

Planning Inspectorate

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Your Ref: BC0410001

[via Planning Inspectorate website &
emgateway2@planninginspectorate.gov.uk]

Date: 07 April 2026

Dear Sir/Madam

**EAST MIDLANDS GATEWAY PHASE 2 DCO & EAST MIDLANDS GATEWAY
MCO**

RESPONSE TO EXAMINING AUTHORITY'S WRITTEN QUESTIONS 1

Thank you for consulting us on the examining authority's written questions 1. We have reviewed the questions directed at the Environment Agency and responded to them below.

We trust this advice is useful.

Yours sincerely

Mr James Cordell
Planning Advisor - National Infrastructure Team

Appendix 1 – Response to Examining Authorities Written Questions 1

Cont/d..

Appendix 1

ExQ1	Question to:	Question:
Q8.0.2	EA	<p>Deemed Approvals</p> <p>All bodies which would approve approvals are asked to review the time periods set out and to comment as to whether they consider these periods appropriate. If a different period were to be sought, then the body should justify this revised period. Individual periods should be set out by provision.</p> <p>The ExP understands that the provisions are:</p> <ul style="list-style-type: none"> • Articles 9, 11, 13, 17, 19, 20. • Schedule 13, part 1, paragraph 2 • Schedule 13, part 2, paragraphs 4, 13 <p>However, this should not be considered comprehensive, and parties are requested to consider the whole dDCO.</p>
Environment Agency Response:		
<p>The Environment Agency is satisfied with the time periods set out and deem them appropriate.</p>		

ExQ1	Question to:	Question:
Q8.3.1	EA	<p>Consultee in requirements</p> <p>In various requirements there is a requirement for consultation with a statutory body prior to the decision maker deciding whether to approve details pursuant to requirements. Could all statutory parties review the requirements and confirm whether consider that the current arrangements are appropriate. Should they wish to amend this, could they please set out where such a change should be made, and if requesting additional consultation explain why it is considered necessary.</p>
Environment Agency Response:		
<p>The Environment Agency request to be named on the following requirements:</p> <p>Requirement 11 – Construction Environmental Management Plan, to ensure appropriate mitigation during construction.</p> <p>Requirement 16 – The EA is satisfied to be named within this requirement, should any variations be made to the flood risk assessment, consultation with the EA is required.</p> <p>Requirement 17 – Consultation with the EA is requested to be included along with the LLFA for any surface water drainage design.</p>		

Requirement 18 – The EA requests to be included as a named consultee for requirement 18, along with the local planning authority.

Requirement 22 (3) & (4) – We request the addition of being a named consultee in both sections of this requirement along with the local planning authority to ensure direct consultation with the EA.

Requirement 23 (1), (b) & (ii) – The EA requests to be a names consultee within the mentioned sections of requirement 22 to ensure adequate consultation is undertaken.

ExQ1	Question to:	Question:
Q8.3.4	EA	Requirement 17 Could the EA, LCC as local lead flood authority, and any person who is an approving body under schedule 3 of the Flood and Water Management Act confirm whether they are satisfied with the climate change allowance within this requirement. If not, could they set out what allowance each would seek and justify the quantum.
Environment Agency Response:		
The Environemant Agency would defer to the LLFA on this issue as it is related to the management of surface water flood risk, however as stated above the EA requests to be named consultee for this requirement due to the sustainable drainage statement which includes management measures of the water quality of surface waterbodies.		

ExQ1	Question to:	Question:
Q8.3.5	EA	Requirement 18 The EA is asked to comment as to whether the term “foul water strategy” should be defined as regards its purpose.
Environment Agency Response:		
From a water quality perspective, we requested to be named consultee within requirement 18 as if the foul water strategy is unclear, it can pose a risk to the water environment. The terms “foul water strategy” should be defined in relation to each phase of the development.		

ExQ1	Question to:	Question:
Q10.0.2	EA	Reference to Environment Agency Paragraph 14.5.104 of chapter 14 of the ES [AS-059] refers to remediation measures being “agreed with the Environment Agency”. However, requirements 22 and 23 of the dDCO provide for submission to and approval in writing by the local planning authority. Could the applicants:

		<ul style="list-style-type: none"> • clarify whether these references are intended to describe consultation or formal agreement/ approval • set out the intended discharge process for requirement 22 and 23, identifying: <ul style="list-style-type: none"> o the approving body o any consultees (including the EA) o how consultation would be secured o any other drafting relied upon (e.g. protective provisions) • if formal approval by the EA is intended, provide the precise drafting change(s) required to secure that role and explain why this is necessary
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Environment Agency Response:

Formal agreement will need to be sought from the Environment Agency on matters relating to risks to controlled waters. The local planning authority can advise the developer when liaison with the Environment Agency will be required.

As previously stated, we will request the addition of “and the Environment Agency (if required)” after “local planning authority” in Draft DCO Requirement 22 (3) and (4), and Requirement 23 (1)(b)(ii). We raised this at Relevant Representations (RR-051M).

ExQ1	Question to:	Question:
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Q10.0.8	EA	<p>Waste Transfer Station Record</p> <p>ES chapter 14 [AS-059] table 14.3 states that the EA accepted data supporting the position that the recorded Waste Transfer Station on the EMG2 Works is a geo-referencing error, and records an acceptance date of 21 April 2025.</p> <p>Appendix 14A [APP-153] similarly states that correspondence between Fairhurst and the EA confirms that the EA regard the Waste Transfer Station as a geo-referencing error, but records that the data supporting this was accepted by the EA on 22 April 2025.</p> <p>Can the applicants and the EA:</p> <ul style="list-style-type: none"> • provide the correspondence/ evidence relied upon to support the conclusion that the Waste Transfer Station record is a geo-referencing error, and confirm the correct date on which the EA accepted the supporting data • confirm that the Waste Transfer Station record has been treated consistently across ES chapter 14 and appendix 14A (including that it has been discounted as a potential source of contamination) and identify any required correction(s) to ensure consistency
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Environment Agency Response:

The Environment Agency received an email from Fairhurst on 15th April 2025, which included extracts from the Envirocheck report and historical mapping used to

produce the desk study. This provided further information about the Waste Transfer Station. We compared the details and Licence Reference to our records. The entry appears to relate to permit HP3693CW (formerly Waste Management Licence No. 43288, formerly Permit 161), which is associated with East Midlands Airport and outside the DCO boundary. As such, we agreed that this appeared to be a georeferencing error and were happy to resolve the comment. We replied to confirm our acceptance on 22nd April 2025.

ExQ1	Question to:	Question:
Q14.0.3	EA	<p>Site Waste and Materials Management Plan (SWMMP)</p> <p>ES chapter 18 paragraph 18.5.84 [AS-067] states that the principal mitigation measure is implementation of the CEMP and phase-specific P-CEMPs submitted pursuant to dDCO requirement 11, and further in paragraph 18.5.85 states that, although not required by regulations, a Site Waste and Materials Management Plan (SWMMP) will be regularly updated during the lifetime of the DCO Scheme and is provided as appendix 18E [APP-190].</p> <p>The CEMP paragraph 10.1 [AS-027D] states that each P-CEMP shall set out details of construction waste management in accordance with the SWMMP. Appendix 18E [APP-190] refers to the SWMMP “submitted with the DCO application” being “approved” and then reviewed/ updated (including refinement “in consultation with the local planning authority”) and also contains reliance/ disclaimer wording limiting third-party reliance.</p> <p>The Commitment Register [APP-226D] links the SWMMP to a waste management commitment (MW1) secured via dDCO requirement 24.</p> <p>Could the applicants, LCC and the EA:</p> <ul style="list-style-type: none"> • confirm whether the SWMMP (appendix 18E) is relied upon to secure the mitigation identified in ES chapter 18 and, if so, at what stage it is intended to be “approved” and by whom • explain how updates to the SWMMP will be controlled and enforced through the DCO (including the relationship between the CEMP/ P-CEMPs, requirement 24, and any operational waste management arrangements) • confirm whether any amendment is required to the dDCO and/ or the CEMP/ SWMMP wording to ensure the SWMMP is clearly secured, enforceable and capable of being relied upon for the purposes of the Examination • confirm whether, and if so how, the EA and relevant waste planning authorities will be engaged during discharge/ implementation where the SWMMP relies

		on regulatory compliance processes (including Duty of Care and any permitting/ exemption requirements)
Environment Agency Response:		
<p>Where the Site Waste Management and Materials Plan (SWMMP) relies on regulatory compliance processes, the Environment Agency (EA) and relevant waste planning authorities will be engaged as required through established statutory mechanisms. Any activities involving the management of waste materials must be undertaken in full compliance with the Duty of Care, including appropriate waste classification, secure storage, transfer by licensed carriers and the use of permitted or exempt facilities.</p>		

ExQ1	Question to:	Question:
Q14.0.4	EA	<p>Re-use of Excavated Materials</p> <p>ES chapter 18 appendix 18E [APP-190] states that excavated materials may be managed through the CL:AIRE Definition of Waste: Development Industry Code of Practice (DoWCoP), including preparation of a Materials Management Plan and review by a Qualified Person.</p> <p>ES chapter 18 paragraph 18.5.103 [AS-067] refers to certain material movements (including surplus soils/ topsoil) being managed “without classifying the material as waste”.</p> <p>In its RR [RR-016D] the EA highlights the need for correct waste classification (including potentially hazardous streams) and appropriate regulatory controls depending on circumstances.</p> <p>Could the applicants and the EA clarify:</p> <ul style="list-style-type: none"> • what is meant by “without classifying the material as waste”, including how any proposed donor site movements would be managed and evidenced • what process/ controls will apply if excavated materials are classified as hazardous or otherwise unsuitable for reuse, and signpost where this is set out in the SWMMP and how it is secured through the CEMP/ P-CEMP and/ or any relevant requirement
Environment Agency Response:		
<p>“without classifying the material as waste” would involve the use of CL:AIRE, soils and topsoils are normally classified as a waste, however, Under the CL:AIRE Definition of Waste Code of Practice, materials may be reused without being classified as waste through several recognised scenarios, including reuse (treated or untreated) within the site of origin, the direct transfer of clean, naturally occurring soils between sites for a defined use without treatment, the use of cluster projects where multiple nearby sites share a treatment hub with materials reused across the cluster, and the use of fixed soil treatment facilities where treated materials are fully recovered and demonstrated to be suitable for a defined end use.</p>		

For the purposes of the development, this means that excavated materials would be reused as non-waste materials by demonstrating that they are not discarded, not intended to be discarded, and not required to be discarded. This determination would be made on a site-specific basis and supported by appropriate risk assessment to demonstrate protection of human health and the environment, suitability for intended use, certainty of use, and that quantities used do not exceed those required by the approved design.

Should any excavated materials be identified as hazardous or otherwise unsuitable for reuse on site, they would be immediately segregated and managed as waste in accordance with the applicable waste legislation.

ExQ1	Question to:	Question:
Q14.0.5	EA	<p>Hazardous Waste</p> <p>The paragraphs 18.9.5 and 18.9.12 of the ES chapter 18 [AS-067] states for both the DCO Scheme and the MCO Scheme that potential arising of hazardous waste has not yet been quantified, but that the worst-case scenario does not anticipate hazardous waste arisings greater than 0.35% of the regional hazardous landfill void capacity.</p> <p>Please could the applicants provide:</p> <ul style="list-style-type: none"> • a worst-case quantified estimate of hazardous waste arisings for the DCO application and the MCO application, separately for construction and operation, identifying the hazardous waste streams assumed for operation with reference to the ES chapter 18 paragraph 18.6.32 • the calculation and inputs showing how the 0.35% figure has been derived • the assumed management route(s) for hazardous waste, including how the absence of hazardous landfill capacity within the Refined Study Area has been addressed in the assessment assumptions <p>LCC and the EA are also asked to comment on this matter.</p>
Environment Agency Response:		
<p>The EA requires that all hazardous waste is to be sent to a suitable authorised facility and the movement of this is documented properly in consignment notes.</p>		

ExQ1	Question to:	Question:
Q21.0.2	EA	<p>Operational Environmental Management Plan</p> <p>The EA [RR-016] notes that the applicants should commit to producing an OEMP in order to secure appropriate operational mitigation related to pollution of the water environment. Please can the EA advise if there are any other areas where an OEMP could help</p>

		<p>mitigate the proposed development's environmental impacts. For example, could an OEMP help mitigate potential operational emissions and air pollution etc. and are there any precedents for such an approach in other made DCOs?</p> <p>Please can the applicants comment whether an OEMP would be necessary to help mitigate operational environmental impacts. If the applicants are of the view that an OEMP would not be necessary, please identify existing provisions within the dDCO and dMCO that would secure the necessary mitigation measures for the operational phase of the proposed development.</p> <p>Does NWLDC and LCC have a view on whether an OEMP would be necessary in the context of the above?</p>
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Environment Agency Response:

The OEMP would be a suitable document to outline a commitment and schedule from the applicant to clear trash screens within the site. This maintenance would contribute towards flood risk management within the site and the wider environment. Additionally, as stated in RR-016D, an OEMP can secure appropriate operational mitigation related to pollution of the water environment. However, it can also secure maintenance of site features, including SuDS, which will help manage surface water runoff, irrespective of any pollution.

ExQ1	Question to:	Question:
Q21.0.3	EA	<p>Performance of EMG1 Drainage Systems</p> <p>A number of RRs [RR-030D and others] raised significant concern about flooding in Kegworth, particularly in relation to the construction of EMG1 and Kegworth Bypass. Please can the applicants, LCC and the EA advise whether there is any ongoing monitoring of EMG1's drainage systems and whether it can be determined that such systems are performing in line with the modelling conducted as part of the EMG1 application?</p> <p>Furthermore, the ExP are particularly interested in whether LCC or the EA have any evidence that might corroborate the concerns raised in the RRs, that there has been an increase in local flooding since EMG1 was constructed. If there has been an increase, please can LCC and the EA advise whether there is any potential that this could be objectively attributed to EMG1, including Kegworth Bypass, and whether a more precautionary approach to modelling should be required for the proposed development?</p>

Environment Agency Response:

The Environment Agency do not have any flow or level gauges on the East Midlands Gateway 1 drainage systems. With respect to hydraulic modelling for the East Midlands Gateway 1 project, we reviewed the hydraulic models for the Hemington and Lockington Brooks (Main Rivers) as part of this application and were satisfied with the modelling that the applicant had undertaken of these Main Rivers which are in the vicinity of the East Midlands Gateway 1 project. We were satisfied with the applicant's Flood Risk Assessment and that the development would not increase flood risk elsewhere from a fluvial perspective, particularly in the context of the Hemington and Lockington Brooks. With respect to surface water drainage from new development, we would defer to the view of the respective Lead Local Flood Authority on this matter. To determine whether a development has increased flood risk, it is necessary to understand how surface water runoff would behave both before and after the development is in place. This allows other influencing factors to be separated from the effects of the development itself. A core principle of new development is that appropriate sustainable drainage systems (SuDS) are incorporated to ensure that runoff and flood risk is not increased when compared to the undeveloped site. Our understanding is that the East Midlands Gateway Phase 1 project included surface water runoff attenuation storage to limit runoff from the proposed development. This is typical and similar SuDS features are proposed for the East Midlands Gateway 2 project. We would defer to Leicestershire County Council's view with respect to the adequacy of surface water drainage proposals for the development.

ExQ1	Question to:	Question:
Q21.0.5	EA	<p>Greenfield Runoff Rates</p> <p>Protect Diseworth [RR-025D] raised a significant number of concerns in relation to flood risk, including greenfield runoff rates. Please can the applicants clarify the greenfield runoff rate associated with existing surface water on the northern part of the EMG2 main site and community park that currently drains into Hall Brook?</p> <p>If it is lower than the greenfield runoff rate associated with existing surface water on the southern part of the EMG2 main site and community park that currently drains into Diseworth Brook, via the A42 culvert, would the proposed strategy within the Sustainable Drainage Statement [APP-149] inadvertently increase the rate of surface water entering the Long Whatton Brook catchment as a whole?</p> <p>For example, would the EMG2 works take surface water currently being discharged at a lower rate into Hall Brook, and instead discharge it at a higher rate into Diseworth Brook, via the A42 culvert? Consequently, would this increase the rate of some of the surface water entering the Long Whatton Brook catchment compared to baseline? As such, would there be an increase in flood risk elsewhere as a result of the proposed development?</p> <p>Does the EA, NH or LCC have any comments to make on this matter?</p>

Environment Agency Response:

The Environment Agency would defer to the LLFA on this issue as it is related to the management of surface water flood risk.

ExQ1	Question to:	Question:
Q21.0.8	EA	<p>1 in 1000 year credible maximum climate change floodplain</p> <p>Paragraphs 13.5.18 and 13.5.19 of chapter 13 of the ES [AS-056] identify that some of the highway works could encroach into the 1 in 1000-year credible maximum climate change floodplain, but such extreme flood events are above the design standard and do not require floodplain compensation. Does the EA agree with this statement, or should compensation be provided?</p> <p>For the avoidance of doubt, can the applicants clarify whether any part of the highway works, work no. 10 in particular, would flood during the 1 in 1000- year credible maximum climate change floodplain scenario? If yes, how would this be mitigated to ensure any residual risks are safely managed and that the SRN remained operational over the proposed development’s lifetime in accordance with paragraph 5.133 of the NNNPS, and that it could adapt to climate change in accordance with paragraphs 4.33 to 4.44 of the NNNPS.</p> <p>The ExP would also invite comments from NH on these matters.</p>

Environment Agency Response:

With regards to paragraphs 13.5.18 and 13.5.19 of the Flood Risk and Drainage Chapter (13) of the Environment Statement. The Environment Agency agrees that nominal encroachment of the highway embankment into the 0.1% (1 in 1000) and credible maximum flood extents does not require floodplain compensation. Floodplain compensation would be required if the development encroached into the design event floodplain which in this case is the 1% (1 in 100) annual exceedance probability scenario for the 2080s period (between years 2070 to 2125) which a central allowance for climate change. The approach the applicant has taken aligns with the guidance on climate change allowances and assessing floodplain compensation requirements available online at [Flood risk assessments: climate change allowances - GOV.UK](https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances)

ExQ1	Question to:	Question:
Q21.0.9	EA	<p>Climate Change Scenario</p> <p>Paragraph 13.5.92 of chapter 13 of the ES [AS-056] states in accordance with best practice and local and national requirements, the drainage infrastructure will be designed to manage the design storm (the 1 in</p>

		100-year+25% storm) as well as the resilience check storm (the 1 in 100-year+40% event). Does Requirement 17(1)(a) in the dDCO need to be amended to state that the drainage infrastructure would be designed to manage the 1 in 100-year+40% event?
Environment Agency Response:		
The Environment Agency would defer to the LLFA on this issue as it is related to the management of surface water flood risk.		

ExQ1	Question to:	Question:
Q21.0.14	EA	Water Framework Directive Screening The applicants submitted a Water Framework Directive WFD Screening [APP-147]. Is the EA satisfied that a full assessment can be screened out, that the conclusions of the report generally are acceptable and that the mitigation measures identified are secured in the dDCO and dMCO?
Environment Agency Response:		
The EA still have some concerns over substation drainage design and ability to mitigate in the event of a fire. Furthermore, until the matter of an OEMP is determined (see comments to Q21.0.2) then how mitigation measures are secured there remains some water quality impacts during operation which could affect WFD status. Clarification of water quality monitoring is also still required. Provided these points are addressed the EA is satisfied that the mitigation measures proposed are acceptable to screen out full assessment.		

ExQ1	Question to:	Question:
Q22.0.5	EA	CEMP – Surface Water Storage Paragraph 19.2 of the CEMP indicates that any onsite surface water storage during construction will be to the 1 in 100 year storm event “with an appropriate uplift for climate change applied will be provided (to align with the consenting authorities [sic] requirements)”. Is it possible to include the relevant percentage at this time? If not, could an explanation be included as to how the percentage would be derived.
Environment Agency Response:		
The Environment Agency would defer to the LLFA on this issue as it is related to the management of surface water flood risk.		