

## PLANNING COMMITTEE – 26 MARCH 2019

<b>Application No:</b>	<b>18/01515/FULM (MAJOR)</b>	
<b>Proposal</b>	<b>Hydroelectric generation plant and associated infrastructure including Kaplan turbine, adjustable weir crests, new multi-species fish passes, turbine house building, hydraulic channels, screening, crane pad, electrical substation and underground cabling.</b>	
<b>Location:</b>	<b>Hazelford Weir, Hazelford Lock, Bleasby Nottinghamshire</b>	
<b>Applicant:</b>	<b>H2O Power Ltd - Mr Ewan Campbell-Lendrum</b>	
<b>Registered:</b>	<b>8<sup>th</sup> August 2018</b>	<b>Target Date: 7<sup>th</sup> November 2018</b>
	<b>Extension of time agreed in principle</b>	

The recommendation for this application is for REFUSAL based on an Environment Agency holding objection. Given the recommendation (and the caveat of the host Parish Council's comments to only support if flood risk is deemed acceptable) whilst there is no requirement under the scheme of delegation for this application to be determined by the Planning Committee, officers are mindful that the EA could remove their objection prior to the committee meeting which could change the recommendation and trigger the requirement for committee determination. In the event that officers are minded to approve the scheme, the application has been referred to the planning committee by Cllr I Walker on the grounds of the impact on water levels, impact on fisheries and impact on adjoining land uses and landowners rights. If the application is to be recommended for approval, the applicant requires a decision before the end of March 2019 due to incentives offered by OFGEM tariffs expiring on 31<sup>st</sup> March 2019. Officers have therefore sought to bring this before the planning committee at the earliest opportunity in order that in the event the recommendation does change and Members resolve to approve the scheme, the applicant would still be in a position to take advantage of the tariffs.

### The Site

This application relates to a section of the River Trent c1.3km from the settlement of Bleasby to the north-west and 1.4km from the settlement of Fiskerton to the north east. The site lies within Fiskerton parish.

At this section of the river it divides into 2 separate channels and two weirs (which control water levels for navigation between Hazelford and Gunthorpe to the south west) and which are divided by an island (Nabbs Island) and the Hazelford Lock. The two channels diverge approximately 1km up stream and converge c350m downstream. A floating boom (a string of floats that catch debris) is positioned some 45m upstream of the main weir.

The site is accessed from Boat Lane (east) which runs from Main Street and serves The Bungalow a dwelling immediately adjacent to the site and a public car park (with detached prefabricated garage) on the left hand bank of the river. This property is a single storey dwelling which has a private garden area to the eastern side and is predominantly screened from the river by mature

trees and hedgerow

Other than the river and The Bungalow the site on the left bank is adjoined by agricultural fields.

On the opposite side of the lock on the island and to the north east of the second weir there is a detached residential property (The Lock House) a two storey property which has some screening from the waterway by mature trees.

The site lies within Flood Zones 2 & 3 in accordance with Environment Agency mapping.

Public rights of way traverse the site along the river bank from Fiskerton and the agricultural fields to the north east passing to the front of The Bungalow along the river bank towards Hazelford Ferry.

A small section of the site to the south west falls within Rushcliffe Borough Council.

### **Relevant Planning History**

18/SCR/00014 - Request for screening opinion for the development subject to this application. Screening opinion issued that an EIA is not required.

17/SCR/00004 – a formal EIA screening was requested in December 2017 for a proposed hydroelectric scheme. The LPA determined that the development did not constitute a Schedule 1 development.

Rushcliffe Borough Council planning application reference 18/02762/FUL - Hydroelectric generation plant and associated infrastructure including Kaplan turbine, adjustable weir crests, new multi-species fish passes, turbine house building, hydraulic channels, screening, crane pad, electrical substation and underground cabling. – yet to be determined.

### **The Proposal**

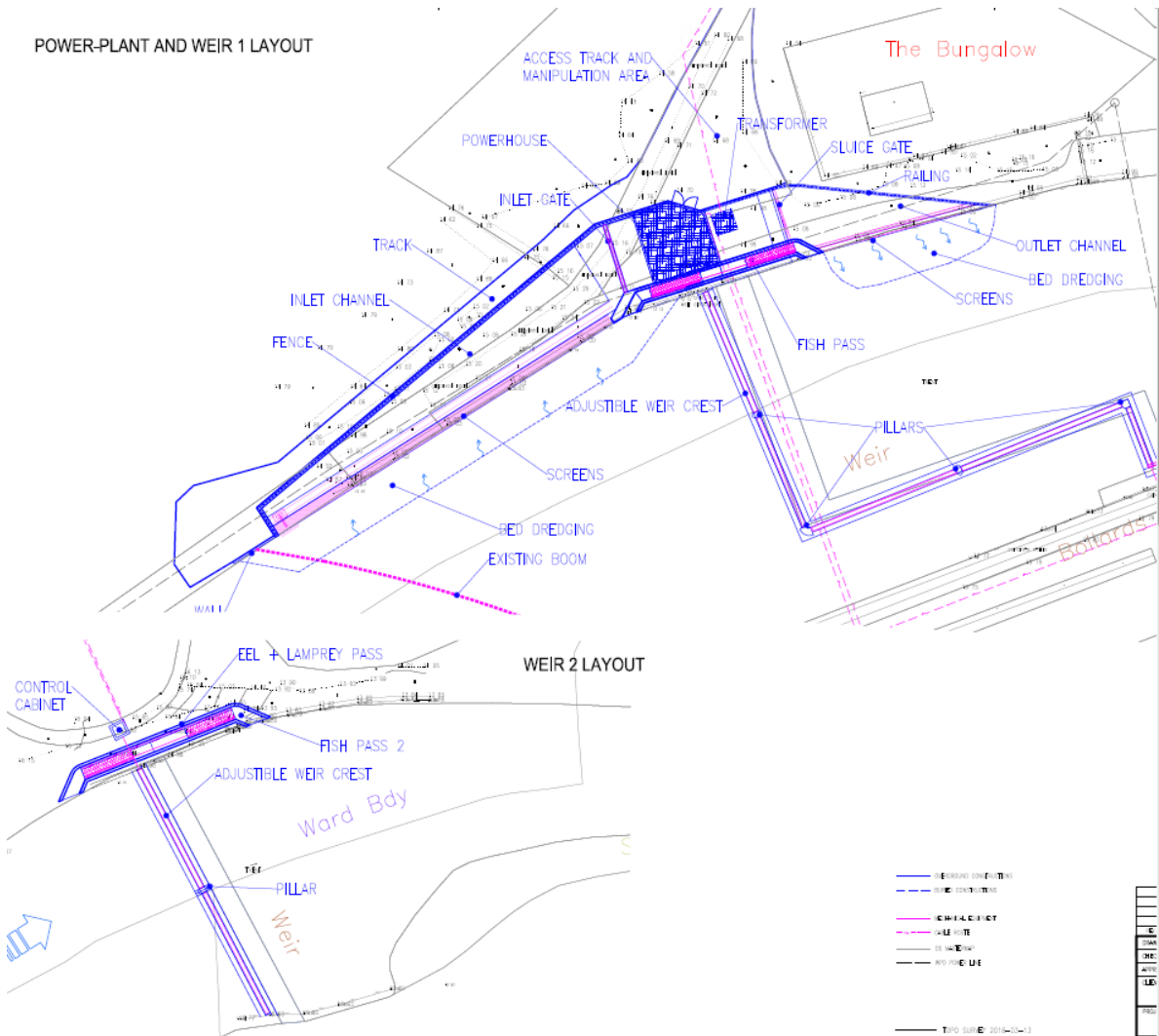
Full planning permission is sought for the erection of a hydroelectric generation plant (HEP) to generate electricity that will feed in to the national grid.

The scheme is expected to generate a peak power of 0.9mw of energy and an average annual energy production of 6.0GW which would be sufficient to power 1,540 homes and would save circa 3,120 tonnes of CO2 emissions. It is estimated that that the infrastructure would be in place for a minimum of 40 years.

This would comprise a single Kaplan Turbine (a propeller type turbine) two adjustable weir crests (that go up and down depending water levels), two multi-species fish passes (a man-made channel that allows fish to move from one part of the river to another around the weir), a turbine house building, hydraulic channels (where water will enter to move the turbine), fish screening (to prevent fish from entering), access improvements, an electrical substation and underground cabling. A new intake channel would be created approximately 78 metres long and 13 metres wide at its maximum. A screen cleaning unit would be positioned at each end of the fish screen on the northern bank. These would have a similar height to that of the turbine house.

The hydropower channels, turbine and fish screening would be sited within the northern bank of the main river channel.

One fish pass would be constructed between the hydropower scheme and weir crest on the main channel and a second between Nabbs Island and the southern bank of the river bank and the weir crest on the secondary channel.



The adjustable weir crests would be installed across both weirs; on the main weir this would consist of 3 sections supported by small pillars between each section and at each end. This would be set 0.6m above the existing crest level. On the secondary channel the adjustable crest would be set at circa 0.57m above the existing crest level and would be supported by pillars at each end. The pillars would be 400mm wide.

The weir crests will include fail-safe mechanisms to ensure that they automatically deflate, in a controlled manner, during loss of power or communications.

The adjustable weir crests would operate automatically to maintain an even weir crest.

As flow increases the hydropower scheme will gradually increase its abstraction rate to maintain an upstream water level of 13.2m until it reaches its maximum abstraction rate. As flow increases further, the weirs will gradually deflate to maintain, as far as possible, a water level equal to approximately 13.39m AOD, which is the existing mean level plus 0.3 m. The applicant proposes to monitor water levels.

The scheme would be expected to operate at full capacity for around 50% of the year and at partial capacity for the remainder. During very high flow conditions the plant would shut down to prevent flood damage.

A turbine house is proposed to the northern bank of the river to enclose the turbine, drive system and electrical equipment which would have maximum dimensions of 14m depth, 14.5m width and 6.5m height. This would be connected to an electrical substation which would have maximum measurements of circa 6.2m x2.8m and a maximum height of circa 2.3m to the north east by underground cabling.

Underground electrical cabling will also run between the turbine house and along the main weir crest across the lock approach to the secondary weir.

Access is to be created from Boat Lane passing to the rear of The Bungalow behind a copse of mature trees to serve the construction site and the operational development.

The HEP scheme would be enclosed by green mesh fencing.

By virtue of the positioning of the turbine house the existing public right of way would require diversion.

The construction period has not been specified though would involve 3 phases; comprising enabling works, the main civils phase and the main mechanical and electrical phase.

*The application is supported by the following plans and documents:-*

- Access and Construction Plan/Aerial Photo – 2110006 (07.08.18)
- Access and Construction Plan/ OS Master map – 2110007 (07.08.18)
- Site Layout – 2110008 (07.8.18)
- Power Plant Plan and Section – 2110009 (07.08.18)
- Power Plant Views - 2110010 (07.08.18) (07.08.18)
- Development Boundary Plan - 2110016 (07.08.18)
- Tree Constraints RPA Plan - TCP RPA 01 (07.08.18)
- RPA App 4 (2) (05.10.18)
- Revised Sub Station Detail - WPD\_TPY\_GRP\_HV (14.02.19)
- Flood Analysis For Weir Malfunction – Remains inflated deposited 18.02.19
- Weir Adjustment Rubber Dam – 2110017
- Weir Adjustment Rubber Dam – 2 18.02.19)
- Site Location Plan - 2110005
- Artist Impressions (07.08.19)
- Additional Flood Modelling drawings(04.02.19)
  
- Full Planning Statement and Assessment including Sections Landscape, Heritage, Noise, Ecology and Flood Risk and other users (07.08.18) (Updated with LIVA and Heritage 20.12.18)
- Ecological Appraisal and Protected Species Surveys June 2018 (07.08.18) (Updated 05.10.18 and 20.12.18) (Addendum 08.02.19)
- Fisheries and Geomorphology Assessment (07.08.18) and (17.01.19)
- Flood Risk assessment deposited (07.08.18)(Updated 20.12.18 and 15.02.19)
- Updated Hydraulic Modelling of Inflatable weir (12.03.19)
- Hydraulic Data Revisions (dated 20.12.18)(18.02.18)
- Initial Method Statement (07.08.18)

- Tree Survey and Arboricultural Implications (07.08.18)(Updated 05.10.18)
- Water Framework Directive (07.08.18) (Updated 17.01.19)
- Details of Construction Traffic (16.11.18)
- Assessment Of Cumulative Impacts (17.01.19)
- Shadow HRA deposited 08.02.19 (Addendum 18.02.19) (Update 08.03.19)
- Hydraulic Data Revision (15.02.19) (21.02.19)
- Weir Malfunction Flood Extent and low Flow Analysis Plots (27.02.19)

### **Publicity**

8 neighbours have been notified by individual letters. Site notices have been posted in proximity to the site and a notice displayed in the local press.

### **Planning Policy Framework**

#### **The Development Plan**

*Newark and Sherwood Amended Core Strategy Adopted March 2019*

Spatial Policy 3 – Rural Areas  
 Spatial Policy 7 – Sustainable Transport  
 Core Policy 9 – Sustainable Design  
 Core Policy 10 – Climate Change  
 Core Policy 12 – Biodiversity and Green Infrastructure  
 Core Policy 13 – Landscape Character  
 Core Policy 14 – Historic Environment

*Newark and Sherwood Allocations and Development Management DPD Adopted July 2013*

Policy DM4 – Renewable and Low Carbon Energy Generation  
 Policy DM5 – Design  
 Policy DM7 – Biodiversity and Green Infrastructure  
 Policy DM8 – Development in the Open Countryside  
 Policy DM9 – Protecting and Enhancing the Historic Environment  
 Policy DM12 – Presumption in Favour of Sustainable Development

### **Other Material Planning Considerations**

National Planning Policy Framework 2019  
 Planning Practice Guidance 2014 including updates 2018  
 Newark and Sherwood Amended Core Strategy DPD 2017  
 Newark and Sherwood Landscape Character Assessment SPD  
 The Town and Country Planning (Environmental Impact Assessment) Regulations 2017  
 The Conservation of Habitats and Species Regulations 2017 (Habitats Regulations)  
 The Climate Change Act 2008

### **Consultations**

**(Host Parish) Fiskerton Parish Council - comments received 18.09.18**

No objections providing that conservation, flooding and wildlife concerns are fully and appropriately considered and managed and addressed.

#### **Bleasby Parish Council – comments received 11.09.18**

Bleasby Parish Council supports the application subject to there being no increased flood risk for surrounding areas. The Council would like to see facilities for educational purposes.

#### **Syerston Parish Council – comments received 04.09.18**

Thank you for the opportunity to comment on the above Planning Application. Syerston Parish accepts that a low impact scheme to produce HEP should be supported providing that conservation, flooding and wildlife concerns, are fully and appropriately addressed and managed.

#### **Rushcliffe Borough Council – comments received 05.11.18**

I write to you in relation to your consultation request regarding the above referenced planning application. Rushcliffe Borough Council have been consulted given the sites location directly adjacent (and partially within) the authorities border with Newark and Sherwood District Council. I note this developer has applied for several schemes along the River Trent, some of which lie within the Rushcliffe Authority Area. With regard to this scheme I note from the records available to me there appears to be a section at the centre of the southern weir which falls within Rushcliffe Borough Council Authority. Although you may be at liberty to determine this application as it stands, I would advise you to make the developer aware that should permission be forthcoming, they would not be able to implement until such time as permission has also been granted by Rushcliffe Borough Council for the works.

In general I note there are no sensitive receptors in proximity to the site on the south side of the river within the RBC boundary. I further note limited works to the southern extents, with the main alterations the raised weir crest. The project lies within an engineered section of the river as viewed from the southern boundaries and therefore the works proposed would not likely alter the visual character and amenity of the wider area as viewed from the south.

Other aspects largely revolve around the considerations of technical consultees for which RBC will not be providing comment. You will of course be required to conduct a screening opinion as to whether the development requires an Environmental Impact Assessment.

Given the above, there are not considered to be any fundamental objections from an RBC perspective should technical issues be resolved. It is considered that RBC will have full opportunity to consider the development when any subsequent application for the works to be submitted to the Borough Council for consideration.

#### **Environment Agency - Comments received 21.02.19**

1. The Environment Agency (EA) Objects to this application.
2. This is because the applicant has not provided a flood risk assessment (FRA) in accordance with the specifics first detailed in the EA's correspondence with the applicant dated 22/02/2018.

3. The FRA as required would clearly demonstrate the impact of the increase water height in the water channel due to the raised weir height. It would also determine the impacts of various flood events and what mitigation measures would need to be taken.
4. Having looked at the issue, the EA considers that the risk posed by increasing the water level up to 37cm is low (The adjustable weir will only increase water levels during low and medium flow conditions), but cannot remove the objection until the modelling has been carried out, properly assessed and the impact is fully understood. The EA will do all it can to assist and will fast track the assessment (normally a 4 week process to be carried out in 15 working days) to determine the actual risk and effect of raising the weir. As yet, the FRA model has not been received from the applicant.

### **Previous comments received 19.02.19**

Please note the following response is in regards to the most recent Flood Risk Assessment (Hazelford Weir HEP: Flood Risk Assessment, Dec 2018, Renewables First) as provided by the applicant. This is not the current Flood Risk Assessment (Hazelford Weir HEP: Flood Risk Assessment, July 2018, Renewables First) that is currently present on the Newark and Sherwood planning website for this application. Today's date is 18/02/2019.

In the absence of an acceptable Flood Risk Assessment (ref: Hazelford Weir HEP: Flood Risk Assessment, Dec 2018, Renewables First) we object to this application and recommend that planning permission is refused.

Reason(s)

The submitted FRA does not comply with the requirements for site-specific flood risk assessments, as set out in paragraphs 30 to 32 of the Flood Risk and Coastal Change section of the planning practice guidance. The FRA does not therefore adequately assess the development's flood risks. In particular, the FRA fails to;

- Consider how people will be kept safe from the identified flood hazards,
- Consider how a range of flooding events (including extreme events) will affect people and property.

### Overcoming our objection

The upstream reach of Hazelford Weir extends roughly 7.2km to Gunthorpe Weir. The Dover Beck which is a main river tributary is present within this reach. It should also be noted there is also a number of ordinary watercourses, drainage channels and flood defence infrastructures along this reach.

### Modelled Outlines, Model Review

In previous comments provided to the applicant we requested for modelled outlines for the River Trent and the Dover Beck for a range of flooding events. We still haven't yet received these outlines. The models should be adjusted to imitate the proposed changes (installation of infrastructure, weir alterations) and run for the whole range of return periods from the 20% Annual Exceedance Probability (AEP) event or lower, up to the 0.1% AEP event (including 1% AEP plus climate change scenarios). We require this information to review the extents which will be flooded more frequently after the proposed HEP scheme has been introduced.

Hydraulic models are available from the Environment Agency for the River Trent, River Trent and Tributaries at Newark SFRM2, Halcrow, July 2011 and for the Dover Beck, Nottingham Tributaries SFRM, JBA, January 2014.

Any models produced for this application will need to be reviewed by the Environment Agency. They are reviewed to ensure they meet the required standards. It takes 4 weeks for a model to be reviewed. The applicant has been previously informed of this in pre app correspondence (Water resources, pre application enquiry letter, dated 22/02/2018 to Matthew Lomax).

#### Backwater Effect, Long Profile

The Flood Risk Assessment (FRA) and the Assessment of Cumulative Impacts Report (ref: River Trent HEP Schemes: assessment of cumulative impacts, APEM P000003266, January 2019) fails to consider the back water effects from the proposed Hydroelectric Power (HEP) Scheme at Hazelford Weir.

The FRA and assessment of cumulative impacts states water levels are expected to rise during low or moderate flows by 0.30m – 0.37m. The applicant has failed to provide the distance which will be impacted by the raised water. Previous comments provided by the Environment Agency have requested for the long profile from the proposed Hazelford Weir. We require the long profile for the Q9 flow condition and a range of flow conditions. The assessment of cumulative impacts report identifies the effects of raised water levels during low or moderate flows as being “relatively minor” but no substantial evidence has been provided to support this.

The smaller watercourses and drainage channels upstream respond more quickly to intense rainfall events which may result in flooding of upstream communities before any change in water level is recorded on the River Trent at Hazelford Weir. With the reduced capacity in the channel due to the backwater effect, these flood events could occur more frequently and depths of floodwater could be increased.

In order for the adjustable weir to react to upstream events we would require the scheme to incorporate a network of monitoring gauges upstream at key locations to be agreed with us in writing.

The FRA should assess this risk and demonstrate appropriate mitigation.

To overcome our objection, please re-consult us with an FRA which addresses the points highlighted above. We will respond within 21 days of receiving the revised FRA.

#### Informative:

The Local Planning Authority, as the decision-maker, should also consult with the Lead Local Flood Authority (Nottinghamshire County Council) to satisfy themselves of localised changes to land drainage patterns impacting upon river users and infrastructure providers as a result of the raising of Hazelford Weir.

#### Flood warning and emergency response

In a weir malfunction scenario, a number of additional properties will be flooded; 2 in a 5% AEP event, an additional 1 in a 1% AEP event, an additional 30 in a 1% AEP plus climate change event



and an additional 5 in a 0.1% AEP event, making a total of 38 properties at increased flood risk. However, the adjustable weir contains fail safes (Float deflation system, Blow-off tank and Pressure relief valves). It is not in our remit to judge if this adequate and advise for you to consult your emergency planners and the emergency services.

We do not normally comment on or approve the adequacy of flood emergency response procedures accompanying development proposals, as we do not carry out these roles during a flood. Our involvement with this development during an emergency will be limited to delivering flood warnings to occupants/users covered by our flood warning network.

The planning practice guidance to the National Planning Policy Framework states that, in determining whether a development is safe, the ability of residents and users to safely access and exit a building during a design flood and to evacuate before an extreme flood needs to be considered. One of the key considerations to ensure that any new development is safe is whether adequate flood warnings would be available.

In all circumstances where warning and emergency response is fundamental to managing flood risk, we advise local planning authorities to formally consider the emergency planning and rescue implications of new development in making their decisions. As such, we recommend you consult with your emergency planners and the emergency services to determine whether the proposals are safe in accordance with the guiding principles of the Planning Practice Guidance (PPG).

#### Environmental permit - advice to applicant

The Environmental Permitting (England and Wales) Regulations 2016 require a permit to be obtained for any activities which will take place:

- on or within 8 metres of a main river (16 metres if tidal)
- on or within 8 metres of a flood defence structure or culvert (16 metres if tidal)
- on or within 16 metres of a sea defence
- involving quarrying or excavation within 16 metres of any main river, flood defence (including a remote defence) or culvert
- in a floodplain more than 8 metres from the river bank, culvert or flood defence structure (16 metres if it's a tidal main river) and you don't already have planning permission.

For further guidance please visit <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits> or contact our National Customer Contact Centre on 03708 506 506. The applicant should not assume that a permit will automatically be forthcoming once planning permission has been granted, and we advise them to consult with us at the earliest opportunity.

It is noted that a permit application has been submitted for this proposal.

#### **Comments received 25.09.18**

In the absence of an acceptable Flood Risk Assessment (FRA) we object to the proposal as currently submitted for the following reasons.

Reasons:

The submitted FRA does not comply with the requirements for site-specific flood risk assessments, as set out in paragraphs 30 to 32 of the Flood Risk and Coastal Change section of the planning

practice guidance. The FRA does not therefore adequately assess the development's flood risks. In particular, the FRA fails to:

- Consider how people will be kept safe from identified flood hazards;
- Consider how a range of flooding events (including extreme events) may affect people and property.

The current FRA fails to consider the impact that the proposals would have on the modelled flood outline extents for the River Trent and the Dover Beck. To overcome this, we would expect a revised FRA to fully model the various flood events, up to and including the 1 in 100 year event plus an allowance for climate change, for the post development scenario.

We require more detail on the back water effects from the proposed Hazelford Weir. Please provide the long profile of the back water along the River Trent (WFD ID: GB104028053110) and the Dover Beck (WFD ID: GB104028053370). Please supply the long profile for both the pre development and post development scenarios.

We also require a table showing the different stages (operational modes) in operating the adjustable weir. Each mode should include the flow range (cubic metres per second), flow exceedance range, water level (metres above ordnance datum), and bladder status (inflated/deflated).

We also require confirmation of the time it would take for the adjustable weir to deflate under emergency conditions. It may be appropriate to have a separately controlled section of the adjustable weir that can act as a flood gate. This would allow greater control of the water level while the adjustable weir is deflating. The introduction of a separately controlled section would help in dropping the water level quickly if a fast response is required. The separately controlled section can also be used as a failsafe if the adjustable weir was to remain fully inflated. The FRA should also consider residual risk scenarios such as a sudden failure of the bladder.

The current FRA states that the proposed development would have a negligible effect on flood risk as it will only remove a small section (200 cubic metres) of the functional flood plain. None the less, this doesn't mean the development is exempt from having to provide flood plain storage. We expect further investigation into whether or not this is required. However, we are mindful that the excavations of the inlet/outlet channel may contribute to increasing flood storage within the flood plain. It is suggested to calculate the extra volume that would be produced from the excavations of the channels, to demonstrate the exact net gain/loss that would be provided.

Finally, the FRA should confirm the flood risk vulnerability classification of the development, referring to the planning practice guidance (PPG) for confirmation. This will ultimately determine which climate change allowances should be used for the development's FRA (40%, 50% etc.), particularly when defining the levels for the control house infrastructure.

#### Overcoming our objection

To overcome our objection, the applicant will need to submit a revised FRA which covers the deficiencies highlighted above and demonstrates that the development is safe without increasing risk elsewhere. Where possible, it should reduce flood risk overall.

If this cannot be achieved, we are likely to maintain our objection. Please consult us with the revised FRA and we'll respond within 21 days of receiving it.

## Informative advice to the applicant and LPA – Permitting requirements

The proposed hydropower scheme will require one or more of an FRA permit under the Environmental Permitting (England and Wales) Regulations 2016, an impoundment licence under Section 25 of the Water Resources Act 1991, an abstraction licence under Section 24 of the Water Resources Act 1991, and a fish pass approval under the Salmon and Freshwater Fisheries Act 1975.

At this moment in time, our permitting teams have requested additional information to meet these permitting requirements and to assess any impact upon the aquatic ecology. We are mindful that the planning system is not the appropriate place to address or resolve these matters which will be regulated under separate legislation, i.e. the environmental permitting regulations.

In determining the various permits and licences that will be required for this development, we will consider how the development affects water biodiversity and the aquatic environment, in line with the relevant European and domestic law. We'll also assess its compliance with the Humber River Basin Management Plan (RBMP).

Additionally, there is significant conservation and fisheries value along the River Trent valley, especially at this site. This will be considered when reviewing the application. We would like to point out that where evidence shows there will be potential impacts on known protected species, a Habitats Regulations Assessment (HRA) would be required.

Finally, we would like to take this opportunity to highlight that we do not consider issues such as local amenity etc. Your Authority will need to satisfy yourselves that the applicant has taken adequate measures to reduce the impacts on amenity matters such as angling. This is not for the Environment Agency to consider in our role as a statutory consultee.

## **Nottinghamshire County Council Policy – comments received 17.09.18**

### National Planning Context

In terms of the County Council's responsibilities the following elements of national planning policy and guidance are of particular relevance.

### Waste

The National Planning Policy for Waste (NPPW) sets out the Government's ambition to work towards more sustainable and efficient resource management in line with the waste hierarchy. Positive planning is seen as key to delivering these waste ambitions through supporting sustainable development. This includes ensuring that waste management is considered alongside other spatial planning concerns and helping to secure the re-use and recovery of waste wherever possible.

Paragraph 8 of the NPPW states that:

'When determining planning applications, all planning authorities should ensure that:

- the likely impact of proposed non-waste related development on existing waste management facilities, and on sites and areas allocated for waste management, is acceptable and does not prejudice the implementation of the waste hierarchy and/or the efficient operation of such facilities;

- new, non-waste development makes sufficient provision for waste management and promotes good design to secure the integration of waste management facilities with the rest of the development, and, in less developed areas, with the local landscape. This includes providing adequate waste storage facilities at residential premises, for example by ensuring that there is sufficient and discrete provision for bins, to facilitate a high quality, comprehensive and frequent household collection service;
- the handling of waste arising from the construction and operation of development maximises reuse/recovery opportunities and minimises off-site disposal.'

In Nottinghamshire, relevant policies are set out in the Nottinghamshire and Nottingham Replacement Waste Local Plan: Part 1 – Waste Core Strategy (December 2013).

#### Minerals

Section 17 of the National Planning Policy Framework (NPPF) covers the sustainable use of minerals. Paragraph 203 points out that 'It is essential that there is a sufficient supply of minerals to provide the infrastructure, buildings, energy and goods that the country needs.'

Paragraph 204 states that planning policies should:

- 'safeguard mineral resources by defining Mineral Safeguarding Areas; and adopt appropriate policies so that known locations of specific minerals resources of local and national importance are not sterilised by non-mineral development where this should be avoided (whilst not creating a presumption that the resources defined will be worked);
- set out policies to encourage the prior extraction of minerals, where practical and environmentally feasible, if it is necessary for non-mineral development to take place'.

In Nottinghamshire, minerals safeguarding and consultation areas are defined in the emerging Nottinghamshire Minerals Local Plan (Draft Plan Consultation 2018) and supported by Policy SP8, which also covers prior extraction.

In terms of the role of local planning authorities in planning for minerals, paragraph 206 of the NPPF states that: 'Local planning authorities should not normally permit other development proposals in Mineral Safeguarding Areas where if it might constrain potential future use for mineral working'.

The national Planning Practice Guidance provides further information on the role of district councils in this regard, stating that 'they have an important role in safeguarding minerals in 3 ways:

- having regard to the local minerals plan when identifying suitable areas for non-mineral development in their local plans. District Councils should show Mineral Safeguarding Areas on their policy maps;
- in those areas where a mineral planning authority has defined a Minerals Consultation Area, consulting the mineral planning authority and taking account of the local minerals plan before determining a planning application on any proposal for non-minerals development within it; and
- when determining planning applications, doing so in accordance with development policy on minerals safeguarding, and taking account of the views of the mineral planning authority on the risk of preventing minerals extraction.'

#### Transport

Section 9 of the NPPF addresses the issue of sustainable transport. The NPPF, in paragraph 111, requires all developments which will generate significant amounts of movement to provide a travel plan and the application for such a development to be 'supported by a transport statement or transport assessment so that the likely impacts of the proposal can be assessed'. It also states, in paragraph 108, that it should be ensured that 'appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of location and its location' and 'any significant impacts from the development on the transport network (in terms of

capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree’.

### Healthy communities

Paragraph 91 of the NPPF points out that ‘Planning policies and decisions should aim to achieve healthy, inclusive and safe places which ....enable and support healthy lifestyles, especially where this would address identified local health and well-being needs...’

With regard to public rights of way, paragraph 98 states that they should be protected and enhanced, ‘including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks...’

### Transport and Flood Risk Management

The County Council as Highway Authority and Local Lead Flood Authority is a statutory consultee to Local Planning Authorities and therefore makes separate responses on the relevant highway and flood risk technical aspects for planning applications. In dealing with planning applications the Highway Authority and Local Lead Flood Authority will evaluate the applicants proposals specifically related to highway and flood risk matters only. As a consequence developers may in cases where their initial proposal raise concern or are unacceptable amend their initial plans to incorporate revisions to the highway and flood risk measures that they propose. The process behind this can be lengthy and therefore any initial comments on these matters may eventually be different to those finally made to the Local Planning Authority. In view of this and to avoid misleading information comments on planning applications made by the Highway Authority and Local Lead Flood Authority will not be incorporated into this letter. However should further information on the highway and flood risk elements be required contact should be made directly with the Highway Development Control Team and the Flood Risk Management Team to discuss this matter further with the relevant officers dealing with the application.

### Minerals and Waste

The adopted Nottinghamshire and Nottingham Replacement Waste Local Plan, Part 1: Waste Core Strategy (adopted 10 December 2013) and the saved, non-replaced policies of the Waste Local Plan (adopted 2002), along with the saved policies of the Nottinghamshire Minerals Local Plan (adopted 2005), form part of the development plan for the area. As such, relevant policies in these plans need to be considered. In addition, Minerals Safeguarding and Consultation Areas have been identified in Nottinghamshire and in accordance with Policy SP8 of the emerging draft Minerals Local Plan (July 2018) these should be taken into account where proposals for non-minerals development fall within them.

### Minerals

In relation to the Minerals Local Plan, the site is within a Minerals Safeguarding and Consultation Area for sand and gravel. Given that the subject of this application is hydroelectric generation plant, it is unlikely that the proposed development would pose a sterilisation risk to a potential future extraction area. Therefore there are no safeguarding concerns in respect to this site and the County Council does not wish to raise any objections to the proposal from a minerals perspective.

### Waste

In terms of the Waste Core Strategy, there are no existing waste sites within the vicinity of the site whereby the proposed development could cause an issue in terms of safeguarding existing waste management facilities (as per Policy WCS10). As set out in Policy WCS2 ‘Waste awareness, prevention and re-use’ of the Waste Core Strategy, the development should be ‘designed, constructed and implemented to minimise the creation of waste, maximise the use of recycled

materials and assist the collection, separation, sorting, recycling and recovery of waste arising from the development.’ In accordance with this, as the proposal is likely to generate significant volumes of waste through the development or operational phases, it would be useful for the application to be supported by a waste audit. Specific guidance on what should be covered within a waste audit is provided within paragraph 049 of the Planning Practice Guidance.

It is noted that application is supported by a WFD Assessment and a Fisheries and Geomorphology Assessment. However, NCC does not have the expertise to comment on either of these, and would suggest that the LPA appoint someone who does to give the application the necessary level of scrutiny. Consultation with the Environment Agency fisheries officers should also be carried out.

### Conclusion

It should be noted that all comments contained above could be subject to change, as a result of ongoing negotiations between the County Council, the Local Planning Authority and the applicants. These comments are based on the information supplied and are without prejudice to any comments the County Council may make on any future planning applications submitted for this site.

### **Natural England – Comments received 12.03.19**

#### **Objection withdrawn**

Following receipt of further information on 08/03/2019 Natural England is satisfied that the specific issues we have raised in previous correspondence relating to this development have been resolved.

We concur with the shadow Appropriate Assessment and therefore consider that there will be no adverse effect on integrity on the Humber Estuary Special Area of Conservation (SAC).

The Shadow Habitat Regulations Assessment for Hazelford Weir (March 2019) which includes an Appropriate Assessment, was prepared on behalf of the applicant and shows that the proposal will not result in adverse effects on the integrity of the site Humber Estuary SAC. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions, providing that all mitigation measures are appropriately secured in any permission given.

Natural England notes that the Habitats Regulations Assessment (HRA) has not been produced by your authority, but by the applicant. As competent authority, it is your responsibility to produce the HRA. We provide the advice enclosed on the assumption that your authority intends to adopt this HRA to fulfil your duty as competent authority

### **Comments Received 21.02.19**

Thank you for your consultation on the above dated 12 February 2019 which was received by Natural England on the same date.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

## SUMMARY OF NATURAL ENGLAND'S ADVICE

### FURTHER INFORMATION REQUIRED TO DETERMINE IMPACTS ON DESIGNATED SITES

As submitted, the application could have potential significant effects on Humber Estuary Special Area of Conservation. Natural England requires further information in order to determine the significance of these impacts and the scope for mitigation.

The following information is required:

#### **Appropriate protection for lamprey ammocoetes**

Without this information, Natural England may need to object to the proposal.

Please re-consult Natural England once this information has been obtained.

Natural England's advice on other issues is set out below.

#### **Additional Information required**

Natural England notes the submission of the document "*Review of Hazelford Weir Shadow Habitats Regulations Assessment*" which was received by your authority on 20/02/2019. We agree with this report's conclusion that the Shadow HRA, which was submitted by the applicant, is procedurally correct in so far as it recognises that HRA is a staged process with a range of tests that have to be applied.

**However we note that the report explains that it does not extend to a detailed ecological analysis of the Shadow HRA or the proposed mitigation proposals. We therefore reiterate the concerns set out in our email of 18/02/2019 that, based on the ecological information provided within the Shadow HRA, Natural England advises that it is not possible for you to conclude no impact on the integrity of the Humber Estuary SAC as a result of the proposed development.**

Natural England's advice with respect to this application is based on the requirement to protect the lamprey population i.e. river lamprey, *Lampetra fluviatilis*, and sea lamprey, *Petromyzon marinus*, that form part of the interest for which the Humber Estuary Special Area of Conservation (SAC).

The outcome that Natural England advises in this proposal (and other Hydropower proposals along the River Trent) is to ensure that the fish pass options and lamprey passage improvements provide unhindered migratory passage for lamprey at all stages of their life cycle. Our particular concern with the proposal at Hazelford Weir is the risk of entrainment within the Kaplan turbine of lamprey ammocoetes as they move downstream back to the Humber Estuary SAC following spawning. We have therefore advised in our previous correspondence that adequate protection could be provided with an intake screen of an appropriate mesh size to prevent the ammocoetes entering the turbine with the risk of injury or mortality.

We note that in the application (APEM Fisheries & Geomorphology document) that a 9mm mesh size for the intake screen has been proposed. However we have advised that the appropriate mesh size should be significantly finer and the maximum of 3mm is recommended, based on the Environment Agency best practice screening document<sup>1</sup>. Further to this advice we can

recommend that it is important for the screen to be of 3mm mesh at the bottom of the river up to ~50 (TBC) centimetres high from the substrate. This will reduce the risk of entrainment to elvers and juvenile lamprey who predominantly live in the substrate. We suggest that the rest of the screen could be of 6mm mesh size.

A deviation from a 3mm mesh screen would only be considered if a combination of other specific site features were in place to give a comparable high level of protection to the lamprey. The applicant would need to provide you with an assessment backed up by sound evidence of why this scheme will not impact lamprey populations if a larger mesh screen is used. We advise that the applicant follows technical advice from the Environment Agency Fisheries team for such an assessment.

### **Comments received 28.01.19**

#### SUMMARY OF NATURAL ENGLAND'S ADVICE

#### FURTHER INFORMATION REQUIRED TO DETERMINE IMPACTS ON DESIGNATED SITES

As submitted, the application could have potential significant effects on the Humber Estuary Special Area of Conservation. Natural England requires further information in order to determine the significance of these impacts and the scope for mitigation.

The following information is required:

Habitat Regulations Assessment - to include confirmation of details to prevent significant effects on lamprey ammocoetes including entrainment risk and habitat loss.

Without this information, Natural England may need to object to the proposal. Please re-consult Natural England once this information has been obtained. Natural England's advice on other issues is set out below.

#### Internationally and nationally designated sites

The application site affects the Humber Estuary Special Area of Conservation (SAC) which is a European designated site (also commonly referred to as Natura 2000 sites), and therefore has the potential to affect its interest features. European sites are afforded protection under the Conservation of Habitats and Species Regulations 2017, as amended (the 'Habitats Regulations').

Special Areas of Conservation (SACs) are designated for rare and vulnerable habitats and species. Many SAC sites are designated for mobile species that may also rely on areas outside of the SAC boundary. These supporting habitats may be used by SAC populations or some individuals of the population for some or all of the time. These supporting habitats can play an essential role in maintaining SAC species populations, and proposals affecting them may therefore have the potential to affect the SAC. In this case there is the potential for impacts on mobile species, i.e. river lamprey, *Lampetra fluviatilis*, and sea lamprey, *Petromyzon marinus*, that form part of the interest for which the Humber Estuary SAC is designated, but such impacts may occur outside the site boundary.

In considering the European site interest, Natural England advises that you, as a competent authority under the provisions of the Habitats Regulations, should have regard for any potential impacts that a plan or project may have<sup>1</sup>. The Conservation objectives for each European site may be helpful in assessing what, if any, potential impacts a plan or project may have.



### Additional Information required

The consultation documents provided by your authority do not include information to demonstrate that the requirements of Regulations 63 and 64 of the Habitats Regulations have been considered by your authority, i.e. the consultation does not include a Habitats Regulations Assessment.

We recommend you obtain the following information to help undertake a Habitats Regulation Assessment:

Confirmation of details of exclusion provisions to prevent entrainment of lamprey Ammocoetes

We acknowledge that the submitted document “Hazelford Weir Hydroelectric Project Water Framework Directive (amended)” recognises that the Hazelford weir is currently a barrier to the upstream movement of lamprey (and other fish species) and the proposed multi fish pass, which includes provision for lamprey, would allow for greater fish passage which is welcome. We note that the fish pass would adhere to best practice guidelines. We note that at paragraph 3.17 bullet point 8 of this assessment, that intake screening with a 9 mm mesh size is mentioned which is considered would be sufficient to prevent entrainment of larger resident yellow eels and downstream migrating silver eels. In Chapter 8 of the Fisheries and Geomorphology Assessment (amended) Intake Screening is discussed and it concludes that a 9mm mesh size is sufficient given the low intake approach velocities and that the proposed eel pass which would provide the primary route of upstream passage is located on the opposite bank to the intake. We also note that in section 4.3 of this assessment that lamprey habitat is discussed and that it concludes that no significant changes in the quality and extent of available habitat are expected after commencement of the HEP scheme. Natural England’s concern with the proposal is the risk of entrainment of lamprey ammocoetes as they move downstream back to the Humber Estuary SAC following spawning.

We would wish to ensure that, as the population of lamprey increases, there is adequate protection with a screen which will be of an appropriate mesh size to prevent the ammocoetes entering the turbine with the risk of injury or death. We would also wish to ensure that habitat for lamprey has been fully considered by the application.

### **Comments received 25.01.19**

Further to our recent correspondence and conversations with regards to the above current applications we are writing to clarify the situation with respect to the need for a Habitat Regulations Assessment for these proposed developments.

#### Impact on Humber Estuary SAC

The potential for offsite impacts needs to be considered in assessing what, if any, potential impacts the proposal may have on European sites. Special Areas of Conservation (SACs) are designated for rare and vulnerable habitats and species. Many SAC sites are designated for mobile species that may also rely on areas outside of the SAC boundary. These supporting habitats may be used by SAC populations or some individuals of the population for some or all of the time. These supporting habitats can play an essential role in maintaining SAC species populations, and proposals affecting them may therefore have the potential to affect the SAC. In this case there is

the potential for impacts on mobile species, i.e. river lamprey, *Lampetra fluviatilis*, and sea lamprey, *Petromyzon marinus*, that form part of the interest for which the Humber Estuary Special Area of Conservation (SAC) is designated, but such impacts may occur outside the site boundary.

#### Advice on Habitats Regulation Assessment

We advise that your authority has a record of its own Habitats Regulations Assessment of the potential impacts of these mobile species.

You may wish to refer to evidence that has been submitted with these applications. If you do so you should take account of the potential difference in the scope of these documents and the requirements for an HRA.

Since the recent ruling made by the Court of Justice of the European Union (the CJEU)<sup>1</sup> any “embedded” mitigation relating to protected sites under the Habitat Regulations 2017 Regulation 63 (1) should no longer be considered at the screening stage. Any element of a plan or project requiring mitigation should be taken forward and considered at the Appropriate Assessment stage with an assessment of effect on site integrity.

As a result of the ruling you will need to come to your own view and, if Likely Significant

Effects are identified then this should be followed through to Appropriate Assessment. You should seek your own legal advice on this.

Licensing Natural England will also need to be consulted under the Habitat Regulations by the Environment Agency regarding the licencing process (Abstraction Licence, Impoundment Licence and Transfer Licence).

We would be happy to comment further should the need arise but if in the meantime you have any queries please do not hesitate to contact us.

#### **Comments received 10.09.18**

##### SUMMARY OF NATURAL ENGLAND’S ADVICE

##### NO OBJECTION

Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts and has no objection.

Natural England’s advice on other natural environment issues is set out below.

##### Other advice

Further general advice on the consideration of protected species and other natural environment issues is provided at Annex A.

Should the proposal change, please consult us again.

#### **Tree Officer – Comments received - 12.10.18**

The amended details still give little clarity as to which trees are to be removed, the potential impact of proposals on the remaining or any propose mitigation planting.

Recommend any approval has attached conditions:

1. No works or development shall take place until an arboricultural method statement and scheme for protection of the retained trees/hedgerows has been agreed in writing with the District Planning Authority.

This scheme shall include:

- a. A plan showing details and positions of the ground protection areas.
- b. Details and position of protection barriers.
- c. Details and position of underground service runs and working methods employed should these runs be within the designated root protection area of any retained tree/hedgerow on or adjacent to the application site.
- d. Details of any special engineering required to accommodate the protection of retained trees/hedgerows (e.g. in connection with foundations, bridging, water features, hard surfacing).
- e. Details of construction and working methods to be employed for the installation of drives and paths within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
- f. Details of working methods to be employed with the demolition of buildings, structures and surfacing within or adjacent to the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
- g. Details of timing for the various phases of works or development in the context of the tree/hedgerow protection measures.

2. All works/development shall be carried out in full accordance with the approved tree/hedgerow protection scheme.

### 3. Prohibited activities

The following activities must not be carried out under any circumstances.

- a. No fires to be lit on site within 10 metres of the nearest point of the canopy of any retained tree/hedgerow on or adjacent to the proposal site.
- b. No equipment, signage, fencing etc shall be attached to or be supported by any retained tree on or adjacent to the application site,
- c. No temporary access within designated root protection areas without the prior written approval of the District Planning Authority.
- d. No mixing of cement, dispensing of fuels or chemicals within 10 metres of any retained tree/hedgerow on or adjacent to the application site.
- e. No soak- aways to be routed within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
- f. No stripping of top soils, excavations or changing of levels to occur within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
- g. No topsoil, building materials or other to be stored within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
- h. No alterations or variations of the approved works or protection schemes shall be carried out without the prior written approval of the District Planning Authority.

4. No works or development shall take place until the District Planning Authority has approved in writing the full details of every tree, shrub, hedge to be planted (including its proposed location, species, size and approximate date of planting) and details of tree planting pits including associated irrigation measures, tree staking and guards.

5. The approved landscaping scheme shall be carried out within 6 months of the first occupation of any building or completion of the development, whichever is soonest, unless otherwise agreed in

writing with the District Planning Authority. If within a period of 7 years from the date of planting any tree, shrub, hedgerow or replacement is removed, uprooted, destroyed or dies then another of the same species and size of the original shall be planted at the same place. Variations may only be planted on written consent of the District Planning Authority.

Reasons.

To preserve and protect existing trees and new trees which have and may have amenity value that contribute to the character and appearance of the area.

### **Comments received 22.08.18**

Although a tree survey has been submitted to support this application it only covers trees adjacent to Weir 2.

No survey has been carried out for Weir 1 where this is also likely to be some impact on trees. The submitted tree survey plan and any other submissions need to show an overlay of trees and RPAs onto the proposed layouts in order to evaluate potential constraints/impact of trees.

### **Nottinghamshire Wildlife Trust – Comments received 28.02.19**

Having reviewed the Ecological Appraisal and Protected Species Surveys (Fauna Forest Ecology, June 2018) document Preliminary Ecological Appraisal and Protected Species Surveys Hazelford Lock (Fauna Forest Ecology Limited, February 2019) we have the following comments. The application site includes two Local Wildlife Sites (LWS): River Trent, Gunthorpe to Fiskerton (LWS 2/694) and The Nabbs (LWS 2/695) designated for its gravel colony habitat.

Local Wildlife Sites are afforded protection due to their substantive nature conservation value. Their selection takes into consideration the most important, distinctive and threatened species and habitats within a national, regional and local context, making them some of our most valuable urban and rural wildlife areas. N&S Policy DM7 requires consideration of sites of regional or local importance, including justification for the development outweighing the nature conservation value of the site, as well as use of the 'mitigation hierarchy' Careful consideration should be given ahead of development to prevent adverse impacts on these sites, including appropriate mitigation measures and preconstruction anti-pollution management plans.

### **Impacts**

The River Trent (Gunthorpe to Fiskerton) LWS 2/694

We fully support therefore, the statement in Section 4.4 with regard to nesting birds. Negative impacts to nesting birds (particularly waterfowl) could occur if water levels were to suddenly increase during the breeding season (February - late August). The scheme should be operated so that increased water levels during this season do not exceed the maximum water level experienced naturally earlier in the same season. Ideally, the increased water levels would begin outside the breeding season. Operation across the full range of proposed water levels should only begin once outside the breeding season, or if the maximum controlled water level associated with the scheme has been experienced naturally earlier in the same season.

Given that water levels are predicted to annually increase for the majority of the year, there is less risk of nest-building birds being impacted post-development in subsequent breeding

seasons.

*Section 4.10 states that 'The majority of impact in and around Areas 1 and 2 does not fall within the LWS. Provided that all recommendations/RAMs are strictly adhered to in this report, The River Trent (Gunthorpe to Fiskerton) LWS will not be impacted by the scheme during or after the construction phase. We are satisfied with this assessment and we recommend that the recommendations / Reasonable Avoidance Measures (RAMS) are secured by way of a suitably worded condition.'*

### **The Nabbs (LWS 2/695)**

*Section 4.11 states that: 'There is no gravel colony habitat within or close to Areas 3 and 4 (areas of impact). The north bank of the island at this point is a hard bank and the south bank is relatively steep with scrub habitat extending to the edge on the upstream side of the weir and more open on the downstream side. Scrub habitat to be removed during the operation mostly includes dog rose, bramble and hawthorn. However, this represents a relatively small proportion of the overall area of this type of habitat on the island. Section 4.21 states 'Provided that all recommendations / RAMs are strictly adhered to in this report, only a small proportion of relatively common habitat will be impacted on the island known as The Nabbs LWS. No gravel colonists would be impacted by the proposals'. We are satisfied with this assessment and we recommend that the recommendations / RAMS are secured by way of a suitably worded condition.'*

Adverse impact on The Nabbs LWS will be largely temporary, occurring during the construction phase, however, part of the hydro-scheme development will lead to the permanent loss of part of the LWS. With regards to mitigation hierarchy, we have taken into account that due to the nature of the scheme (utilising the rivers weir system) restricts the development from being installed outside of the LWSs.

### **Compensation**

Due to the permanent loss of part of The Nabbs LWS and for the clearance of habitat north of Area 2 we advise that compensation should be sought. Upon completion, losses of scrub habitat should be compensated for in the Habitat Creation Areas referred to as HCA1 and HCA2.

**Habitat Creation Area (HCA1)** Section 4.23 states '*Upon completion of the construction phase, after all machinery and tools have been removed from site, a wildflower meadow combined with a mixed hedgerow will be planted around the periphery of the area which badger are known to exploit for the purpose of commuting and foraging (Figure 4). At present, much of this region is predominantly covered with a substantial stand of blackthorn and other associated scrub. The hedgerow margins that bound the west and northern region of the scrub are to be retained. The new hedgerow will run for approximately 120m adjacent to the existing path in a south-west to north-easterly direction.'*

Habitat Creation Area (HCA2) Section 4.32 states: '*Once the construction area has been cleared of all tools and machinery, species-rich mixed scrub will be planted in Areas 3 and 4 (The Nabbs LWS). Suggested species would be hazel, hawthorn, blackthorn, dog rose, at 2m spaces. Maintenance would involve coppicing at 10-15 years.'*

We take the view that tree planting is unnecessary if no trees on the island were negatively impacted. Another option could be to enhance areas of amenity grassland on the island.

## **Additional Comments**

Ideally, the oak tree (TN1) supporting the barn owl box should be retained. If this tree is to be removed, it should be surveyed for its potential to support roosting bats and the persons responsible for monitoring the barn owl box should be consulted.

Our default position where adverse impacts to LWS occur would be to advise the LPA to refuse planning permission. In this instance however, we consider impacts on LWS to be minor and when the proposed package of mitigation and habitat restoration/creation is taken into account we are satisfied that the benefits of this planning application outweigh the negative impacts. The finished scheme will also significantly improve passage for fish around what is currently a significant obstacle to fish movement. We recommend that Environment Agency are consulted with regard to the design of the fish pass.

## **Following the submission of an updated ecology survey the following comments received 28.11.18**

Whilst it is preferable to agree all mitigation details prior to determination, on this occasion we would be satisfied with the below pre-commencement condition.

A Construction Environmental Management Plan including pollution mitigation, habitat compensation measures and landscaping shall be submitted to and be agreed with LPA prior to construction commencing.

It appears to cover the key points that we raised. A thorough, detailed CEMP would be vital in ensuring protection of the LWS and appropriate mitigation/compensation for loss of habitat as well as protection of species during construction.

## **Comments received 28.08.18**

Having reviewed the Ecological Appraisal and Protected Species Surveys (Fauna Forest Ecology, June 2018) document, we are concerned that the potential impact of the proposal on Local Wildlife Sites (LWSs) has not been assessed. The report provides a list of LWSs within 2.5km, but does not give any further information or discussion on this matter.

From the documents submitted and a review of Nottinghamshire Insight Mapping, we believe that the application site includes 2 x LWSs:

River Trent (Gunthorpe to Fiskerton) LWS 2/694  
The Nabbs LWS 2/695

Local Wildlife Sites are afforded protection due to their substantive nature conservation value. Their selection takes into consideration the most important, distinctive and threatened species and habitats within a national, regional and local context, making them some of our most valuable urban and rural wildlife areas. N&S Policy DM7 requires consideration of sites of regional or local importance, including justification for the development outweighing the nature conservation value of the site, as well as use of the 'mitigation hierarchy'. We therefore recommend that the report is amended to include consideration of potential impact on these sites of county

importance, including measures to avoid, mitigate and/or compensate any identified ecological impacts. This work should be undertaken before the application is determined

**NCC Lead Local Flood Authority – Comments received 28.01.19** - reiterate previous comments dated 29.08.18

**comments received 29.08.18**

Having considered the application the LLFA will not be making comments on it in relation to flood risk as it falls outside of the guidance set out by Government for those applications that do require a response from the LLFA.

As a general guide the following points are recommended for all developments:

1. The development should not increase flood risk to existing properties or put the development at risk of flooding.
2. Any discharge of surface water from the site should look at infiltration – watercourse – sewer as the priority order for discharge location.
3. SUDS should be considered where feasible and consideration given to ownership and maintenance of any SUDS proposals for the lifetime of the development.
4. Any development that proposes to alter an ordinary watercourse in a manner that will have a detrimental effect on the flow of water (eg culverting / pipe crossing) must be discussed with the Flood Risk Management Team at Nottinghamshire County Council.

**NSDC Environmental Health Contamination – comments received 30.10.18**

No observations in relation to contaminated land.

**NSDC Environmental Health – comments received 30.11.18**

Having considered the noise data there should be no issues.

**NCC Highway Authority – Comments received 27.11.18**

Assuming these figures (provided in the construction traffic details) cover the 6 month period previously mentioned, there are no highway objections based on the information submitted. The applicant should note that any temporary signage will need to be approved by VIA/NCC Co-ordination Team prior to works commencing on site.

**Previous comments received 30.10.18**

This proposal is for the installation of a hydropower scheme. The application site is to be accessed from Main Street and the works are expected to take up to 6 months to complete. The lane leading to the site is unadopted, however, it is recommended that further details be submitted prior to works commencing providing details of the number and size of vehicles expected as part of the construction phase.

It is recommended that NCC/Via Rights of Way section are consulted for advice/comments as a Footpath may be affected by this proposal.

Therefore, the Highway Authority would not wish to raise objection subject to the following condition being imposed:

Prior to commencement on site, the applicant shall submit a Construction Management Statement providing details of the expected vehicle size and numbers during the construction phase over a daily or weekly period. Reason: In the interests of highway safety.

#### **Archaeology Consultant – Comments received 07.11.18**

This site is in an area surrounded by archaeology which sadly was not all identified in the 'Heritage Statement' with a battlefield to the east as well as the remnants of medieval earthworks and to the north there is a prehistoric/Roman settlement.

However it is unlikely that these proposals will have a significant detrimental impact on these remains and so no further archaeological input is required into this scheme.

#### **Canals and River Trust – comments received 18.02.19**

Firstly we note and welcome the details provided concerning the boom and notice served on neighbouring landowners, and clarification regarding the red line boundary and have no further comment to make on these matters.

With regards to the wharf facility, as outlined in my letter of 5 November, we would wish to see a replacement wharf provided as part of any planning application to mitigate the loss of the existing facility.

We consider that a hard edge of approximately 70ft will be necessary and that this is capable of being provided within the application site redline boundary. We would therefore ask that notwithstanding the submitted plans a condition is imposed on any planning permission requiring submission of further details of the replacement wharf including siting, specification and timescale for the completion of the works.

Suggested policy wording is as follows:

Condition:

Notwithstanding the plans submitted, details of a replacement wharf facility shall be submitted to and approved in writing by the Local Planning Authority prior to the loss of the existing facility, and thereafter implemented in accordance with the agreed details unless otherwise agreed in writing.”

Reason: To ensure the provision of a replacement wharf facility necessary to support the use of the River Trent for navigation, in accordance with the aims of Spatial Policy 7 ‘Sustainable Transport’ from the adopted Newark and Sherwood Core Strategy.

#### **Following discussions with regards to the wharf the riverside path the following comments were received on the 12.02.19**

I have passed this on to our engineers to check whether they are OK with the operational wharf and position of the boom, in case this is not an issue, and will seek to get back to you on this matter.

The riverside path provision seems fine. However, the applicant would require an agreement with our estates section as this would affect a property we lease (not so much of a planning issue, but



this could affect its deliverability, so I have asked our utilities section to make the applicant aware of this).

Regarding the design of the power house building, we do believe that the external design should be secured, to ensure that its visual impact can be mitigated as far as practical.

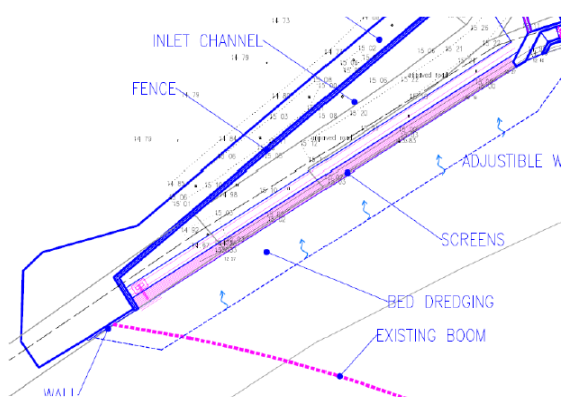
Given that no precise specification has been provided of the external appearance, we do believe that the use of conditions to secure its external appearance may be required.

I would recommend that the provision of the path and wharf are secured by condition if any permission is given.

**Following ongoing discussions with the applicant the following response has been received on the 12.02.19**

With regards to the wharf, this is used primarily as an operational wharf to allow access for dredging boats etc. It is not used continuously, but provision of a replacement wharf would be required to allow for continued maintenance of this section of river.

If a replacement wharf is to be provided, then that would be acceptable. Looking at the plans, I presume that a new access track and wharf are shown as below:



However, the plans do raise a few concerns as to whether it would be provided. As such, it would be best if the following matters could be ironed out. Notably:

- The plans show a boom crossing the wharf, which would compromise the ability to utilise the wharf.
- The plans show the access track and wharf on 3rd party land, upon whom I don't believe notice of the application has been served.
- It would be best practice if the wharf could be labelled as such to avoid confusion.

On the other points, we'd be satisfied with the riverside path being routed as described below. On Heritage Matters, we'd be happy for you to come up with a judgement, using your own expert advice, whether the information submitted is sufficient to take account of undesignated heritage assets associated with the weir.

On the Site Location Plan, I think there is still some confusion over why the red line boundary crosses the curtilage of the bungalow, and whether any works are proposed here. However, they

have served notice on us, and we would have an input as landowner in any case. As such, if this cannot be clarified prior to the permission being given, we could manage this by other means.

#### **Comments received 04.02.19**

Based on the information available our substantive response (as required by the Town & Country Planning (Development Management Procedure) (England) Order 2015 (as amended)) is that the Trust has no comment to make on the revised information provided. Please note, however, that our original comments made in November 2018 still apply to this application.

#### **Comments received 01.02.19**

Based on the information available our substantive response (as required by the Town & Country Planning (Development Management Procedure) (England) Order 2015 (as amended)) is that the Trust has no comment to make on the revised information provided. Please note, however, that our original comments made in November 2018 still apply to this application.

#### **Comments received 05.11.18**

The Trust has reviewed the application but is unable to make a substantive response under the Town & Country Planning (Development Management Procedure) (England) Order 2015 (as amended) due to the absence of the following information:

- . A Heritage Impact Assessment taking account of non-designated heritage assets affected by the development.
- . Clarification with regards to the provision of alternative wharf facilities,
- . Information detailing alterations to the riverside path.
- . Elevations of the proposed power house building, and
- . Clarification over the site location plan.

#### **Heritage**

Although the application includes an assessment of the impact of the development on designated heritage assets, no assessment has been undertaken with regards to non-designated assets in proximity to the site.

There is the potential that remnants of the original Jessop engineering technologies associated with the canalisation of the river and remnants associated with a former ford and ferry crossing at Hazleford could be present in proximity to the weir. Other heritage features including the lock cottage on the non-towpath side of the river and clapper gates beside 'the bungalow' are also present.

As a result, we advise that a desktop heritage assessment should be carried out to accompany the current application to include an assessment of the likely presence of non-designated heritage assets, and the likely impact of the development upon these.

We believe that this request would be in line with the aims of paragraph 189 of the National Planning Policy Framework. This states that there is a requirement for applicants to describe the significance of any heritage assets affected by the development; which should be proportionate to the assets' importance and sufficient to understand the potential impact of the proposal on their

significance.

### **Impact on an Operational Wharf**

The submitted plans show that the location of the proposed spillway could result in the removal of a riverside wharf presently sited to the west of the weir. The wharf is used by craft to carry out essential operations on the River Trent to aid navigation, including dredging works.

The removal of the wharf would reduce the ability of the Trust to carry out activities to maintain navigation on the Trent; which could harm the ability of the river to handle navigation traffic.

The Trust has been advised by the applicant that an alternative wharf will be provided to the west of the site accessed by a new track to the rear of the proposed spillway. This is not however made sufficiently clear on the submitted layout plan and the Trust would therefore request further details of the proposed replacement wharf facility and its siting, which should be included within the application site boundary.

The Trust would also wish to see the provision of the alternative wharf facility secured by planning condition prior to the commencement of any works to construct the proposed spillway .

### **Impact upon the Riverside Path**

The submitted plans show that the spillway and power plant building would be sited upon the existing riverside path. There is therefore a risk that the development could sever existing walking routes along the River Trent, which would discourage public access along the river. This could run counter to the aims of Spatial Policy 7 from the Core Strategy, which seeks to ensure that footpath and bridleway networks will be safeguarded, and the aims of paragraph 102 from the National Planning Policy Framework, which seeks to ensure development proposals identify opportunities to promote walking.

Although existing access tracks lie behind a neighbouring property ('The Bungalow'), and could provide an alternative route, these are used by vehicular traffic, which could result in additional hazards for pedestrian users without the provision of appropriate segregated refuges.

We therefore request that additional information is provided to detail a safe alternative footpath for users to pass the hydro-electric site along the river.

The Trust has been advised that the applicant may be considering the installation of a replacement path next to the river. If this is the intention, we request that this is indicated upon the submitted plans, so that its provision can be guaranteed as part of the scheme.

### **Design and Appearance of the Proposed Power House Building**

The supplied cross sections reveal that the power house building would form a relatively large structure, covering 192 square metres at up to 7.5m in height. It therefore could form a prominent structure upon the waterway.

We believe that full details of the external appearance and materials are necessary in order to enable a judgement to be made as to whether the building would adequately protect the local distinctiveness of the District's landscape and character. This would be in accordance with the aims Policy DM5 from the adopted

Allocations and Development Management Development Plan Document, and the aims of Core Policy 9 'Sustainable Design' from the adopted Core Strategy.

We therefore request that full elevations of the building should be provided, including details of the proposed facing materials, so that a full assessment can be undertaken with regards to its external appearance and the impact the structure could have upon the appearance of the waterway corridor.

#### Site Boundary

We note that the two separate location plans have been provided, labelled 'Site Location Plan' and 'Development Boundary Plan' which include alternative red line boundaries. We request that clarity is provided from the applicant with regards to which site plan is subject to the application. We also advise that the final red line boundary should include all parts of the proposed development, including any new wharf facility.

Both submitted plans show a red line boundary that intercepts the curtilage boundary of an adjacent property ('The Bungalow'), which is owned and leased by the Trust. We request that details of any works to be carried out within the curtilage of this property are provided. Should no works be proposed in this area, then we request that the site location boundary is amended so that it does not intercept the curtilage of this property to avoid any confusion.

In addition to the above, we also wish to raise the following additional matter, which we advise could be dealt with via the submission of additional information of the use of an appropriately worded condition.

#### **Navigational Safety**

The proposed hydro-electric scheme is likely to result in changes to the water flow of the River Trent for which the Canal & River Trust is navigation authority. Alterations to water flows can impact on the navigational safety of the waterway. For example, the draw and discharge of water from hydro-electric schemes can have impacts upon craft using the waterway and may also result in the additional deposition of silt or debris that could affect the ability of the river to carry waterborne traffic and increase liabilities in terms of dredging etc.

We therefore request that a detailed navigational risk assessment is submitted for approval prior to the commencement of development on site to assess the scheme's impact on navigational safety and identify any necessary mitigation measures. This should include details of how navigational safety will be maintained in the event of an emergency shut down of the scheme.

#### **Suggested wording is provided below:**

*Prior to the commencement of development, a detailed and comprehensive Navigational Risk Assessment shall be provided to and approved by the Local Planning Authority. The Risk Assessment shall include modelling data to identify how the proposals will affect water flows during both normal operation and during an emergency shut down of the scheme; and shall include mitigation measures to respond to any risks identified. Thereafter, the scheme shall be carried out in accordance with the approved details.*

*Reason: To ensure that the development will not result in hazards for navigation that would harm the ability of the river to handle navigational traffic; and to promote and support the use of the River Trent in accordance with the aims of spatial policy 7 of the Newark & Sherwood Core Strategy. It is essential that details are provided prior to the commencement of development, so that any risks identified can be fully addressed.*

**Inland Waterways** – no comments received

## **Nottinghamshire County Council Rights of Way – Comments received 04.03.19**

Thank you for the consultation. I am commenting on the application as a statutory consultee as public rights of way form part of the highway network

I have checked the Definitive Map for the area and can confirm that Fiskerton cum Morton Footpath No. 22 crosses the site edged in red on the site location plan. I attach a plan showing the definitive routes of the footpaths. The applicant has acknowledged the existence but possibly not the exact location of the public rights of way.

The public right of way is affected by the development during construction and after completion.

The applicant has stated that the path can be temporarily diverted to enable the construction and that it can be restored to its current line on completion. However the plans indicate that the powerhouse will in fact be situated over the footpath. If this is the case then the applicant will need to apply for a diversion of the path (see notes below). Construction cannot start until such time as a confirmed order has been made. It is recommended that the application be submitted as soon as possible to prevent time delays in construction.

The applicant is recommended to make contact with the RoW team to discuss the implication of construction, temporary closure and confirm that a diversion is required

Please note the following general points

The footpath should remain open, unobstructed and be kept on its legal alignment at all times. Vehicles should not be parked on the RoW or materials unloaded or stored on the RoW so as to obstruct the path (unless a temporary traffic regulation order is in place) .

There should be no disturbance to the surface of the footpath without prior authorisation the Rights of Way team.

The safety of the public using the path should be observed at all times. A Temporary Closure of the Footpath may be granted to facilitate public safety during the construction phase subject to certain conditions. Further information and costs may be obtained by contacting the Rights of Way section. The applicant should be made aware that at least 5 weeks notice is required to process the closure and an alternative route on highway should be provided if possible. Alternatively, a permissive route within the applicants control and at their liability can be offered to mitigate the effect on the publics use.

Structures cannot be constructed on the line of the right of way without the prior authorisation of the Rights of way team. It should be noted that structures can only be authorised under certain criteria and such permission is not guaranteed.

If the design of any proposed development requires the legally recorded route of the RoW to be diverted because it cannot be accommodated on the legal line within the scheme, then this should be addressed under the relevant provisions within the Town and Country Planning Act 1990 for the diverting/stopping up of public rights of way affected by development. An application way under this act should be made to the Planning authority and is a separate application to the planning permission

*For path which requires a TCPA diversion*

*Under Section 12 of the Growth and Infrastructure Act 2013, it is now possible for the planning authority to carry out preliminary consultations, draft and make the Order under the appropriate Regulations (Town & Country Planning Public Path Orders Regulations 1993) if an application has been made under Part 3, and before planning permission has been granted, if on granting it, it is necessary to alter a public path. The order can be confirmed if planning permission is then granted. This can avoid the previous delays caused by developers having to wait for planning permission to be granted before applying for a diversion.*

This team does not object to the application however the applicant must confirm the effects on the footpath and manage them appropriately in consultation with this team and a diversion proposal, if necessary, through the District Council

**Ramblers** - On behalf of Nottinghamshire Ramblers we have no objection to this scheme and are glad to see in the planning statement that the existence of the Trent Valley Way is noted.

This is one of the three long-distance trails in Nottinghamshire and is important for its links to heritage and tourism. If any temporary diversions are needed it is essential that these are managed correctly in consultation with the Highways Department of the County Council.

**Three representations have been received from 2 interested parties with regards to impacts on fish/angling. These have been set out in full below:-**

#### **Comments from Scunthorpe Amalgamated Anglers**

“Lease the waters above and below the weir on the south side of Nabbs Island for the purpose of angling. The lower section below the weir known as Lady Pitt is a prolific barbel water and wSit unique habitat and spawning grounds. Some 30/40 percent of our 2500 members join specifically for the fishery, therefor and major effect created by this proposal could result in loss of revenue. We are disappointed that as a stake holder we was not advised/consulted prior to the application. We would expect the applicant to provide assurance that the proposal will have no detrimental effect on the fishery and that adequate, undisturbed water flow over the weir will be maintained at all times and not compromised at the expense of power generation. We would advise that we would seek compensation if

- a) Access to and the capability to fish has to cease due to safety concerns during construction resulting in loss of revenue
- b) Loss of water over the weir during modification resulting in the fishery having to close to preserve fish welfare..resulting in loss of revenue
- c) Pro-rata claim against annual lease costs for the duration of any activity causing the fishery to be closed
- d) Claim for loss of revenue should there be a long term detrimental effect on the fisheries due to the project

Should this application be approved we would work/liase with the applicant to minimise effect and request that that communication should be made with our local fishery manager IN ADVANCE of ANY activity that could effect the fishery during construction.

After completion ADVANCE WARNING to be given before any adjustment is made to the weir

which could effect water flow. We have approached the applicant direct for written assurance there will no effect on the fishery and have been advised this will be forthcoming.(not received to date11/09/18) We respectively suggest this application is not approved until such assurance is received.

### **Comments from Fish Legal:**

#### **Received 04.02.19**

Further to our letter of 6 November 2018 with regard to the above application for planning permission, we have now seen that there have been some updates made to the documentation on the council's planning website.

#### General points

We note that despite the fact that this is a development which falls under schedule 2 of the EIA Regulations, there has been no screening for EIA purposes.

Additionally, given the presence of lamprey, the council is the appropriate authority charged with undertaking an HRA screening of the impact of the development on the Humber SAC. There is also still confusion over the area of the development and the site boundaries (see for instance the most recent letter from CRT).

#### APEM Report

We have seen the updated APEM Geomorphology and Fisheries Report. We believe that there are serious gaps in the report.

1. The report does not present hydrology data for each channel before and after the development.
2. A prolonged flow of <Q99 (including fish pass flow) is said to actually improve some elements of river habitat for rheophilic species and especially rheophilic spawning; that is despite the fact that expert opinion is that a depleted reach will have a detrimental effect on a fishery.
3. Fish passes are planned for both channels but individual flows are not shown for each pass and so it is difficult to see how the report can reach its optimistic conclusions.
4. Furthermore, it is stated that the "total fish pass discharge" is 2.20 cumecs.  
However, the recommended minimum for single pass adjacent to a turbine of 55 cumecs is 2.78 cumecs (5%) with an optimal flow of 10%. This needs to be clarified as the fish pass discharge appears to be lower than the acceptable limit.

Above all, full fish surveys ought to be undertaken before a decision is made on the application.

Two further representations have been received from 3<sup>rd</sup> parties which raise the following concerns:

- There are a natural and legal rights to water for permanent pasture for livestock and major concern is rased with the need to prevent interference with the natural flow and levels of water over the existing balancing weir such might result from adjustable machinery designed to maximise water to the turbine and lock apparatus and impact on this right together with concern in relation to loss of fishery and income due to changes in the water levels.
- Concern is rased with regards to with the quality of the information deposited which is

misleading and inaccurate.

### **Comments received 06.11.18**

As with other hydro scheme applications on the Trent we have been alerted to, it is obvious that the development will affect the hydro-dynamics of the water, the shape, form and location of the gravels and will disrupt the fishing.

Currently, downstream of the weir are gravel beds which provide habitat for coarse species. It is an important barbel spawning site as it contains clean, oxygenated gravels. We are also instructed that the same spawning site is used by the Environment Agency to recruit spawn for their Calverton Fish Farm.

A desk-top fisheries and geomorphology report prepared by APEM indicates a focus on geomorphology and flow over fisheries on the advice of the Environment Agency. We note that the Environment Agency's fisheries department does not appear to have been included in any discussions over the impact of the development on the fish and fishery. The APEM report relies on actual survey results but other sites "in close proximity" for an indication of what fish species are present at the weir. The report also seems to ignore the crucial fact that energy removed from flow means that the abstracted and returned flow of water will not have the same power to clean gravels.

The Planning Statement produced by the developer, Renewables First indicates that the council screened for EIA – but there is no evidence on the website that such a screening has been undertaken as no such screening is available on the planning website.

We note that there has been no response from the Environment Agency to the planning application on the basis of the impact on the fishery; the EA's focus is on flood defence.

Crucially, no surveys have been undertaken by the developer or by the council and its consultants in order to determine the actual presence of fish at the weir.

We understand that several other fishing clubs may own fishing rights within the red line area of the development but that these clubs with a legal interest in the land, whether corporeal or incorporeal, have not been notified of the development or asked directly for their opinion.

#### **HRA**

The EA letter to the council dated 25 September 2018, although virtually silent on fisheries issues, reminds the council that ". . . there is significant conservation and fisheries value along the River Trent valley, especially at this site. This will be considered when reviewing the application. We would like to point out that where evidence shows there will be potential impacts on known protected species, a Habitats Regulations Assessment (HRA) would be required."

The site in question here is the [Humber SAC – check???]. The principles in Waddenzee (Case c127/02) and other authorities apply.

Regulation 9 of the Conservation of Habitats and Species Regulations 2010 requires that the appropriate authority (here the LPA) "must exercise [its] functions. . .so as to secure compliance with the requirements of the directive."

This development is a "plan or project" for the purposes of Article 6 (2) and (3) are engaged. In



such circumstances the council, as the appropriate authority, must ensure that there is no deterioration to the natural habitat and disturbance to the species for which a site has been designated. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon shall be subject to appropriate assessment. The competent national authority shall agree to the plan or project only after having ascertained that it will not adversely affect the site concerned.

What the Council needs to do before making its decision

As the development is schedule 2 for the purposes of the EIA Regulations, the council must screen, giving notice of this and consult the Fisheries Department of the EA, Natural England and all other relevant bodies in doing so.

The Council is obliged to undertake a phase I HRA screening of the likelihood of significant environmental effects from the development on the protected site, produce a written statement of the same and make it publicly available.

The Council should require that a full fisheries survey of the weir and report be prepared before the application is further considered.

Then Council must also ensure that those holding an interest in the land by way of fishing rights at the site or nearby should be notified and consulted directly.

Given that the application is clearly controversial it is not appropriate for it to be decided under delegated authority and should therefore be called into committee.

### **Comments of the Business Manager**

#### *Preliminary Matters*

This proposal falls primarily within the Newark and Sherwood District jurisdiction albeit it should be noted that a small part of the site lies within borough of Rushcliffe. This means that the applicant requires planning permission from both authorities. Members will note from the site history section of this report that an application to Rushcliffe has been lodged and this remains (at the time of writing) undetermined. As the authority with the largest portion of the site we are the main determining Authority.

Members will also note that the application has been screened under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and it has been determined that an EIA is not required in this instance. The EIA is attached as Appendix 1 to this report.

An Appropriate Assessment in accordance with the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations) has been undertaken by consultants on behalf of the LPA. The findings are agreed and this has been adopted which forms Appendix 2.

#### **The Principle of Development**

The National Planning Policy Framework promotes the principle of a presumption in favour of sustainable development and recognises that it is a duty under the Planning Acts for planning applications to be determined in accordance with the development plan, unless material considerations indicate otherwise.

The site lies outside of any settlement and is therefore located within the countryside. Spatial Policy 3 seeks to protect the countryside and states that schemes to enhance heritage assets, to increase biodiversity, enhance the landscape will be encouraged. It also states that 'Development not in villages or settlement, in the open countryside, will be strictly controlled and restricted to uses which require a rural setting. Policies to deal with such applications are set out in the Allocations and Development Management DPD...' Policy DM8 of the A&DM(DPD) provides that 'In accordance with the requirements of Spatial Policy 3, development away from the main built up areas of villages in the open countryside will be strictly controlled and limited to the following types of development.' It then lists a number of types of development that may be acceptable. The proposed development doesn't fall neatly into any of the development type exceptions listed. However this type of development by its very nature needs to be next to a river and a weir which are often in a countryside location. It is a logical step to consider policies related to renewable development set within the Development Plan.

The District Council's commitment to tackling climate change is set out in Core Policy 10 of the Core Strategy. This provides that the Council will encourage the provision of renewable and low carbon energy generation within new development. The policy seeks to mitigate the impacts of climate change through ensuring that new development proposals minimize their potential adverse environmental impacts during construction and eventual operation including the need to reduce the causes and impacts of climate change and flood risks. New proposals should ensure that impacts on natural resources are minimized and the use of renewable resources are maximised and be efficient in consumption of energy water and other resources.

Policy DM4 also reflects the NPPF and provides that permission shall be granted for renewable energy generation schemes unless there are adverse impacts that outweigh the benefits.

Whilst the development plan takes primacy, the policies in respect of climate change are consistent with the NPPF, which is a material consideration. Chapter 14 of the NPPF (2019) 'Meeting the Challenge of climate change, flooding and coastal change' at paragraph 148 requires that the 'planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources.....; and support renewable and low carbon energy and associated infrastructure.

Paragraph 153 states that in determining planning applications, local planning authorities should expect new development to comply with development plan policies on local requirements for decentralised energy supply unless it can be demonstrated by the applicant, having regard to the type of development involved and its design, that this is not feasible or viable and take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption.

The scheme is expected to generate a peak power of 0.9mw of energy and an average annual energy production of 6.0GW which would be sufficient to power 1,540 homes and would save c3,120 tonnes of CO2 emissions from entering the atmosphere.

As such the proposal will accord in principle with both local and national policy aspirations. In determining an application it would be necessary to balance the policy presumption in favour of applications for renewable technologies against any specific adverse impacts discussed below.

## **Impact on Landscape Character**

Core Policy 9 states that new development should achieve a high standard of sustainable design and layout that is of an appropriate form and scale to its context complementing the existing built and landscape environments. Core Policy 13 requires the landscape character of the surrounding area to be conserved. Policy DM5 states that the rich local distinctiveness of the District's landscape and character of built form should be reflected in the scale, form, mass, layout, design materials and detailing of proposals for new development.

Core Policy 13 of the Core Strategy addresses issues of landscape character. It states that development proposals should positively address the implications of the Landscape Policy Zones in which the proposals lie and demonstrate that such development would contribute towards meeting the Landscape Conservation and Enhancement Aims for the area.

The District Council has undertaken a Landscape Character Assessment to assist decision makers in understanding the potential impact of the proposed development on the character of the landscape. The LCA provides an objective methodology for assessing the varied landscape within the District and contains information about the character, condition and sensitivity of the landscape. The LCA has recognised a series of Policy Zones across the 5 Landscape Character types represented across the District.

The part of the site that would be developed falls within the Trent Washlands Policy Zone TW PZ 52 (Thurgarton River Meadowlands) which identifies the key characteristic visual features as being flat low lying field landscape with linear stretches of pasture against the river Trent, open views from the Trent to the wooded hills in the north and south abandoned gravel works with establishing scrub vegetation and some strong hedgerows. The landscape condition is identified as being moderate and landscape sensitivity low. The landscape sections for this policy zone are to create and reinforce.

Having considered the proposals and accompanying assessments, officers consider that there is no conflict with environmental policies in the National Planning Policy Framework or the Development Plan.

The applicant has included within the updated Planning Statement, a Landscape and Visual Impact assessment. This has identified 6 key visual impact receptors.

### *Receptor 1 - The Bungalow immediately to the north of the weir*

The LVIA concludes that there would be some disruption to this receptor during construction by virtue of tree removal, civil works, vehicle movements and plant installation. One operational visual screening of the proposed scheme would be provided by replanting of trees. The main visual impact would be from partial views of the outfall channel and screen, although these are largely below ground. There would be distant views of the small control cabinet on the far bank.

### *Receptor 2 - Hazelford Old Lock House*

The LIVA concludes that although the HEP and weir would be partly screened by trees there would be visibility from this property. The main visual impact from this receptor would be the turbine house screen and screen cleaning equipment. However these are adjacent to The Bungalow and

do not impact rural views from this property. The LIVA concludes that visual impact would be relatively minor.

#### *Receptor 3 - Residential and leisure properties at Hazelford*

Given distances and vegetation the visual impact would be relatively minor

#### *Receptor 4 - Residential properties on Main Street*

The LIVA concludes limited impact during construction. No visual impact would be experienced at operational stage.

#### *Receptor 5 – Trent Valley Way*

The LIVA concludes that this runs along the north bank. The HEP will be highly visible from this receptor, the most notable feature being the turbine house, the intake screen, hydraulic channels and fencing enclose the development together with some new stone access tracks. This impact is considered to be significant to footpath users but given the length of the track affected this would be relatively short.

#### *Receptor 6 - Bridleways along the south bank of the river*

There would be some glimpses of the HEP from the bridleway within the extent of the western area of the historic battlefield to the south of the site but these would be distant and screened by trees. Direct views will be possible from the bridleways on the southern bank as they pass through the battlefield. However the north weir and HEP scheme would not be visible from this area. Visual impact along the rest of the bridleways would be limited to the weir crest, the fish pass and the small control cabinet.

AECOM the consultants commissioned by the Council to provide advice with regards to the EIA have concluded that although the LIVA submitted by the applicant is limited, they consider that although the development would clearly impact on both landscape and visual receptors particularly during construction, the scale of the development is relatively small and given the proposed external materials (secured by condition) it is unlikely the proposal would constitute a significant effect.

Overall the LIVA concludes that visual impact is relatively minor and the development design is in keeping with the existing weir and buildings at the site. I consider this to be a fair assessment and in any case I have been able to form my own judgment on the impacts. In assessing all matters I would concur with the conclusions of the LIVA. It is acknowledged that the addition of a number of incongruous and urbanising elements into the landscape will give rise to landscape and visual impacts. These include elements such as the proposed turbine house, substation, cleaning equipment etc. However the only significant visual effects are from close viewpoints on the residential receptor (The Bungalow) and the adjacent public footpath on the northern bank and only over a short distance, and these effects will reduce after the construction stage and over intervening years it is likely to reduce further given landscaping and planting which can reasonably be secured by robust conditions. In conclusion whilst some adverse impacts will occur these are not so significant as to warrant a reason for refusal and in any event can be largely mitigated.

## **Impact on Trees**

Policy CP12 and DM5 seeks to protect and enhance natural features where possible. CP9 requires proposals 'to demonstrate a high standard of sustainable design that both protects and enhances the natural environment and contributes to and sustains the rich local distinctiveness of the District.'

The application has been accompanied by Tree Survey Arboricultural Implications Assessment (AIA) dated May 2018 and updated in October 2018 together with tree constraint plans.

In appraising the scheme a small section of the island located on the river upstream from the lock and riverbank to the north of the Trent has been surveyed. In making recommendations the AIA notes that the trees on the island are categorised as C1/B2 grade trees (moderate to low value). A dual category has been assigned to a number of trees which are of moderate low value but taken as a group do make a significant contribution to the landscape and provide valuable habitat. Although the Assessment considers that the loss of individual trees within the group might not be significant, the loss of a large proportion of the trees within the group could result in a significant impact.

The latest AIA identifies that the development could result in the loss of trees, and pruning and tree felling is likely to be required to enable construction and that the installation of services within root zones would impact on the long term survival of retained trees.

The applicant has confirmed by email that the number of trees to be removed across the site has been reduced from 14 to 12 and now includes 9 no. category B trees (poplars and ashes in the approximate area highlighted areas A and B in the aerial photograph A below) and 3 no. category C (Alders and Silver Birch in the approximate area highlighted in the aerial photograph B below).

There were 2 no. Category A Field Maple trees proposed to be removed at the northern boundary of the site in aerial photograph B. These are now proposed to be retained which is welcomed.

There is also a category B1 Willow tree on the edge of the area surveyed which it is recommended should be coppiced (indicated in the approximate area C on aerial photograph A below).



**AERIAL PHOTOGRAPH A - NABBS ISLAND**



**AERIAL PHOTOGRAPH B – NORTEHRN BANK OF THE RIVER**

The comments of the Tree officer in assessing the updated AIA are noted. I am satisfied that the subsequent email from the applicant, which identifies the trees to be felled, when read in conjunction with the Tree Constraint Plan allows an assessment to be made in terms of tree removal. The trees to be felled are either within or are in close proximity to groups of trees on the northern bank of the Trent or on the southern bank of a section of Nabbs Island.

The loss of trees on the northern bank would be limited to 3 and of low amenity value. Their loss is not considered to be unduly unacceptable and can be compensated through replacement tree planting.

The trees to be removed on Nabbs Island are on the edges of two wooded areas immediately behind the proposed fish pass located at the second weir between the island and the southern banks of the Trent and are category B and C trees which are not identified as mature species. The loss of these trees would further open up an area of land to the rear of the fish pass and weir. Given that there would remain a large proportion of woodland to the east and west of this part of the site, it is considered that the loss of these trees would not have such a significant impact on the visual amenity of the area to justify refusal on these grounds. Furthermore the loss can be adequately compensated for through replanting of native trees which can be secured by condition.

A landscape condition is therefore considered reasonable requiring that precise details of replacement trees and the protection of existing trees during the construction phase are to be submitted to and approved in writing by the LPA and to ensure that robust and appropriate replacement planting takes place. Subject to this I consider that the impact is acceptable.

### **Impact on Ecology and Biodiversity**

Core Policy 12 states that the Council will seek to conserve and enhance the biodiversity of the District and that proposals will be expected to take into account the need for the continued protection of the District's ecological and biological assets. Policy DM7 supports the requirements of Core Policy 12 and states that development proposals affecting sites of ecological importance should be supported by an up to date ecological assessment.

A Preliminary Ecological and Protected Species Survey has been deposited with the application which has been updated during the lifetime of the application. The assessment identifies the potential impacts on biodiversity. This has been reviewed by an independent consultant Ecologist, AECOM commissioned by the Council.

The desk assessment found that the site lies within 2 local wildlife sites; the River Trent (Gunthorpe to Fiskerton) and Nabbs Island and within 2.5km of a further 19 local wildlife sites. Consultation with the local records centre also found a number of biological records within 2.5km of the site. These records include badger, brown hare, otter, water vole and bat. No records of reptiles or amphibians were found.

The field assessment undertaken found limited signs of the presence of protected species within the application site with no evidence found for white clawed crayfish, otter, water vole, reptiles or amphibians. Nevertheless the application site does provide habitat that could be suitable for protected species.

The Survey concludes that land adjacent to the River Trent LWS does provide some habitat suitable for otter and water vole but that the proposed development would not impact on this area. The habitats also have some value for nesting birds.

On land at Nabbs Island the area of impact is considered to be small given that it is predominantly amenity grassland and some scrub of low ecological value. The Survey does not consider that any gravel colonies would be affected during construction.

The ecological appraisal recommends a number of mitigation measures for the loss of any habitat which include the creation of a wild flower meadow, hedgerow and species rich mixed shrub planting together with native tree planting and the provision of replacement grass. The retention of a mature oak tree to the northern boundary of the site is also recommended. It also recommends the implementation of a low level lighting scheme and adoption of a series of Method Statements during construction. These measures are all considered reasonable and necessary and it is considered appropriate to secure these matters by means of conditions in the event of an approval.

The Survey has been assessed by the Nottinghamshire Wildlife Trust and Natural England whose comments are detailed within the consultation section of this report and by the Council's commissioned ecology consultant.

NWT has confirmed that they consider the impacts on the LWSs to be minor and given the proposed mitigation measures together with habitat restoration/ creation recommendations outlined in the Ecology Survey, they consider the benefits of the proposal outweigh any negative impact. This is subject to conditions to secure such recommendations/RAMs (recommended avoidance measures) and a condition requiring the submission and written approval of a detailed Construction Environmental Management Plan prior to any commencement of development.

The Council's consultant has considered that the information provided and consider that the impact upon ecology is acceptable. They recommend that the RAMs put forward by the applicant include matters of storage of materials, pollution avoidance and incident response methodologies. These can be secured by condition.

An Appropriate Assessment under the Habitat Regulations has been undertaken by Lepus Consulting which the Council has adopted. This is included as Appendix 2. It concludes that the scheme will have no adverse effect on the integrity of any European site, either alone or in combination with any other plan or project.

In terms of impacts on fish, the application is also supported by Fisheries and Geomorphology Assessments undertaken by APEM which have also been updated during the life time the application.

The fisheries assessment considers the potential impacts of the proposed development on a number of matters including fish habitat and fish passage. With regard to fish habitat, the assessment notes that there are likely to be differing effects on and between species in the northern and southern channels. The assessment concludes that spawning salmon and lamprey, juvenile lamprey and adult rheophilic species (such as chub, dace, barbel and gudgeon) habitat would remain largely unchanged in the northern channel although there is likely to be a decrease in junior rheophilic habitat. In the southern channel, spawning and juvenile rheophilic coarse fish as well as adult roach in the southern reach are likely to see an increase in habitat availability after commencement of the HEP scheme. Spawning salmon and lamprey and adult rheophilic habitat suitability is predicted to decrease slightly due to reductions in flow and mean velocities through the channel.

The assessment also finds that the weirs at Hazelwood currently pose a complete barrier to upstream passage of coarse fish species and lamprey as well as a high impact barrier to the passage of salmon and sea trout. The proposed development incorporates into the design a multi species fish pass and lamprey fish pass on both the north and south channels and an eel pass on



the southern channel. This is considered to provide a significant increase in the overall upstream passability at this location.

The fisheries assessment and addendums deposited with the application have been reviewed by the professional ecologists commissioned by the Council. Their Technical Note review of the APEM assessment is attached as Appendix 3. The commissioned consultants have raised no undue concerns with the methodology or content of the fisheries assessment. However they have raised the issue that the proposed mesh size of the intake screen as originally proposed at 9mm did not meet the relevant guidelines. Natural England has also raised this as an objection. However the applicant has subsequently revised the mesh size to be 3mm to the front and 6mm to the back which falls within the EA and NE guidelines. NE have subsequently withdrawn their objection and I am now satisfied that the concerning element has been resolved to a satisfactory manner. This would need to be conditioned in the event of an approval.

With regards to noise impact on fish, AECOM on behalf of the Council have assessed the noise assessment deposited by the applicant and have concluded that it is not considered that the noise expected from the proposed scheme would significantly impact on fish populations given the existing base line of the noise produced from the weir and its close proximity to the development.

It is therefore considered that the proposal would give rise to no unacceptable adverse impacts on the watercourse, its habitats or protected species. Currently, Hazelford Weir acts as a barrier to the upstream movement of fish. The planning application proposes the installation of fish passes into the hydro-electric scheme which it is considered will result in betterment of improved upstream fish passage and will therefore give rise to significant benefits to the resident fish population, particularly to eel, lamprey, sea trout and salmon. Again, these measures can be secured by way of condition.

Notwithstanding the comments of Fish Legal, it is considered that the proposed development is likely, according to our commissioned consultants and consultees (to whom I attached significant weight) to not have any significant impact on fish habitat and would bring about benefits to biodiversity over the longer term. The proposed development is therefore consistent with adopted planning policy, the NPPF and Section 40 of the Natural Environment and Rural Communities Act 2006 which places a duty on public bodies to have regard to the conservation of biodiversity when carrying out their functions.

### **Impact on Highways**

Spatial Policy 7 provides that proposals should be appropriate for the highway network in terms of volume of traffic generated and ensure that the safety, convenience and free flow of traffic using the highway are not adversely affected and should avoid highway improvements that might harm the environment and ensure that appropriate and effective car parking provision should be made. Policy DM5 mirrors this.

The site would be accessed from Boat Lane off Main Street to the north west of the site. The planning statement deposited with the application considers that impacts on traffic and transport will be short term and minor during the construction phase of the development. The applicant has also submitted additional information with regards to the construction phase of the development. This includes:-

- Hours of construction will be between 0800-1800 Mon-Fri and 800-1300 Saturdays no working on Sundays of Bank Holiday);and
- Expected traffic volumes during each phase of construction – which ranges between 7 and 12 per day;
- Provision of parking and turning areas;
- Delivery instructions to be issued to drivers;
- Road cleaning and signage.

The Highway Authority has raised no objections to the scheme based on the information provided subject to their recommended conditions being attached should permission be granted in relation to the provision of signage and the submission and written approval of a detailed CMP.

I agree that the overall vehicle movements associated with the development would be relatively limited during construction and once operational, limited movements would be associated with maintenance. Therefore I am satisfied that subject to appropriate conditions that the proposal would not result in highway safety concerns and therefore would accord with the requirements of Spatial Policy 7 and DM5.

### **Impact on Public Right of Way**

A public right of way crosses the application site (Fiskerton Cum Morton footpath 22) to the front of The Bungalow. The site layout plan deposited with the application shows that this would be affected by the development by virtue of the positioning of the proposed turbine house over the footpath and as is acknowledged by NCC Rights of Way Officer. Although NCC do not raise any objection to the proposal, the applicant will need to apply for the permanent diversion of the footpath post decision should permission be granted (and in pre application consultation with the Rights of Way team) and prior to the commencement of any works on the site. This can reasonably be secured by condition.

### **Impact on Flood Risk and Drainage**

The Planning Practice Guidance outlines that planning applications for hydropower should be accompanied by a flood risk assessment and notes that advice on environmental protection for new hydropower schemes has been published by the Environment Agency.

Core Policy 10 of the Core Strategy and Policy DM5 of the Allocations and Development Management DPD state that the Council will aim to steer new development away from areas at highest risk of flooding and that development proposals will only be considered in Flood Zone 2 where it constitutes appropriate development and it can be demonstrated, by application of the Sequential Test, that there are no reasonably available site in lower risk Flood Zones. Where development is necessary within areas at risk of flooding, it will also need to satisfy the Exception Test by demonstrating it would be safe for the intended users without increasing flood risk elsewhere.

The site is designated as being within Flood Zone3 as shown on the Environment Agency's (EA) Flood Map. The proposal could be viewed as falling within water compatible development or essential infrastructure which has to be located in a flood risk area in terms of flood risk vulnerability.

In considering whether the Exception Test needs to be applied, I refer to Table 3 within the NPPG

on Flood Vulnerability Classification. The proposal could be considered to fall into either the 'water compatible' or the 'essential infrastructure' category where in both zones 2 and 3 development is considered appropriate. The Exception Test only has to be applied in the event that it is considered to be essential infrastructure and not for water compatible. The EA have advised that it falls within both categories in which case I have considered it as the worst case scenario and have applied the Exception Test.

The NPPF sets out that for the exception test to be passed it should be demonstrated that:

(a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and

(b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

Both elements of the exception test should be satisfied for development to be allocated or permitted.

I consider that Part A of the Exception Test is passed. In reaching this conclusion I give considerable weight to fact that the scheme would generate 8,000,000 kw hours of carbon free electricity via a renewable energy source which is a significant public benefit and is in my view a wider sustainability benefit that outweighs the (minimal) flood risk which is discussed further below.

I turn now to whether the scheme would be safe for in flood risk terms. It is noted that the Lead local Flood Authority raise no objection to the proposal.

However, the Environment Agency raised objection to the Flood Risk Assessment (FRA) deposited with the application in August 2018 which failed to consider how people would be kept safe from identified flood hazards and how a range of flooding events (including extreme events) may affect people and property. Moreover this Flood Risk Assessment failed to consider the impact that the proposals would have on the modelled flood outline extents for the River Trent and the Dover Beck and a revised Flood Risk assessment was requested which covered the deficiencies identified in the EA comments noted in the consultation section of this report.

The EA have maintained this objection following the submission of a revised FRA deposited in December 2018. Given that it did not include the modelled outlines previously requested, it failed to consider the backwater effects including the provision of a long profile. Although the FRA report identifies the effects of raised water levels during low or moderate flows as being "relatively minor" no substantial evidence has been provided to support this.

The applicant has deposited to both the LPA and the EA the additional information requested by the EA in the form of Weir Malfunction Flood Extent Plans and Low Flow Analysis Plots. This information is currently being modelled by the EA who at the time of writing this report have maintained their objection, although their latest comments at point 3 note that they consider that the risk of increasing water levels (up to 37cm) during low and medium flows would be low, although they are unable to remove this holding objection until the submitted modelling information has been properly assessed and understood. The results of this modelling are expected by the 22<sup>nd</sup> March 2019.

## **Impact on Amenity**

Core Policy 9 sets out an expectation that development is of a high standard and that contributes to a compatible mix of uses. Policy DM5 requires that all proposals be assessed to ensure that amenity is not adversely affected by surrounding land uses and where this cannot be mitigated should be resisted. The NPPF seeks to ensure a good standard of amenity for all existing and future occupants of land and buildings.

Being mindful of the separation distances of the proposed scheme to the nearest residential properties noted below it is not considered that the proposal would raise any issues in terms of overlooking, overbearing or overshadowing impact. Although there would be some increase in activity during construction this would be time limited. Residential amenity can be further secured by condition restricting hours of work during the hours of construction which are noted in the additional information deposited by the applicant in November 2018. Once operational the level of activity would significantly reduce to circa once a month for maintenance purposes.

The applicant has submitted a noise assessment as part of the updated planning statement deposited in December 2018 which notes that the noise level expected within the turbine house would be 90dB(A). The building would be designed with a dense concrete block and associated cladding construction which would be heavy enough to suppress noise and ensure a 55 dB(A) attenuation. The doors and ventilation panels would also be designed to ensure that an overall minimum 30 dB(A) attenuation is achieved.

The nearest sensitive noise receptor is The Bungalow c45m east of the turbine house (the curtilage being 37m east of the building). The noise levels at this nearest receptor would be no greater than 12 dB(A) which is below the minimum background noise level. Environmental Health colleagues have assessed the proposal and have confirmed that no concerns are raised with regards to noise levels in view of the nature of the development and the distance to human receptors. Taking this into account it is considered that external noise levels from the turbine house when set against the background noise of the water flowing over the weir and the fish pass would not be audible from the nearest sensitive noise receptor, particularly given the separation distance.

Noise impacts associated with the scheme are considered to be negligible. Officers are therefore satisfied that the proposed development can be constructed and operated without giving rise to significant impacts on the environment, amenity or other interests of acknowledged importance. Furthermore, where local impacts have been predicted, mitigation measures are proposed to reduce those. The mitigation measures can be secured through the imposition of appropriate conditions.

## **Heritage Impacts**

A heritage Statement has been deposited with the application. There are no listed buildings or other heritage assets within the site or its immediate setting nor is there likely to be any surviving archaeological deposits. Officers are therefore satisfied that the proposed development would not raise any heritage issues and the proposal accords with heritage policies CP14 and DM9 of the Development Plan.

## **Other matters**

### *Impact on Angling Clubs*

Paragraph 182 of the NPPF introduces the concept of the “agent of change” and expects planning policies and decision to ensure that new development can be integrated effectively with existing business and community facilities. The policy goes on to require that existing businesses and facilities should not have unreasonable restrictions placed upon them and where the operation of an existing business or community facility could have a significant adverse effect on new development, the application should be required to provide suitable mitigation.

The applicant has reviewed the fishing pegs at Hazelford and confirms that the permanent works will have no direct impact on any fishing pegs, nor affect access to them. It is possible that access to one fishing peg near the upstream end of the site will be affected (unavailable) during construction. However this could be mitigated with the provision of a temporary replacement platform, details of which could be secured by condition.

Furthermore in reviewing the assessments deposited with the application the ecology consultants commissioned by the Council do not consider that there would be any significant changes in river levels and therefore fishery interest should not be significantly affected.

It is therefore considered that appropriate mitigation is proposed which can be secured by condition should Members be minded to grant permission and the application complies with the requirement of paragraph 182 of the NPPF.

### *Impact on the Operational Wharf*

The comments of the Canals and River Trust (CRT) are noted with regards to the potential loss of a riverside wharf on the northern river bank to facilitate the proposed intake channel which would prevent access for and the mooring of dredging boats and reduce the ability of the Trust to carry out maintenance to the river. Following lengthy discussions with the CRT the applicant has proposed a replacement wharf, although precise details are yet to be agreed. The CRT are however satisfied that the required circa 70ft hard edge required can be provided within the site. It is therefore considered that precise details of this together with its implementation could reasonably be secured by condition.

### *Navigational Impact*

The CRT has also raised concern with regards to navigational safety, in particular in relation to alterations in water flows as a result of the proposed development. They have requested that “a detailed navigational risk assessment is submitted for approval prior to commencement of development on site to assess the scheme’s impact on navigational safety and identify any necessary mitigation measures”. Provided that this risk assessment is submitted and any necessary mitigation measures incorporated into the proposed development, e.g. in the form of operational procedures, the Councils commissioned consultants do not expect there to be significant effects on navigational safety. This could also be controlled by condition.

### *Accuracy of plans and information deposited with the application*

The comments received with regards to the information deposited with the application are noted.

The ecology and fisheries and geomorphology assessments deposited with the application have been reviewed by Natural England and the Wildlife Trust and by the professional ecology consultants commissioned by the Council who have raised no concerns with the quality of the information nor the methodology undertaken and that there is no evidence before officers to dispute this.

#### *Land Ownership and Rights To Water From The River Bank*

Land ownership and rights to water are not a material planning matters but rather are private legal matters between the individual parties.

#### *Consultation*

Comments have been raised with regard to a perceived lack of consultation. Site notices have been displayed at various locations around the site including at the access to the southern bank of the river, at Hazelford Ferry and at Hazelford weir. Consultation letters were sent to 8 properties in the vicinity of the site and a notice placed in the local press. This meets (and indeed exceeds) the statutory requirements in terms of the publicity of planning applications.

#### **Planning Balance and Conclusion**

This renewable energy installation is considered to be acceptable in principle, subject to conditions, and in line with both national and local policy aspirations. Impact upon the landscape, trees, highways and noise are considered to be acceptable and adverse impacts can be adequately mitigated to an acceptable level by conditions. Ecology specialists have been engaged, alongside various specialist technical consultees, to assist officers with the assessment of the potential impacts of the proposed development. They have concluded, and I concur, that whilst it is acknowledged that the proposal may give rise to localised impacts these can be adequately mitigated. There is also some likely betterment in terms of the provision of fish and eel passages at the weir.

However at the time of writing this report, there is an outstanding objection from the Environment Agency in terms of the impact of flood risk posed by increasing the water level. Potential flood risk is a significant material planning consideration in the determination of this application and as matters currently stand the applicant has failed to demonstrate that the development would not give rise to unacceptable flood risk. Until the potential flood harm is fully understood it is not possible to undertake a proper reasoned planning balance whereby it could reasonably be concluded that the benefits outweigh the harm (when this isn't yet known).

It is acknowledged that by the time this application is considered by the Planning Committee the 'failed to demonstrate' reason for refusal that officers currently recommend may well have changed to either a positive flooding harm reason for refusal or, in the event that no harm is demonstrated and the EA remove their objection, the recommendation would be amended to one of approval. In this case an update report and an updated reason for reason or a revised conclusion and a list of recommended conditions would be provided to Members as part of the late items schedule.

#### **RECOMMENDATION**

**Refuse planning permission for the following reason:**

01

In the opinion of the Local Planning Authority the application has failed to demonstrate that the development would not have an unacceptable adverse impact upon flood risk contrary to Policy CP10 (Climate Change) of the Amended Core Strategy (adopted March 2019) and Policy DM5 (Design) of the Allocations and Development Management DPD which together form the Development Plan as well as the National Planning Policy Framework 2019, a material planning consideration.

#### BACKGROUND PAPERS

Application case file.

For further information, please contact Bev Pearson on ext 5840.

All submission documents relating to this planning application can be found on the following website [www.newark-sherwooddc.gov.uk](http://www.newark-sherwooddc.gov.uk).

**Matt Lamb**  
**Business Manager – Growth and Regeneration**

Committee Plan - 18/01515/FULM

