



The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

The Planning Act 2008

**East Northants Resource Management Facility  
Western Extension**

Examining Authority's Report  
of Findings and Conclusions

and

Recommendation to the Secretary of State for  
Levelling Up, Housing and Communities

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Examining Authority

**Simon Warder** MA BSc(Hons) DipUD(Dist) MRTPI

**2 November 2022**

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# OVERVIEW

File Ref: WS010005

The application, dated 7 September 2021, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 8 September 2021.

The Applicant is Augean South Limited.

The application was accepted for Examination on 24 September 2021.

The Examination of the application began on 3 February 2022 and was completed on 2 August 2022.

The Proposed Development comprises the construction of a new landfill void to the west of the currently consented hazardous waste and low-level radioactive waste landfill area and the alteration of the consented restoration profile. The proposal would increase the consented throughput of waste to the existing waste treatment and recovery facility and increase the total input rate to the site. It would also extend the operational period of the current site activities and the western extension to 2046.

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should make the Order in the form attached.

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# Department for Levelling Up, Housing and Communities

## EAST NORTHANTS RESOURCE MANAGEMENT FACILITY

### THE EXAMINING AUTHORITY'S RECOMMENDATION REPORT 2 NOVEMBER 2022

#### ERRATA

Paras 1.1.1, 1.4.13, 1.4.18, 1.9.1 – lower case 'application' for consistency with the rest of the report.

Para 1.1.5 – 2nd bullet 3<sup>rd</sup> line - capital 'Order'.

Para 1.1.9 – bullet 1 last line insert '30' between s and (2).

Page 4 – the footnote reference to Guidance on associated development applications for major infrastructure Projects (April 2013) should be to the former Department for Communities and Local Government not the Secretary of State.

Paras 1.5.2 and 1.5.3 – the references to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) should be to the 2017 Regulations. Hence para 1.5.2 line 2 'Regulation 10', line 3 '2017', line 7 'Regulation 8 (1)(b)', and para 1.5.3 line 2 'Regulation 6 (2) (a)'.

Para 1.5.4 – 'Regulation 16'.

Para 2.2.2- line 5 space between '150,000' and 'tonnes'.

Para 3.4.10 – line 3 delete 'comprising'.

Para 3.10.2 – add 'Council' after 'North Northamptonshire'.

Para 3.11.1 – line 1 replace 'on' with 'in'.

Para 4.2.1 – line 8 delete 'Housing'.

Para 4.5.26 – delete 'for Levelling Up, Housing and Communities (SoS)'.

Para 4.8.4 - line 2 insert 'be made' after 'may'.

Para 4.9.9 – full stop at end of paragraph.

Para 4.9.20 – line 2 delete 'PA'.

Para 4.9.68 – last sentence 'EMMAP'

Para 4.9.70 - line 3 insert 'the' before 'SoCG'.

Para 4.12.11 – line 2 space after 'ESC'.

Para 4.14.1 – penultimate line 'principle' not 'principal'.

Para 4.15.4 – line 2 insert 'the' before 'proposal'.

Para 4.17.20 – last line 'addressed'.

Para 4.17.24 – penultimate line remove possessive apostrophe from ‘HGVs’.

Para 4.18.11 – full stop at end of the paragraph.

Para 4.18.72 – line 3 ‘2 litres’ not ‘2litre’.

Para 6.4.4 – line 2 delete ‘Housing and Communities’ and replace with ‘Housing, Communities and Local Government’.

Para 6.4.28 – third sentence ‘proposal’.

Para 6.4.50 – line 3 insert ‘water’ after ‘ground’.

Para 8.2.8 – full stop at end of the paragraph.

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# **1. INTRODUCTION**

## **1.1. INTRODUCTION TO THE EXAMINATION**

- 1.1.1. The Application for the East Northants Resource Management Facility (ENRMF) (the Proposed Development) was submitted by Augean South Limited (the Applicant) to the Planning Inspectorate (PINS) on 7 September 2021 under section(s) 31 of the Planning Act 2008 (PA2008) and accepted for Examination under s55 of the PA2008 on 24 September 2021 [PD-001]. Individual document references to the Examination Library in this report are enclosed in square brackets []. The final version of the Examination Library is at Appendix A.
- 1.1.2. The location of the Proposed Development is shown on the site location plan [APP-050]. The site lies within the administrative area of North Northamptonshire and is wholly in England.
- 1.1.3. The Proposed Development is an extension of the existing ENRMF which was granted consent under a Development Consent Order dated 2013 (the original Order). A fuller planning history of the existing ENRMF is set out in Section 2.2 below. Section 2.3 explains the relationship between the existing facility and the Proposed Development.
- 1.1.4. The Proposed Development comprises:
- the construction of a new landfill void in the proposed western extension for the continued disposal of the same range of predominantly hazardous wastes and a limited amount of low-level radioactive waste (LLW) as deposited at the existing ENRMF with a capacity of greater than 100,000 tonnes per annum (tpa) of hazardous waste;
  - the creation of a coherent landform for the restoration of the existing landfill facility and the proposed western extension resulting in the construction of new landfill void in the existing landfill facility to connect with the proposed western extension with a capacity of greater than 100,000tpa of hazardous waste. The construction of a total additional landfill void of approximately 2.5 million cubic metres;
  - the winning and working of minerals in the western extension in order to create the landfill void and provide extracted materials for use on site as well as the exportation of clay and overburden for use in engineering, restoration and general fill at other sites. The temporary stockpiling of clay, overburden and soils for use in the construction of the engineered containment system at the site and restoration of the site;
  - the continued direct inputting of waste into the existing landfill facility and the proposed western extension at a rate of up to 150,000tpa;

- an increase in the hazardous waste throughput of the existing waste treatment and recovery facility from 200,000tpa to 250,000tpa, together with the extension of the treatment area to the south. The proposed throughput comprises an increase of 50,000 tpa compared with the rate consented in the original Order. A combined total waste importation rate limit to the site of 300,000tpa, which is an increase of 50,000tpa compared with the rate consented in the original Order;
- deposition of LLW in the proposed western extension at the lower end of the defined activity range with a typical radioactivity level of up to 200 becquerels per gram;
- the diversion of the existing overhead electricity cable crossing the proposed western extension into a trench following the route of existing water pipes and the western margin of the site;
- restoration of the whole site to generally domed profiles to create a coherent restoration landform with the aim of improving biodiversity and nature conservation interest using the soils available at the site as well as suitable imported materials. Planting to create a mosaic structure of woodland with shrubby edges, flower meadow grassland, scattered trees, hedgerows and waterbodies; and
- completion of the landfilling and restoration operations and removal of the existing waste treatment and recovery facility by December 2046 with the retention of long-term management infrastructure beyond that date.

1.1.5. Schedule 1 of the draft Development Consent Order (dDCO) sets out the authorised development and divides it into the following:

- Work No 1 - a hazardous waste landfill facility for the disposal, at a direct input rate of up to 150,000tpa, of predominantly hazardous waste together with small quantities of LLW. This is divided into Works No 1A which equates to the existing ENRMF site and Work No 1B which is the proposed western extension;
- Work No 2 - a hazardous waste facility, consisting of the alteration of the existing waste treatment and recovery facility to increase its capacity from 200,000tpa (in the original order) to 250,000tpa of predominantly hazardous waste;
- Work No 3 – the site reception area including buildings, site access and surfaced roads, parking, weighbridge, wheel washing facilities, cess pit and fuel storage tanks;
- Work No 4 - the conversion of a culverted drain to an open watercourse with associated ecological works;
- Work No 5 - the diversion of an overhead electricity cable; and
- additional works including monitoring boreholes; leachate storage tanks; bunded fuel storage tanks; security cameras; lighting; internal site roads; hardstanding and bunding; boundary fencing; surface water collection ponds; surface and foul water drainage;

the restoration of the land including the creation of footpaths and tracks for public access and retention of the car parking area; and aftercare.

- 1.1.6. The Explanatory Memorandum (EM) [REP7-005] confirms that Work Nos 1 and 2 are the principal works falling within the definition of a Nationally Significant Infrastructure Project (NSIP) for the purposes of s14(1)(p), 30(1) and 30(3) of the PA2008. The winning and working of minerals to create the landfill void would be an opportunist benefit of that operation. Work Nos 3 and 4 and the additional works comprise associated development as defined in relevant guidance<sup>1</sup>. In accordance with the guidance, the associated works comprise supporting development which is necessary to ensure the effective operation of the primary development. The works would also be proportionate in scale and nature to the NSIP.
- 1.1.7. The legislative tests for whether the Proposed Development is an NSIP were considered by the Secretary of State for Levelling Up, Housing and Communities (SoS) in its decision to accept the application for Examination in accordance with s55 of PA2008.
- 1.1.8. Paragraph 2.2.1 of the National Policy Statement for Hazardous Waste (NPSHW) advises that proposals for hazardous waste facilities that might handle a relatively small proportion of LLW alongside hazardous waste are within the scope of this NPSHW where those facilities are NSIPs. In this case, Requirement 8 of the dDCO limits the total quantity of LLW which would be accepted at the waste treatment and recovery facility and the landfill to some 20% of the total waste accepted over the life-time of the Proposed Development. This proportion is consistent with that allowed under the original Order and I consider that it amounts to a 'relatively small proportion' for the purpose of determining whether the Proposed Development is an NSIP.
- 1.1.9. PINS agreed with the Applicant's view stated in the application form [APP-002] that the Proposed Development is an NSIP as it includes:
- the disposal within the western extension of predominantly hazardous wastes and a limited amount of LLW with a capacity of greater than 100,000tpa of hazardous waste which satisfies s30(1) and s(2)(a) of PA2008;
  - the construction of new landfill void in the existing landfill facility with a capacity of greater than 100,000tpa of hazardous waste which satisfies s30(1) and s30(2)(a) of PA2008; and
  - an increase in the hazardous waste throughput of the existing waste treatment and recovery facility of 50,000tpa compared with the rate consented in the original Order which satisfies s30(3) and s30(4)(b) of PA2008.

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<sup>1</sup> Secretary of State for Communities and Local Government: Guidance on associated development applications for major infrastructure Projects (April 2013).

- 1.1.10. The Proposed Development therefore requires development consent in accordance with s31 of the PA2008 and meets the definition of an NSIP set out in s14(1)(p).
- 1.1.11. In this report, 'the site' means the red line boundary as shown on the Works Plan [APP-006], 'the existing ENRMF' means the existing facility as defined by Work No 1A on the Works Plan, and 'the western extension' means the area defined by Work No 1B on that Plan.

## **1.2. APPOINTMENT OF THE EXAMINING AUTHORITY**

- 1.2.1. On 10 December 2021, Simon Warder was appointed as the Examining Authority (ExA) for the application under s61 and s79 of PA2008 [PD-004].

## **1.3. THE PERSONS INVOLVED IN THE EXAMINATION**

- 1.3.1. The persons involved in the Examination were:
- Persons who were entitled to be Interested Parties (IPs) because they had made a relevant representation (RR) or were a Statutory Party who requested to become an IP; and
  - Other persons, who were invited to participate in the Examination by the ExA because they were either affected by it in some other relevant way or because they had particular expertise or evidence that the ExA considered to be necessary to inform the Examination.

## **1.4. THE EXAMINATION AND PROCEDURAL DECISIONS**

- 1.4.1. The Examination began on 2 February 2022 and concluded on 2 August 2022. The principal components of, and events during, the Examination are summarised below.

### **Preliminary Meeting**

- 1.4.2. On 6 January 2022, the ExA wrote to all IPs, Statutory Parties and Other Persons under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) (the Rule 6 letter) inviting them to the Preliminary Meeting (PM) [PD-005], outlining:
- the arrangements and agenda for the PM;
  - an Initial Assessment of the Principal Issues (IAPI);
  - the draft Examination Timetable;
  - the availability of RRs and application documents; and
  - the ExA's procedural decisions.
- 1.4.3. The PM took place on 2 February 2022 as a virtual event using the Microsoft Teams platform. An audio recording [EV2-001], transcript [EV2-002] and note of the meeting [EV2-003] were published on the PINS [National Infrastructure website](#).

- 1.4.4. The ExA's subsequent procedural decisions and the Examination Timetable took full account of matters raised at the PM. They were provided in the Rule 8 letter [PD-007], dated 9 February 2022.

#### **Key Procedural Decisions**

- 1.4.5. All the procedural decisions set out in the Rule 8 letter were confined to the Examination process and did not bear on the ExA's consideration of the planning merits of the Proposed Development. Further, they were generally complied with by the Applicant and relevant IPs. The decisions can be obtained from the Rule 8 letter [PD-007] and so there is no need to reiterate them here.
- 1.4.6. The Applicant submitted a request for a proposed change to the application on 17 June 2022 which it considered was non-material. The details of the change and the consultation undertaken are set out in Section 2.4 of this report and the effects of the proposed change in Chapter 4.
- 1.4.7. In a Rule 8(3) letter dated 23 June [PD-014] the ExA invited comments on the Consultation Report submitted with the change request by 29 July 2022. In order to facilitate the tight timescale towards the end of the Examination period, the same letter set out the ExA's provisional view that the proposed change would be non-material. Following receipt of the Consultation Report the ExA formally accepted the proposed change as a non-material amendment in a Rule 9 letter dated 22 July 2022 [PD-015].

#### **Site Inspections**

- 1.4.8. I held site inspections to ensure an adequate understanding of the Proposed Development within its site and surroundings and its physical and spatial effects.
- 1.4.9. Where the matters for inspection can be viewed from the public domain and there are no other considerations such as personal safety or the need for the identification of relevant features or processes, an Unaccompanied Site Inspection (USI) is held. Where an inspection must be made on land requiring consent for access, there are safety or other technical considerations and / or there are requests made to accompany an inspection, an Accompanied Site Inspection (ASI) is held.
- 1.4.10. I held a USI on 20 January 2022 in order to gain an understanding of the setting of the site, its transport links and nearby services, facilities and recreational routes. A site note providing a procedural record of the USI can be found in the Examination Library under reference [EV1-001].
- 1.4.11. I held an ASI on 5 April 2022. The ASI took in the existing site and its facilities, the site of the proposed extension, together with adjoining land including that owned by the Cecil Estate Family Trust (the Trust). The itinerary for the ASI can be found in the

Examination Library at [EV3-001] and a note providing more detail of the locations visited can be found at [EV3-002].

- 1.4.12. I have had regard to the information and impressions obtained during my site inspections in all relevant sections of this report.

### **Hearing Processes**

- 1.4.13. Hearings are held in two main circumstances:

- to respond to specific requests from persons who have a right to be heard. There was not a request by an IP to be heard at an Open Floor Hearing and therefore no such hearing took place. Since the Application does not involve Compulsory Acquisition (CA) or Temporary Possession there was no requirement to hold Compulsory Acquisition Hearings; and
- to address matters where the ExA considers that a hearing is necessary to enquire orally into matters under Examination, typically because they are complex, there is an element of contention or disagreement, or the application of relevant law or policy is not clear.

- 1.4.14. I held a number of hearings to ensure the thorough Examination of the issues raised by the application. Issue Specific Hearings (ISHs) under s91 of PA2008 were held virtually using Microsoft Teams for the sake of efficiency given the relatively small number of participants.

- 1.4.15. ISH1 was held on the matter of the draft Development Consent Order (dDCO) on 29 March 2022. The agenda for the hearing can be found at [EV4-000], a transcript at [EV4-001] and a recording at [EV4-005].

- 1.4.16. ISH2 was also held on 29 March 2022. It covered environmental matters including environmental controls, air quality, emissions and noise, biodiversity, waste management and the water environment. The agenda for the hearing can be found at [EV4-000], transcripts at [EV4-002, EV4-003 and EV4-004] and recordings at [EV4-006, EV4-007 and EV4-008]. My Action Point list following these hearings is at [EV4-009].

- 1.4.17. ISH3 was held on 8 June 2022. Its main purpose was to address the concerns of Anglian Water (AW) regarding the effect of the Proposed Development on its pipelines which cross the application site. The hearing also provided an opportunity to update the Examination on other matters. The agenda for the hearing can be found at [EV4-010], transcripts at [EV4-011 and EV4-012] and recordings at [EV4-013 and EV4-014]. My Action Point list following this hearing is at [EV4-015].

### **Written Processes**

- 1.4.18. Examination under PA2008 is primarily a written process, in which the ExA has regard to written material forming the Application and arising from the Examination. All of this material is recorded in the Examination Library (Appendix A) and published online. As the text includes references to documents in the Examination Library, this report does not contain extensive summaries of all documents and representations, although full regard has been had to them in my conclusions. I have considered all important and relevant matters arising from them.
- 1.4.19. Key written sources are set out further below.

### **Relevant Representations**

- 1.4.20. Seventeen RRs were received by PINS [RR-001 to RR-017]. All makers of RRs received the Rule 6 letter [PD-005] and were provided with an opportunity to become involved in the Examination as IPs. All RRs have been fully considered by the ExA. The issues that they raise are considered throughout this report.

### **Written Representations and Other Examination Documents**

- 1.4.21. The Applicant and IPs and other persons were provided with opportunities to:
- make written representations (WRs) (Deadline 2(D2));
  - comment on WRs made by the Applicant and other parties (D3);
  - summarise their oral submissions at hearings in writing (D4 and D6);
  - make other written submissions requested or accepted by the ExA (D2, D3, D4, D5, D5a, D6 and D7);
  - comment on the ExA's proposed changes to the dDCO [PD-013] published on 29 June 2022 by D7; and
  - comment on the Consultation Report on the Applicant's proposed change to the application [PD-014] by D8.
- 1.4.22. I also used my discretion to accept additional submissions from the Applicant and Huntingdonshire District Council. I have fully considered all WRs and other Examination documents. The issues that they raise are considered throughout this report.

### **Local Impact Report**

- 1.4.23. A Local Impact Report (LIR) is a report made by a relevant local authority giving details of the likely impact of the Proposed Development on the authority's area (or any part of that area) that has been invited and submitted to the ExA under s60 PA2008.

- 1.4.24. One LIR was received from North Northamptonshire Council (NNC) [REP2-027]. It has been taken fully into account in all relevant chapters of this report.

### ***Statements of Common Ground***

- 1.4.25. A Statement of Common Ground (SoCG) is a statement agreed between the applicant and one or more IPs, recording matters that are agreed between them.
- 1.4.26. Unless noted below, the SoCGs are final and signed versions. All of the documents listed below are appended to the Applicant's Statement of Community V6 [REP8-008]:
- National Grid Gas plc (Appendix A);
  - NNC (Appendix B);
  - Environment Agency (EA) (Appendix C);
  - Natural England (NE) (Appendix D);
  - Western Power Distribution (East Midlands) plc (WPD) (Appendix E). This SoCG is in draft for reasons related to a separate commercial agreement which was not available at the close of the Examination. However, correspondence relating to the stand-off distance between the WPD electricity line and the AW pipelines has been submitted and I consider this further at Section 4.16 of the report,
  - Northants Police and Northants Fire and Rescue (Appendix F);
  - Butterfly Conservation (Appendix G);
  - NW Fiennes (Appendix H);
  - Defence Infrastructure Organisation (DIO) (Appendix I), The submitted SoCG is in draft only. However, Appendix I also includes correspondence between the DIO and the Applicant which confirms that the DIO's initial concerns have been addressed;
  - Cecil Estate Family Trust (Appendix J). This SoCG was submitted in draft only and, therefore, limited weight can be attached to it. I deal with the main issues in dispute between the Trust and the Applicant in Sections 4.8 (odour), 4.14 (land use), 4.15 (noise), 4.16 (pollution) and 4.18 (water resources) of the report; and
  - AW (Appendix K).
- 1.4.27. I have taken into account the final SoCGs in all relevant chapters of this report.

### ***Written Questions***

- 1.4.28. I asked two rounds of written questions.



- First written questions (ExQ1) [PD-006] and procedural decisions were set out in the Rule 8 letter [PD-007], dated 9 February 2022; and
  - Further written questions (ExQ2) [PD-010] were issued on 27 April 2022.
- 1.4.29. The following requests for further information and comments under Rule 17 of the EPR were issued on:
- 5 May 2022 [PD-011] sought views on the publication by NE of an updated version of its Biodiversity Net Gain (BNG) Metric as well as a request for information which was missing from the Applicant's Habitats Regulations Assessment (HRA) No Significant Effects Report; and
  - 25 July 2022 [PD-016] sought clarification of the Applicant's proposal for the separation distance between the electricity cable and the water pipelines and how this would be controlled through the Development Consent Order (DCO).
- 1.4.30. All responses to my written questions have been fully considered and taken into account in all relevant chapters of this report.

#### **Requests to Join and Leave the Examination**

- 1.4.31. AW was not an IP, but requested to participate in the Examination in order to present its concerns regarding the effect of the Proposed Development on its pipelines. In view of AW's status as a statutory undertaker and the potential for the proposal to affect its assets, I agreed to this request.
- 1.4.32. No IPs formally requested to leave the Examination.

### **1.5. ENVIRONMENTAL IMPACT ASSESSMENT**

- 1.5.1. The Proposed Development is development for which an Environmental Impact Assessment (EIA) is required (EIA development).
- 1.5.2. On 1 July 2020 the Applicant submitted a Scoping Report [APP-080] to the SoS under Regulation 8 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (the EIA Regulations) in order to request an opinion about the scope of the Environmental Statement (ES) to be prepared (a Scoping Opinion). It follows that the Applicant is deemed to have notified the Secretary of State under Regulation 6(1)(b) of the EIA Regulations that it proposes to provide an ES in respect of the project.
- 1.5.3. On 10 August 2020 PINS provided a Scoping Opinion [APP-081]. Therefore, in accordance with Regulation 4(2)(a) of the EIA Regulations, the Proposed Development was determined to be EIA development, and the application was accompanied by an ES (submitted on 24 September 2021).

- 1.5.4. On 10 December 2021 the Applicant provided PINS with certificates confirming that s56 and s59 of PA2008 and Regulation 13 of the EIA Regulations had been complied with [OD-002] [OD-003].
- 1.5.5. Consideration is given to the adequacy of the ES and matters arising from it in the relevant topic areas at Chapter 4 and throughout this report.
- 1.5.6. The Applicant's proposed changes to the application were accompanied by documents including a Biodiversity Net Gain Review, [AS-027], a Supplementary Landscape and Visual Impact Assessment [AS-028] and a Supplementary ES [AS-021]. These are considered in Chapter 4 of the report.

## **1.6. HABITATS REGULATIONS ASSESSMENT**

- 1.6.1. The Examination must include a process that provides sufficient information to enable the SoS to meet its statutory duties as the competent authority under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) relating to European protected sites. The Applicant provided a HRA Screening Report [APP-102] with its application.
- 1.6.2. Consideration is given to the adequacy of the HRA Report, associated information and evidence and the matters arising from it in Chapter 5 of this report.

## **1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS**

- 1.7.1. By the end of the Examination, the Applicant had entered into an agreement with NNC and Howard Farms Limited under s106 of the Town and Country Planning Act 1990 (counterpart at [REP8-007]). The Agreement provides for the payment of a contribution towards a Community Fund based on the amount of LLW waste deposited at the site, together with a highway contribution of £5000 per year. The Agreement specifies the purposes for which the Community Fund may be used. In essence, the Agreement replicates a similar agreement which was in force under the original DCO.
- 1.7.2. The Applicant considers that there will be no harm arising from the disposition of LLW waste and therefore no requirement for mitigation. On this basis, the parties agree that the contribution towards the Community Fund is not a material planning consideration. As such, I have not taken this element of the Agreement into account in my consideration of the application.
- 1.7.3. The Applicant intends to enter into an agreement with WPD to deal with the relocation of its apparatus within the site (Work No 5). The agreement has not been submitted to the Examination. However, having regard to the terms of the draft SoCG, related correspondence and the Protective Provisions agreed between the Applicant and WPD, there is no reason to believe that completion of the agreement would prove to be an impediment to the implementation of the DCO.

- 1.7.4. The Applicant has entered into an option agreement [REP2-018] with Howard Farms Limited, the owner of the western extension land. The agreement gives the Applicant the option to purchase that land at an agreed base price (subject to indexation) at any time in the option period (up to September 2029). The agreement allows for that date to be extended in the event that the necessary consents are not in place three months before the end of the option period.
- 1.7.5. The agreement includes clauses which require the landowner to support the Applicant in securing the necessary consents for the Proposed Development, including the DCO. On this basis, I am content that this agreement gives the Applicant sufficient control over the western extension land to enable it to implement the DCO should consent be granted.

## **1.8. OTHER CONSENTS**

- 1.8.1. The application documentation and questions during the Examination have identified the following consents that would be required for the Proposed Development, in addition to Development Consent under PA2008. The latest position on these is recorded below.
- 1.8.2. Existing operations at the site are the subject of Environmental Permits (EP) for:
- the disposal of hazardous waste (permit reference EPR/TP3430GW V005, dated 5 October 2015);
  - the waste treatment and recovery facility (permit reference EPR/YP3138XB/V005, dated 30 June 2015 and variation reference EPR/YP3138XB/V006, dated 18 February 2021); and
  - the disposal of LLW (permit reference FD3598TD, dated 26 February 2016).
- 1.8.3. Variations of the existing EPs for the existing operations are required to take account of the Proposed Development. Applications for the disposal of hazardous waste (application ref EPR/TP3430GW/V005, duly made 4 March 2022) and the waste treatment and recovery facility (application ref EPR/YP3138XB/007, duly made 18 January 2022) have been submitted to the EA by the Applicant. I sought updates on the progress of these applications during the Examination.
- 1.8.4. Both applications remained undetermined when the Examination closed. Nevertheless, the Applicant anticipated that the control mechanisms, management plans, limitations, conditions and monitoring requirements will be similar to those in the current EPs. Additional requirements to reflect the proposed changes in processing and throughput, as well as recent guidance issued by the EA, would be applied to the waste treatment EP.
- 1.8.5. An application to vary the LLW EP had not been submitted at the close of the Examination. The Applicant explained that work on the

Environmental Safety Case to support the application was on-going, but the application could not be submitted until details of the Hydrogeological Risk Assessment which was submitted to support the hazardous waste landfill application are agreed with the EA. The Applicant anticipated that the control mechanisms, management plans, limitations, conditions and monitoring requirements will be similar to those in the current LLW EP.

- 1.8.6. I have considered the circumstances in relation to EP variations. The relationship between the ES assessments and the controls and mitigation to be provided through the EPs is considered in the relevant topic areas in Chapter 4 of the report.
- 1.8.7. Based on the evidence submitted by the Applicant and the EA (see SoCG [REP8-008 Appendix C]) and both parties' responses to ExQ2 [REP5-004 and REP5-014]), there is no substantive evidence to suggest that the necessary variations of the EPs will not be granted in due course. In accordance with the advice at para 4.7.10 of the NPSHW, and without prejudice to the exercise of discretion by future decision-makers, I consider that the absence of the varied EPs is not a good reason to refuse consent for the DCO.
- 1.8.8. NE has issued a letter of no impediment in respect of the Applicant's proposals for a mitigation licence for great crested newts [REP6-015]. No other species licence applications are required from NE.

## **1.9. STRUCTURE OF THIS REPORT**

- 1.9.1. The structure of this report is as follows:
- **Chapter 1** introduces the reader to the Application, the processes used to carry out the Examination and make this report;
  - **Chapter 2** describes the site and its surroundings, the Proposed Development, its planning history and that of related projects;
  - **Chapter 3** records the legal and policy context for the SoS's decision;
  - **Chapter 4** sets out the planning issues that arose from the Application and during the Examination;
  - **Chapter 5** considers effects on European Sites and HRA;
  - **Chapter 6** sets out the balance of planning considerations arising from Chapters 4 and 5, in the light of the factual, legal and policy information in Chapters 1 to 3;
  - **Chapter 7** considers the implications of the matters arising from the preceding chapters for the DCO; and
  - **Chapter 8** summarises all relevant considerations and sets out the ExA's recommendation to the SoS.
- 1.9.2. This report is supported by the following Appendices:

- **Appendix A** – the Examination Library;
- **Appendix B** – List of Abbreviations; and
- **Appendix C** – the recommended DCO.

## 2. THE PROPOSAL AND THE SITE

### 2.1. THE APPLICATION SITE AND SETTING

#### The Application Site

2.1.1. The application site falls within the unitary authority area of North Northamptonshire Council (NNC). The setting of the Proposed Development and its land-take are shown on the Location Plan [APP-004].

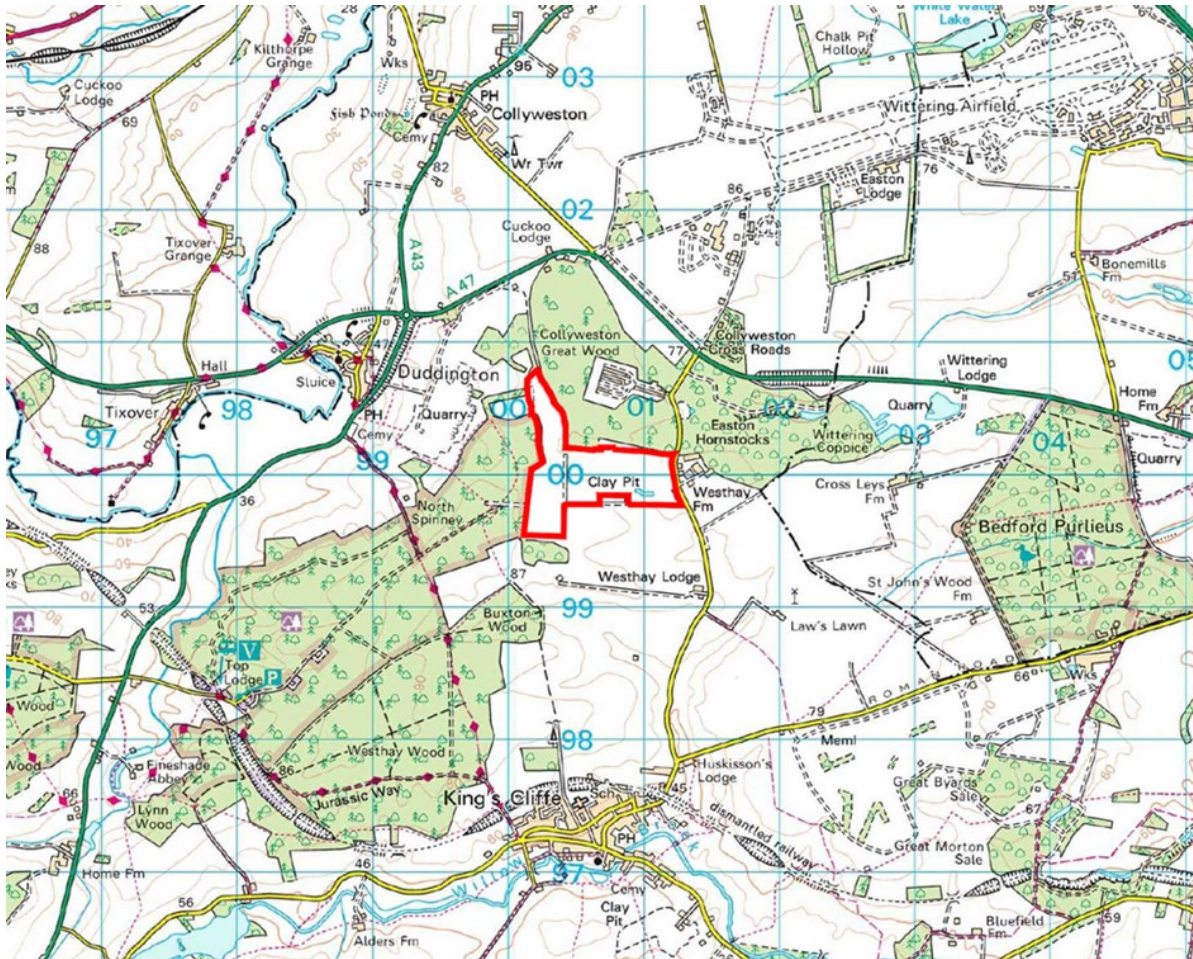


Figure 2.1.1 Location Plan (extract from [APP-004])

2.1.2. In broad terms, the site is located some 18 kilometres (km) west of Peterborough and 7km south of Stamford. The settlements closest to the site are (distances are approximate):

- Duddington, 1.1km to the north-west of the boundary of the northern section of the proposed western extension;
- Collyweston, 1.6km to the north north-west of the northern section of the boundary of the proposed western extension;
- Kings Cliffe, 2km to the south of the southern section of the boundary of the proposed western extension; and

- Fineshade, 2.4km to the south-west of the southern part of the proposed western extension.

2.1.3. The application site (the site) covers an area totalling some 58.5 hectares (ha), of which the existing East Northants Resource Management Facility (ENRMF) site covers around 31.8ha and the proposed western extension around 26.8ha. Most of the land is either under the control of the Applicant or subject to an option agreement. There is an existing swallow hole (see paragraph 2.1.6 for description) on the eastern boundary of the western extension. A small area of land near the swallow hole is not under the Applicant's control or subject to an option agreement. Land ownership and related matters are considered in Section 4.14 of the report.



Figure 21.2 Aerial Photograph (extract from [APP-052])

2.1.4. The existing ENRMF comprises an active waste treatment and recovery facility and a hazardous waste and low-level radioactive waste (LLW) landfill site which includes restored and partially restored landfill areas together with material stockpile areas. A gas management area, including a flare stack, together with a surface water management compound are located in the north-west corner of the existing site. The waste treatment and recovery facility is also located in this part of the site. It comprises a concrete pad and adjacent clay hardstanding area used for storage of solid wastes and sludges, a soil washing plant, a stabilisation unit, an enclosed bag

processing unit, a laboratory / office, a welfare facility, a surface water collection lagoon and an area for bio-remediation.

2.1.5. Other site infrastructure including the site access, weighbridge and waste reception facilities, car parking areas, site offices, welfare facilities, storage areas, laboratories and wheel and vehicle body washing facilities are located towards the eastern boundary and close to the site entrance on Stamford Road. This entrance has been widened recently. It, along with the other site infrastructure, would be retained for use in the Proposed Development.

2.1.6. A swallow hole is located close to the north-western corner of the existing landfill and further limestone solution features (known as dolines) are present in the vicinity of the swallow hole. The Applicant advises that the swallow hole drains surface water from a wide catchment area including parts of the proposed western extension.

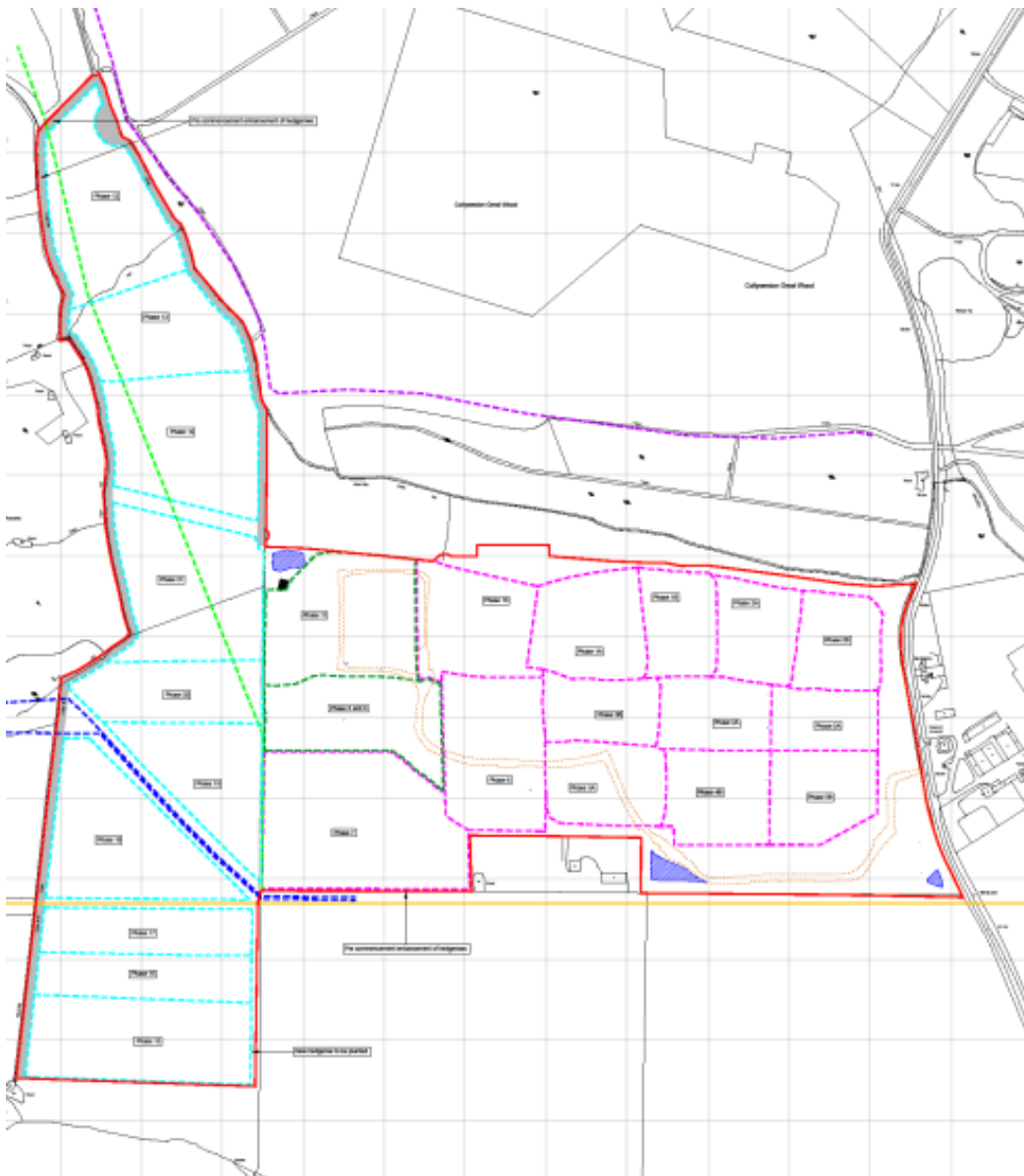


Figure 2.1.3 Current Phase (shown in pink) and Proposed Phasing (shown in green) (extract from [APP-054])



- 2.1.7. The existing landfill operation is divided into 11 phases [APP-054]. Landfilling operations are complete in Phases 1 and 2 which are capped and partially restored to species rich meadow. Landfilling operations are completed in Phases 3, 4, 5 and the southern part of Phase 6. Phases 3, the northern part of Phases 4 and 5 and the southern part of Phase 6 are capped with the remaining areas of Phases 4 and 5 covered with temporary capping. At the end of the Examination, landfilling operations were being carried out in the northern part of Phase 6, in Phase 10 and in Phase 7. Phase 6 and Phase 10 were planned to be capped along with the construction of Phases 8 and 9.
- 2.1.8. The existing ENRMF is enclosed by a dense continuous thorn hedge and / or 1.8m high chain link fencing on all boundaries. An agricultural storage area used by the farmer of the adjacent fields is located in an inset on the southern boundary of this part of the site.
- 2.1.9. The proposed western extension currently comprises two areas of arable land with grassy margins. The land slopes gently towards a hedgerow forming the boundary between the two areas. Levels in the northern area range from 89 to 80m Above Ordnance Datum (AOD) and in the southern area from 86 to 81m AOD.
- 2.1.10. The proposed western extension is bounded mainly by woodland with smaller areas adjoined by arable fields. The application site and the surrounding area are not subject to any national or local landscape value designations. However, the site falls within an Area of Tranquillity identified under Policy 3 of the North Northamptonshire Joint Core Strategy. Landscape and visual matters are dealt with in Section 4.13 of the report. Tranquillity is covered in that section and Section 4.15 (Noise and Vibration).
- 2.1.11. The application site is not located in a groundwater source protection zone and falls within Flood Zone 1 on the Environment Agency (EA) Flood Map. The site drains to two catchments (Wittering Brook and Willow Brook). Both form part of the larger River Nene catchment which flows generally eastwards and is located approximately 6km south-east of the site. The surface water management system for the restored landform for the existing ENRMF drains to a drainage area at the south-eastern corner of the site which, in turn, discharges to a drainage ditch which flows generally to the south. Water resource issues are covered in Section 4.18 of the report.

### **The Setting of the Site**

- 2.1.12. The closest residential properties to the site are Westhay Cottages located on the eastern side of Stamford Road approximately 25m to the east of the application boundary and some 815m to the east of the proposed western extension. Westhay Farm is located immediately to the east of the Cottages and operates as a haulage yard and a farm with associated agricultural and commercial buildings. Westhay Lodge Farm is located approximately 615m to

the south of the application boundary. It comprises the original farmhouse and the converted Westhay Barn.

- 2.1.13. There are a number of other properties between 750m and 955m to the north of the application boundary. A cleared area in the centre of the woodlands located to the north of the existing ENRMF was used formerly by the Ministry of Defence for storage associated with the Wittering Airfield. The area, which is owned by the Cecil Estate Family Trust (the Trust), is currently unused. It has planning permission for use as a transport facility and an application has been made to use it as a commercial storage facility. The implications of this proposal are considered in Sections 4.8 (odour) and 4.15 (noise) of the report.
- 2.1.14. At its closest, the boundary of the operational training airfield and associated accommodation at RAF Wittering is around 840m to the north north-east of the application boundary.
- 2.1.15. The closest heritage assets are located within Duddington Village at least 1.2km from the site. Historic Environment matters are covered in Section 4.11 of the report.
- 2.1.16. Designated nature conservation assets in the vicinity comprise:
- Collyweston Great Wood and Easton Hornstocks Site of Special Scientific Interest (SSSI) and National Nature Reserve (NNR) abuts part of the eastern boundary of the proposed western extension. The ditch along this boundary forms part of the designated area. The designation extends eastwards from this boundary close to, but not directly adjoining (except at one corner) the northern boundary of the existing ENRMF;
  - Bedford Purlieus SSSI and NNR is just over 2km east of the existing ENRMF;
  - Fineshade Wood Local Wildlife Site abuts part of the western boundary of the proposed western extension; and
  - Barnack Hills and Holes Special Area of Conservation (SAC) and SSSI is some 7.4km north-east of the site. Rutland Water SSSI, Ramsar and Special Protection Area (SPA) is just under 9km to the north-west.
- 2.1.17. Parts of the existing ENRMF site and the proposed western extension, together with a woodland and pond area immediately to the north of the western extension area, are designated as a Potential Wildlife Site (PWS). Biodiversity matters, including the PWS designation, are dealt with in Section 4.9 of the report.
- 2.1.18. Cross Leys Quarry lies around 1.5km east of the existing ENRMF and is designated as a Regionally Important Geological Site. Colleywestern Quarry, around 450m to the west of the proposed western extension, is a Local Geological Site.

- 2.1.19. No public rights of way (PRoWs) cross the application site. The closest PRoW is footpath MX15 which runs approximately 100m to the west of the boundary of the proposed western extension. The Jurassic Way bridleway (NE12) is located around 850m to the west of the site at its closest point.
- 2.1.20. A mains gas pipeline runs parallel to the southern boundary of the existing ENRMF and crosses the southern section of the proposed western extension in an east to west direction. Overhead electricity cables run along the western boundary of the existing ENRMF before turning in a north-westerly direction across the northern section of the proposed western extension. Two water pipelines cross the northern part of the southern section of the proposed western extension. A short section of redundant, closed out pipeline owned by the Ministry of Defence is present at the northern point of the proposed western extension. The implications of this infrastructure are dealt with in Section 4.16 of the report.

## **2.2. RELEVANT PLANNING HISTORY**

- 2.2.1. A number of permissions have been granted at the site over the last 60 years. In summary:
- the first planning permission for the existing ENRMF was granted in August 1957 for the extraction of clay. Planning permissions for the extension of the extraction of clay were granted in December 1963 and in May 1967;
  - EN/89/1250C dated March 1994: the extension of the clay workings and infilling with inert waste materials;
  - EN/97/113C dated June 1997: the extraction of silica clay to a depth of 15m and for the restoration of the site to agriculture;
  - EN/99/844C dated April 2000: the reclamation of the clay pit by infilling with hazardous, non-hazardous and inert waste excluding waste food, vegetable matter, soap, cosmetic products, animal carcasses and domestic waste;
  - EN/00/883C dated November 2001: a waste recycling and storage facility for the processing of waste defined in the application and the supporting statement. The waste recycling and storage activities were permitted for 11 years from the commencement of the development the subject of planning permission EN/99/844C;
  - EN/02/166C dated June 2002: the deposition of asbestos in the Kings Cliffe Landfill;
  - EN/02/178C dated October 2002: the importation to, and storage on, the existing ENRMF of soils;
  - EN/05/1264C dated 3 July 2006: a hazardous waste landfill and associated operations. This permission superseded all previous planning permissions and supplanted all conditions in planning

permissions references EN/99/844C, EN/00/883C, EN/02/166C and EN/02/178C;

- EN/06/01517/CRA dated 19 September 2006: the installation and operation of a gas flare and a surface water pumping station;
- 07/00048/WAS and 07/01838/NCC dated 10 January 2008: the installation and operation of a soil treatment facility; and
- 09/00053/WAS submitted July 2009: the landfill disposal of LLW with an activity of up to 200 Becquerels per gram (Bq/g) in cells 4B, 5A and 5B at ENRMF in addition to the consented hazardous waste. The application was refused in March 2010 and Augean appealed. A decision by the Secretary of State on 24 May 2011 allowed the appeal and granted planning consent. A challenge to the decision was rejected in the High Court and the Court of Appeal. Permission to apply to the Supreme Court was refused and the permission was subsequently implemented.

2.2.2. The East Northamptonshire Resource Management Facility was granted a Development Consent Order Statutory Instrument 2013 No. 1752 (the original Order) in July 2013 [APP-105]. Work No 1 of the authorised project includes a hazardous waste landfill facility for disposal at a direct input rate of up to 150,000tonnes per annum (tpa) of hazardous waste and LLW. Work No 2 includes a soil treatment facility with a capacity of 150,000tpa of contaminated materials comprising predominantly hazardous wastes. The ENRMF Development Consent Order (DCO) specifies the completion and restoration of the site by 31 December 2026.

2.2.3. The East Northamptonshire Resource Management Facility (Amendment) Order 2018 Statutory Instrument 2018 No. 742 was granted on 20 June 2018 [APP-106]. The amendment order increased the consented capacity of the soil treatment facility to 200,000tpa. In March 2019 a non-material amendment was granted by Northamptonshire County Council to allow a change in the phasing of the landfill site and to allow the working of Phase 10 in advance of Phase 7.

2.2.4. A s106 Agreement dated January 2013 [APP-107] covering the existing operations at ENRMF provides for community fund and highways contributions. The amount of the Community Fund contribution is tied to the weight of LLW accepted at the facility.

### **2.3. THE APPLICATION AS MADE**

2.3.1. The Proposed Development would involve the construction of a new landfill void to the west of the existing hazardous waste and LLW landfill area, together with the amendment of the existing restoration profile. Operations at the existing ENRMF are due to end in 2026. The proposal would allow operations at the existing site and proposed western extension to run until 2046.

2.3.2. The elements of the Proposed Development can be summarized as:

- the construction of a new landfill void in the proposed western extension for the continued disposal of the same range of hazardous wastes and a limited amount of LLW as deposited at the existing ENRMF. The capacity of the overall hazardous waste disposal would be greater than 100,000tpa;
- the creation of a coherent landform for the restoration of the existing ENRMF and the proposed western extension. This would require the construction of new landfill void in the existing ENRMF to connect with the proposed western extension with a capacity of greater than 100,000tpa of hazardous waste;
- the total additional landfill void to be constructed would be approximately 2.5 million cubic metres;
- the winning and working of minerals in order to create the landfill void and provide extracted materials for use on site as well as the exportation of clay and overburden for use in engineering, restoration and general fill at other sites;
- the temporary stockpiling of clay, overburden and soils for use in the construction of the engineered containment system and the restoration of the site;
- direct input of waste into the existing ENRMF and the proposed western extension would continue at a rate of up to 150,000tpa;
- an increase to the hazardous waste throughput of the existing waste treatment and recovery facility from 200,000tpa to 250,000tpa and the extension of the treatment area to the south while remaining within the existing ENRMF footprint;
- the combined total waste importation rate limit for the site would be 300,000tpa which would be an increase of 50,000tpa compared with the rate consented in the original Order;
- the level of radioactivity of the LLW to be disposed of at the existing ENRMF and the proposed western extension would be limited to the lower end of the activity range for LLW (up to 4,000 Bq/g). The Applicant advises that the LLW to be deposited would, typically, have a level of radioactivity of up to 200Bq/g;
- the diversion of an overhead electricity cable that crosses the proposed western extension into a trench. The trench would follow the route of the water pipes across the proposed western extension before running along the western margin of the site to its northern corner; and
- the restoration of the whole site to generally domed profiles to create a coherent restoration landform. The restoration proposal aims to improve biodiversity and nature conservation interest using the soils available at the site as well as suitable imported materials. It seeks to create a mosaic structure of woodland with shrubby edges, flower meadow grassland, scattered trees, hedgerows and waterbodies.

2.3.3. The Applicant's Explanatory Memorandum (EM) [REP7-005] considers that, in practice, the construction stage is not a separate phase to

the operation of the hazardous waste landfill facility. The operations of extraction, construction of the engineered void, landfilling, construction of the engineered cap and restoration are sequential and take place concurrently in different phases of the site as the development proceeds.

- 2.3.4. The application proposes completion of the landfilling and restoration operations and removal of the existing waste treatment and recovery facility by December 2046. The site infrastructure would be retained until 2046 with long term management beyond that date. The control of the management and maintenance of the site following restoration is considered in Section 4.14 of the report.
- 2.3.5. The existing landfill facility is still in the process of being constructed and filled and work under the original Order will continue until after the decision is made on this application. The existing landfill facility would be subject to some physical changes as new void will be created on top of and along the western boundary of the existing landfill void.
- 2.3.6. The EM [REP7-005] explains that the Applicant is preparing new management plans for the Proposed Development as a cohesive site, which will supersede and update the plans approved under the original Order. It, therefore, considers that it is necessary to include the construction of the existing landfill facility within the application and reapply for consent to construct the remaining elements of it (Work No 1A) alongside the proposed landfilling of the western extension (Work No 1B). The Applicant considers this approach to be beneficial its operation the site as well as to the local planning authority in its enforcement of the consent.

## **2.4. THE APPLICATION AS EXAMINED**

- 2.4.1. During the course of the Examination concerns were expressed by Anglian Water (AW) regarding the effect of the Proposed Development on twin water pipelines which cross the western extension land. In response to these concerns, the Applicant submitted a proposed change to increase the stand-off distance between the edge of the landfill and the pipelines. The proposed change took the form of an additional Requirement which would require subsequent agreement of the stand-off at a distance of between 7m (as originally submitted) and 30m together with consequential amendments to Requirements 3 and 4 [AS-012].
- 2.4.2. The proposed change was accompanied by documents including a change request statement [AS-019] a Supplementary Environmental Statement (ES) [AS-021], a Pipeline Risk Assessment [AS-025], a Pipeline Engineering Assessment [AS-026], a Biodiversity Net Gain Review [AS-027], a Supplementary Landscape and Visual Impact Assessment (LVIA) [AS-028] as well as a revised draft Development Consent Order (dDCO) [AS-012] and EM [AS-015] and a revised DCO Environmental Commitments (DEC) [AS-017]. A revised Works Plan [AS-008], General Arrangement Plan [AS-009] and Restoration

Contour Profile Plan [AS-010] were also submitted. The Supplementary ES and LVIA assessed the proposed change on the basis of a 'worst-case scenario' 30m stand-off distance.

- 2.4.3. The proposed change was the subject of consultation with:
- selected PA2008 s42 parties comprising the host and adjoining unitary and County Councils;
  - s44 parties;
  - targeted s47 parties comprising Town and Parish Councils, Councillors from the host and adjacent authorities, Members of Parliament, the Kings Cliffe Liaison Group, special interest groups and individuals who had responded previously; and
  - the UK Health Security Agency and the Drinking Water Inspectorate.
- 2.4.4. A Consultation Report was submitted at D7 [REP7-010]. The Examining Authority invited comments on the Consultation Report by 29 July 2022 and the only response was from the UK Health Security Agency [REP8-011]. It was satisfied that the proposed change would be a non-material amendment and that there would be no significant public health implications arising from the alteration.
- 2.4.5. Following these submissions, the Applicant continued to discuss the matter with AW and subsequently it was agreed that the stand-off distance could be fixed at 20m. This would be controlled by a DCO Requirement and the DEC. The main consequence of the proposed change would be to widen the pipeline corridor and revise the profile of the landfill on either side. The supplementary LVIA and ES were based on a stand-off distance of up to 30m and found that the proposed change would not lead to any new likely significant effects. The subsequently agreed stand-off distance would be less wide.
- 2.4.6. I consider that the changes do not amount to a material change from the application as submitted.

## **3. LEGAL AND POLICY CONTEXT**

### **3.1. INTRODUCTION**

3.1.1. As understood by the Applicant, the legal and policy context for the Proposed Development is described primarily in the Planning Statement [APP-103].

### **3.2. PLANNING ACT 2008 (PA2008)**

3.2.1. The PA2008 provides different decision-making processes for Nationally Significant Infrastructure Project (NSIP) applications where a relevant National Policy Statement (NPS) has been designated (s104) and where there is no designated NPS (s105). Section 1.1 above establishes that the application is a hazardous waste related NSIP development. Consequently, it is an application to which s104 is applicable because it is subject to policy in the designated National Policy Statement for Hazardous Waste (NPSHW). Therefore, the matters that the Secretary of State for Levelling Up, Housing and Communities (SoS) must consider are:

- any NPS which has effect in relation to development of the description to which the application relates (a 'relevant National Policy Statement');
- the appropriate marine policy documents (if any), determined in accordance with s59 of the Marine and Coastal Access Act 2009;
- any Local Impact Report (LIR) (within the meaning given by s60(3) of the PA2008) submitted to the SoS before the specified deadline for submission;
- any matters prescribed in relation to development of the description to which the application relates; and
- any other matters which the SoS thinks are both important and relevant to the decision.

3.2.2. Section 104(3) of the PA2008 requires the SoS to decide the application in accordance with any relevant NPS unless one or more of the exceptions in subsections (4) to (8) applies. The exceptions are that the SoS is satisfied that:

- deciding the application in accordance with any relevant NPS would lead to the United Kingdom (UK) being in breach of any of its international obligations;
- deciding the application in accordance with any relevant NPS would lead to the SoS being in breach of any duty imposed on her / him by or under any enactment;
- deciding the application in accordance with any relevant NPS would be unlawful by virtue of any enactment;
- the adverse impact of the Proposed Development would outweigh its benefits; and / or



- any condition prescribed for deciding an application otherwise than in accordance with a NPS is met.
- 3.2.3. Where the NPS applies, s104 creates a presumption in favour of NPS compliant development. Whether or not the Proposed Development complies with the NPSHW is addressed in detailed terms, with references to individual paragraphs in the NPSHW, in Chapter 4 of the report.
- 3.2.4. The NPSHW sets out the need for, and Government's policies to control, the development of hazardous waste NSIPs in England. It provides planning guidance for promoters of NSIPs and is the basis for the Examination by the Examining Authority (ExA) and decisions by the SoS. These matters are considered later in this chapter. No other NPSs are directly applicable to the Proposed Development.

### **3.3. UK LEGISLATION**

- 3.3.1. I have had regard to all relevant UK legislation set out below.

#### **Wildlife and Countryside Act 1981**

- 3.3.2. The Wildlife and Countryside Act 1981 (WCA) is the primary legislation which protects animals, plants, and certain habitats in the UK. It provides for the notification and confirmation of Sites of Special Scientific Interest (SSSI). In England, these sites are identified for their flora, fauna, geological or physiographical interest by Natural England (NE). The WCA contains measures for the protection and management of SSSIs.
- 3.3.3. The WCA is divided into four parts: Part I relates to the protection of wildlife, Part II relates to designation of SSSIs and other designations, Part III on public rights of way and Part IV contains miscellaneous provisions. If a species protected under Part I is likely to be affected by development, a protected species licence would be required from NE.
- 3.3.4. The WCA is relevant to the Proposed Development in view of the sites and species identified in the Ecology and Biodiversity chapter of the Environmental Statement (ES) [APP-049].

#### **Natural Environment and Rural Communities Act 2006**

- 3.3.5. The Natural Environment and Rural Communities Act 2006 makes provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites and SSSIs. It includes a duty that every public body must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the conservation of biodiversity (the biodiversity duty). In complying with the biodiversity duty, regard must be had to the United Nations Convention on Biological Diversity of 1992.

### **The Environmental Permitting Regulations 2016**

- 3.3.6. These Regulations implement the permitting requirements under the Industrial Emissions Directive (and other relevant Directives) for certain categories of waste management sites and many other types of industrial installation with potentially harmful consequences for human health and / or the environment. They are relevant to the application because much of the control of impacts on the environment would be regulated by Environmental Permits (EPs).

### **Waste (England and Wales) Regulations 2011**

- 3.3.7. The Waste (England and Wales) Regulations 2011 (the 2011 Regulations) transpose the Waste Framework Directive 2008/98/EC13 (rWFD) into UK law. Among other things, they apply the revised 'waste hierarchy' (Article 4), impose duties to improve the use of waste as a resource and impose duties on planning authorities when exercising planning functions in relation to waste management including the protection of human health and the environment (Article 13).

### **OTHER RELEVANT LEGAL PROVISIONS**

- 3.3.8. The following legislative provisions have been taken into account in the Examination of the Proposed Development.

### **United Nations Convention on Biological Diversity 1992**

- 3.3.9. The UK Government ratified the Convention in June 1994. Responsibility for the UK contribution to the Convention lies with the Department for Environment, Food and Rural Affairs (DEFRA) who promote the integration of biodiversity into policies, projects and programmes within Government and beyond. The Convention is of relevance to ecology, biodiversity, landscape and visual matters, which are discussed in Chapter 4.
- 3.3.10. As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, regard has been had to this Convention in my consideration of the likely impacts of the Proposed Development and appropriate objectives and mechanisms for mitigation and compensation. In particular, I find that compliance with the UK provisions on Environmental Impact Assessment (EIA) and transboundary matters (referred to below) satisfy the requirements of Article 14 with regard to impacts on biodiversity.

### **The UK Biodiversity Action Plan**

- 3.3.11. Priority habitats and species are listed in the UK Biodiversity Action Plan, which is relevant to the Proposed Development in view of the biodiversity considerations discussed in Section 4.9.

### **Flood and Water Management Act 2010**

- 3.3.12. The NPSHW (paragraph 5.7.9) advises that where construction work has drainage implications, approval for the project's drainage system

will form part of any development consent issued by the SoS. The SoS will, therefore, need to be satisfied that the proposed drainage system complies with the National Standards published by Ministers under Paragraph 5(1) of Schedule 3 to the Flood and Water Management Act 2010.

### **Marine legislation and policy**

- 3.3.13. Having had regard to the application documents and evidence submitted during the Examination, I have considered whether the Proposed Development could affect the coastal or marine environment in a manner sufficient to invoke this body of legislation and policy, including with respect to the marine and coastal change matters identified in the NPSHW. Given the inland location of the Proposed Development there would be no pathway to the marine environment. Consequently, the Proposed Development would not have such an effect. Therefore, no further consideration has been given to marine or coastal change legislation or policy in this report.

### **Climate change**

- 3.3.14. The United Nations Framework Convention on Climate Change (UNFCCC) is an international environmental treaty that was adopted in 1992 with the objective to “*stabilise greenhouse gas concentrations in the atmosphere at a level that would prevent anthropogenic interference with the climate system*”. The Paris Agreement 2015 was adopted by the parties to the UNFCCC, including the UK, at a conference in Paris in December 2015 with the purpose of strengthening the global response to the threat of climate change. The UN Climate Conference 2021 (COP26) resulted in nearly 200 countries agreeing to keep the aim of limiting global warming to 1.5C alive and finalised the outstanding elements of the Paris Agreement. All countries agreed to revisit and strengthen their current emissions targets to 2030, known as Nationally Determined Contributions, in 2022.
- 3.3.15. The Climate Change Act 2008, as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 requires “*the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline.*” The UK has legally binding interim targets called carbon budgets and Nationally Determined Contributions.
- 3.3.16. Carbon budgets restrict the total amount of greenhouse gas (GHG) that the UK can emit over five-year periods up to 2037. The 6<sup>th</sup> Carbon Budget was published in December 2020 and provides recommendations for sectors of the economy, including waste. Among other things, it sets limits on the volume of GHG emissions by sector over specified time periods.
- 3.3.17. The Net Zero Strategy: Build Back Greener sets out how the UK will deliver on its commitment to reach net zero emissions by 2050.

3.3.18. Climate change is considered in Section 4.10 of this report.

### **Equality Act 2010**

3.3.19. The Equality Act 2010 establishes a public sector equality duty (PSED) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The PSED is applicable to the ExA in the conduct of this Examination and reporting and to the SoS in decision-making. In particular regard was had to the PSED, including in the decision to hold virtual hearings during the Examination, as well as in producing the guidance for, and conducting, those hearings.

### **The Historic Built Environment**

3.3.20. When deciding an application which is likely to affect listed buildings or conservation areas, or their settings, the SoS must comply with Regulation 3 of The Infrastructure Planning (Decisions) Regulations 2010 which requires regard to be had to the desirability of preserving or enhancing the character or appearance of the heritage asset or its setting. I have had regard to these matters in Section 4.11.

### **OTHER RELEVANT LEGISLATION**

3.3.21. Other relevant legislation has been considered for this report, including the:

- Highways Act 1980;
- Town and Country Planning Act 1990;
- Countryside and Rights of Way Act 2000;
- Health and Safety at Work Act 1974;
- Neighbourhood Planning Act 2017;
- Protection of Badgers Act 1992;
- Environment Act 1995;
- Hedgerows Regulations Act 1997;
- Pollution Prevention and Control Act 1999; and
- Land Drainage Act 1991.

## **3.4. EU LAW AND RELATED UK REGULATIONS**

3.4.1. I have had regard to the following European Union (EU) Law and related UK Regulations.

### **Leaving the European Union**

3.4.2. The UK left the EU as a member state on 31 January 2020. The European Union (Withdrawal Agreement) Act 2020 provides for, among other things, EU law to be retained as UK law unless excepted. This report has been prepared on the basis of retained EU

law and references in it to European terms such as 'Habitats' have also been retained for consistency with the Examination documents. It will be a matter for the SoS to satisfy themselves as to the position on retained EU law, obligations and equivalent terms at the point of their decision.

### **The Environmental Impact Assessment (EIA) Directive and the EIA Regulations**

- 3.4.3. The most recent EIA Directive is 2014/52/EU, which came into force on 15 May 2014. It defines the procedure by which information about the environmental effects of a development is collected and considered by the relevant decision-making body before consent can be granted. It applies to a wide range of public and private projects, which are defined in Annexes I and II of the Directive.
- 3.4.4. The EIA Directive is transposed into law for NSIPs in England and Wales by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations).
- 3.4.5. The EIA Regulations establish the minimum information to be supplied by an applicant within an ES, as well as information that can be requested as being reasonably justified in the circumstances of the case. Regulation 14 and Schedule 4 of the EIA Regulations set out the information required in an ES. This is reinforced by Regulation 4(2), which sets out the core duty of the decision maker in deciding on EIA development. It states that the decision maker *"must not ... make an order granting development consent or ... grant subsequent consent unless an EIA has been carried out in respect of that application."*
- 3.4.6. The Proposed Development is EIA development under Schedule 2 of the EIA Regulations. The Applicant submitted a notification to the Planning Inspectorate (PINS) of its intention to submit an ES under Regulation 8(1)(b) and has provided an ES [APP-048 to APP-101] as part of the submitted application. As set out in Section 2.4 above, a Supplementary ES was submitted during the Examination to take into account the proposed change to the application. It updates the landscape and visual and biodiversity assessments. All other topic areas were scoped out.
- 3.4.7. All the submitted environmental information has been taken into consideration, as defined in Regulation 4 of the EIA Regulations including the ES and all other information received during the Examination. The ES is addressed in Chapter 4.

### **The Habitats Directive, the Birds Directive and the Habitats Regulations**

- 3.4.8. The Habitats Directive (92/43/EEC) and the Birds Directive (2009/147/EC) form a cornerstone of Europe's nature conservation policy. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) are the principal means by which they are

transposed into the law of England and Wales. The Habitats Directive is built around two pillars: a network of protected sites, and a system of species protection.

- 3.4.9. Habitat types and animal and plant species requiring the designation of Special Areas of Conservation (SACs) are listed in the Annexes of the directive. All species listed in these annexes are identified as European Protected Species.
- 3.4.10. The Birds Directive classifies all of the most suitable territories for all naturally occurring wild bird species in the EU as Special Protection Areas (SPAs) comprising. All SACs and SPAs form part of the Natura 2000 ecological network.
- 3.4.11. Assessment processes required under the Habitats Regulations are referred to as Habitats Regulations Assessment (HRA). When determining this application, the SoS must consider whether the Proposed Development may have a significant effect on a European site of nature conservation importance alone or in combination with other plans or projects. The Habitats Directive, Birds Directive and Habitats Regulations have been taken into account in considering the application and are discussed in Chapters 4 and 5.

#### **The Water Framework Directive (WFD) and the WFD Regulations**

- 3.4.12. EU Directive 2000/60/EC includes objectives such as preventing and reducing pollution, environmental protection, improving aquatic ecosystems and mitigating the effects of floods. The WFD requires the identification of River Basin Districts.
- 3.4.13. The WFD is transposed into law in England and Wales by the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. They require the 'appropriate agency' to prepare River Basin Management Plans (RBMP) for each River Basin District. The application site is covered by the Anglian River Basin District RBMP.
- 3.4.14. Regulation 3 places a general duty on the SoS and the Environment Agency (EA) to exercise their 'relevant functions' to secure compliance with the WFD. The PA2008 is not a 'relevant function' for this purpose. However, these bodies, together with other public bodies, also have a specific duty to have regard to the relevant RBMP and any supplementary plans made under it in exercising their functions, which would include functions under the PA2008.
- 3.4.15. The Applicant has not prepared a specific Water Framework Directive Assessment Report for Proposed Development, but the WFD is addressed in Chapter 17 of the ES. I cover WFD matters in Section 4.18 of the report.

## **The Air Quality Directive, the UK Air Quality Strategy and the Clean Air Strategy**

- 3.4.16. The Air Quality Standards Regulations 2010 give statutory effect to Air Quality Directive 2008/50/EC Directive and transpose it into UK law. They require the SoS, as the competent authority, to assess ambient air quality for the presence of sulphur dioxide, nitrogen dioxide and mono-nitrogen oxides (NO<sub>x</sub>), particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), lead, benzene and carbon monoxide. They set limit values (LVs) for compliance and establish control actions where the LVs are exceeded. The Applicant has included relevant assessments on air quality impacts as part of the ES. I consider these issues in Section 4.8 of the report.

### **3.5. MADE DEVELOPMENT CONSENT ORDERS**

- 3.5.1. The planning history review of the application at Section 2.2 above establishes that the site is the subject of a Development Consent Order (DCO) made in 2013 and an amendment to that Order dated 2018. The interaction of the proposed DCO with those Orders is considered in Chapter 7. There is nothing in the application documents or other submissions made to the Examination to indicate that the Proposed Development would substantively affect, or be affected by, made DCOs other than the 2013 and 2018 Orders.

### **3.6. NATIONAL POLICIES FOR WASTE**

#### **National Policy Statement for Hazardous Waste**

- 3.6.1. The NPSHW defines hazardous waste for the purposes of the PA2008 in terms of the definition set out in Regulation 5 of the Hazardous Waste (England and Wales) Regulations 2005. That is, waste which contains one or more hazardous properties that may cause harm to human health or the environment. While that definition does not include radioactive waste, paragraph 2.2.1 of the NPSHW advises that *"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."*
- 3.6.2. Requirement 8 of the draft Development Consent Order (dDCO) sets the limits for the quantities of waste to be accepted at the site. On the basis that the site has a 20-year operational lifespan, these limits would result in the proportion of low-level radioactive waste (LLW) being just under 20% of the total waste accepted. A similar proportion of LLW was accepted under the original Order for the East Northants Resource Management Facility (ENRMF).
- 3.6.3. Neither North Northamptonshire Council nor the EA questioned the proportion of LLW proposed to be accepted at the site [REP8-008 Appendices B and C]. Consequently, I consider that the proportion of LLW allowed by the dDCO amounts to a 'relatively small proportion' for the purposes of the expanded definition of hazardous waste in NPSHW paragraph 2.2.1.

- 3.6.4. NPSHW paragraph 2.1 identifies the main objectives of Government policy on hazardous waste as:
- to protect human health and the environment – stringent legislative measures are in place to control the management of waste with hazardous properties;
  - to implement the waste hierarchy in accordance with the rWFD and the 2011 Regulations. Amongst other things, these require five steps to be applied to waste management: prevention, preparation for reuse, recycling, other recovery, including energy recovery, and disposal (of which landfill is considered to be at the bottom of the hierarchy);
  - self-sufficiency and proximity – to ensure that sufficient disposal facilities are provided in the country as a whole to match expected arisings of all hazardous wastes, except those produced in very small quantities, and to enable hazardous waste to be disposed of in one of the nearest appropriate installations; and
  - climate change – to minimise GHG emissions and maximise opportunities for climate change adaptation and resilience.
- 3.6.5. At paragraph 2.4.1 the principles for the management of hazardous waste are reviewed. They originate from the Strategy for Hazardous Waste Management in England 2010 and those relevant to the need for new infrastructure comprise:
- Principle 1 requires hazardous waste to be managed to provide the best overall environmental outcome;
  - Principle 2 requires a reduction in reliance on landfill;
  - Principle 3 requires hazardous waste to be not mixed with different categories of hazardous waste or with other waste substances or materials;
  - Principle 4 requires organic hazardous wastes that cannot be reused, recycled or recovered to be subject to destruction using best available techniques. No hazardous organic waste is to be landfilled unless the requirements of the Landfill Directive are met; and
  - Principle 5 requires an end to the practice of relying on higher Landfill Directive waste acceptance criteria to enable some hazardous waste to continue to be landfilled.
- 3.6.6. Paragraph 3.1 summarises the need for large scale waste infrastructure, which results from:
- trends in hazardous waste arisings. Notwithstanding measures to minimise waste, arisings have remained significant, in part because measures to improve the environmentally sound management of waste has increased the types of waste that must be removed from the municipal waste stream and be managed separately as hazardous waste. Changes to the list of hazardous properties in the rWFD and (then) forthcoming changes to the



European Waste List, are expected to lead to further increases in the amount of waste that must be managed as 'hazardous'; and

- the need to meet legislative requirements, including applying the waste hierarchy. New, improved facilities will be required to optimise the extent to which the management of hazardous waste can be moved up the hierarchy. Facilities are also required to treat hazardous waste that can no longer be sent to landfill following the phase out of the practice of relying on higher Landfill Directive Waste acceptance criteria and to comply with the 'proximity principle' of adequate provision of hazardous waste facilities.

3.6.7. The paragraph goes on to refer to the need established in 'A Strategy for Hazardous Waste Management in England (2010)'. This includes nationally significant facilities for bio-remediation / soil washing to treat contaminated soil diverted from landfill, treatment plant for air pollution control residues and hazardous waste landfill. These types of facility are relevant to the Proposed Development. The paragraph also confirms that the SoS will assess applications for infrastructure covered by NPSHW on the basis that need has been demonstrated.

3.6.8. Paragraph 4.13 sets out the factors to be taken into account in assessing the adverse impacts and benefits of proposals as follows:

- 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.

3.6.9. The NPSHW also refers to the need to comply with UK and EU legislation on EIA (paragraphs 4.2.1 to 4.2.9) and the Habitats Regulations (4.3.1 to 4.3.2). Paragraph 4.4.1 confirms that there is no need to consider strategic alternatives to meeting the need for nationally significant hazardous waste infrastructure.

3.6.10. Paragraphs 4.7.1 to 4.7.10 deal with pollution control and other environmental regulatory regimes. They confirm that the ExA and SoS should focus on whether the Proposed Development "*is an acceptable use of the land, and on the impacts of that use*", rather than on the control of associated processes, emissions or discharges. It should be assumed that the relevant pollution control regime will be properly applied and enforced and should act to complement but not seek to duplicate it. Nevertheless, the ExA may wish to consult the EA on the scope of any Environmental Permit (EP) or consent and any management plans that would be included in the EP application. Other regulatory regimes should be treated in a similar way.

3.6.11. NPSHW also provides topic-specific advice and this is covered in the relevant sections of Chapter 4 of this report.

### **Other national policies for waste**

3.6.12. Other national policies for waste that have been taken into account in the report include:

- Policy for the Long Term Management of Solid Low-level Radioactive Waste in the United Kingdom 2007;
- Strategy for Hazardous Waste Management in England 2010;
- Strategy for the management of solid low-level radioactive waste from the non-nuclear industry in the United Kingdom 2012;
- National Planning Policy for Waste 2014;
- Radioactive Waste Strategy 2019; and
- Waste Management Plan for England 2021.

### **3.7. OTHER RELEVANT POLICY STATEMENTS**

3.7.1. No other National Policy Statements contain policies, guidance or information which has a material bearing on the considerations in this application.

### **3.8. THE NATIONAL PLANNING POLICY FRAMEWORK**

3.8.1. The National Planning Policy Framework (July 2021) (NPPF) sets out the Government's planning policies for England and how these are expected to be applied for the particular purposes of making development plans and deciding applications for planning permission and related determinations under the Town and Country Planning Act 1990 (as amended).

3.8.2. The NPPF does not contain specific policies for NSIPs. These are determined in accordance with the decision-making framework in the PA2008 and relevant NPSs for major infrastructure, as well as any other matters that are relevant, which may include the NPPF.

3.8.3. Paragraph 4.1.5 of the NPSHW advises that account has been taken of national planning policy set out in the NPPF as well as policies set out in Planning Policy Statement 10 or any successor to it. It goes on to say that, in *'the event of a conflict between these or any other documents and this NPS, the NPS prevails for purposes of decision making given the national significance of the infrastructure.'* The NPPF has been revised and PPS10 replaced by the National Planning Policy for Waste since the NPSHW was designated.

3.8.4. NPPF policies have been considered in respect of all planning issues addressed in Chapter 4. They are typically drawn out only where they identify different considerations from those arising through the NPSHW.

### **3.9. LOCAL IMPACT REPORTS**

3.9.1. Section 104 of the PA2008 states that in deciding the application the SoS must have regard to any LIR within the meaning of s60(3).

There is also a requirement under s60(2) to give notice in writing to each local authority falling under s56A inviting them to submit LIRs. This notice was given in the Rule 8 letter dated 9 February 2022 [PD-007].

- 3.9.2. As set out in Section 1.4, an LIR was submitted by NNC. A summary of the matters raised in the LIR is set out in Section 4.3 of this report.

### **3.10. THE DEVELOPMENT PLAN**

- 3.10.1. When deciding applications, s104(2)(d) of the PA2008 requires the SoS to have regard to any other matters considered both important and relevant. The NPSHW requires consideration to be given to policies and information in the development plan with regard to matters including interactions with other developments and land use allocations, flood risk, heritage assets, landscape and visual designations and green infrastructure.

- 3.10.2. Although the application site falls within the administrative area of North Northamptonshire, the LIR confirms that development plan policies from predecessor authorities and Northamptonshire County Council are also considered to be relevant to the Proposed Development. The development plan comprises the following documents.

#### **Northamptonshire Minerals and Waste Local Plan July 2017**

- 3.10.3. The Northamptonshire Minerals and Waste Local Plan (MWLP) provides the land use planning strategy for minerals and waste related development in the County. Its capacity forecast for the management of general waste is based on achieving net self-sufficiency. However, it recognises that the management of hazardous waste and LLW requires specialist facilities and that this requires wider catchment areas and consideration at a regional or national scale. The ENRMF is identified as one of the few facilities dealing with hazardous waste and LLW and that it has a national catchment.
- 3.10.4. Policy 3 sets out the development control criteria for mineral extraction. These include that the proposal does not conflict with the spatial strategy for mineral extraction, demonstrates a proven need for materials with particular specifications that could not be reasonably met from committed or allocated reserves and that it would maximise the recovery of the particular reserve.
- 3.10.5. Policy 10 seeks the development of a sustainable waste management network to support growth and net self-sufficiency. Provision is expected to come from a mix of extensions to existing sites, intensification or redevelopment of existing sites and new sites, subject to complying with the Plan's spatial strategy for waste management and meeting environmental, amenity and other

requirements. Appendix 4 identifies the ENRMF as a commitment for the treatment of soils and hazardous and radioactive waste disposal.

- 3.10.6. Policy 11 sets out the spatial strategy for waste management and seeks to direct facilities to a 'central spine' area and the sub-regional centre of Daventry. The application site falls outside of these areas and within the rural hinterland. Nevertheless Policy 11 does allow for facilities in the rural hinterland where they are incompatible with urban development.
- 3.10.7. Policy 12 sets out the development control criteria for waste management facilities, including hazardous waste. These include that the development does not conflict with the spatial strategy for waste management and that the facility should deliver Northamptonshire's waste management capacity requirements. The policy also requires proposals to clearly establish the need for the facility, its functional role, intended catchment and, where applicable, the requirement for a specialist facility. Proposals should also be in general conformity with the principles of sustainability and facilitate the efficient collection and recovery of waste materials.
- 3.10.8. Policy 15 sets out broadly comparable criteria for waste disposal proposals, including hazardous waste.
- 3.10.9. Policy 14 provides indicative waste disposal capacity requirements including for the disposal of non-inert, inert and hazardous landfill. Where it can be demonstrated that there is a need for additional landfill capacity for residual waste preference should be given to extensions to existing sites.
- 3.10.10. Policy 17 sets out the criteria for radioactive waste management. These require proposals to represent the most appropriate management option, to be in line with the principle that communities take more responsibility for their own waste, that the facility complies with national guidance and the principles of sustainable waste management, that any adverse effects can be mitigated and that the proposal would not prejudice an existing use where it would involve co-location with an operational waste disposal site.
- 3.10.11. Other relevant policies include:
- Policy 18: Addressing the impact of minerals and waste development;
  - Policy 19: Encouraging sustainable transport;
  - Policy 20: Natural assets and resources;
  - Policy 21: Landscape character;
  - Policy 22: Historic environment;
  - Policy 23: Layout and design quality; and
  - Policy 24: Restoration and after use.

3.10.12. These matters are dealt with in the relevant topic areas in Chapter 4 of the report.

#### **North Northamptonshire Joint Core Strategy July 2016**

3.10.13. The Council's LIR identifies the following policies from the North Northamptonshire Joint Core Strategy (JCS) as relevant to the proposal:

- Policy 1: Sustainable development;
- Policy 2: Historic environment;
- Policy 3: Landscape character;
- Policy 4: Biodiversity and geodiversity;
- Policy 5: Water environment, resources and flood risk management;
- Policy 8: Place shaping principles; and
- Policy 21: Rockingham Forest.

3.10.14. These matters are dealt with in relevant sections of Chapter 4 of the report.

#### **Rural North Oundle and Thrapston Plan July 2011**

3.10.15. The LIR identifies Policy 4 on green infrastructure, Policy 7 on flood risk and Policy 11 on enhancing biodiversity as being relevant to the proposal. Again, these matters are covered in Chapter 4 of the report.

#### **King's Cliffe Neighbourhood Plan October 2019**

3.10.16. Policy RC2 on biodiversity protection and gain and policy RC3 on rights of way from this Plan are identified as relevant in the LIR and covered in Chapter 4 of this report.

### **3.11. TRANSBOUNDARY EFFECTS**

3.11.1. On behalf of the SoS, PINS carried out a screening exercise on August 2020 to determine whether the Proposed Development would result in any likely significant effects on the environment in another European Economic Area State.

3.11.2. Under Regulation 32 of the EIA Regulations and based on the information provided by the Applicant, PINS considered that the Proposed Development would be unlikely to have a significant effect either alone or cumulatively on the environment in another European Economic Area State.

3.11.3. In reaching this conclusion PINS identified and considered the Proposed Development's likely impacts including potential pathways and the extent, magnitude, probability, duration, frequency and reversibility of the impacts. PINS considered that the likelihood of transboundary effects resulting from the Proposed Development is so

low that it does not warrant completion of a formal transboundary screening matrix. PINS undertook a re-screening exercise on 8 February 2022 following the submission of the application and reached the same conclusions.

- 3.11.4. I have had regard to the ongoing duty of the SoS under EIA Regulation 32 to have regard to transboundary matters throughout the Examination. No new information came to light during the Examination which gives rise to the need to reconsider PINS' transboundary screening opinion.

### **3.12. THE SECRETARY OF STATE'S POWERS TO MAKE A DCO**

- 3.12.1. Planning Act 2008: Guidance for the Examination of applications for development consent (March 2015), provides guidance at paragraphs 109 to 115 in relation to changing an application post acceptance. The view expressed by the Government during the passage of the Localism Act was that s114(1) places the responsibility for making a DCO on the decision-maker and does not limit the terms on which it can be made.
- 3.12.2. Consideration has been given throughout the Examination to whether revisions to the application documents have changed the proposal to a point where it became a different application and, therefore, whether the SoS would have the power under s114 of the PA2008 to make a DCO having regard to the development consent applied for. The only alteration to the proposal itself post-acceptance was the change to the stand-off distance to accommodate the Anglian Water (AW) pipelines (see Section 2.4 of the report). I concluded during the course of the Examination that this change would amount to a non-material amendment only. Other changes to the application documentation were consequential on this change or minor in nature.
- 3.12.3. Having regard to these matters, I consider that the alterations to the application have not resulted in any significant changes to the application as originally made. Consequently, I consider that the SoS has the power to make the DCO as recommended in Chapter 7 and provided in Appendix C to this report.

## **4. THE PLANNING ISSUES**

### **4.1. INTRODUCTION**

4.1.1. This chapter considers the main planning issues in the Examination. First, it identifies the Initial Assessment of Principal Issues (IAPI). The chapter then deals with topics in turn and sets out conclusions in relation to them. The only topics not dealt with in this chapter are the Habitats Regulations Assessment (HRA) and the Development Consent Order (DCO) which are dealt with in Chapters 5, and 7 respectively.

### **4.2. MAIN ISSUES IN THE EXAMINATION**

4.2.1. The IAPI, prepared in accordance with s88 of the Planning Act 2008 (PA2008) and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010, was published with the letter inviting all Interested Parties (IPs) to the Preliminary Meeting (PM) [PD-005]. It had regard to the application documents, the National Policy Statement for Hazardous Waste (NPSHW) and any relevant Department for Levelling Up, Housing and Communities (DLUHC) (formerly Department for Housing Communities and Local Government) and Department for the Environment, Food and Rural Affairs (DEFRA) guidance together with Relevant Representations (RR) submitted by IPs.

4.2.2. It was made clear in Annex C of the letter that the list was not comprehensive or exhaustive and that regard would be had to all relevant matters in reaching a recommendation after the conclusion of the Examination. The issues identified in that initial assessment were as follows:

- air quality;
- biodiversity;
- climate change
- the draft Development Consent Order (dDCO);
- Environmental Impact Assessment (EIA);
- ground conditions;
- the historic environment;
- human health;
- infrastructure;
- landscape and visual;
- land use, soils and socio-economics
- legislation and policy, including the need for the development, good design and alternatives;
- noise and vibration;

- safety;
- traffic and transport; and
- water quality and resources.

4.2.3. The IAPI was discussed at the PM and there were no objections to it from any of the parties. For the most part, the main issues in the Examination turned out to be broadly consistent with those identified in the IAPI. That said, concerns about the swallow hole close to the application site boundary and the effect of the proposal on the Anglian Water (AW) pipelines gained prominence during the Examination. These matters are dealt with in Sections 4.14, 4.16 and 4.18 of the report.

4.2.4. Following this section, the chapter goes on to consider issues arising in the Local Impact Report (LIR), RRs, written and oral submissions. It then considers in principle conformity with national, development plan and other policies. This section takes in the need for the Proposed Development, alternatives and good design. The chapter then considers the Applicant's Environmental Statement (ES) and the EIA process. The remainder of the chapter covers the following planning issues, although no significance should be attached to their order:

- air quality, odour and dust;
- biodiversity;
- climate change;
- the historic environment;
- human health;
- landscape and visual;
- land use, soils and socio-economics;
- noise and vibration;
- safety and security;
- traffic and transport;
- water environment; and
- other policy and factual matters.

### **4.3. ISSUES ARISING IN THE LOCAL IMPACT REPORT**

4.3.1. The LIR briefly considers the NPSHW and finds that it provides a significant material consideration in support of the proposal in principle. It goes on to consider in more depth the principle of the Proposed Development against development plan policies. It does not find any direct, in principle, conflict with development plan policies. Nevertheless, nor do those policies identify a need for a large scale extension to the existing East Northants Resource Management Facility (ENRMF). The LIR advises that this matter should be balanced against the national need for the proposal.



- 4.3.2. The LIR also considers the proposal against other relevant development plan policies on amenity protection, ecology, landscape and visual, Rockingham Forest, flood risk and drainage, cultural heritage and archaeology, transport and highway safety, layout and design, socio-economic factors, and health impacts. It finds that there would be a significant adverse effect on the landscape character of the northern part of the western extension and that this needs to be weighed in the planning balance. However, taking into account the mitigation measures provided through the DCO, the LIR finds that the Proposed Development would not have any other significant adverse effects.
- 4.3.3. The LIR welcomes the proposed s106 Agreement (see paragraph 1.7.1 above) but finds that it should include provision for long term public access and that a 20-year aftercare requirement should be provided through the s106 Agreement or the DCO.

#### **Conclusion on issues arising from the LIR**

- 4.3.4. I have had regard to all matters raised in the LIR, as required by s104(2) of the PA2008. The 'in principle' support for the proposal provided by the NPSHW is noted. The other matters identified are discussed later in this chapter.

### **4.4. ISSUES ARISING IN WRITTEN AND ORAL SUBMISSIONS**

#### **Introduction**

- 4.4.1. The application generated a fairly small number of RRs (17 in total), some of which were neutral in content and local opposition was limited. Of the two areas of concern which gained prominence during the Examination, those expressed by the neighbouring landowner (Cecil Estate Family Trust (the Trust)) were the subject of two sets of RRs and those expressed by AW came to light later in the Examination.

#### **Relevant Representations**

- 4.4.2. The concerns raised at the RR stage included:
- the protection of statutory utilities infrastructure affected by the proposal, including the use of appropriate Protective Provisions (PP), retention of rights of access for inspection and maintenance, use of Compulsory Acquisition (CA) powers (notwithstanding that none are included in the dDCO) and entry into crossing agreements (National Grid Gas Plc [RR-001] and Western Power Distribution East Midlands (WPD) [RR-012]);
  - the maintenance of physical support to, and protection from pollution of, adjoining land (NW Fiennes [RR-003]);
  - the effect of the proposal on biodiversity including wildlife connectivity between the adjoining areas of woodland (Fineshade Wood and Colleyweston Great Wood, which is a Site of Special Scientific Interest (SSSI)) particularly for bats and adders. The

effects of the loss of hedgerows, lighting and dust deposition (Butterfly Conservation [RR-004], Mike Henchy [RR-009], the Trust [RR-015] and Stephen Glen [RR-014]);

- the potential for the construction and after-use phases of the proposal to attract large and / or flocking birds, leading to increased risk of aircraft using RAF Wittering being subject to bird-strike (Defence Infrastructure Organisation [RR-005]);
- general objections, but with a particular concern regarding road cleanliness and a suggested alternative entrance position (Kings Cliffe Parish Council [RR-007] and Stephen Glen [RR-014]);
- a claim that the Applicant does not have the right to discharge surface water into the swallow hole adjoining the site boundary, lack of clarity over the surface water drainage proposals, concern over the fitness of the Applicant to manage the site in the light of a pollution incident in Spring 2020, the proposed biodiversity net gain (BNG) should be brought forward in the phasing programme, the proposed financial contribution to the Community Fund should not be taken into account as a material consideration and the impacts from noise, odour and additional traffic (the Trust [RR-008 and RR-015]); and
- absence of consultation with Northants Police and Northants Fire and Rescue Service, concern that on-site worker accommodation would have implications for fire safety and anti-social behaviour (Northants Police and Northants Fire and Rescue Service [RR-011]).

#### 4.4.3. Other RRs offered the following advice:

- sufficient information has been provided to demonstrate that potential significant adverse effects on biodiversity arising from the western extension and the extension of the lifespan of the ENRMF can be ruled out or the proposed mitigation would be adequate to demonstrate no impact. Requirements should be used to ensure that unacceptable environmental impacts either do not occur or are sufficiently mitigated (Natural England (NE) [RR-010]);
- Environmental Permits (EPs) will be needed, submissions have been made for variations of two existing EPs, clarification of the details of the use of a natural low permeability geological barrier to protect groundwater. A detailed risk assessment of the effects on groundwater quality and flows and further detailed design of the proposal in the vicinity of the swallow hole and other limestone features will be needed before the hazardous waste EP is determined. The Environment Agency (EA) should be a named consultee in respect of Requirements 3(4) and 4(1) and the period allowed for consultation in these Requirements should be increased to 21 calendar days. No objections to the proposals subject to consideration of any further information emerging during the Examination (EA [RR-016]); and

- no air quality or public health objections to the proposals (UK Health Security Agency [RR-017]).

### **Written and Oral Submissions**

4.4.4. The Examination process presented the opportunity for IPs to supplement their RRs and to respond to submissions by other IPs. Discretion was exercised to accept additional written submissions from others who were not registered as IPs and to hear from others at the Issue Specific Hearings (ISHs). The substantive new matters to emerge from these contributions are set out below:

- the effect of the proposal on the AW pipelines which cross the extension land. This matter was discussed extensively during ISH2 and ISH3 and resulted in the Applicant submitting a request for a non-material change to the application. The process for considering the change is set out in Section 2.4 above. The substance of the issues raised is dealt with at Section 4.16;
- whether the controls in the dDCO would ensure the long-term aftercare of the restored site (see Section 4.14);
- the effect of the proposal on the neighbouring land to the north, with particular regard to pollution control and surface water drainage (Section 4.18), noise (Section 4.15); and
- whether the submitted Dust Management Plan would provide effective control of wind-blown dust.

### **Conclusion on issues arising from the RRs and written and oral submissions**

4.4.5. The concerns of NW Fiennes [RR-003] and Northants Police and Northants Fire and Rescue Service [RR-011] and the adequacy of the Dust Management Plan were subsequently resolved in the Statements of Common Ground (SoCGs) with the relevant parties ([REP8-008 Appendices H, F and C (EA regarding dust)]) respectively. I have considered all other issues raised in the RRs and written and oral submissions and they are addressed in detail later in this chapter.

## **4.5. POLICY CONFORMITY**

### **Introduction**

4.5.1. This section deals with whether the Proposed Development complies, in principle, with the requirements of the NPSHW, the development plans and other relevant policies. In doing so, it covers whether the need for the development has been established and whether alternatives to the submitted proposals and 'Good Design' have been properly considered. Compliance or otherwise with detailed policies on specific topic areas is dealt with in subsequent sections of this chapter.

## **Conformity with the NPSHW**

### ***Need for the Proposed Development***

- 4.5.2. I concluded at Section 1.1 of the report that the Proposed Development is a hazardous waste Nationally Significant Infrastructure Project (NSIP). Requirement 7 of the dDCO limits the type of waste to be accepted to hazardous waste and low-level radioactive waste (LLW) (other than materials to be use in the restoration of the site) and Requirement 8 controls the proportion of LLW which could be accepted.
- 4.5.3. Paragraph 4.1.2 of the NPSHW advises that, subject to its detailed policies and protections, and the legal constraints set out in the PA2008, *"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."*
- 4.5.4. Sections 3.1 to 3.3 of the NPSHW deal with the need for hazardous waste infrastructure. They review the drivers of demand, which is expected to increase; the need to meet legislative requirements, including the waste hierarchy; and the alternatives to meeting that demand. The conclusion at paragraph 3.3.7 is that *"a small number of large facilities (i.e. with a capacity above the threshold for nationally significant hazardous waste infrastructure) are likely to be needed to meet the expected increase in arisings of hazardous waste."*
- 4.5.5. Section 3.4 identifies the categories of NSIPs that are likely to be needed. These include the following forms of waste management and disposal which would be provided by the Proposed Development:
- treatment plant for air pollution control residues. Paragraph 3.4.4 advises that arisings from this waste stream are expected to increase significantly in future as more Energy from Waste facilities are developed and to meet target restrictions on the amount of waste sent to landfill. The Applicant's Environmental Statement (ES) [APP-049 paragraph 5.1.1] confirms that the ENRMF landfill facility has, and would continue to, accept this form of waste;
  - bio-remediation / soil washing to treat contaminated soil diverted from landfill. Paragraph 3.4.7 explains that waste soils and sludges from industries, including construction and demolition, are suitable for treatment by bio-remediation and / or soil washing. This treatment can move the waste up the waste hierarchy in order to meet the revised Waste Framework Directive. The ES (section 6.5) describes the bio-remediation process that has and would continue to be undertaken by the waste treatment and recovery facility; and
  - hazardous waste landfill. Although landfill is at the bottom of the waste hierarchy, paragraph 3.4.13 acknowledges that some existing landfill permissions may not be renewed and that there

will remain some waste streams for which landfill is the best overall environmental outcome. As such, there may be future applications for development consent for nationally significant hazardous waste landfill.

- 4.5.6. At paragraph 3.4.14, the NPSHW concludes that *"there is a need for these hazardous waste infrastructure facilities. The Examining Authority should examine applications for infrastructure covered by this NPS on the basis that need has been demonstrated."*
- 4.5.7. The Applicant evaluates the Proposed Development against relevant NPSHW policies in its Planning Statement (PS) [APP-103]. It sets out the need for the Proposed Development assessed against the provisions of the NPSHW and the trends in demand for waste treatment and disposal.
- 4.5.8. In terms of waste treatment and recovery, the PS finds that there are sustainability benefits associated with the co-location of these facilities with the ENRMF landfill facility and with the Applicant's nearby Thornhaugh Landfill Site (which takes non-hazardous treatment residues). Nationally, inputs to waste treatment and recovery facilities have increased from some 165,715 tonnes per annum (tpa) in 2015 to 211,373tpa in 2020. Continuation of the use of the waste treatment and recovery facility would enable hazardous waste such as contaminated soils and air pollution control residues to move up the waste hierarchy by recovering material for re-use and minimising the volume for disposal to landfill. The PS also advises that additional treatment processes which would increase further the potential for the recovery of wastes are contained in the application to vary the EP for the treatment and recovery facility.
- 4.5.9. The ENRMF is one of only nine hazardous landfill sites in England and there are no others in the East and West Midlands, East of England and South East which can accept a wide range of wastes. The PS therefore finds that the Proposed Development is geographically well located to the sources of waste it accepts.
- 4.5.10. Over the last five years more than 80% of the waste accepted at the waste treatment plant and over 98% of the waste accepted at the site for landfill disposal came from the East and West Midlands, the East of England, Greater London and South East. Further, the quantity of hazardous waste generated in those regions is rising steadily and no new hazardous waste landfill facilities have been developed in the south of England since the ENRMF was originally consented. The ES advises that, as of 2020, the current landfill void had a life of 3.5 to 4.5 years. If the Proposed Development does not proceed, hazardous waste generated in the south of England would need to be transported over longer distances with associated environmental effects.
- 4.5.11. With regard to LLW in particular, although this would constitute a relatively small proportion of the total waste accepted, the PS states that the Proposed Development is well located to meet the needs of

producers from the nuclear and non-nuclear industries. Reference is made to the large amount of LLW expected to be generated by the decommissioning of early nuclear power stations, as well as radioactive materials produced by industry, medicine, research, military nuclear programmes and mineral mining and processing. The PS also refers to the Nuclear Decommissioning Authority's 2016 and 2019 Radioactive Waste Strategies, the need to apply the waste hierarchy to LLW and the need to make the best use of existing, fit for purpose facilities, and to conserve the capacity of the specialist LLW Repository in Cumbria.

4.5.12. None of the participants in the Examination questioned the Applicant's interpretation of the NPSHW position on need or its assessment of the need for any element of the proposal. The Applicant's assessment is based on relevant published data and Strategies which identify a generally increasing need for the types of waste treatment and recovery and disposal to be provided by the Proposed Development. The site is well located geographically to meet the sources of that need and there are limited other facilities offering comparable capabilities, in particular for hazardous waste and LLW treatment and disposal.

4.5.13. I consider, therefore, that the Proposed Development would meet the need for nationally significant hazardous waste facilities as defined at paragraph 4.1.2 of the NPSHW. As such, there is a presumption in favour of granting consent, subject to compliance with the detailed policies of the NPSHW. I deal with those policies later in this chapter.

### ***Alternatives***

4.5.14. Paragraph 4.4.1 of the NPSHW advises that there is no requirement to examine the strategic alternatives to meeting the need for nationally significant hazardous waste facilities. However, NPSHW paragraph 4.4.3 does require the ES for each project to include an outline of the main alternatives studied by the applicant and the main reasons for its choice, having regard to environmental, social and economic effects. This is consistent with Regulation 14(1)(d) and Schedule 4 of the EIA Regulations which require an ES to provide "*a description of the reasonable alternatives studied by the applicant, which are relevant to the Proposed Development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment*".

4.5.15. Chapter 10 of the ES [APP-049] reviews the following alternatives to the Proposed Development

#### Alternative Waste Management Methods

4.5.16. I sought further information on the Applicant's approach and performance in relation to the waste hierarchy [PD-006 Q13.1.1 and Q13.1.2] and at ISH2. The Applicant's responses [REP2-006, REP4-006 and REP4-007] refer to the statutory requirement for producers

to comply with the waste hierarchy and consider methods higher up the hierarchy before sending waste (including LLW) to the ENRMF. These matters are controlled through Duty of Care documentation under the 2011 Regulations. The Applicant also referred to the need to find appropriate uses for treated outputs and to the opportunities offered by its network of facilities.

- 4.5.17. The Applicant further pointed to its environmental management system procedure which would be secured through the varied landfill EP. It would require all wastes to be subject to a rigorous technical assessment and testing regime. The Proposed Development would increase the capacity and flexibility of the waste treatment facility and so offer opportunities to recover a greater range of waste types for re-use off-site following treatment rather than disposal. Nevertheless, there will remain a need for the disposal of hazardous waste.
- 4.5.18. The Applicant was not able to provide benchmarking or data on the performance of the ENRMF specifically in complying with the waste hierarchy. However, company-wide data for the years 2019 to 2021 indicates that it has generally increased the through-put of options higher up the hierarchy and reduced through-put for landfill. On this basis, I am content that alternative waste management options for the Proposed Development have been considered and that the chosen option would support the aims of the waste hierarchy and accord with the principles for the management of waste set out in NPSHW paragraph 2.4.1.

#### Alternative Locations

- 4.5.19. The Applicant advised that it had maintained a watching brief for alternative locations to expand its capacity since the original Order was granted. From 2017, a proactive search was conducted, initially using hydrogeological and geological criteria, and then planning policy-based criteria, as well as assessment by a specialist surveyor. A sifting process resulted in four sites being deemed worthy of further investigation. At this time the Applicant became aware that the land to the west of the ENRMF may be available and initial discussions with the EA indicated that it would be potentially suitable to extend the existing facility.
- 4.5.20. The Applicant's assessment contends that the extension of the landfill activity at the ENRMF location would accord with relevant policies of the Northamptonshire Minerals and Waste Local Plan 2017 (MWLP) and that its co-location with the existing treatment facility and the Thornhaugh landfill site would have sustainability and operational benefits. I sought further information on the site selection exercise [PD-006 Q1.3.3] and the Applicant's response [REP2-006] indicates that none of the alternative sites out-performed the extension of the existing facility with regard to environmental or operational considerations.

4.5.21. The Applicant's assessment found a strong preference for co-location of the landfill and waste treatment facilities for operational and transportation reasons. Although three other locations close to the existing site were considered, none were found to be preferable and, in two cases, were not available. I questioned whether the use of CA powers had been sufficiently explored [PD-006 Q1.3.4]. The Applicant responded that, as the application site became available to acquire by negotiation, and its development would have less environmental impact, the use of CA powers would not accord with the Guidance<sup>2</sup> which requires all reasonable alternatives to CA to be explored.

#### Design Alternatives

4.5.22. The Applicant reports that consideration was given to moving the treatment facility to an area to the south of the existing site. It found that the advantage of being able to complete the landfill of existing phase 11 was outweighed by landscape impact and cost considerations. An alternative access position to the north of the existing access was discounted on biodiversity grounds and would need longer haul roads. The design of the landfill void was informed by the following factors:

- the area of land controlled by Augean;
- the need for a stand-off from the site boundary to provide space for ecological mitigation, planting, fencing and stable slopes;
- the presence of services;
- the site geology and hydrogeology; and
- the visual impact and effect on landscape character.

4.5.23. The Applicant's search for alternative locations for the landfill activity appears to have ended somewhat abruptly when the land to the west of the ENRMF became available. Nevertheless, the benefits of maintaining the continuity of the operations, co-location with the waste treatment facility and the Thornhaugh landfill site carry considerable weight. As the remainder of this chapter will show, environmental and policy constraints at the application site are relatively limited and the Proposed Development has not generated significant local objection.

4.5.24. Kings Cliffe Parish Council considered that an alternative access to the site should be provided in order to manage additional traffic movements and ensure the cleanliness of the highway [RR-007]. However, no alternative location was suggested, and the objection was not supported by substantive evidence. The only realistic alternative location would be in the wooded area to the north of the existing access. As the Applicant points out, an access here would

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<sup>2</sup> Guidance related to procedures for the compulsory acquisition of land – Department for Communities and Local Government September 2013



likely have harmful biodiversity effects. I deal with additional vehicle movements and road cleanliness in Section 4.17 below.

- 4.5.25. Overall therefore, I find that the Applicant has satisfactorily outlined the main alternatives to the Proposed Development and provided adequate reasons for its choice, having regard to environmental, social and economic effects as required by NPSHW paragraph 4.4.3 and the EIA Regulations.

### ***Good Design***

- 4.5.26. Paragraph 4.5.3 of the NPSHW advises that the SoS for Levelling Up, Housing and Communities (SoS) needs to be satisfied that hazardous waste infrastructure developments are sustainable and as attractive, durable and adaptable as they can be, having regard to regulatory and other constraints. The Applicant should demonstrate that it has taken into account both functionality and aesthetics as far as possible.
- 4.5.27. Neither the ES nor the PS refer specifically to 'Good Design'. I therefore sought further information on the consideration given to good design [PD-006 Q1.3.5]. The Applicant's response [REP2-006] refers to the selection of the existing location as the first key consideration, together with the minimal changes proposed to the existing treatment facility, office and reception areas. The main area of change would be the landfill and the technical requirements for its design are set out in Sections 5.5 (Landfill engineering and containment design), 5.8 (Restoration contours) and 9.2 (Landform restoration) of the ES. Among other things, the Proposed Development would employ the sustainable use of materials (for example re-use of the low permeability clay excavated from the site) and the sustainable management of waste. The restoration proposals would offer opportunities for enhancement of biodiversity and public access.
- 4.5.28. As the NPSHW recognises, the nature of hazardous waste development limits the extent to which it can contribute to the enhancement of the quality of the area. Operational, safety and security requirements also need to be taken into account.
- 4.5.29. In large part, the Applicant's approach to good design has been embedded in the evolution and design of the various elements of the Proposed Development. I consider this further in relation to specific topic areas later in this chapter. However, in general I am satisfied that the proposal employs good design in the proportionate manner expected by the NPSHW.

### **Conformity with the Development Plan**

- 4.5.30. The development plan policies most directly relevant to the Proposed Development are found in the MWLP. The capacity requirements for hazardous waste treatment, recycling and disposal identified in Policy 10 are based on achieving self-sufficiency in the County. As the LIR

[REP2-027] and North Northamptonshire Council's (NNC) SoCG [REP8-008 Appendix B] point out, those requirements do not include a large extension to the ENRMF. However, as the MWLP also acknowledges, the facilities at the existing ENRMF, as well as those proposed to be extended, have national importance and a national catchment.

- 4.5.31. I have already found that the need for the Proposed Development is supported by the NPSHW. In this way, the proposal would meet the aim of Policy 14 insofar as it requires the need for waste disposal proposals to be justified and prefers the extension of existing sites.
- 4.5.32. The MWLP also recognises that the ENRMF is one of the few facilities nationally able to dispose of LLW. Policy 17 sets out criteria for the consideration of radioactive waste management. With the exception of a concern regarding the landscape impact of the proposal, the Council's LIR assessment does not find conflict with these criteria. Nor did any question of conflict arise during the course of the Examination.
- 4.5.33. The MWLP spatial strategy for waste management set out in Policy 11 seeks to direct facilities to identified areas within the County. The location of the ENRMF does not fall within these areas. Nevertheless, the Policy also allows for such facilities in the 'rural hinterlands' where they are incompatible with urban development. The scale and nature of the proposal render it incompatible with urban development.
- 4.5.34. This, together with the national need for, and catchment area of, the proposed facility, overcomes any inconsistency with the Plan's waste management spatial strategy. These considerations would also overcome the tension with Policy 10 inasmuch as the policy does not identify a need to extend the ENRMF based on County-level demand for hazardous waste treatment and disposal.
- 4.5.35. Policy 3 requires mineral extraction to accord with the MWLP spatial strategy and meet a proven need for the materials. As the Council's LIR acknowledges, the proposed clay extraction is an opportunist benefit and is suitable for use in the construction of the landfill or at the nearby Thornhaugh landfill site. Although the existing site benefits from historic permissions for clay extraction, whereas the application site does not, the material proposed to be extracted would efficiently serve an identified need. To that extent, the proposal would accord with the broad aims of Policy 3.
- 4.5.36. Policies 12 and 15 set out development criteria for waste management and waste disposal facilities. I have already found that the Proposed Development generally accords with the Plan's spatial strategy for these forms of development and that a need has been demonstrated. The policies also require proposals to conform with the principles of sustainability.

- 4.5.37. This matter, together with the effects of the Proposed Development on the considerations identified in MWLP Policies 18 to 24 (see report paragraph 3.10.10) and relevant policies of the North Northamptonshire Joint Core Strategy (JCS) (see report paragraph 3.10.13), Rural North Oundle and Thrapston Plan (RNOTP) (see report paragraph 3.10.15) and King's Cliffe Neighbourhood Plan (see report paragraph 3.10.16) are dealt with later in this chapter.
- 4.5.38. Subject to those considerations, I find that the principle of the Proposed Development accords with the broad aims and strategy of the MWLP and the development plan as a whole.

### **Application of Other Policies**

- 4.5.39. Paragraph 3.6.12 above identifies six national strategy documents for waste in addition to the NPSHW. Key themes relevant to the Proposed Development emerging from these documents are to:
- encourage reductions in hazardous waste arisings and the application of the waste hierarchy;
  - ensure safe, environmentally acceptable and cost effective management solutions appropriate to the nature of the LLW. This includes disposal above or below ground to appropriate facilities;
  - ensure the best use of existing LLW management facilities; and
  - provide for new fit-for-purpose waste management routes which allow for the diversion of LLW from the Cumbria Low-level Waste Repository.
- 4.5.40. The Proposed Development would provide additional capacity and flexibility in the treatment of hazardous waste and LLW. This would make a contribution to moving arisings up the waste hierarchy, although the Applicant was not able to quantify this benefit. The proposal would also provide additional capacity for the disposal of hazardous waste and LLW, for which there is an identified and on-going need. Consequently, I consider that the Proposed Development would accord with the key aims of the six national strategies for hazardous and LLW waste set at paragraph 3.6.12 insofar as they are relevant to the treatment and disposal of these forms of waste.

## **4.6. THE PRINCIPLE OF THE DEVELOPMENT**

- 4.6.1. Taking into account my conclusions on the support for the Proposed Development provided by the NPSHW, as well as its compliance with other national waste strategies and the development plan strategy for waste management and mineral extraction, I find that the principle of development is well-founded in relevant policy.

## **4.7. ENVIRONMENTAL IMPACT ASSESSMENT**

### **Policy and Legislative Context**

- 4.7.1. As set out in Chapter 3 above, the EIA Regulations provide the legislative requirements for EIA development. Paragraph 4.2.1 of the NPSHW confirms that projects which are subject to the EIA Directive must be accompanied by an ES describing the aspects of the environment likely to be significantly affected by the project. Specifically, the directive refers to effects on human beings, fauna and flora, soil, water, air, climate, the landscape, material assets and cultural heritage, and the interaction between them. Paragraph 4.2.8 of the NPSHW further advises that it would be helpful to include information on likely significant social and economic effects. In accordance with the EIA Regulations and the NPSHW, direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project should be considered, as well as cumulative and combined effects.

### **The Application**

- 4.7.2. The application was accompanied by an ES, the scope of which had been previously agreed. Queries were received in relation to the scope of the submitted ES from the Trust and AW, which I address below. The ES text was presented in a single volume [APP-049] together with supporting Figures [APP-050 to APP-077], Appendices [APP-078 to APP-101] and a Non-Technical Summary [APP-048].
- 4.7.3. As discussed in Section 2.4 above, the proposed change to the application was supported by a Supplementary ES dealing primarily with landscape and visual and biodiversity matters. Given that the proposed change was limited to the profile of the landfill on either side of the pipeline corridor, I consider it reasonable that aspect areas other than landscape and visual and biodiversity were scoped out of the Supplementary ES. Its scope was not questioned by participants in the Examination or parties consulted by the Applicant.
- 4.7.4. A number of the assessments and mitigation measures in the ES rely on the assessments and controls provided by the EPs. A similar approach was taken when the DCO for the existing ENRMF was granted. Paragraph 4.7.1 of the NPSHW advises that issues relating to discharges or emissions which affect air quality, water quality, land quality or which include noise and vibration, may be subject to separate regulation. In this case, that means EPs issued by the EA. The EPs deal with all those matters, although noise and vibration from off-site vehicle movements is not covered. Paragraph 4.7.3 of the NPSHW states that the Examining Authority (ExA) and SoS *"should work on the assumption that the relevant pollution control regime will be properly applied and enforced. It should act to complement but not seek to duplicate it."*

- 4.7.5. The ES advises that it is not proposed to change the nature of the hazardous waste and LLW to be accepted at the western extension compared with the existing ENRMF and that the principles of the landfill construction, containment and phasing would remain the same. The risk assessments used in the EP applications have been reviewed and updated to take into account the proposed activities and the extension of the site area.
- 4.7.6. I questioned the relationship between the thresholds for compliance used in the EP assessments and the 'significant effect' threshold used in EIA [PD-006 ExQ1.1.4]. The Applicant's response [REP2-006] confirmed that the control and threshold limits for emissions to air and water with the potential to affect health are based on applicable health-based guidelines or standard values as specified in the former Public Health England NSIP guidance. The Applicant confirmed that the hydrogeological risk assessment submitted as part of the EP application modelled predicted impacts and compared them with agreed Environmental Assessment Levels for the current site.
- 4.7.7. The EA's submissions to the Examination did not identify any concerns with the scope or controls provided in the existing or the proposed variations to the EPs. With these considerations in mind, I find that it is appropriate to take into account the assessments, controls and mitigation measures which would be provided through the EP regime.
- 4.7.8. I have already concluded that it would be reasonable to expect that the necessary variations to the existing EPs will be granted in due course. In the unlikely event that they are not granted, that would prevent the Applicant from undertaking the controlled activities and thereby avoid any resulting environmental impacts.
- 4.7.9. I sought clarity regarding the methodological approaches and the significance criteria used to assess likely significant effects (LSE) in the ES [PD-006 Q1.2.1]. The Applicant's response [REP2-006] stated that the methodologies used were the same as those employed in the original DCO application and the Whitemoss Landfill Site DCO application. Mitigation measures are embedded in the design of the facilities and, therefore, assessment without these measures has not been carried out. A summary table of the potential significant effects and residual significance following mitigation was also provided [REP2-017]. With regard to the assessment of water quality specifically, the Applicant's response again relied on the approach used in the EPs.
- 4.7.10. Work Nos 2 and 3 as defined in Schedules 1 and 4 of the dDCO include provision for buildings and structures in the waste treatment facility and the reception area. The parameters for the height and extent of such structures are contained in the DCO Environmental Commitments (DEC) [REP7-008 Appendix DEC C]. As submitted with the application, these parameters would have allowed for structures covering the whole of each Work area to a height of 15m (Work No

2) or 8m (Work No 3). I sought clarity regarding the layout, scale and massing of the structures ([PD-006 Q4.3.3] and ISH2). The Applicant responded with updated landscape and visual information which was sufficient to address my concerns regarding Work No 2 [REP4-006].

- 4.7.11. I further questioned whether the full implications of the parameters for Work No 3 had been taken into account in the Landscape and Visual Impact Assessment (LVIA) and ES landscape and visual assessment and, therefore, whether it accorded with the Rochdale Envelope approach [PD-010 Q4.1]. The Applicant responded by revising the dDCO and the DEC Appendix C to restrict the structures in Work No 3 to no more than one 8m high building ([REP6-013 Schedule 4 and REP6-008 Appendix C]). NNC indicated that it was content with this approach [REP8-008 Appendix B].
- 4.7.12. No other Examination parties questioned the approach to the Rochdale Envelope in the ES assessments. With the amendments in place, I am content that the full implications of the Proposed Development have been assessed in the ES using the Rochdale Envelope approach.
- 4.7.13. I have already found that the alternatives to the Proposed Development have been properly considered in the ES. The topic area sections later in this chapter consider, where appropriate, permanent, temporary, short, medium and long term effects, direct and indirect effects and cumulative and combined impacts.
- 4.7.14. The EA and NNC were content with the methodology, assessments, controls and mitigation measures provided through the ES [REP8-008 Appendices B and C]. I deal with AW's concerns regarding the effect of the Proposed Development on its pipelines and the Applicant's response in Section 4.16. Here I note that the additional submissions by the Applicant satisfied the concerns of AW [REP8-008 Appendix K]. The Trust's concerns regarding surface and groundwater drainage are covered in Sections 4.14 (land use) and 4.18 (water environment). There were no objections to the ES methodology, assessment or controls by other parties.

### **Conclusions on the ES and EIA**

- 4.7.15. I am satisfied that the ES and Supplementary ES, together with the other information submitted by the Applicant during the Examination, is adequate and meets the requirements under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. Full account has been taken of all environmental information in the assessment of the application and in the recommendation to the SoS.
- 4.7.16. Considering the EIA process, the submitted and updated ES, the Works Plans and the DEC, I conclude that:
- the Proposed Development is EIA development;

- the submitted documents, as supplemented by the subsequent submissions, provide an adequate assessment of the environmental effects of the Proposed Development;
- the Rochdale Envelope approach has been properly defined and considered in the ES; and
- the ES gives adequate consideration to alternatives to the Proposed Development.

## **4.8. AIR QUALITY, ODOUR AND DUST**

### **Introduction**

- 4.8.1. This section addresses the effect of the Proposed Development in relation to air quality, including odour and dust. Air quality matters specific to biodiversity and designated sites are covered in Section 4.9 and climate change and greenhouse gas (GHG) emissions are dealt with in Section 4.10.

### **Policy Context**

- 4.8.2. Paragraph 5.2.4 of the NPSHW advises that the ES should describe any significant air emissions, mitigation and residual effects, including significant emissions from traffic, the contribution of emissions to critical levels for the protection of the eco-system, predicted absolute emission levels after mitigation and existing air quality levels and relative change.
- 4.8.3. European Union (EU) air quality limits and the presence of air quality management areas (AQMA) should be taken into account, as well as cumulative impacts and consistency with local air quality action plans. Substantial weight should be given where a proposal would lead to a deterioration of air quality, or result in a new area where air quality breaches national air quality limits. Air quality considerations will also be important where substantial changes to air quality are expected. The ExA will need to ensure that the EA is satisfied that air emissions can be adequately regulated under the EP regime (paragraphs 5.2.5 to 5.2.8).
- 4.8.4. Mitigation measures needed to control operational and construction emissions should be acceptable and reference may be made to the conditions and advice in the UK Air Quality Strategy or any successor (NPSHW paragraphs 5.2.9 and 5.2.10).
- 4.8.5. Policy 18 of the MWLP requires minerals and waste proposals to avoid and / or minimise the adverse effects of air emissions, including dust.

### **The Application**

- 4.8.6. Air quality, dust and odour matters are dealt with in Chapter 21 of the Applicant's ES [APP-049], while dust is also covered under the heading of 'Amenity' in Chapter 22. These chapters are supported by:

- Figure ES22.1 Location of dust sensitive receptors [APP-074];
- Appendix ES22.1 Methodology for the Dust Assessment [APP-098];
- Appendix ES22.2 All hours wind rose [APP-099];
- Appendix ES22.3 Dry hours wind rose [APP-100]; and
- Appendix ES22.4 Beaufort wind scale [APP-101].

### ***Baseline and Methodology***

#### Air Quality and Odour

- 4.8.7. The site is not within an AQMA. The Applicant's assessment uses the UK Air Quality Archive to provide site data for the most common atmospheric pollutants, defined as fine particulate matter (PM<sub>2.5</sub>, PM<sub>10</sub>) and nitrogen oxides (NO<sub>x</sub>). It shows that air quality in the area for these measures is better than the national air quality objective annual mean concentrations.
- 4.8.8. As required under the existing EPs for the site, methane, hydrogen sulphide, oxides of nitrogen, carbon dioxide, carbon monoxide, suspended particulates (PM<sub>10</sub>), asbestos fibres and volatile organic compounds are routinely monitored. The EPs also require emissions from the landfill gas flare and gas concentrations in the ground to be monitored. Emissions are compared with compliance limits specified by the EA. Monitoring of gaseous emission during the construction and operational phases and following completion would continue to be required under the varied EPs.
- 4.8.9. The ES [APP-049] advises that hazardous wastes, LLW and wastes for treatment received at the site would contain minimal quantities of putrescible material, making it unlikely that significant odorous emissions would be generated by the biodegradation of imported organic matter. Any odorous industrial wastes received at the site are assessed as part of pre-acceptance checks and those with significant odour potential would be turned away. The Applicant reports that it has not recorded any complaints regarding odour in the last 5 years.

#### Dust

- 4.8.10. The ES states that activities with the potential to generate dust would include soil stripping, mineral extraction operations, landfill cell construction, materials handling, on site transportation, waste processing at the waste recovery and treatment facility, stockpiles and off-site transportation. Heavy goods vehicles (HGVs) leaving the site have the potential to deposit mud on the road.
- 4.8.11. The ES reports that the dust assessment was undertaken generally in accordance with the Planning Practice Guidance (PPG) Note for Minerals 2014 and the Institute of Air Quality Management (IAQM)



Guidance on the Assessment of Mineral Dust Impacts for Planning 2016.

- 4.8.12. The 2019 DEFRA estimate for annual mean PM<sub>10</sub> background concentrations in the area had a mean value of 15.45 micrograms (µg)/m<sup>3</sup>. This is well below the annual mean air quality objective of 40 µg/m<sup>3</sup>. Dust monitoring at the site boundary, as required by the EP, shows that in the last five years the only exceedances were due to nearby agricultural activity.

### ***Assessment of Effects***

#### Air quality and odour

- 4.8.13. The through-put of the waste treatment and recovery facility would increase as a result of the Proposed Development. The varied EP would continue to control gas and vapour emissions and particulates. The EP would also require operating techniques to be reviewed to ensure that they conform with the Best Available Techniques set out in EU and national guidance. The Applicant considers that the proposed change to the waste treatment and recovery facility would have a negligible impact on air quality.
- 4.8.14. Hazardous waste and LLW with a total organic content (TOC) of more than 6% would not be permitted for disposal at the site. The existing phases of landfill are monitored and the emissions from those phases (Phase 3 onwards) where deposits took place after the limit on TOC in hazardous waste was introduced in the UK in 2004 are too low to warrant the use of an active gas collection system. The Applicant, therefore, contends that there would be minimal potential for the deposited waste to generate landfill gas or other vapours. Any significant gas or vapours that are generated would be contained by the low permeability perimeter seals and capping layer. Where necessary, they would be collected by the gas extraction and management system and directed to the gas flare for combustion.
- 4.8.15. The ES reports that monitoring data reviewed for the last 5 years for gaseous emissions in the boundary boreholes and in the atmosphere show that there have been no exceedances of the thresholds set in the EP for the protection of human health and the environment. Nor have there been exceedances for asbestos fibre at the site boundary.
- 4.8.16. Particulate monitoring at the site boundary shows no PM<sub>10</sub> concentrations above 10 µg/m<sup>3</sup>. This is well below the 40 µg/m<sup>3</sup> annual mean air quality target, although the ES acknowledges that there is no PM<sub>10</sub> target for the protection of ecosystems.
- 4.8.17. It is proposed to continue the current EP controls on the acceptance of potentially odorous waste and, as such, the Applicant considers that there would be no significant effect from odour.
- 4.8.18. Monitoring and control of emissions to air would continue to take place in accordance with the requirements of the existing and varied

EPs in order that they remain below the levels determined by the EA for the protection of human health and the environment.

- 4.8.19. The existing and varied EPs include risk assessments of the emission of radioactive isotopes in the gas generated at the site. The nature of the LLW accepted at the site would continue to be controlled in order that the doses that result from radioactivity in gaseous emissions do not exceed the design criteria. A limited quantity of carbon-based gases such as methane and carbon dioxide may be generated by the biodegradation of the negligible proportion of biodegradable wastes deposited with the hazardous wastes. However, the Applicant considers it highly unlikely that carbon-based gases would be generated from the deposited LLW. The ES reports that the radiation monitoring, which is reviewed by Public Health England (now the UK Health Security Agency), demonstrates low recorded levels of activity and compliance with the thresholds in the EP and guidance.
- 4.8.20. The ES finds that monitoring of particulate matter at the site in accordance with the EP and the site Particulate Monitoring Action Plan would be sufficient to ensure that the extraction and stockpiling of soils, clay and overburden during the construction phase would have no significant effect on air quality in the locality. Further, the EP monitoring and controls of gaseous emissions and particulate matter during restoration would ensure that this phase of activity would have a negligible effect on air quality.
- 4.8.21. The IAQM/Environmental Protection UK guidance<sup>3</sup> identifies a level of 100 Annual Average Daily Traffic HGV movements as the threshold for requiring a detailed air quality assessment of traffic. The ES uses the results of its Transport Assessment (TA) (see Section 4.17 of this report) to establish that the predicted increase in the number of HGV movements (36/day) would be well below this threshold. It, therefore, concludes that there would be no significant effect on air quality from the increase in traffic movement generated by the Proposed Development. Nor is there anything to suggest that existing traffic movements in the area are having a significant adverse effect on air quality.

#### Dust

- 4.8.22. Based on the relevant guidance, the ES assessment assumes that significant dust blow would not occur when the wind speed is below 5m/second or in the hours when the average rainfall exceeds 0.2mm. Wind rose data indicates that during 42.44% of the dry hours wind speeds are above 5m/second. The assessment refers to IAQM guidance to quantify residual source emissions for the proposed site activities with no operational controls in place, while noting that such controls are in place at the ENRMF. The assessment considers that

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<sup>3</sup> Institute of Air Quality Management (2017) Land-Use Planning & Development Control: Planning for Air Quality

potential dust impact would occur predominantly within 400m of the operations.

- 4.8.23. The assessment recognises that the phased nature of the Proposed Development would result in potentially dust generating activities taking place periodically throughout its operational lifetime. Using the terms and methodology in the IAQM guidance, the ES finds that there would be a medium working area associated with the extraction and restoration operations at the site, a high volume of material movements (over 100,000 cubic metres (m<sup>3</sup>)) and a medium number of mobile plant. Soil stockpiles would be seeded as soon as possible following placement. The soils placed during restoration would also have the potential to generate dust. On this basis the assessment finds that, without operational controls, the residual source emissions from the site during preparation and restoration should be categorised as medium.
- 4.8.24. Mineral extraction would take place in phases of some 4 hectares (ha) area, which the IAQM guidance classifies as a small working area. Moreover, the clay which would be extracted has a high moisture content and, therefore, a low potential for dust. These activities would involve transport along haul roads, direct tipping, tipping to stockpiles or export off-site. They would occur, in part, close to the footpaths near the western site boundary which the assessment classifies as low sensitivity receptors. Again, using the IAQM guidance, the assessment concludes that the residual source emission category for mineral extraction is medium, the residual source emission category for materials handling is large and the residual source emission category for on-site transportation is medium.
- 4.8.25. Stockpiles on site would not generally exceed 5m in height and would consist predominantly of material of low dust potential. They would be sprayed using a water bowser where necessary. The stockpiles may be located close to the site boundary and there could be frequent material transfer to and from the stockpiles during mineral extraction and cell construction operations. Having regard to the nature of the exposed surfaces throughout the site, the assessment finds that the residual source emissions can be categorised as large.
- 4.8.26. The waste treatment and recovery operations would involve a combination of processes and the waste to be processed would have an overall dust potential of medium. The end product of the waste processing is assessed to have low dust potential. The residual source emissions for waste processing is categorised as medium.
- 4.8.27. The assessment identifies receptors within 400m of the site boundary and, having regard to wind speed during dry hours, finds that there is the potential for negligible to moderate adverse dust impact without the implementation of specific mitigation or dust controls. The site is subject to good practice controls which would continue to be implemented through the EPs. The assessment finds that with those

measures (see below) in place it is unlikely that there would be significant dust emissions from the site.

### ***Mitigation and Monitoring***

#### Air quality and odour

- 4.8.28. The ES refers to the monitoring and controls required by the existing and varied EPs which are and would continue to be an integral part of the design and operation of the waste treatment and recovery facility and the landfill activity. Monitoring results are reviewed by the EA and available for public inspection. They show that the existing mitigation measures are effective as well as providing an early warning system in the event that exceedances occur. This would allow the source to be identified and remedial measures to be implemented promptly. Where exceedances are the result of site activities they would be investigated, and improvement actions implemented and reported to the EA.
- 4.8.29. Such improvement actions may comprise changes to the review, checking and management of wastes accepted or delivered to the site, improvements in the gas management system, the dust and particulate controls or improvements to the capping system. The Applicant considers these measures mean that no further controls under the DCO would be necessary.

#### Dust

- 4.8.30. Existing dust control measures which would continue to be implemented in the Proposed Development are set out in ES Table ES22.3. A Dust Management Scheme would also be implemented through Requirement 6(2) in the dDCO. Boundary dust monitoring would be carried out in accordance with the EP to ensure that dust is adequately controlled. In the event that significant dust levels are detected the Applicant advises that corrective action would be taken in accordance with the EP.

#### Combined and Cumulative Effects

- 4.8.31. The ES finds that there are no other activities in the area which may have the potential to lead to significant cumulative effects on the air quality of the area. Nor does it find that the air quality, odour or dust effects combined with other effects of the proposal would lead to significant effects.

### **Issues in the Examination**

- 4.8.32. The Trust contended that occasional odour from the ENRMF currently adversely affects its land to the north and would also affect the proposal to use the existing buildings for commercial storage. It, therefore, sought a more effective odour control system [REP2-033].

- 4.8.33. The matter was discussed at ISH2. There was no evidence of complaints being made to the Applicant or NNC. The Applicant's response refers to the types of waste accepted at the site having low potential to generate odour (see paragraph 4.8.9 above) and to its complaints procedure [REP4-007]. NNC's Environmental Health Officer advised that "*given the type of waste accepted at the site and the intervening tree belt it is unlikely that noise or odour would impact on any development site*" [REP4-012]. The Trust continued to be concerned about odour impact, but did not provide further substantive evidence to support its position [REP5-013].
- 4.8.34. I deal with the concerns expressed by the Woodland Trust [REP7-017] under the heading of biodiversity in Section 4.9 below.
- 4.8.35. I sought clarification on a number of points regarding the assessment of air quality in the ES [PD-006 Q2.1.1 to Q2.3.6]. The Applicant's responses [REP2-006]:
- confirmed that there was an error in table ES22.2 and that Collyweston Great Wood and East Hornstocks SSSI should be classified as a medium sensitivity receptor for dust using the IAQM guidance. Nevertheless, it would not change the dust assessment conclusion;
  - added columns to table ES22.2 in order to clarify and justify the pathway effectiveness categories for dust. This information was taken from the IAQM guidance;
  - confirmed that the parameters for emissions to air used in the EP risk assessments adopt applicable health-based guidelines or standard values as specified in the Public Health England NSIP guidance (Advice on the content of Environmental Statements accompanying an NSIP application);
  - advised that, notwithstanding that the Applicant considers that no landfill gas collection system would be necessary in the western extension, the wells in each phase would be monitored and designed to allow connection to the gas flare system if necessary. The amount of gas collected would be too small to sustain re-use as an energy source. These matters would be controlled through the varied landfill EP; and
  - the proper investigation of complaints would be controlled through the EP process as well as being a requirement of the Applicant's certified ISO14001 procedures.

### **Conclusions**

- 4.8.36. The buildings proposed to be converted by the Trust are some distance from the application site boundary and the proposed commercial use would be a relatively low-sensitivity receptor for odour impact. Although the buildings themselves are not currently occupied, they, and the land around them, is managed and maintained by the Trust. By virtue of its participation in the Examination, it is evidently an engaged landowner. As such, the

absence of a formal complaint to the Applicant or the Council about odours hitherto suggests that the problem has not been significant.

- 4.8.37. Nor is there substantive evidence that the Proposed Development would materially increase the potential for odour impact. Having regard also to the views of the Council's Environmental Health Officer, I consider that odour from the Proposed Development would not have a significant effect on the Trust's land or the proposed use of its buildings to the north of the application site..
- 4.8.38. The Applicant has provided satisfactory responses to my questions on the assessment of air quality. Neither the EA nor NNC has expressed concern regarding the assessment or potential impacts of the Proposed Development on air quality or from dust or odour [REP8-008 Appendices B and C]. The controls necessary to ensure that the assessed effects would not be exceeded are integral to the design of the proposal or would be effectively provided through the varied EPs. As such, apart from the Dust Management Scheme secured by Requirement 6(2) of the dDCO, I consider that there is no need for further controls to be provided. The proposal would, therefore, accord with NPHW paragraphs 5.2.9 and 5.2.10.
- 4.8.39. I consider that the Applicant has provided adequate assessments of air quality, odour and dust as required by NPSHW paragraph 5.2.4. I find that the Proposed Development would not have a significant effect on air quality and would not lead to unacceptable levels of odour or dust. As such, it would accord with NPSHW paragraph 5.2.5 to 5.2.8 and MWLP Policy 18. Therefore, these matters do not weigh for or against the proposal in the planning balance.

## **4.9. BIODIVERSITY**

### **Introduction**

- 4.9.1. This section considers the effect of the Proposed Development on biodiversity and nature conservation interests. It includes air quality and water borne impacts on biodiversity. Issues relating to the HRA are addressed separately in Chapter 5. Although, it is relevant to note here that Chapter 5 finds that the Proposed Development would not have a likely significant effect on the objectives of any European sites and their qualifying features, or on any site to which the same protection is applied as a matter of policy.
- 4.9.2. Geological conservation matters are considered in the context of the water environment in Section 4.18.

### **Policy Context**

- 4.9.3. Paragraph 5.3.3 of the NPSHW requires the ES to set out clearly any effects on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity. The

applicant should also show how opportunities are taken to conserve or enhance biodiversity interests (paragraph 5.3.4).

- 4.9.4. The NPSHW refers to the aims of the Government's Biodiversity Strategy 2020 including "*a halting, and if possible, a reversal, of declines in priority habitats and species*" and "*the acceptance of biodiversity's essential role in enhancing the quality of life*". It goes on to note the effect of climate change on biodiversity. If significant harm resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then development consent should not be granted (paragraphs 5.3.5 to 5.3.7).
- 4.9.5. Appropriate weight should be attached to designated sites of international (most important), national (high degree of protection) and regional and local importance (due consideration). The NPSHW notes that many species and habitats receive statutory protection and other species are designated as being of principal importance (paragraphs 5.3.8, 5.3.9, 5.3.10, 5.3.13, 5.3.16 and 5.3.17).
- 4.9.6. The NPSHW also recognises that proposals can provide opportunities for building-in beneficial biodiversity features and that these opportunities should be maximised by the applicant (paragraph 5.3.15).
- 4.9.7. Mitigation measures should be an integral part of the proposal and the applicant should identify where and how they would be secured. Particular attention should be given to minimising the area of construction works, use of best practice to minimise the risk of disturbance to habitats and species, habitat restoration, the use of landscaping to avoid habitat fragmentation and opportunities to enhance existing or create new habitats (paragraph 5.3.18).
- 4.9.8. Consideration should be given to what requirements should be attached to any consent to deliver the mitigation measures. Account should also be taken of the measures agreed with NE and licences granted or refused by that body (paragraphs 5.3.19 and 5.3.20).
- 4.9.9. Paragraph 174 of the National Planning Policy Framework (NPPF) requires proposals to minimise impacts on, and provide net gains, for biodiversity, including by establishing coherent ecological networks. Paragraph 180 presumes against development which is likely to have an adverse effect on a SSSI and states that development resulting in the loss or deterioration of irreplaceable habitats, such as ancient woodland, should be refused, unless there are wholly exceptional reasons
- 4.9.10. Together, Policies 18 and 20 of the MWLP require minerals and waste proposals to protect the County's natural resources and international and national environmental designated sites, deliver a wider range of benefits where they would adversely affect locally designated sites, protect strategic biodiversity networks and contribute to the Northamptonshire Biodiversity Action Plan targets for habitats and

species. Proposals will also be required to undertake assessments where appropriate and identify mitigation measures.

- 4.9.11. Policy 24 requires the restoration of sites to enhance biodiversity, including giving precedence to Biodiversity Action Plan habitats, strategic biodiversity networks and enhancing the habitat of any adjoining or connecting identified habitat areas.
- 4.9.12. JCS Policy 4 seeks a net gain in biodiversity by protecting existing biodiversity assets, enhancing ecological networks and supporting the recovery of priority habitats and species. Policy 21 seeks to strengthen the biodiversity of Rockingham Forest by, among other things, linking fragmented habitats.
- 4.9.13. RNOTLP Policy 4 requires development to contribute and link into the wider green infrastructure network. Policy 11 refers to the use of Biodiversity Opportunity Mapping and requires development affecting priority habitats to contribute to habitat creation or restoration.
- 4.9.14. King's Cliffe Neighbourhood Plan Policy RC2 requires proposals to deliver BNG where possible and address any threat to Local Green spaces, water courses or access to the natural environment.

### **The Application**

- 4.9.15. Biodiversity and ecology is covered in Chapter 13 of the Applicant's ES. It is supplemented by:
  - Appendix ES13.1 Ecological Impact Assessment [APP-087];
  - Appendix ES13.2 ENRMF DEFRA Metric 3.0 [APP-086];
  - Supplementary Environmental Statement for the Proposed Non-Material Change [AS-021]; and
  - Appendix SES4.1 Biodiversity Net Gain Review [AS-027].

### **Methodology**

- 4.9.16. The ES identifies statutory designated sites within 5 kilometres (km) of the application site and non-statutory designated sites within 2km. A preliminary ecological appraisal established that the zone of influence of the Proposed Development for ecologically valuable sites, habitats or species which may be significantly affected is not greater than 1km. This finding established the need to undertake detailed survey work, which can be summarised as:
  - a Phase 1 habitat survey in October 2018, updated by monthly visits between April and August 2019 and, in 2020, of the western extension land and adjoining woodland edges where access was permitted;
  - monthly invertebrate surveys of the western extension from May to August 2019. Six additional visits during summer 2020 in areas of Fineshade Wood and Collyweston Great Wood adjacent to the site;



- water samples from eight waterbodies within 250m of the western extension for eDNA testing to determine the presence of great crested newts (GCN), together with surveys to estimate their population;
- walking surveys of the field boundaries around the western extension in early 2019 to assess their potential to support reptiles, followed by the placing of 130 (rising to 183) artificial cover objects (ACO) in suitable habitats in and around the site;
- 'direct observation' visits carried out in early March 2021 on habitats known to be preferred by adders, followed by 10 ACO and direct observation surveys between April and September 2019 and in 2020;
- 12 wintering bird surveys between October 2018 and March 2019;
- six breeding bird surveys between March and June 2019;
- bat surveys of all trees at the western extension assessed to have roosting potential in 2019 to 2021;
- badger activity signs search of the western extension in February 2021;
- dormice surveys, including the use of 50 dormouse tubes in suitable habitats within and bordering the western extension in 2019 and 2020. In addition, 25 dormouse nesting boxes located in the woodland to the north of the existing ENRMF have been checked annually since 2014; and
- observation and recording of other mammals such as fallow, roe and muntjac deer and brown hares during survey visits, although no specific surveys were undertaken.

4.9.17. The habitat data collected was used to characterise and assess the condition of the habitats present at the proposed western extension and determine the value of the site in 'biodiversity units' using DEFRA Biodiversity Metric 3.0.

4.9.18. Chartered Institute of Ecology and Environmental Management Guidelines<sup>4</sup> were used in the methodology for assessing impacts and developing the mitigation measures incorporated into the design of the proposals for the operational and restoration phases.

4.9.19. The ES proposes the assessment of the potential impact of radiological emissions from the disposal of LLW on non-human biota using the ERICA Assessment Tool<sup>5</sup>. However, this would be undertaken as part of the varied EP for the LLW and as explained at Section 1.8 above, the application for this EP had not been submitted

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<sup>4</sup> CIEEM Guidelines for Ecological Impact Assessment in the UK and Ireland, Terrestrial, Freshwater, Coastal and Marine 2019

<sup>5</sup> The Environmental Risk from Ionising Contaminants: Assessment and Management (ERICA) Assessment Tool is maintained by a consortium of national environmental protection agencies, including the EA.

when the Examination closed. Nevertheless, the ES advises that the Environmental Safety Case (ESC) for the existing landfill of LLW shows that the criteria set in the permit are protective of fauna.

### ***Baseline***

#### Designations and Records

- 4.9.20. The closest European Sites are Rutland Water Special Protection Area(s)PA/Ramsar site some 8.8km north west of the application boundary and Barnack Hills and Holes Special Area of Conservation (SAC) around 7.5km to the north east. There are seven statutory designated sites within 5km of the application site with the closest being Collyweston Great Wood and Easton Hornstocks National Nature Reserve (NNR) and SSSI which is immediately to the north east of the site. The ES reports that part of the site and adjoining land may be designated by NNC as a Potential Wildlife Site.
- 4.9.21. Records for protected species in the vicinity of the western extension include:
- around 125 species of invertebrates, with the majority from Fineshade Wood;
  - 51 records of GCN between 2014 and 2020 with the majority from Fineshade Wood and 49 records for other amphibians including common toad, common frog, smooth newt and palmate newt with the closest record being 1.1km away;
  - numerous records of reptiles including slow worm, common lizard, grass snake and adder within Fineshade Wood;
  - 54 bird species including 11 in Schedule 1 of the Wildlife and Countryside Act 1981 (WCA) and 23 from the 'Birds of Conservation Concern' red list, within 1.1km of the site, with many of the records from Fineshade Wood;
  - 77 records, including 11 roost records, for at least eight species of bats, with the closest in Collyweston Great Wood; and
  - 24 records of dormice in Fineshade Wood.

#### Plant communities and species

- 4.9.22. The habitats within the western extension comprise two arable fields, two hedgerows, strips of rough and semi-improved grassland, isolated trees and small areas of scrub and broadleaved woodland. The existing ENRMF includes boundary hedgerows, ditches, several waterbodies, including managed GCN ponds, and areas restored to species rich grassland. The hedgerows located in the centre of the proposed western extension and on the western side of the existing ENRMF site qualify as 'important' under the Hedgerow Regulations. The field in the north of the western extension contained three arable weeds of conservation interest. Japanese knotweed was identified in the existing ENRMF site.

### Invertebrates

- 4.9.23. The hedgerows at the site were generally of poor value for invertebrates due to a lack of woody species-richness and an apparently regular cutting regime, which tends to reduce variation in physical structures along a hedgerow.
- 4.9.24. The survey of Fineshade Wood recorded 238 species which included 11 species considered of higher than local value. The ES advises that, as the diversity of species in Fineshade Wood is not particularly rich, this demonstrates the value to invertebrates of the edge habitats at and surrounding the site. The Collyweston Great Wood survey recorded 212 species with 18 species considered to be of higher than local value. Collyweston Great Wood supports a good proportion of scarce species due to the number of mature and degenerated trees.
- 4.9.25. The two woodlands are connected by tree lines and hedgerows that also border the western extension. There are similarities in the faunas present in the woodlands but also significant differences, largely in the suites of species associated with deadwood and, to a lesser extent, the open habitats.

### Amphibians

- 4.9.26. GCN were recorded in seven of the eight ponds surveyed including confirmed breeding in ponds on both sides of the western extension. The ponds within Fineshade Wood are considered to be less optimal and contained lower numbers of GCNs. Smooth newts were found in every waterbody surveyed with larger numbers in the waterbodies at the eastern side of the western extension which were created to provide amphibian habitat. Palmate newts were found to prefer the ponds within Fineshade Wood. Common toads and common frogs were found in relatively few ponds but were identified in ACOs on both woodland margins.

### Reptiles

- 4.9.27. The ES reports that adders are known to be present in Fineshade Wood and have been found on road verges in the general area. Recent surveys have identified populations in Fineshade Wood and three sites in Collyweston Great Wood. Adders have also been recorded to the north and on the western edge of the existing ENRMF, and at the western end of the central hedge. The area surrounding the western extension is considered to be of county or regional importance for adders.
- 4.9.28. Common lizards and slow worms were found around all margins of the western extension and were recorded regularly to the north of the existing ENRMF. Small numbers of immature grass snakes have also been found on the southeast ditch bank of The Assarts, Fineshade Wood.

### Birds

- 4.9.29. The existing ENRMF does not accept household waste and nor would the Proposed Development. As such they are not expected to attract large numbers of birds. The 2018/19 survey confirmed that the area does not attract large flocks of passage / wintering bird flocks. The wintering bird surveys recorded 37 species feeding in the arable fields and hedgerows, on the western extension and adjacent to it. No wintering waders such as lapwings or golden plover were recorded to be using the western extension or adjacent fields.
- 4.9.30. The breeding bird survey recorded 47 species across the western extension with several of the noted species resident elsewhere and visiting the survey area to forage. The ES considers that the assemblage of breeding birds recorded at the western extension would be resilient to the Proposed Development as many of the birds are woodland and scrub species or conversely, need open habitats such as farmland. Large areas of their preferred habitats would continue to be present throughout the site operations. The ES considers that restoration of the site would create new habitats that would encourage a greater number of birds and a larger range of species than at present. Therefore, it does not assess breeding birds further.

### Bats

- 4.9.31. Emergence surveys were carried out on all trees in the western extension which had potential roost features, but no evidence of a roost site was recorded. Bat activity over the open arable fields in the western extension away from the edge habitats was low. Seven species of bat were recorded during the surveys. There were peaks in activity in June at certain woodland and edge points.
- 4.9.32. The ES considers that maternity roosts are located in the adjacent woodlands to the east and west of the western extension, including for barbastelle. Due to the assemblage of bats using the western extension bats are considered an important ecological feature. Nevertheless, the ES considers that, given the mobility of bats, and that the western extension is being used for foraging and around the margins only, they will be generally resilient to any effects of the Proposed Development during the operational period.

### Dormice

- 4.9.33. The ES reports that no dormice or activity signs were found during any of the surveys for the application, or as part of the many years of monitoring at the existing ENRMF. There are, however, records of dormice in Fineshade Wood.

### Badgers

- 4.9.34. Surveys for badgers were undertaken and their presence recorded in the area. This information was provided in a confidential annex and is therefore not detailed here.

### Other mammals

- 4.9.35. The ES advises that fallow, roe and muntjac deer are known to be present in the area and have been recorded crossing the western extension. Brown hare were occasionally seen using the arable fields within the western extension and those adjacent to the site.

### Ecologically important features

- 4.9.36. The ES identifies the following as ecologically important features of the western extension:

- the habitats and plant communities comprising hedgerows and wood margin ditches and grassland that provide habitat for important species including amphibians, reptiles, invertebrates and potentially dormice as described above;
- the amphibian and reptile assemblage including GCNs and adders;
- bats, particularly in respect of the adjacent woodlands;
- badgers; and
- although not recorded at the western extension, the potential for dormice as a protected species whose use of the site would help bolster local populations.

- 4.9.37. The ES considers that the following features of the western extension do not merit further detailed consideration:

- plants and plant communities, as all species are common and widespread;
- the agricultural fields as they have a low biodiversity interest; and
- breeding and wintering birds, which are considered resilient to the impacts associated with disturbance of the site and are likely to benefit from the restoration scheme.

- 4.9.38. The Applicant advised that, should the Proposed Development not proceed, the ENRMF would continue to operate until 2026, after which it would be restored in accordance with the currently proposed scheme. The western extension land would continue to be used for agriculture.

### ***Assessment of effects***

- 4.9.39. The ES advises that extensive avoidance and enhancement measures have been designed into the Proposed Development and have been

taken into account in the assessment. While the development would be subject to a number of general biodiversity mitigation measures, only the removal of two hedgerows as described below are said to require specific mitigation measures.

#### Designated and locally important sites

- 4.9.40. The ES finds that the distance from the application site to European Sites, together with the absence of potential pathways, means that the Proposed Development would not lead to likely significant effects. This matter is considered further in Chapter 5 of the report.
- 4.9.41. Potential impacts on Collyweston Great Wood and Easton Hornstocks NNR and SSSI and Fineshade Wood Local Wildlife Site could result from the erection of fences along the site boundary, vehicle movements in close proximity to trees or over roots, hydrological changes, emissions to air and water and impacts associated with dust from general site activities. However, the ES finds that the embedded protection of tree roots, the requirement to comply with the controls for hazardous waste landfilling and treatment operations in the EPs and the Dust Management Plan would result in no significant adverse effect on any valued site. It also finds that, in the long term, there would be a significant beneficial effect on the Rockingham Forest area.

#### Hedgerows

- 4.9.42. Two hedgerows which cross the western extension and run along the western boundary of the existing ENRMF would be removed. The ES advises that they meet the criteria for Habitats of Principal Importance only because the adjacent verges of both are used by all four common reptiles. The hedgerows themselves are species-poor. Removal would be left until as late a stage as possible.
- 4.9.43. Mitigation would comprise the planting of a number of new, species-rich hedges both crossing the western extension and running parallel to the edges. The ES finds that, as the new and enhanced hedges would be created before either existing hedgerow is completely removed, their eventual loss would not be significant. In the medium and long term there would be a significant beneficial effect. The mitigation would form part of the restoration scheme in accordance with the Ecological, Management, Monitoring and Aftercare Plan (EMMAP) and included as DEC Appendix DEC E [REP7-008] and secured through Requirement 4 of the DCO.

#### Invasive plant species

- 4.9.44. Japanese Knotweed is present in a small area of the ruderal vegetation on the northern edge of the existing ENRMF. Left untreated there is the potential for it to spread through roots or by soil movement, resulting in a significant adverse effect. The ES advises that treatment of the Japanese Knotweed is on-going and a watching brief will be implemented to identify any recurrence. With

these measures in place, and secured through DEC Appendix DEC E, it considers that the threat to the wider area would be removed and there would be no residual effect.

#### Site margins

- 4.9.45. The western extension margins are considered to hold a good variety of invertebrates and support reptiles and amphibians. They are considered to be essential to the many woodland species found in the vicinity of the site. Without avoidance measures in place the Proposed Development would result in the loss of the field margins and cause a significant adverse impact. The ES finds that, with the proposed avoidance measures and other enhancements in place and secured through the EMMAP, very little of the site margins would be lost and the enhancements would result in a significant beneficial residual effect.

#### Amphibians

- 4.9.46. The woodland margin habitat located along the boundaries of the western extension is used by amphibians. Without avoidance measures the loss of this habitat would result in a significant adverse effect. The ES considers that the conversion of this margin to a richer habitat, providing more invertebrate prey for the amphibians, and the provision of shelter and hibernating sites, together with a fence preventing damage to this habitat and preventing animals straying onto the active area would safeguard the current populations. The Applicant has sought a European Protected Species licence from NE to erect amphibian exclusion fencing around the perimeter of the active area. Following restoration, connectivity of existing amphibian populations would be improved which would result in a significant beneficial effect.

#### Adders

- 4.9.47. Existing records show that there is a strong adder population in Fineshade Wood, and a scattering of records within Collyweston Wood, and along its roadside boundary. There are no records of adders in the margin or interior of Fineshade Wood where it abuts the northern field of the western extension, or along the opposite boundary of Collyweston Great Wood. The ES reports that, apart from a sighting of one adder on the Fineshade edge of the central hedgerow, and despite surveys of the margins around both fields throughout 2019 and 2020, connectivity between these habitats appears to be minimal currently and not obviously likely to improve without intervention.
- 4.9.48. With the proposed enhancement and protection measures in the EMMAP (see DEC Appendix DEC E), connectivity of the adder habitats would be greatly improved as would the likelihood of the two adder populations joining. This would result in a significant beneficial effect.

### Birds

- 4.9.49. The western extension is considered to support a good range of probable or possible breeding species. Site clearance work during the active breeding season could result in damage to, or destruction of, nests which would be an offence under the WCA and amount to a significant adverse effect. The ES advises that any necessary vegetation removal would take place either outside the breeding season of these species or following inspection by an experience ecologist, with any nest found protected until the young have flown. In this way there would be no damage to nests or loss of eggs or young birds.
- 4.9.50. There would be no reduction in breeding habitat since the planned enhancement measures would provide new hedges before the existing ones are removed, and thus no loss of breeding species. The current population is therefore judged to be resilient to the operations, and upon restoration, the higher biodiversity value of the site would result in a significant beneficial effect on species and numbers.

### Bats

- 4.9.51. Currently, only five trees (one of which is already dead) are present inside the western extension. None of them are judged to have roosting potential and only one would need to be removed. It, along with any other that might need to be removed (for example for safety reasons) would be re-assessed before felling. Light and dust controls would be implemented under the EMMAP to minimise their impacts on bats using the site.
- 4.9.52. The ES finds that the loss of a limited amount of foraging and commuting habitat in the operational areas of the western extension would result in a temporary adverse impact. However, the effect would not be significant given the amount of good feeding habitat provided by the woods on both sides. The proposed restoration features would lead to a significant beneficial effect over the longer term (10-20 years).

### Dormice

- 4.9.53. Although no dormice or signs of them were found in the western extension or the surrounding area, monitoring surveys would continue so that protective measures could be implemented if necessary. The proposed new and enhanced hedges and the restoration of the site would include woody species known to provide nesting habitat, nuts, berries and other fruit preferred by dormice.

### Biodiversity Net Gain

- 4.9.54. A BNG assessment was carried out using the DEFRA Biodiversity Metric 3.0 ([APP-087] (see also review at [AS-025])). The original assessment found a BNG of over 110% for habitats and 550% for hedgerows. There would also be a net gain in watercourses. The net



gain in habitat and hedgerows would occur from the pre-commencement phase and build fairly steadily through the operational phases of the Proposed Development.

- 4.9.55. The review of BNG undertaken in support of the proposed change to the application [AS-027] found that, assuming the same seed mix for the wider utility corridor, there would be no alteration to the number of biodiversity units delivered by the proposal.

Avoidance, protection and enhancement measures

- 4.9.56. The measures proposed to be undertaken are set out in the EMMAP and secured by dDCO Requirement 4. Those to be carried out before the commencement of the development can be summarised as:

- the creation of a new species-rich hedgerow running parallel to the existing grown-out tree-line and gappy hedgerow forming the western boundary of the western extension;
- the creation of a bank and a new hedgerow / treeline along the south-east boundary of the southern field of the western extension;
- gapping-up the southern boundary of the existing ENRMF; and
- delineation and management of a 10m wide buffer-strip, around the whole of the northern field of the western extension. Low scrub, including bramble and honeysuckle, would be encouraged to create hibernacula and basking areas.

- 4.9.57. Measures to be undertaken before works commence are intended to protect animals from accessing the works area and can be summarised as:

- planting a double east-west hedgerow along the north and south sides of the doline area, to allow maturation of the hedging plants;
- the erection of deer protection fencing (around at least Phase 12 of the northern field);
- the erection of protective fencing around the operational areas of the western extension in phases as development proceeds;
- continuation of the protective fencing for GCNs. At the time the ES was submitted, an application for a GCN licence had been made to NE. During the course of the Examination NE issued a letter of no impediment in respect of the licence [REP6-015];
- removal of the eastern half of the central hedge and the northern half of the western hedge. This would be done under ecological supervision, with any amphibians and reptiles captured and removed to the refuge area; and
- the implementation of dust control measures in accordance with the Dust Management Plan.

- 4.9.58. Measures during the operational and restoration phases can be summarised as:
- the removal of fencing as phases are complete, releasing restored areas to provide additional connectivity for wildlife;
  - progressive working and restoration so that the restoration of the northern section of the western extension is achieved as soon as possible;
  - the opening of an existing culverted drain and creation of a new watercourse with ponds along the line of the doline feature between the two rows of double hedges planted prior to commencement of the works;
  - the treatment and removal of the current and any additional invasive species;
  - planting double east-west hedges along both sides of each utility corridor as filling and restoration of each adjacent phase is completed (see also discussion on the stand-off distance for this corridor at Section 4.16 of the report);
  - the restoration of the site to a mosaic of woodland with shrubby edges, flower meadow grassland, scattered trees, hedgerows and waterbodies. This is intended to complement and link existing habitats to give a greater area of woodland and habitats for a range of species; and
  - the maintenance and management of the restored site in order to achieve the planned benefits for an aftercare period of 20 years, in accordance with the EMMAP.
- 4.9.59. All of these measures would be controlled by the EMMAP at DEC Appendix DEC E [REP7-008] which is secured by DCO Requirement 4.

#### Combined and Cumulative Effects

- 4.9.60. The ES does not identify any significant cumulative effects associated with the biodiversity and nature conservation aspects of the Proposed Development.

#### **Issues in the Examination**

- 4.9.61. Concern was expressed in the RRs that the proximity of the Proposed Development to a SSSI and other areas with extensive wildlife value, would seriously impact on biodiversity including decreasing habitat connectivity, particularly for adder and bats (Mike Henchy [RR-010], the Trust [RR-008 and RR-015] and Butterfly Conservation [RR-004]). The Trust also considered that the BNG should be delivered earlier in the development programme [RR-008]).
- 4.9.62. The Trust provided a limited amount of additional evidence in support of its concerns [REP2-033]. However, during the course of ISH2, the Trust accepted that the timing of the proposed BNG would be satisfactory [EV4-002 and REP4-007]. Butterfly Conservation, whose

RR on this topic was the most detailed, completed a SoCG. Among other things, it agreed that *"in the long term connectivity between Fineshade Woods and Collyweston Great Wood will be enhanced."* and that the restoration planting would complement and link existing habitats and restore the potential for bat roosts [REP8-008 Appendix G].

- 4.9.63. The Woodland Trust contended that the Proposed Development would have indirect impacts on ancient woodland in Collyweston Great Wood and Easton Hornstocks, contrary to national policy in the NPSHW and NPPF. It sought suitable buffer zones and mitigation measures including control of dust, emissions to air and water [REP7-017]. The submission relies in large part on standing advice from NE and the Forestry Commission.
- 4.9.64. The Applicant's response to the Woodland Trust submission [REP8-009] refers to its engagement with both of those bodies and to the SoCG with NE which agreed that *"the restoration of the site will have a positive effect on the natural environment by creating new and enhanced habitats connecting and providing stronger ecological links between Collyweston Great Wood and Easton Hornstocks SSSI and Fineshade Woods."* The SoCG also agreed that the Proposed Development would not have *"significant individual or cumulative adverse impacts on surface water or groundwater flow or quality at internationally and nationally designated ecological sites in the vicinity of the ENRMF."* It also refers to the control of emissions through the EPs which are protective of the environment.
- 4.9.65. The ES uses DEFRA's Biodiversity Metric 3.0 to calculate BNG. During the course of the Examination Metric 3.1 was issued. Accompanying advice from NE stated that existing projects should continue to use Metric 3.0 unless requested to do otherwise by the consenting body. I invited the parties to comment on whether it would be appropriate to use Metric 3.1 for the Proposed Development.
- 4.9.66. The Applicant's response [REP5a-001] referred to the NE advice and considered that, since Metric 3.0 forecast a substantial increase in BNG, the use of Metric 3.1 would not materially change the outcome and therefore that it was not necessary to use it. NE advised that Metric 3.0 should continue to be used on the project.
- 4.9.67. I sought clarification of matters relating to biodiversity in my first written questions [Pd-006 Q3.1.1 to Q3.4.2] and at ISH2 [EV4-000]. The Applicant responded [REP2-006 and REP4-007] that:
- the ERICA toolkit, to be used to assess the effects of radioactivity on non-biota, would not be available until the application to vary the LLW EP is submitted (see Section 1.8 above). However, the principles would be the same as the existing LLW EP;
  - there was considerable consultation with parties concerned about the linkages with, and between, the adjoining protected

woodlands. Surveys show that existing wildlife linkages are limited. The proposals include early enhancement of the grassland strips along the west and north edges of the site;

- the restoration planting and management scheme would allow buffer zones around the proposed woodland patches to be managed as edge habitat which would expand over time and provide connectivity with the adjoining woodlands. While the resulting habitat would not create a 'manicured' grassland, it need not be incompatible with public access;
- the varied EPs would include controls to ensure that the thresholds for the deposition of dust and particulate matter at the site boundary would be protective of the adjoining areas of woodland;
- the Proposed Development would be carried out in accordance with the EMMAP. It includes proposals to ensure that the removal and replacement of the two 'important' hedgerows would maintain and enhance the wildlife movement corridors across the site. Protective fencing erected during the operational phase would be progressively removed as the works progress. The EMMAP would be secured by DCO Requirement 4;
- treatment of invasive species at the site is, and would continue to be, undertaken in accordance with the requirements of the WCA. Moreover, Requirement 4(3)c of the dDCO requires the phasing, landscaping and restoration scheme to address how invasive species would be managed;
- although the ES assessment assumes that tree T03 (near the swallow hole) would be removed, if possible, it would be retained subject to detailed design; and
- notwithstanding the reference in the ES to the designation of part of the application site as a Potential Wildlife Site, the matter has not been progressed since the early 2000s (this information was confirmed by NNC at ISH2 [EV4-003]).

### **Conclusions**

- 4.9.68. The key mitigation measures for biodiversity include woodland, hedgerow and grassland planting, the use of protective fencing and the creation of waterbodies. They would be secured under the EMMP.
- 4.9.69. I am satisfied that, together, the protections provided in the EMMAP and EPs would be likely to ensure that the Proposed Development would not have an adverse effect on nearby ancient woodland. Indeed, in terms of the important role of creating connectivity between the adjoining areas of protected woodlands, the restored site would be an enhancement over the existing position.
- 4.9.70. Although the assessment does not specifically mention the local Biodiversity Action Plans referred to in development plan policies, I note that SoCG with NNC [REP8-008 Appendix B] does not find conflict with biodiversity policies and agrees that the Proposed

Development would have a beneficial effect on biodiversity in the long term.

- 4.9.71. I am satisfied that the ES adequately assesses the effects of the proposal on internationally, nationally and locally designated site of ecological conservation importance, as well as protected species and habitats and species of principal importance. The assessments find that there would be no significant effects following mitigation. The necessary mitigation measures would be secured through the DCO. As such, the Proposed Development would accord with NPSHW paragraphs 5.3.3 to 5.3.10, 5.3.13 and 5.3.15 to 5.3.20. It would also meet the aims of NPPF paragraphs 174 and 180, MWLP Policies 18, 20 and 24, JCS Policies 4 and 21, RNOTLP Policy 4 and King's Cliffe Neighbourhood Plan Policy RC2.
- 4.9.72. With regard to the use of BNG Metric 3.0 or 3.1, taking into account the circumstances in this case and the responses received from the Applicant and NE, I consider that Metric 3.0 provides a satisfactory means of assessing BNG. Using this measure, the Proposed Development would lead to a considerable increase in BNG units at the site.
- 4.9.73. I am satisfied that the Applicant's assessment and responses to the issues raised in the Examination show that the overall long-term effects of the Proposed Development on biodiversity would be beneficial. As such, the Proposed Development would accord with the relevant legislative and policy requirements for biodiversity. In this regard, I have taken into account the biodiversity duty set out in the Natural Environment and Rural Communities Act 2006. The findings on biodiversity weigh moderately in favour of the proposal in the planning balance.

## **4.10. CLIMATE CHANGE**

### **Introduction**

- 4.10.1. This section deals with the contribution of the Proposed Development to climate change and its vulnerability to the effects of climate change.

### **Legislative and Policy Context**

- 4.10.2. I set out the relevant legislative provisions in Section 3.3. Paragraph 2.3.9 of the NPSHW advises that improved hazardous waste management can contribute to a low carbon economy through the development of infrastructure that will be able to adapt to and address climate change. It will also provide for the disposal of hazardous waste in ways that reduce carbon dioxide emissions.
- 4.10.3. Paragraph 4.6.6 of the NPSHW advises that hazardous waste infrastructure will remain operational over many decades, in the face of a changing climate. The ES should set out how the location,

design, build, operation and, where appropriate, decommissioning of the proposal will take account of climate change.

- 4.10.4. The next paragraph advises applicants to use the latest UK Climate Projections in their assessments. They should apply as a minimum, the emissions scenario that the Committee on Climate Change suggests the world is currently most closely following and the 10%, 50% and 90% estimate ranges.
- 4.10.5. Applicants should demonstrate that there are not critical features of the design which may be seriously affected by more radical changes to the climate beyond that projected in the latest set of UK Climate Projections, taking account of the latest credible scientific evidence (paragraph 4.6.11). Any adaptation measures should be based on the latest climate change projections and in consultation with statutory consultees (paragraph 4.6.12).
- 4.10.6. Policies 12 and 15 of the MWLP require proposals for, respectively, hazardous waste management facilities and hazardous waste disposal proposals to conform with the principles of sustainability. Policy 12 requires hazardous waste management facilities to maximise the re-use of energy, heat and residues where appropriate.

#### **The Application**

- 4.10.7. Climate change is dealt with in Chapter 24 of the Applicant's ES. There are no supporting figures or appendices for this topic.
- 4.10.8. The Applicant anticipates that the Proposed Development would have a limited impact on climate change, with the biggest potential effect coming from the emission of GHG from plant and machinery. It advises that it is a standard condition of EPs for waste facilities operators to take all measures to ensure that energy and raw materials are used efficiently in all activities. These matters must be reviewed and recorded at least every 4 years.
- 4.10.9. The site currently uses leachate and surface water run-off in place of mains water in the treatment and recovery facilities and uses alkaline air pollution control residue waste to treat and stabilise other wastes rather than raw material inputs.
- 4.10.10. The assessment reiterates that the nature of the waste accepted at the site results in the generation of negligible quantities of landfill gas (see also discussion on this point in Section 4.8 of the report).
- 4.10.11. With regard to vehicle movements, the assessment recognises that there are a significant number of existing HGV movements to deliver waste to the site and to export treatment residues, clay and overburden for use elsewhere. Chapter 19 of the ES finds that the number of additional movements generated by the Proposed Development would be relatively small (36 movements per day). The assessment goes on to contend that the proximity of the ENRMF to the waste sources it accepts means that vehicle movements are

shorter than if the waste had to be transported to more distant facilities. The location of the ENRMF therefore helps to minimise carbon emissions and fuel use.

- 4.10.12. The Applicant refers to the BNG created by the proposals, including blue and green infrastructure and woodland planting, which would contribute to minimising climate change.
- 4.10.13. The Applicant also considers that the Proposed Development would have limited vulnerability to the effects of climate change. The main potential impact would be from increased rainfall intensity and this has been taken into account in the submitted hydrological risk assessment and the flood risk assessment (FRA). It advises that the surface water management scheme has been designed to accommodate predicted rainfall increases.

### **Issues in the Examination**

- 4.10.14. None of the IPs raised concerns on this topic. I sought clarification of the significance criteria used to determine the effects of climate change together with an assessment of the GHG emissions during construction. Carbon calculations to support the assessment of GHG from operational activities and a specific conclusion regarding the potential for likely significant effects were also requested [PD-006 Q1.1.1].
- 4.10.15. The Applicant's response [REP2-006] refers to the proposed continuation of the existing disposal and management of waste generated by others and the regulatory controls over the design and operation of the facility. These factors limit the opportunities to reduce impacts on climate change. Therefore, the rate of GHG emissions generated by construction and operational activity at the site would not materially change. The Applicant contends that the NPSHW does not require a quantitative assessment of the effect of the Proposed Development on climate change.
- 4.10.16. Reference was also made to the 6<sup>th</sup> Carbon Budget Report (December 2020) which indicates that the waste sector as a whole accounted for 6% of UK GHG emissions in 2018 and were 63% below 1990 levels. The Applicant identified the options for reducing emissions in the waste sector as set out in the 6<sup>th</sup> Carbon Budget Report. It considers that the existing and proposed landfill development currently does, and would continue to, minimise the GHG emissions which comprise the main contribution from landfill sites.
- 4.10.17. The Applicant also pointed out that standard conditions in the EPs require the operator to review at least every 4 years opportunities to improve the energy efficiency of the activities and to consider whether alternative materials could be used to reduce the impacts of the use of raw materials.
- 4.10.18. At ISH2 I raised the question of the Government's adoption of the Net Zero 2050 target and the 6<sup>th</sup> Carbon Budget since the NPSHW

was published. The Applicant contended that the nature of the development considered in the NPSHW is different from other NPSs in that it has less propensity to generate significant amounts of GHG. It also notes that Parliament has not found it necessary to update the NPSHW in the light of subsequently adopted targets. Moreover, more recent targets for the waste sector are not applicable to the proposed activities [REP4-006 Annex B and REP4-007 Item 3d].

- 4.10.19. The EA confirmed that it assesses and controls GHG emissions as part of the EP process. In particular, this would limit the emission of methane and carbon dioxide. Gas produced over the lifetime of the site is monitored and, if necessary, required to be extracted and combusted [REP4-015]. The SoCG with the EA also confirms that standard conditions included in the varied EPs would control energy efficiency, use of raw materials and the avoidance, recovery and disposal of wastes produced by the proposed activities [REP8-008 Appendix C].

### **Conclusions**

- 4.10.20. The Applicant's assessment of climate change effects relies on a qualitative approach and the application of professional judgement. However, there appears to be limited policy support for applying a purely quantitative approach in the case of the particular activities proposed here. The Applicant has also had regard to the Government's latest climate change targets. There is no substantive evidence to indicate that the proposal would generate GHG at a level which would call into question the ability of the UK to reach its overall net zero target or its carbon budgets.
- 4.10.21. The varied EPs would include conditions to monitor and review emissions and require remedial action if necessary. The EP conditions would also control the use of raw materials and the treatment of waste generated by the proposal. The EA has not expressed concern about the ability of the Proposed Development to comply with any of these conditions.
- 4.10.22. The Applicant identifies the increased intensity of rainfall as the only climate change effect which may affect the resilience of the Proposed Development. I consider water-related issues including flood risk and the proposed surface water management strategy in more detail in Section 4.18. However, there is no firm evidence to suggest that increased rainfall intensity would put at risk the future operation of the facility or that it would be significantly adversely affected by other climate change effects.
- 4.10.23. Consequently, I find that the Applicant's assessment of climate change effects is adequate for the purposes of the NPSHW paragraphs 4.6.7, 4.6.11 and 4.6.12, and the relevant provisions of the Climate Change Act 2008 as amended, the Net Zero Strategy and the UK Carbon Budgets. The Proposed Development would have neither a significant effect on climate change nor be significantly affected by it. Consequently, it would accord with NPSHW



paragraphs 2.3.9, 4.6.6 and MWLP Policies 12 and 15. This matter, therefore, has a neutral weighting in the planning balance.

## **4.11. HISTORIC ENVIRONMENT**

### **Introduction**

- 4.11.1. This section deals with the effect of the Proposed Development on above and below ground designated and non-designated heritage assets.

### **Policy Context**

- 4.11.2. Paragraph 5.8.8 of the NPSHW requires the ES to describe the significance of any heritage assets affected, including any contribution made by their settings. The level of detail should be proportionate to the assets' importance. Where the site includes, or has the potential to include, heritage assets with archaeological interest, the ES should include an appropriate desk-based assessment and, where necessary, a field evaluation.
- 4.11.3. The SoS should seek to identify and assess the particular significance of any affected heritage asset or its setting, taking account of the available evidence, including consultations with IPs. Consideration should be given to the significance of heritage assets as well as the desirability of sustaining and, where appropriate, enhancing the significance of the assets and the contribution of their settings (paragraphs 5.8.9 to 5.8.11).
- 4.11.4. Great weight should be given to the conservation of designated assets, with greater weight being given to more important assets. Since heritage assets are irreplaceable, harm or loss affecting any designated heritage asset or its setting should require clear and convincing justification. Any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development, recognising that the greater the harm, the greater the justification that would be needed for any loss (paragraphs 5.8.12 and 5.8.13).
- 4.11.5. Applicants should look for opportunities for new development within the setting of heritage assets to enhance or better reveal their significance (paragraph 5.8.18).
- 4.11.6. Where the loss of the whole or part of a heritage asset's significance is justified, the SoS should require the applicant to record and advance understanding of the significance of the heritage asset before it is lost. The extent of the requirement should be proportionate to the nature and level of the asset's significance. This should be secured through a Requirement in the DCO, in accordance with a written scheme of investigation (paragraphs 5.8.21 and 5.8.22).
- 4.11.7. Where there is a high probability that a development site may include as yet undiscovered heritage assets with archaeological interest, the

SoS should consider using Requirements to ensure that there are procedures for the identification and treatment of such assets discovered during construction (paragraph 5.8.23).

- 4.11.8. Policy 22 of the MWLP requires proposals to seek to conserve and enhance Northamptonshire's historic environment. Proposals for minerals and waste development involving a site which includes heritage assets (including development within the setting of an asset), particularly those with an archaeological interest, will be required to undertake appropriate desk based and / or field evaluations. Policy 2 of the JCS has broadly similar aims.

### **The Application**

- 4.11.9. The historic environment is covered in Chapter 16 of the Applicant's ES. It is supplemented by:
- Regulation (5)(2)(m) plan: Statutory and Non-statutory historic environment sites [APP-015];
  - Figure ES16.1 Designated heritage assets within 2km of the site [APP-066];
  - Appendix ES16.1 Heritage Statement [APP-090];
  - Appendix ES16.2 Archaeological Mitigation Strategy [APP-091]; and
  - Appendix ES16.3 Features of the Historic Environment within 2km of the Site [APP-092].

### Methodology

- 4.11.10. A desk-based study was undertaken using Chartered Institute for Archaeologists and Historic England guidance to provide an initial assessment of the potential effects on archaeological and heritage resources. A search of the Historic England Archive, the Northamptonshire Historic Environment Record (HER) and DEFRA Magic Database was done to obtain information on designated heritage assets.
- 4.11.11. A geophysical survey of the proposed western extension was undertaken in November 2019 and May 2020. Excavation of 51 trial trenches took place across the proposed western extension to verify the findings of the geophysical survey and identify any features of archaeological interest which may be present below ground. A Written Scheme of Investigation for the trial trenching was agreed and approved by the former Northamptonshire County Archaeologist.

### Baseline

- 4.11.12. There is no surviving archaeology within the existing ENRMF. All areas were disturbed and subject to previous investigation and recording as part of the original DCO scheme. The ES reports that the western extension has no upstanding heritage assets. It has

been under arable cultivation for at least 150 years and prior to that it was partially located in Rockingham Forest.

- 4.11.13. There are no designated heritage assets within the application boundary. The nearest Scheduled Monument is Duddington Bridge approximately 1.6km west north-west of the site. One other Scheduled Monument, a manor house and gardens, sits on the limit of the 2km search area to the north-west. The ES finds that distance, topography, woodland and a lack of visual connection separate these assets from the application site. As the Proposed Development would have no visual effects on the assets or their settings no further assessment was made.
- 4.11.14. There are two Grade II\* listed buildings and 32 Grade II listed buildings within 2km of the site. The closest are located within Duddington village where there are twenty-seven listed buildings located within a conservation area at a distance of over 1.2km to the west of the site. The ES finds that there are no views of the application site from the listed buildings due to distance and the intervening topography and woodland. As the Proposed Development would have no effects on the buildings or their settings no further assessment was made.
- 4.11.15. The HER shows four entries within the application site comprising Collyweston Great Wood, an area on the enclosure award map that was probably lawn, a fieldname and a crop mark of a field boundary. The ES reports that numerous archaeological sites have been located within the vicinity of the site. The sites comprise possible settlements, buildings and ironworking locations, including many of Roman date. However, there are no known Roman sites nearer than 500m from the western extension.
- 4.11.16. The ES reports that the geophysical survey found little of certain archaeological interest. The main feature identified was the western part of a small rectilinear enclosure which may suggest the presence of materials commonly associated with intensive use such as cultural debris and heated soils. The results of the trial trenching corroborated the findings of the geophysical survey as only a sparse number of archaeological features were identified.
- 4.11.17. Without the implementation of the Proposed Development the agricultural use would likely continue and any below ground archaeology present in the proposed western extension would remain in situ. It is unlikely that there would be further contribution to local archaeological knowledge or potential for the discovery of artefacts of archaeological interest.

#### Assessment of effects

- 4.11.18. Construction activities such as topsoil stripping, the creation of stockpiles, pre-construction infrastructure works, movement of heavy machinery and mineral extraction could have an impact on known or

potential archaeological or cultural features. The baseline assessment indicates that there would be no adverse effects on designated assets due to a combination of topography, distance, intervening woodland and built development.

- 4.11.19. The archaeological investigation identified only two areas of archaeological interest which the ES finds are of local value only. The ES concludes that the Proposed Development would not have a significant effect on archaeology or cultural heritage.

#### Mitigation

- 4.11.20. An Archaeological Mitigation Strategy has been agreed with the archaeological advisor for NNC [APP-091 and REP7-008 Appendix DEC A]. It identifies two areas comprising the square enclosure in the north-east, and small-scale charcoal production in the east of the western extension, that would be subject to soil stripping under the direction of an archaeologist. The Archaeological Mitigation Strategy would be secured under Requirement 9(1) of the dDCO. A watching brief would be undertaken by an archaeologist in the utility service corridors where the ground would be disturbed. The mitigation would also include appropriate environmental sampling and the retention and recording of finds. Requirement 9(2) of the DCO would secure a Written Scheme of Investigation for the works to be agreed with the local planning authority.
- 4.11.21. The ES finds that there would be no residual effects following mitigation and that the Proposed Development would not result in combined or cumulative effects associated with the historic environment.

#### **Issues in the Examination**

- 4.11.22. No IPs raised concerns about the effects of the Proposed Development on the historic environment. The SoCG with NNC [REP8-008 Appendix B] confirms that it is content with the Applicant's assessment and mitigation proposals. I saw no need to seek further information on this topic during the Examination.

#### **Conclusions**

- 4.11.23. The Applicant has undertaken a thorough investigation and assessment of the effects of the proposal on the above and below ground historic environment. It found little of significance and that the effects of the Proposed Development would be very limited. Moreover, those effects could be adequately mitigated. I have no reason to doubt the findings of the ES and am satisfied that the mitigation measures would be secured through the DCO. The proposal and the mitigation measures would, therefore, accord with paragraphs 5.8.8 to 5.8.13, 5.8.18 and 5.8.21 to 5.8.23 of the NPSHW and Policy 22 of the MWLP. I conclude that this topic has a neutral weighting in the planning balance.

## **4.12. HUMAN HEALTH**

### **Introduction**

- 4.12.1. This section deals with the direct effects of the Proposed Development on the health of the population living and working in the vicinity of the application site. Potential indirect effects on matters such as transport, access to services, open space and recreation are covered in Section 4.14 on socio-economics.

### **Policy Context**

- 4.12.2. Paragraph 4.10.2 of the NPSHW advises that modern, appropriately located, well-run and well-regulated, waste management facilities operated in line with current pollution control techniques and standards should pose little risk to human health. Further, that the detailed consideration of the waste management process and the implications, if any, for human health is the responsibility of the pollution control authorities. Paragraph 4.10.4 notes that direct impacts on health may include increased traffic, air pollution, dust, odour, polluting water and noise. The EP process controls health impacts on air, land and water during operation and decommissioning of the regulated facility.
- 4.12.3. The planning system should ensure that the location of the development is acceptable. When setting conditions, a range of potential impacts including, for example, noise should take account of health concerns (paragraph 4.10.2).
- 4.12.4. The ES should assess potential health effects for each element of the proposal, identifying any adverse health impacts as well as measures to avoid, reduce or compensate for these impacts (paragraph 4.10.3).

### **The Application**

- 4.12.5. Human health is covered primarily in Chapter 12 of the Applicant's ES. Chapter 25 provides an overall assessment of direct and indirect effects on health and well-being in response to a request by the then Public Health England (PHE) (now the UK Health Security Agency (UKHSA)) at the ES Scoping stage. Much of the chapter summarises assessments found elsewhere in the ES and is, therefore, not reported again here. However, Chapter 25 does include an assessment of the effect of the Proposed Development on the wider determinants of health and well-being.
- 4.12.6. There are no additional supporting figures or appendices for these chapters although reference is made to Figure ES1.2 Designated sites in the vicinity of the ENRMF [APP-051] and Appendix ES11.1 Environmental Safety Case [APP-085].

## Methodology

- 4.12.7. Chapter 12 of the ES takes a risk-based approach to the assessment of human health, recognising that pollution control is a function of the EP process. The ES assessment is, therefore, limited to what it considers to be appropriate to the DCO. The pathways considered in the EPs include those associated with direct contact with waste, emissions of vapours, gaseous contaminants, releases to the aqueous environment via groundwater and surface water, dust and odour.
- 4.12.8. The assessment uses the 'source – pathway – receptor' model to assess risk from pollutants, acknowledging that there may be more than one such linkage at a facility. Control and threshold limits are taken from PHE NSIP health-based guidance. Where there is no exposure pathway identified, the ES assesses the risks as negligible. Where there is the potential for emissions and the emission limits are set at a level which is protective of human health and the environment the ES finds that there would be no significant effect on human health or the environment.
- 4.12.9. Radiological emissions dose criteria are set by the EA at a level which it determines is protective of the human health of adults and children. The dose criteria include workers at the site as well as nearby residents and workers. Where emissions can be maintained below these levels the ES assesses that there would be no significant effect on human health.
- 4.12.10. The ES uses a qualitative assessment for the risks relating to the treatment of hazardous waste and the potential for emissions associated with the disposal of hazardous waste. The exception is the assessment of emissions to water which are assessed quantitatively.
- 4.12.11. Quantitative risk assessments using mathematical models would be used to assess the effects of the disposal of LLW. The ES to support the existing LLW EP application draws on methodologies developed by the International Atomic Energy Agency. Additional approaches developed by the Health Protection Agency (now part of the National Institute for Health Protection), the UK Environment Agencies (SNIFFER), the LLW Repository Environmental Safety Case and the EA were used in the existing LLW EP application. The Applicant advises that similar assessment methods will be used in the varied LLW EP application.
- 4.12.12. Chapter 25 of the ES uses PHE guidance which identifies 21 determinants of potential health and well-being effects. A screening exercise was used to focus the assessment on the following factors:
- impacts associated with the support of local services and facilities;
  - potential impacts associated with the provision of the new green space and recreational facilities;

- potential for impacts on users of the existing natural environment;
- impact on employment and training opportunities and local business activity;
- potential for the Proposed Development to result in feelings of anxiety in people and communities living in the vicinity; and
- potential impacts of the current and proposed community engagement on the acceptability of the Proposed Development in the context of wellbeing.

#### Baseline

- 4.12.13. The ES characterises the surrounding area as rural farm and woodland, with the nearest village of Duddington some 1km away, and a mixed urban-rural economy including industrial, commercial and tourist activity. Reference is also made to highway and footpath connections and the proximity of other properties. This information is set out in Chapter 2 of this report.
- 4.12.14. The ES also reviews PHE data on the general health profile of the local population<sup>6</sup>. It finds that, for the majority of indicators, East Northamptonshire is similar or better than the overall status for England. Data taken from the Consumer Data Research Centre on the Index of Multiple Deprivation in 2019 show that the villages in the area (Duddington, Collyweston and Kings Cliffe) are in the 7th least deprived decile for the population as a whole. This means that the areas are not identified as having a high general level of deprivation.
- 4.12.15. The ES refers to the history of landfill and waste management at the site and considers that the issue of consents for these activities demonstrates that the associated risks have been considered to be acceptable. It is necessary to assess whether the risks remain acceptable if the activities are extended as proposed.
- 4.12.16. The receptors for the assessment are identified as nearby residents and members of the public who work in the vicinity of the site or may use the facilities close to the site such as footpaths. Surface water and groundwater receptors may be used by people. The ES advises that site visitors and workers are protected in accordance with Occupational Health legislation and therefore are not assessed as receptors.
- 4.12.17. The ES goes on to advise that the site is operated at all times to protect the health of those working at the site and who are closest to the waste on a day-to-day basis. It contends that, as the health of the site workers is protected by the design and operation of the site, it follows that those measures would also protect the health of all those living and working beyond the site boundary.

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<sup>6</sup> Public Health England Local Authority Health Profiles, accessed 12 July 2021

4.12.18. With regard to LLW, the ES states that the site is located in an area of the country with natural background levels of radiation that are elevated compared with the average in the country due to the emission of radon from the underlying rocks. The average annual exposure in Northamptonshire from natural sources is 3.6 millisieverts per year (mSv/yr) compared with an average annual exposure of the UK population from all significant sources of radiation of around 2.7 mSv/yr.

4.12.19. The ES considers that the variability in the background levels of radioactivity across the country is significantly greater than the dose criteria for the site. The design dose criteria (maximum potential annual exposure) set for the acceptance of LLW for disposal at the site are contained in the ESC and secured through the LLW EP. In summary they are:

- members of the public under routine operational activities during the management period - 0.3mSv/yr;
- members of the public as a result of release to groundwater during the management period - 0.02mSv/yr;
- workers as a result of routine operational activities during the management period - 1mSv/yr;
- long-term (following the end of receipt of waste and after the cessation of management at the site) for all persons - 0.02mSv/yr. This level is based on the assessment of a range of different expected events (that is, normal activities) and unexpected events (that is, accidents); and
- inadvertent intrusion or excavation into the site at some point well into the future - 3mSv/yr.

#### Assessment of effects

4.12.20. The assessment in Chapter 12 of the ES proceeds on the basis that measures to eliminate or reduce exposure pathways are an integral part of the design and operation of the ENRMF. Monitoring is used to ensure that these measures are effective.

4.12.21. The applications to vary the EP include detailed risk assessments. In the case of the application for the disposal of LLW, it would include a detailed quantitative ESC which would be based on the ESC submitted to support the existing LLW EP (Appendix ES11.1 [APP-085]). The ES advises that many of the exposure assessments in the revised ESC will be the same as those in the current risk assessment as they are for distinct situations or incidents.

4.12.22. The current ESC includes the following scenarios:

#### *During site operations:*

- *exposure to waste during waste handling;*



- *dropped waste container resulting in spillage of hazardous waste or LLW;*
- *contamination as a result of waste entering an open wound;*
- *treatment of re-used leachate;*
- *fire at the site;*
- *impact from an aircraft crash;*
- *drilling through emplaced waste;*

*Site restoration and closure:*

- *direct exposure to waste through cover materials;*
- *site remediation activities; and*
- *'inadvertent' activities.*

- 4.12.23. Other exposure assessments would be updated and amended to reflect the extended area of the landfill site and the proposed increase in the volume of LLW to be deposited. The approach to the use of design dose criteria set for the site and to setting a limit for the overall radiological capacity for the site would remain the same.
- 4.12.24. The risk assessments are said to be based on well-established models approved by the EA. They are based on highly conservative assumptions and consider the potential impacts of the site in the short and the very long term (thousands of years). They assume that the high density polyethylene liner (a heavy duty chemical resistant synthetic material) component of the engineered containment system degrades over time. The highly engineered clay component of the liner, being geological material, is considered not to degrade and would provide continued protection over geological time.
- 4.12.25. The LLW assessments assume that the site would be managed for a period of 60 years following the end of landfill operations. However, the ES expects that the site would be managed for considerably longer until the EA allows the EP to be surrendered.
- 4.12.26. The ES advises that the results of the radiological assessments which would be presented in the ESC would be compared with the design dose criteria set out above. This would be used to derive a limit for the quantity of each radionuclide that could be disposed to the landfill without exceeding the design dose constraints and risk guidance levels. The risk assessments would take into account the emissions from daughter nuclides that are generated as a result of radioactive decay.
- 4.12.27. The exact mixture of radionuclides sent to the landfill for disposal would not be known until the site becomes operational and producers identify the specific loads of waste sent to the site for disposal. Pre-acceptance procedures to be adopted would ensure that the exact

mixture of radionuclides in any consignment would always be known prior to receipt at the site.

- 4.12.28. The total quantity of radionuclides in the LLW disposed of at the landfill site, including that which has been deposited already, would be controlled through a 'sum of fractions' approach. This approach calculates the ratio, for each radionuclide, of the activity of the radioactive waste disposed of to the relevant values specified in a disposal table which would be included in the EP. This table would define the radiological capacity of the site. The ratios (fractions) are calculated for each radionuclide. These are summed to obtain the total sum of fractions for the cumulative disposals. It would be a permit condition that the sum of these ratios must be less than 1. This approach allows the flexibility to respond to future mixtures of radionuclides in LLW while ensuring that the overall dose stays within acceptable levels. The approach is said to be used at other sites receiving LLW.
- 4.12.29. The radiological capacity limits would apply from the date of issue of the EP until the date of closure of the operational landfill or the point at which the capacity limit is reached, whichever is sooner. The landfill would not be permitted to receive any further LLW once the sum of fractions equals 1. The capacity limit cannot be expressed as a single number because it depends on the exact mixture of nuclides received. It is relevant to note that these limits are for the radiological capacity of each load of LLW and are distinct from the total volume of LLW which could be deposited at the site under dDCO Requirement 8.
- 4.12.30. The ES also considers the potential health impacts of the removal of soils, clays and overburden at the commencement of each phase of the development. Without appropriate controls these operations could result in airborne dust generation. Dust can potentially have chemical and physical health impacts. The ES finds that, due to the inert non-hazardous nature of these materials, the extraction and stockpiling of soil, overburden and clay would have a negligible effect on the health of workers and local residents.
- 4.12.31. Based on its assessment of air quality (Chapter 21 of the ES, Section 4.8 of this report), the ES concludes that, subject to the continuation of the current operational controls, together with the updated stockpile management plan, airborne dust generated by extraction and stockpiling activities at the proposed extension would be unlikely to result in significant adverse effects on health.
- 4.12.32. The exposure pathways set out in paragraph 4.12.22 above have been subject to risk assessments (see Appendix ES11.1 [APP-085] and ES tables ES11.1 and ES11.2 [APP-049]). Where there is the potential for emissions, controls and emission limits would be set in the varied EPs at a level which is protective of human health and the environment. Relying on the EP process therefore, the ES concludes

that there would be no significant effect on human health or the environment from these exposure pathways.

4.12.33. The ES considers that the extension of landfill and waste treatment operations to 2046 would not result in any additional cumulative effects.

4.12.34. In terms of impacts on the wider determinants of health and wellbeing identified in paragraph 4.12.12 above, the ES finds that:

- local services and facilities - activities at the site support the use of local services wherever possible and there is no evidence that the presence of the site has had a detrimental effect on the development of other businesses or the development of services and facilities. While the presence of the site may be evident from the lorry traffic on Stamford Road there is a negligible effect on local villages from operations at the site. The Applicant makes contributions to local communities for a wide range of matters, including the provision of opportunities for the regeneration, creation and maintenance of community facilities;
- new green space and recreational facilities - there is currently no public access to the existing site or to the agricultural fields that make up the proposed western extension. The Restoration Concept Scheme would provide for public access, including a maintenance access track and permissive footpaths with the potential for connectivity with the wider rights of way network, as well as a car park. The Restoration Concept Scheme, aftercare and public access are secured by dDCO Requirement 4. The design of the restored site is intended to maximise the quality of the natural environment. The ES advises that it is increasingly recognised that green spaces such as parks, woodlands and fields are an important asset for supporting health and wellbeing;
- users of the existing natural environment - although operations in the proposed western extension would bring noise generating activities closer to public rights of way (PRoW), the closest footpath (Footpath MX15) would be a minimum of 100m from the site. The continued implementation of standard noise measures would minimise any potential adverse impacts, the site would not operate at night and lighting would be controlled. The impact on leisure and recreation users of the nearest area of natural environment (Fineshade Wood and The Assarts) would be minimal. Nor would the proposal result in a significant change in the character of the designated Area of Tranquillity;
- employment and training opportunities and local business activity - the continued operation of the ENRMF would allow for the safe disposal of hazardous wastes and LLW for local, regional and national businesses. The Proposed Development would help secure the continued employment of the 23 full time, mainly skilled staff as well as additional agency staff who currently work at ENRMF and 10 head office support staff in Wetherby. The Applicant works with local educational establishments;

- anxiety in people and communities living in the vicinity – the Applicant has, and would continue to, engage with the local community in order to provide opportunities for people to understand clearly the proposals and the controls that are in place together with the reality of the potential risks and impacts. There is no evidence, based on the extensive ongoing engagement and communications with local people and their representatives, that the day-to-day activities at the site currently give rise to consistent significant concerns or anxiety regarding health or environmental impacts; and
- current and proposed community engagement on the acceptability of the Proposed Development in the context of wellbeing – the Applicant has, and would continue to, engage with the local community through the Kings Cliffe Liaison Group (KCLG) including holding open days. In order to offer reassurance, data is provided on site monitoring in a simplified and publicly accessible form as well as data from the passive dosimeters worn by site workers. The Applicant would continue to review and respond constructively to any concerns or complaints. Low numbers of complaints have been received historically. The number of comments or complaints that are received would be monitored as this provides an indication of the level of concern in the community.

#### Monitoring and Mitigation

- 4.12.35. The ES advises that environmental monitoring during the construction, operational and aftercare phases would check that the levels of contaminants and radiation in a range of potential exposure pathways such as landfill gas, air emissions, leachate, surface water, groundwater and dust would not exceed the environmental thresholds and radiation dose criteria set for the site. Samples would be taken to a programme specified in the EPs and follow protocols set by the EA including reporting monitoring data. The EA currently undertakes its own independent sampling programme for radioactivity. The monitoring regime is intended to provide assurance that the site would perform as expected and that the design, construction and operating standards would be effective in eliminating or controlling any exposure risks.
- 4.12.36. The results of the monitoring for the last five years have been reviewed as part of the specific impact assessments used in the ES. It is reported that the data confirm that the monitored emissions of particulates, asbestos fibres, and gases are controlled and that there are no emissions which present an unacceptable risk to health. All site staff working in the vicinity of LLW received and deposited at the site wear radiation monitoring badges. The records of the dose badges show that they do not and have never exceeded the dose thresholds set in the guidance and regulations.
- 4.12.37. The on-going mitigation measures would include regular monitoring of emissions from the site and submission of the results to the EA in

accordance with the varied EPs. The monitoring would take into account the cumulative effects of all operations at the site as well as any contributions from other sources in the vicinity.

### **Issues in the Examination**

- 4.12.38. The RR from the UKHSA [RR-017] advises that it has reviewed the submitted documents and confirms that it is satisfied that the Proposed Development "*should not result in any significant adverse impact on public health.*"
- 4.12.39. The SoCG with NNC [REP8-008 Appendix B] agrees that the EP process would appropriately regulate the effects of the proposal on human health. It further finds that the Proposed Development would not have any significant adverse impacts on the health of people, including impacts on the wider determinants of public health, but would have significant beneficial impacts. The SoCG with the EA [REP8-008 Appendix C] confirms that the EA would not issue a variation of the LLW EP unless it and its statutory consultees are satisfied that there would be no unacceptable risks to human health.
- 4.12.40. AW considered that its customers may perceive that storing LLW close to its pipelines may compromise the supply of wholesome water [REP4-013]. The Applicant responded [REP5-008] that it was aware of the importance of openness in addressing the public perception of risk. It wished to move away from assertions and undertake an appropriate risk assessment. A Pipeline Risk Assessment [AS-025] was submitted in support of the non-material change and found that there is "*no conceivable pathway by which contaminants in the landfill site could migrate to and affect the quality of the water in the pipelines*". AW did not dispute the findings of this assessment. No other IPs raised substantive concerns regarding the effects of the Proposed Development on human health.
- 4.12.41. I asked for clarification on a number of matters related to human health [Pd-006 Q7.1.1 to 7.2.1]. The Applicant responded in [REP2-006]. I sought clarification on the exclusion of site visitors and workers from the ES assessment of human health. The Applicant's response refers to site specific risk assessments carried out to ensure that workplace exposure limits to contaminants and radioactivity are maintained below the limits set by the Health and Safety Executive (HSE) and to the requirements of the Health and Safety at Work Act. The Applicant considers that this approach to the assessment accords with the requirements of Schedule 4(5) of the EIA Regulations in terms of the information to be included in an ES.
- 4.12.42. I sought evidence to support the Applicant's contention that the site operations do not give rise to consistent significant concerns or anxiety regarding health or environmental impacts. The Applicant's response refers to the absence of such concerns in the websites or social media of local community groups and feedback from the KCLG. There has also been a low level of complaints to NNC, the EA and the Applicant.

- 4.12.43. I also sought clarifications of the assessment with regard to the potential exposure pathways for hazardous waste and LLW for events with a low likelihood of occurrence, the stage at which risk assessment would be undertaken and in the event of an aircraft crash. The Applicant gave satisfactory responses not requiring additional information.
- 4.12.44. I asked how equality, diversity and inclusion considerations had been taken into account in the human health assessment. The Applicant's response refers to the data used to establish the assessment baseline and considers that it does not indicate "*an atypically vulnerable population who may experience disproportionate negative health effects as a result of development such as that proposed.*" The vulnerabilities considered are said to include those falling within protected characteristics identified in PHE advice and Protected Groups as defined in the Equality Act 2010.
- 4.12.45. With regard to mitigation, I asked for further information about the layers of capping material to be used in the landfill cells, including the assessment of its effectiveness post-restoration. The Applicant explained that the construction details of the capping layers would be secured through the EP process and subject to Construction Quality Assurance. The Applicant considered that it would not be appropriate to duplicate that control in the DCO. The assessment relies on research by the Forestry Commission which concluded that a restoration soil depth of 1.5m is suitable to ensure that trees can be established on landfills without posing a significant threat of damage to the underlying cap.

### **Conclusions**

- 4.12.46. The assessment, control measures and mitigation of the direct effects of the Proposed Development on human health rely in large part on the control of emissions through the EP process. However, I have already found that reliance on that process for the consideration of emissions is appropriate and accords with the approach set out in the NPSHW. The relevant regulatory bodies (specifically the EA and UKHSA) are content with this approach, as is NNC. Moreover, none of those bodies or other IPs have expressed concern regarding the direct effects of the proposal on human health. The Applicant's responses to my questions on this topic were satisfactory
- 4.12.47. The noise component of human health is dealt with at Section 4.15 of the report and the dDCO includes Requirement 5 which requires the Proposed Development to be operated in accordance with a noise management plan.
- 4.12.48. There is nothing in the submissions to the Examination to indicate that either the existing ENRMF, or the Proposed Development, has or would adversely affect wider health and wellbeing concerns, give rise to undue anxiety in the local community or impact on local businesses or facilities. This appears to be, at least in part, due to the Applicant's active and open engagement with the community.

4.12.49. In the longer term, the restoration of the site would provide a new, fairly extensive publicly accessible open space which would be secured through the dDCO. I deal with the landscape and biodiversity effects of this space elsewhere. However, it would be reasonable to expect the open and green character of this space to have a beneficial effect on the wellbeing of people using it. Overall, therefore, I find that the Proposed Development would not have significant adverse effects on human health during the construction and operational phases and would have a moderately beneficial effect in the long term, post restoration phase. Consequently, the Proposed Development would comply with paragraphs 4.10.2 to 4.10.4 of the NPSHW.

## **4.13. LANDSCAPE AND VISUAL**

### **Introduction**

4.13.1. This section covers the landscape and visual effects of the Proposed Development. It includes the effects of the proposed artificial lighting, which the Applicant deals with under the heading of 'Amenity' in its ES. It also deals with the landscape effects of the Proposed Development on the designated Area of Tranquillity.

### **Policy Context**

4.13.2. The NPSHW requires the Applicant's assessment to take into account any landscape character assessments or studies, relevant development plan policies and landscape and visual effects during the construction and operational phases. It should also include light pollution, local amenity, rural tranquillity and nature conservation effects (paragraphs 5.9.2 to 5.9.4).

4.13.3. Paragraph 5.9.5 advises that proposals should aim to minimise harm to the landscape, having regard to siting, operational and other relevant constraints, Reasonable mitigation should be provided where possible and appropriate.

4.13.4. The application site is not within an area statutorily designated for its landscape value or within the landscape or visual setting of such an area. Outside statutorily designated areas, proposals should give particular consideration to locally designated landscapes where they are informed by a landscape character assessment (paragraph 5.9.11). The visual effects on sensitive receptors such as local residents and visitors to the area should be weighed against the benefits of the proposal (paragraph 5.9.13).

4.13.5. Within the site, adverse landscape and visual effects may be minimised through appropriate siting of infrastructure, design considerations, including colours and materials, and landscaping schemes. The use of materials and building design should always be given careful consideration (paragraph 5.9.16).

- 4.13.6. Policy 21 of the MWLP seeks to ensure that proposals reflect Northamptonshire's landscape character. Development should mitigate any adverse impacts on local landscape character during the construction and operation phases and following restoration. Opportunities for enhancement should be maximised through restoration, aftercare and after-use. Policy 3 of the JCS has similar aims. It also requires proposals to preserve tranquillity within the King's Cliffe Hills and Valleys Landscape Character Area (LCA) by minimising light and noise pollution and minimising visual and traffic impacts.

### **The Application**

- 4.13.7. Landscape and visual matters are covered mainly in Chapter 14 of the Applicant's ES [APP-049]. A Supplementary ES [AS-021] considers the landscape and visual effects of the non-material change. Lighting is dealt with as part of Amenity in Chapter 22 of the submitted ES. These documents are supplemented by:

- Figure ES14.1 Visual context [APP-064];
- Appendix ES14.1 Landscape and Visual Impact [APP-088];
- Figure SES2.1 Restoration Profile Contour Plan [AS-022];
- Figure SES2.2 Indicative Restoration Concept Scheme for 30m stand-off from water pipelines [AS-023];
- Appendix SES5.1 Supplementary Landscape and Visual Impact Assessment [AS-028]; and
- Applicant's Supporting Documentation for ISH1 and ISH2 (Annex A) [REP4-006].

### Methodology

- 4.13.8. The LVIA in the ES is said to be undertaken in accordance with the Landscape Institute and Institute of Environmental Management and Assessment Guidelines for Landscape and Visual Impact Assessment 3rd Edition. A Zone of Theoretical Visibility, based on Digital Surface Modelling, in combination with site surveys was used to identify 13 representative viewpoints [APP-088 Figure 1 - Visual Context and Figures 4 to 29 - Viewpoint (VP) photographs]. The ES uses a qualitative approach to the assessment of lighting.

### Landscape baseline

- 4.13.9. The LVIA baseline includes the approved restoration profile for the existing ENRMF. The site is not within an area statutorily or locally designated for its landscape value or within the setting of such an area. However, it does fall within an Area of Tranquillity (Policy 3 of the JCS). This designation includes the existing ENRMF and Collyweston Quarry.
- 4.13.10. The site lies within National Character Area 92: Rockingham Forest as defined by NE which includes an undulating landform rising to a



prominent northern scarp with large woodlands, remnants of unimproved grassland and large arable fields with low hedges.

- 4.13.11. At county level<sup>7</sup> the site falls within Landscape Character Type 11: Wooded Limestone Hills and Valleys and, within that, LCA 11a: King's Cliffe Hills and Valleys. Relevant characteristics include broad valleys and low hills dipping to the east with a generally enclosed character, a predominance of arable land with areas of improved pasture and calcareous grassland frequent along watercourses, significant woodland cover of varying composition with large areas of designated ancient woodland.
- 4.13.12. The existing site comprises the disturbed and evolving landscape of the existing ENRMF including built development, stockpiles and plant. It is generally not consistent with the wider landscape and is of low sensitivity. The western extension land is more consistent with the wider landscape character. The northern part is partially enclosed by surrounding woodland, whereas the southern part has a closer association with the existing ENRMF. The ES lists features of the western extension land comprising:
- topography of low to medium sensitivity;
  - 5.9ha of grade 3a best and most versatile (BMV) agricultural land of medium sensitivity; and
  - Grade 3b land, hedgerows and scrub area of low sensitivity.
- 4.13.13. The area around the site is characterised as rural and tranquil and includes small villages and farmsteads, minerals and waste operations as well as a haulage yard to the east of the site.

#### Visual baseline

- 4.13.14. The LVIA considers the site to be generally well contained with limited external viewpoints. In summary:
- views from north - none due to the screening effect of extensive mature woodland and the absence of residential properties or publicly accessible areas;
  - views from the east – an established boundary hedgerow helps to screen views of the ENRMF from Stamford Road, Westhay Cottages and Westhay Farm immediately to the east and the ENRMF itself lies between those receptors and the western extension. Further south along Stamford Road, views are curtailed by the low-lying road and roadside hedges. More distant views from Cross Leys Farm and St John's Wood Farm are restricted by distance and / or intervening landform and vegetation;

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<sup>7</sup> Northamptonshire Current Landscape Character Assessment 2005 and Northamptonshire Current Landscape Character Strategy and Guidelines 2006 (River Nene Regional Park assisted by Northamptonshire County Council)

- views from the south – partial views of the existing ENRMF are available from Westhay Lodge and Westhay Barn and the adjoining stretch of Stamford Road, although intervening vegetation and agricultural buildings restrict views to the western extension. Vegetation and landform prevent views of the site from Kings Cliffe village; and
  - views from the west – landform and woodland blocks prevent views of the site from Duddington village. There are views from short lengths of Footpath MX15. Views from other PRoWs are restricted by distance and vegetation.
- 4.13.15. Without implementation of the Proposed Development the baseline would evolve with the operation of the existing ENRMF up to 2026 and the creation of its restored profile thereafter. No change to the western extension land is anticipated. Nor would the landscape character of, and available views from, the surrounding area change.

#### Lighting Baseline

- 4.13.16. The existing site reception facilities and the waste recovery and treatment facility have external lighting. All lighting is directed downwards and shielded and, other than security lighting, is switched off at the end of the working day. Mobile lighting is used on the operational area of the landfill site during operational hours only.

#### Assessment of Landscape Effects

- 4.13.17. The Proposed Development would extend the period of operation of the ENRMF from 2026 to 2046. The ES finds that this would cause some adverse effects on landscape character as the completion of the restoration of the existing ENRMF would be delayed and remain uncharacteristic of the surrounding landscape over that period. However, the ES concludes that the effects would not be significant as they would be temporary, there would be progressive restoration of the site and enhanced restoration proposals would provide mitigation.
- 4.13.18. The ES finds that the construction of the new void, mineral extraction, stockpiling and landfill cell construction would lead to a significant adverse effect on the topography of the western extension land. The effect on the landscape character of the northern part of the western extension would be significant. The effect on the southern part of the western extension would not be significant due to its closer association with the existing ENRMF. The effect on the wider LCA 11a: Kings Cliffe Hills and Valleys area would be limited and not considered significant.
- 4.13.19. These works would result in the loss of the hedgerows and areas of scrub which the ES finds would be of minor to moderate significance due to their limited landscape value. The loss of an existing oak tree at the eastern end of the hedgerow which crosses the western extension land would be of higher significance because of its age,

condition and landscape value. Nevertheless, in the context of the extensive adjoining woodland and planting proposals, the ES finds that the loss would not be significant in the long term.

- 4.13.20. The ES finds that the operation of the extended site up to 2046 would lead to a significant adverse effect on the landscape character of the northern part of the western extension land. The effect on the southern part of the land would not be significant as it does not contribute to the wider landscape character in a special or notable way and is influenced by the existing ENRMF operation.
- 4.13.21. The operation of the waste treatment and recovery facility up to 2046 would not result in significant effects on landscape character or features. Although the facility is not characteristic of the wider landscape, it is characteristic of the existing ENRMF in which it is located. The ES found that the retention of the existing ENRMF would not have significant landscape effects. Removal of the waste treatment and recovery facility by 2046 would be beneficial although the effect would not be significant.
- 4.13.22. Post restoration, the Proposed Development would provide around 3km of hedgerows, tree planting, the creation of an area of neutral / calcareous grassland and the provision of attenuation basins which may function as ephemeral ponds. Woodland and scrub planting would help to link the existing adjoining woodlands. Permissive footpaths would also be introduced. The ES finds that the rural landscape character of the surrounding area would be maintained and enhanced with the integration of the restored site into its surroundings.

#### Assessment of Visual Effects

- 4.13.23. The ES finds that the extended period of operations at the existing ENRMF would have no or negligible effects on most visual receptors. Occupiers of Westhay Lodge and, to a slightly greater extent, Westhay Barn (VPs 5 and 13) have partial views of the existing ENRMF and would experience minor-moderate effects. The duration of visual disturbance for users of Footpath MX15 (VP12) would be extended, although the impact would be fleeting and oblique.
- 4.13.24. Due to good screening and the low incidence of visual receptors within 700m, the ES finds that the visual effect of the construction of the new void, mineral extraction, material stockpiling and landfill cell construction would be limited and of negligible to minor significance. Occupiers of Westhay Lodge and Westhay Barn would experience visual effects of moderate significance as soil stripping and stockpiling in the proposed western extension would be partially visible above the existing and proposed hedgerows. Users of Footpath MX15 would be subject to noticeable, but not significant, effects as a result of the above ground landfill construction works in the southern part of the proposed western extension.

- 4.13.25. With regard to the proposed landfill operation, users of Footpath NE20 (VP10) and Bridleways NE8 (VP6) and NE25 (VP8) are likely to experience glimpses of the works in the southern part of the western extension, but the significance is assessed to be negligible to minor.
- 4.13.26. As the landform rises above the existing and proposed hedgerows, the landfill in the southern part of the western extension would become visible to occupiers of Westhay Lodge and Westhay Barn. The effect would be moderate to major and therefore significant. The effect would be temporary as the works are completed in phases. Users of Footpath MX15 (VP3) would experience fleeting and short-term visual disturbance from the works in Phases 19-21 which the ES finds would be significant. Users of Footpath MX18 (VP2) would have distant views of the works through intervening vegetation.
- 4.13.27. The ES considers that the visual effect of the extended period of operation of the waste treatment and recovery facility would be minor and not significant. Views of the removal of this facility would be limited to users of Footpath MX15. The effect would be temporary, limited in extent and not significant.
- 4.13.28. Views of the restored western extension land would be available from a number of the representative viewpoints. The landform and planting of the restored land would comprise woodland blocks, scrubby planting areas and hedgerows with trees on grassland slopes rising to a level of 99m Above Ordnance Datum (AOD). It would be similar in character to the approved scheme for the existing ENRMF. The Proposed Development would take up a greater proportion of the view to the north-west for occupiers of Westhay Lodge and Westhay Barn. The ES considers that, once the proposed planting has established, the restored site would integrate with the surrounding woodland and would be in character with the existing landscape.

#### Assessment of Lighting

- 4.13.29. There would be no change to the external lighting in the reception area or the waste treatment facility. Mobile lighting would be used in the operational areas and haul roads on the western extension during operational hours only. No complaints regarding lighting have been received by the Applicant in the last five years.
- 4.13.30. The ES considers that there would not be an unacceptable impact on amenity as a result of the continued use of lighting as part of the Proposed Development. Nor does it consider that the lighting proposals would adversely affect the designated Area of Tranquillity.

#### Cumulative Effects

- 4.13.31. The ES considers the potential for cumulative effects with similar types of operation at Collyweston Quarry, Thornhaugh Landfill, Cooks Hole Quarry and Wakerley Quarry. It finds that there would be no significant landscape effects during the construction and operational phases. Following restoration, there would be minor beneficial

effects on landscape features due to the gain in habitats created at the Proposed Development and the other facilities. No significant cumulative effects on landscape character are identified, largely because of the screening of the application site and the localised nature of the proposed changes. The defining character of the area would remain open agricultural land to the south and east with large woodland blocks to the west and north and few built elements.

- 4.13.32. Cumulative visual effects would be limited to views from Footpath MX18 to the northwest of Collyweston Quarry. From here, the site and parts of Collyweston Quarry would be viewed through intervening vegetation such that spring and summertime views would be very restricted. This would result in a minor effect that would not be significant. Footpath and road users may experience sequential views of the Proposed Development and the other facilities, but the distance and time between the views means that the effect would be negligible.

#### Mitigation

- 4.13.33. The ES advises that the landscape, visual and lighting mitigation measures comprise:
- advance hedgerow planting including on the northern / western boundary of the northern part of the western extension, the hedgerows either side of the proposed water channel and the eastern side of the southern part of the western extension;
  - progressive restoration of the site starting from the north in order to minimise the duration of works, in particular between Fineshade Wood and Collyweston Wood;
  - the creation of areas of neutral / calcareous grassland, the establishment of new woodland blocks, scrubby areas, attenuation basins, small individual ponds for biodiversity enhancement and new permissive footpath routes; and
  - continued use of external lighting only where necessary and ensuring that it is downward facing and shielded.
- 4.13.34. These measures would be secured in the dDCO by Requirement 4(1), (2) and (3).

#### Non-material change to the Proposed Development

- 4.13.35. The Supplementary LVIA [AS-028] assesses two potential stand-off distances - 20m and 30m for the AW water pipelines. It considers that, whichever option is adopted, or any other stand-off distance in between, the change would not result in any new or different likely significant effects on landscape or visual receptors compared to those identified in the original LVIA.
- 4.13.36. Effects identified in the submitted ES and supporting LVIA [APP-088] would generally still occur to receptors. Some minor differences

would be evident due to the increased separation of the proposed restoration landform between Phases 19 and 20 (to the north of the water pipelines) and Phase 18 (to the south of the pipelines) and the associated changes to the steepness of the slopes as a result of the altered restoration landforms. However, the Supplementary LVIA finds these differences would not be notable enough to alter the overall significance ratings for either landscape or visual effects set out in the original ES and LVIA. These findings are reflected in the Supplementary ES [AS-021].

### **Issues in the Examination**

- 4.13.37. NNC's LIR found that the Proposed Development would have a significant effect on the landscape character of the northern part of the western extension land [REP2-027]. In the NNC SoCG [REP8-008 Appendix B], it was agreed that the long-term character of the proposed western extension landfill area would not be typical of the surrounding agricultural land but that this has to be balanced against the benefits to be gained by the proposed restoration scheme. This would *"eventually be far closer in character to the adjacent woodland areas, whilst offering extensive benefits to biodiversity when compared to the baseline."*
- 4.13.38. The SoCG with NNC also agreed that there would be temporary effects on tranquillity within the western extension during operations, but that after restoration, there would be beneficial effects on landscape character and tranquillity compared with the baseline. There would also be significant, though temporary adverse visual effects on a very limited number of visual receptors. Following restoration, the Proposed Development would be *'visually appealing'*.
- 4.13.39. Stephen Glen queried whether the proposal would enhance tranquillity [RR-014]. No other landscape or visual concerns were raised by IPs. I have dealt with the concerns of the Woodland Trust [REP7-017] in Section 4.9 under the heading of Biodiversity.
- 4.13.40. I raised a number of queries on landscape and visual matters in written questions [PD-006 Q8.1.1 to Q8.3.3 and PD-010 Q4.1], some of which were also discussed in ISH2. The Applicant's responses [REP2-006, REP4-006, REP4-007 and REP5-004] can be summarised as:
- the dates on which the photographs of representative viewpoints were taken was clarified. All but three of the photographs were taken in February 2020, with the others taken in October 2020, January 2021 and June 2021. Most were therefore taken in autumn and winter when trees were not in leaf and visual permeability was at its highest. In response to ExQ8.1.2 regarding the limited reference in the LVIA to discussion of summer and winter seasonal effects, the Applicant considered that the autumn / winter assessment undertaken represents a *'worst-case scenario'*; and

- in response to ExQ8.1.3 and the subsequent discussion at ISH2 regarding the parameters for new buildings in Work Nos 2 and 3, the Applicant submitted updated information. A LVIA Viewpoint Summary Table [REP4-006 Annex A] provided additional information on a number of representative viewpoints. It established that the original LVIA assessment of the potential new buildings in Work No 2 was based on the parameters set out in the then current dDCO [REP4-004] and DEC Appendix DEC D [APP-110]. As such, it accorded with the 'Rochdale Envelope' approach. With regard to the potential new buildings in Work No 3, the parameter in Schedule 4 of the dDCO [REP6-013] was updated to clarify that no more than one 8m tall building would be allowed in Work No 3 at any time. This is intended to ensure that the parameters align with the assessment in the LVIA.

### **Conclusions**

- 4.13.41. With the additional information submitted in response to my queries and in support of the non-material change, I am satisfied that the landscape and visual effects of the Proposed Development have been properly assessed. Mitigation measures including advance hedgerow planting, woodland and grassland planting, control of lighting and the restoration of the site would be secured under the phasing, landscaping and restoration scheme and dDCO Requirement 4. Nevertheless, the Proposed Development would have significant adverse effects on the topography and landscape character of the western extension during the construction and landfilling phases.
- 4.13.42. The site falls within an Area of Tranquillity as designated by JCS Policy 3 and there would be a similarly adverse landscape effect on that designation during these phases, particularly in the northern part of the western extension. There would also be significant adverse visual effects on limited viewpoints from Westhay Lodge, Westhay Barn and Footpath MX15 during the construction and landfilling phases.
- 4.13.43. Following restoration, the effects in each case would no longer be significant. The Applicant goes further and considers that the effect on landscape character would be moderate beneficial and that the visual effect on the Westhay Lodge viewpoint would be minor beneficial.
- 4.13.44. I recognise that the landform and planting of the restored western extension would be consistent with the character of the approved restoration scheme for the existing ENRMF. In time, the proposed planting, including the increased lengths of hedgerow, would also reflect and integrate with the landscape character of the woodland areas to the north of the site. Nevertheless, the contours of the restored landform would be relatively steeper than the undulating landform of the surrounding area. Consequently, while I agree that there would be no significant adverse landscape or visual effects following restoration, nor would there be any beneficial effects.

- 4.13.45. The ES assessment of the effects of external lighting is brief. However, I note that there have been no complaints, the matter was not raised in the Examination and the lighting proposals appear proportionate to the proposed operations. Further approval of lighting details would be secured under dDCO Requirement 4(3).
- 4.13.46. The site is within an Area of Tranquillity as designated under Policy 3 of the JCS and the Proposed Development would result in harm to the landscape character of part of this designation. However, the effect would be experienced in only part of the western extension and for a limited period. I also conclude in Section 4.15 that there would not be a significant noise effect on the designation. Moreover, the designation was made when the ENRMF was already in place. Consequently, the degree of conflict with JCS Policy 3 would be minor.
- 4.13.47. Overall therefore, I find that the construction and landfilling phase landscape and visual effects, although affecting limited areas, would be significant adverse. This brings a degree of conflict with landscape protection Policy 21 of the MWLP as well as paragraphs 5.9.5 and 5.9.13 of the NPSHW and JCS Policy 3. As such, these matters weigh against the proposal in the planning balance.

#### **4.14. LAND USE, SOILS AND SOCIO-ECONOMICS**

##### **Introduction**

- 4.14.1. This section covers the effects of the Proposed Development on land use, including green infrastructure and agricultural land, soils and direct socio-economic effects. Indirect socio-economic effects are covered under the heading of Human Health in Section 4.12 above. The section also takes in the proposed s106 Agreement with NNC and issues arising from the relationship of the proposal with adjoining landowners. The principal of development of the site for the proposed uses is dealt with in Section 4.6 above.

##### **Policy Context**

- 4.14.2. Paragraph 5.10.1 of the NPSHW advises that access to high quality open space can make an important contribution to the health and well-being of communities. At paragraph 5.10.3 it requires the Applicant to identify existing and proposed land uses near the site, any effects of replacing an existing use of the site or preventing a development or use on a neighbouring site from continuing.
- 4.14.3. Any use of BMV agricultural land should be taken into account and preference given to the use of poorer quality agricultural land as well as previously developed land. Regard should be had to any effect on soil quality, soil contamination and mineral resources should be safeguarded as far as possible (paragraphs 5.10.6, 5.10.7 and 5.10.13).



- 4.14.4. Applicants should use good design to minimise the direct effects of the proposal on the existing use of the site and on proposed uses nearby (paragraph 5.10.16). Rights of way and other rights of access to land are important recreational facilities and consideration should be given to whether proposed mitigation measures are acceptable (paragraph 5.10.21).
- 4.14.5. Policy 18 of the MWLP requires minerals and waste development to minimise land use conflict, among other things. Policy 24 states that the after-use of such development should be determined in relation to its land use context, the surrounding environmental character and any specific local requirements. It should enhance biodiversity and the local environment and benefit the local community. The policy also states that sites previously comprising high-grade agricultural land should be restored to the original land use.
- 4.14.6. RNOTLP Policy 4 requires development to contribute and link into the wider green infrastructure network. Policy RC3 of the King's Cliffe Neighbourhood Development Plan states that development proposals should deliver overall quality and accessibility enhancements to the PRow network.

### **The Application**

- 4.14.7. Soil resources are covered in Chapter 15 of the Applicant's ES [APP-049] and socio-economic matters in Chapter 23. These chapters are supplemented by:
- Figure ES15.1 Agricultural land classification for the proposed western extension area [APP-065];
  - Appendix ES15.1 Agricultural and Soil Impact Assessment [APP-089]; and
  - Figure ES23.1 Alternative hazardous waste landfill facilities [APP-075].

### ***Agricultural Land and Soil Resources***

#### Methodology and Baseline

- 4.14.8. An investigation of the soils at the western extension was undertaken in December 2018 and supplemented by information from the Soil Survey of England and Wales. This information was used to grade the land in accordance with the Ministry of Agriculture, Fisheries and Food (MAFF) Agricultural Land Classification (ALC) of England and Wales (1988). The grades range from 1 (excellent) to 5 (poor), with Grade 3 subdivided into subgrade 3a 'Good' and subgrade 3b 'Moderate'. Land graded 1, 2 and 3a is defined as 'BMV'.
- 4.14.9. A post 1988 MAFF survey of the Duddington area established that, in the wider area including to the east and to the west of the site, soils in ALC Grade 3a and 3b are extensive.

- 4.14.10. The proposed western extension comprises two fields under arable production with grassy margins and separated by a hedgerow. There is an area of young scrubby woodland in the south-eastern corner of the northern area.
- 4.14.11. The ES reports that the quality of the agricultural land in the northern part of the western extension is limited by soil droughtiness where the soil profiles are developed over limestone. It makes up some 21% of the area and falls within Grade 3a. The clayey soil profiles over the southern part of the western extension are limited by soil wetness to Grade 3b. This makes up just over 77% of the total, with the remainder classified as non-agricultural. The land in the existing ENRMF is also classified as non-agricultural.
- 4.14.12. Soils at the Grade 3a land comprise some 30 centimetres (cm) of calcareous heavy clay loam topsoil underlain by some 25cm of recoverable calcareous clay subsoil. Below this is limestone rock. Soils in the Grade 3b land comprise some 25cm of clay topsoil underlain by 30cm of recoverable upper subsoil and a further 70cm of potentially recoverable lower subsoil.
- 4.14.13. In terms of the future baseline if the Proposed Development did not proceed, the current land uses would be likely to continue, with the existing ENRMF restored by 2026 and used for nature conservation and open space thereafter.

#### Assessment of Effects

- 4.14.14. The proposed construction and landfilling operations would result in the loss of the agricultural production on the western extension. After restoration, the land would be used for nature conservation and open space. As such, the loss would be permanent and comprise some 25.8ha of agricultural land, of which around 5.9ha is classified as Grade 3a BMV.
- 4.14.15. The ES finds that this would be a moderate significant effect on agricultural land based on the type and amount of land affected. It considers that there is no shortage of agricultural land in Northamptonshire and reports that the removal of the land from production would not affect the structure or viability of the existing farm business. The ES also suggests that, notwithstanding the current restoration proposals, the scheme design does not preclude the use of the land for agriculture in the future if necessary.
- 4.14.16. In terms of soil resources, the topsoil and subsoil would be stripped and stored separately. The soils would be handled, moved and stored for re-use in accordance with the Soil Handling and Management Scheme (DEC Appendix DEC I [REP7-008]) as controlled by dDCO Requirement 6(1). The soil at the Grade 3a land has been identified as having a high pH and calcium carbonate content and would be re-used to help create calcareous grassland in the restoration phase.

- 4.14.17. The ES finds that, without mitigation, the stripping of the soil would result in a temporary adverse significant effect on soil resources. However, following the implementation of the mitigation measures (see below) the Proposed Development would have a negligible effect on soil resources.

#### Mitigation

- 4.14.18. The ES considers that the proposed biodiversity enhancements (see Section 4.9 above) provided by the restoration scheme (secured by dDCO Requirement 4(2)) would offset the adverse effect of the loss of the agricultural land. Mitigation of the effect of the Proposed Development on soil resources comprises the re-use of the topsoil and subsoil in the restoration scheme (Soil Handling and Management Scheme (DEC Appendix DEC I [REP7-008] and dDCO Requirement 6(1)), including the creation of calcareous grassland using the soils identified as having a high pH and calcium carbonate content. The ES considers that there would be no cumulative impacts on agricultural land or soil resources.

### ***Land use and socio-economics***

#### Methodology and Baseline

- 4.14.19. The ES considers potential effects at the national, regional and local levels. Having regard to development policies, it identifies the factors to be considered as employment and the economy, housing and house prices, village infrastructure and services, tourism, green infrastructure and accessibility.
- 4.14.20. At the national and regional levels, the ES assessment focuses on the contribution of the Proposed Development to the need for hazardous and LLW waste disposal and treatment facilities and the locational benefits of the site. These matters are covered in Sections 4.5 and 4.6 above and so are not re-iterated here.
- 4.14.21. At the local level the ES takes data from the JCS<sup>8</sup> to identify a population projected to increase from 316,000 in 2011 to 370,000 by 2031. The JCS also finds that the area has around 0.85 jobs for each worker (economically active residents excluding those in full time education) and became less self-reliant on employment in the period 2001 to 2011.
- 4.14.22. Drawing from the RNOTLP, the ES characterises the economy of its 'Rural North' area as mixed, with an established agricultural and forestry base, mineral working and waste management, distribution and transport, light industrial and small businesses and military activities. The area is also said to have many assets which attract

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<sup>8</sup> The JCS covers the local authority areas of East Northamptonshire, Corby, Kettering and Wellingborough. It pre-dates the formation of NNC as the local authority covering the application site.

visitors who contribute to the local economy, including various types of visitor accommodation, restaurants and public houses.

- 4.14.23. In the event that the Proposed Development did not proceed, the existing ENRMF would continue to operate and support local jobs and services and provide community funding until 2026. After that time operations would cease.
- 4.14.24. It is also relevant to note at this point that the Applicant has submitted a completed s106 Agreement with NNC and the owner of the western extension land which would provide financial contributions to highway maintenance and a Community Fund.

#### Assessment of Effects

- 4.14.25. The ES assessment at the national and regional levels refers to the need for new waste facilities, the contribution that the Proposed Development would make to meeting that need, its locational advantage in terms of proximity to waste producers and the benefit of receiving LLW in order to relieve pressure on the Cumbria Low-level Waste Repository. These matters are covered in Sections 4.5 and 4.6 of the report where I find that the proposal supports the aims of Government strategy for hazardous waste and accords in principle with the NPSHW and benefits from a presumption in favour of development (subject to detailed considerations).
- 4.14.26. At the local level, the ES considers that the Proposed Development would help to secure the continued employment of around 23 full-time staff currently working at the ENRMF (spending approximately £590,000 per annum on wages) and a further 10 staff at the Applicant's head office. The site employs mainly skilled staff living locally and who have either appropriate scientific degrees or specialised plant operating skills. The existing ENRMF operation spent some £787,000 per annum on local services in 2020.
- 4.14.27. The ES goes on to consider the potential for other effects in terms of suppressing local investment, and the negative perception of the presence of a large waste facility. I have considered these matters in Section 4.12 under the heading of Human Health.
- 4.14.28. The ES finds no evidence that the existing ENRMF has adversely affected local agricultural or forestry. The environmental controls in the EPs for the existing ENRMF would be extended to cover the Proposed Development and so would continue to provide protection for these activities.
- 4.14.29. Reference is made to the association of the site with other mineral working sites in the area (Collyweston Quarry, Cross Leys Quarry, Wakerley Quarry, Ketton Limestone and Cement Works, Thornhaugh Quarry and Cooks Hole Quarry) which are an intrinsic part of the historic landscape and economy of the area.

- 4.14.30. The ES finds no evidence that the existing ENRMF has had an adverse effect on nearby businesses, including the haulage yard opposite the site on Stamford Road. Reference is also made to the grant of planning permission for a transport depot on the former Ministry of Defence (MoD) land to the north of the site. This is the site on which the Trust is seeking permission for a commercial storage facility. I deal with its concerns regarding odour and noise at Sections 4.8 and 4.15 of the report.
- 4.14.31. The ES reviews the housing market in local villages and concludes that house prices in the area have continued to rise in accordance with national trends, notwithstanding the presence of the existing ENRMF facility. It finds no reason to expect that the Proposed Development would change this situation, although no specific evidence was provided to support that view.
- 4.14.32. Drawing from the RNOTLP, the ES identifies Kings Cliffe as a local service centre for a network of surrounding villages. The Plan states that the centre should be enhanced by making available appropriate opportunities to meet housing and employment needs.
- 4.14.33. With regard to support for the local community, the Applicant refers to the Landfill Tax Credit scheme, under which it has invested more than £4.5m in local projects. This figure covers the Thornhaugh Landfill site as well as the existing ENRMF. Projects within a 10-mile radius of the site may apply for grants which are allocated by Kings Cliffe Environmental Association. In 2020, 21 projects including upgrades to halls, churches and sports facilities and recreation ground improvements received grants. The Applicant company has also directly funded a number of local community projects and supports local educational establishments on waste-related matters.
- 4.14.34. The Applicant makes a contribution of £5000 per year to Northamptonshire County Council for the maintenance of the highway in the vicinity of the site. This is secured through an existing s106 Agreement and is proposed to continue under the s106 Agreement for this application.
- 4.14.35. The ES also refers to contributions to a Community Fund secured through the existing s106 agreement and which is proposed to be continued. However, the Applicant has subsequently accepted [REP3-011] that this contribution should not be taken into account as a material consideration in the application.
- 4.14.36. The ES finds no evidence that the existing ENRMF has had negative impacts on the infrastructure or service provision in Kings Cliffe or that this would change as a result of the Proposed Development. Moreover, the contributions through the Landfill Tax scheme have, and would continue, to support the local community.
- 4.14.37. Having regard to the visually contained nature of the site, the ES considers that the Proposed Development would be unlikely to have a

significant negative impact on tourism in the locality now or in the future. Taking into account the landscape and visual, historic environment and biodiversity assessments, the ES concludes that the Proposed Development would not result in a significant adverse cumulative impact on the green infrastructure of the area. Indeed, the Landfill Tax Funding would significantly contribute to the creation and maintenance of those assets.

- 4.14.38. No additional planned developments are identified which may have the potential for cumulative effects.

#### Mitigation

- 4.14.39. The mitigation measures identified in this chapter of the ES essentially comprise the funding and community support referred to above, together with the EP controls set out elsewhere in the ES and this report which seeks to avoid impacts on the local environment and neighbouring occupiers.

#### **Issues in the Examination**

- 4.14.40. None of the IPs disputed the Applicant's assessment of the effects of the proposal on agricultural land or soil resources. Nor were the assessments of the socio-economic effects of the proposal challenged.
- 4.14.41. In terms of adjoining occupiers, Mr N W Fiennes sought assurances that the Proposed Development would not affect the potential to develop his land for quarrying by reason of pollution or the restraint of the boundaries [RR-003]. These matters were resolved in discussion with the Applicant and as confirmed in the SoCG [REP8-008 Appendix H].
- 4.14.42. The Trust raised a number of concerns regarding the effects of the Proposed Development on its land. Those relating to odour, noise, pollution and the surface water drainage scheme are dealt with in Sections 4.8, 4.15 and 4.18 respectively. The Trust withdrew its concern regarding the presence of a bund along the eastern boundary of the western extension [EV4-003]. The Trust contended that the Community Fund contribution in the Applicant's s106 Agreement should not be regarded as a material consideration [RR-015]. I have already noted that the Applicant accepted this point (see paragraph 4.14.35).
- 4.14.43. With regard to the relationship of the proposal with neighbouring landowners, the Trust disputed the ownership of the swallow hole located close to the eastern boundary of the western extension and into which the Applicant proposes to discharge surface water [RR-008, REP2-003]. This matter was raised in my first written questions (EXQ14.1.2), was discussed at ISH2 [EV4-000] and the area viewed during the Accompanied Site Visit (ASI) [EV3-002].

- 4.14.44. The Trust and the Applicant undertook to submit land surveys of the area in question. I understand that both parties produced a survey, but only the Applicant submitted a survey to the Examination [AS-006]. The Trust's responses are at [REP5-013, Q1.6 and Q9.1]. The Applicant's survey shows that, while the outer edge of the swallow hole straddles the boundary between the land owned by the Trust and that controlled by the Applicant, the point at which surface water discharges underground is within the land controlled by the Applicant. I was able to see this relationship between the discharge point and the boundary, as defined by the Applicant, at the ASI.
- 4.14.45. I understand that the Trust's survey, while identifying a slightly different boundary position also shows the discharge point within land controlled by the Applicant. The Trust did not make a further submission to the Examination on this matter following the receipt of the Applicant's survey and the viewing at the ASI.
- 4.14.46. The Applicant advised that groundwater flows in a southerly direction from the swallow hole. The Trust did not dispute this but alleged that the Applicant has no rights to discharge groundwater beneath its land. Further, if the Proposed Development is permitted, that it would monitor the flows and take any action to prevent unlawful discharges [REP5-013 Q9.2].
- 4.14.47. The Applicant considers that no express legal rights are required for this discharge because the discharge point is wholly within land under its control and surface water from the western extension land does not need to cross any land owned by the Trust. Even if additional rights were required, the 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 [REP7-015].
- 4.14.48. I sought further information on a number of matters in relation to ALC and soil resources [PD-006 Q9.2.1 to Q9.2.4], to which the Applicant responded [REP2-006]. In summary:
- the pH and calcium carbonate content of the soil taken from the Grade 3a land would be preserved while it is retained for re-use because the carbonate content should not leach or be affected by soil micro-organisms;
  - the time that soils are stockpiled prior to use for restoration would be limited as re-use would be carried out in a phased manner with soil stripped in one phase being used to restore an earlier phase. Stockpiles would nevertheless be required to accommodate any temporary delays. Stockpile management is secured under Requirement 6(1) of the dDCO;
  - there is an existing shortfall in topsoil and subsoil at the site. Therefore, all of the stripped topsoil and subsoil, together with selected overburden, would be used in the restoration; and

- the reference in the ALC assessment to 'insufficient data' to determine the duration and frequency of flooding is based on the criteria used in the ALC guidelines. They require local knowledge of short-term events which was not available in this case.

4.14.49. I also sought clarification on socio-economic matters [PD-006 Q9.3.1 to Q9.3.6] and received responses from the Applicant [REP2-006]. These clarifications can be summarised as:

- support for the Applicant's contention that there is no evidence the existing or proposed operations would affect plant growth or agricultural operations comes from the absence of any concerns from the existing landowner, other nearby farm businesses or the Forestry Commission;
- the Applicant's use of local services and suppliers and support for educational establishments is a long-standing practice which it intends to continue, but would not be secured through the DCO;
- equality, diversity and inclusion considerations have been taken into account by reference to the analysis of census information which shows that the health profile of the population area is at or above the national average and that the area does not experience a high level of deprivation. Having regard also to the site's rural setting, the Applicant considers that the local population is unlikely to experience disproportionate socio-economic effects or differential health effects. The detailed design of the green space created following restoration would be controlled by DCO Requirement 4 at which time equality, diversity and inclusion considerations would be taken into account; and
- public access to the restored site would be secured by an amendment to Requirement 4 of the dDCO [REP3-004] to make it clear that public access would be permitted for the 20-year aftercare period, and that the Applicant would have an on-going responsibility for the site until the EPs are surrendered.

### **Conclusions**

4.14.50. There is no evidence of a shortage of Grade 3 land in Northamptonshire or evidence that the Proposed Development would adversely affect the wider existing farm operation. Nevertheless, the Proposed Development would result in the loss of some 5.9ha of BMV agricultural land. To that extent, the proposal would not accord with NPSHW paragraphs 5.10.6 and 5.10.13 insofar as they set out a preference for the use of poorer quality agricultural land. However, the use of the BMV arises from the location of the western extension land adjoining the ENRMF and I found in Section 4.5 that there are sustainability and operational benefits from this co-location. Nevertheless, I agree with the Applicant that the loss of the BMV land would be of moderate adverse significance.

4.14.51. With the soil handling and management mitigation measures in place, which can be secured through Requirement 6 of the dDCO, I am satisfied the Proposed Development would not have an adverse effect



on soil resources. As such it would accord with NPSHW paragraph 5.10.6 in as much as it seeks to protect soil resources.

- 4.14.52. I concluded in Section 4.5 of this report that, at the national / regional level, there is a need for the Proposed Development in accordance with the NPSHW. It would offer nationally significant economic benefits in meeting the need for hazardous waste disposal and treatment and disposal of LLW. This would overcome the tension with MWLP Policy 10 regarding the absence of a County-level need to extend the ENRMF.
- 4.14.53. As NNC recognises in its SoCG [REP8-008 Appendix B], the proposal would make suitable use of the clay extracted from the site. To that extent, the proposal would meet the aim of NPSHW paragraph 5.10.7 to safeguard mineral resources.
- 4.14.54. Locally, there has been notably little opposition to the Proposed Development and no evidence to suggest that the existing ENRMF has had an adverse effect on local services and businesses, the housing market, tourism, agriculture or forestry. There is limited firm evidence on the effect of the Proposed Development on these sectors. However, the nature of the proposed operations would not materially change, it would continue to be subject to EP controls and there is nothing to suggest that the increased scale and duration of the activity would adversely affect these sectors. The proposal would also help to support around 23 jobs locally.
- 4.14.55. The Applicant has stated that it would contribute funding to community projects through the Landfill Tax scheme during the operation of the Proposed Development. Quantifying the value of the support for local services and suppliers is difficult and such support would not be secured through the DCO. While this limits the weight to be attached to the claimed benefits, there is no reason to expect the Applicant would not continue to provide such support and it would amount to a material benefit.
- 4.14.56. There is no existing open space in the vicinity of the site which would be directly affected by the Proposed Development. Other green infrastructure includes a network of PRowS. None of these routes would be altered as a result of the proposal. I consider its effects on users of the routes in terms of views under the heading of 'Landscape and Visual' in Section 4.13 and noise in Section 4.15. Following restoration, the Proposed Development would provide a publicly accessible green space which would be considerably larger than the space offered under the existing DCO restoration scheme. I consider that this would amount to a meaningful additional benefit to the local community which is supported by NPSHW paragraph 5.10.1, Policy 24 of the MWLP and Policy 4 of the RNOTLP.
- 4.14.57. The s106 Agreement contribution to highways maintenance is intended to mitigate the effect of the proposal on the local highway network and I have already found that the Community Fund

contribution should not be taken into account. The s106 Agreement does not, therefore provide a benefit in favour of the Proposed Development.

- 4.14.58. Nevertheless, overall, I find that the proposal would have moderate beneficial socio-economic effects locally and that this would offset its adverse effect on agricultural land.
- 4.14.59. With regard to the issues arising from the relationship of the Proposed Development with neighbouring occupiers, I recognise that the Trust has outstanding concerns. However, the available evidence suggests that the proposed surface water discharge to the swallow hole would be located on land under the Applicant's control. I deal with the water environment in Section 4.18 where I find that discharges from the Proposed Development would not have significant adverse effects on surface water or groundwater flows or quality. The discharge to the swallow hole would also be subject to the consent of the EA under the EP regime.
- 4.14.60. In my view, any further concerns regarding the Applicant's rights and obligations in relation to the discharge of surface water to ground and its impact on the Trust's land are matters outside the scope of this report, and any outstanding issues on this point should be resolved between the parties independently.
- 4.14.61. Elsewhere in this report, I have found that the Proposed Development would not adversely affect the potential development of the Trust's land to the north of the site for commercial storage (Section 4.8 regarding odour and Section 4.15 regarding noise). The concerns of Mr Fiennes have been resolved. I deal with the concerns regarding AW's water pipelines below at Section 4.16.
- 4.14.62. In the round therefore, I find that the relationship of the Proposed Development with neighbouring occupiers and uses does not weigh against the proposal. As such, it does not conflict with NPSHW paragraph 5.10.3 or MWLP Policy 18 insofar as they require hazardous waste and minerals and waste development to minimise land use conflict.
- 4.14.63. Taking into account the national / regional economic benefits of the Proposed Development, I find that, together, its land-use, soils and socio-economic effects weigh moderately in its favour in the planning balance.

## **4.15. NOISE AND VIBRATION**

### **Introduction**

- 4.15.1. This section deals with the noise and vibration effects of the Proposed Development on human receptors and sensitive areas.

### **Policy Context**

- 4.15.2. Paragraphs 5.11.1 and 5.11.2 of the NPSHW recognise that excessive noise can have impacts on human health and well-being as well as quiet places and biodiversity. Vibration should be dealt with in a similar way.
- 4.15.3. The NPSHW goes on to identify the factors likely to determine noise impact and those which should be considered in the applicant's assessment. These include the noise generating aspects of the development, noise sensitive receptors, the existing noise climate and how it is predicted to change during the phases of the development and times of the day, the effect of such change on noise receptors and mitigation measures. The assessment should be proportionate to the likely noise impact and take into account noise from ancillary activities such as traffic movements (paragraphs 5.11.4 and 5.11.5).
- 4.15.4. The assessment should be based on relevant British Standards (BS) and consultation with the EA and NE and proposal should demonstrate how good design has been used to minimise noise emissions (paragraphs 5.11.6 and 5.11.7). The proposal must accord with the statutory requirements for noise and demonstrate good design in the selection of plant and the use of noise containment measures (NPSHW paragraphs 5.11.8 and 5.11.9).
- 4.15.5. Proposals must avoid significant adverse noise impacts, and mitigate and minimise other impacts, on health and the quality of life (paragraph 5.11.10). The SoS should consider whether Requirements, specific mitigation or other measurable requirements are needed to ensure that noise levels from the proposal do not exceed those assessed (paragraph 5.11.11). Where processes in the development are subject to EPs, the SoS may assume that the necessary controls would be in place, but should still take into account the potential impact from all noise sources (paragraph 5.11.12).
- 4.15.6. Consideration should be given to whether mitigation measures are needed in the construction and operational phases and whether they should be secured by Requirements. Applicants should propose mitigation measures to limit noise impact on amenity (paragraphs 5.11.13 and 5.11.14).
- 4.15.7. Policy 18 of the MWLP requires minerals and waste proposals to, among other things, avoid adverse noise impacts or minimise them to an acceptable level. Policy 8 of the JCS includes similar aims.

### **The Application**

- 4.15.8. Noise and vibration are covered in Chapter 20 of the Applicant's ES [APP-049]. It is supported by:
- Figure ES3.3: Services and public rights of way [APP-053]; and

- Appendix ES20.1: Noise and vibration Impact Assessment [APP-097].

### ***Methodology and Baseline***

- 4.15.9. The ES reports that a noise survey was undertaken in February 2021 using guidance from BS7445-1:2003. Department for Transport (DfT) statistics indicate that traffic levels at that time were around 67% of pre-pandemic levels and, therefore, the ES considers that the baseline noise levels should be regarded as conservative.
- 4.15.10. The assessment of noise and vibration impacts from the operations associated with the Proposed Development was undertaken primarily with reference to BS4142:2014+A1:2019 'Methods for rating and assessing industrial and commercial sound'. Noise from the construction and operation activities was assessed using three-dimensional modelling based on methods set out in Annex F of BS 5228-1:2009+A1:2014 'Code of practice for noise and vibration control on construction and open sites'.
- 4.15.11. The ES and Appendix ES20.1 detail the assumptions and parameters used in the noise assessments. The assessment is based on a worst-case scenario of plant combinations working at the closest point to receptor locations. It predicts the potential highest LAeq,1h (Equivalent Continuous Sound Level (1 hour)) (free-field) noise level to which the receptor may be exposed during the operations at the site over a short period. Four locations considered to be representative of noise sensitive premises around the site were monitored (Westhay Cottages and Farm, Westhay Lodge, Cuckoo Lodge and Duddington village). Observations of the noise climate were also made at three points along Footpaths MX15 and MX13 to the west of the site, the closest of which is some 100m from the site boundary.
- 4.15.12. A noise survey of activities at the existing ENRMF provided representative site-specific sample measurements which were used to estimate noise levels from the Proposed Development during day and night times. Although the existing ENRMF does not operate at night, the gas abstraction plant and generators could be operating.
- 4.15.13. A compliance monitoring survey was also undertaken at Westhay Cottages, the closest noise sensitive location. It found that the noise level was 53dB LAeq,1h which is below the threshold of 55dB LAeq,1h set in the current Noise Management and Monitoring Scheme. The ES also reports that there have been no recorded complaints about noise or vibration from the existing ENRMF in the last 5 years.
- 4.15.14. In the event that the Proposed Development does not proceed, the ES expects that existing noise from the ENRMF would continue unchanged until 2026.

## ***Assessment of Effects***

### Operational Effects

- 4.15.15. The ES advises that the initial worst-case estimate of noise impact shows that the noise rating level would be likely to be no more than 3dB above the daytime background noise level, depending on the assessment location. Night-time rating levels are estimated to be at least 4dB below the background noise level. BS4142 states that a difference of around +5dB is likely to be an indication of a significant impact, depending on the context. The ES considers that the following matters should be considered in this regard:
- the most significant noise sources operate during the daytime when there would be a lower likelihood of adverse impact compared to the more sensitive night-time period;
  - absolute noise levels from site operations are expected to remain within the noise limits specified within the existing noise management and monitoring scheme. This scheme has been reviewed and updated for the Proposed Development (see Noise and Vibration Management Plan at DEC Appendix DEC L [REP7-008] secured under dDCO Requirement 5). External worst-case rating levels in the region of 30 - 48 dB could be experienced at noise sensitive premises in the vicinity of the Proposed Development. This equates to internal sound levels of less than 35 dB during the daytime and 30dB during the night-time (with windows open) and suggests that there would be unlikely to be any significant adverse effects on residential occupiers within their homes or using private external amenity areas during the daytime;
  - the character of the proposed sound has been assessed and it is considered that any acoustic features would not increase the significance of noise impact. Such features would be minimised through the implementation of the Noise and Vibration Management Plan (DEC Appendix DEC L [REP7-008] secured under dDCO Requirement 5);
  - predicted noise levels are worst-case scenarios that would occur for relatively short periods; and
  - the Proposed Development would move some operations further west and therefore away from the nearest noise sensitive receptors which are to the east of the site.
- 4.15.16. The ES also considers that uncertainty in the assessment has been minimised through the use of good practice and because the existing site is in operation and so there is reasonable certainty about the nature and noise generating potential of the proposed activities.
- 4.15.17. The ES concludes that, with the mitigation provided by the Noise and Vibration Management Plan, the operational phase of the proposal would not result in any adverse or significant adverse impacts as defined by BS4142. The ES refers to the Government's 'Guidance on

the planning for mineral extraction' which advises that the noise from minerals sites should not exceed the daytime background level by more than 10 dB or the maximums of 55 dB during the day and 42 dB during the night. It considers that the Proposed Development has many similarities with minerals operations and, on this basis, its noise effects are not likely to be significant.

- 4.15.18. Reference is also made to the noise exposure hierarchy in the PPG for Noise. The ES considers that noise at the most affected noise-sensitive premises would be likely to be occasionally present but not intrusive and therefore at or below the Lowest Observed Adverse Effect Level (LOAEL).

#### Construction Phase

- 4.15.19. The ES considers that the construction phase should not be considered as separate from the operation phase as the operations required for both would be sequential and take place concurrently in different phases of the site as the development proceeds. As such, the calculated noise levels take into account both construction and operational activities. These noise levels would be well within the recommended threshold values for construction noise set out in Annex E.3.2 of BS 5228-1.

#### Road Traffic and Vibration

- 4.15.20. The ES advises that a change in road traffic noise of 1 dB equates to a 25% increase in flow and is considered to be just perceptible. The proposal would result in an 18% increase in HGV movements (see Traffic and Transport at Section 4.17) and, therefore, noise from this source is considered to be not significant.
- 4.15.21. The ES reports that Road Transport Laboratory research indicates that people's reaction to vibration from traffic is similar to, but less marked than, their reaction to noise. It follows that, if the increase in noise from a development is acceptable, so would be the effect on any vehicle induced vibration.
- 4.15.22. The closest potential receptors to traffic noise associated with the site are Westhay Cottages which are located opposite the site entrance and set back some 12m from Stamford Road. The ES considers this distance to be a reasonable buffer. Further, the surface of Stamford Road between the site entrance and the A47 junction to the north is well maintained, and would continue to be so as a result of the highways contribution in the s106 Agreement (see Section 4.14). HGVs would be prevented from turning south out of the site entrance under the terms of the Traffic Management Plan (DEC Appendix DEC K [REP7-008] secured under dDCO Requirement 11). The ES concludes that the road traffic noise and vibration effects of the Proposed Development would not be significant.

### Public Rights of Way and Area of Tranquillity

- 4.15.23. The ES advises that there are no numerical threshold values to guide the assessment of noise impacts on public amenity areas. The observed character of the noise environment at the three footpath monitoring locations to the west of the site (see ES Figure ES3.3 [APP-053]) included audible road traffic noise and birdsong at all locations with activities at Collyweston Quarry or the existing ENRMF site also audible depending on the location.
- 4.15.24. The Proposed Development would bring activity further west and, therefore, closer to these footpaths. Nevertheless, a minimum 100m separation distance would remain and the ES considers that the continued use of best practice would minimise potential adverse impacts. Although the noise level from the site may increase during certain stages of the Proposed Development, the ES considers that the character of the acoustic environment along the footpaths and in the Area of Tranquillity would remain largely unchanged.

### ***Mitigation***

- 4.15.25. Mitigation measures in the Noise and Vibration Management Plan include:
- strictly adhering to permitted operating hours;
  - ensuring that machinery is well maintained and fitted with exhaust silencers;
  - monitoring and maintaining vehicle routes through the site;
  - avoiding unnecessary use of horns, revving of engines and rapid acceleration and braking;
  - switching off or throttling down equipment when not required;
  - regularly inspecting and repairing cladding or enclosures around noise-generating plant;
  - minimising the drop heights of materials as far as possible;
  - as far as reasonably practicable, locating and orientating equipment to minimise its effect on noise sensitive receptors;
  - starting plant and equipment sequentially and ensuring that any required period of warm-up idling takes place away from noise-sensitive receptors where reasonably practicable;
  - ensuring that any necessary emergency or unforeseen work is completed as quickly and quietly as possible; and
  - training operatives in techniques to keep site noise to a minimum.
- 4.15.26. The Noise and Vibration Management Plan would be secured under Requirement 5 of the dDCO.

### Cumulative Effects

- 4.15.27. Collyweston Quarry is located some 500m west of the western extension. Duddington Village and Cuckoo Lodge are noise sensitive receptors which could be potentially affected by the operations at the Proposed Development and Collyweston Quarry. The worst-case external noise levels associated with the Proposed Development are estimated to be around 30 dB LAeq,1h (free-field) at residential premises on the east side of the village and up to 38 dB at Cuckoo Lodge. These noise levels are estimated to be at least 13 dB below the typical daytime background sound levels. As such, the ES finds that they would make no significant contribution to the cumulative noise effects of the operation of Collyweston Quarry and the ENRMF.
- 4.15.28. With regard to footpath MX15, the ES advises that, due to its routing, the noise effects from the Proposed Development and Colleyweston Quarry would be experienced independently, rather than cumulatively.

### **Issues in the Examination**

- 4.15.29. The Trust expressed concern regarding the noise and vibration impacts of the Proposed Development, particularly on its land to the north of the site which it is seeking to develop as a commercial storage site and on woodland fauna [RR-015, REP2-033, REP5-013]. No technical evidence was submitted in support of its concerns. The matter was discussed at ISH [EV4-000] and responses were received from the Applicant [REP3-010, REP4-007] and NNC [REP4-012].
- 4.15.30. The Applicant advised that the site of the proposed storage facility is between 175m and 700m from the nearest boundary with the western extension. These distances, together with air noise absorption, ground effects, the topography and building façades would result in significant reductions in the sound levels reaching site occupiers. Moreover, the proposed use would not be particularly noise sensitive, operations at the phases nearest the Trust site would be relatively short term and noise mitigation measures would be put in place. The Council's EHO considered it unlikely that noise from the Proposed Development would impact on the Trust's site.
- 4.15.31. I sought clarification on a number of matters relating to noise and vibration [PD2-006 Q101.1 to Q10.2.3] and the Applicant responded [REP2-006]. In summary:
- neither the PPG for Noise nor the Noise Policy Statement for England define LOAEL in numerical terms. The Applicant applied professional judgement in concluding that the nearest noise sensitive receptors would experience noise at or below this level having regard to the nature of the proposal, predicted absolute noise levels and their acoustic character, comparison with background noise levels and the overall context;



- the Applicant's statement that a 1 dB change in road traffic noise equates to a 25% increase in traffic flow was derived from Design Manual for Roads and Bridges HD213/11. Although this has been superseded by LA111, the Applicant argues that the underlying principle and the formula used in the prediction remain valid;
- the noise thresholds for construction activities used in the ES are taken from BS 5228-1 Annex E3.2 (ABC method). They apply to 'open sites' which is defined to include quarries, mineral extraction sites and opencast coal sites. On this basis, the Applicant considers that waste disposal sites can be treated as 'open sites'. It accepts that the ABC method is more applicable to works with a shorter duration than the 20-year lifespan of the Proposed Development and, therefore, that more weight should be given to the assessment under BS4142. That said, BS5228 does indicate that a limit of 55 dB LAeq 1hr should be used for daytime operations likely to occur for more than six months. The predicted noise levels at the Proposed Development fall below this threshold;
- the characterisation (in ES Appendix ES20.1) of sources of vibration at the site as 'fairly low in intensity' and 'localised' is based on the advice in BS5228-2:2009+A1:2014. The key sources of vibration associated with construction activity and mineral working (vibratory compaction, percussive and vibratory piling, drilling, boring and blasting) would not be undertaken as part of the Proposed Development. Data collated by the Applicant's noise and vibration consultant indicates that vibration from the types of mobile plant activity which would occur at the site dissipates over distances shorter than the distance between the proposed activity and the nearest residential receptors. On this basis, the Applicant considered a detailed assessment of vibration impacts was not necessary; and
- the Applicant clarified that its complaints procedure is controlled under the EP, rather than the DEC, and submitted a copy of its complaints procedure to the Examination [REP2-022].

### **Conclusions**

- 4.15.32. The Applicant has undertaken noise assessments for the construction and operational phases of the development. I agree that the nature of the Proposed Development means that these phases would overlap in practice. Having regard to the responses received to my questions, I am content that the noise and vibration assessments are satisfactory and accord with paragraphs 5.11.4, 5.11.5, 5.11.7 and 5.11.9 of the NPSHW.
- 4.15.33. While the Trust remains concerned about noise and vibration impacts on its proposed commercial storage site, the available evidence firmly indicates that there would be little or no adverse effect. Nor is there any substantive evidence to show that noise from the Proposed Development would adversely affect fauna in the wooded area to the north of the site. The SoCG with NE reflects this finding.

- 4.15.34. Indeed, the SoCGs with NNC and NE [REP8-008 Appendices B and D respectively] agree that the proposal would not result in significant noise effects on protected species or on noise sensitive locations, including the Area of Tranquillity. As such, the Proposed Development would accord with NPSHW paragraph 5.11.2. That said, I conclude in Section 4.13 that the Proposed Development would adversely affect the landscape of the northern part of the western extension which is within the Area of Tranquillity.
- 4.15.35. A Noise and Vibration Mitigation Plan would be secured under the dDCO as required by NPSHW paragraphs 5.11.13 and 5.11.14. With this Plan in place, I agree with the Applicant's assessment that neither the proposed on-site construction and operational activities or associated traffic movements would result in significant adverse noise or vibration effects on human receptors. As such, the proposal would accord with paragraph 5.11.1 of the NPSHW and with Policy 18 of the MWLP and Policy 8 of the JCS. Consequently, this matter has a neutral weighting in the planning balance.

## **4.16. SAFETY AND SECURITY**

### **Introduction**

- 4.16.1. This section deals with safety and security related matters including military aviation interests, as required by the NPSHW, and major accidents and disasters as required under Schedule 4 of the EIA Regs. It, therefore, includes consideration of the Spring 2020 pollution incident at the site and AW's concerns regarding the effect of the Proposed Development on its pipelines. The effect of the Proposed Development on human health, including a range of accident scenarios, is covered in Section 4.12 of this report.

### **Policy Context**

- 4.16.2. The applicant is expected to liaise with the HSE on matters relating to safety. The HSE is responsible for enforcing a range of health and safety legislation applying to hazardous waste infrastructure (NPSHW paragraph 4.8.1).
- 4.16.3. Paragraph 5.4.2 of the NPSHW advises that it is essential that the safety of UK aerodromes, aircraft and airspace is not adversely affected by new hazardous waste infrastructure. Paragraph 5.4.6 refers to military Low Flying Zones which cover the whole of the UK and the potential of hazardous waste infrastructure to cause obstructions in low flying areas.
- 4.16.4. The applicant should assess potential construction and operational phase effects on military assets, including consultation with relevant bodies (paragraphs 5.4.10 to 5.4.12). The proposal should be designed to minimise adverse impacts on the operation and safety of aerodromes and reasonable mitigation should be put in place (paragraph 5.4.14).

- 4.16.5. Policy 18 of the MWLP requires minerals and waste proposals to address, among other things, bird-strike and Policy 23 requires them to build in safety and security.

### **The Application**

- 4.16.6. Major accidents and disasters are covered in Chapter 24 of the ES [APP-049]. There are no supporting figures or appendices for this chapter. It does, however, refer to Chapters 11 and 12 which review the risks and impacts from possible accidents associated with the man-made and natural environments at and around the site. In turn, Chapter 11 advises that the full and detailed risk assessments would be undertaken as part of the EP process and scrutinised by the EA. I have already concluded that it is appropriate to take into account the assessments, controls and mitigation measures which would be provided through the EP regime.
- 4.16.7. Chapter 24 of the ES goes on to identify as a potential major accident hazard the mains gas pipeline which runs parallel to the southern boundary of the existing ENRMF and crosses the southern section of the western extension. It would not be diverted and access to it would be maintained. A minimum easement distance of 6m has been agreed with the pipeline authority. The ES reports that the existing ENRMF has operated within the same easement distance to the north of the gas pipeline for many years and considers that there would be a limited major accident risk associated with the gas pipeline.
- 4.16.8. The ES concludes that the site location is not considered potentially vulnerable to major natural hazards such as severe earthquakes, tsunamis, avalanches or natural events such as drought, flooding and sea level rises. As such, it considers that no further assessment of these aspects is necessary.

### **Issues in the Examination**

#### Military Assets

- 4.16.9. The site is within 1km of the airfield boundary of RAF Wittering. The Defence Infrastructure Organisation (DIO) (acting for the MoD) expressed concern regarding the potential for the Proposed Development to increase the risk of bird-strike at the airfield [RR-005]. The Applicant discussed this concern with the DIO at the pre-application stage and during the Examination [REP2-005 Table 4]. This resulted in an agreed position being reached by exchange of correspondence [REP8-008 Appendix I]. This correspondence confirms that the revised Bird Hazard Management Plan (see final version of the DEC Annex I2 [REP7-008]) addresses the DIO's concern regarding the potential for bird-strike. The Plan is secured through dDCO Requirement 6(2). Furthermore, the correspondence confirms that the DIO has no other concerns regarding the effect of the Proposed Development on RAF Wittering.

4.16.10. The ES confirmed the presence of a short section of redundant and closed out MoD pipeline located in the northern part of the western extension land. In response to my question [PD-006 Q11.1.3] the Applicant reported [REP2-006 and REP-019] that the DIO confirmed that the pipelines had been declared redundant by the MoD and can be removed.

#### Pollution Incident

4.16.11. The Trust raised concerns about a pollution incident in Spring 2020 which affected its land [RR-008, RR-015, REP2-33]. It advised that the surface water management system at the existing facility flooded and contaminated water flowed on to the Trust's land causing chloride pollution and the destruction of vegetation. The concern was heightened by the presence of a SSSI on the Trust's land. It further alleged that the Applicant had not sought to clean up or remediate the pollution. The Trust considered that the incident calls into question the Applicant's fitness to operate the site.

4.16.12. Exchanges between the Trust and the Applicant suggest that there had been some miscommunication between them over gaining access to the land following the incident.

4.16.13. The matter was the subject of a written question [PD-006 Q14.1] was discussed at ISH2 [EV4-000, REP4-007, REP4-015] and the site of the incident was viewed at the ASI [EV3-002]. The Applicant's responses [REP2-005, REP2-006, REP4-007] attribute the incident to a combination of extreme rainfall events and fine material building up on an unsurfaced haul road to the north of the waste treatment and recovery facility. This caused the mobilisation of the fine material onto the adjoining Trust land. The Applicant also considers that the Trust land was, itself, flooded which contributed to the spread of the mobilised material. The incident resulted in elevated levels of chloride in local groundwater, soil contaminated with chloride and localised damage to coarse grassland and scrub.

4.16.14. The Applicant undertook soil sampling following the incident (see Appendix 3 of [REP2-33]) which found that, in August 2021, none of the samples collected returned results above the UK soil guideline values for public open space, albeit that there are no soil guideline values for chloride. It also reported that the area has recovered significantly and I saw on the ASI that, while the after-effects of the incident were still apparent, regrowth of vegetation had occurred.

4.16.15. The Applicant has responded to the incident by installing a concrete haul road with 300mm upstands to contain surface water, which then discharges to a drainage sump. Secondary containment in the form of an interceptor drain and a clay bund at the northern edge of the road has also been installed. The Applicant also reports that flood storage capacity at the waste treatment and recovery facility has been reviewed along with site inspection and maintenance and management procedures.

- 4.16.16. At ISH2, the EA confirmed that the actions taken by the Applicant provided “*assurance that all possible steps are being taken to prevent another incident*” [REP4-015]. The matter was not raised as a concern by NE or NNC.

#### Water Pipelines

- 4.16.17. Section 2.4 of this report identifies the concerns of AW regarding the effect of the Proposed Development on its pipelines and reviews the Applicant’s response, which took the form of a request for a non-material change to the application. I concluded in that section that the change was non-material and in Sections 4.9 and 4.13 respectively that the change would not result in any additional significant biodiversity or landscape and visual effects.
- 4.16.18. AW’s concerns were considered extensively during the Examination. The matter was discussed at ISH2 [REP4-007, REP4-013, REP4-014], ISH3 [EV4-010, REP6-010, REP6-019], raised in written questions [PD-010 Q8.1 to Q8.4, REP5-004, REP5-011] and was the subject of other written submissions from the Applicant [REP5-005, REP5-006, REP5-007, REP5-008, REP7-012, REP7-013]. As set out at Section 2.4 of this report the Applicant also submitted extensive documentation in support of the change request.
- 4.16.19. In essence, AW’s concern was that the initially proposed stand-off distance of 7m between its twin pipelines and the fence line adjoining the landfill cells was insufficient to prevent an unacceptable risk of damage to the pipelines. The construction of the landfill cells could damage the pipelines as a result of physical or chemical changes to soil and groundwater conditions and additional stress on the pipelines from excavation works and vehicle crossings.
- 4.16.20. AW advised that the pipelines serve a population of some 80,000 and any failure would have very serious consequences for the water supply. An uncontrolled burst could also lead to localised destruction, including to the other pipeline and adjoining landfill cells, mobilising contaminants and leading to contamination of the water supply. AW also considered that the sloping landform on both sides of the service corridor would contain the released water, cause local flooding and hamper access to the pipelines. AW’s preferred solution was the diversion of the pipelines around the area of the Proposed Development. It presented three route options, none of which were acceptable to the Applicant. AW also considered that the Applicant’s assessment of the effect of the proposal on its pipelines had not been addressed in the Applicant’s ES [REP5-011].
- 4.16.21. The Applicant’s submissions in support of the change request include a Supplementary ES [AS-21], a Pipeline Risk Assessment (PRA) [AS-025] and a Pipeline Engineering Assessment [AS-026]. The Supplementary ES refers to the PRA and concludes that there would be no significant environmental risks associated with the presence of

the pipelines and no need to assess the matter under the 'major accidents and disasters' topic heading.

- 4.16.22. The PRA considers risk assessments for the calculated crater diameter following a catastrophic failure event and the stand-off distance needed so that there is no effect from the landfill activities on the structural integrity of the pipes. It finds that both are less (that is, shorter) than the distance identified as necessary for access for repair purposes. It estimates that the space needed for access ranges from 8.5m to 20m to the side of each pipe and, as such, the maximum distance likely to be necessary would be 20m.
- 4.16.23. Direct discussion between the Applicant and AW took place following the Applicant's change request submissions. The outcome was that a stand-off distance of 20m and corresponding Protective Provisions (PP) were agreed (SoCG at [REP8-008 Appendix K]). The stand-off distance is set out in the boundary standoff design parameters (Figure DEC B1 and Table DEC B1 of the DEC [REP7-008]) and secured by Requirement 3(1) of the dDCO.
- 4.16.24. However, at that stage, there was no agreement regarding the distance between the water pipeline and the WPD diverted electricity cable which would run in the same service corridor (Work No 5). The ExA issued a Rule 17 request for further information [PD-016] and the Applicant responded. The Applicant's response confirms that WPD agreed to separation distances of 3.5m between its electricity cable and (a) the water lines and (b) the fence line [email dated 25 July 2022 attached to REP8-010].
- 4.16.25. Notwithstanding that agreement, and AWs agreement to the stand-off distance between the water pipelines and the fence line, agreement was not reached with AW regarding the distance between its water pipelines and the diverted electricity line. AW sought a distance of 19m unless detailed design information justified a shorter distance. That work had not been undertaken at the close of the Examination [REP8-010]. The Applicant considers that a distance of 16.5m between the water pipelines and the electricity cable would be sufficient and the PPs for AW allows for such a distance to be agreed [REP8-003 Schedule 6, Part 1, clause 4]. In that case, all the works could be accommodated within the 20m water pipeline stand-off distance.
- 4.16.26. In the event that AW does not agree a distance of 16.5m or less between its pipelines and the electricity cable, a greater distance could be accommodated within the terms of the current controls in the dDCO. The Works Plan [AS-008] and the Restoration Profile Contour Plan [AS-010] allow for a 30m distance between the water pipeline and the fence line to the north. The Applicant considers that both AW's and WPD's separation distances could be achieved within these parameters. Requirement 3 of the dDCO [REP8-003] requires the Proposed Development to be carried out in accordance with the Works Plan and the Restoration Profile Contour Plan.

### Other Matters

- 4.16.27. I raised two further concerns regarding safety and security [PD-006 Q11.1.1 and Q11.2.1], to which the Applicant responded [REP2-006]. In brief, the Applicant confirmed that:
- by virtue of the nature of the proposed operations and the type and volume of hazardous substances to be treated pending landfill, the thresholds for requiring a Hazardous Substance Consent under the Planning (Hazardous Substances) Regulations 2015 would not be reached; and
  - the nature of the chemical and radio-active material accepted at the site do not represent a national security issue and therefore DEFRA and the Centre for the Protection of National Infrastructure were not consulted regarding the potential national security implications of the proposal. Northamptonshire Police has confirmed that the site security details for the Proposed Development would be acceptable.

### **Conclusions**

- 4.16.28. At the end of the Examination the DIO had confirmed that it was satisfied that the Proposed Development would not pose an unacceptable risk to military aviation or other military assets. I have no reason to doubt that position and there is nothing to suggest that the Proposed Development would pose a risk to civilian aviation.
- 4.16.29. The pollution of the Trust's land was triggered by a particular set of circumstances and the Applicant has taken a range of actions to prevent a repeat of the incident. These include works to the haul road in question and the drainage system which I saw on the ASI. The Applicant has also reviewed its operating procedures. The EA is content that the measures are appropriate and I see no reason to disagree.
- 4.16.30. Partly as a result of the exchanges during the Examination, the Trust and the Applicant appear to be in communication which should lead to the parties agreeing any further necessary remedial works on the Trust's land. As such, I find that the incident, while unsatisfactory, was isolated and does not throw substantive doubt on the fitness of the Applicant to operate the site.
- 4.16.31. The potential for the Proposed Development to pose a risk to infrastructure assets, particular AW's pipelines was thoroughly explored during the Examination. Like AW, I am content that the Applicant's additional submissions, specifically the PRA, demonstrate that, with the requisite stand-off distances in place, the Proposed Development would not pose a risk to the water pipelines or the diverted electricity cable.
- 4.16.32. Although the exact distance required between the water pipelines and the electricity cable was not fully agreed, the control mechanisms within the dDCO allow for the requirements of both statutory

undertakers (SU) to be accommodated. While this may result in the distance between the water pipelines and the fence line to the north exceeding 20m, it would not exceed the 30m distance that the Supplementary ES [AS-021] and Supplementary LVIA [AS-028] have considered and assessed would not lead to any additional significant environmental effects. The exact stand-off distance would be established as part of the approval of details secured under Requirement 3 of the dDCO.

- 4.16.33. Consequently, I find that the Proposed Development could be constructed under the terms of the dDCO without posing an unacceptable risk to the safety of infrastructure assets or leading to likely significant environmental or 'major accidents and disasters' effects. The terms of the dDCO would also allow the stand-off requirements of AW and WPD to be accommodated.
- 4.16.34. There is no substantive evidence to indicate that the Proposed Development would be unduly vulnerable to other safety concerns or that it would pose an undue risk to the safety of the local environment or neighbouring occupiers, assets and operations. The mitigation measures necessary to achieve this would be secured through the varied EPs and the provisions of the DEC (including the boundary design principles, the Surface Water Management Plan (SWMP) and the bird hazard management plan) which, in turn, are secured through the Requirements in the DCO.
- 4.16.35. Overall therefore, I find that the Proposed Development accords with the NPSHW paragraphs 5.4.2, 5.4.6, 5.4.10 to 5.4.12 and 5.4.14 and the relevant provisions of Policies 18 and 23 of the MWLP. As such, safety and security matters weigh neither for nor against the proposal in the planning balance.

## **4.17. TRAFFIC AND TRANSPORT**

### **Introduction**

- 4.17.1. This section deals with the traffic and transport effects of the Proposed Development. It covers changes to traffic flows during the construction and operational phases, the requirements for sustainable travel and localised impacts (eg mud on the road). Noise and disturbance from traffic is dealt with in Section 4.15 and impact on air quality in Section 4.8.

### **Policy Context**

- 4.17.2. Where a proposal is likely to have significant transport implications, the applicant's ES should include a transport assessment, using the NATA/WebTAG methodology. The assessment should be informed by consultation with appropriate bodies. It should illustrate accessibility to the site by all modes and the likely modal split of journeys to and from the site and provide details of proposed measures to improve access by public transport, walking and cycling. Applicants should also demonstrate how hazardous wastes which may present a



significant risk during transportation would be managed (NPSHW paragraph 5.13.2).

- 4.17.3. Consideration should be given to mitigation where the proposal would result in substantial impacts on surrounding transport infrastructure. The use of planning obligations for funding infrastructure and otherwise mitigating adverse impacts should be considered (paragraph 5.13.4). Where there is likely to be substantial HGV traffic, consideration should be given to, among other things, control of the number of movements in a specified period and the routing of movements (paragraph 5.13.9).
- 4.17.4. Policy 18 of the MWLP requires minerals and waste development to ensure sustainable, safe and environmentally acceptable access. Policy 19 requires such development to seek to minimise transport movements and maximise the use of sustainable or alternative transport modes. It should be well placed to serve its intended markets or catchment areas in order to minimise transport distances and movements.

### **The Application**

- 4.17.5. Transport and traffic is dealt with in Chapter 19 of the Applicant's ES. It is supported by Appendix ES19.1 Transport Assessment (TA) [APP-096].

### Methodology and Baseline

- 4.17.6. The ES reports that the scope and methodology of the TA was agreed with Northamptonshire County Council highways department (NCCH) and Highways England (now National Highways). The s106 Agreement attached to the original Order prevents HGVs turning south from the site access and, therefore, these movements were scoped out of the TA. The Traffic Management Plan for the Proposed Development [REP7-008 Appendix DEC K] and Requirement 11 of the dDCO would also prevent movements south from the site, except for local deliveries.
- 4.17.7. HGV movements at the site comprise the delivery of wastes to the waste treatment and landfill facilities, the removal of treated waste for recovery or disposal elsewhere and the removal of excavated clay and overburden for use elsewhere. Personnel working at, or visiting, the site use cars or light goods vehicles.
- 4.17.8. The calculation of HGV movements is based on information taken from the 2012 assessment for the original Order, site operational data from 2019 and estimates based on the proposed increase in the throughput of waste and the removal of clay overburden and treated waste. The calculation finds that the Proposed Development would lead to an increase of 36 HGV movements per day compared with the 2012 assessment. Given this limited increase in traffic movements, it was agreed in the scoping consultation that it was not necessary to

carry out junction capacity assessments or a detailed assessment of the road network.

- 4.17.9. The ES describes the surrounding road network noting:
- the access to the haulage yard and warehousing operation on the east side of Stamford Road almost opposite the site access;
  - the junction with the A47 (Collyweston Crossroads) some 1.25km north of the site;
  - the access to the former RAF storage site (this is the site on which the Trust is seeking planning permission for commercial storage) some 500m south of the A47; and
  - that the A47 provides links to the strategic road network to the east (A1(T)) and west (A43).
- 4.17.10. There have been no recorded personal injury accidents on Stamford Road (including the A47 junction) in the last five years. The ES notes two damage only accidents. Five personal injury accidents were recorded at the A47/A43 junction and ten on the A47 to the east of the Stamford Road junction. Using DfT traffic flow data, the ES calculates the accident rates at those locations of 0.00003% and 0.00005% respectively.
- 4.17.11. The part of Stamford Road adjoining the site was re-surfaced in late 2020 and the site access has been widened and improvements made to visibility and drainage.
- 4.17.12. The ES uses 2019<sup>9</sup> vehicle logs to arrive at figures for average daily movements associated with the site of 158 for HGVs and 36 for staff.
- 4.17.13. The transportation of dangerous goods, including products with potentially hazardous properties, as well as hazardous waste and LLW is controlled under the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (as amended). These Regulations require appropriate package design to provide the main element of safety in normal and accident conditions for specified materials and that all drivers must have appropriate training and an appropriate class of licence.
- 4.17.14. The ES advises that the packaging for materials delivered to the site would comply with the Regulations. For hazardous wastes the packaging is typically designed to minimise uncontrolled emissions and can range from sheeting on lorries transporting contaminated soils or filter cakes to double bagged packages for wastes containing asbestos. Wastes in fine powder form such as air pollution control residues are delivered by tanker or in enclosed bags. LLW is normally delivered in enclosed containers such as bulk bags, drums or other containers. Some large items of waste such as metal sheeting may not be transported in containers but would be wrapped.

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<sup>9</sup> Movements in 2020 were considered to be reduced due to the Covid pandemic

Some materials may be unpackaged if the activity levels are low enough.

#### Assessment of Effects

- 4.17.15. The ES advises that the number of HGV movements is not only associated with the delivery of waste to the site. They also arise from the removal of waste treatment residues for recovery or for disposal elsewhere and from the removal of the excavated clay and overburden for use elsewhere. As outlined in paragraph 4.17.8 above the ES calculates that the Proposed Development in the construction and operational phases would result an increase of 36 HGV vehicle movements per day over the 2012 position.
- 4.17.16. The ES reports that the calculated number of trips assessed in the 2012 assessment is higher than the actual vehicle numbers based on the review of the vehicle logs. It considers that this provides confidence that the 2012 forecast methodology was robust.
- 4.17.17. The site operating hours are 0700 to 1730 on weekdays, a 10.5 hour operating period. This yields an average increase in HGV movements of four per hour. NCCH and National Highways were satisfied that the trips associated with the Proposed Development would not result in a severe impact, as defined in the NPPF. It would fall well below the figure of 30 trips in the morning or evening peak hours which Highways England's 'Protocol for Planning Development' identifies as the threshold for assessment of the strategic road network. As such, no further assessment of the highway network was considered necessary.
- 4.17.18. The ES finds that the small number of additional HGV movements predicted is not expected to result in an impact on road safety on Stamford Road or the A47 in the construction and operational phases. Following restoration, a small car park would be provided for visitors to the site. The ES considers that visitor numbers to the restored site would be less than the staff numbers working at the site, including during the operational phase of the Proposed Development, and therefore that the associated traffic impact would be low.
- 4.17.19. In view of the low level of increase in vehicle numbers predicted, the ES considers that there would be no impact on the Area of Tranquillity (designated under JCS Policy 3) as a result of traffic movements.
- 4.17.20. The ES reviews traffic-related complaints received over the last five years (seven in 2020 and two in the first six months of 2021). It reports that complaints about the condition of the road surface have been address by the recent re-surfacing work.
- 4.17.21. With regard to complaints about mud on the road, the ES advises that, on inspection, this is generally dirty water being carried onto the highway network. The Applicant seeks to minimise the potential

for vehicles leaving the site to carry mud onto the highway by operating a three-stage wheel cleaning facility, pressure washers to clean the wheels and chassis of vehicles prior to leaving the site as well as operating a road sweeper which regularly cleans the on-site tarmac surfaced road and Stamford Road. The use of wheel cleaning facilities is secured through the traffic management plan [REP7-008 Appendix DEC K] and dDCO Requirement 13.

- 4.17.22. In response to a complaint about signage, the Applicant has committed to fund additional signs on Stamford Road, although they would need to be provided by the local highway authority.
- 4.17.23. There are no footways, cycleways or bus stops / services within the vicinity of the site. The ES reports that NCCH accepts that, although accessibility to the site by sustainable modes is poor, given the nature of the proposal which is predominantly HGV based, there is no reason for objection on sustainable travel grounds.

#### Mitigation and Monitoring

- 4.17.24. Mitigation measures would comprise the continuation of the routing restrictions to prevent most HGV movements entering and leaving the site from the south together with the continued financial contribution to highways maintenance. The routing restriction would be secured through the Traffic Management Plan [REP7-008 Appendix DEC K] and dDCO Requirement 11. The Traffic Management Plan provides for the maintenance of signage at the site access and supporting CCTV cameras and requires all HGV's leaving the site to use the wheel cleaning facilities.
- 4.17.25. Requirement 13 of the dDCO provides further control over wheel cleaning. A s106 Agreement [REP8-007] requires a financial contribution of £5,000 per year to be used for highway maintenance and improvement of the section of Stamford Road between the site access and the A47 junction.

#### Cumulative Effects

- 4.17.26. The ES finds that there are no other new or planned developments in the vicinity of the site which may result in a cumulative impact on the local highway network. The changes to traffic flows on the A47 as a result of the Proposed Development are substantially below the normal daily variation of 5%. Therefore, any cumulative effect with rises in baseline flows on this road is considered to be negligible.

#### **Issues in the Examination**

- 4.17.27. The Trust was concerned about the impact of additional traffic on the local area [RR-008], although this matter was not included in its subsequent written representations [REP2-003].
- 4.17.28. Kings Cliffe Parish Council considered that an alternative entrance should be put into place to manage the additional vehicle

movements, and the maintenance and cleanliness of the road given the recent near misses and road repairs recently carried out [RR-007]. Stephen Glen expressed concern about mud on the road [RR-014]. Neither of these IPs provided subsequent submissions to the Examination.

- 4.17.29. The Applicant's responses are at [REP2-005]. With regard to the Trust, it refers to the ES TA and its conclusion, shared by NCCH and Highways England, that there would not be a 'severe' impact on the highway network.
- 4.17.30. The Applicant's response to Kings Cliffe Parish Council refers to the recent improvements to the site access and that new signage was installed in early 2022. It also refers to the consideration of alternatives in the ES including a route to the A47 through the wooded area to the north of the site. It considered that such a route would lead to significant ecological effects, have space constraints for the provision of a new reception area and result in long travel distances along haul roads.
- 4.17.31. In response to the issue of mud on the road, the Applicant refers to the wheel cleaning facilities, to the road cleaning and to the improvements to drainage at the site access which, it finds, reduces the potential for tracking silty water onto the highway. The Applicant also considers that the 2012 and current TAs demonstrate that there is not a highway safety issue on Stamford Road. The Applicant's response to Stephen Glen [RR-014] makes similar points.
- 4.17.32. I raised a number of questions on transport and traffic matters [PD-006 Q12.1.1 to Q12.1.5] to which the Applicant responded [REP2-006]. In summary:
- the Applicant's logs of existing vehicles do not record the distribution of movements over times of the day. However, it suggests that movements are generally spread evenly throughout the working day;
  - the figures for HGV movements used in the Applicant's TA [APP-096 Appendix J] appear to contain anomalies between the 2012 and the current assessment. The Applicant advised that the differences can be explained by changes in the average weight of the load carried by each HGV over that period;
  - the figures in Appendix J include HGV movements associated with the removal of clay and overburden in Phases 6 to 11 of the existing ENRMF (60/day, 330/week) and compares them with the predicted figures for the same activity at the western extension (83/day, 455/week); and
  - trip generation figures used in the TA are based on total import and export rates of material from the site, which are then divided into daily figures. There is no restriction on the daily import or export of material and, as such there is the potential for actual daily figures to vary from the calculated average. The logs of

existing vehicles show that the maximum number of daily trips was 214, with an average of 123. This equates to an hourly range of between 20 and 12 trips. However, the TA assumes that there would be an increase in trips in the morning and afternoon peaks which would constitute a worst-case position. Even taking this into account, the effect of the Proposed Development on the highway network was found to be acceptable.

- 4.17.33. NNC did not respond to the questions directed to it, but the SoCG confirms that it is content with the Applicant's assessment of this topic, the Transport Management Plan and the s106 Agreement [REP8-008 Appendix B].

### **Conclusions**

- 4.17.34. The scope, methodology and findings of the Applicant's TA was found to be acceptable by the local and strategic highway authorities. It shows that there would be a relatively small increase in the number of HGV movements to and from the site as a result of the Proposed Development. The number of movements falls below the threshold for requiring a detailed analysis of impacts on the highway network. Nor is there any substantive evidence to demonstrate that the proposal would lead to congestion or pose a significant risk to highway safety. I am satisfied, therefore, the Proposed Development would not lead to a significant adverse effect on the highway network.
- 4.17.35. The Applicant has undertaken improvements to the drainage at the site entrance, makes a financial contribution to the maintenance and improvement of the highway and provides wheel cleaning facilities, the use of which would be required under the DCO. As such, I consider that reasonable measures are in place to ensure the condition and cleanliness of the road.
- 4.17.36. On this basis, I consider that the site access arrangements are suitable for the Proposed Development and that there is no need to provide an alternative access position.
- 4.17.37. Measures to ensure that hazardous waste and LLW is transported safely are set out in legislation. There is nothing to suggest that the Applicant has not complied with these requirements in the operation of the existing ENRMF or that it would not do so when operating the Proposed Development.
- 4.17.38. The Applicant's assessment of sustainable travel options is very limited. However, I recognise that neither the local travel infrastructure nor the nature of the traffic generated at the site lend themselves to achieving a significant shift to more sustainable travel modes. Moreover, I have recognised in Section 4.5 that, given its national and regional catchments, the site is well located with regard to the sources of waste it receives. This helps to minimise travel distances.

- 4.17.39. With the mitigation measures secured through the DCO in place, I find that the proposal would not lead to significant adverse traffic and transport effects. It would, therefore, accord with paragraphs 5.13.2 and 5.13.4 of the NPSHW and Policy 18 of the MWLP. Nor would it be contrary to the sustainable travel aims of Policy 19 of the MWLP. It would also accord with NPSHW paragraph 5.13.9 to the extent that the dDCO would control the routing of HGV movements. However, the total number of HGV movements would not be substantial and therefore would not justify control over the number of movements in a specified period.
- 4.17.40. Traffic and transport matters, therefore, weigh neutrally in the planning balance.

## **4.18. WATER ENVIRONMENT**

### **Introduction**

- 4.18.1. This section covers the effects of the proposal on surface water and groundwater, the proposed surface water drainage scheme and flood risk. It has regard to the requirements of the Water Framework Directive (WFD). Where water-related matters concern human health and safety matters they are covered in Sections 4.12 and 4.16 respectively.

### **Policy Context**

#### Water Quality and Resources

- 4.18.2. Paragraph 5.15.3 of the NPSHW advises on the content of the applicant's ES. It should describe the existing quality of the waters affected by the proposal, the impacts of the proposal and any existing or proposed discharges, existing water resources affected and any impacts on them, the physical characteristics of the water environment, any impacts on water bodies or protected areas under the WFD and source protection zones (SPZs) as well as any cumulative effects.
- 4.18.3. Applicants should also demonstrate the design measures incorporated into the scheme, such as independent water storage and collection facilities and opportunities for the re-use of water. Emergency response procedures to deal with pollution incidents and measures to avoid any adverse effects from accidental spills should be described (paragraph 5.15.4).
- 4.18.4. The NPSHW goes on to re-affirm the relationship between the Examination of DCO applications and the EP regime with regard to pollution control (paragraph 5.15.5). More weight should be given to impacts on the water environment where the proposal would adversely affect the achievement of WFD objectives. Regard should be had to the relevant River Basin Management Plan (RBMP) (paragraph 5.15.7).

- 4.18.5. Consideration should be given to the mitigation measures put forward by the applicant and whether they can be secured through the DCO (paragraph 5.15.8), the use of careful design to reduce impacts on the water environment (paragraph 5.15.10) and the efficient use of water (paragraph 5.15.11).

#### Flood Risk

- 4.18.6. Where, as in this case, the proposal is in Flood Zone 1 (FZ1) (as defined by the EA) and one hectare or more in area, it should be accompanied by a FRA (paragraph 5.7.4). The FRA should consider the risk of all forms of flooding by, and of, the proposal and demonstrate how those risks would be managed and mitigated taking into account the effects of climate change. It should consider the vulnerability of site users, site access, potential cumulative effects, the nature of the hazardous waste and whether there would be an increased risk of pollution or accidents. It should also assess the residual risk after mitigation and consider whether there would be a need to remain operational during a worst-case flood event (paragraph 5.7.5).
- 4.18.7. The NPSHW advises that further guidance on flood risk is available in the technical guidance to the NPPF and highlights the importance of consultation with the EA and other relevant bodies (paragraphs 5.7.6 and 5.7.7).
- 4.18.8. Consideration of the application should include the FRA, the application of the Sequential and Exceptions tests, a sequential approach in directing the most vulnerable uses to areas of lowest flood risk within the site and the use of Sustainable Urban Drainage Systems (SUDS), flood resilience and resistance measures (paragraph 5.7.8).
- 4.18.9. Where construction work has drainage implications, approval for the project's drainage system will form part of any DCO. It should, therefore, comply with the National Standards published under the Flood and Water Management Act 2010. Provision should also be made for maintenance of the SUDS system by the most appropriate body (paragraph 5.7.9).
- 4.18.10. Paragraph 5.7.12 advises that preference should be given to locating projects in FZ1 in accordance with the Sequential Test. In this case the Proposed Development falls within FZ1. Consideration should be given to whether the applicant has made suitable proposals to mitigate flood risk. If necessary, appropriate Requirements should be attached to the DCO.
- 4.18.11. Paragraph 167 of the NPPF sets out broadly similar requirements for the consideration of flood risk and paragraph 169 requires the use of SUDS for major developments. Technical guidance on the assessment of flood risk, including the application of the Sequential



and Exceptions tests, is provided in the PPG 'Flood risk and coastal change'

- 4.18.12. Policy 18 of the MWLP requires proposals for minerals and waste development to consider impacts on flood risk and the flow and quantity of surface and groundwater, among other things.
- 4.18.13. Policy 5 of the JCS requires proposals to avoid high and medium flood risk areas, normally meet a minimum 1% annual probability standard of flood protection with allowances for climate change and incorporate SUDS wherever possible. It also presumes against proposals that would lead to the deterioration of a water body or groundwater or compromise the good status standards of the Anglian River Basin Management Plan.

### **The Application**

- 4.18.14. Water resources is covered in Chapter 17 of the Applicant's ES [APP-049] and flood risk in Chapter 18. They are supported by:
  - Figure ES17.1 The geology at and in the vicinity of the site [APP-067];
  - Figure ES17.2 Geological cross-sections through the proposed western extension [APP-068];
  - Figure ES17.3 Surface water features at and in the vicinity of the site [APP-069];
  - Figure ES17.4 Water resources within 3km of the site [APP-070];
  - Figure ES17.5 Groundwater levels in the vicinity of the current ENRMF [APP-071];
  - Figure ES17.6 Groundwater levels in the vicinity of the proposed western extension [APP-072];
  - Appendix ES17.1 Site Investigation Report [APP-092a];
  - Appendix ES17.2 Abstraction Licences and Private Water Supplies [APP-093];
  - Figure ES18.1 Topographical survey of the proposed western extension area [APP-080];
  - Appendix ES18.1 Flood Map [APP-094]; and
  - Appendix ES18.2 Surface Water Management Plan [APP-095] and final version at [REP7-008 Appendix DEC F].

### **Water Quality and Resources**

#### Methodology

- 4.18.15. The ES sets out the baseline hydrology and hydrogeology of the site and deals with potential indirect effects on human health from water borne contamination, as well as effects on protected areas and water resources. The ES reports that a survey of surface water drainage and an extensive site investigation (SI) of the western extension

were undertaken. The scope of the SI was agreed with the EA and included 27 boreholes. The level of detail in the ES is considered to be appropriate to the consideration of the land use consequences of the Proposed Development.

- 4.18.16. Quantitative hydrogeological risk assessments (QHRAs) were undertaken for the existing landfill EP and the radiological risks to the aqueous environment for the LLW EP. The ES advises that they will be reviewed and updated to include the Proposed Development. It goes on to state that the QHRAs will take into account all existing and proposed waste deposits, are based on well-established models, adopt highly conservative assumptions and consider impacts in the short and the very long terms. The review of the landfill QHRA is at [REP2-009].
- 4.18.17. The Applicant advises that the assessment of groundwater pathways for the migration of radioactive contaminants will use a model implemented specifically for the site and surrounding area and based on GoldSim software. This is said to provide an appropriately flexible modelling framework. The QHRAs would be reviewed regularly and the results submitted to the EA.
- 4.18.18. The ES includes a qualitative assessment of the potential for contaminant migration to surface water and the potential for adverse effects on surface water quality. There is also a qualitative assessment of the potential impacts on groundwater levels, groundwater flows, groundwater resources and flows in nearby watercourses. The assessment includes potential impacts on water dependant features of ecological importance and archaeological features of importance which may be affected by changes in the hydrogeological or hydrological regime of the site.

#### Baseline

- 4.18.19. The ES describes the geology of the site based on information taken from British Geological Survey mapping and the SI. In summary, the geological strata at the western extension includes:
- drift deposits of glacial till overlying the solid geology across a thin strip from east to west in the central section and the south-west corner of the current ENRMF site and across the majority of the southern part of the proposed western extension;
  - solid geology comprising a thin layer of Blisworth Limestone Formation in the south-eastern corner of the current ENRMF site and the northern corner of the proposed western extension;
  - the Blisworth Limestone Formation is underlain by clays and silty clays of the Rutland Formation;
  - limestones and sandstones of the Lincolnshire Limestone Formation, sands, silts and clays of the Grantham Formation and sandstones and siltstones of the Northampton Sand Formation; and

- fossiliferous mudstones and siltstones of the Whitby Mudstone Formation of the Jurassic Lias Group.
- 4.18.20. A Regionally Important Geological Site is located approximately 1.3km to the east north-east of the existing ENRMF and a Local Geological Site approximately 0.5km to the north-west of the proposed western extension. The sites are quarries within the Lincolnshire Limestone Formation and the designations relate to the geological exposures in the quarries. The ES finds that the Proposed Development would not affect these sites.
- 4.18.21. Information on local hydrology is taken from Ordnance Survey mapping and data supplied by the EA and local authorities. The site is in the catchment of the River Nene which flows generally eastwards and is approximately 6km east south-east of the site at its closest point.
- 4.18.22. The operational surface water management system for the existing ENRMF is designed to retain all potentially contaminated surface water on site where it is stored in ponds for re-use. The system is progressing towards the approved post-restoration SWMP which provides for the capped phases to drain to a point in the south-east corner of the existing ENRMF. This discharge is subject to an EP and the water flows through a ditch and stream before outfalling to Willows Brook 2.5km to the south. Willow Brook joins the River Nene approximately 9km south-east of the site.
- 4.18.23. Surface water from the waste treatment and recovery facility hardstanding drains to a sump. Fuel, lubricant and chemical reagents are stored in bunded areas to contain spillage and vehicles are refuelled on areas of hardstanding drained to a collection point or on the engineered landfill area. Foul drainage is to a cesspit which is emptied by tankers.
- 4.18.24. The ES reports that the EA's surface water catchment data explorer website indicates that the majority of the western extension is within the catchment of the Wittering Brook along with the majority of the existing ENRMF site. Only the southern part of the western extension and the southern part of the existing ENRMF site are shown within the catchment of Willow Brook.
- 4.18.25. However, the ES considers that although the western extension land is located on a divide in the surface water catchments, the majority drains to the Willow Brook along with the existing ENRMF site. Based on site observations it considers that run-off from the central area and the southern part of the northern section of the western extension drains, via field drains, drainage ditches and two culverts, to the swallow hole located close to the eastern boundary of the western extension.
- 4.18.26. The ES considers that part of the northern section of the western extension land drains to the east to a drainage ditch running along the western and southern boundaries of Collyweston Great Wood. It

flows to Wittering Brook, then to White Water Brook and ultimately to the River Nene at a distance of some 7.5km. The demarcation of the Willow Brook and Wittering Brook catchments is considered further as an issue in the Examination.

- 4.18.27. In addition to the water bodies at the existing ENRMF, a pond is located adjacent to the south-west corner of the western extension. Three fenced and managed constructed ponds are located to the north of the western extension with the closest approximately 80m from the boundary. Further small ponds are located between approximately 200m and 500m east, west and south of the western extension.
- 4.18.28. The ES reports that there is one licensed and one deregulated surface water abstraction within 3km of the site. However, both are from the River Welland, which is a separate catchment area. An abstraction from the River Nene is located approximately 7km east of the site where water is pumped to Rutland Water for public water supply.
- 4.18.29. In terms of WFD objectives, the site falls within the area covered by the Anglian RBMP. The ES reports that the Willow Brook (Nene) catchment, which includes the tributary of the Willow Brook to the south of the site, was classified by the EA in 2019 as 'Moderate' for ecological quality and 'Fail' for chemical quality with an overall classification of 'Moderate'. The ES states that it understands that the failure of chemical quality relates to a combination of Macrophytes and Phytobenthos and phosphate from a continuous sewage discharge by the water industry.
- 4.18.30. The RBMP predicts that, without the Proposed Development, the ecological quality will remain 'Moderate' up to 2027 having achieved this objective in 2013 and that the predicted chemical quality objective of 'Good' will be reached by 2027 having been 'Good' up to 2016.
- 4.18.31. The Wittering Brook catchment is classified by the EA in 2019 as 'Moderate' for ecological quality and 'Fail' for chemical quality with an overall classification of 'Moderate'. The ES states that it understands that the failure of chemical quality relates to phosphate from point source and diffuse emissions due to poor agricultural and rural land management, transport drainage and continuous sewage discharge. The RBMP predicts that the ecological quality will remain 'Moderate' up to 2027 having achieved this objective in 2009 and that the predicted chemical quality objective of 'Good' will be reached by 2027 having been 'Good' up to 2016.
- 4.18.32. Other than the permitted discharge from the existing ENRMF, there are no permitted water discharges within 500m of the site.
- 4.18.33. The ES considers that there are no water dependent features of ecological importance and no archaeological features of importance

which may be affected by changes in the hydrogeological or hydrological regimes.

- 4.18.34. The ES describes the water bearing characteristics of the geology below the site. It goes on to identify the swallow hole as one of a series of topographic depressions interpreted as dolines that trend east to west approximately 40m to the north of the existing ENRMF and then extend westwards beneath the western extension.
- 4.18.35. The SI found few proven discontinuities greater than 1cm and no discontinuities greater than 10cm, including in the area of the swallow hole and dolines. An electromagnetic induction survey was carried out in the area to the west of the swallow hole and the report found evidence of two areas of high electrical conductivity above the limestone. This suggests vertical structures within the clay which may be acting as sinks in the area of the survey aligned with the approximate location of the swallow hole. A larger area of very high conductivity in the south-west of the survey area was interpreted as relating to drainage.
- 4.18.36. A further small swallow hole feature was identified to the west of the main swallow hole although there was no evidence of surface water run-off entering it.
- 4.18.37. The Blisworth Limestone Formation and Lincolnshire Limestone Formation are designated as Principal aquifers by the EA. The glacial till is designated as a Secondary undifferentiated aquifer and the Rutland Formation is designated a Secondary B aquifer. The Grantham Formation is designated as a Secondary undifferentiated aquifer and the Northampton Sand Formation is designated as a Secondary A Aquifer.
- 4.18.38. The site is not located in a SPZ for public water supply. The closest SPZ is located approximately 2.9km north north-west of the site at the closest point. There is one licensed groundwater abstraction which abstracts from two borehole locations, twelve deregulated groundwater abstraction licences at fifteen locations and six private water supply groundwater abstractions within a 3km radius of the site.
- 4.18.39. Based on groundwater level information provided by the EA, together with groundwater levels recorded at the boreholes at and around the site, the ES considers that the direction of groundwater flow in the Lincolnshire Limestone Formation and Northampton Sand Formation in the vicinity of the site is towards the south generally. It is considered likely to discharge to the River Nene directly or via tributaries.
- 4.18.40. The ES identifies a number of springs and issues within 3km of the site. Based on the general direction of groundwater flow in the vicinity, it considers that the springs to the north-west and north-northwest are located up hydraulic gradient of the site, and the

springs to the south, south-southeast and south-east are down hydraulic gradient. It reports that all other springs and issues are neither up nor down hydraulic gradient of the site in respect of groundwater flow.

- 4.18.41. Groundwater quality at the existing ENRMF is monitored regularly and results reported to the EA. Groundwater quality in the vicinity of the site is classified by the EA under the WFD and presented in the Anglian RBMP. The ES reports that groundwater in the Northampton Sands (Nene Catchment), in which the site is located, was classified as 'Good' in 2019 for quantitative status and 'Poor' for chemical quality with an overall classification of 'Poor'. The reason given for not achieving 'Good' status for chemical quality was poor nutrient management under the agricultural and land management category. The quantitative status and chemical quality objectives for groundwater in the RBMP coincide with the current classifications and they are predicted to remain up to 2027.
- 4.18.42. If the Proposed Development does not proceed, operations at the existing ENRMF would continue to 2026 in accordance with current practices and the site would be restored thereafter. No changes to the surface water or groundwater conditions at the agricultural land forming the western extension are expected.

## **Assessment of Effects**

### ***Water Quality and Resources***

- 4.18.43. The ES reports that discussions with the EA took place during the preparation of the QHRA [REP2-009] submitted with the application to vary the landfill EP. The EA confirmed that, consistent with the status of the existing ENRMF landfill site, the development of the western extension landfill in a similar manner would comply with the EA Groundwater Protection Position Statement in respect of the location of landfill sites.
- 4.18.44. The proposed site containment engineering, including the formation level of the landfill and operations for the landfill site, would be regulated by the EA through the EP regime. The western extension landfill would retain at least a 2m depth of the glacial till or Rutland Formation in-situ above the Lincolnshire Limestone Formation. As with the existing ENRMF landfill, the ES anticipates that the western extension would be above rest groundwater levels and, as such, there would be no need for groundwater management during or post development.
- 4.18.45. The ES considers that the western extension landfill would have no significant impacts on groundwater levels or flows at and in the vicinity of the site. A leachate management system would continue to be operated in order to maintain leachate at permitted levels. Site operations and leachate, surface water and groundwater monitoring would all continue to be undertaken in accordance with the EPs.

- 4.18.46. The updated QHRA concludes that there would be no significant impact on groundwater quality beneath the site or at receptors down hydraulic gradient of the site as a consequence of the western extension landfill. Nor is the operation of the western extension landfill considered to affect the current or predicted groundwater quality status designated under the WFD in the RBMP.
- 4.18.47. The ES advises that the detailed radiological QHRA for LLW landfill disposal, prepared as part of the ESC [APP-085] for the existing landfill, is being updated to reflect the extended disposal area of the western extension. The exposure pathways and risks assessed, and the exposure limits, are expected to be similar to those in the original ESC.
- 4.18.48. The EP limits on the total radioactivity capacity of the LLW will be based on conservative risk assessments to ensure that the dose for people using or exposed to groundwater or surface water is below the design criteria for the protection of human health (see also discussion of this matter under Human Health in Section 4.12 of the report).
- 4.18.49. The Applicant advises in the ES that the EA would not issue an EP unless it was satisfied that the proposed disposal of LLW would not result in significant harm to human health or the environment, including water resources. I consider the current status of the varied EPs and reliance on them in the DCO application at Sections 1.8 and 4.7.
- 4.18.50. The waste treatment and recovery facility would operate in accordance with the procedures and controls required by the EP. This would include the management of a self-contained surface water management system and the collection sump. The ES considers that the continued operation of this facility would not lead to significant impacts on surface water and groundwater resources. It also considers that, subject to continued adherence to the relevant procedures in the EP, there would be likely to be no significant effects on surface water and groundwater resources from the continued use and storage of fuel, lubricants and chemical reagents at the site and the refuelling of vehicles at the site.
- 4.18.51. The proposed SWMP [REP7-008 Appendix DEC F] sets out the principles of the surface water management in the operational areas of the proposed western extension and the restored landform.
- 4.18.52. The design of the surface water drainage system for the restored site includes attenuation ponds to store run-off and control discharges from the site to pre-development rates. Surface water would discharge by gravity to the existing point in the south-east corner of the site, to the swallow hole, to the eastern drainage ditch (and then to Wittering Brook) and the southern ditch (and then to Willow Brook).

- 4.18.53. The final design of the landfill in the western extension in the vicinity of the swallow hole and potential other limestone solution features would be developed in detail following further targeted site investigations. An unfilled corridor would be retained in this area to allow continued surface water drainage from the land to the west of the western extension to the swallow hole.
- 4.18.54. The detailed design of the surface water drainage system would be subject to approval under Requirement 3(5) of the dDCO. Surface and groundwater quality would be monitored and new discharge points consented under the varied EP.
- 4.18.55. The ES considers that the SWMP demonstrates that surface water can be managed on site without an increased risk of downstream flooding. The existing controls for the quality of surface water from the waste treatment area, the operational landfill area and the restored landfill areas would continue and be extended to include the Proposed Development.
- 4.18.56. The ES concludes that, with the proposed controls in place, the Proposed Development would not have significant impacts on water quality or flow in the Willow Brook, Wittering Brook or River Nene or on the surface water quality status as designated under the WFD in the RBMP. It finds the points of surface water discharge and the rates of discharge from the western extension would be consistent with pre-development conditions with minimal effects on the hydrological regime, including in the vicinity of the woodlands to the west and east of the western extension and north of the current ENRMF site.
- 4.18.57. The ES also considers that the Proposed Development would have no significant adverse effects on groundwater quality or flow beneath the site or at receptors down hydraulic gradient of the site.

#### Mitigation and Monitoring

- 4.18.58. The ES advises that the mitigation measures for emissions to the water environment are an integral part of the design and operation of the waste treatment and recovery facility and the landfill site and associated processes. For the landfill site, specific measures include the construction of the site containment engineering and the operation of the site in accordance with the EP controls. The mitigation measures for the surface water comprise the design and implementation of the SWMP [REP7-008 Appendix DEC F]. Requirement 3(1) of the dDCO requires the Proposed Development to be carried out in accordance with the SWMP and Requirement 3(5) requires the approval of a detailed drainage design in accordance with the SWMP.
- 4.18.59. The ES reports that monitoring of surface and groundwater quality is undertaken under the EP for the existing ENRMF and the results show no adverse impacts, with the exception of the Spring 2020 pollution



incident (see discussion under Land Use etc in Section 4.16 of this report). This monitoring would be extended to include the Proposed Development under the terms of the varied EPs.

- 4.18.60. The ES considers that routine monitoring of leachate, groundwater and surface water provides an early warning in the event that results exceed the control or action limits specified in the EP. Under the EP, the results are reported to the EA and measures can be implemented to identify and rectify the source or cause of the contaminants.

#### Cumulative Effects

- 4.18.61. The ES finds that the cumulative effects of the existing ENRMF and the Proposed Development would not result in any additional significant impacts on ground or surface water quality or flows on or around the site and that there would be no change to their quality status under the WFD. It does not identify any cumulative effects with other projects.

#### **Flood Risk**

##### Methodology and Baseline

- 4.18.62. The ES advises that an FRA has been undertaken in accordance with the requirements of the NPSHW, the NPPF and the PPG on flood risk.
- 4.18.63. This part of the ES re-caps the hydrological characteristics of the site and surface water catchments described above. It adds that the topography of the western extension is gently sloping towards its centre, with ground levels to the north ranging between 89m and 80m AOD and in the south from 88m to 81m AOD.
- 4.18.64. The EA defines the River Nene and Willow Brook as 'Statutory Main Rivers' which it manages. Willow Brook, its tributaries, and the tributaries of Wittering Brook are 'Ordinary Watercourses' managed by the Lead Local Flood Authority (LLFA) (in this case NNC).
- 4.18.65. EA flood mapping and the East Northamptonshire Strategic Flood Risk Assessment (SFRA) 2020 place the site in FZ1.
- 4.18.66. Using information from published sources, the ES finds that the majority of the site is at a very low to low risk of flooding from surface water. Specific areas of medium to high flood risk occur in the central area of the western extension at the ends of culverts and in the vicinity of the swallow hole. There is no history of flooding from sewers in the area and no large surface water bodies in the vicinity of the site.
- 4.18.67. The SFRA finds that the site is an area of negligible to very low risk of flooding from groundwater. A small area to the north of the eastern part of the existing ENRMF is defined as at high risk of flooding which is understood to be due to bedrock aquifer at ground level. The SI found that Blisworth Limestone Formation at the site was recorded as

not water bearing. Therefore, it constitutes a low risk of flooding from groundwater at the site. Furthermore, it would be removed as part of the proposed excavations.

- 4.18.68. Since the site is within FZ1 it meets the requirements of the Sequential Test as set out in the NPPF. Table 2 (formerly Table 3) of the PPG finds that all classes of development are appropriate in FZ1 and therefore it is not necessary to apply the Exceptions test.
- 4.18.69. If the Proposed Development does not proceed, operations at the existing ENRMF would continue to 2026 in accordance with current practices and the site would be restored thereafter. No changes to the drainage or topography of the agricultural land forming the western extension are expected.

#### Assessment of Effects

- 4.18.70. The restoration profile would follow best practice for the design of restored landfill sites including in particular that the landform should be raised with slopes designed to shed water in order to minimise rainfall infiltration through the low permeability cap and into the waste.
- 4.18.71. The SWMP makes the necessary provisions for climate change, in particular the predicted increase in frequency and intensity of rainfall storm events. The design rainfall event comprises the 1 in 30-year rainfall event plus a 20% allowance for climate change. The extreme rainfall event assumed for the purpose of the calculations in the SWMP is a 1 in 100-year rainfall event plus a 40% allowance for climate change.
- 4.18.72. The ES advises that the principles in the SWMP demonstrate that surface water can be managed on site with discharge at the pre-development greenfield run-off rate or 2litre/second/ha, whichever is greater without increased flood risk downstream of the site. These principles would be extended to cover the western extension.
- 4.18.73. The site is not located in an area which is identified as sensitive to flooding from rivers or the sea. As such, the ES considers that, with the implementation of an effective surface water management plan, the Proposed Development could be undertaken without increasing the risk of flooding at or in the vicinity of the site.

#### Mitigation

- 4.18.74. The ES considers that the only mitigation necessary is the implementation of the SWMP. This is secured in the dDCO by Requirement 3(1). Under the heading of 'Regulation and site monitoring' (Chapter 8) the ES confirms that emergency procedures, including dealing with spillages, are controlled through the EP regime.

### Cumulative Effects

- 4.18.75. The ES does not identify any cumulative effects relating to flood risk.

### **Issues in the Examination**

- 4.18.76. The Trust was concerned about the level of detail provided on the proposed surface water drainage scheme, the Applicant's assessment of surface and groundwater flows affecting its land. It also considers that the Applicant has no right to discharge surface water into the swallow hole and, therefore, cannot deliver the surface water drainage scheme [RR-008, RR-015, REP2-033, REP5-013]. These matters were also the subject of written questions [PD-006 Q14.1.2, PD-010 Q9.1 to 9.3] and were discussed at ISH2 [EV4-000] and ISH3 [EV4-010]. The Applicant's responses are at [REP2-005, REP2-006, REP4-007, REP5-004, REP6-010, REP6-011].
- 4.18.77. I have considered the question of the right to discharge to the swallow hole in Section 4.14 above. I also note that the Applicant considers that, if it is not permitted to discharge to the swallow hole, an alternative scheme using soakaways could be implemented and would fall within the terms of the current DCO application [REP4-007 Item 7a(iii)].
- 4.18.78. As identified in the review of the application above, the Applicant came to a different view from the EA's published information on the catchment divide across the site. This matter was discussed at ISH2. The Applicant described in some detail the topography of the western extension and surrounding land and the resulting surface water sub-catchments, locations of groundwater infiltration and the direction of flow of the groundwater [REP4-007 Item 7a(ii)]. The EA did not dispute the Applicant's findings and indicated that it would review its catchment information accordingly [REP4-015].
- 4.18.79. In answer to one of my questions [REP2-006 Q14.2.7] the Applicant confirmed that the swallow hole and perimeter ditches currently take surface water run-off from the agricultural fields forming the western extension land, but do not take run-off from the existing ENRMF.
- 4.18.80. At ISH2 the Applicant also explained [REP4-007 Item 7a(iv)] the basis of its SWMP [REP7-008 Appendix F]. The design takes into account pre and post development surface water infiltration rates. Conservative assumptions were used to calculate run-off rates and, therefore, the design of the system is robust. Attenuation basins would be used to store surface water in extreme rainfall events, which would then discharge to the swallow hole, ditches and the existing discharge point at pre-development greenfield rates. The size of the basins has been designed to cater for a 1 in 100-year storm event with allowance for climate change. This is intended to avoid any downstream impacts.
- 4.18.81. The Applicant acknowledged that the design of the surface water drainage system is indicative only. However, the SWMP is said to be

based on LLFA and EA guidance. The SoCGs with NNC (as the LLFA) and the EA ([REP8-008 Appendices B and C respectively) confirm that both are content with the Applicant's assessment of the effects of the Proposed Development on surface and groundwater flows and quality and agree with the principles of the SWMP as submitted. The SoCGs also recognise that the detailed design of the surface water drainage system would be subject to approval under Requirement 3(5) of the dDCO and that surface water discharges would be subject to control under the EP regime. The SoCGs also agree that the SWMP provides an appropriate basis for the FRA.

- 4.18.82. The Applicant accepted that an area of land to the west of the swallow hole requires further investigation. It advised that any changes to the scheme design following this investigation would be taken into account in the QHRA. Even if this results in the need for the adjoining landfill cell to be moved further away, it would not affect the finished restoration profile [REP4-0007 Item 7b]. The SoCG with the EA confirms that this matter would be controlled through the EP regime.
- 4.18.83. I sought explanation of a number of other water resources matters in written questions [PD-006 Q1.1.3 and Q14.1.3 to Q14.2.11] and at ISH2 [EV4-000] to which the Applicant [REP2-006, REP4-007] and the EA [REP2-028] responded. Some of the questions related to clarification of the information submitted and did not give rise to substantive concerns. These matters are not reviewed below. In terms of the other matters, in summary:
- the Applicant provided information to demonstrate its record of compliance with the EPs. With the exception of the Spring 2020 incident (see Section 4.16), it has achieved a high level of compliance based on the EA's Compliance Classification Scheme. However, the record also shows a consistent pattern of elevated leachate levels. This matter was discussed at ISH2 and the Applicant explained that the elevated levels related to specific circumstances. There were times during the landfilling at the existing ENRMF when landfill cells were left uncapped for a significant time. The Applicant advised that cells in the Proposed Development would be capped promptly and that this is controlled by the EP. An occasion when two leachate wells were blocked was reported to the EA and actions agreed. The Applicant considered that it has demonstrated its ability to control leachate levels and that temporary elevated levels would not have harmful impacts. Leachate levels are closely monitored and controlled under the landfill EP. The EA confirmed at ISH2 that temporary elevated leachate levels are normally quickly rectified. Its SoCG [REP8-008 Appendix C] confirms that emissions would be adequately monitored and controlled under the EP regime;
  - with regard to the RBMP classifications for the status of some water bodies, the EA advised that some of the descriptions in the ES were not correct. However, the targets used were correct. The EA did not dispute the Applicant's assessment of the effects

of the proposal on surface and groundwater quality for the purposes of the WFD. This is confirmed in the SoCG with the EA [REP8-008 Appendix C];

- the Applicant confirmed that the design and protection of the engineered clay liner to be used in the landfill cell construction would be subject to controls under the EP regime including a Construction Quality Assurance plan and that the works would be subject to verification before waste is placed in the cell;
- the assessment of groundwater pathways for the migration of radioactive contaminants would be undertaken as part of the varied LLW EP application which would follow the Examination. I considered the timing of this application in Section 1.8 of this report;
- the Applicant advised that the Proposed Development would not pose a risk to known dissolution features (eg the swallow hole) as there would be no material changes to the surface water drainage routes or volumes affecting the swallow hole. The detailed drainage design would ensure that flows to the swallow hole would be at pre-development levels. As reported above, further SI of the area to the west of the swallow hole would be carried out and the scheme design adapted as necessary;
- the Applicant advised that further SI would be carried out of the areas of high electrical conductivity identified in the EMI survey (see paragraph 4.18.35 above). The Applicant considers that they may show failed field drains. If, however, the results of the investigation show that the scheme needs to be adapted, the approach would be similar to that taken for the area to the west of the swallow hole;
- the proposed excavations would be above rest groundwater levels and therefore no de-watering for groundwater would be necessary. De-watering of surface water during the construction and landfilling phases would be undertaken using a system of bunds, ditches, pumping and a leachate management system. Clean and dirty water would be separated and disposed of or treated accordingly;
- Global Positioning Satellite controlled survey and excavation plant would be used to ensure that the depth of excavations does not infringe on the 2m depth of the impermeable material which is required to be maintained above the Lincolnshire Limestone Formation. The controls and designs of each excavation would be regulated under the varied landfill EP;
- the SWMP [REP7-008 Appendix F] would deliver the surface water management system for the restored site. Surface water management during the construction and operational phases would be regulated through the EP regime. During this period the system of drainage channels and basins would evolve through the phases of development with the ultimate goal of creating the scheme proposed in the SWMP and serving the site in its restored state;

- a culvert (referred to as the southern culvert) crosses the land which is subject to further investigation (see above) and is understood to be blocked. Understanding the blockage would be part of that investigation and, as an interim measure, any works required would be done in accordance with the detailed drainage design (controlled by dDCO Requirement 3(5)). The culvert would be replaced with a drainage channel in accordance with the SWMP in the restoration phase. The channel would not be brought into use until the landfill phase to its north is completed. The EA confirmed that it is content with this arrangement and that robust surface water controls could be secured through the EP [REP4-015];
  - the drainage system would be maintained for a period of 20 years following restoration under the terms of dDCO Requirement 4(6). The Applicant would have further responsibility for drainage maintenance as part of the EP and its associated Financial Provision until the EP is surrendered (likely to be at least 60 years). Thereafter the drainage system would be the responsibility of the final landowner;
  - the Applicant confirmed that the surface water drainage system would be designed to comply with the National standards as required under the Flood and Water Management Act 2010; and
  - run-off surface water in the waste treatment area has the same contaminants as the waste materials being treated. It is contained within that area and used in the treatment process in order to reduce the demand for fresh water. Once used, it is incorporated into the treated residues and deposited in the landfill under the terms of the EP. Clean water is used for dust suppression elsewhere on the site.
- 4.18.84. Except as they relate to surface water management and are covered above, no other concerns were raised regarding flood risk during the Examination.

### **Conclusions**

- 4.18.85. The Applicant's assessments of the water environment rely in part on the information to be supplied and approved by the EA under the EP regime. I have concluded in Section 1.8 that it is appropriate to rely on the EP regime for the control of emissions in this case. This approach is supported by NPSHW paragraph 5.15.5.
- 4.18.86. Comprehensive reviews of the surface water and groundwater context for the site have been provided. Assessments have been made of the effects on surface water and groundwater quality and flows which are appropriate to the land-use implications of the Proposed Development. The principles of the surface water management system have been provided and, while the detailed design would be subject to further approval, that would be secured through the dDCO. There is no substantive evidence to indicate that a satisfactory design could not be achieved.

- 4.18.87. Therefore, I am satisfied that the information submitted to the Examination is sufficient for the purposes of determining the land-use implications of the Proposed Development, as required by NPSHW paragraph 5.15.3.
- 4.18.88. Some further site investigation is required which may result in adjustment to the detailed design of the system. However, I am content that those adjustments could be accommodated within the principles established in the SWMP and would not require consequential changes to the restoration scheme.
- 4.18.89. The SWMP would be secured and maintained through the dDCO in accordance with NPSHW paragraphs 5.7.9 and 5.15.8. It would ensure that surface water discharges continue at pre-development greenfield rates and that the quality of surface water at the site and in the surrounding area would not be harmed. As such, the proposal would accord with the requirements of the WFD and the RBMP as well as NPSHW paragraphs 5.15.7 and 5.15.10. I note that the EA was content with the Applicant's WFD assessment [REP8-008 Appendix C].
- 4.18.90. Insofar as contaminated water would be used in the treatment processes in the waste treatment and recovery facility, the proposal would seek to limit the demand for fresh water in accordance with NPSHW paragraph 5.15.11.
- 4.18.91. I recognise that the Trust is concerned about the effects of surface water and groundwater crossing its land as a result of the proposal. However, there is no substantive evidence to show that the proposal would harm either the quality of those waters or result in increased flows. Further control of discharges would be provided through the EP regime. The EP regime would ensure that emergency response procedures to deal with spillages would be in place as required by NPSHW paragraph 5.15.4.
- 4.18.92. The site is within an area of generally low flood risk and there is nothing to suggest that it is at risk of flooding from external sources. I am content that the FRA and the SWMP adequately demonstrate that the Proposed Development would not lead to an unacceptable risk of flooding at the site, or the surrounding area, as required by NPSHW paragraphs 5.7.4 and 5.7.5.
- 4.18.93. I also note that the EA and the LLFA were consulted and were content with the FRA and SWMP as advised by NPSHW paragraphs 5.7.6 and 5.7.7. The proposal would meet the aims of the Sequential Test (NPSHW paragraph 5.7.12). The SWMP uses SUDS principles as required by NPSHW 5.7.8 and NPPF paragraph 169 and would be designed to meet the National Standards as required under the Flood and Water Management Act 2010.
- 4.18.94. Overall therefore, I find that the Proposed Development would not have significant adverse effects on water resources or flood risk.

Consequently, it would accord with the relevant provisions of sections 5.7 and 5.15 of the NPSHW and paragraph 167 of the NPPF as well as Policy 18 of the MWLP and Policy 5 of the JCS. This topic weighs neutrally in the planning balance.

#### **4.19. OTHER POLICY AND FACTUAL MATTERS**

##### **Introduction**

4.19.1. This section deals with matters identified in the NPSHW which, potentially, require consideration when making a decision on a NSIP, but which have not been covered in the preceding sections of this chapter. Having regard also to the issues raised in the Examination it considers:

- waste management, primarily the waste generated at the application site; and
- statutory nuisance.

4.19.2. This section also recaps briefly on the question of combined and cumulative effects.

##### **Waste Management**

###### ***Policy Context***

4.19.3. The NPSHW seeks a reduction in the production of waste and the use of it as a resource wherever possible. Where that is not possible, regulation requires waste to be disposed in the way least damaging to the environment and human health. The NPSHW goes on to refer to the waste hierarchy (paragraphs 5.14.1. and 5.14.2).

4.19.4. The application should consider the arrangements for dealing with waste that cannot be managed at the proposed facility and include a Site Waste Management Plan. This Plan should include information on waste recovery and disposal, the alternatives considered and demonstrate that the options chosen are the most sustainable for the waste stream. It should assess the impacts of the waste generated on the capacity of the receiving waste management facilities for at least five years of operation. Waste volumes should be minimised and then managed in accordance with the waste hierarchy. Excavated soils and subsoils should be re-used on site wherever possible (paragraph 5.14.4).

4.19.5. Consideration should be given to the use of Requirements or obligations to ensure that appropriate measures for waste management are delivered and, potentially, reviewed (paragraph 5.14.7). Where the EP regime applies, waste management arrangements during operations would be covered by the EP (paragraph 5.14.8).



### ***The Application***

- 4.19.6. The Applicant's ES does not include a chapter dedicated to waste management, although it assesses the effects of waste on receptors in chapters such as human health, and transport. This approach is consistent with the ES scoping process.
- 4.19.7. Chapter 4 of the ES [APP-049] sets out the types and quantities of waste which would be received at the site. Chapter 5 deals with the stripping, extraction and stockpiling of soils, overburden and clay, among other things. Soil handling would be controlled by the Soil Handling and Management Scheme [REP7-008 Appendix DEC I] and secured by dDCO Requirement 6. Chapter 6 reviews the operation of the waste treatment and recovery facility and Chapter 8 covers regulation and monitoring. Alternative waste management options are covered in Chapter 10. The Applicant's PS [APP-103] sets out its approach to the acceptance and treatment of wastes received. I have dealt with these matters in earlier sections of this report.
- 4.19.8. It is also relevant to note that the existing landfill EP [REP2-012] and waste treatment EP [REP2-013] include conditions controlling the avoidance, recovery and disposal of wastes produced by those activities. There is nothing to suggest that similar controls would not be applied in the varied EPs as anticipated in the SoCG with the EA [REP8-008 Appendix C]. This approach is consistent with NPSHW paragraph 5.14.8.

### ***Issues in the Examination***

- 4.19.9. None of the parties in the Examination questioned the Applicant's approach to waste management. I sought clarification of the Applicant's approach to the application of the waste hierarchy as reported in Section 4.5. In addition, I asked about the options for use of the excavated landfill construction material [PD-006 Q13.1.4 and EV4-000 Item 6b]. The Applicant responded [REP2-006 and REP4-007] that:
- the total volume of material excavated as a result of the Proposed Development is estimated to be some 1,722,000m<sup>3</sup>. It is anticipated that all topsoil and subsoil would be re-used on site. Of the 715,000m<sup>3</sup> of overburden excavated, 114,000m<sup>3</sup> would be re-used and 601,000m<sup>3</sup> exported. 435,000m<sup>3</sup> of excavated clay would be re-used and 426,000m<sup>3</sup> exported;
  - the traffic generation implications of the export of this material have been taken into account in the TA submitted with the application (see Section 4.17 of this report). In turn, the noise and air quality assessments are based on the traffic generation figures in the TA;
  - excavation works would be controlled as part of the Construction Quality Assurance plans under the landfill EP; and
  - clay and other suitable materials would be exported to the Applicant's nearby Thornhaugh landfill site where it would be

used in the engineered lining system. Any remaining clay and overburden to be exported would be sold for general use at various destinations. Examples include road, housing and commercial constructions sites and, potentially, mineral extraction facilities.

### **Conclusions**

- 4.19.10. Although ES does not include a separate chapter on waste management, it does assess the effects of waste management operations on receptors. It also considers the management of waste generated at the site itself. Taken together, the contributions in the ES, PS and responses during the Examination provide a reasonable coverage of the matter.
- 4.19.11. I deal with waste received at the Proposed Development in Section 4.5. Waste generated during the operation of the Proposed Development would be controlled and procedures reviewed through the varied EPs as anticipated by NPSHW paragraph 5.14.8.
- 4.19.12. During construction, the principal waste generated would be the material excavated to form the landfill cells. Much of this material would be re-used on site and controlled through the Soil Handling and Management Scheme secured by Requirement 6(2) of the dDCO. The remainder would be exported for re-use at a local landfill site or in construction projects.
- 4.19.13. While these outcomes would not be controlled under the DCO, they would be a continuation of the way in which the Applicant has operated the existing ENRMF and there is nothing to suggest that its approach would change in the Proposed Development. Re-use is toward the top of the waste hierarchy and therefore these outcomes would fit with its objectives and those of NPSHW paragraphs 5.14.1, 5.14.2 and 5.14.4.
- 4.19.14. There is nothing to suggest that waste generated by the Proposed Development would need to go for disposal elsewhere or put pressure on the capacity of other waste management facilities. Consequently, I find that the proposals for dealing with waste generated by the Proposed Development would accord with the requirements of NPSHW section 5.14. This matter weighs neither for nor against the Proposed Development in the planning balance.

### **Statutory Nuisance**

#### ***Legislative and Policy Context***

- 4.19.15. Section 158 of the PA2008 provides a defence of statutory authority against claims in civil and criminal proceedings for nuisance, unless the DCO provides otherwise.
- 4.19.16. Section 79(1) of the Environmental Protection Act 1990 (the 1990 Act) establishes the definition of 'statutory nuisance'. The term covers matters such as noise, smoke, or gas emitted from premises,

if they either constitute a (common law) nuisance or are prejudicial to health.

- 4.19.17. The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP Regs) Regulation 5(2)(f) requires the application to be accompanied by a statement of whether the proposal engages the matters set out in s79(1) and, if so, how it is proposed to mitigate or limit them.
- 4.19.18. The NPSHW advises that it is very important that possible sources of nuisance under s79(1), and how they may be mitigated or limited, are considered so that any necessary Requirements can be included in the DCO (paragraph 4.11.2).

### ***The Application***

- 4.19.19. Article 17 of the dDCO [REP8-003] provides the undertaker with a defence against proceedings in respect of certain categories of nuisance falling within s79(1) of the 1990 Act. A Statutory Nuisance Statement [APP-108] was submitted with the application. It sets out how the Proposed Development engages with those nuisance categories and the associated limitations and mitigation measures:
- *(a) any premises in such a state as to be prejudicial to health or a nuisance.* Operational and management controls would be put in place through an Environmental Management System (EMS), controlled by the EPs including procedures and controls for the acceptance, storage and treatment of waste, controls and design of the placement and covering of waste deposited in the landfill, the maintenance of the site and wheel washing facilities and regular monitoring of the quality of the environment around the site in order to identify potentially unacceptable emissions. Reference is made to Chapters 12 and 25 of the ES which assess effects on human health;
  - *(c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance.* The EPs would include conditions to control matters such as radioactive emissions and monitoring and landfill gas emissions and monitoring. The results of the monitoring would be made publicly available to provide confidence that the site is being managed effectively. Again, reference is made to Chapters 12 and 25 of the ES which assess effects on human health;
  - *(d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance, and (e) any accumulation or deposit which is prejudicial to health or a nuisance.* Operational and management controls would be put in place, through an EMS, controlled by the EPs including procedures for the acceptance storage and treatment of waste, controls on the placement and covering of waste deposited in the landfill, its engineering design and construction and the regular monitoring of the quality of the environment around the site in order to identify potentially unacceptable emissions. The

risk of statutory nuisance occurring from dust, steam, smells or other effluvia, would be minimised by measures such as dust control, a soil management scheme and a stockpile management scheme, all of which would be secured through the dDCO.

Reference is made to the assessments of human health, water resources and amenity in the ES; and

- *(g) noise emitted from premises so as to be prejudicial to health or a nuisance and (ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street.* Noise would be controlled by the noise mitigation and monitoring scheme, secured by the dDCO. Reference is made to the noise assessment in the ES, which includes an assessment of noise from traffic associated with the Proposed Development.

4.19.20. The Statutory Nuisance Statement concludes that the current site operational practices have not given rise to any statutory nuisance to date. In light of the proposed mitigation secured by the dDCO and the controls in the varied EPs, the Applicant considers it unlikely that the Proposed Development would give rise to statutory nuisance. The Applicant considers that Article 17 of the DCO is, nevertheless, necessary in the event that proceedings are brought in the magistrates' court under s82 of the 1990 Act (EM [REP7-005]). It also makes the point that the original Order contained a similar provision

### ***Issues in the Examination***

- 4.19.21. None of the parties to the Examination disputed the Applicant's approach to statutory nuisance. The SoCG with NNC [REP8-008 Appendix B] considers that the relevant assessments in the ES are appropriate, as is Article 17 of the dDCO.
- 4.19.22. I questioned the Applicant's reliance on the mitigation measures in the EP to justify the powers sought under Article 17 [PD-006 Q4.2.12]. The Applicant responded [REP2-006] that the DCO should not duplicate controls secured by another statutory regime. If the controls were provided in the DCO it would be necessary to disapply parts of the Environmental Permit (England and Wales) Regulations 2016. The Applicant considered that the necessary consent from the EA to do that would not be forthcoming.

### ***Conclusions***

- 4.19.23. My conclusions in Sections 4.8 (air quality, including dust), 4.12 (human health) 4.15 (noise and vibration) and 4.18 (water environment) are relevant to the consideration of nuisance. I have also had regard to the lack of any objection to dDCO Article 17 and NNC's support of it.
- 4.19.24. Given the nature of the Proposed Development in this case, and the reliance placed on the controls to be provided in the varied EPs, I consider that it would also be appropriate to rely on them in relation

to statutory nuisance. I find that the EP measures, together with the Statement of Statutory Nuisance [APP-108], relevant chapters in the ES [APP-049] and the mitigation secured in the dDCO satisfy the requirement of paragraph 4.11.2 of the NPSHW to consider potential sources of nuisance and how they may be mitigated. They also meet the requirement in the APFP Regs to provide a statement on statutory nuisance and proposals to mitigate or limit them.

- 4.19.25. Notwithstanding the proposals for mitigation, I consider that Article 17 is required in order to provide a defence against potential proceedings for nuisance brought in the magistrates' court under s82 of the 1990 Act.

### **Cumulative and Combined Effects**

- 4.19.26. Paragraph 4.1.3 of the NPSHW requires the cumulative adverse impacts of the proposal to be taken into account, particularly when weighing its adverse impacts against its benefits. Paragraph 4.2.1 advises that the EIA Directive requires the ES to describe the cumulative effects of the proposal, among other things. Paragraph 4.2.2 advises that the ES should provide information on how the effects of the proposal would combine and interact with the effects of other existing development, and other projects for which consent has been granted.
- 4.19.27. Each aspect chapter within the Applicant's ES includes consideration of 'cumulative impacts', which considers cumulative effects with other developments and inter-related effects from the project as a whole as relevant.
- 4.19.28. The ES finds that there would be no significant cumulative effects arising from the Proposed Development. None of the parties to the Examination raised concerns about any such effects. The SoCGs with NNC, the EA and NE [REP8-008 Appendices B, C and D respectively] do not identify any other projects which should have been considered in the assessment of combined effects or call into question the Applicant's assessment of cumulative effects.
- 4.19.29. I have no reason to doubt the Applicant's assessments of these matters and am satisfied that the Proposed Development would not give rise to any significant combined or cumulative effects. As such, I consider that the requirements of the EIA Directive and paragraphs 4.1.3, 4.2.1 and 4.2.2 of the NPSHW have been satisfied.

## **5. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT**

### **5.1. INTRODUCTION**

- 5.1.1. This Chapter sets out my analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State for Levelling Up, Housing and Communities (SoS) as the competent authority, in performing their duties under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').
- 5.1.2. This Chapter is structured as follows:
- findings in relation to Likely Significant Effects (LSE) on the UK National Site Network and European sites;
  - Conservation Objectives; and
  - HRA conclusions.
- 5.1.3. In accordance with the precautionary principle embedded in the Habitats Regulations, consent for the Proposed Development may be granted only after having ascertained that it will not adversely affect the integrity of European site(s)<sup>10</sup> and no reasonable scientific doubt remains<sup>11</sup>.
- 5.1.4. Policy considerations and the legal obligations under the Habitats Regulations are described in Chapter 3 of this report.
- 5.1.5. I have been mindful throughout the Examination of the need to ensure that the SoS has such information as may reasonably be required to carry out their duties as the competent authority. I have sought evidence from the Applicant and the relevant Interested Parties (IPs), including Natural England (NE) as the Appropriate Nature Conservation Body (ANCB), through written questions and Issue Specific Hearings (ISHs).

#### **Proposed Development Description**

- 5.1.6. The Proposed Development is described in Chapter 2 of this report.
- 5.1.7. As outlined in Section 2.4, a non-material change (NMC) request was submitted by the Applicant during the Examination [AS-018]. The

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<sup>10</sup> For the purposes of this chapter, in line with the Habitats Regulations and relevant Government policy, the term 'European sites' includes Special Areas of Conservation (SACs); Special Protection Areas (SPAs); proposed SACs; potential SPAs; and Ramsar sites (both proposed and listed); and areas secured as sites compensating for damage to a European site.

<sup>11</sup> CJEU Case C-127/02 Waddenzee 7 September 2004, Reference for a preliminary ruling from the Raad van State (Netherlands) in the proceedings: Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij

Applicant concluded that the NMC would produce no new or different environmental effects [AS-021]. The NMC was accepted to the Examination on 22 July 2022 [PD-015]. Having regard to the nature of the NMC, the Applicant's assessment of it and the consultation responses received, I find that it would not have a bearing on the HRA.

## **HRA Implications**

### ***Applicant's HRA documents***

- 5.1.8. The Applicant provided a No Significant Effects Report (NSER) entitled 'No Significant Effects Report and Screening Stage of a Habitats Regulations Assessment for the proposed Western Extension to East Northants Resource Management Facility (ENRMF), Kings Cliffe, Northamptonshire' [APP-102] with the application. The Applicant concluded within its NSER that there would be no LSE on any of the European sites screened.

### ***Relationship between the Proposed Development and European sites***

- 5.1.9. The spatial relationship between the Order Limits of the Proposed Development and European sites located within 10 kilometres (km) of the Proposed Development is shown in Figure 1 to the NSER [APP-102]. A copy of this figure is reproduced below for ease of reference.

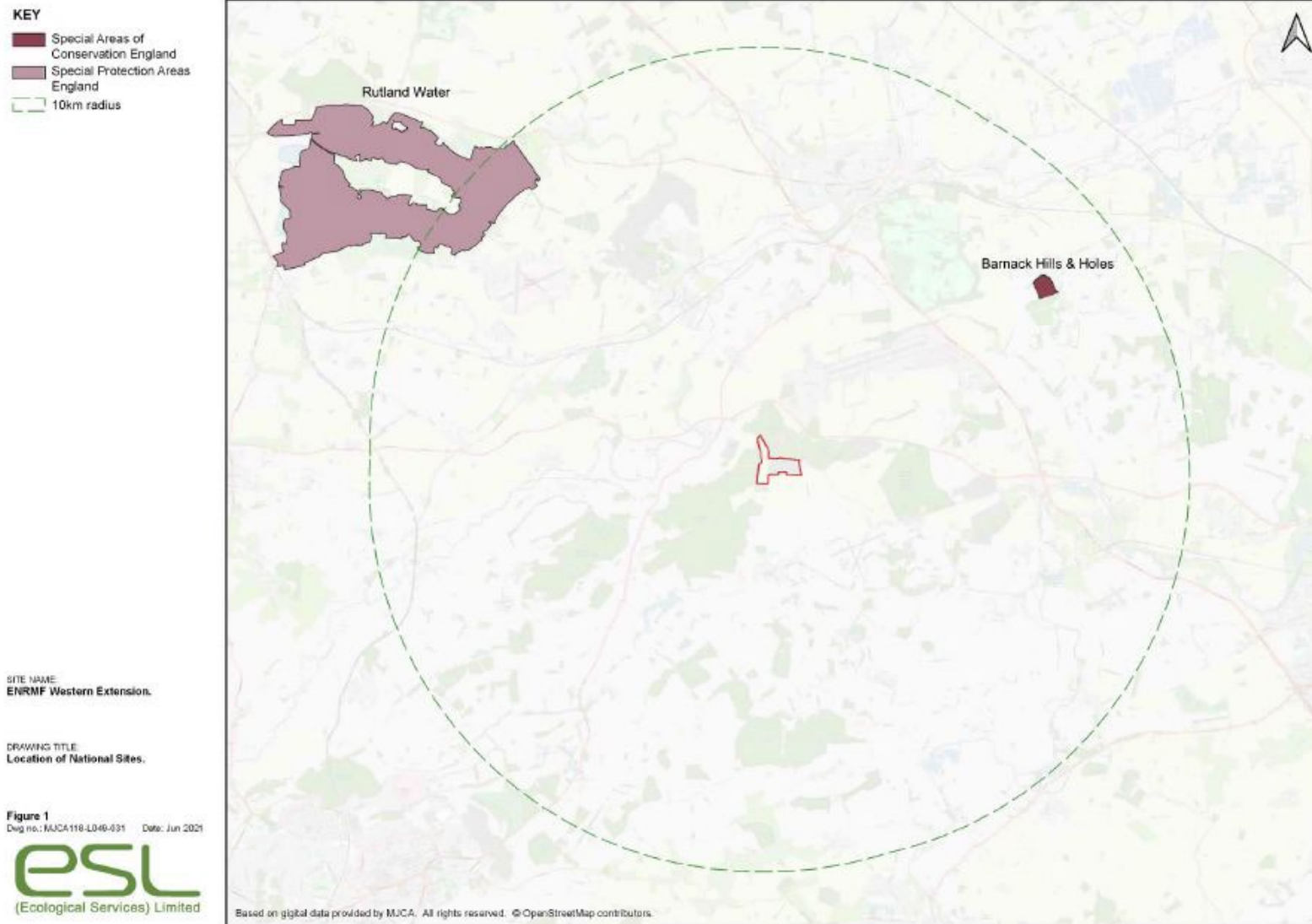


Figure 5.1.4 Relationship between the application site and European Sites



### ***Examination***

- 5.1.10. NE confirmed in its Relevant Representation (RR) [RR-010] that it was satisfied that there would be “*no significant effect on the integrity of the European sites.*”
- 5.1.11. I issued two questions related to HRA matters ([PD-006Q1 3.5.1 and Q3.5.2] directed to the Applicant and NE. Responses were received from the Applicant [REP2-006] and NE [REP2-030].
- 5.1.12. I also issued a Rule 17 letter [PD-011] requesting clarification from the Applicant and NE regarding the qualifying features and Criteria of the Upper Nene Valley Gravel Pits Special Protection Area (SPA) and Upper Nene Valley Gravel Pits Ramsar. Responses to the Rule 17 letter were received from the Applicant [REP5a-001] and NE [REP5a-002].
- 5.1.13. No further representations on HRA matters were received during the Examination.

### ***Report on the implications for European sites (RIES)***

- 5.1.14. NE stated agreement with the Applicant’s conclusions with regard to the European sites assessed and their qualifying features [RR-010] and [REP2-030]. No other evidence or comment to dispute this conclusion was submitted by any other IP. Consequently, I decided that a RIES compiling HRA-relevant information would not be required.

### ***Transboundary effects***

- 5.1.15. The Applicant has not identified any potential impacts on European sites in European Economic Area States [APP-102]. Only European sites which form part of the UK National Site Network are addressed in this report.

## **5.2. FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS**

- 5.2.1. Under the Habitats Regulations, the competent authority must consider whether a development will have LSE on a European site(s), either alone or in combination with other plans or projects. Where LSE are likely and a project is not directly connected with or necessary to the management of that site(s), an Appropriate Assessment is required of the implications of the plan or project for that site(s) in view of its conservation objectives.
- 5.2.2. The purpose of this section is to identify any LSEs on European sites, either alone or in combination, and to provide a view to the competent authority on the likely need for an appropriate assessment, including the likely activities, sites or plans and projects that may need to be included for further consideration.

- 5.2.3. The Proposed Development is not connected with or necessary to the management for nature conservation of any of the European sites considered within the Applicant's NSER [APP-102].
- 5.2.4. The NSER sets out the Applicant's approach to the selection of European sites for consideration for LSE. This included an initial search of European sites within 10km of the Proposed Development, followed by a further search for the next nearest European sites that could potentially be functionally linked to the Proposed Development.
- 5.2.5. Table 5.1 below lists the European sites and qualifying features included in the Applicant's NSER [APP-102] that are located within 10km of the Proposed Development. The Upper Nene Valley Gravel Pits SPA and Upper Nene Valley Gravel Pits Ramsar were also considered by the Applicant in its assessment as the next nearest sites that could be functionally linked. These two European sites are located 19km to the south-east of the Proposed Development and are designated for wintering waterbirds.
- 5.2.6. No separate HRA screening matrices were provided in the NSER for the Upper Nene Valley Gravel Pits SPA and Nene Valley Gravel Pits Ramsar, nor were the specific qualifying features listed for these two sites. In response to my Rule 17 letter [PD-011], the Applicant and NE provided the data sheets for the Upper Nene Valley Gravel Pits SPA and Ramsar to confirm the precise qualifying features and Criteria for these European sites [REP5a-001, REP5a-002]. The qualifying features and Criteria for these European sites are listed in Table 5.2 below.
- 5.2.7. NE did not identify any other European site or qualifying features that could be affected by the Proposed Development.

**Table 5.1: European sites screened by the Applicant [APP-102]**

Name of European site	Distance from Proposed Development	Qualifying features
Barnack Hills and Holes Special Area of Conservation (SAC)	7.5km	H6210 Semi-natural dry grasslands and scrubland facies on calcareous substrates ( <i>Festuco-Brometalia</i> ) (*important orchid sites)
Rutland Water SPA	8.8km	A051 Gadwall ( <i>Anas strepera</i> ) Non-breeding
		A056 Northern shoveler ( <i>Anas clypeata</i> ) Non-breeding
		Assemblage of wintering waterbirds
Rutland Water Ramsar	8.8km	Criterion 5: Assemblage of wintering waterbirds
		Criterion 6: Gadwall (spring/autumn)
		Criterion 6: Northern shoveler (spring/autumn)

**Table 5.2 Qualifying features and Criteria for the Upper Nene Valley Gravel SPA and Ramsar [REP5a-001],[REP5a-002]**

Name of European site	Distance from Proposed Development	Qualifying features
Upper Nene Valley Gravel Pits SPA	19km	Bittern <i>Botaurus stellaris</i> (non-breeding)
		Golden plover <i>Pluvialis apricaria</i> (non-breeding)
		Gadwall (non-breeding)
		Assemblage of wintering waterbirds
Upper Nene Valley Gravel Pits SPA	19km	Criterion 5: Assemblage of wintering waterbirds
		Criterion 6: Mute swan <i>Cygnus olor</i> (non-breeding)
		Criterion 6: Gadwall (non-breeding)

## **LSE from the Proposed Development alone**

5.2.8. The potential impacts and effect pathways considered by the Applicant [APP-102] for each European site and qualifying feature / Criteria are listed below.

- Barnack Hills and Holes SAC - H6210 Semi-natural dry grasslands and scrubland facies on calcareous substrates (*Festuco-Brometalia*) (\*important orchid sites):
  - Changes to air quality, including:
    - Emissions of oxides of nitrogen (NO<sub>x</sub>) to air / deposition of nutrient nitrogen<sup>12</sup>
    - deposition of dust<sup>12</sup>
  - Changes to water quality
- Rutland Water SPA – all qualifying features:
  - Changes to water quality, considered in terms of:
    - habitat loss or changes<sup>12</sup>
    - changes to supporting features<sup>12</sup>
    - changes to population or distribution<sup>12</sup>
  - Changes to bird numbers or populations as a result of impacts to birds using functionally linked land;
- Rutland Water Ramsar – Criteria 5 and 6:
  - Changes to water quality, considered in terms of:
    - the extent, distribution, structure and function of the habitats<sup>12</sup>
    - processes supporting the features<sup>12</sup>
    - changes to numbers or population of the features<sup>12</sup>
  - Changes to bird numbers or populations as a result of impacts on birds using functionally linked land
- Upper Nene Valley Gravel Pits SPA and Ramsar – all qualifying features / Criteria:
  - Changes to bird numbers or populations as a result of impacts to birds using functionally linked land<sup>13</sup>.

5.2.9. The NSER concluded that there would be no LSE from the Proposed Development alone for all potential effect pathways considered [APP-102]. A summary of the potential effects and conclusions for each European site is provided below.

### ***Barnack Hills and Holes SAC***

5.2.10. In respect of this SAC, the NSER considered potential changes to air quality as a result of dust and emissions of NO<sub>x</sub> to air (which the NSER

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<sup>12</sup> Effect/impact as identified in the HRA screening matrices presented in the NSER (e-pages 2 to 9) [APP-102]

<sup>13</sup> As noted above, no matrices were provided for this SPA and Ramsar; however, this potential effect was discussed in the main text of the NSER [APP-102]

states “*may relate to deposition of nitrogen*”) and emissions to water, which could affect water quality. Emissions to air included both emissions from the gas flare within the Proposed Development and changes to traffic (in particular heavy goods vehicles (HGVs)). Dust generating activities associated with the Proposed Development were also considered.

#### Changes to air quality

- 5.2.11. With regard to air quality emissions at the site, the NSER confirmed that the only potential change to air quality would be as a result of combusted gas emitted from the gas flare stack.
- 5.2.12. As discussed in Section 4.8 of the report (Air Quality) waste with a total organic carbon content of greater than 6% is not permitted for disposal at hazardous waste landfill sites. Therefore, the Applicant [APP-049, APP-102] considered there would be minimal potential for the deposited waste to generate landfill gas or other vapours. Phases 1 and 2 of the existing ENRMF site received waste of higher concentrations of organic carbon and the quantity of gas generated in these phases (currently subject to combustion through the gas flare) is already declining and this decline will continue [APP-049]. Accordingly, it is unlikely that significant quantities of landfill gas or vapours would be generated. The NSER and Environmental Statement concluded that emissions from the site currently have, and are also predicted in the future, to have no discernible impact on local air quality [APP-102, APP-049].
- 5.2.13. Air quality data for the area of the site area (the UK Air Quality Archive) show the air quality at the site location for PM<sub>2.5</sub>, PM<sub>10</sub>, nitrogen dioxide and NO<sub>x</sub> is better than the national air quality objective annual mean concentrations [APP-102]. The NSER concluded that it is considered likely that the Proposed Development would continue to have a negligible impact on air quality in the locality and therefore, a negligible impact on air quality at the SAC at a distance of 7.5km to the Proposed Development, even without the control measures proposed as an intrinsic part of the Environmental Permits (EP).
- 5.2.14. With regard to air quality changes associated with changes in HGV movements, the change in vehicle movements is well below the threshold specified in the Institute of Air Quality Management (IAQM)/Environmental Protection UK guidance 'Land-Use Planning and Development Control: Planning for Air Quality'. It is therefore considered there would be no significant impact on air quality as a result of the traffic associated with the Proposed Development and thus no LSE on the SAC.
- 5.2.15. In terms of dust generating activities, the NSER identified that due to the distance to this SAC, even in the absence of the control measures proposed as an intrinsic part of the EPs, no dust generated as a result

of the Proposed Development would reach the SAC and thus there would be no LSE on this SAC from dust.

#### Changes to water quality

- 5.2.16. In response to ExQ1 3.5.1 [PD-006], the Applicant [REP2-006] confirmed that the groundwater from the Proposed Development site flows to the south and south-east. The SAC is located approximately 7.5km to the north-east of the Proposed Development. The Applicant [REP2-006] confirmed that there is no natural hydraulic connectivity between the Proposed Development and the SAC and thus, even without the control measures proposed in the EPs, the potential for a hydrogeological or hydrological impact on the SAC is negligible. As there is no potential effect pathway between the Proposed Development and the SAC in this regard, there is no potential for a hydrogeological or hydrological impact on Barnack Hills and Holes SAC and no LSE was concluded.

#### ***Rutland Water SPA and Ramsar***

- 5.2.17. The NSER [APP-102] confirmed that the Proposed Development, including the western extension and surrounds, does not form functionally linked land for the qualifying features / Criteria of the SPA and Ramsar, on the basis of absence of suitable habitat and absence of such species recorded during surveys.
- 5.2.18. The NSER also confirmed that there is no natural hydraulic connectivity between the Proposed Development and Rutland Water and therefore, even without the control measures proposed in the EPs, there is no potential for a hydrogeological or hydrological impact on Rutland Water SPA/Ramsar.

#### ***Upper Nene Valley Gravel SPA and Ramsar***

- 5.2.19. The NSER concluded on the basis of the distance to these two European sites, and the absence of evidence that the Proposed Development and its surrounds provide functionally linked land for the waders or waterfowl of these sites, there would be no LSE [APP-102].

#### **LSE from the Proposed Development In Combination**

- 5.2.20. The NSER referenced potential in-combination projects and plans identified by the former Northamptonshire County Council [APP-102]. These included Collyweston Quarry, Wakerley Quarry, Cooks Hole Quarry and Thornhaugh Quarry. The NSER did not identify any LSE from the Proposed Development alone for all potential impacts considered (ie air quality, water quality, and presence of birds using functionally linked land). Potential LSE from in combination effects were therefore also excluded.

#### **LSE assessment outcomes**

- 5.2.21. A total of five European sites were screened by the Applicant prior to Examination (see Tables 5.1 and 5.2). Of these sites, the Applicant

concluded that there would be no LSE on any of the European sites and their qualifying features / Criteria. NE confirmed both prior to the Examination [APP-102, RR-010] and during the Examination [REP2-030] that it agreed with the Applicant's conclusion of no LSE on these European sites. The Applicant's conclusion of no LSE on the European sites and their qualifying features was not disputed by any IPs during the Examination.

### **5.3. CONSERVATION OBJECTIVES**

- 5.3.1. The conservation objectives for the European sites and their qualifying features identified in Table 5.1 above are set out in Section 4 of the NSER [APP-102].

### **5.4. HRA CONCLUSIONS**

- 5.4.1. The Proposed Development is not directly connected with, or necessary to, the management of European sites, and therefore the implications of the Proposed Development with respect to adverse effects on potentially affected sites must be assessed by the SoS.
- 5.4.2. Five European sites and their qualifying features /Criteria were considered in the Applicant's assessment of LSE [APP-102]. No LSE were identified for any European sites or their qualifying features / Criteria, either from the Proposed Development alone or in-combination with other plans or projects.
- 5.4.3. I am satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to LSE have been identified.
- 5.4.4. I find that LSE from the Proposed Development can be excluded for all European sites considered, either alone or in combination with other plans or projects and that an Appropriate Assessment does not appear to be required. NE as the ANCB has confirmed agreement with this conclusion [APP-102, RR-010, REP2-030]. No other IPs raised concerns regarding HRA.

## **6. CONCLUSIONS ON THE CASE FOR DEVELOPMENT CONSENT**

### **6.1. INTRODUCTION**

- 6.1.1. This chapter sets out my reasoning and conclusions on whether there is a case for the making of a Development Consent Order (DCO) for the Proposed Development. My conclusions are based on the provisions of the recommended DCO (rDCO) (Appendix C), the drafting of which is discussed in Chapter 7.
- 6.1.2. Relevant legislation and policy are identified in Chapter 3. The need for the Proposed Development is considered in Section 4.5 and 4.6 and the potential effects in Sections 4.8 to 4.19. Chapter 5 sets out my findings in relation to the Habitats Regulations Assessment.
- 6.1.3. Following this introduction, this chapter considers:
- the matters to be taken into account as required by the Planning Act 2008 (PA2008) and other relevant legislation and policy;
  - the need case for the Proposed Development;
  - the likely impacts of the Proposed Development by topic; and
  - the planning balance and conclusions.

### **6.2. MATTERS TO BE TAKEN INTO ACCOUNT**

- 6.2.1. Section 104 of the PA2008 states that the designated National Policy Statement (NPS) provides the primary basis for making decisions on development consent applications in England by the Secretary of State for Levelling Up, Housing and Communities (SoS). This provision is subject to the exceptions set out in paragraph 3.2.2 above. For hazardous waste Nationally Significant Infrastructure Projects (NSIPs), the relevant NPS is the National Policy Statement for hazardous waste (NPSHW).
- 6.2.2. NPSHW paragraph 4.1.2 creates a presumption in favour of granting consent for hazardous waste NSIPs that clearly meet the need for such infrastructure established in the NPSHW. Paragraph 4.1.3 of the NPSHW requires the SoS and Examining Authority, to weigh the adverse impacts and benefits of the proposal as set out in paragraph 3.6.7 above.
- 6.2.3. My conclusions on the case for making a DCO are reached within the context of the policies contained in the NPSHW. Also, as indicated in Chapters 3 and 4, I have taken all other relevant law and policy into account.
- 6.2.4. I have had regard to all of the evidence presented to the Examination, including the application and request for a non-material change, the Relevant Representations and Written Representations, the Local Impact Report received from North Northamptonshire



Council (NNC), the responses to Examining Authority's written questions, as well as all other representations made during the course of the Examination. I have also taken into account the discussions in the Issue Specific Hearings and the findings from the unaccompanied and accompanied site visits. Throughout this process I have had regard to the Public Sector Equality Duty to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not.

### **6.3. THE NEED CASE FOR THE PROPOSED DEVELOPMENT**

- 6.3.1. The Applicant's need case for the Proposed Development and the benefits arising from it are set out in the Planning Statement [APP-108]. I consider the need case in Section 4.5 of the report.
- 6.3.2. The East Northants Resource Management Facility (ENRMF) is one of only nine hazardous landfill sites in England and there are no others in the East and West Midlands, East of England and South East which can accept a wide range of wastes. The quantity of hazardous waste generated in those regions is rising steadily and no new hazardous waste landfill facilities have been developed in the south of England since the ENRMF was originally consented. The Proposed Development therefore has a national catchment but is geographically well located to the main sources of hazardous waste it accepts.
- 6.3.3. The Proposed Development is also well located to meet the needs of producers of low-level radioactive waste (LLW) from the nuclear and non-nuclear industries. A large amount of LLW is expected to be generated by the decommissioning of early nuclear power stations, as well as radioactive materials produced by other sectors. The LLW element of the Proposed Development is, therefore, well placed to make the best use of an existing, fit for purpose facility and to conserve the capacity of the specialist LLW Repository in Cumbria.
- 6.3.4. The waste treatment and recovery facility element of the proposal offers sustainability benefits from its co-location with the ENRMF landfill facility and with the Applicant's nearby Thornhaugh Landfill Site. Inputs into waste treatment and recovery facilities have increased in recent years and the continuation of the use of the proposed facility would enable hazardous waste such as contaminated soils and air pollution control residues to move up the waste hierarchy by recovering material for re-use and minimising the volume for disposal to landfill. It would also support the application of the waste hierarchy to LLW by increasing the capacity and range of treatment and recovery facilities for this form of waste.
- 6.3.5. None of the parties to the Examination questioned the need case put forward by the Applicant. Indeed, the Statement of Common Ground (SoCG) with NNC [REP8-008 Appendix B] finds that the Proposed Development would support a national, regional and local need for hazardous waste landfill and treatment and the disposal of LLW.

- 6.3.6. I conclude in Section 4.5 that I am satisfied that the need for the Proposed Development has been established in accordance with the requirements of the NPSHW. This finding weighs strongly in favour of the DCO being made.

## **6.4. LIKELY IMPACTS OF THE PROPOSED DEVELOPMENT**

### **Introduction**

- 6.4.1. This section summarises my conclusions on each topic in Chapters 4 and 5, taking into account the Applicant's assessment, the key issues considered during the Examination, the adequacy of mitigation measures and how they are secured, compliance with relevant legislation, the NPSHW, other national policies and the development plan and the matters weighing significantly for or against the making of the DCO.

### **Environmental Impact Assessment**

- 6.4.2. I consider that the ES [APP-049], the Supplementary ES [AS-021] and associated information submitted by the Applicant during the Examination provide an adequate overall assessment of the environmental effects of the Proposed Development for the purposes of decision making in accordance with the requirements of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.
- 6.4.3. I have found that the Applicant adequately defined the Rochdale Envelope and sufficient controls would be secured by the rDCO (Appendix C) to appropriately mitigate the effects identified using the Rochdale Envelope. Alternatives to the Proposed Development and the question of 'good design' have been adequately addressed.
- 6.4.4. In terms of Transboundary impacts, I agreed with the screening opinion of the then Secretary of State for Housing and Communities that the Proposed Development is unlikely to have a significant effect either alone or cumulatively on the environment in another European Economic Area State. No information came to light during the Examination to alter this conclusion.

### **Habitats Regulations Assessment (HRA)**

- 6.4.5. I am satisfied that the evidence indicates that the Proposed Development would not be likely to give rise to any adverse significant effects on the UK national site network and European sites due to the lack of effective pathways. I am also satisfied that the SoS has sufficient information available to discharge their obligations on this matter under the Conservation of Habitats and Species Regulations 2017.

### **Air Quality, Dust and Odour**

- 6.4.6. I consider that the Proposed Development would not be likely to have a significant effect on air quality and would not lead to unacceptable

levels of dust or odour. This finding takes into account the effect on the buildings to the north of the site which are proposed to be converted by the Cecil Estate Family Trust (the Trust). They are some distance from the application site boundary and the proposed commercial use would be a relatively low-sensitivity receptor for odour impact.

- 6.4.7. Neither the Environment Agency (EA) nor NNC expressed concern regarding the assessment or potential impacts of the Proposed Development on air quality or from dust or odour. The controls necessary to ensure that the assessed effects would not be exceeded are integral to the design of the proposal or would be effectively provided through the Environmental Permits (EPs) as varied to include the Proposed Development. As such, apart from the requirement for a dust management scheme (which would be secured by rDCO Requirement 6(2), I consider that there is no need for further controls to be provided in the DCO.
- 6.4.8. Taking all of these factors into consideration, I find that the Proposed Development would accord with NPSHW paragraphs 5.2.4 to 5.2.8 and Northamptonshire Minerals and Waste Local Plan (MWLP) Policy 18. Overall, air quality, dust and odour matters do not weigh for or against the proposal in the planning balance.

### **Biodiversity**

- 6.4.9. I find that the Applicant's assessment and responses to the issues raised in the Examination show that the overall long-term effect of the Proposed Development on biodiversity would be beneficial.
- 6.4.10. Specifically, the important role of creating connectivity between the areas of protected woodlands adjoining the site when it has been restored would be an enhancement over the existing position. So too would the planting of extensive lengths of hedgerow. The SoCGs with NNC and Natural England [REP8-008 Appendices B and D] do not find conflict with biodiversity policies and agree that the Proposed Development would have a beneficial effect on biodiversity in the long term. This is borne out by the Applicant's Biodiversity Net Gain assessment.
- 6.4.11. The protections provided in the Ecological Management, Monitoring and Aftercare Plan (EMMAP) [REP7-008 Appendix DEC E] (secured by rDCO Requirement 4) and the varied EPs would secure the necessary mitigation measures.
- 6.4.12. As such, the Proposed Development would accord with the relevant provisions of NPSHW section 5.3, NPPF paragraphs 174 and 180, MWLP Policies 18, 20 and 24, North Northamptonshire Joint Core Strategy (JCS) Policies 4 and 21, Rural North Oundle and Thrapston Local Plan (RNOTLP) Policy 4 and King's Cliffe Neighbourhood Plan Policy RC2. In reaching these conclusions, I have had regard to the biodiversity duty set out in the Natural Environment and Rural

Communities Act 2006. Overall, I find that biodiversity matters weigh moderately in favour of the proposal in the planning balance.

### **Climate Change**

- 6.4.13. I find that the Proposed Development would be likely to have neither a significant effect on climate change nor be significantly affected by it.
- 6.4.14. The Applicant has had regard to the Government's latest climate change targets and there is no substantive evidence to indicate that the proposal would generate greenhouse gases at a level which would call into question the ability of the UK to meet its current carbon budget target for the waste sector. There is nothing to suggest that climate change effects would put at risk the future operation of the facility.
- 6.4.15. The varied EPs would include conditions to monitor and review emissions as well as controlling the use of raw materials in the proposal. The proposal would, therefore, comply with NPSHW paragraphs 2.3.9, 4.6.6, 4.6.7, 4.6.11 and 4.6.12, the relevant provisions of the Climate Change Act as amended, the Net Zero Strategy, the UK carbon budgets and MWLP Policies 12 and 15. Overall, this matter has a neutral weighting in the planning balance.

### **Historic Environment**

- 6.4.16. I conclude that the Proposed Development would not be likely to have a significant effect on the above or below ground historic environment. The site and immediately surrounding area contain little of historic significance and the effects of the Proposed Development would be very limited. More distant designated heritage assets and their settings are not within visual range of the site.
- 6.4.17. I am satisfied that the mitigation measures necessary to safeguard those heritage assets which may be affected by the proposal would be achieved through the Archaeological Mitigation Strategy [REP7-008 Appendix DEC A] which would be secured through the rDCO. On this basis, the Proposed Development would accord with paragraphs 5.8.8 to 5.8.13, 5.8.18 and 5.8.21 to 5.8.23 of the NPSHW and Policy 22 of the MWLP. Consequently, I find that this topic has a neutral weighting in the planning balance.

### **Human Health**

- 6.4.18. I find that the Proposed Development would not be likely to have significant adverse effects on human health during the construction and operational phases and would have a moderately beneficial effect in the long term, post restoration phase.
- 6.4.19. The assessment, control measures and mitigation of the direct effects of the Proposed Development on human health rely in large part on the control of emissions through the EP process. However, reliance

on that process for the consideration of emissions is appropriate and accords with the approach set out in the NPSHW. The relevant regulatory bodies (specifically the Environment Agency and UK Health Security Agency) were content with this approach, as was NNC.

- 6.4.20. I find that the Proposed Development would not be likely to adversely affect wider health and wellbeing concerns, give rise to undue anxiety in the local community or impact on local businesses or facilities during its construction and operational phases.
- 6.4.21. In the longer term, the restoration of the site would provide a new, fairly extensive, publicly accessible open space. The open and green character of this space could be expected to have a beneficial effect on the wellbeing of people using it. As such, I conclude that the Proposed Development would comply with paragraphs 4.10.2 to 4.10.4 of the NPSHW and that human health matters weigh moderately for the Proposed Development in the planning balance.

### **Landscape and Visual**

- 6.4.22. I find that the Proposed Development would be likely to have significant adverse effects on the landscape character of the western extension during the construction and landfilling phases. The site falls within an Area of Tranquillity as designated by JCS Policy 3. There would be a similarly adverse landscape effect on this area during these phases, particularly in the northern part of the western extension. However, the effect would be limited in extent and timespan. Furthermore, the designation was made when the ENRMF was already in place and any effects on the tranquillity of the location would have been taken into account. I also found that the proposal would not lead to significant noise effects on the designated area (see Section 4.15). Consequently, the degree of conflict with JCS Policy 3 would be minor.
- 6.4.23. There would also be significant adverse visual effects on limited viewpoints from Westhay Lodge, Westhay Barn and Footpath MX15 during the construction and landfilling phases. Following restoration, the effects in each case would no longer be significant.
- 6.4.24. The Applicant goes further and considers that the effect on landscape character would be moderate beneficial and that the visual effect on the Westhay Lodge viewpoint would be minor beneficial. The landform and planting of the restored western extension would, indeed, be consistent with the character of the approved restoration scheme for the existing ENRMF and the proposed planting would reflect and integrate with the landscape character of the woodland areas to the north of the site. Nevertheless, the contours of the restored landform would be relatively steeper than the undulating landform of the surrounding area. Consequently, while I find that there would be no significant adverse landscape or visual effects following restoration, nor would there be any beneficial effects.

- 6.4.25. In reaching this conclusion I have taken into account the Supplementary ES submitted with the non-material change application, the planting proposals and the mitigation measures set out in the EMMP.
- 6.4.26. Overall, I find that the construction and landfilling phase landscape and visual effects, although affecting limited areas, would be significant adverse. This brings a degree of conflict with landscape protection Policy 21 of the MWLP, Policy 3 of the JCS as well as paragraphs 5.9.5 and 5.9.13 of the NPSHW. As such, these matters weigh moderately against the proposal in the planning balance.

### **Land Use, Soils and Socio-economics**

- 6.4.27. The Proposed Development would result in the loss of some 5.9 hectares of best and most versatile (BMV) agricultural land which would be of moderate adverse significance. As such the proposal would not accord with the part of NPSHW paragraph 5.10.6 which presumes against the loss of BMV land or paragraph 5.10.13.
- 6.4.28. With mitigation measures in place, which can be secured through Requirement 6 of the rDCO, I am satisfied the Proposed Development would not have an adverse effect on soil resources. The use of extracted clay in the Proposed Development would also help to safeguard mineral resources. The proposal would, therefore, accord with NPSHW paragraphs 5.10.6 (with regard to the protection of soil resources) and 5.10.7.
- 6.4.29. I have concluded that, at the national / regional level, there is a need for the Proposed Development in accordance with the NPSHW. It would offer nationally significant economic benefits in meeting the need for hazardous waste disposal and treatment and disposal of LLW.
- 6.4.30. I am satisfied that, at the local level, the Proposed Development would not adversely affect local services and businesses. It would also help to support around 23 jobs and provide a degree of support for local services and suppliers. The Proposed Development would also contribute funding to community projects through the Landfill Tax scheme.
- 6.4.31. Following restoration, the Proposed Development would provide a publicly accessible green space which would be considerably larger than the space offered under the existing DCO restoration scheme. I consider that this would amount to a meaningful additional benefit to the local community which is supported by NPSHW paragraphs 5.10.1 and 5.10.21, Policy 24 of the MWLP and Policy 4 of the RNOTLP. In this way the proposal would have a moderate beneficial socio-economic effect locally. This benefit would offset its adverse effect on agricultural land.
- 6.4.32. I recognise that the Trust, as a neighbouring landowner, has outstanding concerns. However, the available evidence suggests that

the proposed surface water discharge to the swallow hole would be located on land under the Applicant's control and I find elsewhere in the report that the proposed discharges to surface water and groundwater would not have adverse effects. Moreover, they would be subject to additional control under the EP regime.

- 6.4.33. I consider that any further concerns of the Trust regarding the nature of the Applicant's rights and obligations in relation to the discharge of surface water to ground and any associated effects on the Trust's land are matters outside the scope of this report. Overall, I find that the relationship of the Proposed Development with neighbouring occupiers and uses does not weigh against the proposal. In this respect the proposal accords with the aims of NPSHW paragraph 5.10.16 and MWLP Policy 18.
- 6.4.34. I have found that the local socio-economic effects of the proposal offset its adverse effect on agricultural land. Adding the national / regional economic benefits of the Proposed Development to that neutral position I find that, together, the land-use, soils and socio-economic effects of the Proposed Development weigh moderately in its favour in the planning balance.

#### **Noise and Vibration**

- 6.4.35. I find that the proposed on-site construction and operational activities and the associated traffic movements have been properly assessed and would not be likely to result in significant adverse noise or vibration effects. The mitigation measures necessary to achieve this outcome would be secured by a Noise and Vibration Management Plan secured by rDCO Requirement 5.
- 6.4.36. Although the Trust remains concerned about noise and vibration impacts on its proposed commercial storage site, the available evidence firmly indicates that there would be little or no adverse effect. Nor is there any substantive evidence to show that noise from the Proposed Development would adversely affect fauna in the wooded area to the north of the site.
- 6.4.37. With these considerations in mind, I find that the proposal would accord with paragraphs 5.11.1, 5.11.2 and 5.11.4, to 5.11.14 of the NPSHW as well as Policy 18 of the MWLP and Policy 8 of the JCS. Noise and vibration matters, therefore, have a neutral weighting in the planning balance.

#### **Safety and Security**

- 6.4.38. The Proposed Development would not be likely to pose a risk to military or civilian aviation. It would, therefore, accord with NPSHW paragraphs 5.4.2, 5.4.6 and 5.4.14 and the relevant provisions of MWLP Policy 18. The Proposed Development would also accord with paragraphs 5.4.10 to 5.4.12 insofar as it would not affect other military assets.

- 6.4.39. The Spring 2020 pollution incident affecting the Trust's land has been dealt with satisfactorily by the Applicant and I am content that it does not call into question the Applicant's fitness to operate the Proposed Development.
- 6.4.40. The potential for the Proposed Development to pose a risk to infrastructure assets, particular Anglian Water's (AW) pipelines, was thoroughly explored during the Examination. I am content that the Applicant's additional submissions demonstrate that the Proposed Development would not pose a risk to the water pipelines or the diverted electricity cable which would run in the same service corridor.
- 6.4.41. Although the exact distance required between the water pipelines and the electricity cable was not fully agreed at the end of the Examination, the control mechanisms within the rDCO make sufficient allowance for the requirements of both AW and Western Power Distribution to be accommodated without leading to any additional significant environmental effects. Consequently, I find that the Proposed Development could be constructed under the terms of the rDCO without posing an unacceptable risk to the safety of infrastructure assets.
- 6.4.42. There is nothing to suggest that the Proposed Development would be unduly vulnerable to other safety concerns or that it would pose an undue risk to the safety of the local environment or neighbouring occupiers, assets and operations. The mitigation measures necessary to achieve this would be secured through the varied EPs and relevant provisions of the Applicant's DCO Environment Commitments (DEC) [REP7-008] (in particular, the Boundary Design Principles - Appendix DEC B, the Surface Water Management Plan - Appendix DEC F and the Bird Hazard Management Plan - Annex DECI2) which, in turn, are secured through the rDCO.
- 6.4.43. Therefore, I find that the Proposed Development accords with the relevant provisions of NPSHW Section 5.4 and Policies 18 and 23 of the MWLP. As such, safety and Security matters weigh neither for nor against the proposal in the planning balance.

### **Traffic and Transport**

- 6.4.44. The Applicant's Transport Assessment shows that the Proposed Development would lead to a relatively small increase in the number of heavy goods vehicle movements to and from the site. The predicted increase in movements is below the threshold for a detailed assessment of the strategic highway network to be required. There is nothing to indicate that the proposal would lead to congestion or pose a significant risk to safety on the local highway network. The Applicant has measures in place to ensure the safe transport of hazardous waste.
- 6.4.45. Recent improvements to the site access, together with a financial contribution to the maintenance and improvement of the highway



and the provision of wheel cleaning facilities would help ensure the condition and cleanliness of the road. The mitigation measures necessary to secure these outcomes are secured in the Traffic Management Plan, rDCO Requirement 11 and the signed s106 Agreement.

- 6.4.46. On this basis, I consider that the site access arrangements are suitable for the Proposed Development and that there is no need to provide an alternative access position.
- 6.4.47. Neither the existing local travel infrastructure nor the nature of the traffic generated at the site lend themselves to achieving a significant shift to more sustainable travel modes. Moreover, I have already found that the site is well located with regard to the sources of waste it receives. This helps to minimise travel distances for lorries delivering waste to the facility.
- 6.4.48. Overall therefore, I find that the proposal would not lead to significant adverse traffic and transport effects. Consequently, it would accord with NPSHW paragraphs 5.13.2, 5.13.4 and 5.13.9 and Policy 18 of the MWLP. Nor would it be contrary to the sustainable travel aims of Policy 19 of the MWLP. Traffic and transport matters, therefore, weigh neutrally in the planning balance.

#### **Water Environment**

- 6.4.49. The water-related context for the site has been thoroughly considered and assessments of the effects of the Proposed Development on surface water and groundwater quality and flows have been found to be acceptable. The principles of the Surface Water Management Plan (SWMP) have been provided and, while the detailed design would be subject to further approval, that would be secured through rDCO Requirement 3(1) and it is reasonable to expect that a satisfactory design could be achieved. Some further site investigation is required which may result in adjustment to the detailed design of the system. However, I am content that those adjustments could be accommodated within the principles established in the SWMP and would not require consequential changes to the restoration scheme.
- 6.4.50. The SWMP would ensure that surface water and groundwater discharges would be maintained at pre-development greenfield rates and that the quality of surface water and ground at the site and in the surrounding area would not be harmed. As such, the proposal would accord with the requirements of the Water Framework Directive and the Anglian River Basin Management Plan.
- 6.4.51. There is no substantive evidence to show that the proposal would have an adverse effect on the quality or volume of surface water or groundwater crossing the Trust's land.

- 6.4.52. Insofar as contaminated water would be used in the treatment processes in the waste treatment and recovery facility, the proposal would seek to limit the demand for fresh water.
- 6.4.53. The site is within an area of generally low flood risk and there is nothing to suggest that it is at risk of flooding from external sources. I am content that the SWMP adequately demonstrates that the Proposed Development would not lead to an unacceptable risk of flooding at the site or the surrounding area.
- 6.4.54. I find that the Proposed Development would not have significant adverse effects on water resources or flood risk. Consequently, it would accord with paragraphs 5.7.5 to 5.7.9, 5.7.12, 5.15.3 to 5.15.5, 5.15.7, 5.15.8, 5.15.10 and 5.15.11 of the NPSHW, the NPPF and Planning Practice Guidance as well as Policy 18 of the MWLP and Policy 5 of the JCS. This topic weighs neutrally in the planning balance.

### **Waste Management**

- 6.4.55. Waste generated during the operation of the Proposed Development would be controlled through the varied EPs. During construction, the principal waste generated would be the material excavated to form the landfill cells. Much of this would be re-used on-site. The Applicant has identified potential destinations where the remainder would be re-used. As such, the waste generated during the construction phase would not put pressure on the capacity of other waste management facilities. Re-use is towards the top of the waste hierarchy and therefore these outcomes would fit well with its objectives.
- 6.4.56. Consequently, I find that the proposals for dealing with waste generated by the Proposed Development would accord with the requirements of NPSHW paragraphs 5.14.1, 5.14.2, 5.14.4 and 5.14.8. This matter weighs neither for nor against the Proposed Development in the planning balance.

### **Cumulative and Combined Effects**

- 6.4.57. The ES considers potential combined and cumulative effects for each topic area and these do not lead to any additional significant effects being identified. None of the parties to the Examination raised concerns about the combined or cumulative effects.
- 6.4.58. I am satisfied that there would be no likely significant combined and cumulative effects arising from the Proposed Development. Consequently, I find that the requirements of the EIA Directive and paragraphs 4.1.3, 4.2.1 and 4.2.2 of the NPSHW have been satisfied. This matter has a neutral weighting in the planning balance.

## **6.5. THE PLANNING BALANCE**

- 6.5.1. I consider that the environmental information submitted by the Applicant, including the ES and Supplementary ES, other

environmental information submitted during the Examination and information relevant to the HRA, is adequate in terms of statutory and policy requirements purposes for decision-making. I have taken it into account, along with all other submissions made to the Examination, in reaching my recommendation and consider that the SoS can rely on it in determining the case for making the DCO.

- 6.5.2. I have found that the construction and landfilling phase landscape and visual effects, although affecting limited areas, would be significant adverse. This brings a degree of conflict with landscape protection Policy 21 of the MWLP and JCS Policy 3 as well as paragraphs 5.9.5 and 5.9.13 of the NPSHW. As such, these matters weigh moderately against the proposal in the planning balance.
- 6.5.3. I also found that the loss of Grade 3a agricultural land as a result of the Proposed Development would amount to a moderate adverse effect. However, this negative effect is outweighed by other socio-economic benefits and overall, the land use, soils and socio-economic effects of the proposal weigh moderately in its favour. I have also found that biodiversity and human health effects weigh moderately in favour of the proposal. All the other environmental aspects considered have a neutral weight in the planning balance.
- 6.5.4. The Applicant's No Significant Effects Report and the comments of Natural England indicate no likely significant effects on European Sites, species or habitats would arise from the Proposed Development. I see no reason for HRA matters to prevent the making of the DCO.
- 6.5.5. I have found that the need for the Proposed Development has been established in accordance with the requirements of the NPSHW. The location of the proposal also weighs in its favour: nationally in terms of proximity to the source of waste that it would accept, and locally in terms of co-location with the Thornhaugh landfill site that would take exported clay from the site. This finding weighs strongly in favour of the DCO being made. This consideration, together with the biodiversity, human health and land use, soils and socio-economic benefits of the proposal substantially outweigh its adverse landscape and visual effects. Overall therefore, the Proposed Development accords with the policies of the NPSHW.
- 6.5.6. For the reasons set out in the preceding chapters and summarised above, I find that the Proposed Development is acceptable in planning terms. Therefore, the case for making the DCO for the Proposed Development has been made, and I recommend accordingly.

## **7. DRAFT DEVELOPMENT CONSENT ORDER**

### **7.1. INTRODUCTION**

- 7.1.1. This chapter provides an overview of the Applicant's changes to the Draft Development Consent Order (dDCO) during the Examination, and my consideration of the Applicant's final dDCO [REP8-003] to arrive at the recommended Development Consent Order (rDCO) (Appendix C).
- 7.1.2. A dDCO [APP-017] and an Explanatory Memorandum (EM) [APP-019] were submitted as part of the application. The EM describes the purpose of the dDCO and each of its articles and schedules. The Applicant submitted 'clean' and 'tracked' versions of the subsequent iterations of the dDCO and EM.
- 7.1.3. While the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009, (the model provisions) has been repealed, the submission version of the dDCO draws on the model provisions as well as precedent set by other made DCOs under the Planning Act 2008 (PA2008). These are referenced in the EM. The application dDCO and subsequent iterations are in the form of a Statutory Instrument as required by s117(4) of the PA2008.
- 7.1.4. The following sections of this chapter:
- describe the structure and functions of the dDCO;
  - summarise the processes used to examine the dDCO and the iterations of the dDCO during the Examination;
  - report on the consideration of the dDCO and relevant submissions made by the Applicant and other parties during the Examination;
  - set out the changes made to the dDCO during the Examination; and
  - provide my recommended changes leading to the rDCO (Appendix C of this report).

### **7.2. STRUCTURE AND FUNCTION OF THE DRAFT DCO**

- 7.2.1. Each iteration of the Applicant's dDCO contains articles and schedules including requirements and Protective Provisions (PP). These are preceded by a preamble which briefly explains the key legislative provisions and the process of Examination, reporting and decision making.
- 7.2.2. The articles are contained in four parts, which are briefly described here and in more detail in the final EM [REP7-005] submitted to the Examination. The rDCO (Appendix C) has the same structure as the final dDCO.

- 7.2.3. Part 1 contains the preliminary provisions providing for citation, commencement and terms used in the dDCO.
- 7.2.4. Part 2 sets out the principal powers and provides for the grant of development consent for the Proposed Development. It includes provisions dealing with the relationship between the proposed DCO and the original DCO granting consent for the existing East Northants Resource Management Facility (ENRMF), limits of deviation, who has the benefit of the Order and how those powers can be transferred, the power to construct and maintain the Proposed Development and maintenance of drainage.
- 7.2.5. Part 3 provides supplemental powers relating to access to the works, the discharge of water, the authority to survey and investigate the Order land and works to trees and hedgerows.
- 7.2.6. Part 4 contains miscellaneous and general provisions in relation to landlord and tenant law, PPs, the relationship of the Order to subsequent grants of planning permission, statutory nuisance, the certification of documents, service of notice and arbitration.
- 7.2.7. The schedules contain information referred to in the articles, including the description of the authorised development, Requirements applying to the authorised development, the procedure for approval under the Requirements, design parameters, removal of important hedgerows and PPs.
- 7.2.8. The Applicant has entered into a section 106 agreement with the landowner and North Northamptonshire Council (NNC). I deal with its terms in Section 4.14 above. However, they are concerned with the payment of financial contributions and do not directly affect the function of the rDCO.
- 7.2.9. The Applicant has entered into an option agreement [REP2-018] with Howard Farms Limited, the owner of the western extension land. The agreement gives the Applicant the option to purchase that land at an agreed base price (subject to indexation) at any time in the option period (up to September 2029). The agreement also allows for that date to be extended and includes clauses which require the landowner to support the Applicant in securing the necessary consents for the Proposed Development, including the DCO. On this basis, I am content that this agreement gives the Applicant sufficient control over the western extension land to enable it to implement the DCO should consent be granted.
- 7.2.10. Throughout the Examination I have considered the interaction of the dDCO and the controls and mitigation that would be provided through the Environmental Permit regime. I am satisfied that these two legislative provisions would not overlap and would operate to provide effective controls over the Proposed Development as required by National Policy Statement for Hazardous Waste (NPSHW) paragraphs 4.7.2, 4.7.3 and 4.7.9.

## **7.3. DRAFT DCO EXAMINATION PROCESS AND ITERATIONS**

### **Examination process**

7.3.1. The dDCO was examined through written questions and an Issue Specific Hearing, including the following (in each case showing the references to the main written responses):

- Issue Specific Hearing 1 (ISH1) [PD-008, EV4-000, EV4-001, EV4-005]: responses - Applicant [REP4-006], NNC [REP4-012], Environment Agency (EA) [REP4-015], Natural England (NE) [REP4-016];
- First written questions [PD-006]: responses - Applicant [REP2-006], EA [REP2-028], NE [REP2-030], National Grid Gas [REP2-031], NNC [REP2-034]; and
- Further written question [PD-010]: response - NNC [REP5-009].

### **Iterations**

7.3.2. The dDCO was updated several times during the Examination, responding to issues that were raised. The clean and tracked copy versions of the dDCO submitted by the Applicant during the Examination were:

- Version (V)1: clean [REP3-003], tracked [REP3-004];
- V2: clean [REP4-005], tracked REP4-004];
- V3: clean [AS-011], tracked [AS-012];
- V4: clean [REP6-003], tracked [REP6-013];
- V5: clean [REP7-007], tracked [REP7-006]; and
- V6: clean [REP8-003], tracked [REP8-004].

7.3.3. The Applicant also submitted a schedule of changes to each version of the dDCO, including the reasons for those changes [REP8-006]. Each version of the dDCO was accompanied by a validation report. The validation report for the final version is at [REP8-005].

7.3.4. The Applicant provided the following updates to the EM during the Examination:

- V1 [REP3-006];
- V2 [AS-014];
- V3 [REP3-006]; and
- V4 [REP7-005].

7.3.5. I issued a schedule of changes to the Applicant's dDCO [PD-013] and invited comment on it at Deadline 7. The only response was from the Applicant who submitted its V5 of the dDCO.

## 7.4. EXAMINATION OF THE DRAFT DCO

7.4.1. This section does not report on every change made to the dDCO during the Examination, as some were as a result of drafting or typographical errors or were revisions that I feel are not controversial. Nor does it repeat queries that I consider have been adequately justified by the Applicant, thereby not necessitating change to the dDCO. The section deals with those changes made during the Examination considered to be significant because of their effect or because they gave rise to several submissions.

7.4.2. I queried a number of the articles in the submitted dDCO [PD-006 Q4.2.1 to Q4.2.14] and the Applicant responded [REP2-006]. In summary:

- **Article 2** was amended in V1 of the dDCO to specify the 'relevant planning authority' in accordance with Planning Inspectorate Advice Note 15. This Article was also amended to define 'work' by reference to the Works Plans and Schedule 1 of the dDCO;
- **Article 4** was amended in V1 of the dDCO to clarify that the provisions of the DCO (including compliance with the Requirements) would come into force on the date that notice is served on the relevant planning authority that the undertaker is ceasing to operate works under the original Order;
- **Articles 6, 10 12 and 13** V1 of the EM was amended to more clearly explain the derivation of these articles and how they differ from those on which they are based;
- **Articles 7, 10, 11, 14, 16 and 19** V1 of the EM was amended to explain more clearly why these articles are appropriate to the Proposed Development;
- **Article 10** as submitted allowed the undertaker, with the consent of the street authority, to construct accesses at such locations as it considered reasonably necessary. I queried whether this power would potentially allow the undertaker to construct accesses at locations which had not been assessed in, for example, the noise and air quality chapters of the Applicant's Environmental Statement (ES). This matter was also discussed at ISH1 [REP4-007] and the article was amended in V2 of the dDCO to specify that the access works would be as shown on the access plan [APP-010]; and
- **Article 12** was amended in V1 of the dDCO to define 'the 1965 Act' as the Compulsory Purchase Act 1965.

7.4.3. I sought clarification of a number of the schedules in the submitted dDCO [PD-006 Q4.3.1 to Q4.3.6] to which the Applicant [REP2-006], the EA [REP2-028] and NNC [REP2-034] responded. In brief:

- **Schedule 1** was not itself amended to include a cross reference to the Works Plans, but see the related amendment to Article 2 above;

- **Schedule 2** was amended in V1 of the dDCO to include the EA as a consultee in the discharge of Requirements 3 and 4 [see also EA submission at REP2-028]; and
  - **Schedule 4** was amended in V4 of the dDCO to more closely control the number and height of buildings permitted in Work No 3. The discussion leading to this amendment is reported in Section 4.13 'Landscape and Visual'.
- 7.4.4. **Schedule 6** contains the PPs for the three statutory undertakers (SUs) affected by the Proposed Development (Anglian Water (AW), National Grid Gas and Western Power Distribution (East Midlands) (WPD)). The PPs were the subject of discussions between the Applicant and the SU throughout the Examination. These discussions culminated in the parties agreeing bespoke PPs for each of the SUs [REP8-008 Appendices A, E and K]. These PPs were included in V4 (National Grid Gas and WPD) and V5 (AW) of the dDCO.
- 7.4.5. My schedule of proposed changes to the dDCO [PD-013] indicated that the remaining generic PPs could be omitted subject to the SUs being satisfied that the bespoke provisions meet their requirements. The generic PPs were omitted in V6 of the dDCO.
- 7.4.6. Although WPD agreed to the terms of the PPs, its Statement of Common Ground (SoCG) remained unsigned at the end of the Examination. I have already concluded that the terms of the DCO would allow for both its and AW's requirements for separation distances in the service corridor to be accommodated (see Section 4.16 Safety and Security).
- 7.4.7. The issue preventing signature was the absence of a completed Asset Protection agreement between the Applicant and WPD [REP8-010]. However, having regard to the final draft SoCG, including acceptance of the PPs, and related correspondence, there is no reason to believe that completion of the agreement would affect the function of the dDCO or prove to be an impediment to the implementation of the Proposed Development.
- 7.4.8. I sought views on the Requirements in the submitted dDCO [PD-006 Q4.4.1 to Q4.4.6 and Q9.1.1] to which the Applicant [REP2-006], the EA [REP2-028] and NNC [REP2-034] responded. In summary:
- **Requirement 4** allows the undertaker 24 months from the date of the Order to submit a phasing, landscaping and restoration scheme. In V1 of the dDCO a new clause was added to clarify that phasing, landscaping and restoration work would be controlled by the Ecological Management, Monitoring and Aftercare Plan [REP7-008 Appendix DEC E] pending approval of a phasing, landscaping and restoration scheme;
  - **Requirement 4** was amended in V1 to specify that restoration and aftercare works must be carried out for a minimum period of 20 years in accordance with the then extant phasing, landscaping



and restoration scheme (the Requirement also requires this scheme to be updated every two years);

- **Requirement 4** was amended in V1 to confirm that the undertaker must provide public access to the restored site in accordance with details set out in the phasing, landscaping and restoration scheme; and
- **Requirement 4** was amended in V2 to clarify that the phasing, landscaping and restoration scheme must include details of how any invasive species would be managed.

7.4.9. **Article 5** and **Requirement 3(2)** were amended in V3 to refer to the restoration concept plan submitted with the non-material change to the Proposed Development (see Section 2.4 of this report).

7.4.10. In the interests of completeness, it is worth noting that V3 of the dDCO included an additional Requirement to secure details of the stand-off distances for the water pipelines. However, once agreement with AW was reached (see discussion at Section 4.16) this Requirement was omitted from subsequent versions of the dDCO.

7.4.11. I have also given consideration to Article 17 of the dDCO which provides the undertaker with a defence against proceedings in respect of certain categories of nuisance falling within s79(1) of the Environmental Protection 1990 Act. Although the available evidence suggests that the Proposed Development would be unlikely to give rise to statutory nuisance, Article 17 is necessary in the event that proceedings are brought in the magistrates' court under s82 of the 1990 Act. It is relevant that the original Order contained a similar provision.

## **7.5. CHANGES TO THE APPLICANT'S FINAL DRAFT DCO**

7.5.1. The Applicant's final draft [REP8-003] has been reviewed and the following changes are considered to be necessary:

- update Article 4(3) to replace the words '*requirements in Schedule 2*' with '*provisions*';
- update the title and departmental name for the Secretary of State below Article 20;
- amend Requirement 4 to add the words '*The works must be undertaken in accordance with the extant phasing, landscaping and restoration scheme.*' at the end of clause 4; and
- amend Requirement 4 to add the word '*thereafter*' after '*20 years*' in clause 6.

7.5.2. The change to Article 4(3) is intended to remove ambiguity. It confirms that all provisions of the original Order would cease to have effect after the new Order comes into force.

7.5.3. The change to the title and departmental name is purely factual. The changes to Requirement 4 are intended to add precision and do not

alter the substantive provisions of the Requirement. All these changes are included in the rDCO (Appendix C).

## **7.6. CONCLUSIONS**

- 7.6.1. I have had regard to all matters forming the application and put before me in the Examination, including the iterations of the dDCO.
- 7.6.2. I am satisfied that the rDCO adequately defines the scope of the consent being granted and that it secures the necessary controls and mitigation measures that are consistent with the assessments provided in the ES.
- 7.6.3. I consider that the rDCO only includes Requirements that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects. As such, they accord with paragraph 4.1.7 of the NPSHW.
- 7.6.4. If the Secretary of State for Levelling Up, Housing and Communities is minded to make the DCO, it is recommended to be made in the form set out in Appendix C.

## **8. SUMMARY OF FINDINGS AND CONCLUSIONS**

### **8.1. INTRODUCTION**

8.1.1. This chapter summarises the conclusions arising from the report as a whole and sets out my recommendation to the Secretary of State for Levelling Up, Housing and Communities.

### **8.2. SUMMARY AND CONCLUSIONS**

8.2.1. My conclusions are subject to the provisions of the recommended Development Consent Order (rDCO) at Appendix C of this report.

8.2.2. In relation to ss104(2) and 104(3) of the Planning Act 2008 (PA2008), I conclude that making the rDCO would be in accordance with the National Policy Statement for Hazardous Waste, relevant development plans and other relevant policy, all of which have been taken into account in this report. Furthermore, I have had regard to matters arising from the Local Impact Report from North Northamptonshire Council, relevant legislation and to all matters that I consider to be both important and relevant in reaching my conclusions.

8.2.3. I have had regard to the findings of the Applicant's Habitats Regulations Assessment Screening Report and the comments of Natural England. While the Secretary of State for Levelling Up, Housing and Communities (SoS) is the competent authority under the Habitats Regulations and will make the definitive assessment, I conclude that the Proposed Development would not be likely to have significant effects on the UK national site network and European sites, species or habitats and I have taken this finding into account in reaching my recommendation. I am also satisfied that the SoS has sufficient information available to discharge their obligations on this matter under the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations). I see no reason for Habitats Regulation Assessment matters to prevent the making of the Development Consent Order.

8.2.4. As required by Regulation 3 of The Infrastructure Planning (Decisions) Regulations 2010, I have had regard to the desirability of preserving listed buildings or their setting and any features of special architectural or historic interest which they possess, preserving or enhancing the character or appearance of conservation areas, and preserving scheduled monuments or their setting. I am satisfied with how they have been addressed.

8.2.5. As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, I have had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992. I am content that the Proposed Development accords with those aims.

- 8.2.6. There are no identified conflicts with the Natural Environment and Rural Communities Act 2006 and I have fulfilled the required biodiversity duty. Similarly, I am content that due consideration has been given to the relevant requirements of the Wildlife and Countryside Act 1981, the Waste (England and Wales) Regulations 2011, Flood and Water Management Act 2010 and the Climate Change Act 2008 as amended.
- 8.2.7. I have had regard to the Public Sector Equality Duty throughout the Examination. I find that the Proposed Development would not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. As such, there would be no breach of the Public Sector Equality Duty.
- 8.2.8. In relation to s104(7) of the PA2008, and with the mitigation proposed through the rDCO at Appendix C and the controls provided through the Environmental Permits, I consider that adverse impacts arising from the Proposed Development would not outweigh its benefits
- 8.2.9. There is nothing to indicate that the application should be decided other than in accordance with the National Policy Statement for Hazardous Waste. I have had regard to all other matters and representations received, but have found no relevant matters that would individually or collectively lead to a recommendation other than that set out below.

### **8.3. RECOMMENDATION**

- 8.3.1. My findings and conclusions on important and relevant matters are set out in this report. I consider that the Proposed Development meets the tests in s104 of the PA 2008. On that basis, I recommend that the SoS makes the East Northants Resource Management Facility Western Extension Development Consent Order in the form attached at Appendix C to this report.

## **APPENDIX A: EXAMINATION LIBRARY**

# **East Northants Resource Management Facility Western Extension Examination Library**

**Updated – 03.08.2022**

This Examination Library relates to the East Northants Resource Management Facility Western Extension application. The library lists each document that has been submitted to the Examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate, is published to the National Infrastructure Website but is not included within the Examination Library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

**WS010005 – East Northants Resource Management Facility  
Western Extension**

**Examination Library - Index**

Category	Reference
<p><a href="#">Application Documents</a></p> <p>As submitted and amended version received before the PM. Any amended version received during the Examination stage to be saved under the Deadline received</p>	APP-xxx
<p><a href="#">Adequacy of Consultation responses</a></p>	AoC-xxx
<p><a href="#">Relevant Representations</a></p>	RR-xxx
<p><a href="#">Procedural Decisions and Notifications from the Examining Authority</a></p> <p>Includes Examining Authority's questions, s55, and post acceptance s51</p>	PD-xxx
<p><a href="#">Additional Submissions</a></p> <p>Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination including responses to Rule 6 and Rule 8 letters</p>	AS-xxx
<p><a href="#">Events and Hearings</a></p> <p>Includes agendas for hearings and site inspections, audio recordings, responses to notifications and applicant's hearing notices</p>	EV-xxx
<p><a href="#">Representations – by Deadline</a></p>	
<p><a href="#">Deadline 1:</a></p> <p>Deadline for receipt by the ExA of: - Submission by Interested Parties (IPs) of suggested locations for the ExA to include in the Accompanied Site</p>	REP1-xxx

<p>Inspection (ASI), including the reason for nomination and issues to be observed, information about whether the location can be accessed using public rights of way or what access arrangements are required (if any)</p> <ul style="list-style-type: none"> <li>- Any further information requested by the ExA under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR)</li> <li>- Any other information requested by the ExA for submission at Deadline 1</li> <li>- Notification by Interested Parties (IPs) of wish to speak at an Open Floor Hearing</li> <li>- Notification by IPs of wish to speak at an Issue Specific Hearing(s)</li> <li>- Notification by IPs of their intention to attend the ASI</li> <li>- Notification by Statutory Parties who wish to be considered as an IP</li> <li>- Notification of wish to receive future correspondence electronically</li> </ul>	
<p><a href="#">Deadline 2:</a></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>- Comments on Relevant Representations (RRs)</li> <li>- Written Representations (WRs)</li> <li>- Summaries of WRs exceeding 1500 words</li> <li>- Responses to ExQ1</li> <li>- Local Impact Reports (LIRs) from local authorities</li> <li>- Statements of Common Ground (SoCG) requested by ExA – see Annex E</li> <li>- Comments on updated application documents (if submitted)</li> <li>- A revised Guide to the Application</li> <li>- Applicant’s draft itinerary for the ASI</li> <li>- Comments on any additional information/submissions received by Deadline 1</li> <li>- Any further information requested by the ExA under Rule 17 of the EPR</li> </ul>	REP2-xxx
<p><a href="#">Deadline 3:</a></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>- Comments on WRs</li> </ul>	REP3-xxx



<ul style="list-style-type: none"> <li>- Responses to comments on RRs</li> <li>- Comments on any LIRs</li> <li>- Comments on responses to ExQ1</li> <li>- Comments on any revised draft DCO from the Applicant, if submitted</li> <li>- Progressed SOCG and Statement of Commonality</li> <li>- An updated version of the draft Development Consent Order (dDCO) in clean, tracked and word versions</li> <li>- Schedule of Changes to the dDCO</li> <li>- Comments on the second itinerary for the ASI</li> <li>- An updated Guide to the Application</li> <li>- Any further information requested by the ExA under Rule 17 of the EPR</li> <li>- Comments on any additional information/ submissions received by Deadline 2</li> </ul>	
<p><a href="#">Deadline 4</a></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>- Written summaries of oral contributions at hearings</li> <li>- Post-hearing submissions requested by the ExA</li> <li>- Responses to comments on WRs</li> <li>- Responses to comments on LIRs</li> <li>- Any revised dDCO from the Applicant in clean, tracked and word versions</li> <li>- An updated Schedule of Changes to the dDCO</li> <li>- An updated Guide to the Application</li> <li>- Comments on any other information submitted at Deadline 3</li> <li>- Progressed SOCG and updated Statement of Commonality (if required)</li> <li>- Any other information requested by the ExA under Rule 17 of the EPR</li> <li>- Comments on any additional information/ submissions received by Deadline 3</li> </ul>	REP4-xxx
<p><a href="#">Deadline 5</a></p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>- Responses to ExQ2</li> <li>- Comments on any revised dDCO</li> <li>- Progressed SOCG and updated Statement of Commonality of SOCG, if required</li> <li>- An updated Guide to the Application</li> </ul>	REP5-xxx

<ul style="list-style-type: none"> <li>- Any update to the Book of Reference to reflect changes to land interests in the Order land</li> <li>- Any other information requested by the ExA for submission at Deadline 5</li> <li>- Any further information requested by the ExA under Rule 17 of the EPR</li> <li>- Comments on any additional information/ submissions received by Deadline 4</li> </ul>	
<p><a href="#">Deadline 5a</a></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>- Further Information requested in the letter of 5 May 2022</li> </ul>	REP5a-xxx
<p><a href="#">Deadline 6</a></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>- Written summaries of oral contributions at hearings (if required)</li> <li>- Post-hearing submissions requested by the ExA(if required)</li> <li>- Progressed SoCG and Statement of Commonality (if required)</li> <li>- Comments on responses to ExQ2</li> <li>- Applicant's updated dDCO in clean, tracked and word versions</li> <li>- An updated Schedule of Changes to the dDCO</li> <li>- An updated Guide to the Application</li> <li>- Any other information requested by the ExA for this deadline</li> <li>- Any further information requested by the ExA under Rule 17 of the EPR</li> <li>- Comments on any additional information/ submissions received by Deadline 5</li> </ul>	REP6-xxx
<p><a href="#">Deadline 7:</a></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>- Comments on submissions for Deadline 6</li> <li>- Comments on the ExA's proposed Schedule of Changes to the dDCO (if required)</li> <li>- Comments on RIES (if required)</li> <li>- Final SoCG and finalised Statement of Commonality</li> <li>- Final draft DCO to be submitted by the Applicant in clean, tracked, word</li> </ul>	REP7-xxx

<p>versions and in the statutory Instrument (SI) template with the SI template validation report</p> <ul style="list-style-type: none"> <li>- Final Guide to the Application</li> <li>- Any other information requested by the ExA for submission at Deadline 7</li> <li>- Any further information requested by the ExA under Rule 17</li> <li>- Comments on any additional information/ submissions received by Deadline 6</li> </ul>	
<p><a href="#">Deadline 8:</a></p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>- Comments on the Applicant's Consultation Report (CR) produced to summarise the responses to its consultation exercise (in relation to its proposed Change to the Application) on or before 20 July 2022</li> </ul>	REP8-xxx
<p><a href="#">Other Documents</a></p> <p>Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents</p>	OD-xxx

**WS010005 – East Northants Resource Management Facility  
Western Extension**

**Examination Library**

**Application Documents**

APP-001	<a href="#">Augean South Limited</a> 1.1 Covering letter
APP-002	<a href="#">Augean South Limited</a> 1.2 Application Form
APP-003	<a href="#">Augean South Limited</a> 1.4 Guide to the Application
APP-004	<a href="#">Augean South Limited</a> 2.1 Location Plan
APP-005	<a href="#">Augean South Limited</a> 2.2 Land Plan
APP-006	<a href="#">Augean South Limited</a> 2.3 Works Plan
APP-007	<a href="#">Augean South Limited</a> 2.4 General Arrangement Plan Work No 1A and Work No 1B
APP-008	<a href="#">Augean South Limited</a> 2.5 General Arrangement Plan Work No 2
APP-009	<a href="#">Augean South Limited</a> 2.6 General Arrangement Plan Work No 3
APP-010	<a href="#">Augean South Limited</a> 2.7 Access Plan
APP-011	<a href="#">Augean South Limited</a> 2.8 Restoration Concept Scheme
APP-012	<a href="#">Augean South Limited</a> 2.9 Restoration Profile Contour Plan
APP-013	<a href="#">Augean South Limited</a> 2.10 Hedgerow Removal Plan
APP-014	<a href="#">Augean South Limited</a> 2.11 Statutory and Non Statutory Ecological Sites Plan
APP-015	<a href="#">Augean South Limited</a> 2.12 Statutory and Non Statutory Historic Environment Sites.
APP-016	<a href="#">Augean South Limited</a> 2.13 River Basin Management Plan
APP-017	<a href="#">Augean South Limited</a> 3.1 Draft Development Consent Order
APP-018	<a href="#">Augean South Limited</a> 3.2 Draft DCO Validation Report
APP-019	<a href="#">Augean South Limited</a> 3.3 Explanatory Memorandum
APP-020	<a href="#">Augean South Limited</a> 3.4 Book of Reference
APP-021	<a href="#">Augean South Limited</a> 4.1 Consultation Report
APP-022	<a href="#">Augean South Limited</a> Ref 4.2.1 - Appendix CRA - Consultation Compliance Checklist

APP-023	<a href="#">Augean South Limited</a> Ref 4.2.2 - Appendix CRB - Consultation Diary
APP-024	<a href="#">Augean South Limited</a> Ref 4.2.3 - Appendix CRC - Initial draft Statement of Community Consultation (SoCC) Presentation to East Northants District Council
APP-025	<a href="#">Augean South Limited</a> Ref 4.2.4 - Appendix CRD - Powerpoint Presentation to Kings Cliffe Liaison Group (27 August 2020)
APP-026	<a href="#">Augean South Limited</a> Ref 4.2.5 - Appendix CRE - Consultation draft of SoCC - Responses Received and a copy of Amended Section of SoCC Following Covid 19 Restrictions being Implemented
APP-027	<a href="#">Augean South Limited</a> Ref 4.2.6 - Appendix CRF - Publication Version of Statement of Community Consultation (SoCC)
APP-028	<a href="#">Augean South Limited</a> Ref 4.2.7 - Appendix CRG - Table of Section 47 Consultees
APP-029	<a href="#">Augean South Limited</a> Ref 4.2.8 - Appendix CRH - Public Information Leaflet and Poster Advertising Consultation
APP-030	<a href="#">Augean South Limited</a> Ref 4.2.9 - Appendix CRI - Screenshots of Local Social Media Publicity of Consultation
APP-031	<a href="#">Augean South Limited</a> Ref 4.2.10 - Appendix CRJ - Screenshots of Consultation Website
APP-032	<a href="#">Augean South Limited</a> Ref 4.2.11 - Appendix CRK - Exhibition Boards
APP-033	<a href="#">Augean South Limited</a> Ref 4.2.12 - Appendix CRL - Exhibition Pack
APP-034	<a href="#">Augean South Limited</a> Ref 4.2.13 - Appendix CRM - Consultation Correspondence to 8 January 2021
APP-035	<a href="#">Augean South Limited</a> Ref 4.2.14 - Appendix CRN - Consultation Correspondence between 8 January and 15 February 2021
APP-036	<a href="#">Augean South Limited</a> Ref 4.2.15 - Appendix CRO - Table of Section 47 Responses
APP-037	<a href="#">Augean South Limited</a> Ref 4.2.16 - Appendix CRP - Table of Section 42, Section 43 and Section 44 Consultees
APP-038	<a href="#">Augean South Limited</a> Ref 4.2.17 - Appendix CRO - Section 42, Section 43 and Section 44 Consultation Pack
APP-039	<a href="#">Augean South Limited</a> Ref 4.2.18 - Appendix CRR - Table of Section 42 Consultation Responses
APP-040	<a href="#">Augean South Limited</a> Ref 4.2.19 - Appendix CRS - Section 46 letter to the Planning Inspectorate

APP-041	<a href="#">Augean South Limited</a> Ref 4.2.20 - Appendix CRT - Published Section 48 and Section 47 Notices
APP-042	<a href="#">Augean South Limited</a> Ref 4.2.21 - Appendix CRU - Correspondence with North Northamptonshire Council
APP-043	<a href="#">Augean South Limited</a> Ref 4.2.22 - Appendix CRV - Further Section 44 consultation in June 2021
APP-044	<a href="#">Augean South Limited</a> Ref 4.2.23 - Appendix CRW - Recent minutes of Kings Cliffe Liaison Group
APP-045	<a href="#">Augean South Limited</a> Ref 4.2.24 - Appendix CRX - Copies of Recent Company Newsletters
APP-046	<a href="#">Augean South Limited</a> Ref 4.2.25 - Appendix CRY - Copies of Electronic Newsletters
APP-047	<a href="#">Augean South Limited</a> Ref 4.2.26 - Appendix CRZ - Log of Telephone Enquiries Received During Consultation
APP-048	<a href="#">Augean South Limited</a> 5.1 Non technical summary
APP-049	<a href="#">Augean South Limited</a> 5.2 Environmental Statement
APP-050	<a href="#">Augean South Limited</a> 5.3.1.1 Figure ES1.1 The site location
APP-051	<a href="#">Augean South Limited</a> 5.3.1.2 Figure ES1.2 Designated sites in the vicinity of ENRMF
APP-052	<a href="#">Augean South Limited</a> 5.3.3.1 Figure ES3.1 Aerial photograph of the site and surrounding area in 2019
APP-053	<a href="#">Augean South Limited</a> 5.3.3.3 Figure ES3.3 Services and public rights of way
APP-054	<a href="#">Augean South Limited</a> (PDF, 254 KB) 5.3.5.1 Figure ES5.1 Current and proposed landfill phases
APP-055	<a href="#">Augean South Limited</a> 5.3.3.2 Figure ES3.2 The current site layout
APP-056	<a href="#">Augean South Limited</a> 5.3.5.2 Figure ES5.2 Landfill schematic plan
APP-057	<a href="#">Augean South Limited</a> 5.3.5.3 Figure ES5.3 Proposed surface water channel in the western extension area
APP-058	<a href="#">Augean South Limited</a> 5.3.5.4 Figure ES5.4 Temporary stockpile locations
APP-059	<a href="#">Augean South Limited</a> 5.3.5.5 Figure ES5.5 Restoration profile contour plan
APP-060	<a href="#">Augean South Limited</a> 5.3.6.1 Figure ES6.1 Waste treatment and recovery facility flow diagram

APP-061	<a href="#">Augean South Limited</a> 5.3.8.1 Figure ES8.1 Current monitoring and site investigation borehole locations
APP-062	<a href="#">Augean South Limited</a> 5.3.9.1 Figure ES9.1 Restoration Concept Scheme
APP-063	<a href="#">Augean South Limited</a> 5.3.9.2 Figure ES9.2 Illustrative restoration scheme cross sections
APP-064	<a href="#">Augean South Limited</a> 5.3.14.1 Figure ES14.1 Visual context
APP-065	<a href="#">Augean South Limited</a> 5.3.15.1 Figure ES15.1 Agricultural land classification for the proposed western extension area
APP-066	<a href="#">Augean South Limited</a> 5.3.16.1 Figure ES16.1 Designated heritage assets within 2km of the site
APP-067	<a href="#">Augean South Limited</a> 5.3.17.1 Figure ES17.1 The geology at and in the vicinity of the site
APP-068	<a href="#">Augean South Limited</a> 5.3.17.2 Figure ES17.2 Geological cross-sections through the proposed western extension
APP-069	<a href="#">Augean South Limited</a> 5.3.17.3 Figure ES17.3 Surface water features at and in the vicinity of the site
APP-070	<a href="#">Augean South Limited</a> 5.3.17.4 Figure ES17.4 Water resources within 3km of the site
APP-071	<a href="#">Augean South Limited</a> 5.3.17.5 Figure ES17.5 Groundwater levels in the vicinity of the current ENRMF
APP-072	<a href="#">Augean South Limited</a> 5.3.17.6 Figure ES17.6 Groundwater levels in the vicinity of the proposed western extension
APP-073	<a href="#">Augean South Limited</a> 5.3.18.1 Figure ES18.1 Topographical survey of the proposed western extension area
APP-074	<a href="#">Augean South Limited</a> 5.3.22.1 Figure ES22.1 Location of sensitive dust receptors
APP-075	<a href="#">Augean South Limited</a> 5.3.23.1 Figure ES23.1 Alternative hazardous waste landfill facilities
APP-076	<a href="#">Augean South Limited</a> 5.3.23.2 Figure ES23.2 Alternative disposal facilities for LLW in the UK
APP-077	<a href="#">Augean South Limited</a> 5.3.23.3 Figure ES23.3 Average house prices in Kings Cliffe and Duddington
APP-078	<a href="#">Augean South Limited</a> 5.4.1.1 Appendix ES1.1 Statement of competence
APP-079	<a href="#">Augean South Limited</a> 5.4.1.2 Appendix ES1.2 Applicant's Statement

APP-080	<a href="#">Augean South Limited</a> 5.4.2.1 Appendix ES2.1 Scoping Report
APP-081	<a href="#">Augean South Limited</a> 5.4.2.2 Appendix ES2.2 Scoping Opinion August 2020
APP-082	<a href="#">Augean South Limited</a> 5.4.3.1 Appendix ES3.1 Designated ecological sites
APP-083	<a href="#">Augean South Limited</a> 5.4.5.1 Appendix ES5.1 Western landfill extension standoff design principles
APP-084	<a href="#">Augean South Limited</a> 5.4.9.1 Appendix ES9.1 Approved restoration scheme for the existing ENRMF
APP-085	<a href="#">Augean South Limited</a> 5.4.11.1 Appendix ES11.1 Environmental safety case
APP-086	<a href="#">Augean South Limited</a> 5.4.13.2 Appendix ES13.2 ENRMF DEFRA Metric 3.0
APP-087	<a href="#">Augean South Limited</a> 5.4.13.1 Appendix ES13.1 Ecological Impact Assessment
APP-088	<a href="#">Augean South Limited</a> 5.4.14.1 Appendix ES14.1 Landscape and Visual Impact Assessment
APP-089	<a href="#">Augean South Limited</a> 5.4.15.1 Appendix ES15.1 Agricultural and Soil Impact Assessment
APP-090	<a href="#">Augean South Limited</a> 5.4.16.1 Appendix ES16.1 Heritage Statement
APP-091	<a href="#">Augean South Limited</a> 5.4.16.2 Appendix ES16.2 Archaeological Mitigation Strategy
APP-092	<a href="#">Augean South Limited</a> 5.4.16.3 Appendix ES16.3 Features of the Historic Environment within 2km of the Site
APP-092a	<a href="#">Augean South Limited</a> 5.4.17.1 Appendix ES17.1 Site Investigation Report
APP-093	<a href="#">Augean South Limited</a> 5.4.17.2 Appendix ES17.2 Abstraction Licences and Private Water Supplies
APP-094	<a href="#">Augean South Limited</a> 5.4.18.1 Appendix ES18.1 Flood Map
APP-095	<a href="#">Augean South Limited</a> 5.4.18.2 Appendix ES18.2 Surface Water Management Plan
APP-096	<a href="#">Augean South Limited</a> 5.4.19.1 Appendix ES19.1 Transport Assessment
APP-097	<a href="#">Augean South Limited</a> 5.4.20.1 Appendix ES20.1 Noise and Vibration Impact Assessment
APP-098	<a href="#">Augean South Limited</a> 5.4.22.1 Appendix ES22.1 Methodology for the Dust Assessment
APP-099	<a href="#">Augean South Limited</a> 5.4.22.2 Appendix ES22.2 All hours wind rose
APP-100	<a href="#">Augean South Limited</a> 5.4.22.3 Appendix ES22.3 Dry hours wind rose



APP-101	<a href="#">Augean South Limited</a> 5.4.22.4 Appendix ES22.4 Beaufort wind scale
APP-102	<a href="#">Augean South Limited</a> 5.5 Habitat Regulations Screening Assessment
APP-103	<a href="#">Augean South Limited</a> 6.1 Planning Statement
APP-104	<a href="#">Augean South Limited</a> 6.2.2.1 Appendix PS 2.1 Designated Ecological Sites
APP-105	<a href="#">Augean South Limited</a> 6.2.4.1 Appendix PS 4.1 The ENRMF Order 2013
APP-106	<a href="#">Augean South Limited</a> 6.2.4.2 Appendix PS 4.2 The ENRMF (Amendment) Order 2018
APP-107	<a href="#">Augean South Limited</a> 6.2.4.3 Appendix PS 4.3 Current Section 106 Agreement
APP-108	<a href="#">Augean South Limited</a> 6.3 Statutory Nuisance Statement
APP-109	<a href="#">Augean South Limited</a> 6.4 ENRMF Draft S106 Agreement (26.07.21)
APP-110	<a href="#">Augean South Limited</a> 6.5 DCO Environmental Commitments
<b>Adequacy of Consultation Responses</b>	
AoC-001	<a href="#">Buckinghamshire Council</a> Adequacy of Consultation Representation
AoC-002	<a href="#">Cambridgeshire County Council</a> Adequacy of Consultation Representation
AoC-003	<a href="#">Central Bedfordshire Council</a> Adequacy of Consultation Representation
AoC-004	<a href="#">Milton Keynes Council</a> Adequacy of Consultation Representation
AoC-005	<a href="#">North Northamptonshire Council</a> Adequacy of Consultation Representation
AoC-006	<a href="#">South Kesteven Council</a> Adequacy of Consultation Representation
AoC-007	<a href="#">Huntingdonshire District Council</a> Late Adequacy of Consultation Representation
AoC-008	<a href="#">Warwickshire County Council</a> Late Adequacy of Consultation Representation
<b>Relevant Representations</b>	
RR-001	<a href="#">Addleshaw Goddard LLP on behalf of National Grid Gas Plc</a>
RR-002	<a href="#">Barnack Parish Council</a>
RR-003	<a href="#">Berrys on behalf of N W Fiennes</a>
RR-004	<a href="#">Butterfly Conservation</a>
RR-005	<a href="#">Defence Infrastructure Organisation</a>
RR-006	<a href="#">Gretton Parish Council</a>
RR-007	<a href="#">Kings Cliffe Parish Council</a>
RR-008	<a href="#">Maples Teesdale LLP on behalf of Cecil Estate Family Trust</a>
RR-009	<a href="#">Mike Henchy</a>
RR-010	<a href="#">Natural England</a>

RR-011	<a href="#">Northants Police and Northants Fire and Rescue</a>
RR-012	<a href="#">Osborne Clarke on behalf of Western Power Distribution (East Midlands) Plc</a>
RR-013	<a href="#">Rutland County Council</a>
RR-014	<a href="#">Stephen Glen</a>
RR-015	<a href="#">Strutt &amp; Parker on behalf of Cecil Estate Family Trust</a>
RR-016	<a href="#">The Environment Agency</a>
RR-017	<a href="#">UK Health Security Agency</a>
<b>Procedural Decisions and Notifications from the Examining Authority</b>	
PD-001	<a href="#">Notification of Decision to Accept Application</a>
PD-002	<a href="#">Section 55 Checklist</a>
PD-003	<a href="#">Section 51 advice to the Applicant</a>
PD-004	<a href="#">Notice of appointment of the Examining Body</a>
PD-005	<a href="#">Rule 6 letter - notification of the preliminary meeting and matters to be discussed</a>
PD-006	<a href="#">The Examining Authority's Written Questions and Requests for Information (ExQ1)</a>
PD-007	<a href="#">Rule 8 letter - notification of timetable for the examination</a>
PD-008	<a href="#">Rule 13 and 16 - Notification of Hearings and Accompanied Site Inspection (ASI)</a>
PD-009	<a href="#">ASI draft itinerary ExA second draft - Final</a>
PD-010	<a href="#">The Examining Authority's Further Written Questions and Requests for Information (ExQ2)</a>
PD-011	<a href="#">Rule 17 and Rule 8 (3) - Request for Further Information</a>
PD-012	<a href="#">Rule 13 - Notification of Hearings</a>
PD-013	<a href="#">Schedule of proposed changes to the draft Development Consent Order</a>
PD-014	<a href="#">Rule 8(3) – Request for a change to the original application and change to the Examination Timetable</a>
PD-015	<a href="#">Notification of Procedural Decision - Rule 9</a>
PD-016	<a href="#">Rule 17 - Request for Further Information</a>
PD-017	<a href="#">Notification of completion of the Examining Authority's Examination</a>
<b>Additional Submissions</b>	
AS-001	<a href="#">Huntingdonshire District Council</a> Additional Submission - Clarification that Huntingdonshire District Council does not intend to participate in the Examination - Accepted at the discretion of the Examining Authority
AS-002	<a href="#">Augean South Limited</a> Additional Submission – Badger Assessment (Confidential) - Accepted at the discretion of the Examining Body
AS-003	<a href="#">Augean South Limited</a> Additional Submission - Plan showing the improvements to the site access (drawing reference AU/KCW/01-22/22966) - Accepted at the discretion of the Examining Body
AS-004	<a href="#">Augean South Limited</a> Additional Submission - Ecological Baseline 2021 Supplementary Survey Report (January 2022) - Accepted at the discretion of the Examining Body

AS-005	<a href="#">Augean South Limited</a> Additional Submission - Supplementary Background Noise Monitoring - Accepted at the discretion of the Examining Body
AS-006	<a href="#">Augean South Limited</a> Additional Submission – Figure ES18.1 ISH2 Detail for Swallows Hole - Accepted at the discretion of the Examining Body
AS-006a	<a href="#">Augean South Limited</a> Notice of March 2022 Hearings and Accompanied Site Inspection
AS-007	<a href="#">Augean South Limited</a> <b>Proposed Change Request to DCO Application</b> – 1.4 Guide to the Application V6 - Additional Submission accepted at the discretion of the Examining Authority
AS-008	<a href="#">Augean South Limited</a> <b>Proposed Change Request to DCO Application</b> - 2.3 Works Plan - Additional Submission accepted at the discretion of the Examining Authority
AS-009	<a href="#">Augean South Limited</a> <b>Proposed Change Request to DCO Application</b> - 2.4 General Arrangement Plan - Work No 1A and Work No 1B - Additional Submission accepted at the discretion of the Examining Authority
AS-010	<a href="#">Augean South Limited</a> <b>Proposed Change Request to DCO Application</b> - 2.9 Restoration Profile Contour Plan (Revision A) - Additional Submission accepted at the discretion of the Examining Authority
AS-011	<a href="#">Augean South Limited</a> <b>Proposed Change Request to DCO Application</b> - 3.1 Draft Development Consent Order v3 (Clean) - Additional Submission accepted at the discretion of the Examining Authority
AS-012	<a href="#">Augean South Limited</a> <b>Proposed Change Request to DCO Application</b> - 3.1 Draft Development Consent Order v3 (Tracked) - Additional Submission accepted at the discretion of the Examining Authority
AS-013	<a href="#">Augean South Limited</a> <b>Proposed Change Request to DCO Application</b> - 3.2 Development Consent Order Validation Report v3 - Additional Submission accepted at the discretion of the Examining Authority
AS-014	<a href="#">Augean South Limited</a> <b>Proposed Change Request to DCO Application</b> - 3.3 Explanatory Memorandum v2 (Clean) - Additional Submission accepted at the discretion of the Examining Authority
AS-015	<a href="#">Augean South Limited</a> <b>Proposed Change Request to DCO Application</b> - 3.3 Explanatory Memorandum v2 (Tracked) - Additional Submission accepted at the discretion of the Examining Authority

AS-016	<a href="#">Augean South Limited</a> <b>Proposed Change Request to DCO Application</b> - 3.5 Schedule of changes to the draft Development Consent Order v2 - Additional Submission accepted at the discretion of the Examining Authority
AS-017	<a href="#">Augean South Limited</a> <b>Proposed Change Request to DCO Application</b> - 6.5 Development Consent Order Environmental Commitments v1 - Additional Submission accepted at the discretion of the Examining Authority
AS-018	<a href="#">Augean South Limited</a> <b>Proposed Change Request to DCO Application</b> – 14.1 Cover Letter - Additional Submission accepted at the discretion of the Examining Authority
AS-019	<a href="#">Augean South Limited</a> <b>Proposed Change Request to DCO Application</b> – 14.2 Request for a Non-Material Change - Additional Submission accepted at the discretion of the Examining Authority
AS-020	<a href="#">Augean South Limited</a> <b>Proposed Change Request to DCO Application</b> – 14.3 Non-technical summary of the proposed Non-Material Change - Additional Submission accepted at the discretion of the Examining Authority
AS-021	<a href="#">Augean South Limited</a> <b>Proposed Change Request to DCO Application</b> – 14.4 Supplementary Environmental Statement for the proposed Non-Material Change - Additional Submission accepted at the discretion of the Examining Authority
AS-022	<a href="#">Augean South Limited</a> <b>Proposed Change Request to DCO Application</b> - 14.5.2.1 Figure SES2.1 Restoration Profile Contour Plan - Additional Submission accepted at the discretion of the Examining Authority
AS-023	<a href="#">Augean South Limited</a> <b>Proposed Change Request to DCO Application</b> - 14.5.2.2 Figure SES2.2 Indicative Restoration Concept Scheme for 30m standoff from water pipelines - Additional Submission accepted at the discretion of the Examining Authority
AS-024	<a href="#">Augean South Limited</a> <b>Proposed Change Request to DCO Application</b> - 14.6.2.1 Appendix SES2.1 Supplementary Statement of Competence - Additional Submission accepted at the discretion of the Examining Authority
AS-025	<a href="#">Augean South Limited</a> <b>Proposed Change Request to DCO Application</b> - 14.6.2.2 Appendix SES2.2 Pipeline Risk Assessment - Additional Submission accepted at the discretion of the Examining Authority

AS-026	<a href="#">Augean South Limited</a> <b>Proposed Change Request to DCO Application</b> - 14.6.2.3 Appendix SES2.3 Pipeline Engineering Assessment - Additional Submission accepted at the discretion of the Examining Authority
AS-027	<a href="#">Augean South Limited</a> <b>Proposed Change Request to DCO Application</b> - 14.6.4.1 Appendix SES4.1 Biodiversity Net Gain Review - Additional Submission accepted at the discretion of the Examining Authority
AS-028	<a href="#">Augean South Limited</a> <b>Proposed Change Request to DCO Application</b> - 14.6.5.1 Appendix SES5.1 Supplementary Landscape and Visual Impact Assessment - Additional Submission accepted at the discretion of the Examining Authority
AS-029	<a href="#">Huntingdonshire District Council</a> Comments on Augean South Limited Non-Material Change
<b>Events and Hearings</b>	
<b>Unaccompanied Site Inspection</b>	
EV1-001	<a href="#">Note of Unaccompanied Site Inspection</a>
<b>Preliminary Meeting</b>	
EV2-001	<a href="#">Preliminary Meeting - 2 February 2022</a>
EV2-002	<a href="#">Preliminary Meeting Transcript - 2 February 2022</a>
EV2-003	<a href="#">Preliminary Meeting Note</a>
<b>Accompanied Site Inspection</b>	
EV3-001	<a href="#">Accompanied Site Inspection Itinerary</a>
EV3-002	<a href="#">ExA Note of Accompanied Site Inspection 1</a>
<b>Hearings</b>	
EV4-000	<a href="#">Agenda for Issue Specific Hearing 1 (ISH1) &amp; Issue Specific Hearing 2 (ISH2)</a> Issue Specific Hearing 1 (ISH1): The draft Development Consent Order (dDCO) and Issue Specific Hearing 2 (ISH2): Environmental matters
EV4-001	<a href="#">Issue Specific Hearing 1 (ISH1) - Transcript - 29 March 2022</a> This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV4-002	<a href="#">Issue Specific Hearing 2 (ISH2) - Transcript - Session 1 - 29 March 2022</a> This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.

EV4-003	<a href="#">Issue Specific Hearing 2 (ISH2) - Transcript - Session 2 - 29 March 2022</a> This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV4-004	<a href="#">Issue Specific Hearing 2 (ISH2) - Transcript - Session 3 - 29 March 2022</a> This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV4-005	<a href="#">Recording of Issue Specific Hearing 1 (ISH1) - 29 March 2022</a> Recording of hearing
EV4-006	<a href="#">Recording of Issue Specific Hearing 2 (ISH2) - Session 1 - 29 March 2022</a> Recording of hearing
EV4-007	<a href="#">Recording of Issue Specific Hearing 2 (ISH2) - Session 2 - 29 March 2022</a> Recording of hearing
EV4-008	<a href="#">Recording of Issue Specific Hearing 2 (ISH2) - Session 3 - 29 March 2022</a> Recording of hearing
EV4-009	<a href="#">ExA Action Points from ISH1 and 2</a> The Examining Authority Action Points from ISH1 and ISH 2
EV4-010	<a href="#">Agenda for Issue Specific Hearing 3 (ISH3) - Wednesday 8 June 2022</a> Issue Specific Hearing 3 (ISH3): Infrastructure matters
EV4-011	<a href="#">Issue Specific Hearing 3 (ISH3) - Transcript - Session 1 – 8 June 2022</a> This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV4-012	<a href="#">Issue Specific Hearing 3 (ISH3) - Transcript - Session 2 – 8 June 2022</a> This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV4-013	<a href="#">Recording of Issue Specific Hearing 3 (ISH3) - Session 1 – 8 June 2022</a>
EV4-014	<a href="#">Recording of Issue Specific Hearing 3 (ISH3) - Session 2 – 8 June 2022</a>
EV4-015	<a href="#">ExA Action Points from ISH3</a> The Examining Authority Action Points from ISH3

## Representations

### Deadline 1 – 23 February 2022

Deadline for receipt by the ExA of:

- Submission by Interested Parties (IPs) of suggested locations for the ExA to include in the Accompanied Site Inspection (ASI), including the reason for nomination and issues to be observed, information about whether the location can be accessed using public rights of way or what access arrangements are required (if any)
- Any further information requested by the ExA under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR)
- Any other information requested by the ExA for submission at Deadline 1
- Notification by Interested Parties (IPs) of wish to speak at an Open Floor Hearing
- Notification by IPs of wish to speak at an Issue Specific Hearing(s)
- Notification by IPs of their intention to attend the ASI
- Notification by Statutory Parties who wish to be considered as an IP
- Notification of wish to receive future correspondence electronically

REP1-001	<a href="#">North Northamptonshire Council</a> Deadline 1 Submission - North Northamptonshire Council notification of wish to speak at an Open Floor Hearing (OFH), Issue Specific Hearing (ISH) and attend the Accompanied Site Inspection (ASI)
REP1-002	<a href="#">National Grid Gas PLC</a> Deadline 1 Submission - National Grid Gas PLC notification of wish to speak at an Open Floor Hearing (OFH) and Issue Specific Hearing (ISH)
REP1-003	<a href="#">Maples Teesdale LLP on behalf of Cecil Estate Family Trust</a> Deadline 1 Submission - Cecil Family Estate Trust notification of wish to speak at an Open Floor Hearing (OFH), Issue Specific Hearing (ISH) and attend the Accompanied Site Inspection (ASI)

## Deadline 2 – 4 March 2022

Deadline for receipt by the ExA of:

- Comments on Relevant Representations (RRs)
- Written Representations (WRs)
- Summaries of WRs exceeding 1500 words
- Responses to ExQ1
- Local Impact Reports (LIRs) from local authorities
- Statements of Common Ground (SoCG) requested by ExA – see Annex E
- Comments on updated application documents (if submitted)
- A revised Guide to the Application
- Applicant's draft itinerary for the ASI
- Comments on any additional information/submissions received by Deadline 1
- Any further information requested by the ExA under Rule 17 of the EPR

REP2-001	<a href="#">Augean South Limited</a> Deadline 2 Submission - Cover Letter
REP2-002	<a href="#">Augean South Limited</a> Deadline 2 Submission - 1.4 Guide to the Application V2.pdf
REP2-003	<a href="#">Augean South Limited</a> Deadline 2 Submission - 6.4 Updated Draft ENRMF S106 Agreement (Clean)
REP2-004	<a href="#">Augean South Limited</a> Deadline 2 Submission - 6.4 Updated Draft ENRMF S106 Agreement (Tracked)
REP2-005	<a href="#">Augean South Limited</a> Deadline 2 Submission - 9.1 Comments on the Relevant Representations
REP2-006	<a href="#">Augean South Limited</a> Deadline 2 Submission - 9.2 Responses to the Examining Authority's Written Questions (ExQ1)
REP2-007	<a href="#">Augean South Limited</a> Deadline 2 Submission - 9.2.1.1.1 EPL AR Landfill permit variation application: Application Report
REP2-008	<a href="#">Augean South Limited</a> Deadline 2 Submission - 9.2.1.1.1 EPL ESID Landfill permit variation application: Environmental Setting and Installation Design Report
REP2-009	<a href="#">Augean South Limited</a> Deadline 2 Submission - 9.2.1.1.1 EPL HRA Landfill permit variation application: Hydrogeological Risk Assessment
REP2-010	<a href="#">Augean South Limited</a> Deadline 2 Submission - 9.2.1.1.1 EPL SRA Landfill permit variation application: Stability Risk Assessment



REP2-011	<a href="#">Augean South Limited</a> Deadline 2 Submission - 9.2.1.1.1 EPTA Environmental Permit variation application for the waste treatment and recovery facility dated May 2021
REP2-012	<a href="#">Augean South Limited</a> Deadline 2 Submission - 9.2.1.1.1A Landfill Environmental Permit dated 5 October 2015
REP2-013	<a href="#">Augean South Limited</a> Deadline 2 Submission - 9.2.1.1.1B1 Waste Treatment Environmental Permit dated 30 June 2015
REP2-014	<a href="#">Augean South Limited</a> Deadline 2 Submission - 9.2.1.1.1B2 Waste Treatment Environmental Permit dated 18 February 2021
REP2-015	<a href="#">Augean South Limited</a> Deadline 2 Submission - 9.2.1.1.1C LLW Environmental Permit dated 26 February 2016
REP2-016	<a href="#">Augean South Limited</a> Deadline 2 Submission - 9.2.1.1.1D EPL FV Documents provided to the Planning Inspectorate from the Landfill EP variation application
REP2-017	<a href="#">Augean South Limited</a> Deadline 2 Submission - 9.2.1.2.1 Response to ExQ1: Q1.2.1(i) Residual Effects Table
REP2-018	<a href="#">Augean South Limited</a> Deadline 2 Submission - 9.2.1.4.2 Option agreement dated 17 September 2019
REP2-019	<a href="#">Augean South Limited</a> Deadline 2 Submission - 9.2.11.1.3 Letter from the Defence Infrastructure Organisation dated 23 November 2018
REP2-020	<a href="#">Augean South Limited</a> Deadline 2 Submission - 9.2.2.1.1 Updated Table ES22.2 (Clean)
REP2-021	<a href="#">Augean South Limited</a> Deadline 2 Submission - 9.2.2.1.1 Updated Table ES22.2 (Tracked)
REP2-022	<a href="#">Augean South Limited</a> Deadline 2 Submission - 9.2.2.3.2 EMS Complaints procedure
REP2-023	<a href="#">Augean South Limited</a> Deadline 2 Submission - 9.2.3.4.2 Protected species guidance
REP2-024	<a href="#">Augean South Limited</a> Deadline 2 Submission - 9.2.8.1.1 Clarification of VP9 Location
REP2-025	<a href="#">Augean South Limited</a> Deadline 2 Submission - 9.3 Statement of Commonality
REP2-026	<a href="#">Augean South Limited</a> Deadline 2 Submission - 9.4 Applicants draft Itinerary for the ASI
REP2-027	<a href="#">North Northamptonshire Council</a> Deadline 2 Submission - Local Impact Report (LIR)

REP2-028	<a href="#">Environment Agency</a> Deadline 2 Submission - Responses to the Examining Authority's Written Questions (ExQ1)
REP2-029	<a href="#">Anglian Water Services Limited</a> Deadline 2 Submission - Responses to ExQ1
REP2-030	<a href="#">Natural England</a> Deadline 2 Submission - Responses to the Examining Authority's Written Questions (ExQ1)
REP2-031	<a href="#">National Grid Gas plc</a> Deadline 2 Submission - Responses to the Examining Authority's Written Questions (ExQ1)
REP2-032	<a href="#">National Grid Gas plc</a> Deadline 2 Submission - Written Representations
REP2-033	<a href="#">Maples Teesdale LLP on behalf of Cecil Estate Family Trust</a> Deadline 2 Submission - Written Representations
<b>Late Submission</b>	
REP2-034	<a href="#">North Northamptonshire Council</a> Deadline 2 Submission - Late Submission - Responses to ExQ1 - Accepted at the discretion of the Examining Authority
<b>Deadline 3 – 16 March 2022</b>	
Deadline for receipt by the ExA of:	
<ul style="list-style-type: none"> <li>• Comments on WRs</li> <li>• Responses to comments on RRs</li> <li>• Comments on any LIRs</li> <li>• Comments on responses to ExQ1</li> <li>• Comments on any revised draft DCO from the Applicant, if submitted</li> <li>• Progressed SOCG and Statement of Commonality</li> <li>• An updated version of the draft Development Consent Order (dDCO) in clean, tracked and word versions</li> <li>• Schedule of Changes to the dDCO</li> <li>• Comments on the second itinerary for the ASI</li> <li>• An updated Guide to the Application</li> <li>• Any further information requested by the ExA under Rule 17 of the EPR</li> <li>• Comments on any additional information/ submissions received by Deadline 2</li> </ul>	
REP3-001	<a href="#">Augean South Limited</a> Deadline 3 Submission - Cover Letter
REP3-002	<a href="#">Augean South Limited</a> Deadline 3 Submission - 1.4 Guide to the Application
REP3-003	<a href="#">Augean South Limited</a> Deadline 3 Submission - 3.1 Draft Development Consent Order (Clean) V1
REP3-004	<a href="#">Augean South Limited</a> Deadline 3 Submission - 3.1 Draft Development Consent Order (Tracked) V1
REP3-005	<a href="#">Augean South Limited</a>

	Deadline 3 Submission - 3.2 Draft DCO Validation Report V1
REP3-006	<a href="#">Augean South Limited</a> Deadline 3 Submission - 3.3 Explanatory Memorandum (Clean) V1
REP3-007	<a href="#">Augean South Limited</a> Deadline 3 Submission - 3.3 Explanatory Memorandum (Tracked) V1
REP3-008	<a href="#">Augean South Limited</a> Deadline 3 Submission - 3.5 Schedule of Changes to the submission version of the dDCO
REP3-009	<a href="#">Augean South Limited</a> Deadline 3 Submission - 9.3 Statement of Commonality V1
REP3-010	<a href="#">Augean South Limited</a> Deadline 3 Submission - 10.2 Applicant's Response to the Deadline 2 Submissions
REP3-011	<a href="#">Augean South Limited</a> Deadline 3 Submission - 10.3 Proposed Route for the Accompanied Site Inspection (ASI)
<p><b>Deadline 4</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Written summaries of oral contributions at hearings</li> <li>• Post-hearing submissions requested by the ExA</li> <li>• Responses to comments on WRs</li> <li>• Responses to comments on LIRs</li> <li>• A revised dDCO from the Applicant in clean, tracked and word versions</li> <li>• An updated Schedule of Changes to the Ddco</li> <li>• An updated Guide to the Application</li> <li>• Comments on any other information submitted at Deadline 3</li> <li>• Progressed SOCG and updated Statement of Commonality (if required)</li> <li>• Any other information requested by the ExA under Rule 17 of the EPR</li> <li>• Comments on any additional information/ submissions received by Deadline 3</li> </ul>	
REP4-001	<a href="#">Augean South Limited</a> Deadline 4 Submission - Cover letter
REP4-002	<a href="#">Augean South Limited</a> Deadline 4 Submission - 1.4 Guide to the Application V4
REP4-003	<a href="#">Augean South Limited</a> Deadline 4 Submission - Option Agreement for the Proposed Western Extension Land
REP4-004	<a href="#">Augean South Limited</a> Deadline 4 Submission - 3.1 Draft Development Consent Order (Tracked) V2
REP4-005	<a href="#">Augean South Limited</a> Deadline 4 Submission - 3.1 Draft Development Consent Order (Clean) V2

REP4-006	<a href="#">Augean South Limited</a> Deadline 4 Submission - Supporting documentation for ISH1 and ISH2
REP4-007	<a href="#">Augean South Limited</a> Deadline 4 Submission - Written summaries of oral contributions at ISH1 and ISH2
REP4-008	<a href="#">Augean South Limited</a> Deadline 4 Submission - 3.2 Draft DCO Validation Report V2
REP4-009	<a href="#">Augean South Limited</a> Deadline 4 Submission - 9.3 Statement of Commonality V2
REP4-010	<a href="#">Augean South Limited</a> Deadline 4 Submission - Augean Corporate Social Responsibility report for 2020
REP4-011	<a href="#">Augean South Limited</a> Deadline 4 Submission - An updated Schedule of Changes to the dDCO
REP4-012	<a href="#">North Northamptonshire Council</a> Deadline 4 Submission - Written summaries of oral contributions at hearings
REP4-013	<a href="#">Anglian Water Services Limited</a> Deadline 4 Submission - Chief Engineer's Proof of Evidence
REP4-014	<a href="#">Anglian Water Services Limited</a> Deadline 4 Submission - Written summaries of oral contributions at hearings
REP4-015	<a href="#">Environment Agency</a> Deadline 4 Submission - Written summaries of oral contributions at hearings
REP4-016	<a href="#">Natural England</a> Deadline 4 Submission - Written summaries of oral contributions at hearings
<p><b>Deadline 5</b></p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>• Responses to ExQ2</li> <li>• Comments on any revised Ddco</li> <li>• Progressed SOCG and updated Statement of Commonality of SOCG, if required</li> <li>• An updated Guide to the Application</li> <li>• Any update to the Book of Reference to reflect changes to land interests in the Order land</li> <li>• Any other information requested by the ExA for submission at Deadline 5</li> <li>• Any further information requested by the ExA under Rule 17 of the EPR</li> <li>• Comments on any additional information/ submissions received by Deadline 4</li> </ul>	
REP5-001	<a href="#">Augean South Limited</a> Deadline 5 Submission - Cover letter
REP5-002	<a href="#">Augean South Limited</a> Deadline 5 Submission - 1.4 Guide to the Application

REP5-003	<a href="#">Augean South Limited</a> Deadline 5 Submission - 9.3 Statement of Commonality V3
REP5-004	<a href="#">Augean South Limited</a> Deadline 5 Submission - 12.2 Responses to the Examining Authority's Further Written Questions (ExQ2)
REP5-005	<a href="#">Augean South Limited</a> Deadline 5 Submission - The Applicant's comments on the written summaries of oral contributions at the Hearings
REP5-006	<a href="#">Augean South Limited</a> Deadline 5 Submission - Anglian Water's Cross Sector Infrastructure Access Statement
REP5-007	<a href="#">Augean South Limited</a> Deadline 5 Submission - Correspondence with Anglian Water since 5 April 2022
REP5-008	<a href="#">Augean South Limited</a> Deadline 5 Submission - Comments on the proof of evidence by the chief engineer at Anglian Water (REP4-013)
REP5-009	<a href="#">North Northamptonshire Council</a> Deadline 5 Submission - Responses to ExQ2
REP5-010	<a href="#">National Grid Gas plc</a> Deadline 5 Submission - Responses to ExQ2
REP5-011	<a href="#">Anglian Water Services Limited</a> Deadline 5 Submission - Responses to ExQ2
REP5-012	<a href="#">Natural England</a> Deadline 5 Submission - Responses to ExQ2
REP5-013	<a href="#">Maples Teesdale LLP on behalf of Cecil Estate Family Trust</a> Deadline 5 Submission - Responses to ExQ2
REP5-014	<a href="#">Environment Agency</a> Deadline 5 Submission - Responses to ExQ2
<b>Deadline 5a</b>	
Deadline for receipt by the ExA of:	
<ul style="list-style-type: none"> <li>• Further Information requested in the letter of 5 May 2022</li> </ul>	
REP5a-001	<a href="#">Augean South Limited</a> Deadline 5a Submission - Further Information requested in the letter of 5 May 2022
REP5a-002	<a href="#">Natural England</a> Deadline 5a Submission - Late response accepted at the discretion of the ExA

## Deadline 6

Deadline for receipt by the ExA of:

- Written summaries of oral contributions at hearings (if required)
- Post-hearing submissions requested by the ExA(if required)
- Progressed SoCG and Statement of Commonality (if required)
- Comments on responses to ExQ2
- Applicant's updated dDCO in clean, tracked and word versions
- An updated Schedule of Changes to the dDCO
- An updated Guide to the Application
- Any other information requested by the ExA for this deadline
- Any further information requested by the ExA under Rule 17 of the EPR
- Comments on any additional information/ submissions received by Deadline 5

REP6-001	<a href="#">Augean South Limited</a> Deadline 6 Submission - Cover Letter
REP6-002	<a href="#">Augean South Limited</a> Deadline 6 Submission - An updated Guide to the Application V7
REP6-003	<a href="#">Augean South Limited</a> Deadline 6 Submission - Updated draft Development Consent Order (Clean)
REP6-004	<a href="#">Augean South Limited</a> Deadline 6 Submission - Development Consent Order Validation Report
REP6-005	<a href="#">Augean South Limited</a> Deadline 6 Submission - Explanatory Memorandum V3 (Clean)
REP6-006	<a href="#">Augean South Limited</a> Deadline 6 Submission - An updated Schedule of Changes to the draft Development Consent Order
REP6-007	<a href="#">Augean South Limited</a> Deadline 6 Submission - Final Agreed Section 106 Agreement Relating to Land at the East Northants Resource Management Facility, Stamford Road, Northamptonshire
REP6-008	<a href="#">Augean South Limited</a> Deadline 6 Submission - Development Consent Order Environmental Commitments
REP6-009	<a href="#">Augean South Limited</a> Deadline 6 Submission - Progressed Statement of Common Ground and Statement of Commonality
REP6-010	<a href="#">Augean South Limited</a> Deadline 6 Submission - Written Summary of the Applicant's Oral Case at Issue Specific Hearing 3
REP6-011	<a href="#">Augean South Limited</a> Deadline 6 Submission - Comments on the other Parties EXO2 Responses
REP6-012	<a href="#">Augean South Limited</a> Deadline 6 Submission - Explanatory Memorandum (track changed version)

REP6-013	<a href="#">Augean South Limited</a> Deadline 6 Submission - Applicant's updated draft Development Consent Order (track changed version)
REP6-014	<a href="#">Augean South Limited</a> Deadline 6 Submission - Final Agreed Section 106 (track changed version)
REP6-015	<a href="#">Augean South Limited</a> Deadline 6 Submission - Natural England Letter of No Impediment
REP6-016	<a href="#">Augean South Limited</a> Deadline 6 Submission - 15.2.6.1 Correspondence with Anglian Water between 11 May 2022 and 21 June 2022
REP6-017	<a href="#">Augean South Limited</a> Deadline 6 Submission - 15.2.6.2 Applicant's Response to the Anglian Water information provided on 16 and 21 June 2022
REP6-018	<a href="#">Augean South Limited</a> Deadline 6 Submission - 15.2.4.2 The Applicant's Mark up of the Bespoke Protective Provisions provided by Anglian Water
REP6-019	<a href="#">Anglian Water Services Limited</a> Deadline 6 Submission - Written summary of oral contributions at hearings and Supporting information for Anglian Water's suggested diversion routes
REP6-020	Not in use
REP6-021	<a href="#">Addleshaw Goddard LLP on behalf of National Grid</a> Deadline 6 Submission
<p><b>Deadline 7</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on submissions for Deadline 6</li> <li>• Comments on the ExA's proposed Schedule of Changes to the dDCO (if required)</li> <li>• Comments on RIES (if required)</li> <li>• Final SoCG and finalised Statement of Commonality</li> <li>• Final draft DCO to be submitted by the Applicant in clean, tracked, word versions and in the statutory Instrument (SI) template with the SI template validation report</li> <li>• Final Guide to the Application</li> <li>• Any other information requested by the ExA for submission at Deadline 7</li> <li>• Any other information requested by the ExA under Rule 17</li> <li>• Comments on any additional information/ submissions received by Deadline 6</li> </ul>	
REP7-001	<a href="#">Augean South Limited</a> Deadline 7 Submission - 1.4 Guide to the Application v8
REP7-002	<a href="#">Augean South Limited</a> Deadline 7 Submission - 3.1 Draft Development Consent Order v5 (Clean)

REP7-003	<a href="#">Augean South Limited</a> Deadline 7 Submission - 3.1 Draft Development Consent Order v5 (Tracked)
REP7-004	<a href="#">Augean South Limited</a> Deadline 7 Submission - 3.2 Draft DCO Validation Report v5 (Tracked)
REP7-005	<a href="#">Augean South Limited</a> Deadline 7 Submission - 3.3 Draft Explanatory Memorandum v4 (Clean)
REP7-006	<a href="#">Augean South Limited</a> Deadline 7 Submission - 3.3 Draft Explanatory Memorandum v4 (Tracked)
REP7-007	<a href="#">Augean South Limited</a> Deadline 7 Submission - 3.5 Schedule of Changes to the draft Development Consent Order v4 (Clean)
REP7-008	<a href="#">Augean South Limited</a> Deadline 7 Submission - 6.5 DCO Environmental Commitments v3
REP7-009	<a href="#">Augean South Limited</a> Deadline 7 Submission - 9.3 Final Statement of Common Ground and finalised Statement of Commonality
REP7-010	<a href="#">Augean South Limited</a> Deadline 7 Submission - 14.7 Non Material Change Consultation Report
REP7-011	<a href="#">Augean South Limited</a> Deadline 7 Submission - 16.1 Cover letter and schedule
REP7-012	<a href="#">Augean South Limited</a> Deadline 7 Submission - 16.2 Applicant's comments on the Anglian Water written submissions at Deadline 6
REP7-013	<a href="#">Augean South Limited</a> Deadline 7 Submission - 16.2.1 Correspondence with Anglian Water
REP7-014	<a href="#">Augean South Limited</a> Deadline 7 Submission - 16.3 Applicant's comments on the National Grid Gas written submissions at Deadline 6
REP7-015	<a href="#">Augean South Limited</a> Deadline 7 Submission - 16.4 Applicant's Final Position Statement
REP7-016	<a href="#">Augean South Limited</a> Deadline 7 Submission - 16.5 Communications Update
REP7-017	<a href="#">Woodland Trust</a> Deadline 7 Submission - Response to the Applicant's Development Consent Order
<p><b>Deadline 8</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on the Applicant's Consultation Report (CR) produced to summarise the responses to its consultation exercise (in relation to its proposed Change to the Application) on or before 20 July 2022</li> <li>• Comments on the ExA's proposed Schedule of Changes to the dDCO (if required)</li> </ul>	



REP8-001	<a href="#">Augean South Limited</a> Deadline 8 Submission - Cover Letter
REP8-002	<a href="#">Augean South Limited</a> Deadline 8 Submission - 1.4 Guide to the Application v9
REP8-003	<a href="#">Augean South Limited</a> Deadline 8 Submission - 3.1 Draft Development Consent Order v6 (Clean)
REP8-004	<a href="#">Augean South Limited</a> Deadline 8 Submission - 3.1 Draft Development Consent Order v6 (Tracked)
REP8-005	<a href="#">Augean South Limited</a> Deadline 8 Submission - 3.2 Draft DCO Validation report v6
REP8-006	<a href="#">Augean South Limited</a> Deadline 8 Submission - 3.5 Schedule of Changes to the draft Development Consent Order v5
REP8-007	<a href="#">Augean South Limited</a> Deadline 8 Submission - 6.4 Final Agreed S106 Agreement
REP8-008	<a href="#">Augean South Limited</a> Deadline 8 Submission - 9.3 Statement of Commonality v6
REP8-009	<a href="#">Augean South Limited</a> Deadline 8 Submission - 17.2 Applicant's comments on the Woodland Trust written submissions at Deadline 7
REP8-010	<a href="#">Augean South Limited</a> Deadline 8 Submission - Response to the Examining Authority's request for Further Information
REP8-011	<a href="#">UK Health Security Agency</a> Deadline 8 Submission
<b>Other Documents</b>	
OD-001	<a href="#">Augean South Limited</a> Applicant's S56 notice of accepted application
OD-002	<a href="#">Augean South Limited</a> Certificate of compliance with Section 56 of the Planning Act 2008
OD-003	<a href="#">Augean South Limited</a> Certificate of compliance with regulation 16
OD-004	<a href="#">Augean South Limited</a> Notice of March 2022 Hearings and Accompanied Site Inspection

## **APPENDIX B: LIST OF ABBREVIATIONS**

## APPENDIX B - LIST OF ABBREVIATIONS

µg	microgram
ACO	artificial cover object ('tin')
ALC	Agricultural Land Classification
ANCB	Appropriate Nature Conservation Body
AOD	Above Ordnance Datum
APFP	Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
AQMA	Air Quality Management Area
ASI	Accompanied Site Inspection
AW	Anglian Water
BMV	best and most versatile (agricultural land)
BNG	Biodiversity Net Gain
Bq/g	Becquerels per gram
BS	British Standard
CA	Compulsory Acquisition
CIEEM	Chartered Institute of Ecology and Environmental Management
cm	centimetre
D	Deadline
dB	decibel
DCO	Development Consent Order
dDCO	draft Development Consent Order
DEC	DCO Environmental Commitments
DEFRA	Department for the Environment, Food and Rural Affairs
DfT	Department for Transport
DIO	Defence Infrastructure Organisation
DLUHC	Department for Levelling Up, Housing and Communities
EA	Environment Agency
eDNA	environmental Deoxyribonucleic Acid
EIA	Environmental Impact Assessment
EM	Explanatory Memorandum
EMI	electromagnetic interference
EMMAP	Ecological Management, Monitoring and Aftercare Plan
ENRMF	East Northants Resource Management Facility
EP	Environmental Permit
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
ES	Environmental Statement
ESC	Environmental Safety Case
EU	European Union
ExA	Examining Authority
ExQ1	Examining Authority's first written questions
ExQ2	Examining Authority's further written questions
FRA	Flood Risk Assessment
FZ	Flood Zone
GCN	great crested newt

GHG	greenhouse gas
ha	hectare
HER	(Northamptonshire) Historic Environment Record
HGV	heavy goods vehicle
HRA	Habitats Regulation Assessment
HSE	Health and Safety Executive
IAPI	Initial Assessment of Principal Issues
IAQM	Institute of Air Quality Management
IP	Interested Party
ISH	Issue Specific Hearing
JCS	(North Northamptonshire) Joint Core Strategy
KCLG	Kings Cliffe Liaison Group
km	kilometre
LAeq, (1h)	Equivalent Continuous Sound Level (1 hour)
LCA	Landscape Character Area
LIR	Local Impact Report
LLFA	Lead Local Flood Authority
LLW	low-level radioactive waste
LOAEL	Lowest Observed Adverse Effect Level
LSE	Likely Significant Effects
LV	limit value
LVIA	Landscape and Visual Impact Assessment
m	metre
m <sup>3</sup>	cubic metre
MAFF	Ministry of Agriculture, Fisheries and Food
MoD	Ministry of Defence
mSv/yr	millisieverts per year
MWLP	Northamptonshire Minerals and Waste Local Plan 2017
NCCH	Northamptonshire County Council highways department
NE	Natural England
NMC	non-material change
NNC	North Northamptonshire Council
NNR	National Nature Reserve
NOx	(combined total of) nitrogen oxides and dioxides
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPSE	Noise Policy Statement for England
NPSHW	National Policy Statement for Hazardous Waste
NSER	No Significant Effects Report
NSIP	Nationally Significant Infrastructure Project
PA2008	Planning Act 2008
PHE	(former) Public Health England, now UK Health Security Agency
PINs	Planning Inspectorate
PM	Preliminary Meeting
PM <sub>10</sub>	particulate matter up to 10 micrometres (µm) diameter
PM <sub>2.5</sub>	particulate matter up to 2.5 micrometres (µm) diameter
PP	Protective Provision

PPG	Planning Practice Guidance
PRA	Pipeline Risk Assessment
PRoW	Public Right of Way
PS	Planning Statement (submitted by the Applicant)
PSED	public sector equality duty
PWS	Potential Wildlife Site
QHRA	quantitative hydrogeological risk assessment
RBMP	River Basin Management Plan
RIES	Report on the Implications for European Sites
RNOTLP	Rural North Oundle and Thrapston Local Plan
RR	Relevant Representation
rWFD	revised Waste Framework Directive
SAC	Special Area of Conservation
SFRA	(East Northamptonshire) Strategic Flood Risk Assessment
SI	site investigation
SoCG	Statement of Common Ground
SoS	Secretary of State for Levelling Up, Housing and Communities
SPA	Special Protection Area
SPZ	source protection zone
SSSI	Site of Special Scientific Interest
SU	statutory undertaker
SUDS	sustainable urban drainage system
SWMP	Surface Water Management Plan
TA	Transport Assessment
TOC	total organic content
tpa	tonnes per annum
UK	United Kingdom
UKHSA	UK Health Security Agency
UNFCCC	United Nations Framework Convention on Climate Change
USI	Unaccompanied Site Inspection
VP	viewpoint
WCA	Wildlife and Countryside Act 1981
WFD	Water Framework Directive
WPD	Western Power Distribution (East Midlands) plc
WR	Written Representation

## **APPENDIX C: THE RECOMMENDED DCO**

**202\* No. [\*\*]**

**INFRASTRUCTURE PLANNING**

**The East Northants Resource Management Facility Order 20\*\***

*Made* - - - - - \*\*\*

*Coming into force* \*\*\*

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An application has been made to the Infrastructure Planning Commission, in accordance with the Infrastructure Planning (Applications and Prescribed Forms and Procedure) Regulations 2009(a), for an order granting development consent.

The application was examined by a single appointed person appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act(b) and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The single appointed person, having examined the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 83(1) of the 2008 Act, made a report and recommendation to the Secretary of State.

The Secretary of State, having considered the report and recommendation of the single appointed person, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114, 115 and 120 of the Planning Act 2008, makes the following Order:

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(a) S.I. 2009/2264, amended by S.I. 2010/602, 2012/635, 2012/2732, 2013/522.  
(b) 2008 c. 29. The relevant provisions of the Planning Act 2008 are amended by Part 6 of Chapter 6 of, and Schedule 13 to, the Localism Act 2011 (c. 20). Following the abolition of the Infrastructure Commission on 1st April 2012 the single person appointed under section 61(2) of the 2008 Act is treated as if appointed by the Secretary of State by virtue of a direction given by the Secretary of State under section 129 of the Localism Act 2011.  
(c) S.I. 2010/103, amended by S.I. 2012/635.



# PART 1

## PRELIMINARY

### Citation and commencement

1. This Order may be cited as The East Northants Resource Management Facility Order 202X and shall come into force on the XXXX.

### Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(a);

“the 1965 Act” means the Compulsory Purchase Act 1965(b);

“the 1980 Act” means the Highways Act 1980(c);

“the 1990 Act” means the Town and Country Planning Act 1990(d);

“the 2008 Act” means the Planning Act 2008(e);

“access plan” means the plan certified as the access plan [Drawing Reference AU/KCW/07-21/22659] by the Secretary of State for the purposes of this Order;

“address” includes any number or address for the purposes of electronic transmission;

“apparatus”, unless otherwise provided for, has the same meaning as in Part 3 of the 1991 Act;

“authorised development” means the development and associated development(f) described in Schedule 1 (authorised development) and any other development authorised by this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“business days” means Monday to Friday excluding Bank Holidays and other public holidays or days on which general or local elections are held;

“commence” means the carrying out of a material operation (as defined in section 56(4) of the 1990 Act) excluding any operations relating to ecological enhancement works, planting, soil investigations or works in respect of land contamination, archaeological investigations, site clearance, diversion of services, receipt and erection of construction plant and equipment, the erection of temporary fencing, hoardings and erection of site compound buildings and “commence” and “commenced” shall be construed accordingly;

“DEC” means the document certified as the DCO environmental commitments [Report Reference AU/KCW/LZH/1724/01DECV3] by the Secretary of State for the purposes of this Order;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“environmental statement” means the document of that name submitted with the application for this Order;

“hazardous waste” means waste defined as such in regulation 6 of the Hazardous Waste (England and Wales) Regulations 2005(g) and as may be amended from time to time in these or equivalent regulations;

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(a) 1961 c.33.

(b) 1965 c.56.

(c) 1980 c.66.

(d) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the 2008 Act. There are other amendments to the 1990 Act not relevant to this Order.

(e) 2008 c.29.

(f) For the definition of “associated development” see section 115 of the 2008 Act.

(g) S.I. 2005/894, amended by S.I. 2011/988. There are other amendments not relevant to this Order.

“hedgerow plan” means the plan certified as the hedgerow removal plan [Drawing Reference AU/KCW/07-21/22661] by the Secretary of State for the purposes of this Order;

“highway”, “highway authority” and “local highway authority” have the same meaning as in the 1980 Act and “highway” includes part of a highway;

“land plan” means the plan certified as the land plan [Drawing Reference AU/KCW/08-21/22752] by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 5 (limits of deviation) and shown on the works plan;

“low level waste” means radioactive waste comprising solid low level radioactive waste typically with a specific activity of up to 200Bq/g;

“maintain” includes maintain, inspect, repair, remove, clear, refurbish, reconstruct, demolish, replace and improve and “maintenance” shall be construed accordingly;

“the Order limits” means the limits shown on the works plan within which the authorised development may be carried out;

“original order” means the East Northamptonshire Resource Management Facility Order 2013 as amended by the East Northamptonshire Resource Management Facility (Amendment) Order 2018;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981 (interpretation)(a);

“relevant planning authority” means North Northamptonshire Council or the local planning authority for the area in which the land to which the relevant provision of this Order applies is situated from time to time;

“Requirements” means the requirements listed in Part 1 of Schedule 2 (Requirements), and any reference to a numbered Requirement is to be construed accordingly;

“restoration concept scheme” means the scheme certified as the restoration concept scheme [Drawing No. ENORTH 028] by the Secretary of State for the purposes of this Order;

“restoration profile contour plan” means the plan certified as the restoration profile contour plan [Drawing Reference AU/KCW/07-21/22660revA] by the Secretary of State for the purposes of this Order;

“the site” means land within the Order limits;

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8), of the 2008 Act (statutory undertakers’ land) and includes a public communications provider as defined in section 151(1) of the Communications Act 2003(b);

“street authority”, in relation to a street, has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

“the undertaker” means Augean South Ltd (Company No. 04636789) or such other person as has the benefit of this Order under section 156(1) of the 2008 Act;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, soakaways, sewers and passages through which water flows except a public sewer or drain; and

“Western Power Distribution” means Western Power Distribution (East Midlands) Plc (company number 02366923), whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB

“work” means a work set out in Schedule 1 and shown on the works plans; and a reference to a work designated by a number or a combination of numbers and letters, is a reference to the work so designated in that Schedule;

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(a) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1992 (c.34). There are other amendments to section 7 which are not relevant to the Order.

(b) 2003 c. 21.

“the works plan” means the plan certified as the works plan [Drawing Reference AU/KCW/07-21/22655revA] by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) References in this Order to numbered Requirements are to the Requirements with those numbers in Schedule 2.

(4) All distances, directions and lengths referred to in this Order are approximate.

(5) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by Schedule 1 of this Order.

(6) The expression “includes” shall be construed without limitation.

## PART 2 PRINCIPAL POWERS

### **Development consent etc. granted by the Order**

3. Subject to the provisions of this Order and to the Requirements in Schedule 2 (requirements) attached to this Order the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

### **Effect of the Order on the original order**

4.—(1) The undertaker must not start operational use of Work No. 1A, Work No. 2, or Work No.3 under this Order until notice has been served on the relevant planning authority that the undertaker is ceasing to operate those works under the original order.

(2) Upon service of the notice under paragraph (1) construction, operation and maintenance of Work No.1A, Work No.2 and Work No.3 will cease under the original order and from that date the authorised development will be constructed, operated and maintained in accordance with the provisions of this Order and the plans certified under article 18.

(3) From the date of the notice served under paragraph (1) the provisions of the original order will not apply in relation to the authorised development.

### **Limits of deviation**

5.—(1) In carrying out, maintaining or diverting the authorised development, the undertaker may—

- (a) construct any such work within the lateral limits of deviation or extents of work shown on the works plans for the relevant work;
- (b) in relation to Work No. 1 only deviate the works vertically upwards to a limit of 1 metre from the contours shown in grey on the restoration profile contour plan;
- (c) deviate the works vertically downwards to any extent as may be found necessary to construct the authorised development, subject to approval by the Environment Agency.

(2) The maximum limits of deviation specified in sub-paragraphs (1)(a), (1)(b) and (1)(c) do not apply where it is demonstrated by the undertaker to the relevant planning authority’s satisfaction, and certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects to those identified in the environmental statement.

### **Benefit of the Order**

6.—(1) Subject to paragraph (2) and article 7 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which the consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

#### **Consent to transfer benefit of Order**

7.—(1) The undertaker may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), includes references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is not required under this article where the transfer or grant is made to Western Power Distribution for the purposes of undertaking Work No. 5.

#### **Power to construct and maintain the authorised development**

8. The undertaker may at any time construct and maintain the authorised development, except to the extent that this Order or an agreement made under this Order, provides otherwise.

#### **Maintenance of drainage works**

9.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article “drainage” has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991(a).

## **PART 3**

### **SUPPLEMENTAL POWERS**

#### **Access to works**

10.—(1) The undertaker may, for the purposes of the authorised development and subject to paragraph (2), with the consent of the street authority (such consent not to be unreasonably withheld or delayed) following consultation by the street authority with the relevant planning authority, form and lay out such means of access (permanent or temporary) shown on the access plan or improve existing means of access, within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) The consent of the street authority is not required for the formulation, laying out or improvement of a new or existing means of access as shown on the access plan and described in Schedule 1 (authorised development).

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(a) 1991 c. 59.

## **Discharge of water**

**11.**—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but is not to be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval is not to be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016.

(8) In this article—

- (a) “public drain” means a drain which belongs to the Homes and Communities Agency, the Environment Agency, an internal drainage board, a joint planning board, a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(b) have the same meaning as in that Act.

## **Authority to survey and investigate the land**

**12.**—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes or bore holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes and bore holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner or occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

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(a) 1991 c. 56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c. 37). There are other amendments to this section which are not relevant to this Order.

(b) 1991 c. 57.

- (a) must, if so required on entering the land, produce written evidence of their authority to do so; and
  - (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes or bore holes.
- (4) No trial holes or bore holes may be made under this article—
- (a) in land located within the highway boundary without the consent of the highway authority; or
  - (b) in a private street without the consent of the street authority, but such consent must not be unreasonably withheld.
- (5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (6) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—
- (a) under paragraph (4)(a) in the case of a highway authority; or
  - (b) under paragraph (4)(b) in the case of a street authority; that authority is deemed to have granted consent.
- (7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

**Felling or lopping of trees and removal of hedgerows**

- 13.**—(1) The undertaker may fell or lop or cut back any roots of any tree or shrub near any part of the authorised development, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.
- (2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.
- (3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (4) The undertaker may, for the purposes of carrying out the authorised development —
- (a) remove the important hedgerows as are within the Order limits and specified in Schedule 5 (removal of important hedgerows); and
  - (b) without limitation on the scope of sub-paragraph (a), and with the consent of the local authority in whose area the hedgerow is located, remove or translocate any hedgerow within the Order limits.
- (5) The grant of consent of a local authority in terms of paragraph (4)(b) must not be unreasonably withheld.
- (6) If a local authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (4)(b) the local authority is deemed to have granted consent.
- (7) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerow Regulations 1997(a).

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(a) S.I. 1997/1160, as amended by S.I. 2003/2155, S.I. 2015/1997, S.I. 2015/377, S.I. 2009/1307 and S.I. 2013/755.

**PART 4**  
**MISCELLANEOUS AND GENERAL**

**Application of landlord and tenant law**

**14.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants is to prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law is to apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

**Protective Provisions**

**15.** Schedule 6 (protective provisions) of this Order has effect.

**Planning permission**

**16.** If planning permission is issued under the 1990 Act for development any part of which is within the Order limits following the publication of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; and
- (b) required to complete or enable the construction, use or operation of the development authorised by this Order,

then the carrying out, use or operation of such development under the terms of the planning permission does not constitute a breach of the terms of this Order.

**Defence to proceedings in respect of statutory nuisance**

**17.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraphs (a), (c), (d), (e), (g) or (ga) of section 79(1) of that Act no order shall be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—

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(a) 1990 c. 43, amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16). There are other amendments to the Environmental Protection Act 1990 not relevant to this Order.

- (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(a); or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
- (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with Requirement 5; or
  - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall not apply where any consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### **Certification of plans etc**

**18.**—(1) The undertaker shall, as soon as practicable after the making of this Order, submit to the Secretary of State copies of the following plans and documents—

- (a) the access plan;
- (b) the hedgerow plan;
- (c) the works plan;
- (d) the restoration profile contour plan;
- (e) the restoration concept scheme; and
- (f) the DEC

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Service of Notices**

**19.**—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

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(a) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 25). There are other amendments to the Control of Pollution Act 1974 not relevant to this Order.



(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to services by post) of the Interpretation Act 1978<sup>(a)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the Requirement will be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender will provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation will be final and will take effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article will not be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

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(a) 1978 c. 30.

## Arbitration

20. Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled in arbitration, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

Signed by authority of the Secretary of State for Levelling Up, Housing and Communities

	<i>Name</i>
Address	Secretary of State for Levelling Up, Housing and Communities
Date	Department for Levelling Up, Housing and Communities

## SCHEDULES

### SCHEDULE 1

Articles 2 and 10

#### Authorised Development

A nationally significant infrastructure project as defined in section 14(1)(p) and 30 of the 2008 Act comprising—

**Work No.1** – A hazardous waste landfill facility for the disposal at a direct input rate of up to 150,000 tonnes per annum of predominantly hazardous waste together with small quantities of low level waste on the areas identified on the works plan comprising-

**Work No. 1A** – the construction and filling of a landfill including -

- (a) extraction and stockpiling of soil, clay and other suitable materials for engineering and restoration purposes and the exportation of some clay and other suitable materials,
- (b) all other associated engineering works to construct the landfill phases including a leachate collection system,
- (c) a landfill gas pump and gas flare,
- (d) surface water management and pumping systems including ponds as needed.

**Work No. 1B** – the construction and filling of a landfill including -

- (a) extraction and stockpiling of soil, clay and other suitable materials for engineering and restoration purposes and the exportation of some clay and other suitable materials,
- (b) all other associated engineering works to construct the landfill phases including a leachate collection system,
- (c) surface water management and pumping systems including ponds as needed.

**Work No.2** – A hazardous waste facility, namely the alteration of an existing waste treatment and recovery facility with an increase from the capacity of 200,000tpa in the original order to a capacity of 250,000tpa of predominantly hazardous wastes including -

- (a) a modular plant located on a concrete pad with associated enclosures or buildings, surface water drainage and collection,
- (b) stocking areas, stocking bays with concrete walls and storage lagoons,
- (c) process, reagent, acid waste, water or other liquid storage tanks,
- (d) storage silos,

- (e) feed hoppers,
- (f) screens,
- (g) conveyors,
- (h) washing units,
- (i) separators,
- (j) mixing vessels,
- (k) sedimentation units,
- (l) bioremediation area,
- (m) a mobile crusher on a campaign basis,
- (n) open concrete lined settlement tanks,
- (o) a process control office and staff welfare facilities,
- (p) bunded fuel storage tanks and an electricity generator in an insulated container.

**Work No. 3** – the site reception area which will include -

- (a) site access and surfaced access road,
- (b) storage shed,
- (c) laboratory,
- (d) canteen, welfare facilities and offices,
- (e) car parking area,
- (f) weighbridge,
- (g) wheel washing facilities,
- (h) cess pit, and
- (i) bunded fuel storage tanks.

**Work No. 4** – the conversion of a culverted drain to an open watercourse with associated ecological works.

**Work No. 5** – the diversion of an overhead electricity cable.

And for the purposes of or in connection with the construction of Work No.1, Work No. 2 and Work No. 3 further development within the order limits consisting of—

- (a) monitoring bore holes;
- (b) leachate storage tanks;
- (c) bunded fuel storage tanks;
- (d) security cameras;
- (e) lighting;
- (f) internal site roads; and
- (g) hardstanding and bunding.

And for the purposes of or in connection with the construction of any of those works mentioned above further development within the order limits consisting of—

- (a) boundary fencing;
- (b) surface water collection ponds;
- (c) surface and foul water drainage;
- (d) the restoration of the site including the creation of footpaths and tracks for public access and retention of the car parking area; and
- (e) aftercare.

## SCHEDULE 2 Requirements

Articles 2, 3 and 4

### Interpretation

**1.** In this Schedule—

- “archaeological mitigation strategy” means the strategy at Appendix DEC A of the DEC;
- “boundary design principles” means the principles set out in Appendix DEC B of the DEC;
- “dust management scheme” means the scheme at Appendix DEC H of the DEC;
- “ecological management, monitoring and aftercare plan” means the plan at Appendix DEC E of the DEC;
- “new works” means Work Nos. 1B, 4 and 5 for which development has not yet commenced at the date this Order takes effect;
- “noise and vibration management plan” means the plan at Appendix DEC L of the DEC;
- “operational site” means Work Nos. 1A, 2 and 3 which are consented under the original order.
- “phase” means the relevant phase referred to in the phasing sequence table;
- “phasing sequence table” means the table in Appendix DEC D of the DEC;
- “relevant parameters” means the parameters set out in Schedule 4 and in Appendix DEC C of the DEC;
- “soil handling and management scheme” means the scheme at Appendix DEC I of the DEC;
- “stockpile management scheme” means the scheme at Appendix DEC J of the DEC;
- “surface water management plan” means the plan at Appendix DEC F of the DEC;
- “traffic management plan” means the plan at Appendix DEC K of the DEC.

### Time limits

**2.** The authorised development must commence within 5 years of the coming into force of this Order.

### Detailed design

**3.—(1)** The authorised development must be carried out in accordance with the following approved plans and schemes listed in this Requirement (except for minor amendments as approved in writing by the relevant planning authority)—

- (a) the access plan;
- (b) the works plan;
- (c) the boundary design principles; and
- (d) the surface water management plan.

(2) Subject to article 5, the finished ground level contours approved pursuant to requirement 4(1)(f) must lie between the grey contours and the green contours shown on the restoration profile contour plan and in areas where no green contours are shown, the finished ground level contours must accord with the grey contours shown on the restoration profile contour plan.

(3) All parts of the authorised development comprised in Work No.2 and Work No. 3 must be constructed in accordance with the relevant parameters.

(4) Work No. 4 must be carried out in accordance with the details set out in the approved phasing, landscaping and restoration scheme submitted pursuant to Requirement 4.

(5) Development of the new works must not commence until a detailed drainage design in accordance with the surface water management plan has been submitted to and approved by the relevant planning authority following consultation with the Environment Agency.

## **Phasing, landscaping and restoration**

4.—(1) The authorised development must be carried out in accordance with the ecological management, monitoring and aftercare plan and the first stage of the phasing sequence table until the phasing, landscaping and restoration scheme is approved pursuant to sub paragraph (2).

(2) Within 24 months of the date of this Order the undertaker must submit a phasing, landscaping and restoration scheme in accordance with the principles set out in the ecological management, monitoring and aftercare plan and the restoration concept scheme to the relevant planning authority for approval following consultation with the Environment Agency.

(3) The phasing, landscaping and restoration scheme submitted must include details of phasing timescales and all proposed hard and soft landscaping works, ecological mitigation and enhancement measures including—

- (a) a programme for the progressive filling, capping and phased restoration of the land including all landscaping, restoration and aftercare works which are in accordance with the phasing sequence table;
- (b) a programme for review meetings;
- (c) the location, number, species, size and planting density of any proposed planting;
- (d) how any invasive species will be managed;
- (e) soil testing and preparation, cultivation, importing of materials and other operations to maximise plant establishment;
- (f) details of proposed finished ground level contours in accordance with requirement 3(2);
- (g) hard surfacing materials;
- (h) vehicular and pedestrian access, parking and circulation areas;
- (i) minor structures, such as furniture, refuse or other storage units, signs and lighting;
- (j) proposed and existing functional services above and below ground, including drainage, power and communications cables and pipelines, manholes and supports;
- (k) details of existing trees to be retained, with measures for their protection during the operations; and
- (l) the location of fuel storage and leachate tanks, extraction and monitoring facilities and any other infrastructure required for the aftercare works.

(4) Not later than 24 months from the date the phasing, landscaping and restoration scheme is approved pursuant to sub paragraph (1) and then again at least every two years from that date the undertaker must submit an updated phasing, landscaping and restoration scheme for approval and if necessary arrange a review meeting with the relevant planning authority to discuss any changes. The works must be undertaken in accordance with the extant phasing, landscaping and restoration scheme.

(5) Any tree or shrub planted as part of an approved landscaping and restoration scheme that, within a period of 10 years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.

(6) The undertaker must restore the site by 31 December 2046 at the latest and all landscaping, restoration and aftercare works must be carried out for a minimum period of 20 years thereafter in accordance with the extant phasing, landscaping and restoration scheme in place at the time those works are being carried out and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(7) The undertaker must provide public access to the authorised development in accordance with the details set out in the phasing, landscaping and restoration scheme.

## **Noise**

5. The authorised development must be carried out, operated and maintained in accordance with the noise and vibration management plan.

## **Stockpiles and soil**

6.—(1) The stockpiles must be managed in accordance with the details set out in the stockpile management scheme during the operation of the authorised development.

(2) The authorised development must be carried out in accordance with the environmental commitments set out in the dust management scheme and soil handling and management scheme, which includes a bird hazard management plan.

## **Disposal of waste**

7. No waste materials may be disposed of at the site other than hazardous wastes and low level waste together with suitable waste materials used for restoration purposes.

## **Quantities of waste**

8.—(1) The maximum quantities of waste that will be imported to the waste treatment and recovery facility per annum will be 250,000 tonnes and directly to the landfill will be 150,000 tonnes. The combined total amount of waste that can be imported to the site per annum shall not exceed 300,000 tonnes.

(2) The total quantity of low level waste disposed of at the site in the period up to 31 December 2046 (or its earlier closure) shall not exceed 448,000 tonnes in relation to Work No. 1A and 700,000 tonnes in relation to Work No. 1B.

## **Archaeological mitigation strategy**

9.—(1) The new works must be carried out, operated and maintained in accordance with the archaeological mitigation strategy

(2) Development of the new works must not commence until a written scheme of investigation has been submitted to and approved by the relevant planning authority and the investigation of the new works must be carried out in accordance with the approved written scheme of investigation.

## **Vehicular access**

10. The only vehicular access for the authorised development permitted is by way of the existing access to the site on to the Stamford Road shown on the access plan.

## **Control of vehicular movements**

11. Vehicular traffic associated with this authorised development must comply with the traffic management plan and be controlled as follows:

- (a) The undertaker must direct that all heavy goods vehicles entering and leaving the site except local collections shall travel direct to and from the A47 Trunk Road via Stamford Road north of the access point with no such vehicles travelling along Stamford Road towards King's Cliffe village south of the site access point.
- (b) Signs informing vehicle drivers of the requirements in paragraph (a) above shall be maintained in a visible location near to the egress on site.
- (c) Facilities shall be provided for site operatives within the site to observe the direction of vehicle entry to and exit from the site.

### **Site security**

12. The site security measures including the 1.8m palisade fence around the gas compound shall be maintained throughout the life of the operations at the site and beyond until the relevant planning authority, in consultation with the Environment Agency, determines and confirms in writing that the site security measures are no longer required and thereafter, any fences shall be removed within a period of 3 months.

### **Wheel cleaning**

13. Wheel cleaning facilities shall be provided on the site with appropriate drainage and thereafter maintained to the satisfaction of the relevant planning authority. The wheels of all vehicles leaving the site shall be cleansed of mud and other debris to prevent mud being carried onto the public highway. All vehicles transporting materials in connection with the authorised development shall be adequately sheeted to the satisfaction of the relevant planning authority.

### **Hours of operation**

14.—(1) Except as may otherwise be approved in writing by the relevant planning authority in temporary limited circumstances, all waste treatment, waste disposal, site preparation, levelling and restoration operations and any associated activities shall be restricted to between the hours of 07.00 and 18.00 on Mondays to Fridays and 07.00 and 13.00 on Saturdays, and subject to sub paragraph (2), no such operations may be carried out on the site on Sundays or public holidays.

(2) On a public holiday between the hours of 07.00 and 18.00, the following activities may be carried out—

- (a) the delivery of up to 20 loads a day of air pollution control residues;
- (b) the processing in the waste treatment and recovery facility (Work No.2) of those residues; and
- (c) the stockpiling and management of the processed residues within the waste treatment and recovery facility (Work No.2).

(3) For the purposes of this paragraph “public holiday” means Christmas Day, Good Friday or a day which under section 1 of the Banking and Financial Dealings Act 1971<sup>(a)</sup> is a bank holiday in England.

### **Gas flare structures**

15. Except in respect of minor amendments approved in writing by the relevant planning authority the height of—

- (a) the gas compound fencing shall not exceed 1.8m above existing ground level;
- (b) any building, plant, machinery, foundation, hardstanding, roadway, bunding, structure or erection in the nature of plant or machinery used in connection with the gas flare and pumping station shall not exceed 2m above existing ground level; and
- (c) any gas flare flue shall not exceed 10m above existing ground level.

### **Floodlighting**

16.—(1) All floodlighting including mobile units shall be directed towards the ground to minimise light spillage from the site and except for emergencies will only be operating within the hours of operation specified in Requirement 14.

(2) No additional permanent or temporary floodlighting shall be installed at the site, until after consultation with the relevant planning authority, and a written scheme for the management and

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(a) 1971 c. 80.

mitigation of artificial light emissions has been submitted to and approved by the relevant planning authority.

### **Cessation of development**

17. The landfilling of waste and the operation of the waste treatment and recovery facility hereby permitted shall cease not later than 31 December 2046 by which time the land and the access shall be restored or reinstated in accordance with the Requirements of this Order.

### **Removal of plant and machinery**

18. Except to the extent required for aftercare purposes as approved pursuant to the phasing, landscaping and restoration scheme under Requirement 4, any building, plant, machinery, foundation, hardstanding, roadway, structure or erection in the nature of plant or machinery used in connection with the authorised development shall be removed from the site when they are respectively no longer required for the purpose for which they were installed and in any case not later than 31 December 2046 upon completion of the aftercare of the site.

### **Amendments to approved details**

19. Where any Requirement requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details shall be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority.

## **SCHEDULE 3**

Article 1 and Schedule 2

### **Procedure for approvals under requirements**

#### **1. In this Schedule**

“discharging authority” means the relevant planning authority.

#### **Applications made under Requirements**

2. This Schedule applies to an application made by the undertaker to a discharging authority for any consent, agreement or approval under a Requirement.

#### **Decision Period**

3.—(1) The discharging authority must give written notice to the undertaker of its decision on the application before the end of the decision period.

(2) In sub-paragraph (1), “the decision period” means—

- (a) where the discharging authority does not give written notice under paragraph 4(1) or 4(2) requiring further information, the period of eight weeks from the later of
  - (i) the day immediately following the day on which the authority receives the application, and
  - (ii) the day on which the authority receives the fee payable under paragraph 5; or
- (b) where the discharging authority gives written notice under paragraph 4(1) or 4(2) requiring further information, the period of eight weeks from the day immediately following the day on which the undertaker provides the further information; or
- (c) such longer period as may be agreed in writing by the undertaker and the discharging authority.



## **Further Information**

4.—(1) If the discharging authority considers that it requires further information to make a decision on the application, it must give written notice to the undertaker specifying the further information required within seven business days from the day on which it receives the application.

(2) If the relevant Requirement requires that discharging authority to consult a person (referred to in this Schedule as a “consultee”) in relation to the application—

- (a) the discharging authority must consult the consultee within five business days from the day on which it receives the application;
- (b) if the consultee considers that it requires further information to respond to the consultation, it must so notify the discharging authority, specifying what further information is required, within 21 business days from the day on which the discharging authority received the application; and
- (c) within five business days from the day on which it receives any such notification from the consultee, the discharging authority must give written notice to the undertaker specifying the further information required by the consultee.

(3) If the discharging authority, after consultation with any consultee, considers that further information provided by the undertaker in response to a written notice from the discharging authority under sub-paragraph (1) or (2) is not sufficient to allow it to make a decision on the application, it must give written notice to the undertaker specifying what further information is still required, within seven business days from the day on which the undertaker provided the information.

(4) If the discharging authority does not give written notice in accordance with sub-paragraph (1), (2) or (3), it is not entitled to request any additional information in relation to the application without the prior agreement in writing of the undertaker.

## **Fees**

5.—(1) The undertaker must pay the authority a fee of £116, or such greater fee as for the time being is payable to the authority in respect of an application for the discharge of a condition imposed on a grant of planning permission, in respect of each application.

(2) The authority must refund the fee paid under sub-paragraph (1) to the undertaker, within the relevant period, if it—

- (a) rejects the application as being invalidly made;
- (b) fails to give the written notice required by paragraph 3(1).

(3) Sub-paragraph (2) does not apply if, within the relevant period, the undertaker agrees in writing that the authority may retain the fee paid and credit it in respect of a future application.

(4) In sub-paragraphs (2) and (3) “the relevant period” means the period of eight weeks from, as the case may be—

- (a) the day on which the authority rejects the application as being invalidly made;
- (b) the day after the day on which the decision period expires.

## **Appeal to the Secretary of State (procedure)**

6.—(1) The undertaker may appeal to the Secretary of State against—

- (a) the discharging authority’s refusal of an application;
- (b) the discharging authority’s grant subject to conditions of an application;
- (c) the discharging authority’s failure to give the written notice required by paragraph 3(1);
- (d) a written notice given by the discharging authority under paragraph 4(1), 4(2) or 4(3).

(2) In order to appeal, the undertaker must, within 10 business days from the relevant day, send the Secretary of State the following documents—

- (a) its grounds of appeal;
  - (b) a copy of the application submitted to the authority;
  - (c) any supporting documentation which it wishes to provide.
- (3) In sub-paragraph (2), “the relevant day” means—
- (a) in the case of an appeal under sub-paragraph (1)(a) or (1)(b), the day on which the undertaker is notified by the authority of its decision;
  - (b) in the case of an appeal under sub-paragraph (c), the day after the day on which the decision period expires;
  - (c) in the case of an appeal under sub-paragraph (1)(d), the day on which the undertaker receives the authority’s notice.
- (4) At the same time as it sends the documents mentioned in sub-paragraph (2) to the Secretary of State, the undertaker must send copies of those documents to the authority and any consultee.
- (5) As soon as reasonably practicable following receipt of the documents mentioned in sub-paragraph (2), the Secretary of State must—
- (a) appoint a person (referred to in this Schedule as “the appointed person”) to determine the appeal on his behalf;
  - (b) give written notice to the undertaker, the authority and any consultee of the appointment and of the appointed person’s address for correspondence in relation to the appeal.
- (6) Within 20 business days from the day on which the Secretary of State gives notice under sub-paragraph (5)(b), the authority and any consultee—
- (a) may submit written representations in respect of the appeal to the appointed person; and
  - (b) must, at the same time, send a copy of any such representations to the undertaker and (if applicable) to each other.
- (7) Within 10 business days from the last day on which representations are submitted to the appointed person under sub-paragraph (6), any party—
- (a) may make further representations to the appointed person in response to the representations of another party; and
  - (b) must, at the same time, send a copy of any such further representations to each other party.

**Appeal to the Secretary of State (powers of the appointed person)**

- 7.—(1) The appointed person may—
- (a) allow or dismiss the appeal;
  - (b) reverse or vary any part of the authority’s decision, irrespective of whether the appeal relates to that part;
  - (c) make a decision on the application as if it had been made to the appointed person in the first instance.
- (2) The appointed person—
- (a) if he considers that he requires further information to make a decision on the appeal, may by written notice require any party to provide such further information to him and to each other party by a specified date;
  - (b) if he gives such a notice, must—
    - (i) at the same time send a copy of it to each other party, and
    - (ii) allow each party to make further representations in relation to any further information provided in response to the notice, within 10 business days from the day on which it is provided.
- (3) The appointed person may waive or extend any time limit (including after it has expired) for the provision of representations or information in relation to an appeal.

### Appeal to the Secretary of State (supplementary)

8.—(1) The decision of the appointed person on an appeal may not be challenged except by proceedings for judicial review.

(2) If the appointed person grants approval of an application, that approval is to be taken as if it were an approval granted by the authority in relation to the application.

(3) Subject to sub-paragraph (4), the undertaker must pay the reasonable costs of the appointed person incurred in deciding the appeal.

(4) On written application by the authority or the undertaker, the appointed person may make a direction as to the costs of the parties to the appeal and of the appointed person, including imposing an obligation on any party to pay all or part of such costs to the party which incurred them.

(5) In considering an application under sub-paragraph (4) the appointed person must have regard to the National Planning Practice Guidance: Advice on planning appeals and the award costs or any circular or guidance which may from time to time replace it.

## SCHEDULE 4

Article 2

### Design parameters

<i>(1)</i> <i>Component</i>	<i>(2)</i> <i>Maximum dimensions</i>
Any plant or buildings in Work No. 2	15m high
Any plant in Work No. 3	7.4m high
Any buildings in Work No. 3 (excluding the storage shed)	3.6m high
Work No. 3(b), the storage shed	8m high
Any buildings in Work No. 3	36.5m x 10.5m

## SCHEDULE 5

Article 2 and Article 13

### Removal of important hedgerows

<i>(1)</i> <i>Location of hedgerow</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
H02 shown on the hedgerow plan	Removal	Work No. 1B
H03 shown on the hedgerow plan	Removal	Work No.1B

## Protective Provisions

## PART 1

For the protection of Anglian Water Services Limited

**Application**

1. For the protection of Anglian Water the following provisions have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

**Interpretation**

2. In this Part of this Schedule—

“Act” means the Water Industry Act 1991;

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in a manner no less efficient than previously;

“Anglian Water” means Anglian Water Services Limited;

“apparatus” means Anglian Water’s twin water mains running between Stamford Road, King’s Cliffe (at grid references TL0130899796 and TL0131499784 or thereabouts) and A43, Duddington (at grid references SK9888300433 and SK9888000429 or thereabouts, respectively) and includes:

- (a) any accessories (as defined by section 219 of the Act) forming part of it,
- (b) any structure in which apparatus is or is to be lodged or which gives or will give access to it, and
- (c) alternative apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

**Acquisition of land**

3. Regardless of any provision in this Order, the undertaker must not acquire any apparatus otherwise than by agreement.

**Retained apparatus**

4.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus (or any means of access to it) the removal of which has not been required by the undertaker in accordance with section 185 of the Act, the undertaker must submit to Anglian Water a plan of the works to be executed.

(2) Those works must be executed only (i) if approved by Anglian Water pursuant to sub-paragraph (3) below, (ii) in accordance with the plan submitted under sub-paragraph (1) and (iii) in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus,

or for securing access to it, and Anglian Water is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it. The approval that may be given under that sub-paragraph must not be unreasonably withheld (although may be subject to the said requirements) and shall be assumed to have been given unless Anglian Water gives written notice to the undertaker that it is being withheld entirely or given subject to the said requirements within the same time period.

(4) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(5) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to Anglian Water notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances, using its best endeavours to keep the impact of those emergency works on Anglian Water's apparatus, on the operation of its water and sewerage network and on end-users of the services Anglian Water provides to a minimum.

(6) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph:

- (a) the establishment of an access way or haul road and underground works are both deemed to be "works" for the purposes of this paragraph; and
- (b) works are deemed to be in land near Anglian Water's apparatus if those works fall within 20 metres measured from the medial line of the closer of the two water mains forming such apparatus to the works in question.

### **Expenses and costs**

5.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule.

(2) There must be deducted from any sum payable under subparagraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 20 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Anglian Water by virtue of subparagraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

6.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of:

- (a) the construction of any works of authorised development for which development consent is granted by this Order,
- (b) any subsidence resulting from such works or development, or
- (c) any leakage, leachate or radiation resulting from such works or development,

any contamination or damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), any medium conveyed by such apparatus or any property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

- (d) bear and pay the cost reasonably incurred by Anglian Water in making good such damage or restoring the supply; and
- (e) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty (whether legal, regulatory or in relation to regulatory funding) or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by Anglian Water on behalf of the undertaker or in accordance with a plan approved by Anglian Water or in accordance with any requirement of Anglian Water or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Anglian Water fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to:

- (a) any damage or interruption to the extent that it is attributable to the unlawful or unreasonable act, neglect or default of Anglian Water, its officers, servants, contractors or agents;
- (b) any part of the authorised development carried out by Anglian Water in the exercise of any functions conferred by this Order pursuant to a transfer of benefit under article 7; or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) Anglian Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made, without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) Anglian Water must act reasonably in relation to any claim or demand served under subparagraph (1) and use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands and penalties to which a claim or demand under subparagraph (1) applies.

## **Cooperation**

7.—(1) Where in consequence of the proposed construction of any of the authorised development, Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 4, the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised

development and taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking, using existing processes where requested by Anglian Water, provided it is appropriate to do so, and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

(2) Where the undertaker identifies any apparatus which may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it shall inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

(3) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Anglian Water in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

(4) The undertaker and Anglian Water may by written agreement substitute any period of time for those periods set out in this Part of this Schedule.

### **Monitoring**

**8.**—(1) Where in relation to the proposed construction of any of the authorised development, Anglian Water reasonably requires leak detection monitoring and/or monitoring of the water level in the pipe bedding material to be installed (“pipe bedding monitoring”), and gives written notice to the undertaker of that requirement, the following provisions of this paragraph apply:

- (a) Any leak detection monitoring and pipe bedding monitoring to be installed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such situation as may be agreed between Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 20 (arbitration).
- (b) Anglian Water must, after the leak detection monitoring and pipe bedding monitoring to be installed has been agreed or settled by arbitration in accordance with article 20, and after the grant to Anglian Water of any such necessary facilities and rights over the land, proceed without unnecessary delay to construct and bring into operation the agreed leak detection monitoring and pipe bedding monitoring.
- (c) The undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water in, or in connection with, the installation of any leak detection and pipe bedding monitoring apparatus.
- (d) If Anglian Water gives notice in writing to the undertaker that it desires the undertaker to execute any work, or part of any work in connection with the installation of leak detection or pipe bedding monitoring apparatus or the undertaker and Anglian Water otherwise agree, that work, instead of being executed by Anglian Water, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Anglian Water at the cost of the undertaker.
- (e) Anglian Water must share all monitoring data arising from the installation of the leak detection monitoring and pipe bedding monitoring with the undertaker on a quarterly basis.

### **Expert Determination**

**9.**—(1) Article 20 (arbitration) shall apply to any difference as to the legal interpretation of this Schedule and as provided for in paragraph 4(3).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph 4(3) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers or the President of the Institution of RICS or the President of the Institution of Engineering and Technology (as relevant and agreed between Anglian Water and the undertaker, both acting reasonably and without delay).

(3) All parties involved in settling any difference must use best endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The costs and fees of the expert and the costs of Anglian Water and the undertaker are payable by the parties in such proportions as the expert may determine. In the absence of such determination the costs and fees of the expert are payable equally by the parties who shall each bear their own costs.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 14 days of receipt of the submissions under sub-paragraph (b); and
- (d) (give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (e) Anglian Water's service obligations and licence conditions; and
- (f) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 20.

## PART 2

For the protection of Western Power Distribution (East Midlands) Plc

### Application

10. For the protection of Western Power Distribution (East Midlands) plc the following provisions, unless otherwise agreed in writing between the undertaker and Western Power Distribution (East Midlands) plc, have effect.

### Interpretation

11. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable WPD to fulfil its statutory functions in a manner not less efficient than previously and where the context requires includes any part of such alternative apparatus;

“alternative rights” means all and any necessary legal easements, leases, consents, or permissions required by WPD in order to permit or authorise a diversion and to permit or authorise WPD to lay, keep, operate, maintain, adjust, repair, alter, relay, renew, supplement, inspect, examine, test and remove the alternative apparatus;



“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989<sup>a</sup>, belonging to or maintained by WPD;

“diversion” means an alteration to the WPD Network in order to enable or facilitate the authorised development;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” or “plans” includes all designs, drawings, specifications, method statements, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed;

“specified work” means so much of any of the authorised development that is carried out within 6 metres of any apparatus;

“undertaker” means Augean South Ltd (Company No. 04636789) or such other person as has the benefit of the Order;

“WPD” means Western Power Distribution (East Midlands) plc (company number 02366923) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB;

“WPD Network” means WPD’s distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the 1989 Act; and

other terms have the meaning given in article 2 (interpretation).

### **Precedence of 1991 Act in respect of apparatus in streets**

12. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and WPD are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

### **No acquisition except by agreement**

13. Regardless of any provision in this Order, the undertaker must not acquire any apparatus otherwise than by agreement.

### **Removal of apparatus**

14.—(1) If, in the exercise of the powers conferred by this Order, the undertaker requires that apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of WPD to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, alternative rights acquired or granted for the alternative apparatus and the alternative apparatus is in operation and access to it has been provided if necessary to the reasonable satisfaction of WPD in accordance with sub-paragraphs (2) to (10) or with such alternative or supplementary provisions as the undertaker and WPD may agree between them.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to WPD written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed.

(3) If as a direct consequence of the exercise of any of the powers conferred by this Order WPD reasonably needs to remove or divert any of its apparatus and the removal of that apparatus has not been required by the undertaker under sub-paragraph (2) then WPD must give to the undertaker written notice of that requirement, together with a plan of the work proposed, and of the proposed

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(a) 1989 C. 29. The definition of “electricity plant” (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c.27).

position of the alternative apparatus to be provided or constructed and this Part has effect as if the removal or diversion of such apparatus had been required by the undertaker under sub-paragraph (2).

(4) If as a direct consequence of the removal or diversion of apparatus under sub-paragraph (2) or (3) alternative apparatus is to be constructed in land owned or controlled by the undertaker then the undertaker must afford to WPD the necessary facilities alternative rights and any necessary third party consent or approvals for the construction of alternative apparatus in the other land owned or controlled by the undertaker.

(5) If the undertaker or WPD requires to remove or divert any apparatus placed within the Order land and alternative apparatus is to be constructed in land not owned or controlled by the undertaker as a consequence of the removal or diversion of apparatus then WPD shall use its reasonable endeavours to obtain alternative rights in the land in which the alternative apparatus is to be constructed.

(6) If alternative apparatus is to be constructed in land not owned or controlled by the undertaker and WPD is unable to obtain such alternative rights as are mentioned in sub-paragraph (5), the undertaker and WPD shall consider whether there is an alternative engineering solution that can achieve the diversion without the need for the use of compulsory powers. Should such an alternative engineering solution not be practicable and deliverable in a reasonable timescale and at a reasonable cost (which shall be determined by the undertaker acting reasonably), WPD may but shall not be compelled to use the powers of compulsory acquisition set out in this Order or the Electricity Act 1989 to obtain the necessary facilities and rights in the land outside the Order limits in which the alternative apparatus is to be constructed in accordance with a timetable agreed between WPD and the undertaker.

(7) Any alternative apparatus required pursuant to sub-paragraphs (2) or (3) must be constructed in such manner and in such line or situation as may be agreed between WPD and the undertaker or in default of agreement settled in accordance with paragraph 19.

(8) WPD must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 19, and after the acquisition by or grant to WPD of any such facilities and alternative rights as are referred to in sub-paragraphs (2) to (6), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required to be removed under the provisions of this Part of this Schedule.

(9) Regardless of anything in sub-paragraph (8), if the undertaker gives notice in writing to WPD that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by WPD, must be executed by the undertaker—

- (a) in accordance with plans and specifications and in such line or situation agreed between the undertaker and WPD, or, in default of agreement, determined in accordance with paragraph 19; and
- (b) without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of WPD.

(10) Nothing in sub-paragraph (9) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or alternative apparatus, or execute any filling around the apparatus or alternative apparatus (where the apparatus or alternative apparatus is laid in a trench) within 600 millimetres of the point of connection or disconnection.

### **Facilities and rights for alternative apparatus**

**15.—**(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to WPD facilities and alternative rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and alternative rights are to be granted upon such terms and conditions as may be agreed between the undertaker and WPD or in default of agreement settled in accordance with paragraph 19.

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker;
- (b) have regard to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted;
- (c) have regard to WPD’s ability to fulfil its service obligations and comply with its licence conditions; and
- (d) have regard to the standard form rights WPD ordinarily secures for the type of alternative apparatus to be constructed in the circumstances similar to the authorised development.

(3) If the facilities and alternative rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and alternative rights are to be granted, are in the opinion of the expert less favourable on the whole to WPD than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the expert must make such provision for the payment of compensation by the undertaker to WPD as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus**

**16.**—(1) Not less than 60 days before the undertaker intends to start the execution of any specified work where the removal of the apparatus in question has not been required under paragraph 14, the undertaker shall submit to WPD a plan of the works to be executed. Any submission must note the time limits imposed on WPD under sub-paragraph (3) below.

(2) Subject to sub-paragraph (3) below the undertaker shall not commence any works to which sub-paragraph (1) applies until WPD has identified any reasonable requirements it has for the alteration or protection of the apparatus, or for securing access to it.

(3) If by the expiry of 60 days beginning with the date on which a plan under sub-paragraph (1) is submitted WPD has not advised the undertaker in writing of any reasonable requirements for the alteration or protection of the apparatus, or for securing access to it, it shall be deemed not to have any such requirements and the undertaker shall be at liberty to proceed with the works.

(4) The works referred to in sub-paragraph (1) must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (2) by WPD and WPD shall be entitled to watch and inspect the execution of those works.

(5) At all times when carrying out the authorised development the undertaker shall comply with WPD’s *Avoidance of Danger from Electricity Overhead Lines and Underground Cables* (2014), the Energy Network Association’s *A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines* (undated), the Health and Safety Executive’s *GS6 Avoiding Danger from Overhead Power Lines* and the Health and Safety Executive’s *HSG47 Avoiding Danger from Underground Services (Third Addition)* (2014) as the same may be replaced from time to time.

(6) If WPD, in accordance with sub-paragraph (2) and in consequence of the works proposed by the undertaker, reasonably requires the removal or diversion of any apparatus and gives written notice to the undertaker of that requirement, this Part of this Schedule applies as if the removal or diversion of the apparatus had been required by the undertaker under paragraph 14(2).

(7) Nothing in this paragraph 16 precludes the undertaker from submitting at any time or from time to time, but in no case less than 60 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to WPD notice as soon as is reasonably practicable and a plan of those

works as soon as reasonably practicable subsequently and must comply with any reasonable requirements stipulated by WPD under sub-paragraph (2) and with sub-paragraphs (4) and (5) in so far as is reasonably practicable in the circumstances. Nothing in this sub-paragraph prevents WPD from exercising its rights under sub-paragraph (6).

### **Expenses and costs**

**17.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to WPD the proper and reasonable expenses reasonably incurred by WPD in, or in connection with, the inspection, removal, diversion, alteration or protection of any apparatus, the construction of any alternative apparatus and the acquisition or grant of alternative rights for the alternative apparatus, arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule WPD requires that alternative apparatus of better type, of greater capacity, of greater dimensions or at a greater depth is necessary in substitution for existing apparatus which for WPD's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development, WPD shall reduce the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph (1).

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph 18(1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**18.**—(1) Subject to sub-paragraph (2), if by reason or in consequence of the construction of any specified work or any subsidence resulting from any of those works any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of WPD the undertaker is to—

- (a) bear and pay the cost reasonably incurred by WPD in making good such damage or restoring the supply; and
- (b) reimburse WPD for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by WPD, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of WPD, its officers, servants, contractors or agents.

(3) WPD must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) WPD must act reasonably in relation to any claim or demand served under sub-paragraph (1) and use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands and penalties to which a claim or demand under sub-paragraph (1) applies.

(5) WPD's liability to the undertaker for negligence or breach of contract, in respect of each diversion, shall be limited to the value of that diversion and WPD shall not otherwise be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus.

### **Expert determination**

**19.**—(1) Article 20 (arbitration) shall apply to any difference as to the legal interpretation of this Schedule and as provided for in sub-paragraph (7).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers or the President of the Institution of RICS or the President of the Institution of Engineering and Technology (as relevant and agreed between WPD and the undertaker, both acting reasonably and without delay).

(3) All parties involved in settling any difference must use best endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The costs and fees of the expert and the costs of WPD and the undertaker are payable by the parties in such proportions as the expert may determine. In the absence of such determination the costs and fees of the expert are payable equally by the parties who shall each bear their own costs.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 14 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (e) WPD's service obligations and licence conditions; and
- (f) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 20.

## PART 3

### For the protection of National Grid as Gas Undertaker

#### Application

**20.**—(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 7 (consent to transfer benefit of Order) –

- (a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid.

#### Interpretation

**21.** In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means a third party liability insurance effected and maintained by the undertaker with a limit of indemnity of not less than £100,000,000 (one hundred million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the construction period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an “acceptable credit provider”, such policy shall include (but without limitation):

- (a) a waiver of subrogation and an indemnity to principal clause in favour of the National Grid; and
- (b) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either:

- (a) a parent company guarantee from a parent company in favour of National Grid Gas Plc to cover the undertaker’s liability to National Grid Gas Plc to a total liability cap of £100,000,000.00 (one hundred million pounds) (in a form reasonably satisfactory to National Grid and where required by National Grid, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or
- (b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Gas Plc to cover the undertaker’s liability to National Grid Gas Plc for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £100,000,000.00 (one hundred million pounds) (in a form reasonably satisfactory to the National Grid);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply, together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

(a) “authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

(b) “commence” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means: National Grid Gas plc (Company Number 02006000) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Network Code” means the network code prepared by National Grid pursuant to Standard Special Condition A11(3) of its Gas Transporter’s Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of National Grid’s Gas Transporters Licence, as both documents are amended from time to time;

“Network Code Claims” means any claim made against National Grid by any person or loss suffered by National Grid under the Network Code arising out of or in connection with any failure by National Grid to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works or any costs and/or expenses incurred by National Grid as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably;

“undertaker” means the undertaker as defined in article 2(1) of this Order;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 24(2)5(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 24(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”).

### **On Street Apparatus**

22. Except for paragraphs 26 (*retained apparatus: protection*) and 27 (*expenses*) and 28 (*indemnity*) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

### **Acquisition of land**

23.—(1) Regardless of any provision in this Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 28 or 29 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).



## **Removal of apparatus**

24.—(1) If, the undertaker acquires any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its reasonable satisfaction (taking into account paragraph 27(1) below) the necessary facilities and rights

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

## **Facilities and rights for alternative apparatus**

25.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 32 (*Arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

## **Retained apparatus: protection of gas undertaker**

26.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe —

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(7) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grids' satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 20 to 22 and 25 to 27 apply as if the removal of the apparatus had been required by the undertaker under paragraph 24(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National

Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub paragraph (11) at all times;

(11) At all times when carrying out any works authorised under the Order National Grid must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(-G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 27.

## **Expenses**

**27.**—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid using its own compulsory purchase powers to acquire any necessary rights under paragraph 24(3); or
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 32 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount

which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## **Indemnity**

**28.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods or energy, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid and including Network Code Claims other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (*consent to transfer benefit of order*) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3 will be subject to the full terms of this Part of this Schedule including this paragraph 28.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid's apparatus until the following conditions are satisfied:

- (a) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same to the undertaker in writing; and
- (b) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works which constitute specified works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

(7) In the event that the undertaker fails to comply with sub-paragraph 28(6) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

### **Enactments and agreements**

**29.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

**30.—**(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 24(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 26 the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

### **Access**

**31.** If in consequence of the agreement reached in accordance with paragraph 23(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

## **Arbitration**

32. Any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 20 (*arbitration*).

## **Notices**

33. Notwithstanding article 19 (service of notices), any plans submitted to National Grid by the undertaker pursuant to this Part must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order grants development consent for, and authorises Augean South Limited to alter the existing facilities and construct new facilities for the recovery and disposal of hazardous waste and the disposal of low level waste at the East Northants Resource Management Facility, Stamford Road, Kings Cliffe, Northamptonshire. The Order also authorises further development within the Order limits and provides a defence in proceedings in respect of statutory nuisance. The Order imposes requirements in connection with the development for which it grants development consent.

A copy of the plans and documents referred to in this Order and certified in accordance with article 18 of this Order may be inspected free of charge during working hours at the offices of North Northamptonshire Council, One Angel Square, Northampton, NN1 1ED.