- 2.8 The proposed development meets the infrastructure needs identified in Paragraph 3.4.1 of the NPS through the continued provision of these types of hazardous waste management infrastructure for an additional 20 years. The need for the proposed development is set out in Section 11 of the Planning Statement [APP-103]. The site lies in the south eastern corner of the East Midlands region and is geographically close to the West Midlands, East of England, Greater London and South Eastern regions. No new hazardous waste landfill facilities have been developed in the south of the country since the proposals for the currently consented activities was submitted in 2011. There is an evident continuing need for the provision of a waste management facility for the treatment and disposal of hazardous waste able to serve the wastes arising in the West Midlands, East Midlands, East of England, South East and Greater London.
- 2.9 The potential for benefits resulting from the co-location of new and existing facilities are identified in paragraph 4.13.3 of the NPS and this proposal is for the development of new landfill in the proposed western extension together with continuation of the co-located existing treatment and recovery facility.
- 2.10 The ENRMF is centrally located for the wastes arising at the locations of the major LLW waste producers in the south and east of the country. The location of the site is well placed to serve the producers of LLW from the nuclear and non-nuclear industries. The need for a fit-for-purpose site for the landfill disposal of LLW from both the nuclear and non-nuclear industries in a central location that will contribute to the national need for capacity to address the identified shortfall and to conserve the capacity of the highly specialised facility at LLWR remains. Whilst this need is not specifically addressed in the NPS, it remains an important material consideration in this application. The proposed development has been assessed against the planning policies relevant to the environment and human health in the National Policy Statement for Hazardous Waste and other national policy and the Local Development Framework in the Planning Statement [APP-103]. It is concluded that the proposed development is in accordance with the NPS and the relevant policies of the Development Plan (see Table PS6.1 of the Planning Statement APP-103) and the NPPF. It is agreed by North Northamptonshire Council in the Statement of Common Ground (Appendix B of REP6-009) that the development does not conflict with the policies in the Local Development Framework. Furthermore it is in alignment with the national LLW policy and will make a significant and important continuing contribution to the delivery of LLW disposal in the UK. Despite the LLW management strategies and policies encouraging the development of more fit for purpose, long term LLW landfill facilities to provide security of supply which is identified as necessary to increase the resilience of the supply chain, ENRMF is currently the only landfill site able to offer LLW disposal services and delivery of The Policy for the Long Term Management of solid low level radioactive waste in the United Kingdom (2007).
- 2.11 It is concluded that there is an evident need for the proposed development, that the proposed development is not only in accordance with the relevant planning policies but it will also provide a facility specifically encouraged by policy.

- 2.12 An Environmental Impact Assessment has also been undertaken of the proposed development and the results are set out in the Environmental Statement [APP-049]. It is demonstrated that there will be no significant adverse impacts on the environment or human health as a result of the proposed development. The operations at the site are and will continue to be the subject of Environmental Permits which are regulated by the Environment Agency and include the operation and management of the activities in order to comply with the control and emission criteria which are set for the protection of human health and the environment. The long established consented use of the site for the treatment and disposal of a wide range of wastes including difficult to manage wastes such as hazardous waste and LLW and the conclusions of the Environmental Impact Assessment set out in the Environmental Statement demonstrate that the proposed development is an acceptable and safe use of the land.
- 2.13 Therefore it is concluded that there are no material policy considerations which override the demonstrable need for and the benefits of the proposed development.

### 3. PRINCIPAL ISSUES

- 3.1 The Applicant summarises briefly the post-submission evidence and its position in relation to each of the Principal Issues identified in the Examining Authority's (ExA) Rule 6 letter (PD-005).

Principal issue	Applicant's concluding comments
Air Quality and Emissions	<p>Air quality and amenity are presented in Sections 21 and 22 of the Environmental Statement [APP-049]. Written responses to the written questions on this topic are in REP2-006. Oral and written responses were provided to questions raised in ISH2 (REP4-007).</p> <p>The Applicant's submissions demonstrate that there will be no adverse effects on air quality and emissions as a result of the proposed development. Emissions from the site are controlled under the Environmental Permits regulated by the Environment Agency and routine air quality monitoring is undertaken. The concentrations of the parameters that are monitored are compared with limits which are specified by the Environment Agency and are protective of human health and the environment. It is concluded that there will be no significant impacts associated with air quality as a result of the proposed site activities.</p> <p>Air quality is addressed in the SoCG with the Environment Agency which is presented at Appendix C in REP4-009. The Environment Agency agree that the emissions from the site will be adequately controlled under the Environmental Permit.</p> <p>No concerns have been raised by the UK Health and Security Agency or Natural England regarding the potential for significant impacts on air quality.</p> <p>The Applicant is content that all issues raised have been adequately addressed.</p>

Biodiversity	<p>The Applicant's responses to written questions on this topic are in REP2-006 and REP5-004. Oral and written responses were provided to questions raised in ISH2 (REP4-007).</p> <p>The proposed development includes habitat creation and biodiversity enhancement including in particular the development of substantially enhanced connectivity between currently disparate areas of protected woodland which has been a long term objective of local wildlife groups. The proposed measures will provide a Biodiversity Net Gain of over 110% for habitats and 550% for hedgerows. There will also be a net gain in watercourses through the creation of Swallow Brook. Details on Biodiversity Net Gain are presented at Section 9 and Section 13 of the Environmental Statement (APP-049). It has been agreed by Natural England (REP-5a002) that it remains appropriate for the use of Biodiversity Metric 3.0 for this project to continue.</p> <p>The Applicant has reached agreement with Butterfly Conservation (Appendix G of REP6-009), Natural England (PINS document reference 9.3 v5) and North Northamptonshire Council (Appendix B of REP6-009) (NNC) on all matters relating to biodiversity. This is evidenced in the final SoCGs with these organisations. Therefore, the Applicant is content that all issues raised have been adequately addressed.</p>
Climate change	<p>The Applicant's responses to written questions on these topics are in REP2-006. Oral responses were provided during ISH2 (REP4-007).</p> <p>Taking into account the information reviewed and presented in section 24 of the Environmental Statement and further consideration of the sources of greenhouse gases from the waste sector which contribute to the UK carbon budget it is concluded that the proposed development will not result in likely significant adverse effects on greenhouse gas emissions or on the ability of the UK to achieve its carbon budget targets. The Applicant has confirmed why its approach to the assessment of greenhouse gas emissions is appropriate for a development of this nature, given its limited propensity to contribute to the carbon budget.</p> <p>There have been no concerns regarding climate change raised by any statutory consultees or other interested parties. The Applicant is content that all issues raised by the ExA have been adequately addressed.</p>
Draft development consent order	<p>Responses to written questions on the dDCO are in REP2-006 and REP5-004. Oral responses were provided during ISH1 (REP4-007) and ISH3 (REP6-010). The Applicant submits it has adequately addressed all concerns raised by the ExA, the EA and NNC in relation to the dDCO.</p> <p>Document <b>AS-019</b>, is a request for a non material change which proposes minor changes to the dDCO to address late concerns raised by Anglian Water.</p>

	<p>The ExA has given a preliminary view on 23 June 2022 that the proposed change is likely to be considered non material under Rule 9. The dDCO has been agreed by the Local Planning Authority, North Northamptonshire Council as well as the Environment Agency.</p> <p>The Applicant provided their preferred drafting of the Protective Provisions with Anglian Water in the dDCO (V4) submitted at Deadline 6 (REP6-003) and retained requirement 19 of the dDCO pursuant to the request for a non material change which allows for a standoff to be agreed of up to a maximum of 30m.</p> <p>However, following agreement of bespoke Protective Provisions (which are incorporated into the dDCO (V5) submitted at Deadline 7) Anglian Water have agreed to a standoff from the water pipes of 20m. Changes have been made to Table DEC B1 of Appendix B of the DCO Environmental Commitments document (PINS document reference 6.5. V3 submitted at Deadline 7) to document this standoff distance.</p> <p>As the standoff from the water pipes is now agreed, there is no need for Requirement 19 as previously drafted. The Detailed Design wording in Requirement 3(1)(c) and 3(2) of the dDCO remains appropriate to control the development. The finished ground level contours will be determined in accordance with Requirement 3(2) based on the final location of the diverted, buried electricity cable, which will be agreed through the Protective Provisions agreed with Anglian Water and Western Power.</p> <p>A few changes to the wording of the dDCO were requested by the ExA in their Schedule of Changes to the dDCO dated 29 June 2022. The changes requested relate to the definition of water pipe standoff used in Regulation 19 and the protective provisions. As explained above, Requirement 19 is now removed and agreed protective provisions are included in the final version of the dDCO submitted at Deadline 7. All updates made to the dDCO throughout the examination are set out in full in the latest DCO Schedule of Changes submitted at Deadline 7.</p>
Ground conditions	<p>Ground condition issues were not raised in the Issue Specific Hearings on Environmental matters. The Applicant's responses to written questions on these topics are in REP2-006.</p> <p>There have been no specific concerns regarding ground conditions raised by any interested parties and the Applicant is content that all issues raised by the ExA have been adequately addressed.</p>
Historic environment	<p>Archaeology and cultural heritage is assessed in Section 16 of the Environmental Statement (APP-049). Historic environment issues were not raised in the Issue Specific Hearings on Environmental matters. The Archaeological Mitigation Strategy has been agreed with the former Northamptonshire County Archaeological Service and is presented at Appendix DEC A of the DCO Environmental Commitments document (REP6-008). North Northamptonshire Council agree in the SoCG (Appendix B of REP6-009) that with the</p>

	<p>proposed mitigation measures there will be no residual effects on cultural heritage and archaeology. There have been no concerns regarding the historic environment raised by any interested parties and the Applicant is content that all issues raised by the ExA have been adequately addressed.</p>
Human health	<p>Population including impacts on human health is addressed in Section 12 of the Environmental Statement (APP-049). Human health issues were not raised in the Issue Specific Hearings on Environmental matters. The Applicant's responses to written questions on these topics are in REP2-006.</p> <p>Emissions from the site are controlled under the Environmental Permits regulated by the Environment Agency. The Environmental Permits include emission limits which are protective of human health and the environment.</p> <p>There have been no concerns regarding the potential for significant effects on human health raised by any interested parties including the UK Health and Security Agency and the Environment Agency.</p> <p>The potential for the perception of harm to the quality of water in the water supply pipes running between areas of proposed landfill was raised by Anglian Water. This matter was addressed in ISH3 where the Applicant confirmed [REP6-010] that it has been active in its communications for many years to ensure a high level of understanding and to overcome misperceptions and no such misperceptions have been raised by the public in respect of this matter. Perception is only material where supported by cogent evidence in terms of planning consequences and the Applicant has demonstrated in its risk assessments for the proposed non material change [AS-025] that there is no pathway for contamination from the proposed development to enter the water pipes.</p> <p>The Applicant is content that all issues raised by the ExA have been adequately addressed.</p>
Infrastructure	<p>The Applicant's responses to written questions on this topic are in REP5-004. Oral and written responses were provided to questions raised in ISH3 (REP6-010).</p> <p>The Applicant has reached agreement with both Western Power Distribution and National Grid Gas on suitable protective provisions. The agreed SoCG for National Grid is presented at Appendix A of the Statement of Commonality respectively (PINS document reference 9.3 v5). The final draft SoCG with Western Power is presented at Appendix E of the Statement of Commonality. Western Power and Augean have concluded in principle their discussions in respect of Western Power's assets and outlined the position under a commercial agreement, the terms of which are confidential. The wording of the commercial agreement is agreed by both parties and is proceeding through the process of execution and completion by both parties.</p>



	<p>The holding objection by Western Power to the granting of the draft DCO will be withdrawn when the commercial agreement is executed in counterpart and completed. It is anticipated that the agreement will be completed by 2 August 2022.</p> <p>The current position regarding Anglian Water is set out in more detail from paragraph 3.2 to 3.9 below.</p>
Landscape and visual	<p>Landscape and visual effects are addressed in Section 14 of the Environmental Statement (APP-049). The Applicant's responses to written questions on these topics are in REP2-006 and REP5-004. Oral and written responses were provided to questions raised in ISH2 (REP4-007). The lack of any potential significant impacts associated with the proposed non material change were discussed at ISH3 [REP6-010] and are set out in the Supplementary Environmental Statement [AS-021] submitted with the non material change request.</p> <p>It is concluded that the landscape has the capacity to absorb the changes brought by the operations in the proposed development without any unacceptable adverse effects on landscape features. The proposed restoration scheme would deliver positive long term benefits for landscape features in terms of vegetation cover, habitat creation and public access. It is concluded that while there would be significant though temporary visual effects for a very limited number of visual receptors at specific times during the life of proposed development, the lack of any other notable visual effects reinforces the selection of the land to the immediate west as being appropriate for an extension to the existing ENRMF landfill. The proposed development would be restored in a manner in character with the surroundings and which would be visually appealing in the long term. These conclusions are agreed by North Northamptonshire Council in the SoCG (Appendix B of REP6-009).</p> <p>Following a request from the Examining Authority additional controls have been included within the dDCO to make it clear that only one 8 metre tall building may be constructed as part of Work No.3.</p> <p>The Applicant is content that all issues raised have been adequately addressed.</p>
Land use, soils and socio-economics	<p>Soil resources are addressed in Section 15 of the Environmental Statement (APP-049). Socio economic impacts are addressed in Section 23 of the Environmental Statement (APP-049) The use of the land and proposed restoration are addressed in Sections 5 to 9 of the Environmental Statement (APP-049). Land use, soils and socio-economics issues were not raised in the Issue Specific Hearings on Environmental matters. The Applicant's responses to written questions on these topics are in REP2-006 and REP5-004.</p> <p>In the SoCG with North Northamptonshire Council (Appendix B of REP6-009) the position on land use, soils and socio-economics has been agreed.</p>

	<p>Matters raised on behalf of a neighbouring landowner, N W Fiennes, regarding land use have been addressed through the SoCG (Appendix H to REP3-009).</p> <p>Responses to the matters raised on behalf of the Cecil Estate Family Trust are addressed in paragraph 3.10 to 3.13 below.</p> <p>Requirement 4 of the dDCO has been updated in light of discussions with NNC to include reference to the period for restoration and a programme for review meetings. There are no outstanding issues in respect of this topic.</p>
Noise and vibration	<p>Noise and vibration is addressed in Section 20 of the Environmental Statement (APP-049). The Applicant's responses to written questions on these topics are in REP2-006 and REP5-004. Oral and written responses were provided to questions raised in ISH2 (REP4-007).</p> <p>In the SoCG with North Northamptonshire Council (Appendix B of REP6-009) it is agreed that there will be no significant or unacceptable adverse noise impacts at noise sensitive locations resulting from the proposed development including the current ENRMF site. It has been explained in the Applicant's response to the Trust concerns regarding the potential impact of noise from the proposed development on a future commercial development in the woodland to the north and east of the application area that appropriate noise mitigation measures will be in place so that there would be no significant impact on any proposed commercial development in the former bomb dump area (REP3-010)</p> <p>The Applicant considers that there are no outstanding issues in respect of this topic.</p>
Safety and Security	<p>Site security measures are addressed in Section 7 of the Environmental Statement (APP_049). Safety and Security issues were not raised in the Issue Specific Hearings on Environmental matters. The Applicant's responses to written questions on these topics are in REP2-006.</p> <p>In the SoCG with North Northamptonshire Council (Appendix B of REP6-009) it is agreed that the site security arrangements are appropriate. Matters relating to site safety and security also are agreed in the SoCG with the Northants Police and Northants Fire and Rescue Service (Appendix F of REP2-025) and in the agreements with the Defence Infrastructure Organisation on behalf of the Ministry of Defence (document reference 7.7).</p> <p>There have been no concerns regarding site safety and security raised by any interested parties. The Applicant is content that all issues raised by the ExA have been adequately addressed. There are no outstanding issues with respect to this topic.</p>
Traffic and transport	<p>Transport and traffic are addressed in Section 19 of the Environmental Statement (APP-049). Traffic and transport issues were not raised in the Issue Specific Hearings on Environmental</p>

	<p>matters. The Applicant's responses to written questions on these topics are in REP2-006.</p> <p>In the SoCG with North Northamptonshire Council (Appendix B of REP6-009) it is agreed that there would be no significant impact on traffic safety or capacity as a result of the proposed development.'</p> <p>NCC agree that the Traffic Management Plan is appropriate and that the obligation relating to the provision of an annual contribution to highways maintenance is continued throughout the life of the development. The contribution is secured in the s106 agreement (REP6-007). The Applicant is content that all issues raised have been adequately addressed.</p>
Waste management	<p>The Applicant's responses to written questions on these topics are in REP2-006. Oral and written responses were provided to questions raised in ISH2 (REP4-007).</p> <p>The site operations will be the subject of a number of Environmental Permits for the waste management operations which will be regulated by the Environment Agency.</p> <p>There have been no concerns regarding waste management raised by any interested parties and the Applicant is content that all issues raised by the ExA have been adequately addressed.</p>
Water environment	<p>Water resources are addressed in Section 17 of the Environmental Statement (APP-049). The Applicant's responses to written questions on these topics are in REP2-006 and REP5-004. Oral and written responses were provided to questions raised in ISH2 (REP4-007).</p> <p>In the SoCG with North Northamptonshire Council (Appendix B of REP6-009) it is agreed that the proposed development can be undertaken without significant adverse impacts on surface water or groundwater flow or quality.</p> <p>In the SoCG with the Environment Agency (Appendix C of REP4-009) it is agreed that protection of groundwater and surface water at and in the vicinity of the site will be a requirement of the Environmental Permits and that those controls are designed to make sure that there will be no adverse effect on water resources in the vicinity of the site.</p> <p>The current position regarding the responses from the Trust is set out in more detail from paragraph 3.10 to 3.13 below. The Applicant considers that there are no outstanding issues in respect of this topic.</p>

### 3.2 Outstanding issues with Anglian Water

3.3 Despite discussions and early agreements with Anglian Water commencing in 2020 concerns were only raised by Anglian Water in March 2022 during the Examination stage

of the application. The Applicant has undertaken significant work to particularise and understand the precise concerns of Anglian Water and to consider in detail the risks to which these concerns relate.

- 3.4 It is demonstrated clearly in the Pipeline Risk Assessment (AS-025) and the pipeline engineering report (AS-026) submitted with the Non Material Change request that the original design standoff dimension proposed by Augean of 7m from the fence line and a total of 9.5m from the landfill excavation is more than adequate in all cases to make sure that the pipelines will be unaffected by any excavations taking place, and the presence of the excavation activity will not increase the likelihood of pipe failure from any shrink/swell effects associated with the excavation of the clay. In addition the risk assessments demonstrate that based on the original design standoff from the water pipes, the calculated crater diameter following an unlikely catastrophic failure event would not result in any effect on the structural integrity of the landfill containment.
- 3.5 It is understood from discussions with Anglian Water during the meeting on 5 July 2022 and from the response to the Non Material Change consultation that they do not present any challenges to the evidence presented in the form of the findings of the risk assessments. Accordingly no clear evidence has been presented by Anglian Water to support their concerns and as things stand it is assumed that they accept the findings of the risk assessments presented with the Non Material Change application.
- 3.6 It is clear from the risk assessments presented in the Pipeline Risk Assessment (AS-025) that the standoff distances needed for access for repairs is the limiting factor (ie the greatest distance) to determine the standoff from the water pipes. This is because the standoff distance needed so that there is no effect from the landfill activities on the structural integrity of the pipes is less (i.e. shorter) than the distance identified as necessary for repair access purposes.
- 3.7 The evidence presented in the risk assessments demonstrates that the original standoff proposed of 7m from each pipeline together with an additional 2.5m to the nearest point of the landfill excavation is appropriate for the protection of the pipes and the adjacent landfill. The final standoff design needs to be agreed on the basis of the space needed for access for maintenance and repairs in the low probability event of a failure. It is demonstrated that safe access could easily be accommodated in a standoff of 8.5m and Anglian Water have stated (REP4-013) that a distance of up to 20m from each pipeline would be 'ideal'. Accordingly, the proposed Non Material Change readily allows for a reasonable agreement on a suitable and safe standoff distance through Requirement 19 which had been added to the dDCO (V3) (AS-011).
- 3.8 It is important that the final agreed standoff distance is properly justified. This application is a NSIP, the need for the void and the space that it provides is nationally significant. If an unnecessarily wide standoff is imposed on the development, this would reduce the void available to the disbenefit of being able to take the nation's waste.
- 3.9 See above under the dDCO heading in the table the latest position on the final agreement of the stand off, and the Protective Provisions. As stated above, the standoff from the water pipes is now agreed at 20m therefore there is no need for Requirement 19 as previously drafted. The Detailed Design wording in Requirement 3(1)(c) and 3(2) of the dDCO and the details in Table DECB1 (V3) (PINS document reference 6.5 submitted at Deadline 7) remain appropriate to control the development. The finished ground level contours will be determined in accordance with Requirement 3(2) based on the final location of the diverted, buried electricity cable, which will be agreed through the Protective Provisions agreed with Anglian Water and Western Power.

### 3.10 **Outstanding issues with Cecil Estate Family Trust (the Trust)**

- 3.11 A number of issues of concern have been raised by the Trust during the Examination most of which have been demonstrably unsubstantiated and/or have subsequently been withdrawn by representatives for the Trust, for example concerns regarding the presence of a bund along the eastern boundary of the proposed western extension with the woodland (Item 5(a) discussed at ISH2 REP4-007), concerns that no biodiversity gains would be seen until the completion of the development (Item 5(e) discussed at ISH2 REP4-007) and concerns regarding groundwater flow direction (Item 7(a)(ii) discussed at ISH 2 REP4-007). One area of concern raised by the Trust is with respect to the drainage of surface water to the swallow hole feature at the eastern boundary of the proposed western extension to the site as shown on the plan submitted as AS-006 which was premised on the incorrect assumption that the swallow hole was on the Trust land. It has been demonstrated that the discharge point within the swallow hole is within the land under option to the applicant and whilst there is a slight difference in the survey information obtained by surveys carried out by both parties (as shown in the photograph at Annex A to REP5-004) this important point has not been challenged.
- 3.12 The Applicant remains firmly of the opinion that no express legal rights are required for this discharge because the discharge point is wholly within land to be acquired by the Applicant pursuant to the option referred to in the Book of Reference (PINS document reference 3.4. APP-020) and surface water from the proposed western extension land does not need to cross any land owned by the Trust. Even if additional rights were required, the proposed western extension land has been draining into the swallow hole in the same way for at least 40 years and this has been confirmed by the current landowner. Therefore, prescriptive rights have in fact been acquired and no powers to acquire any further rights are required. The surface water management scheme has been designed so that there will not be any change to the existing surface water runoff catchments which currently drain into the swallow hole, so the Proposed Development will cause no material change to and therefore have no impact on the existing drainage arrangements.
- 3.13 The issues which are agreed and which are not agreed between the applicant and the Trust are set out in a draft Statement of Common Ground on which further comments are awaited from the Trust. It is hoped that a final statement of areas agreed and disagreed can be finalised shortly and submitted to the examination.

## 4. **DECISION MAKING FRAMEWORK**

- 4.1 In terms of Section 104(3) of the Planning Act 2008, the Secretary of State must determine the application in accordance with relevant National Policy Statements.
- 4.2 Part 4 of the NPS deals with assessment principles and sets out certain general policies in accordance with which applications relating to hazardous waste infrastructure are to be decided. Paragraph 4.1.2 makes it clear that:

*“Subject to any more detailed policies set out in the Hazardous Waste NPSs [sic] and the legal constraints set out in the Planning Act, there should be a presumption in favour of granting consent to applications for hazardous waste NSIPs, which clearly meet the need for such infrastructure established in this NPS”*

- 4.3 Paragraph 4.1.3 states that:

*“In considering any proposed development, and in particular when weighing its adverse impacts against its benefits, the Examining Authority and the Secretary of State (as decision maker) should take into account:*

- *its potential benefits including its contribution to meeting the need for hazardous waste infrastructure, job creation and any long-term or wider benefits; and*

- *its potential adverse impacts, including any longer-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts”.*

4.4 Paragraph 4.1.4 explains that in this context, environmental, social and economic benefits and adverse impacts should be considered at national, regional and local levels.

4.5 Table PS6.1 and Section 12 of the Planning Statement (APP-103) set out the key aspects of this balancing exercise. Section 104(7) of the Planning Act 2008 provides a balancing consideration whereby the adverse effects of the development are required to be considered against its benefits. In part, the relevant matters will have already been considered when evaluating the various positives and negatives in the context of the National Policy Statements. This provision does however enable the Secretary of State to have regard to other factors over and beyond the National Policy Statements.

4.6 The Applicant submits that when properly construed, the granting of consent would be consistent with the NPS and would invite the ExA to make such a recommendation to the Secretary of State.

## 5. CONCLUSION

5.1 **Policy and presumption in favour of consent:** As identified at the outset of this submission the NPS contains a presumption in favour of granting consent for Hazardous Waste Nationally Significant Infrastructure Projects. This presumption was based on the needs case articulated at the time the NPS was adopted and applies to the types of development proposed at ENRMF.

5.2 **Extensive Engagement:** The Applicant has continued to engage with consultees and interested parties and has taken on board points raised. The outcome of this is reflected by the very limited number of outstanding issues at the close of this Examination. In particular, the Applicant has engaged extensively with key statutory consultees as is evident in the development of eleven Statements of Common Ground (SoCGs) and reaching final agreement on all but two of these (Anglian Water and the Trust) by Deadline 7.

5.3 **Effective mitigation:** The Applicant considers that it has done what it can to mitigate the effects that the proposed development is likely to have. There will be controls on emissions for the proposed development included in the Environmental Permits which will be issued and regulated by the Environment Agency. The controls in the Environmental Permits are designed to be protective of the environment and human health.

5.4 **Benefits of the Proposed Development:** The proposed development will provide a safe facility for the continued essential management of hazardous waste and LLW for which there is a demonstrable need. There are socio-economic benefits at a local, regional and national level. The restoration of the proposed development will provide significant Biodiversity Net Gain and provide linkages between two nature conservation sites which has been a long term objective of wildlife groups.

5.5 **Conclusion:** Having full regard to the relevant policies and these submissions, the positive benefits of the proposed development outweigh any potential adverse impacts and consent should be granted.