



Department for Levelling Up,  
Housing & Communities

Leslie Heasman  
MJCA  
Baddesley Colliery Offices  
Main Road  
Baxterley  
Atherstone  
Warwickshire CV9 2LE

Our ref: WS010006

Your ref: AU/KCW/LZH/1724/01

23 January 2023

Dear Mr Heasman

**PLANNING ACT 2008  
APPLICATION FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE EAST  
NORTHANTS RESOURCE MANAGEMENT FACILITY**

1. I am directed by the Secretary of State for Levelling Up, Housing and Communities (the “Secretary of State”) to advise you that consideration has been given to:
  - a. the report of the Examining Authority, Simon Warder, (“the ExA”) dated 2 November 2022 who conducted an examination into the application (“the application”) dated 7 September 2021 submitted by Augean South Limited (“the applicant”) under section 37 of the Planning Act 2008 (“PA2008”) for a development consent order (“the Order”) under the PA2008 for the construction of a new landfill void and the alteration of existing facilities for the recovery, treatment and disposal of hazardous waste, and disposal of low level radioactive waste at the East Northants Resource Management Facility, Stamford Road, Kings Cliffe (“the proposed development”); and
  - b. representations received by the Secretary of State and not withdrawn in respect of the application, including those received following the close of the examination.
  
2. This decision was made by the Parliamentary-Under Secretary of State for Local Government and Building Safety, Lee Rowley MP, on behalf of the Secretary of State. All references to the Secretary of State are therefore to the Parliamentary-Under Secretary of State.

3. The proposed development is a western extension of the existing East Northants Resource Management Facility (ENRMF) granted consent under a development consent order in 2013, and amended in 2018 (“the original order”), and which requires the operations to cease and the site to be fully restored by the end of 2026. The application site is circa 58.5 ha of which the existing ENRMF covers around 31.8 ha, and the proposed western extension would cover around 26.8 ha. The application seeks to expand the area of the existing site, increase the volumes of hazardous waste that the new facility could handle in total, and extend the operation of the site until 2046. The applicant intends to operate the extended site as a single entity, and the new Order would therefore cover both the existing and additional development and supersede the original order.
  
4. The main elements of the application in relation to the original order for which the Order would grant development consent are:
  - extraction of minerals such as clay from a proposed western extension to create a new landfill void; the extracted materials would be stockpiled and used on site for use in engineering, restoration and general fill as well as being exported for use at other sites;
  - the total landfill void combining the remaining elements of the existing site and the proposed western extension would be approximately 2.5 million cubic metres;
  - the capacity of the whole site for landfill disposal of predominately hazardous waste, including up to about 20% of low level radioactive waste (LLW), would not change from the approved rate in the original order of up to 150,000 tonnes per annum (tpa);
  - the LLW would be disposed of in the proposed western extension landfill and would not be part of any hazardous waste treated at the site; the level of radioactivity would be limited in the Order to 200 Becquerels per gram (Bc/g);
  - the capacity of the existing hazardous waste treatment and recovery facility would increase from 200,000 tpa to 250,000 tpa;
  - the total annual volume of waste imported to the site for either treatment or landfill together in whatever proportions would be capped at 300,000 tpa;
  - diversion of an overhead electricity cable that crosses the proposed western extension;
  - the operational hours of the site would not change from those currently consented (normally 07.00 to 18.00 Monday to Friday and 07.00 to 13.00 on Saturdays);
  - restoration of the whole site to generally domed profiles to create a coherent restoration landform, with improved biodiversity and nature conservation interest using the soils available at the site as well as suitable imported materials;
  - removal of the waste treatment and recovery facility and completion of the landfilling and restoration operations by December 2046, including construction of a public car park to enable public access to the restored site; and
  - long-term management of the site for 20 years beyond 2046.

5. The application was accepted for examination by the Planning Inspectorate on behalf of the Secretary of State on 24 September 2021, and attracted 17 relevant representations. The examination of the application by the ExA began on 3 February 2022 and was completed on 2 August 2022. The examination was conducted on the basis of written submissions to the ExA, and evidence submitted and discussed at three Issue Specific Hearings held between 29 March 2022 and 8 June 2022 via Microsoft Teams. A non-material change to the proposed development was requested by the applicant to meet concerns expressed by Anglian Water, involving amended application documents, and this was accepted into the examination by the ExA on 22 July 2022.
6. Published alongside this letter is a copy of the ExA's recommendation report ("the Report" or "RR"). All paragraph references, unless otherwise stated, are to the Report and are in the form, for example, "RR 1.0". References to requirements in terms of controlling the proposed development are to the Requirements in Schedule 2 to the draft Order.

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

7. The ExA recommends that the Order be made, in the form set out in Appendix C of the Report (RR 8.3.1).

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

8. The Secretary of State has decided under s114 of PA2008 to make an Order granting development consent for the proposals in this application. This letter is the statement of reasons for the Secretary of State's decision for the purposes of s116 of PA2008 and regulation 31(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the 2017 Regulations").

### **Secretary of State's Consideration**

9. The Secretary of State agrees with the ExA that the proposed development is a nationally significant infrastructure project (NSIP) as defined in s14(1)(p) and s30 of PA2008 and that development consent is required under s31 of PA2008 (RR 1.1.10). Works Nos 1 and 2 constitute the NSIP and cover the construction of the existing hazardous waste landfill facility and the western extension, and the increase in capacity. Works Nos 3, 4 and 5 cover elements of associated development including works to the existing reception area, drainage, and diversion of the overhead electricity cable. Like the ExA, the Secretary of State has found that the associated works would be proportionate in scale and nature to the NSIP (RR 1.1.6.).
10. The Secretary of State agrees that the proposed development is development for which an Environmental Impact Assessment is required under Schedule 2 of the 2017 Regulations (RR 1.5.1). He also agrees that the Environmental Statement (ES) and

Supplementary ES (submitted as part of the non-material change request), together with the other environmental information submitted by the applicant during the examination, is adequate and meets the requirements of the 2017 Regulations (RR 4.7.15). He has taken full account of all the environmental information in his assessment of the application and in reaching his decision. As required by s104(2)(b) of PA2008 the Secretary of State has had regard to the local impact report submitted by North Northamptonshire Council (NNC) (RR 1.4.24), and the Secretary of State has assessed the issues set out in this report (RR 4.3.1 to 4.3.3.) as part of his consideration of the examination issues.

11. The Secretary of State has considered the Report, the representations made known to him in respect of the application and all other matters which the Secretary of State thinks are both important and relevant to his decision as required by s104(1)(d) PA2008. The Secretary of State's consideration of these matters and of representations received after the close of the examination is set out in the following paragraphs. Where not otherwise stated in this letter the Secretary of State can be taken to agree with the ExA's findings, conclusions and recommendations as set out in the ExA's Report, and, subject to the qualifications explained in paragraphs 93 to 95 about drafting modifications to the recommended Order, to the ExA's final recommendation (RR 8.3.1).

#### The Setting of the Application Site

12. The Secretary of State notes that 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 (RR 2.1.12).
13. 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 nearby RAF 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 (RR 2.1.13).
14. The closest heritage assets are located within Duddington Village at least 1.2km from the site, and the closest 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) which abut part of the eastern boundary of the proposed western extension (RR 2.1.15 and 2.1.16).
15. No public rights of way (PRoW) 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 (RR 2.1.9). 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 (RR 2.1.20).

## Need for the Proposed Development

### *National Policy Statement for Hazardous Waste*

16. The Secretary of State agrees with the ExA that because the application is accepted as an NSIP, in accordance with s104(3) of PA2008 it falls to be considered in accordance with the National Policy Statement for Hazardous Waste June 2013 (NPSHW) as the primary basis for decision-making (RR 3.2.1 and 3.2.2). He notes that section 3.1 of the NPSHW states that the Secretary of State will assess applications for infrastructure covered by this NPS on the basis that the need has been demonstrated. Paragraph 4.1.2. of the NPSHW goes on to create a presumption in favour of granting development consent for hazardous waste NSIPs that clearly meet the need for such infrastructure (RR 4.5.3).
17. The NPSHW further advises that a small number of large facilities (i.e., NSIPs) are likely to be needed to meet the expected increase in arisings of hazardous waste, including handling relatively small proportions of LLW (RR 3.6.1). The application proposes that the proportion of LLW would be just under 20% of the total waste accepted which would be consistent with that in the original order made in 2013 (RR 1.1.8). The Secretary of State agrees with the ExA that this meets the requirements of the NPSHW (RR 3.6.3).
18. The existing ENRMF is one of only nine hazardous landfill sites in England and the only one in the Midlands, east and south-east of England which can accept a wide range of wastes including LLW (RR 2.1.4 and 4.5.9). As of 2020, the current landfill void approved in 2013 had a life of 3.5 to 4.5 years (RR 4.5.10). In a situation where the quantity of hazardous waste being generated is rising steadily, if the application to extend the size and lifespan of the existing site is not accepted, hazardous waste generated in the south of England would have to be transported over considerably longer distances with associated environmental effects (RR 4.5.10).
19. None of the participants in the examination questioned the assessment of need (RR 4.5.12), but the ExA did consider the main alternatives put forward by the applicant, covering alternative waste management methods in the context of the waste hierarchy, different locations, alternative layouts of the range of facilities on the proposed site, and design options (RR 4.5.14 to 4.5.29). The Secretary of State agrees that although there is no requirement to examine strategic alternatives to meeting the general need for nationally significant hazardous waste facilities, the applicant has outlined the main alternatives to the proposed development with adequate reasons for its preferred choice, having regard to environmental, social, and economic effects. The Secretary of State therefore agrees with both the ExA's conclusions that the requirements of paragraph

4.4.2 of the NPSHW have been met and his assessment of alternatives (RR 4.5.25 and 4.5.29).

20. Like the ExA, Secretary of State considers that the proposed development would meet the need identified in the NPSHW and as such, he agrees there is a presumption in favour of granting consent (RR 4.5.13). The Secretary of State agrees this weighs strongly in favour of the draft Order being made (RR 6.3.6).

#### *National Planning Policy*

21. The Secretary of State agrees that the ExA has had proper regard to the National Planning Policy for Waste 2014 (RR 3.6.12) and to the National Planning Policy Framework (RR 3.8), given that the NPSHW prevails for the purpose of decision-making (RR 3.8.3).

#### *Development Plan Policies*

22. The Secretary of State agrees with the ExA that the development plan for the application site comprises the Northamptonshire Minerals and Waste Local Plan July 2017, the North Northamptonshire Joint Core Strategy July 2016, the Rural North Oundle and Thrapston Plan July 2011 and the King's Cliffe Neighbourhood Plan October 2019 (RR 3.10). He also agrees that the development plan policies from predecessor authorities and Northamptonshire County Council are relevant to the proposed development (RR 3.10.2.). The Secretary of State agrees with the ExA's conclusion that the principle of the proposed development accords with the development plan as a whole (RR 4.5.38).

#### Examination Issues

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

23. Having had regard to paragraph 5.2.4 of the NPSHW the Secretary of State agrees with the ExA that the applicant has provided adequate assessments of air quality, odour and dust effects from mineral extraction, vehicle movements and the treatment of waste and recovery processes, and that in light of these the proposed development would not have a significant effect on air quality, odour or dust (RR 4.8.39).

24. The Secretary of State recognises the issues raised by the Trust concerning odour from the proposed development in relation to their land. He agrees with the ExA that there is no substantive evidence to support the Trust's position (RR 4.8.33) and likewise concludes 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 (RR 4.8.37).

25. No concerns have been raised by the Environment Agency (EA) or NNC and controls would be effectively provided through the environmental permits (EP) issued by the EA (RR 4.8.38). The Secretary of State agrees with the ExA that the proposed development would not have a significant effect on air quality and would not lead to unacceptable levels of odour or dust (RR 4.8.39). He has had due regard to the requirements of

paragraphs 5.2.5 to 5.2.8 and 5.6.7 to 5.6.9 of the NPSHW, and concludes that these matters are neutral in the balance of adverse impacts and benefits.

### *Biodiversity*

26. Paragraph 5.3.8 of the NPSHW requires the Secretary of State in taking decisions to ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider environment.
27. In relation to the proposed development these are principally the Rutland Water Special Protection Area/Ramsar site, Colleyweston Great Wood and Eastern Hornstocks National Nature Reserve and SSSI, a range of protected invertebrates, amphibians, reptiles, birds and bats, and habitats of limited ecological interest. Two important hedgerows qualify under the Hedgerow Regulations 1997 (RR 4.9.22).
28. The Secretary of State agrees with the ExA that as required by paragraph 5.3.3 of the NPSHW, the ES adequately assesses the effects of the proposed development on these designated sites, protected species and on habitats, and that following mitigation secured in the draft Order, including woodland, hedgerow and grassland planting, the use of protective fencing and the creation of waterbodies, there would be no significant effects (RR 4.9.71).
29. The Secretary of State also agrees that the proposed development would not have an adverse effect on nearby ancient woodland, and indeed in terms of connecting adjoining areas of protected woodland would provide an enhancement of the existing position (RR 4.9.69). He notes that the restoration of the site on completion of the proposed development would lead to a considerable increase in BNG units at the site (RR 4.9.72), but considers this will result in a benefit in the long term.
30. The Secretary of State notes that the applicant has reached agreement in final statements of common ground (SoCG) with Butterfly Conservation, Natural England (NE) and NNC on all matters relating to biodiversity. Overall, the Secretary of State agrees with the ExA's conclusion that taking into account the biodiversity duty in s 40(1) of the Natural Environment and Rural Communities Act 2006, the long-term effects of the proposal would be beneficial and weigh moderately in favour of the proposed development (RR 4.9.73).

### *Climate Change*

31. The Secretary of State acknowledges paragraph 2.3.9 of the NPSNW which 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. He agrees with the ExA that the applicant's assessment of climate change effects is adequate for the purposes of the NPSHW (RR 4.10.23).

32. The Secretary of State also agrees that there is no substantive evidence to indicate that the proposed development would generate greenhouse gas at a level which would call into question the ability of the UK to reach its overall Net Zero 2050 target or its carbon budgets (RR 4.10.20). He notes that no interested parties raised issues relating to climate change during the examination and also acknowledges the SoCG signed between the applicant and the EA which confirms the EA will assess and control greenhouse gas emissions under the environmental permitting process (RR 4.10.19).
33. The Secretary of State agrees with the ExA that the proposed development would not be likely to have a significant effect on climate change, nor would it likely to be significantly affected by it, and that overall, this matter is neutral in the balance of adverse impacts and benefits (RR para 4.10.23).

#### *Historic Environment*

34. The Secretary of State notes that paragraphs 5.8.9 to 5.8.13 of the NPSHW require the identification and assessment of the significance of any affected heritage asset or its setting, and that great weight should be given to the conservation of designated heritage assets.
35. He notes that there are no designated heritage assets within the application boundary; the nearest Scheduled Monument is Duddington Bridge approximately 1.6 km from the site. There are a two Grade II\* listed buildings and 32 Grade II listed buildings within 2km of the site (RR 4.11.14).
36. There is no surviving archaeology within the existing ENRMF and all areas were subject to previous investigation and recording as part of the original scheme (RR 4.11.12). The Secretary of State also notes that the geophysical survey submitted as part of the ES found little of certain archaeological interest (RR 4.11.15). As such, the Secretary of State agrees with the ExA that without the proposed development the agricultural use of the site would continue, and it is unlikely that there would be further contribution to local archaeological knowledge or potential for the discovery of artefacts of archaeological interest (RR 4.11.17).
37. The Secretary of State notes that no interested parties raised issues relating to the historic environment during the examination. He has had particular regard to regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, and agrees with the ExA that the proposal and mitigation measures accord with the requirements of the NPSHW. The Secretary of State agrees with the ExA that overall, this matter is neutral in the balance of adverse impacts and benefits (RR 4.11.23).

#### *Human Health*

38. The Secretary of State notes that applying the principle set out in paragraph 4.10.2 of the NPSHW, 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.



39. Further, detailed consideration of the waste management processes and the implications, if any, for human health is the responsibility of the pollution control authorities (RR 4.12.2). In this regard, the EA and UK Health Security Agency (UKHSA) have confirmed they are satisfied that the mechanisms for controlling and mitigating the direct effect of emissions through required EP are appropriate (RR 4.12.46).
40. The Secretary of State considers that given the satisfactory history of landfill and waste management including LLW at the existing site, there is no indication that the proposed development would adversely affect wider health and wellbeing concerns (RR 4.12.42). He has had regard to the relevant representations from the UKHSA which confirms that it is satisfied that the proposed development should not result in any significant adverse impact on public health (RR 4.12.38).
41. The Secretary of State agrees with the ExA that in the longer term, the restoration of the site would provide a new publicly accessible open space that would have a beneficial effect on the wellbeing of people using it, and that overall, these matters weigh moderately in favour of the proposal (RR 4.12.49).

#### *Landscape and Visual*

42. The Secretary of State has had regard to paragraph 5.9.5 of the NPSHW which advises that proposals should aim to minimise harm to the landscape, having regard to siting, operational and other relevant constraints, providing reasonable mitigation where possible and appropriate.
43. He notes that the existing site comprises the disturbed and evolving landscape of the existing ENRMF including built development, stockpiles and plant (RR 4.13.12.). The application site is enclosed to the west and north by substantial woodland, and by the existing ENRMF which has dense hedgerow planting around its boundaries which helps to screen views particularly from the east of the site (RR 4.13.14). It is not within a designated landscape area but does fall within an area of tranquillity designated by the local plan, although this designation was after the existing ENRMF was already in place (RR 4.13.46).
44. The Secretary of State agrees with the ExA that there would be significant adverse effects on the topography and landscape character of the western extension area during the construction and landfilling phases of the project (RR 4.13.41), bringing the proposal into a degree of conflict with paragraphs 5.9.5 and 5.9.13 of the NPSHW (RR 4.13.47). He also agrees with the ExA's finding of significant adverse landscape effects during the construction and landfilling phases on the area of tranquillity, and significant adverse visual effects on limited viewpoints from Westhay Lodge, Westhay Barn and Footpath MX15 (RR 4.13.42).
45. He also agrees that the work undertaken as part of the restoration of the proposed western extension would be consistent with the character of the approved restoration scheme for the existing ENRMF. As such, the Secretary of State concludes with the ExA

that while there would be no significant adverse landscape or visual effects following restoration, neither would there be beneficial effects (RR 4.13.44).

46. In considering the design of the proposed scheme, the Secretary of State has taken into account paragraph 4.5.3 of the NPSHW which advises that hazardous waste infrastructure developments need to be sustainable and, having regard to regulatory and other constraints, as attractive, durable and adaptable as they can be. Having considered these matters, he agrees with the ExA that the proposal employs good design in the proportionate manner expected by the NPSHW (RR 4.5.29).
47. The existing site reception facilities and the waste recovery and treatment facility have external lighting. All existing lighting is directed downwards and shielded and, other than security lighting, is switched off at the end of the working day (RR 4.17.16). These arrangements would continue for the proposed development, and would be controlled under Requirements 4 and 16 of the draft Order. The ExA concludes that the lighting proposals appear proportionate to the proposed operations, and the Secretary of State agrees (RR 4.13.45).
48. The ExA concludes at RR 4.13.47 that these matters weigh against the proposal, but in discussing the planning balance only moderately against (RR 6.4.26 and 6.5.2). Having considered the context of the existing ENRMF and its evolving landscape (RR 4.13.12), the visual containment of the site (RR 4.13.14), proposed mitigation and the progressive restoration (RR 4.13.18), the Secretary of State's view is that landscape and visual effects weigh moderately against the proposed development.

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

49. The Secretary of State acknowledges that the proposed development would result in the loss of approximately 25.8ha of agricultural land of which 5.9ha would be BMV (RR 4.14.14). The loss of the BMV land would be of moderate adverse significance and as such, the proposal does not accord with paragraphs 5.10.6 and 5.10.13 of the NPSHW which set a preference for the use of poorer quality agricultural land.
50. However, he agrees with the ExA that there are sustainability and operational benefits from the location of the western extension on this land due to the need to be situated next to the existing ENRMF (RR 4.14.50). Additionally, in this regard the Secretary of State agrees with the ExA that with the appropriate soil handling and mitigation measures in place he is satisfied that the proposed development would not have an adverse effect on soil resources (RR 4.14.51).
51. There is 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 (4.14.54). The Secretary of State notes economic benefits would arise in meeting the need for hazardous waste disposal, providing about 23 jobs and a degree of support for local services and suppliers (RR 6.4.30). In line with paragraph 5.10.1 of the NPSHW which recognises the importance of providing high quality green space to local

communities, he agrees with the ExA that following restoration the proposed development would provide a publicly accessible green space considerably larger than that offered under the restoration scheme provided by the original order (RR 4.14.56).

52. The Secretary of State notes that none of the interested parties disputed the assessment of effects on land use, soils and socio-economics during the examination (RR 4.14.40). He agrees with the ExA's conclusions regarding the relationship of the proposed development with the adjoining land owned by the Trust (RR 4.14 59 to 4.14 62). Overall, the Secretary of State agrees with the ExA that, taking into account the national and regional benefits of the development, the effects on land use, soils and socio-economic matters weigh moderately in favour of the proposal (RR 4.14.63).

### *Noise and Vibration*

53. Paragraphs 5.11.1 and 5.11.2 of the NPSHW recognise that excessive noise and vibration can have impacts on human health and well-being, as well as on quiet places and biodiversity, and they also identify the factors that are likely to determine this impact. These include noise generating aspects of the development, noise sensitive receptors, the existing noise climate and how it changes at different times.

54. The Secretary of State notes the assessment of noise and vibration effects submitted as part of the application and the locations considered to be representative of noise sensitive premises (RR 4.15.11). 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 (RR 4.15.15). The limited increase in HGV movements suggests that noise from this source would not be significant. He agrees with the ExA that these assessments accord with the requirements of the NPSHW (RR 4.15.32). The Secretary of State also notes that SoCG between the applicant and NNC and NE agree that the proposal would not result in significant noise effects on protected species or on noise sensitive locations (RR 4.15.34).

55. The Secretary of State acknowledges concerns raised by the Trust regarding potential noise and vibration impacts of the proposed development on its land north of the site, which the Trust is seeking to develop as a commercial storage site. However, the Secretary of State agrees with the ExA that the evidence points towards there being little or no adverse effect. Nor would the development adversely affect fauna in the wooded area north of the site (RR 4.15.33).

56. The Secretary of State has had regard to the mitigation measures proposed in the Noise and Vibration Management Plan which would be secured under Requirement 5 of the draft Order, in accordance with paragraphs 5.11.13 and 5.11.14 of the NPSHW. With this plan in place he agrees with the ExA that the development would not result in significant adverse noise or vibration effects on human receptors, and that overall, these matters are neutral in the overall balance (RR 4.16.35).

### *Safety and Security*

57. As required by paragraph 5.4.14 of the NPSHW, the Secretary of State has considered the potential safety and security related matters, including military aviation interests. Consequently, he has had due regard to the Defence Infrastructure Organisation's (DIO) concerns expressed early in the examination over the potential for the development to increase the risk of birdstrike at the nearby airfield of RAF Wittering. The Secretary of State notes that following the revised Bird Hazard Management Plan addressing the potential for birdstrike, the DIO has no further concerns regarding the proposed development (RR 4.16.9).
58. The Secretary of State has also had regard to a previous pollution incident in Spring 2020 which affected the Trust's nearby land. In response to this incident the applicant has installed a concrete haul road with upstands to contain surface water as well as secondary containment measures. Flood storage capacity has also been reviewed (RR 4.16.15). The Secretary of State notes these steps taken by the applicant are supported by the EA, and that the issue was not raised as a concern by NE or NNC (RR 4.16.16). As such, the Secretary of State concludes this is not a matter weighing against the application.
59. The Secretary of State, like the ExA, also acknowledges that Anglian Water has no further outstanding concerns, following a thorough exploration during the examination over the effect of the proposed development on water pipelines. The acceptance of a non-material change application together with a Pipeline Risk Assessment provide assurances over requisite stand-off distances such 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 (RR 4.16.31). As such, the Secretary of State agrees with the ExA that these matters are neutral in the overall balance (RR 4.16.35).

#### *Traffic and Transport*

60. The Secretary of State has had regard to paragraph 5.13.4 of the NPSHW which requires him to ensure that the applicant has sought to mitigate impacts on the surrounding transport infrastructure, including during the construction phase of the operation.
61. Existing 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 (RR 4.17.7).
62. The increase in the number of HGV movements to and from the site during the construction and operational stages would be relatively small (36 per day over an assessment carried out in 2012) and there is no substantive evidence to indicate that the proposal would lead to traffic congestion or pose a significant risk to safety on the local highway network (RR 4.17.34). The site access and immediate local highway have been recently improved, and a development consent obligation is in place regarding future maintenance (RR 4.17.35), though not taken into account in the ExA's consideration of the application (RR 1.7.2). Measures to ensure the safe transport of hazardous waste and

LLW are set out in the Carriage of Dangerous Goods etc Regulations 2009 (as amended) (RR 4.17.13).

63. While the Secretary of State agrees with the ExA that the assessment of sustainable travel options is limited, he recognises that neither the local travel infrastructure nor the nature of traffic generated lend themselves to achieving a significant shift to more sustainable travel modes (RR 4.17.38). The Secretary of State agrees with the ExA's conclusions that with the mitigation measures specified in the draft Order in place, the proposed development would not lead to significant adverse traffic and transport effects (RR 4.17.39, and that these matters are neutral in the overall balance (RR 4.17.40).

### *Water Environment*

64. In consideration of issues affecting the water environment and water quality the Secretary of State has had regard to sections 5.7 (flood risk) and 5.15 (water quality and resources) of the NPSHW, as well as paragraph 167 of the NPPF.

65. The Secretary of State notes that the assessments of the effects on surface water and groundwater quality and flows were agreed with the EA and agrees with the ExA that these are appropriate to the land use implications of the proposed development (RR 4.18.86). 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. Detailed controls secured through the draft Order would ensure that surface water and groundwater discharges would be maintained at pre-development greenfield rates, and that the quality of surface water and groundwater at the site and the surrounding area would not be harmed (RR 4.18.89). Contaminated water would be used in the waste treatment and recovery facility processes so the demand for fresh water would be limited (RR 4.18.90).

66. The Secretary of State acknowledges that the Trust claims that the applicant does not have the right to discharge surface water into a swallow hole adjoining the site boundary (RR 4.4.2) and is concerned about the effects of the surface water and groundwater crossing its land as a result of the proposed development. However, he agrees with the ExA that there is no substantive evidence that supports these claims (RR 4.14.59 and 4.18.91).

67. 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. As required by paragraphs 5.7.4 and 5.7.5 of the NPSHW the Secretary of State is satisfied that the Flood Risk Assessment and Surface Water Management Plan adequately demonstrate that the proposed development would not lead to an unacceptable risk of flooding at the site or the surrounding area (RR 4.18.92). The SoCG with NNC and the EA confirm that both agree that the proposed development can be undertaken without significant adverse impacts on surface water or groundwater flow or quality, that detailed design of the surface water drainage system would be subject to approval under requirement 3(5) of the draft Order, and that surface water discharges would be controlled by the EP (RR 4.18.81).

68. The Secretary of State agrees with the ExA that the proposed development would not have significant adverse effects on water resources or flood risk, and that these matters are neutral in the overall balance (RR 4.18.94).

#### *Waste Management*

69. Paragraph 5.14.1 of the NPSHW recognises that any facilities developed for the management of hazardous waste will themselves generate some waste during construction, operation and decommissioning which should be handled according to the waste hierarchy. Waste generated during the operation of the proposed development would be controlled through the varied EP rather than under the provisions of the draft Order, as has been the practice in operating the existing ENRMF (RR 4.19.11 and 4.19.13). The Secretary of State notes that none of the parties in the examination questioned the applicant's approach to waste management (4.19.9), and agrees with the ExA that overall these matters are neutral in the balance (RR 4.19.14).

#### *Statutory Nuisance*

70. Paragraph 4.11.1 of the NPSHW draws attention to s158 PA2008 which provides a defence of statutory authority in civil or criminal proceedings for nuisance. A Statutory Nuisance Statement was submitted with the application and sets out how the proposed development engages with certain categories of nuisance falling within s79 (1) of the Environmental Protection Act 1990 (4.19.19). The Secretary of State notes that the current site operational practices have not given rise to any statutory nuisance to date and that the situation is unlikely to change with the proposed development (RR 4.19.20).

71. The Secretary of State notes that none of the parties to the examination disputed the applicant's approach to statutory nuisance (RR 4.19.21). He agrees with the ExA that given the nature of the proposed development, it is appropriate to rely on the controls to be provided in the varied EP, together with article 17 in the draft Order so as to provide a defence against potential proceedings for nuisance (RR 4.19.24 and 4.19.25).

#### *Cumulative and Combined Effects*

72. Each topic chapter within the applicant's ES includes consideration of cumulative impacts with other developments and interrelated effects from the project as a whole as relevant, as required by paragraph 4.2.2 of the NPSHW. The Secretary of State notes that none of the parties involved in the examination raised any concerns about combined or cumulative effects, and he agrees with the ExA that overall these matters are neutral in the balance (RR 6.4.58).

#### *Habitats Regulations Assessment*

73. Under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations), the Secretary of State is the competent authority in determining the impacts of the proposed development on Special Areas of Conservation (SACs), Special Protection Areas (SPAs) and the like (termed European sites). Consent for the proposed

development may be granted only after having ascertained that it will not adversely affect the integrity of such sites and no reasonable scientific doubt remains. The ExA has therefore compiled evidence from the applicant and relevant parties, particularly NE, and is satisfied that this is sufficient to enable the Secretary of State to adequately discharge these responsibilities (RR 5.1.5 and 5.4.3).

74. The nearest SAC (Barnack Hills and Holes) is 7.5 km from the proposed development and the nearest SPA/Ramsar site (Rutland Water) is 8.8 km, with a further SPA some 19 km distant. The ExA concludes that five European sites and their qualifying features have been considered in the applicant's assessment. No likely significant effects were identified on any of these, either from the proposed development or in combination with other plans or projects, and this was confirmed by NE (RR 5.2.21). An appropriate assessment does not therefore appear to be required (RR 5.4.4).

75. Having reviewed the information provided to the ExA, the Secretary of State has concluded likewise that no likely significant effects would arise from the proposed development on any of these European sites, either from the proposed development on its own or in combination with other plans or projects. Consequently, in relation to Habitats Regulations Assessment, the Secretary of State concludes that an appropriate assessment is not required, and the proposal would not lead to adverse effects on the integrity of any designated European site or offshore marine site, either alone or in combination with other plans or projects.

#### *Environmental Controls*

76. In his consideration of the application the Secretary of State has had regard to section 4.7 of the NPSHW which sets out the separate but complementary nature of the planning and pollution control systems. He notes that the Secretary of State as decision-maker should focus on whether the development is an acceptable use of the land, and on the impacts of that use, rather than the control of processes, emissions or discharges. Within this context the Secretary of State has also had regard to relevant UK legislation including the Wildlife and Countryside Act 1981, the Natural Environment and Rural Communities Act 2006, the Waste (England and Wales) Regulations 2011 and other relevant legal provisions (RR 3.3.8 to 3.3.21).

77. The draft Order contains several requirements which secure detailed plans in the applicant's DCO Environmental Commitments (DEC) document submitted as part of the application, such as an ecological management, monitoring and aftercare plan, a noise and vibration management plan and a traffic management plan (RR 6.4.42). These plans contain all the mitigation measures identified in the applicant's ES.

78. The existing activities at the site with the greatest potential for impacts on human health and the environment, such as the hazardous waste processing operations and the landfill (including LLW), are controlled by EP issued by the EA under the Environmental Permitting (England and Wales) Regulations 2016, reinforced in this case by a bond provided by the operator in the event that the company no longer exists. These EP will need to be varied to meet the increased volumes of hazardous waste proposed in the application, and in the

unlikely event these were not granted the extended application site would be unable to operate (RR 4.7.8). The Secretary of State therefore places great importance on the detailed control of the site through the 2016 Regulations, and has no reason to disagree with the ExA's conclusion that there is no substantive evidence to suggest that these varied EP will not be granted in due course (RR 1.8.7).

### *Land Assembly*

79. Most of the land necessary to implement the application is either under the control of the applicant through freehold or leasehold interests, or subject to an option agreement (RR 2.1.3). The Secretary of State accepts the ExA's conclusion that the applicant has sufficient control over the western extension land to enable it to implement the proposed development should consent be granted (RR 7.2.9). The application does not involve compulsory acquisition or temporary possession of land or suspension or extinguishment of rights (RR 1.4.13). As such there are no matters for the Secretary of State to consider in this regard.

### *Legal Agreements*

80. The Secretary of State notes that the applicant (and the landowner of the western extension land over which it has an option) has entered into a development consent obligation (a s106 legal agreement) dated 22 July 2022 with NNC. This agreement essentially revokes and replaces several previous ones relating to this site. These provide for payments towards a community fund to support local social and economic projects based on the amount of LLW waste deposited at the site, and payments of £5,000 a year towards highway maintenance. The ExA concludes that this obligation does not provide a benefit in favour of the proposed development (RR 4.14.57).

81. Whilst recognising the applicant's intent to continue to provide these benefits to the community, the Secretary of State concludes that the measures in the development consent obligation are not required to mitigate any adverse impacts of the proposed development and has disregarded it in reaching his decision about the application.

### *Statutory Undertakers*

82. The main interest from statutory undertakers - National Grid Gas, Anglian Water, and Western Power Distribution - concerned the protection of their utilities infrastructure from adverse impacts arising from the proposed western extension. This is because several utilities cross the site, including mains gas and water pipelines and overhead electricity cables. Of these, the overhead electricity cables would need to be rerouted and undergrounded to accommodate the western extension of the site, whilst the gas and water pipelines would be protected by a standoff distance from development taking place in the western extension. A greater standoff distance between the proposed development and the water pipelines owned by Anglian Water than originally intended in the application was requested, and to accommodate this as noted in paragraph 5 above a non-material change to the application was submitted and accepted during the examination.



83. National Grid Gas signed a SoCG with the applicant dated 15 July 2022 and Anglian Water likewise dated 29 July 2022 agreeing that protective provisions in the draft Order are sufficient to protect their interests and assets at the application site and that no other requirements are necessary in the draft Order. Western Power Distribution signed a SoCG in very similar terms dated 31 August 2022 and submitted this to the Secretary of State after the close of the examination on 2 August 2022.
84. Since the close of the examination, the Secretary of State has also received correspondence from both National Grid Gas and Western Power Distribution formally withdrawing their holding objections to the application. The Secretary of State notes that Schedule 6 to the draft Order contains the protective provisions agreed between National Grid Gas, Anglian Water, Western Power Distribution and the applicant, and he therefore concludes that these concerns of the statutory undertakers are now settled.

### *Outstanding Concerns*

85. The Secretary of State notes that two parties' concerns were outstanding at the end of the examination, although resolved to the satisfaction of the ExA.
86. The Cecil Estate Family Trust own land adjoining the proposed development (but not required to enable it) and submitted extensive representations concerning odour, land use, noise, pollution, traffic and water resources. It is clear from the unsigned SoCG that substantial discussions have taken place between the Trust and the applicant during the preparation of the application and throughout the examination. The Secretary of State considers these representations were all fully taken into account in the ExA's assessment of likely impacts and conclusions reached in his Report, and he agrees that none of these matters weigh against the recommended approval of the proposed development.
87. The Woodland Trust submitted a representation very late in the examination having not registered as an interested party. Their objection was to alleged impact on ancient woodland, but without any specific evidence. Instead, it relied heavily on the standing advice offered by the Forestry Commission and NE, whereas both organisations have agreed that there is no conflict. The Secretary of State agrees with the ExA that there would be no loss of ancient woodland or adverse effect on it as a result of the proposed development, and indeed the site when fully restored would be an enhancement over the existing position (RR 4.9.69). Consequently, the Secretary of State accords no weight to this issue in reaching his decision.

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

88. For the reasons given in this letter, the Secretary of State considers the harm he has identified from the proposed development would be clearly outweighed by the need for national hazardous waste infrastructure set out in the NPSHW, together with the other benefits of the project including its location, the use of existing infrastructure, and the benefits following restoration of the site. He has also considered all other relevant legislation, particularly concerning national policy for waste and the development plan. The Secretary of State has taken into account the conclusions of the Habitats Regulations

Assessment, and he also confirms for the purposes of regulation 4(2) of the 2017 Regulations that he has taken into consideration the environmental information as defined in regulation 3(1) of those Regulations.

89. The Secretary of State has had regard to the local impact report submitted by NNC. This does not find any direct in principle conflict with development plan policies and the only main significant adverse effect would be on landscape character of the northern part of the western extension of the existing site (RR 4.3.1 and 4.3.2). The current operations at the site have not given rise to complaints relating to noise, vibration, dust, odour or light nuisance, but there have been some complaints about mud on the road albeit not recently. All these matters would be controlled through requirements in the draft Order.
90. He has had regard also to the Infrastructure Planning (Decisions) Regulations 2010, and his obligations under the Natural Environment and Rural Communities Act 2006.
91. In terms of the Public Sector Equality Duty under the Equalities Act 2010, the Secretary of State has had due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic or persons who do not. The Secretary of State agrees with the ExA's conclusion that the proposed development would not harm the interests of such persons, and as such found no breach of the Public Sector Equality Duty (RR 8.2.7).
92. The Secretary of State has therefore decided to accept the ExA's recommendation at RR 8.3.1 to make an Order granting development consent on the basis of the provisions set out in the recommended Order proposed by the ExA in Appendix C to the RR, subject to the modifications outlined in paragraph 95 below. He confirms that in reaching this decision he has had regard to the NPSHW, the relevant local impact report, and to all other matters which he considers are both important and relevant to his decision and that none of the exceptions contained in subsections (4) to (8) of s104 PA2008 apply.

### **Modifications to the Development Consent Order by the Secretary of State**

93. The draft Order submitted by the applicant is in a standard form for NSIP applications, and contains articles and schedules including requirements and protective provisions relating to the interests of statutory undertakers. In this case, the draft Order follows and builds upon the original order for the site approved in 2013 as amended in 2018, and it would comprehensively replace the original order upon its coming into effect.
94. The Secretary of State notes that the draft Order was subject to a number of iterations during the examination, that the ExA issued comments on the applicant's versions, and that comments were made by, and discussions took place with, statutory bodies and interested parties. He notes that Schedule 4 to the recommended Order lists the parameters for the height and extent of buildings and structures in the waste treatment facility and the reception area. These parameters were reduced from those originally proposed following scrutiny during the examination by the ExA. The result of this detailed

examination of the draft Order is a recommended version containing a number of amendments to the articles and schedules agreed with the applicant, with some further relatively minor changes put forward by the ExA.

95. The Secretary of State notes that the recommended Order at Appendix C of the ExA's RR is the outcome of considerable analysis with the main issues identified in Chapter 7 of the RR, and reflects a broad measure of agreement between the parties, particularly with the statutory bodies. Following consideration of the recommended Order, the Secretary of State has decided under s114(1)(a) of PA2008 to make the Order with the following modifications:

- Article 5 (Limits of deviation): this article contains an unusual provision in paragraph 2 which the Secretary of State regards as providing an unnecessary degree of flexibility, contingent on environmental effects not being materially new or different to those assessed in the ES. He does not accept that the applicant's reasoning in the explanatory memorandum accompanying the draft Order provides sufficient justification for this, as he considers neither of the two made Orders cited as precedents are applicable to the circumstances of this application. Paragraph 2 of article 5 is therefore removed, but a more limited provision is inserted instead at the end of Schedule 1 (Authorised Development), in line with established practice;
- Article 10 (Access to works): to provide more certainty in circumstances where the consent of the street authority is needed, the words 'such consent not to be unreasonably withheld or delayed' have been removed from paragraph (1);
- Article 20 (Arbitration): this article is amended to exclude matters otherwise provided for by the recommended Order, and matters which require the consent or approval of the Secretary of State will not be subject to arbitration;
- Minor textual and drafting changes: in addition, various changes have been made to the recommended Order which do not materially alter its effect, including changes to conform with current drafting practice for statutory instruments (for example, modernisation of language) and changes made in the interests of clarity and consistency.

96. The Secretary of State considers that the recommended Order with these modifications adequately defines the scope of the consent being granted, and secures the necessary controls and mitigation measures that are consistent with the assessments provided in the ES. He further concludes the recommended Order as amended 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.

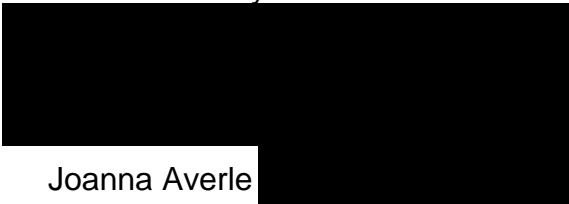
### **Challenge to Decision**

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

### **Publicity for Decision**

98. The Secretary of State's statement of reasons in respect of the application is being published as required by s116 of PA2008 and regulation 31 of the 2017 Regulations.

Yours sincerely

A large black rectangular redaction box covers the signature area, obscuring the name and any handwritten notes.

Joanna Averle

Chief Planner

Department for Levelling Up, Housing and Communities

## ANNEX A

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

Under s118 of the Planning Act 2008, an Order granting or refusing development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. Please also copy any claim that is made to the High Court to the address at the top of this letter. The decision documents are published on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/east-midlands/east-northants-resource-management-facility-western-extension/?ipcsection=overview>

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