



## Meeting note

<b>Project name</b>	East Northants Resource Management Facility - Western Extension
<b>File reference</b>	WS010005
<b>Status</b>	<b>Final</b>
<b>Author</b>	The Planning Inspectorate
<b>Date</b>	9 June 2021
<b>Meeting with</b>	Augean South Limited (the Applicant)
<b>Venue</b>	Telecon
<b>Meeting objectives</b>	Project Update and Draft Document Review Meeting
<b>Circulation</b>	All Attendees

### Summary of key points discussed and advice given

The Planning Inspectorate (the Inspectorate) advised that a note of the meeting would be taken and published on its website in accordance with section 51 of the Planning Act 2008 (the PA2008). Any advice given under section 51 would not constitute legal advice upon which applicants (or others) could rely.

### Project Update

The Applicant stated that it has been responding to stakeholder responses, received in response to s42 consultation (s42 of PA2008). Discussions have been held with the new unitary authority North Northamptonshire Council (the host 'B' authority) which superseded Corby, East Northamptonshire, Kettering and Wellingborough councils on 1 April 2021.

### Comments on Draft Documents

The Applicant and the Inspectorate discussed the comments made on the Applicant's draft documents. A summary is included below and full details are contained in the table attached to this meeting note.

The Inspectorate asked if the Applicant is satisfied that the proposed development is a Nationally Significant Infrastructure Project, which the Applicant confirmed it is. The Inspectorate advised the Applicant to include an explanation on this point in the Explanatory Memorandum for clarification.

The Inspectorate queried whether construction of the existing project under the 2013 DCO (2013 No. 1752) as amended by the 2018 DCO (2018 No.742) will be complete prior to the submission of the application of the new proposed project (the Western Extension). The Applicant explained that construction under the 2013 DCO as amended by the 2018 DCO won't be completed, but that the extension, if granted development consent, will form part of the final scheme. It is proposed that the

existing void and the western extension shall be merged to the extent that they can both be restored as one integral element.

The Inspectorate advised that the Applicant should be explicit on which part of s30 of PA2008 (Hazardous waste facilities) applies to the proposed development and should confirm in the Explanatory Memorandum any thresholds it is relying upon in relation to the construction or alteration capacities, as specified in the s14(1)(p) and s 30 of the PA2008 and in the National Policy Statement for Hazardous Waste (the NPS).

The Applicant responded that the alterations to the treatment facility will exceed the hazardous waste increase threshold of 30,000 tonnes per year in the PA2008 (the applicant is seeking an increase of 50,000 tonnes per year). It will also exceed the hazardous waste threshold for the construction and filling of the landfill void, both for the extension area and the existing landfill (the Applicant is seeking an increase by more than 100,000 tonnes per year).

The Inspectorate queried the absence of a downward vertical limit of deviation in the draft DCO and asked whether the Applicant knew from the underlying geology (including information used to inform the Environmental Statement) the likely limits to the depth of the landfill voids (base of excavation). The Applicant responded that the depths varied across the site and is determined by the underlying geology. The depth is also controlled by Environmental Permit. The Applicant was of the view that a depth specified in metres AoD would not be appropriate but would consider whether a defined limit could be included in the draft DCO.

The Inspectorate made a few observations on the draft works and land plans provided by the Applicant. The Applicant is satisfied that the items detailed in the comments will be addressed before submission of the application.

The Inspectorate asked if the works specified in the draft DCO include both the construction and filling of the landfill void. The Applicant explained that the filling of the void was an essential part of the project, in order to allow construction of the cap and restoration works.

The Applicant stated that it has sent a first draft of a Habitats Risk Assessment to Natural England for review. The feedback received will help the Applicant to progress the document. Natural England identified a further European site for the Applicant to consider.

The Applicant stated that it hasn't identified any category 3 persons (s44(4)) of PA2008) but taking a cautious approach it intends to consult with those persons whose land interests adjoin the land proposed for the western extension under s44(4). The Inspectorate advised that the justification for its approach should be included in the Consultation Report.

### **Anticipated submission date**

The Applicant anticipates that the project will be submitted to the Inspectorate in mid July 2021.

### **Next steps**

The Applicant may share a further draft of the Explanatory Memorandum ahead of the submission of the application.

**Post Meeting Comment:** The Applicant is directed to advice contained in the Inspectorate's [Advice Note 10](#) with regards to the Applicant's Habitats Regulations Assessment to be submitted with the DCO application.



## **EAST NORTHANTS RESOURCE MANAGEMENT FACILITY: WESTERN EXTENSION – WS010005**

### **Section 51 advice regarding draft application documents submitted by Augean South Limited**

On 16 April 2021, Augean South Limited submitted the following draft documents for review by the Planning Inspectorate as part of its Pre-application Service<sup>1</sup>:

1. Draft Explanatory Memorandum
2. Draft Development Consent Order
3. Draft Works Plan
4. Land Ownership and Interests Schedule
5. Draft Land Plans

The advice recorded in the table comprising this document relates solely to matters raised upon the Planning Inspectorate's review of the draft application documents, and not the merits of the proposal. The advice is limited by the time available for consideration and is raised without prejudice to the acceptance or otherwise of the eventual application.

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<sup>1</sup> See <https://infrastructure.planninginspectorate.gov.uk/application-process/pre-application-service-for-applicants/>



Explanatory Memorandum (EM)		
Ref No.	Paragraph/Section	Comment/Question
1.	Section 3 (NSIP Thresholds)	<p>In paragraph 1.3 it is stated that <i>'The Application is for an extended version of the existing facility, which consists of a waste treatment and recovery facility and a hazardous waste landfill (<b>Existing Facility</b>)'</i>. Further justification is required within the EM to explain why the proposal is considered to be both construction and extension of a NSIP, for example, but not limited to:</p> <ul style="list-style-type: none"> <li>- At what point is it expected that work under the original order may be completed? Is it likely to be completed ahead of the Secretary of State's decision on the new application? Are the only updates/amendments required to the existing consent related to the desire to continue operating beyond the duration of the current consent?</li> <li>- Further justification is required in relation to how the proposal fits within section 30 of the Planning Act 2008, including reference to 1.2.1 and 2.2.1 of the National Policy Statement.</li> <li>- Paragraph 2.3 states: <i>'The construction of new landfill void for the disposal of the same range of hazardous wastes and low level radioactive waste (<b>LLW</b>) disposed of at the site currently with a capacity of greater than 100,000 tonnes per annum (<b>tpa</b>) supported by the existing site infrastructure'</i>. Is it proposed to rely on the construction threshold or extension threshold in this instance (refer to paragraph 1.2.1 of the NPS)?</li> <li>- As the thresholds in section 30 relate just to hazardous waste, and not low level radioactive waste (LLW), a distinction should be made between these types of waste, and thereafter clarity should be provided as to how the thresholds are met, notwithstanding the LLW, in calculating relevant volumes.</li> <li>- Clarification should be explicitly provided when explaining which of the following are relevant to this application, identifying clearly the anticipated nature of the waste (ie hazardous or non-hazardous), as this will determine the relevant thresholds:</li> <li>- Either section 30(2) (a) or (b) (which relates to construction of a facility); and either section 30(4) (a) or (b) (which relates to alteration of a facility)</li> </ul> <p>It is not clear on the face of the description of Work No 2 if this is referring to non-hazardous waste, and therefore whether the relevant threshold to the proposal is being applied. Notably, the draft DCO describes Work No 2 as follows: <i>"A hazardous waste facility ...with an increase from the currently consented capacity of 200,000tpa to 250,000tpa of contaminated materials comprising predominantly hazardous wastes including..."</i> – which appears to suggest that this is hazardous waste and therefore that the 100,000, not 30,000tpa threshold would apply.</p>



Explanatory Memorandum (EM)		
Ref No.	Paragraph/ Section	Comment/Question
		<p>It is noted that the works refer to the creation and 'filling', clarification and justification is required as to whether the 'filling' of the void is considered to be part of the NSIP itself, and including reference to how 'filling' is included within the existing DCO.</p> <p>You may also wish to consider the Whitemoss Landfill Western Extension Order in relation to the calibration of volumes and the evidence required to prove that the thresholds have been met.</p>
2.	<p><b>Section 6 – Operative Provisions</b></p> <p><b>Part 2</b></p> <p><b>Article 4</b></p>	<p>The EM states "<i>Work No 1 (the existing landfill void)...</i>" – should the EM be referring to Works 1A only here? (ie the existing landfill is shown as Works 1A on the draft Works Plans. Works 1B is the extension).</p>
3.	<p><b>Schedule 1, Traffic Management</b></p>	<p><i>'The Existing Facility has not caused an unacceptable impact on the public highway and the extension to the site is not expected to increase traffic movements, so this requirement is no longer necessary'</i></p> <p>Justification and evidence from the Highway Authority will be required to support this statement.</p>
4.	<p><b>General</b></p>	<p>Where precedents with other DCOs have been stated, in accordance with our Advice Note please also state why these provisions are directly relevant to your proposal.</p>

Draft Development Consent Order		
Ref No.	Article/ Requirement/ Schedule	Comment/Question
5.	<p><b>Part 1</b></p> <p><b>2 Interpretation</b></p>	<p>"<i>Land plan...</i>" is duplicated in this list</p>



Draft Development Consent Order		
Ref No.	Article/ Requirement/ Schedule	Comment/Question
6.	<b>Part 1 2 Interpretation</b>	"limits of deviation" – the reference to article 4 (limits of deviation) should be updated to article 5 (limits of deviation)
7.	<b>Part 1 2 Interpretation</b>	Definition of maintain: ""maintain" includes maintain, inspect, repair, remove, clear, refurbish, reconstruct, decommission, demolish, replace and improve and "maintenance" shall be construed accordingly;" The Inspectorate considers this definition is too broad and queries whether it is appropriate to include 'decommission'. The Applicant should consider whether this interpretation also needs to include reference to "provided those works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement"
8.	<b>Part 1 18 Certification of Plans</b>	The Inspectorate queries whether this list should also include the Environmental Statement, which is referenced as a certified document in Part 1, 2 Interpretation?
9.	<b>Part 2 4 Effect of the order on the Original Order</b>	The Inspectorate notes that the Applicant considers Article 4 of the Kelmsley Wheelabrator Order to be precedent. However, the Inspectorate also notes that the Wheelabrator replaced a grant of planning permission with a DCO. In contrast, the East Northants application seeks to revoke an existing 2013 DCO at this same location (DO13 No 1752, known as "King's Cliffe") as amended by 2018 DCO (2018 No.742) and to replace it with a new DCO.  The Inspectorate queries: 1. Whether you are pursuing this revocation of the previous DCO under: (a) s 153 and s 6 PA2008; (b) s120(5) PA2008; or (c) some other legislative provision? 2. If you are not pursuing it under s 153 and s 6 PA2008, please can you explain how you consider your proposed route to be lawful?



Draft Development Consent Order		
Ref No.	Article/ Requirement/ Schedule	Comment/Question
		<p>3. If you are using proposing to use s 153 and s 6 PA2008, please could you amend the application to clarify that and consider how you will comply with the IP (Changes to and revocation of DCOs) Regs 2011, in particular noting the contents of Reg 53 (2) of the 2011 Regs?</p> <p>4. If you are pursuing the revocation of the previous DCO under s 120 (5), please consider what arguments you will advance to aim to persuade the Examining Authority and SoS that it is necessary or expedient to use that section instead of s 153?</p>
10.	<b>Part 2 5 Limits of deviation (LoD)</b>	<p>Article 5(1)(b) allows to <i>“deviate the works vertically upwards to a limit of 2 metres”</i>. Requirement 15 of the dDCO relating to the Gas Flare Structures applies limits to the heights of these structures above ground level. Does the 2m upwards LoD apply to these structures? The Applicant should consider whether this is appropriate.</p> <p>Part 1, 2 Interpretation states that the LoD are to be shown on the Works Plans. The Inspectorate acknowledges the note on the draft Works Plan which states these are to be added.</p>
11.	<b>Part 2 5 Limits of deviation</b>	<p>Article 5(1)(c) allows to <i>“deviate the works vertically downward to any extend as may be found necessary to construct the authorised development.”</i></p> <p>The Inspectorate considers that some form of vertical downward limitation is required.</p>
12.	<b>Schedule 1</b>	<p>The Works description beginning <i>“And in connection with such works...”</i></p> <p>The Inspectorate recommends that it be made clear what is meant by ‘such works’ in this paragraph. Does it apply to Works 1 to 5? Is there the need for further numbering?</p> <p>The Applicant should also consider whether it should be stated that these works must fall within the scope of the works assessed in the Environmental Statement (or similar phrase).</p>
13.	<b>Schedule 2 Requirement 3</b>	<p>There is no reference to an outline phasing plan to be submitted. The Inspectorate considers that the Applicant should submit an outline phasing plan with the DCO application, and this should be certified by the dDCO. Requirement 5, Landscaping and restoration, makes reference to specific phases, thus implying the phasing is already agreed to some extent.</p>



<b>Draft Development Consent Order</b>		
<b>Ref No.</b>	<b>Article/ Requirement/ Schedule</b>	<b>Comment/Question</b>
<b>14.</b>	<b>Schedule 2 Requirement 4</b>	4 – Detailed approval The Applicant should consider whether there are any elements of the Environmental Statement that should be included in this section for approval.
<b>15.</b>	<b>Schedule 2 Requirement 5</b>	Requirement 5(3)(c) refers to a plan 'Proposed post settlement restoration contours.' This plan does not appear in the list of certified documents or definitions. Is this the same as the "the restored landform profile plan" in Requirement 4?
<b>16.</b>	<b>Schedule 2 Requirement 15</b>	15 - Gas Flare Structures The Inspectorate advises that the gas flare flue should also have minimum height specified, which matches that assessed in the Environmental Statement.



Draft Works Plan		
Ref No.	Plan ref	Comment/Question
17.	<b>AU/KCW/04-21/22372</b>	<p>The Works Plan meets the requirements of Reg 5(2)(j) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, in so far that it shows the Order Limits and route and alignment of the development.</p> <p>The plan doesn't contain information to denote to what the shading relates but is clearly labelled. The area for Work No. 5 appears to exceed the Order Limits (shown by a red line).</p> <p>The Works Plan largely meets the requirements of Reg 5(3) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, in so far that it is sized at A1 and drawn to scale at 1:2500, however there doesn't appear to be a device to show the direction of North.</p>

Draft Land Plan		
Ref No.	Plan ref	Comment/Question
18.	<b>AU/KCW/05-21/22468rev A</b> <b>Sheets 1 - 3</b>	<p>The Land Plans meet the requirements of Reg 5(3) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, in so far that they are sized at A1, drawn to scale at 1:2500 and show the direction of North.</p> <p>There is no need for a key plan for this set, as per the requirement of Reg 5(4) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, as the three sheets depict the same area, albeit the various interests in the land.</p> <p>As all the land required for the project is under the Applicants control, there are no plots or a conventional Book of Reference. The plans show the land in relation to the titles given in the Land Ownership and Interests Schedule.</p>



Draft Land Plan		
Ref No.	Plan ref	Comment/Question
19.	<p><b>AU/KCW/02-21/22254</b></p> <p><b>AU/KCW/02-21/22255</b></p> <p><b>AU/KCW/02-21/22256</b></p> <p><b>AU/KCW/02-21/22285</b></p>	<p>AU/KCW/02-21/22254, AU/KCW/02-21/22255 &amp; AU/KCW/02-21/22256:</p> <p>These Plans largely meet the requirements of Reg 5(3) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, in so far as they are sized no larger than A0 and show the direction of North, however these are not drawn to scale (not smaller than 1:2500).</p> <p>Whilst they do not meet the test in Reg 5(3), the scale used ensures that information provided is appropriate and shows the relationship between the development site relative to the nature conservation / historic environment locations. Additional plans at 1:2500 scale would not provide any further benefit or clarity to understanding the location of the sites in relation to the site of the proposed development.</p> <p>AU/KCW/02-21/22285</p> <p>This plan shows inserts for locations depicted on plan AU/KCW/02-21/22256. The Plan meets the requirements of 5(3) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, in so far that it is sized no larger than A0, drawn to scale (not smaller than 1:2500) and shows the direction of North.</p>

**General**

1. Where references are provided to other draft application documents it would be beneficial to provide the full title thereof inclusive of document reference number. Should further draft documents be provided for review, the Applicant may wish to consider providing a full list of known application documents (for purpose of signposting) as well as their respective reference number.
2. [\[MHCLG\] Application form guidance](#), paragraph 3, states: *“The application must be of a standard which the Secretary of State considers satisfactory: Section 37(3) of the Planning Act requires the application to specify the development to which it relates, be made in the prescribed form, be accompanied by the consultation report, and be accompanied by documents and information of a prescribed description. The Applications Regulations set out the prescribed form at Schedule 2, and prescribed documents and information at regulations 5 and 6.”*