

## AGENDA ITEM



Committee and date

15<sup>th</sup> February 2024

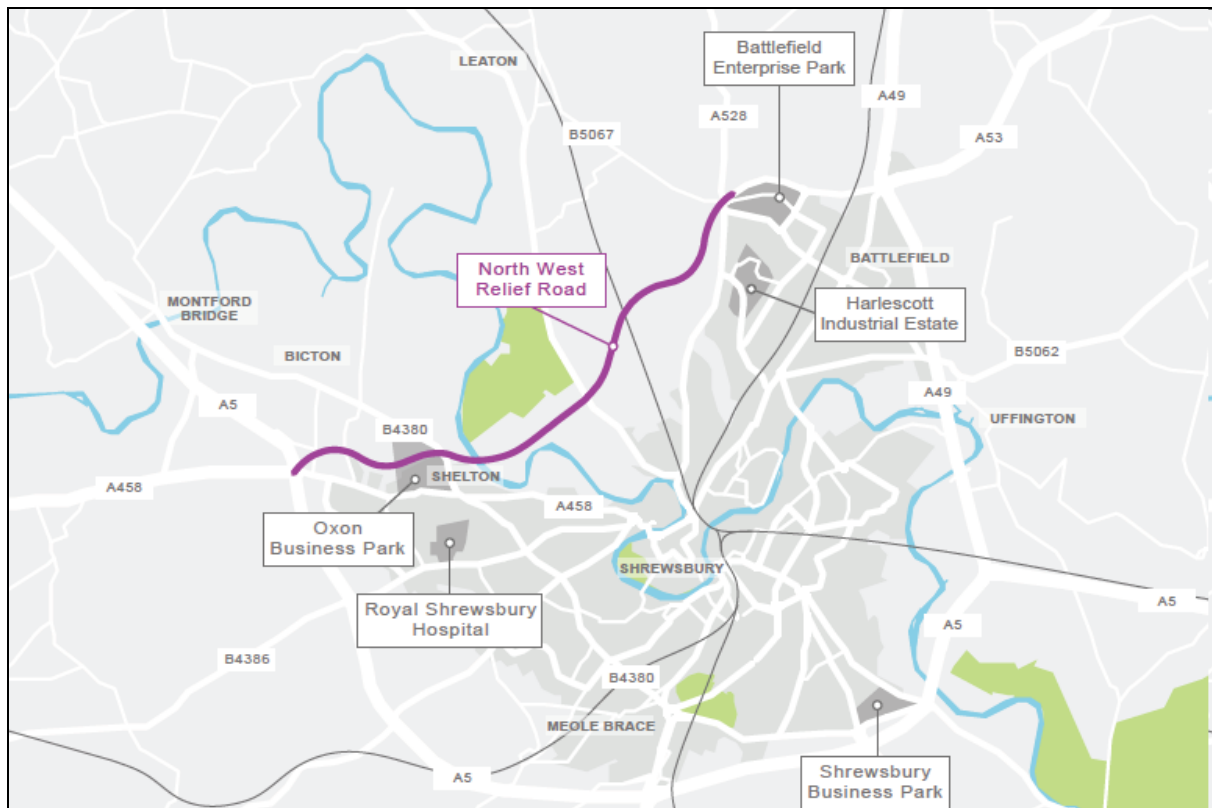
### Development Management Report

Responsible Officer: Tracy Darke, Assistant Director of Economy & Place

### Summary of Application

<b><u>Application Number:</u></b> 21/00924/EIA	<b><u>Parish:</u></b>	Bomere Heath
<b><u>Proposal:</u></b> North West Relief Road scheme. comprising - construction of 6.9km single carriageway (7.3m wide) road; severance of local roads and footpaths; provision of combined footway/cycleway; erection of three bridged structures over carriageway; diversion of existing bridleway/footpath via an underpass; climbing lane on westbound approach; 670m long viaduct; bridge over railway; two flood storage areas; provision of two new roundabout junctions and improvements to two existing roundabouts; associated traffic calming measures, landscaping and drainage schemes. Approval of planning conditions in relation to the above development following committee resolution on 31st October 2023.		
<b><u>Site Address:</u></b> Street Record Welshpool Road Bicton Heath Shrewsbury Shropshire		
<b><u>Applicant:</u></b> Shropshire Council (Highways And Transportation)		
<b><u>Case Officer:</u></b> Mike Davies	<b><u>email:</u></b>	mike.davies.planning@shropshire.gov.uk

**Grid Ref:** 344830 - 313501



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**Recommendation:-** That the planning conditions set out in Appendix 1 attached to this report be agreed by the Northern Planning Committee subject to minor amendments being delegated to the Assistant Director of Economy and Place. These conditions will be attached to any subsequent decision issued by the local planning authority, following the completion of the Section106 agreement between the Council and landowners impacted by mitigation and compensation strategy proposals.

## REPORT

### 1.0 INTRODUCTION

1.1 On 31<sup>st</sup> October 2023 committee resolved to approve this application subject to the conditions to be attached to any planning permission being considered and agreed by committee in advance of any decision being issued.

1.2 Following the decision of committee, a letter has been received from the Department of Levelling Up, Housing and Communities dated 27<sup>th</sup> November 2023, stating that the Secretary of State has decided not to call in this application and that he is content for the Local Planning Authority to determine the proposals.

1.3 It should also be noted that since the original decision was made the Government has published a new version of the National Planning Policy Framework (NPPF) on 19<sup>th</sup> December 2023. It is not considered that the revised NPPF contains anything new which materially impacts the decision previously taken with the changes focusing on housing in the main.

The changes to the NPPF can be summarised as follows:

- *to facilitate flexibility for local authorities in relation to local housing need;*
- *to clarify a local lock on any changes to Green Belt boundaries;*
- *to safeguard local plans from densities that would be wholly out of character;*
- *free local authorities with up-to-date local plans from annual updates to their five-year housing land supply;*
- *limit the practice of housing need being exported to neighbouring authorities without mutual agreement;*
- *bolster protections from speculative development for neighbourhoods that develop their own plans;*
- *support self-build, custom-build and community-led housing; and*
- *cement the role of beauty and placemaking in the planning system.*

## 2.0 PROGRESS

2.1 Since the decision of the committee, officers have consulted with both internal and external consultees to finalise the full list of conditions prior to reporting back to the committee to seek their approval of the conditions.

2.2 One particular area of focus has been the water environment. As a result of this, detailed discussions on the content and wording of conditions has taken place with both the Environment Agency (EA) and Severn Trent Water. In addition, the Local Lead Flood Authority have also input into the formulation of conditions in relation to the water environment.

2.3 The County Arborist and County Ecologist have worked with officers to formulate conditions to secure appropriate mitigation in relation to the proposals along with the delivery of the compensation strategy for the loss of veteran trees.

2.4 Input from Highways Development Control, Public Rights of Way Officer, Regulatory Services and the Historic Environment team has also been sought in the drafting of the conditions.

## 3.0 CONSULTEE COMMENTS ON CONDITIONS

3.1 Following the committee resolution to grant planning permission at the meeting on 31<sup>st</sup> October 2023 subject to a S106 agreement and the approval of planning conditions by the committee, a further round of consultations with consultees has taken place to frame the planning conditions to be attached to the decision.

- 3.1.1 **Environment Agency (EA)** - the EA provided a response dated 12<sup>th</sup> December 2023, which set out their position and ongoing concerns in relation to the proposal. The letter is summarised and quoted from below.
- 3.1.2 In the letter, the EA pointed out that they maintained their concerns based on the information that was submitted with the planning application.
- 3.1.3 The EA consider that “There is a significant risk of impact upon the water supply at this location, based on the route and design the applicant has chosen to pursue. We acknowledge the submission of the ‘Waterman report’. This suggests *‘the importance and impact on the quality of public water supply source should be revised upward’* from that presented”.
- 3.1.4 The EA advised the Local Planning Authority that it was “not sufficiently reassured at the planning stage based on matters that need more detail, outlining that the Environmental Impact Assessment (EIA) needs to be robust, and risks/mitigation fully explored”.
- 3.1.5 The EA said it “would not advise the LPA to grant planning permission, subject to planning conditions, at this time. The EA outlined that further information should be submitted to inform the Environmental Impact Assessment (EIA) and subsequent potential planning conditions or other mechanisms, ensuring the planning is clearly and robustly identified around potential impacts to the water environment. The EA comments were made with environmental protection in mind and to inform the appropriateness of the scheme”.
- 3.1.6 The EA maintain they “had previous discussions with the LPA about these concerns and explained the need for further work to be carried out”. The EA advised “that if, as LPA, we were minded to override their concerns and were prepared to manage risk by way of conditions, with critical information missing/provided once permission had been granted, then that was the LPA’s decision as determining authority, but they did not support this approach”.
- 3.1.7 The EA maintain concerns in relation to the Environmental Impact Assessment. Their opinion/advice was, and is, that “the EIA and some key parts of the assessment, including around water supply protection, was necessary to inform the planning application and could not reasonably be conditioned. We consider and have consistently advised that sufficient detail should be provided within the EIA, determined at planning stage and in some cases not deferred to a post determination planning condition. One of our joint meetings with the LPA and the applicant covered this. An update to the Water Framework Directive (WFD) assessment is one example, and the issue of addressing if there was an impact; along with the need to implement any necessary mitigation measures.” The EA are also concerned that their position has been misrepresented in the planning committee report (31/10/2023) as they deny they were refusing to engage until conditions are drafted.

- 3.1.8 The EA further advise that “Having raised an overarching concern on the planning submission due to there being an incomplete assessment of the risks, we consider (ed) it premature to be advising on what conditions and mitigations may be necessary. Appropriate mitigation is guided by and can only be determined once the complete picture is understood. This is covered further below. Having felt it necessary to clarify the above, we provide comments on conditions to help minimise the gaps and risks”.
- 3.1.9 Finally, the EA point out that their comments are made “as statutory consultee on these relevant matters. In carrying out that duty they have a different role to that of other parties, such as Severn Trent Water Ltd”.
- 3.1.10 The EA, following on from their position statement, have helpfully provided commentary and further suggestions in relation to the wording of conditions. However, they have again reiterated their stance that these comments “should not be taken as agreeing these conditions are robust or appropriate. But they are provided in the context of where you are at with your decision making.”
- 3.1.11 **Water Framework Directive (WFD) assessment** - The EA consider there is missing information in relation to the WFD assessment which isn't carried forward into any proposed condition. The EA opinion, as discussed at our meeting on 13 June 2023, is that they do not think this can/should be conditioned. The assessment informs the scheme principles, process and mitigation and ultimately guides robust/transparent decision making.
- 3.1.12 The EA note that the **Waterman report** appears to agree with a number of its concerns, highlighting areas for further assessment/ work including WFD. For instance, Section 3.12 states – *Waterman... “...agree with the requirement for a WFD assessment to fully consider piling works or road pollution spills, especially relating to public water supply sources and high groundwater conditions. In relation to it informing/being part of the EIA application, it also confirms that “spatial planning is therefore not clearly and robustly identified which may notably impact the scheme design principles”.*
- 3.1.13 The EA are “not satisfied that the potential impact and deterioration risk to the water environment and public water supply has been adequately assessed. As such, the EA do not consider that the LPA has demonstrated compliance with Regulation 33 of the Water Environment Regulations 2017 (WFD) and we would question whether you have complied with Regulation 19.”
- 3.1.14 The EA note that the Waterman review suggests a way forward was agreed at a meeting with Shropshire Council on 17 October 2023 for this matter “to be conditioned” and that ‘WSP would discuss with the EA to agree the way forward’.

- 3.1.15 The EA “suggest they are not aware of this meeting (but appreciate that the LPA were minded to take this application to committee). The current conditions do not include for such, and we would question what was meant to be conditioned? Whilst it may not be procedurally correct to condition a WFD assessment, if you are minded to approve in the absence of such, you could impose a condition along with any subsequent amendments, avoidance/mitigation, from any review.”
- 3.1.16 **Dispersivity modelling** – “No condition or further information on this aspect has been submitted to inform potential significant impact, avoidance, and mitigation options.”
- 3.1.17 “The Waterman review states that – *“Further consideration of the surface water- groundwater interaction is required and whether additional potential pollutant pathways (PPL) need to be included in the DQRA/dispersivity modelling”*.”

We question how this is intended to be appropriately secured?

We are not advocating such an approach but maybe a pre-commencement condition could include –

**No development shall take place until a scheme for dispersivity modelling including reporting, and any mitigation measures, has been submitted to and agreed in writing by the LPA. Any subsequent changes to mitigation shall be implemented.”**

- 3.1.18 “Annex B – **Confidential SEI Documents**. It is unclear how our ‘confidential’ comments were addressed and communicated to the Planning Committee on the DQRA, Dispersivity Modelling and Groundwater Surface water Interaction and Bedrock Connectivity. No specific planning conditions within the draft document reference these other than the suggested 10m standoff condition.”
- 3.1.19 **Detailed Quantitative Risk Assessment (DQRA)** –“There are no conditions relating to furthering the outstanding DQRA aspects.”
- 3.1.20 The EA previously saw, as the Waterman report refers to, the suggestion that the DQRA detailed comments are to be *‘dealt with separately, subsequently & confidentially in due course in a full response to the EA’s comments’*.
- 3.1.21 The EA would point out Waterman comments which state – *“The DQRA should be updated in line with the latest consultation responses with the Environment Agency and Severn Trent Water Limited...”*.”

The EA question how this information and any update to avoidance/protection measures is to be secured?

- 3.1.22 Some example wording to include a DQRA update:

**No development shall commence until a scheme for an update to the Detailed Quantitative Risk Assessment (DQRA) is submitted to and approved in writing by the LPA. The scheme shall include, but may not be limited to – a review of technical comments provided by the EA and Severn Trent Water Ltd, further revised modelling, review of risk. Review strategy, any monitoring, and implementation of any necessary avoidance and mitigation measures.**

- 3.1.23 **Environmental Statement** – “one of the draft suggested conditions seeks to ensure that development will accord with the EIA, Environmental Statement (ES) mitigation (in compliance with the mitigation measures identified and set out in the supporting ES). However, as the EIA is inadequate/incomplete in some key areas, we would not consider this to be a robust condition particularly if other conditions are necessary which could amend the overall ES conclusion/mitigation.”
- 3.1.24 **Piling/standoff** – “the detail should be about avoiding impact on, not solely managing the risk, and should focus on protection of the water environment (including public water supply). The EA consider that there is a level of uncertainty around the potential impacts or efficacy of current proposed mitigation.”
- 3.1.25 The EA consider it is also “plausible that at the point any potential impacts are observed there may already be short to long term (some years of impact/loss), or potentially irreversible impact, particularly in relation to any water supply abstraction/intake feature. Such mitigation options, including corrective action, have not been fully explored within the EIA, but for impacts to public water supplies it could include provision of alternative supplies potentially including alternative mains water supply provision, at someone’s cost. The feasibility of any such options would have to be investigated with Severn Trent Water Ltd.”
- 3.1.26 The EA view is that ‘these elements have not been considered further as part of the application and do not appear to be picked up sufficiently within the conditions.’
- 3.1.27 The EA are “advising as part of the EIA for the applicant to assess and consider necessary measures and as developer to make a commitment to provide financial reparation options for any foreseen and unforeseen impact arising from the construction and future operation of the proposed application.”
- 3.1.28 **Waterman report** states (5.1) – ‘*Appropriate mitigation measures to the construction through monitoring and reporting, design through containment and control, and operation through funding and management agreements of the road by the Highways Agency and emergency services, should be evidenced*’.

The EA are seeking clarification about how these ‘important outstanding points being comprehensively controlled?’

- 3.1.29 With regard to **piling works**, the EA note that “Conditions (trial test piling) are related to this and identify the requirement for development of a written Turbidity Protocol and monitoring plan which would be key to informing any piling methodology, monitoring protocols, trigger criteria.”
- 3.1.30 The EA view is “that the conditions do not go far enough to address the need for action plans (financial, replacement sources, impact/remedial actions, investigation/monitoring of) if adverse impact arises. Possible impacts? What solutions are to be delivered? Feasibility and timeframes? How would they be implemented? This is a key element as monitoring, triggers and control of construction/methods are only part of the required mitigation.”
- 3.1.31 “No further work was forthcoming as part of the EIA and the applicant did not wish to undertake further work. At the June 2023 meeting, the applicant disagreed on the need to further consider an impact from their piling works, or a pollution incident from the road, in this regard.”
- 3.1.32 “In relation to impact and commitment to providing appropriate financial reparation to fund /implement any necessary corrective actions/alternative supplies. How would this be identified and secured? We have previously suggested that another mechanism, such as legal agreement, could secure such, including monitoring and the feedback. We have previously advised on the inclusion of appropriate mechanisms to react appropriately/timely to any impact or concern that may be encountered.”
- 3.1.33 The EA consider that there remains “a degree of uncertainty for decision makers and ultimately, a liability with the applicant.”
- 3.1.34 “Details of any contingency and mitigation proposals should a trigger level be breached and an impact apparent at the public water supply are not included within conditions at present.”
- 3.1.35 The EA recommend a separate condition should be imposed to secure – ‘If the turbidity/monitoring scheme approved via condition shows any adverse risk of deterioration to water features (groundwater and surface water quality) including public water supply boreholes/abstraction, proposals:
1. to investigate the cause of deterioration
  2. to remediate any such risks and secure alternative water supplies.
  3. to monitor and amend any failures of the remediation undertaken, shall be submitted to the LPA for approval’
- 3.1.36 The EA would also recommend adding in some points to refer to the Piling Works Risk Assessment (PWRA) aspects as follows - ‘Agreed Piling methodology including a Piling Works Risk Assessment and standoff limits between toe of piling and bedrock’. (PWRA refinements are still required).



- 3.1.37 **Condition (test piling)** - needs to include reference to these works being undertaken to inform the agreed turbidity protocol and PWRA.
- 3.1.38 **Condition – Bank protection works (Bank stability /geomorphology) –** needs to cover the extent and nature of the bank protection (Right Bank) and how it transitions to natural bank. Reference should be made to the most recent Geomorphological Assessment
- 3.1.39 Condition CEMP – suggested additions to this condition to cover the water environment.

Condition Waste Management – noted.

Condition – Road Drainage Management Plan have requested changes to the suggested condition and a new condition requiring the submission and approval of a Road Drainage Strategy.

Condition Highways signage to include bespoke signage around the SPZ.

A new condition requiring the approval of the viaduct barrier design has also been suggested.

A further condition in relation to Water Quality monitoring has also been out forward.

A condition relating to compensatory flood plain storage is requested.

Finally, the biodiversity condition should be expanded to account for otters.

- 3.1.40 Following on from the EA letter, the LPA wrote requesting further clarification in relation to their position and received the following response.
- 3.1.41 *“The EA previously said that some elements of outstanding work and critical detail is not considered to have been covered. This is detailed in our previous letter of 12 December 2023 for your consideration. The following is to assist in conjunction with that.*
- 3.1.42 *Assessment of Information missing -*

*“Page 3 of our letter of 12 December 2023 covers matters such as **Water Framework Directive (WFD) assessment** (with its intrinsic links to other assessment detail) as well as **dispersivity modelling/assessment, and Detailed Quantitative Risk Assessment (DQRA)**. And along with **Protection of private water supplies** (page 11), these areas were not considered/included within the suggested conditions which you drafted. We have advised these aspects should be detailed within the EIA to inform proposals etc.”*

- 3.1.43 *The EA 'are not advocating a pre-commencement condition but where necessary we provided some comments and wording to assist you/the committee on the appropriateness of such. As confirmed previously, we made these comments on the basis that we are not agreeing these conditions are the most appropriate course of action, at this time, but to assist decision making if you are minded to grant permission.'*
- 3.1.44 *The EA 'also provided comments/suggestions on some potential conditions that appear to have been overlooked. Our letter of 12 December (page 9) details other potential conditions that were not included within the draft suggested conditions. Namely – **Road drainage strategy/surface water drainage scheme, viaduct barrier system** (page 10), and **Baseline water quality and construction monitoring strategy including Borehole decommissioning.'***
- 3.1.45 *The EA 'letter of 12 December also provided comments on the conditions presented including areas where some detail is not considered to have been covered sufficiently. We provided some comments/wording to assist your consideration.'*
- 3.1.46 *The EA "confirmed that they are satisfied with the imposition of conditions to secure flood risk reduction mitigation in line with appropriate FRA/EIA detail, as set out at the end of our letter".*
- 3.1.47 The LPA are continuing to work proactively with the EA to find solutions and common ground. An updated set of conditions has been shared with them following their comments summarised above and an update on the EA position will be provided as a late item to the Committee.
- 3.2.1 **Severn Trent Water** – 'It became increasingly obvious during the committee meeting that there is genuine concern amongst people over risk to our supply asset. STW maintains its positions that appropriate conditions can mitigate the risk presented by the road during construction and operation.'
- 3.2.2 **Condition Long Term Drainage Maintenance in the SPZ**
- "As noted previously this condition relies on an assumption that the funding and commitment to adherence to an approved plan is in place for the lifetime of the road. The potential need to confirm this via a legal agreement has been discussed, but this has been dismissed due to the statutory duty of the Council to maintain the highway drainage in any event i.e. you have explained that it simply must happen and therefore there is no need for a specific legal agreement. We would like some further comfort on this point, as it does remain a point of concern and something that is often raised by interested parties. When you return to committee some specific commentary around this, so everyone understands the issues and the need for appropriate cover to be put in place, should be provided."

- 3.2.3 “In terms of specific wording, STW would like to see an amendment to the condition around emergency response planning so STW and the EA can review this accordingly i.e. if there is a spill what happens/how quickly etc? The current wording of the condition requires the plan to cover ‘remedial work arrangements’, and we would like this amended to require ‘Emergency Response Plan and remedial work arrangements’. We would also like you to consider whether the condition could be further amended to require the plan to become embedded within a wider Council commitment/annual budgeting. If you were able to provide comfort to us and other stakeholders that this was a requirement not at risk of being forgotten about/lost in a list of planning conditions. STW consider this would go a long way to giving assurance that the Council absolutely understands the importance of this issue. Again, covering this off specifically at planning committee is requested.”
- 3.2.4 **All Conditions on Drainage** – “Following the committee meeting and further review of the conditions the main change we would like to see is around the need for ourselves and the EA to be named as consultees in the appropriate conditions around the design of surface water drainage systems. Whilst our concerns over the long-term management remain, STW should also be involved in the detailed design of the drainage where it drains the road through the source protection zones. If conditions can be appropriately worded here to enable us to deploy appropriate engineering expertise to this design, to review and input to the designs that are put forward, this would enable us to be satisfied that all efforts are being made to mitigate risk. This will also demonstrate to the numerous people with concerns over impacts to water supply that we and the EA will have an important role in this design.”
- 3.2.5 “When considering the need for us to be actively involved in the drainage system design, we have noted that there are several conditions related to highway drainage. It is quite hard to decipher exactly what each one covers/what each objective is. We would like to see them grouped together and for the wording to be tightened up to ensure that we are involved in the process as noted above. We appreciate that these are there for the design of the entirety of the road, but our request is for these to be reviewed and for a requirement for consultation with ourselves and the EA to be inserted into appropriate conditions.”
- 3.2.6 “In a number of discussions and submissions STW have noted the need for bespoke highway management to be employed to provide an additional layer of protection e.g. signage to inform drivers of sensitivities and possible speed restrictions. Accordingly, STW would like to see a condition to require appropriate SPZ signage to warn drivers and to provide detail on who to call/emergency procedures etc. This condition should be amended to include a requirement for consultation with STW and the EA on appropriate ‘warning/emergency arrangements signage in and on approaches to the SPZ area’.”

- 3.2.7 STW are going to be “reliant on conditions being monitored and enforced by the Council. We have discussed previously the need for any conditions to not be forgotten about, and our major concern at the moment is that the condition on the long-term management will be forgotten about and therefore how can we be sure that this will be effective? I acknowledge what you have said about the need to expect the Council to treat these seriously, but in an age with increased pressures on resources and budgets you will appreciate that we are taking a bit of a leap to just assume this will be the case. As such, we would like the planning authority to provide some sort of formal confirmation that, if a legal agreement is not put in place to control any of this, the Council will commit to any plan that is agreed via condition. A formal statement that this will be built into annual maintenance plans may suffice here, but STW would ask that the Council consider this request carefully.”
- 3.3.1 **SC Drainage (Local Lead Flood Authority)** –The LLFA have reviewed and suggested the inclusion of conditions to cover flood risk and drainage issues. They have also reviewed the comments of the EA and STW.
- 3.3.2 The LLFA support the inclusion of these amendments and conditions suggested by the EA. However, their only concern is how some of these conditions could then be implemented/enforced, particularly future maintenance. I share the EA’s concern around how the road will be maintained in perpetuity as unless there is ringfenced budget allocated to the scheme the road will eventually be maintained in the same manner as other A roads in the County which, given the known risks and impacts in this location, would not be sufficient to avoid ground water contamination in the event of a major incident.
- 3.3.3 The EA have suggested that there should be a legal agreement requiring the applicant to monitor and maintain the highway drainage system.
- 3.4.1 **Natural England** – A letter was received 02/02/2024 stating Natural England accepts the finalised land take around Hencott Pools that has been proposed in relation to this scheme. It is the NE view that residual impacts to the site are within acceptable levels.
- 3.5.1 **County Ecologist** – Has been heavily involved throughout the whole process in securing mitigation proposals and the compensation strategy. A comprehensive suite of planning conditions has been put forward which address the concerns of the County Ecologist and secure appropriate mitigation. Proposals to improve Hencott Pool will be subject to a legal obligation involving the landowner and the applicant requiring the agricultural activity to desist in a defined area.
- 3.6.1 **County Arborist** – The loss of veteran trees resulted in the County Arborist objecting to the application. Following the committee resolution, the County Arborist has put forward a set of conditions to secure replacement and compensatory tree planting across the site and beyond.

Tree planting taking place on land outside of the ownership of the Council will be secured via legal agreement with the landowners.

3.7.1 **Regulatory Services** - Conditions have been put forward to address noise, air quality and land contamination issues.

3.8.1 **Highways (Development Control)** – A list of suggested conditions have been supplied and incorporated in the final list of conditions.

3.9.1 **Historic Environment** – Archaeological conditions have been put forward and included in the recommended conditions.

4.0 Community Representations

4.1 A further 13 letters of objection have been received from members of the public since the Northern Planning Committee considered this application last time. The comments received can be summarised as follows;

- The loss of the 'Darwin Oak' is unacceptable and should be reconsidered
- The NWRR should be realigned or abandoned to save the 'Darwin Oak'
- Destruction of 'Green Wedge' unacceptable
- Will not help achieve 'Net Zero' target of Government
- Public transport and active travel should be supported
- Evidence shows new roads generate more traffic
- Detrimental impact on biodiversity

5.0 OFFICER ANALYSIS

5.1 Conditions

5.1.1 Government advice on conditions states '*When used properly, conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects. The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable. It is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls.*'

5.1.2 In imposing planning conditions on any approval granted it is important to note that they must meet 6 tests, otherwise they should not be imposed on a planning permission. These 6 tests are set out within the NPPF and Planning Practice Guidance and require the planning condition to be:

1. necessary;
2. relevant to planning and;
3. to the development to be permitted;
4. enforceable;
5. precise and;
6. reasonable in all other respects.

- 5.1.3 The Government advises that Local Planning Authorities should use planning conditions in such a way that they do not unnecessarily affect an applicant's ability to bring a development into use, allow a development to be occupied or otherwise impact on the proper implementation of the planning permission. This means the LPA should consider whether the detailed information required by a planning condition is necessary before development commences, during the construction phase or prior to first use of the land or building(s).
- 5.1.4 LPAs are required to provide reasons for imposing each planning condition and these reasons can also help to demonstrate how the 6 tests are satisfied.
- 5.1.5 It is also important to note that planning conditions should not deal with matters that are covered by other existing legislation and this is explicitly stated in the NPPF.
- 5.1.6 Any approval granted will be subject to the applicant entering into legal agreements with impacted landowners to deliver off-site compensation and mitigation. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. The decision notice will only be issued once these legal agreements are signed.
- 5.2 The Water Environment
- 5.2.1 Members will be aware that due to the position with the EA and the need to unlock the issues, the Local Planning Authority sought independent expert advice from consultants on such matters before the application was considered by committee in October and we have continued to seek their advice on the wording of the conditions.
- 5.2.2 The LPA have worked closely with Waterman to interpret and address the concerns of the EA as far as possible as some issues raised are outside of the remit of the planning system and therefore would not meet the six tests of a legitimate planning condition.
- 5.2.3 Turning to the specific issues raised by the EA, the EA stated that the Water Framework Directive (WFD) assessment has missing information, and this has the ability to change the scheme's principles and impact potential to the water environment.
- 5.2.4 Waterman's comments in the EIA Final Review Report (October 2023) highlighted that there was a requirement for a WFD assessment to fully consider piling works and road spills especially relating to public water supply sources and high groundwater conditions. As noted by the EA, this is difficult to condition as it is covered by a number of different and specific items e.g. Detailed Quantitative Risk Assessment (DQRA), turbidity protocol, and details on road drainage design.

- 5.2.5 The EA has stated that a planning condition to prepare a WFD assessment update is required and this will need to be a pre-commencement planning condition to address this matter.
- 5.2.6 The applicant has supplied information in the ES (Feb 21) Appendix 17.5 WFD Assessment, Supplementary Environmental Information (Jan 23) Appendix 6c WFD Assessment, WSP response to EA dated 21/06/23 (Annex A) and WSP response to EA dated 31/07/23 (Annex B).
- 5.2.7 The applicant is agreeable to a tighter link is between extreme pollution events & emergency response planning. This was included in linked SEI docs. However, they do not agree this is the case regarding proposed piling works & the Piling Works Risk Assessment.
- 5.2.8 Regarding possible interference from high groundwater levels on performance/design of certain proposed drainage features this point is accepted. However, the applicant does not agree that the risks/effects were understated and, as such, the scheme has been designed with regard to the appropriate level of risk/effect.
- 5.2.9 Waterman in their response at C16.5 are content that this matter can be dealt with via a pre-commencement conditions after further discussions with the applicant.
- 5.2.10 Waterman's EIA Final Review Report (October 2023) stated that '*further consideration of the surface water – groundwater interaction is required and whether additional potential pollutant pathways need to be included in the DQRA/dispersivity modelling*'.
- 5.2.11 The EA has stated that, whilst not advocating such an approach, a pre-commencement planning condition could be applied whereby additional dispersivity modelling could be submitted and agreed in writing by the LPA and any subsequent mitigation implemented.
- 5.2.12 The applicant's recent correspondence (dated 15th January 2024) states that there has been '*significant convergence regarding the EA and WSP understandings*' and that '*the only difference now concerns the potential significance of this under high/flood flow conditions*'.
- 5.2.13 It is suggested that, given the complex nature of the assessment, details of this convergence of understandings be included within updated DQRA and dispersivity modelling documents. Hence, pre-commencement planning conditions are included to require the submission and subsequent agreement by the LPA of an updated DQRA and dispersivity modelling documents.
- 5.2.14 The EA has raised a concern that there is no planning condition relating to furthering the outstanding DQRA aspects. This has now been rectified with the inclusion of a pre-commencement condition requiring the DQRA to be updated to include the additional clarifications.

- 5.2.15 The issues relating to the DQRA and dispersivity are covered by the applicant's submission in the following documents.
- ES Feb 21 Appendix 10.2 Detailed Quantitative Risk Assessment (DQRA)
    - ES Feb 21 Appendix 17.1 Water Environment Risk Assessment (WERA), Annex A Dispersivity Modelling
    - ES Feb 21 Appendix 17.4 Detailed Quantitative Risk Assessment (DQRA)
    - SEI Jan 23 Appendix 5.C Detailed Quantitative Risk Assessment (DQRA)
    - SEI Jan 23 Appendix 6.B Water Environment Risk Assessment (WERA), Annex A Dispersivity Modelling
    - WSP response to the EA dated 21st June (Annex A)
    - WSP response to the EA dated 31st July (Annex B)
- 5.2.16 At R.9.1 of the Waterman report they *"agree that DQRA appears to satisfy this original query. Given the highly conservative assessment that has been necessary it is considered that outstanding matters can be dealt with via pre-commencement conditions following clarifications provided in relation to"* C.9.8 and C.16.6 of the Waterman report.
- 5.2.17 The EA has acknowledged the draft SC planning conditions relating to piling but have suggested amendments /additional planning conditions in respect of the proposed turbidity protocol and the piling risk assessment.
- 5.2.18 The planning conditions covering the turbidity protocol and test piling cover the additional information that the EA require. The proposed test piling and turbidity protocol has been amended to include details of proposed action plans, feasibility, timeframes, and trigger values. This should be a pre-commencement condition. It should be noted that the EA's main concern on this topic appears to be the action plans and financial reparations which are outside the scope of what can be conditioned via a planning permission, this should be dealt with under the emergency response plan between the applicant, EA and STW.
- 5.2.19 These matters are covered in the following submissions from the applicant.
- ES Feb 21 Appendix 10.2 Detailed Quantitative Risk Assessment (DQRA)
  - ES Feb 21 Appendix 17.1 Water Environment Risk Assessment (WERA), Annex A Dispersivity Modelling
  - ES Feb 21 Appendix 17.4 Detailed Quantitative Risk Assessment (DQRA)
  - SEI Jan 23 Appendix 5.C Detailed Quantitative Risk Assessment (DQRA)



- SEI Jan 23 Appendix 6.B Water Environment Risk Assessment (WERA), Annex A Dispersivity Modelling
  - WSP response to the EA dated 21st June (Annex A)
  - WSP response to the EA dated 31st July (Annex B)
- 5.2.20 The Waterman report at R9.1 along with clarification points C9.8 and 16.6 address these matters satisfactorily to be able to recommend that these matters are dealt with via appropriate pre-commencement conditions.
- 5.2.21 The EA still maintain that in their view the EIA is not robust. The applicant maintains that the EIA is fit for purpose. The EIA submission was thoroughly reviewed by Waterman on behalf of the LPA and a comprehensive report was produced in October 2023, prior to the application being considered by the Northern Planning Committee, with the findings of this report being reported to the committee.
- 5.2.22 The Waterman review of the EIA concluded that they considered the submission robust and in accordance with the EIA Regulations as such the development will be carried out in accordance with the EIA submission and this will be secured via condition 2.
- 5.2.23 Piling stand-off aims to avoid impact and reduce risk which is a fundamental design approach of the applicant. The turbidity protocol aims to manage a residual risk and this will be developed in consultation with both the EA and STW to help make it as practicable and comprehensive as possible.
- 5.2.24 The LPA has been engaging with the EA and STW to develop appropriate wording for conditions. In their letter dated 6/10/2023, STW indicated their requirements for the turbidity protocol on the basis that it is further developed and secured via a planning condition. It is understood that the applicant has already started progressing this matter with the EA and STW with draft copies of the scope and specification of the work being shared with both on 3/11/2023.
- 5.2.25 Matters relating to this are covered in the following submissions from the applicant
- ES Feb 21 Appendix 10.3 Piling Works Risk Assessment (PWRA)
  - SEI Jan 23 Appendix 5.D Piling Works Risk Assessment (PWRA)
  - WSP response to the EA dated 21st June (Annex A)
  - WSP response to the EA dated 31st July (Annex B)
  - WSP Test piling specification to the EA dated 3rd November 2023 (Annex C) (issued to the EA, and STWL, for comment)"

5.2.26 Following the applicant's response to C9.1, C9.8, C16.10, C16.11 and C16.6 of the Waterman report the LPA are sufficiently comforted to deal with these matters via condition.

5.2.27 The EA has stated that the nature and extent of the bank protection (right bank) and how it transitions to natural bank, including habitat improvement, should be included within the Development Site. The detailed design should include the location, length, transitions, etc for the bank protection works. In addition, a longer-term vegetation/bank protection management strategy and Flood Risk Activity Permit is requested.

5.2.28 The points raised by the EA including that relating to bankside habitat enhancement are accepted. The green bank protection measures should include habitat types of high distinctiveness such as reedbed to offset temporary and permanent decline in biodiversity and should be considered within the design. In addition, Waterman's comments in the EIA Final Review Report (October 2023) highlighted that a source assessment should also be undertaken. A pre-commencement planning condition is included to address the requirement for a longer-term vegetation/bank protection management strategy.

It is also recommended that a further pre-construction planning condition is included to address the requirement for the detailed design including details and agreements on the future maintenance plan.

5.2.29 The WFD assessment submitted in February 2021 states that there would be riparian planting implemented along the left bank for approximately 130m.

The landscape plans, as part of the SEI Jan 23 (70056211-WSP-ELS-L3-DR-LE-30014 Version C01.2), show riparian planting on the left bank and at the upstream and downstream end of the bank protection.

The left bank will include coir product and suitable riparian plant species to encourage re-vegetation after works on the banks as appropriate.

Planting on the right bank would renaturalise and not require regular management (like existing scenario). A transition to natural bank from rock bags is enabled by the proposed planting. The 8-metre buffer zone on the right bank would be maintained by the periodic maintenance for the access track to STW.

The plans are to be approved through Condition. This is a pre-commencement condition and will be approved by the LPA before any work on site starts. These requirements can be incorporated into the detailed design.

The applicant acknowledges that a Flood Risk Activity Permit will be required from the Environment Agency for these proposed works, which is a statutory requirement. Therefore, it is not deemed necessary to cross reference the need for a FRAP via condition.

5.2.30 These matters are covered in the following documents.

- SEI Jan 23 Appendix 1.P Bank Protection Technical Note
- SEI Jan 23 Landscape Drawing: 70056211-WSP-ELS-L3-DR-LE-30014 Version C01.2

And Clarification C7.2 of the Waterman report.

5.2.31 The EA has raised that additional points should be included in Construction Environmental Management Plan condition to include pollution controls; this is accepted, and the condition has been expanded to cover these matters. The applicant has no issues with the inclusion of additional matters being written into a condition. Most of these additions are already incorporated in the development of the detailed CEMP which will be discharged by pre-commencement condition. This will include the stipulation to the contractor to follow the same design principles for the temporary drainage and the other points raised by the EA. This matter was also identified and dealt with under clarification point C16.8 of the Waterman report.

5.2.32 The EA stated that the road drainage strategy contained technical errors including the proposal of a non-sealed drainage system within Source Protection Zone (SPZ) 1 and 2.

5.2.33 Officers agree with the points raised by the EA. In addition, Waterman's comments in the EIA Final Review Report (October 2023) highlighted that *'the road drainage and water environment proposals does not clearly demonstrate that flood risk, water management, water quality, and pollution control is being suitably considered in terms of Environmental Statement (ES) assessment given the design proposals are not wholly complete and/or suitably detailed'*.

5.2.34 The EA have suggested wording for an additional planning condition and that it should be a pre-commencement planning condition. Reference to the Drainage Strategy 70056211-WSP-HDG-AS-RP-CD-00001 P02 July 2021 should be included in the planning condition. This request has been incorporated into the suggested conditions list.

5.2.35 The Applicant have met with the managers of the Multi Agency Response Plan and it has been confirmed that it is not appropriate to revise the Plan, for any specific situation, as it is a framework for action and working together. The Applicant will, however, make full details of the drainage system, and its management, available to the Fire Service (and any other party that is likely to be on scene in the event of a spill) that explains the

location and operation of the pollution containment features and equipment.

5.2.36 Following completion, the North West Relief Road and associated structures will become a maintainable asset of Shropshire Council under its established Highway Maintenance Programme. It will be subject to the established asset inspection and proactive maintenance regime as is currently effectively delivered across the wider c.5,200 km of highway asset. Forward funding of the maintenance programme is set annually by Council on a rolling basis. Based on future expected financial allocations, and in the light of the recent Government announcement around enhanced funds for Highways and Pothole maintenance in particular (up to 2036 at least), the Councils Highway Department can give a categorical undertaking that the NWRR asset will be effectively managed and maintained within required standards for the lifetime of the road.

5.2.37 These matters are dealt with in the following documentation.

- ES Feb 21 Appendix 10.2 Detailed Quantitative Risk Assessment (DQRA)
- SEI Jan 23 Appendix 5.C Detailed Quantitative Risk Assessment (DQRA)
- WSP response to the EA dated 21st June (Annex A)
- WSP response to the EA dated 31st July (Annex B)

The Waterman report also sought clarification at C16.15 and C16.16 and were satisfied with the response from the applicant to recommend the matters be dealt with via conditions.

5.2.38 The EA has recommended wording for bespoke highway signage denoting groundwater vulnerability to be added to the highway's signage condition. It is considered that consistency is required with other SC signage, and that the concern in relation to speed at the SPZ roundabout may be better addressed by use of rumble strips and speed signage to slow vehicles entering the roundabout down.

5.2.39 Location signs for Pollution Control Devices (PCD) could be placed within the source protection zone to signify the location of PCDs. These would be limited to standard variants, in line with Design Manual for Roads and Bridges (DMRB) requirements, visible from the carriageway and locally specifying the distance and/or direction to devices (e.g. a penstock) for those attending an incident.

5.2.40 The appropriateness of public information and warnings at the site need to be carefully considered in the context of drawing attention to the sensitive nature of the location. i.e. an information sign asking drivers to take action to reduce the risk of an accident could highlight the opportunity to someone who wished to cause harm to the public. Therefore, it may be more appropriate to use other measures which don't draw attention to the SPZ, but slow traffic down. This issue was covered by C16.7 in the Waterman report.

- 5.2.41 The EA have stated that the viaduct barrier system lacked technical detail including the assurances on the mitigation and robustness of the proposed design for the viaduct barrier system over the River Severn. The EA's suggested wording for an additional pre-commencement planning condition has been incorporated into the list of conditions.
- 5.2.42 The EA has stated that the proposed network of water quality monitoring points identified by the applicant provide an adequate coverage and that the suggested frequency should represent the bare minimum frequency. In view of the high sensitivity of ground and surface waters along the route, a pre-commencement planning condition to detail the scheme, analytical suites, screening levels, reporting mechanisms and subsequent decommissioning has been added. A separate pre-operation planning condition for the submission of monitoring data and confirmation of the borehole decommissioning works has also been included.
- 5.2.43 The EA has suggested that the location and presence of non-licensed small volume private groundwater sources is not commented upon or risk assessed by the applicant.
- 5.2.44 In response, the applicant acknowledged that such water supplies will be afforded protected rights against any impact and has identified three potential sources and provided a brief assessment of each. Whilst the EA did not advocate the use of a pre-commencement planning condition, it did suggest what it would expect to see within a planning condition with a requirement for a full assessment. A condition is proposed to require a full assessment which will deal with matter.
- 5.2.45 With this in mind a pre-commencement planning condition for a water feature survey has been included and with an appropriate assessment to be included in the updated DQRA.
- 5.2.46 The EA has stated that the flood risk mitigation measures lacked technical detail including the flood compensation works, levels and betterment proposals. The EA's suggested wording for an additional pre-commencement planning condition is accepted and has been incorporated in the list of conditions.
- 5.2.47 The EA has raised that there is no mention of otters which were previously raised in connection with mammal passage and has recommended the ecology planning condition is expanded to secure/include for details to be provided of all mammal passages within each part of the route/phasing plan. The suggested condition has therefore been expanded to include otters.
- 5.3.1 STW have requested amendments to conditions and undertakings in relation to the development. The LPA as the statutory planning authority ultimately makes the final decision on whether to approve or refuse the

discharge of a planning condition. As part of the process of discharging a condition the LPA consults with consultees to seek their views on the appropriateness of information submitted to determine if a condition can be discharged. Conditions usually only refer to approval by the LPA and having regard to this it not deemed necessary to include reference to consultation with STW and EA in the condition as this will happen as a matter of course.

- 5.3.2 In relation to the undertakings requested, these need to come from the applicant and not the LPA. The LPA is distinct from the applicant and operates as such and therefore it cannot make a commitment on its behalf. The LPA, like the applicant has statutory responsibilities and it is not the role of the LPA to police the statutory responsibilities of another part of the authority. As stated these are statutory responsibilities of the Highway Authority as applicant and it is incumbent on them to fulfil its statutory responsibilities. Whilst, clearly both the EA and STW have concerns in relation to these matters, this is a matter that the applicant has to sort out with the representative parties and not something that can be conditioned through the planning permission. Paragraph 194 of the NPPF is explicit in this stating '*The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.*'
- 5.4.1 Appendix 2 contains the original planning committee report which was considered by the Northern Planning Committee at their meeting on 31<sup>st</sup> October 2023. Within the consultation section and the subsequent officer commentary there are requests from consultees for the inclusion of various planning conditions.
- 5.4.2 The report identifies areas to be covered by conditions and following the resolution of the committee to approve the application subject to the agreement of planning conditions by the Northern Planning Committee, a further round of consultations with external and internal consultees took place to finalise the wording of conditions.
- 5.4.3 As a result of this round of consultation on the format and content of the planning conditions the list of conditions (Appendix 1) has been finalised and it is considered that this represents a comprehensive and robust set of conditions which covers all outstanding matters and concerns, thus allowing the Local Planning Authority to issue the decision notice once the Section 106 is completed.
- 5.5 Summary

- 5.5.1 Whilst, there still remains a difference of opinion between the EA and the applicant in relation to provision of further information. The local planning authority, having sought independent advice from Waterman is sufficiently reassured with the robustness of the environmental statement following a detailed review and the additional information to be secured via pre-commencement conditions to move forward to a decision. Clearly, the EA position is that they would prefer this information in advance of any decision being made on this application, whilst the applicant position is that this information can be provided prior to commencement of development. Having regard to the advice the LPA has received following the independent review, it is considered that these outstanding matters can be sufficiently controlled via pre-commencement conditions without the need for further delay.
- 5.5.2 The pre-commencement conditions will require the submission of the additional information that both the EA and STW require. Clearly, the EA position is that they would prefer this upfront prior to a decision. However, given that these are pre-commencement conditions development cannot start in advance of these conditions being discharged. It is therefore considered that once the information is received this determine if further mitigation and avoidance measures are required to satisfy these outstanding concerns.
- 5.5.3 Section 106 Agreements will be signed to between the Council and landowners to deliver the offsite compensation strategy and mitigation elements proposed as part of the scheme. The legal obligations will cover desisting of agricultural activities around Hencott Pool, woodland management, woodland planting, veteran tree management plans,

## 6.0 RECOMMENDATION

- 6.1 The formal issuing of a decision notice is still subject to the completion of Section 106 agreements between the Council and landowners impacted by the proposals. The decision will therefore only be issued once these are completed.
- 6.2 However, the agreement of the suggested conditions is an important step in moving forward to a point where a decision notice can be issued and in light of this it is recommended that the committee agree to the imposition of the conditions set out in Appendix 1 on any planning permission granted.
- 6.3 It should be noted that following the finalisation of the suggested list of conditions these have been shared with the external statutory consultees such as the EA, STW and NE. Any further comments received back from them prior to the committee meeting will be reported to members at the meeting.

### **APPENDIX 1 – Draft Conditions**

### **APPENDIX 2 – Planning Application report on 21/00924/EIA**

**To Northern Planning Committee on 31/10/2023**

**APPENDIX 3 – Review of Environment Agency Planning Conditions –  
Waterman 01/02/2024.**