

Secretary of State for Transport c/o
Transport Infrastructure Planning Unit
Department for Transport
Great Minster House (33) Horseferry
Road
London
SW1P 4DR

Our ref: RA/2023/146206/01-L01

Date: 25 August 2023

transportinfrastructure@dft.gov.uk

Dear Sir/Madam

**THE NETWORK RAIL (LEEDS TO MICKLEFIELD ENHANCEMENTS ORDER 202[X]
HUDDERSFIELD TO WESTTOWN (DEWSBURY) IMPROVEMENTS) ORDER.
APPLICATION TO THE SECRETARY OF STATE UNDER SECTION 6 OF THE
TRANSPORT AND WORKS ACT 1992 FOR AN ORDER UNDER SECTIONS 1 AND 5
OF THAT ACT. LEEDS TO MICKLEFIELD.**

We received confirmation from Network Rail on the 17 July 2023 that they have applied to the Secretary of State for Transport for the above mentioned proposed Transport and Works Act 1992 Order (TWAo).

We note from the application that Network Rail is also seeking deemed planning permission for the development proposed within the Order, and our comments below reflect this.

Network Rail is seeking to disapply the application of the Environmental Permitting Regulations (EPR) in respect of any requirement for a flood risk activity permit, which we have no objection to in principle. However, we are not currently satisfied with the wording of the Protective Provisions as currently written within the draft Order. Further discussion will be needed with Network Rail to agree the wording of these Provisions before we can confirm no objection to the scheme as proposed. Additional detail on this, together with further advice within our remit, is provided below.

Draft Transport & Works Act Order

Disapplication of legislative provisions – flood risk activity

We note that Network Rail is seeking to dis-apply the requirement for a flood risk activity

permit (FRAP) under the Environmental Permitting Regulations (EPR) 2016. The Environment Agency would have to agree to such disapplication.

Our understanding, from having reviewed the information and plans submitted on the 17 July 2023, is that there are no works being undertaken near any main rivers. This, therefore, negates the need for a FRAP and therefore any Protected Provisions.

Should Network Rail still wish to pursue disapplication of the requirement for any FRAP, they would need to agree to our standard wording. We are happy to provide Network Rail with a copy of these and to discuss with them as necessary. Until this is agreed, we are unable to agree to disapplication of EPR.

Additional Advice on Dewatering

Our understanding from email correspondence with Network Rail is that they considered disapplication of EPR necessary for any dewatering that may be required. However, Article 5 of the draft order does not disapply the legislative provisions regulating dewatering activities and the protective provisions are not relevant to dewatering. In addition, we are unlikely to agree to disapplication in relation to dewatering. As a result, it is important that Network Rail is aware that any abstraction and/or discharge of water made in the course of dewatering will require separate consents to be obtained from the Environment Agency.

Abstraction Licence

Dewatering is licenced under the Water Resources Act 1991. This was previously exempt, but the Water Abstraction (Transitional Provisions) Regulations 2017 removed the exemption, meaning that any dewatering of over 20 m³/day will require a licence.

However, Network Rail will need to apply for an abstraction licence in the course of building or engineering works if your activity meets the conditions of the surface water abstraction exemption under Regulation 6 of the Water Abstraction and Impounding (Exemptions) Regulations 2017.

A key concern is around the 6-month timeline, as all big projects overrun and end up finding things that need more attention. Dewatering is also linked to rainfall and groundwater levels, so it is not always clear how much water is going to be in the ground until you start to dig. Our advice is, if there are any locations where the proposed works have a risk of going over 6 months, Network Rail will need a licence. This means work would have to stop while a licence is obtained for the proposed works.

Dewatering for more than 6 months without a licence is a breach of the regulations, and Network Rail would face enforcement action. It is also worth highlighting that the geology and water table will change over the route, so one licence to cover all the locations of dewatering may not be feasible, but they can be applied for in bundles with the assistance of our Permitting Support Centre (PSC).

If Network Rail needs to start the application process then they will need to speak to psc-waterresources@environment-agency.gov.uk to obtain the necessary forms and determine what they need to apply for. It is also worth bearing in mind that they may need to apply for preapplication, especially for more complex sites.

Discharge Consent

Network Rail may need an environmental permit under the Environmental Permitting (England and Wales) Regulations 2016 for dewatering activities if they discharge liquid effluent into surface waters, for example, rivers, streams, estuaries, lakes, canals, or coastal waters – this is known as a ‘water discharge activity’.

However, for discharges of uncontaminated water (such as rainwater) from excavations, an environmental permit is not currently required if the requirements of the [temporary dewatering from excavations to surface water](#) regulatory position statement are met.

If Network Rail needs to start the application process then they will need to speak to PSC-waterquality@environment-agency.gov.uk to obtain the necessary forms and determine what they need to apply for.

Should you require any further information or clarification on the matters raised, please contact me on the details below.

Yours sincerely

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