

The Planning Inspectorate

Our ref: XA/2024/100232/01-L01

Your ref: TR010065

[via email:

A46NewarkBypass@planninginspectorate.gov.uk]

Date: 04 February 2025

Dear Sir/Madam

A46 Newark Bypass – Development Consent Order Application

A46 from Farndon Roundabout to Winthorpe Roundabout, near Newark-On-Trent

Deadline 5 (04 February 2025)

Please see below Environment Agency comments for Deadline 5 in relation to:

1. Comments on any submissions received at the previous deadline
2. Responses to the Examining Authority's (ExA's) Second Written Questions (ExQ2)
3. Responses on the Report on the Implications for European Sites (RIES) and any associated questions
4. Update on resolution of outstanding flood risk issues

Appendix 1 provides an overview table showing progress made on resolving issues raised in our Relevant Representation [RR-020].

1. Comments on any submissions received at the previous deadline

We have reviewed the documents as submitted at Deadline 4, insofar as it relates to our remit, and we wish to make the following comments:

Draft Development Consent Order (dDCO), Rev 5 [REP4-003 / REP4-004]

We wish to confirm that we are satisfied with the updated dDCO (Rev 5), as submitted.

First Iteration Environmental Management Plan (FIEMP) Rev 4 [REP4-010 / REP4-011]

We wish to confirm that we are satisfied amendments as presented within this revision of the FIEMP, however we are awaiting further amendments to item RDWE10 in the Record of Environmental Actions and Commitments table in relation to flood compensation area fish escape mitigation and maintenance to manage flood risk.

We have reviewed a draft update to RDWE10 which the Applicant provided to us for reviewed. We have confirmed that we are satisfied with the draft amendment and expect a further revision of the FIEMP to be submitted at Deadline 5. Following this we should be able to consider our comments concerning FCA fish escape mitigation and flood risk issue (EAFR-005 – please see section 4 further below) as resolved.

Pre-commencement Plan (PCP), Rev 2 (December 2024) [REP4-012 / REP4-013]

Please see our comments on the PCP in section 2 of this letter in response to ExQ2 Q1.4.1 further below.

Statement of Common Ground with the Environment Agency - Rev 1 [REP4-019]

We are satisfied that this version of our Statement of Common Ground with the Applicant reflected our position at that point in time. However, since then we have liaised with the Applicant and progress towards resolving the outstanding matters continues to move forward.

Applicant's Summary of the Issue Specific Hearing 3 (ISH3) [REP4-033]

A minor point of clarification: item 3(b) 13 on page 13 mentions the “sustainable places scheme”. This should be “Sustainable Places Team”.

Detailed Quantitative Risk Assessment (DQRA), Rev 1 (December 2024) [REP4-038]

Please see our comments on the DQRA in section 2 of this letter in response to ExQ2 Q7.0.2.

2. Responses to the ExQ2

ExQ2	Question to:	Question:
Q1.0.1	The Applicant, Host Authorities and all other IPs	National Planning Policy Framework A revised National Planning Policy Framework (the Framework) was published on 12 December 2024. All Parties confirm whether there are any changes to your case

		resultant from changes to the Framework and if so, set out the amended policy and how this changes your case. Furthermore whether you consider this changes the scope of any of the Applicant's Assessments or the basis for the Secretary of State's conclusions.
Environment Agency comments:		
The revised National Planning Policy Framework (December 2024) does not alter the Environment Agency's position on the Development Consent Order application or otherwise affect our case.		
Q1.4.1	NSDC, NCC, LLFA, Natural England, the EA	Mitigation – Pre-commencement Plan <ul style="list-style-type: none"> a) Do you have any unresolved comments on the Pre-commencement Plan (PCP) [REP4-012]? b) Are there any matters which you consider should be included in the PCP which have not yet been included? c) Where relevant, does the PCP satisfactorily reflect the provisions on the First Iteration EMP so that there would be a consistent approach to mitigation across all stages of development?
Environment Agency comments:		
a)	The list of pre-commencement activities, as listed in 1.1.2 of the PCP [REP4-012/REP4-013], differs from that in the draft Development Consent Order Rev 6 (see REP4-004, PDF page 10/11) – there are 3 activities missing in the PCP document; of relevance to our remit, "remedial work in respect of any contamination or other adverse ground conditions" is not mentioned in the 1.1.2 of the PCP, however section 3.12 does cover contaminated land, which we are satisfied with.	

b)	<p>See above comment regarding the pre-commencement activities concerning remediation. We have raised this directly with the Applicant (via email dated 07/01/2025). The Applicant has confirmed that the list in the PCP will be updated and a revised PCP document submitted at Deadline 5.</p> <p>While we are satisfied with what has been included within the PCP at this current stage in relation to flood risk, it should be noted that as further details are provided about the Averham and Kelham Flood Compensation Area (FCA) regarding the access crossing from the A617, additional pre-commencement activities may required. Progress is being made regarding the access crossing, but we are currently still awaiting further detail from the Applicant.</p> <p>Otherwise, we have no further matters to raise regarding the PCP.</p>
c)	Yes, we are satisfied with this.

Q7.0.2	Environment Agency	<p>Detailed Quantitative Risk Assessment</p> <p>Does [REP4-038] address your outstanding queries in relation to contamination? If no, please outline whether and how any outstanding matters could be resolved.</p>
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Environment Agency comments:

As submitted, the Detailed Quantitative Risk Assessment (DQRA), Rev 1 (December 2024) [REP4-038], does not fully address our concerns in relation to contamination, insofar as it relates to our remit (impacts on controlled waters). While we are largely satisfied with the input parameters that have been used, there are two exceptions:

- bulk density of soil
- compliance point distance

We provided detailed comments on these points directly to the Applicant on 09/01/2025 so they had the opportunity to resolve them before Deadline 5. Since then, we have reviewed a draft revised DQRA (Rev 2, January 2025, Deadline 5 submission draft), which the Applicant provided to us for review outside of the Examination. We completed our review of the revised DQRA and confirmed to the Applicant, on 27/01/2025, that we are now satisfied that the revised DQRA fully addresses our concerns, and the issue can be closed out pending the submission of the document into the Examination.

The Applicant has informed us that the revised DQRA (Rev 2) will be submitted into the Examination at Deadline 5. Following this, we will be able to consider the issue regarding the contamination at hotspot WS46 as formally agreed/resolved. We expect to complete this at Deadline 6 and it should then be reflected in an updated Statement of Common Ground.

Q9.0.1	The Applicant, Natural England, the EA	Report on Implications for European Sites (RIES) Please respond to the questions raised in the RIES published alongside these further written questions.
Environment Agency comments: Please see below comments in response to RIES questions QR7 and QR8, in section 3 of this letter.		
Q15.0.1	The Applicant, NCC, the EA, NSDC	Averham and Kelham FCA In [REP4-033], it was confirmed that Peridot Solar had submitted an amended plan relative to their application for a solar panel installation on part of the Averham and Kelham FCA to remove the panels from the FCA. Does this resolve the fundamental concern over how the FCA and the panels would operate and their relative development timescales?
Environment Agency comments: We have no concerns regarding the solar panels in relation to Averham and Kelham FCA. Solar panels are not located within the FCA. Our main outstanding concern is regarding an access crossing over the FCA channel from the A617. The design details for this crossing are not yet finalised. Once finalised the impact of this crossing on the FCA needs to be tested within the hydraulic model. The Applicant is aware of this requirement and is working towards resolving our concerns.		
Q15.0.2	The Applicant, NSDC, NCC, the EA	EA Flood Map Update Does the recent update to the EA flood mapping data, published on 17 December 2024, result in any alterations to the findings of Chapter 13 Road Drainage and Water Environment [APP-057] or Appendix 13.2 Flood Risk Assessment [APP-177]. Equally, does this update alter the comments made by the Host Authorities or the EA?

Environment Agency comments:

The update to the flood mapping data has no impact on the findings of Chapter 13 Road Drainage and Water Environment. The Applicant has undertaken site specific detailed hydraulic modelling which builds on the Environment Agency's hydraulic modelling which is used to inform the flood mapping data. This hydraulic modelling has been reviewed several times by the Environment Agency and reflects the best available information with regards to baseline and "with scheme" flood risk.

Q15.1.1

The Applicant

Exception Test

In the EA's deadline 4 response [REP4-044] it confirms that the proposal will increase flood risk elsewhere during 1 in 20 and 1 in 30 year events, i.e. more frequent events than the designed event in the FRA. The Exception Test within NPPF 2024 does not make a distinction between sensitive and non-sensitive receptors, nor does it use the term 'significant', it simply requires that proposals do not increase the risk of flooding elsewhere. Please detail how the proposal meets with the requirements of the Exception Test.

If the proposal cannot meet the requirements of the Exception Test, please provide reasoning as to justify a departure.

Environment Agency comments:

While this question is not directed to the Environment Agency, we wish to make the following comments:

The Applicant is making positive steps towards our concerns regarding the Exception Test and increases in flood risk. The Applicant has explained and provided supporting evidence that some of the increases within the model are due to model precision limitations and boundary effects, which we are satisfied with. The Applicant has provided us with additional technical detail and evidence which we are currently in the process of reviewing.

Additionally, we are having discussions with the Applicant to ensure all possible opportunities to reduce food risk overall are taken and the Applicant is presenting evidence of this.

3. Responses on the RIES and any associated questions

We include the following comments below in response to RIES questions QR7 (ID 3.4) and QR8 (ID 3.5).

Table 3.1: Issues raised in the examination to date by the ExA and IPs in relation to the applicant's assessment of effects on integrity (alone and in-combination)

Humber Estuary SAC and Ramsar site

ID 3.4 - QR7

We discussed this question with the Applicant and their proposed response in a virtual (MS Teams) meeting on 23/01/2025. The Applicant subsequently provided a written draft of their response and further clarification and email (24/01/2025 and 31/01/2025 respectively). Following this, we have a better understanding of the fish escape mitigation, and we are now satisfied that the proposed minimum dimensions for the fish escape passage are acceptable. As such, we consider that this matter is now resolved, insofar as it relates to our remit. This should be reflected in the updated Statement of Common Ground.

In relation to the Habitat Regulation Assessment, we defer to Natural England as the lead adviser on this topic.

ID 3.5 – QR8

As per our response to QR7, having discussed this with the Applicant and have been provided with further details, we are now satisfied with the proposed maintenance measures and that it defined in detail at the next stage of the design. As such, we are now satisfied that this matter is resolved, insofar as it relates to our remit. This should be reflected in the updated Statement of Common Ground.

4. Update on resolution of outstanding flood risk issues

Flood risk exception test (part 2) – fluvial flood risk (EAFR-001); Increase in fluvial flood risk elsewhere (EAFR-002) & Overall reduction in fluvial flood risk (EAFR-003)

We are currently reviewing updated analysis that the Applicant has undertaken to address our concerns with the increases in flood risk. The Applicant presents the case that some of the increases in flood risk observed are because of model precision limitations and boundary effects. The Applicant has undertaken further detailed hydraulic modelling to demonstrate the sensitivities and precision limitations associated with hydraulic models. We are currently reviewing this information and will provide a detailed response to the Applicant. We will provide a further update to the ExA at the next Examination deadline.

This issue remains under discussion. The Applicant submitted an updated technical report (Hydraulic Modelling Technical Note, Rev 2) on the 24 January 2025 and

additional model results on the 31 January 2025, which we are currently reviewing. Once we have completed our review, we will feed back directly to the Applicant and provide a further update to the ExA at the next Examination deadline.

Compensatory flood storage (EAFR-004)

The Applicant has provided additional information about the location and size of culverts in our most recent meeting with them, on 27 January 2025. However, the design of the access crossing from the A617 over the Kelham and Averham FCA channel has yet to be finalised. Any proposed designs are yet to be tested within the hydraulic model.

As such, we are still awaiting further information about the access crossing and an understanding of the impacts this will have on flood risk. Overall, this is moving positively towards resolution.

Compensatory flood storage – phasing of works (EAFR-005)

We are now satisfied that this issue has been resolved on the following basis:

- The solar panels (Peridot Solar planning application, LPA ref. 23/01837/FULM) have been removed from within Kelham and Averham FCA.
- The First Iteration Environmental Management Plan (Rev 2) [REP4-010/011] includes the following for item RDWE10 in the Record of Environmental Actions and Commitments (REAC) table: *Prior to commencing any above ground works (including above ground pre- commencement works) there must be sufficient replacement floodplain storage in place to compensate for those works.*

Compensatory flood storage – maintenance (EAFR-006)

The Applicant has presented to us (31 January 2025) further revised draft wording for item RDWE10 in the REAC table of the First Iteration Environmental Management Plan (FIEMP). We have indicated to the Applicant that we are satisfied with this in relation to flood risk, therefore once this is included in an update to the FIEMP and together with the commitment to providing a full maintenance plan as part of the Third Iteration EMP, we will be able to consider this issue as resolved.

Slough Dyke (main river) realignment (EAFR-007)

The Applicant has provided draft plans to us for our review in relation to this issue. We are satisfied that positive progress is being made. We will feed back to the Applicant directly once we have concluded our review of the details and provide a further update to the ExA at the next Examination deadline.

Interaction with Environment Agency flood defences (EAFR-008)

While the issue has been briefly covering in a meeting we had with the Applicant on 27 January 2025, we have not yet received sufficient detail (cross-sections, plans) or evidence that the Scheme will not have an adverse impact on the defences.

We will continue to work with the Applicant to resolve the outstanding issues and provide a further update at Deadline 6.

Please contact us if you have any queries or require anything further.

Yours faithfully,

Mr Alex Hazel

Planning Specialist – National Infrastructure Team

E-mail: NITeam@environment-agency.gov.uk

Appendix 1 – Environment Agency issues / work package tracker summary table

Appendix 1 – Environment Agency issues / work package tracker summary table – Deadline 5

Issue status key:

	Agreed / resolved – no further discussion needed
	Working on a solution / under discussion – final position not yet reached
	Not agreed – final position that cannot be agreed and will remain a point of difference

Subject	Topics		Assessment / plan / DCO	Impact	Solution / Mitigation	Requirement agreed / assessment updated to resolve issue	Requirement number(s) in DCO / Protective provision in DCO	Notes
Biodiversity	Biodiversity net gain (BNG) strategy	BNG – improvements to river units (EAFBG-004)	Agreed	Agreed	Agreed	Agreed	3	
	Environmental Management Plan (EMP)	Invasive species – Himalayan Balsam (EAFBG-005)	Agreed	Agreed	Agreed	Agreed	3	
Contaminated land	Contaminated land assessment	British Sugar authorised (active) landfill site (EAGWCL-001)	Agreed	Agreed	Agreed	Agreed	N/A	
		Contamination hotspot at WS46 (EAGWCL-005)	Agreed	Agreed	Agreed	Working on a solution	N/A	The pending submission of a satisfactory revised Detailed Quantitative Risk Assessment (DQRA), Rev 2. Once this has been submitted at Deadline 5, we will be able to confirm this issue is agreed/resolved at Deadline 6.
Fisheries	Use of borrow pits for fry refuge (EAFBG-001)		Agreed	Agreed	Agreed	N/A (Agreed)	N/A	
Flood risk	Flood risk assessment / Flood modelling	Flood risk exception test (part 2) – fluvial flood risk (EAFR-001)	Working on a solution	Working on a solution	Working on a solution	Working on a solution	14, 15	Please refer to section 4 above (Update on resolution of outstanding Relevant Representation issues)

		Increase in fluvial flood risk elsewhere (EAFR-002)	Working on a solution	Working on a solution	Working on a solution	Working on a solution	14, 15	Please refer to section 4 above (Update on resolution of outstanding Relevant Representation issues)
		Overall reduction in fluvial flood risk (EAFR-003)	Working on a solution	Working on a solution	Working on a solution	Working on a solution	14, 15	Please refer to section 4 above (Update on resolution of outstanding Relevant Representation issues)
		Compensatory flood storage (EAFR-004)	Working on a solution	Working on a solution	Working on a solution	Working on a solution	14, 15	Please refer to section 4 above (Update on resolution of outstanding Relevant Representation issues)
		Compensatory flood storage – phasing of works (EAFR-005)	Agreed	Agreed	Agreed	Agreed	14, 15	Please refer to section 4 above (Update on resolution of outstanding Relevant Representation issues)
		Compensatory flood storage – maintenance (EAFR-006)	Agreed	Agreed	Agreed	Working on a solution	14, 15	Please refer to section 4 above (Update on resolution of outstanding Relevant Representation issues)
		Slough Dyke (main river) realignment (EAFR-007)	Agreed	Working on a solution	Working on a solution	Working on a solution	15	Please refer to section 4 above (Update on resolution of outstanding Relevant Representation issues).
		Interaction with Environment Agency flood defences (EAFR-008)	Working on a solution	Working on a solution	Working on a solution	Working on a solution	15	Please refer to section 4 above (Update on resolution of outstanding Relevant Representation issues).
		Climate change allowances sensitivity test (EAFR-009)	Agreed	Agreed	Agreed	Agreed	15	
Geomorphology	Water Framework Directive (WFD) – water body mitigation (EAFBG-002)		Agreed	Agreed	Agreed	N/A (Agreed)	N/A	
	Biodiversity net gain (BNG) – missed opportunity for watercourse improvements (EAFBG-003)		Agreed	Agreed	Agreed	Agreed	3	
Groundwater protection	Environmental Management Plan (EMP)	Dewatering Management Plan (EAGWCL-002)	Agreed	Agreed	Agreed	Agreed	3	
		Piling method statements and risk assessments	Agreed	Agreed	Agreed	Agreed	3	

		(EAGWCL-003, EAREQ-007)						
		Surface water and groundwater monitoring (EAGWCL-004)	Agreed	Agreed	Agreed	Agreed	N/A	
Permitting & consents	Required Environment Agency permits and licences (EAGCC-001)		Agreed	Agreed	Agreed	Agreed	N/A	
	Disapplication of EPR for flood risk activities		Agreed	Agreed	Agreed	Agreed	N/A	
Waste	Waste management	Disposal of waste – British Sugar landfill (EAWA-001)	Agreed	Agreed	Agreed	Agreed	3	
Water quality	Water Framework Directive (WFD)	Water quality – surface water run-off (EAWQ-001)	Agreed	Agreed	Agreed	N/A (Agreed)	N/A	
		Water quality – surface water sensitivity (EAWQ-002)	Agreed	Agreed	Agreed	N/A (Agreed)	N/A	
		WFD – detailed assessment (EAWQ-003)	Agreed	Agreed	Agreed	N/A (Agreed)	N/A	
		WFD – detailed assessment (EAWQ-004)	Agreed	Agreed	Agreed	N/A (Agreed)	N/A	
	Environmental Management Plan (EMP)	Surface water quality monitoring – frequency (EAWQ-006)	Agreed	Agreed	Agreed	N/A (Agreed)	N/A	
		Surface water quality monitoring – ecological monitoring (EAWQ-007)	Agreed	Agreed	Agreed	N/A (Agreed)	N/A	
		Surface water quality monitoring – baseline (EAWQ-008)	Agreed	Agreed	Agreed	N/A (Agreed)	N/A	
		DCO Requirement 3 – Second Iteration EMP (EAWQ-009)				Agreed	3	

	Highways England Water Risk Assessment Tool (HEWRAT)	HEWRAT – baseline (EAWQ- 005)	Agreed	Agreed	Agreed	N/A (Agreed)	N/A	
Water resources	Water usage – abstraction licencing (EAWR-001)		Agreed	Agreed	Agreed	N/A (Agreed)	N/A	
Development Consent Order (DCO)	Requirement 3 – Second Iteration Environmental Management Plan (EAREQ-001)					Agreed (Requirement)	3	
	Requirement 4 – Third Iteration Environmental Management Plan (EAREQ-002)					Agreed (Requirement)	4	
	Requirement 6 – Landscaping (EAREQ-003)					N/A (Agreed)	6	
	Requirement 8 - Contaminated land and groundwater (EAREQ-004)					Agreed (Requirement)	8	
	Requirement 14 – Flood compensatory storage (EAREQ-005)					Agreed (Requirement)	14	While we are satisfied with the wording of Requirement 14 in the draft DCO, issues relating to compensatory flood storage are presently unresolved (see issues EAFR-004, 005 & 006)
	Requirement 15 – Flood risk assessment (EAREQ-006)					Agreed (Requirement)	15	While we are satisfied with the wording of Requirement 15 in the draft DCO, issues relating to the flood risk assessment are presently unresolved (see above flood risk issues)
	Additional Requirement – piling					N/A (Agreed)	N/A	

END