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Mr Richard Price  
The Planning Inspectorate  
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**Our ref:** KT/2016/121628/02  
**Your ref:** TR010006  
**Date:** 12 January 2017

Dear Mr Price

**Application by Highways England for an Order Granting Development Consent for the M20 Junction 10a**

Please find enclosed our written representations for the M20 Junction 10a project. If you have any questions or require any clarification on the points below, please do not hesitate to contact me.

Yours faithfully

**Mrs Ghada S. Mitri Renner**  
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## **Written Representations**

### **On behalf of the Environment Agency**

This Written Representation outlines where further work, clarification or mitigation is required to ensure so far as possible that the proposal has no detrimental impact on the environment. At this stage, we consider that the Flood Risk Assessment (FRA) is incomplete, and that the applicant still needs to demonstrate that flood risk will not be increased by this proposal incorporating the new climate change allowances (2016). This is a lengthy process (around 8 to 9 weeks) involving a model review and we believe this needs to be resolved at this stage. There is also other information that will need to be provided in due course, the provision of which will need to be secured by way of requirements or through protective provisions, relating to the design of the scheme, but specifically our access to the Aylesford Stream, pollution prevention and land contamination. The further information we will require is set out in detail below.

### **1.0 Flood risk assessment**

As explained in our Relevant Representations the Environment Agency has a general supervisory duty in relation to flood risk management matters. The Environment Agency has the power to carry out flood risk management works to any main river but has no duty to do so. Based on the current information submitted, we have the following advice to share:

We do not consider the submitted Flood Risk Assessment (FRA) is complete. Further information is required to show that flood risk will not be increased by this development. The following information should be provided at this stage, before this examination closes. Please note this information involves flood modelling, which needs to be reviewed by our modelling team. This review is a lengthy process and it is in the applicant's best interests to make us aware of when this is expected for review so we can ensure that appropriate resources are available. We strongly recommend the applicant submits the following as soon as possible:

- Information to demonstrate that there will be no loss of floodplain storage as result of the development. This applies in particular to the proposed slip roads which are shown within the flood zone. The FRA must be updated to include an assessment of the loss of flood storage, and provide compensation storage on a level for level, volume by volume basis.
- The FRA should take into account the new climate change allowances Published on 19 February 2016 under the title: Flood risk assessments: climate change allowances (available on gov.uk at <https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances>). It will need to use the most appropriate climate change allowance for the development, but we would advise that this is agreed with us before updating the FRA and carrying out modelling. Modelling should use the Environment Agency's most up to date fluvial flood model, which is currently the 'Ashford Updates Model, 2012'.
- It will need to consider the effects not only of the embankments in flood zone 3, but also of all crossings across flood zones that make up the scheme and demonstrate no impact on flood risk.

- Confirmation of the design requirements for mammals and the level of the animal pipe bridge. These will be used to update the FRA to form a modelled assessment to demonstrate that channel capacity will not be affected upstream/ downstream of the M20

### **1.1 Structures within the bylaw margin**

The following information will need to be provided, however it may be sufficient to secure this information through the protective provisions:

- Design details of embankments with clear span bridges for new slip roads and temporary works structures: e.g. temporary bridge (e.g. bailey bridge), coffer dams, over-pumping arrangements, silt mitigation measures, haul roads, compounds, fencing.
- Design details of mammal crossings, after these have been confirmed for the flood risk assessment.
- Design details of new outfalls should be aligned to an angle oblique to the watercourse (ideally 45 degrees to the direction of flow) and the pipe should not protrude in the channel where it may cause an obstruction to flow. Where a headwall is proposed, the headwall and wingwalls should not project beyond or above the profile of the riverbank and should be as visually unobtrusive as possible. Our preference would be for more natural materials to form the headwall e.g. stone rather than plastic or at least brick rather than concrete bagwork. Suitable scour protection and splash apron should be provided where appropriate.
- New structures within the cross-sectional area of the Aylesford Stream and within 8 metres of the riverbank of the Aylesford Stream e.g. surface water outfalls; new ditch connecting to the Aylesford Stream from Stour Park Development site, fencing, access track(s).

### **1.2 Access to the Aylesford Stream**

We also require additional information and drawings to show that our access to the Aylesford Stream will be maintained. We need access to the Aylesford Stream to allow us to carry out maintenance annually and for incident management purposes as part of our flood risk management role. We need to maintain our access to the channel during and post development, as we cannot know what interventions may be required in the long term. It may be satisfactory to us to secure this information through the protective provisions, when the scheme is at detailed design stage.

We will need to see detailed drawings of an appropriate scale, of the new access tracks and any temporary or permanent structures in or within 8 metres of the Aylesford Stream (for example bailey bridge, coffer dams, over pumping arrangements, compounds, fencing, outfalls) as follows:

- New access track from the A2070 (Bad Munstereifel Rd), e.g. serving Pond 1, to the existing farm bridge over the Aylesford Stream. This is to ensure the new track from A2070 is suitable for EA vehicular access to the Aylesford Stream for incident management and maintenance purposes

(e.g. weedcutting, blockage clearance, desilting). A blockage here could flood the nearby car park. We need reassurance that the M20 culvert and the immediate section of channel downstream, will not be obstructed, either as a consequence of the project delivery or outcome.

- Suitable dimensions to indicate proximity of the proposed mammal pipe bridge adjacent to the M20, to the M20. This will allow us to ascertain the length of channel of the Aylesford Stream where our access along the channel (e.g. for desilting operations) may now be blocked by the presence of this bridge.
- Details of the proposed badger/mammal fencing in the vicinity of the proposed mammal pipe bridge and associated fencing. This will help us understand whether, and how much of our access to the channel will be blocked by this structure. We recommend that suitably sized vehicular access gates are provided within the fencing to still maintain our access to the Aylesford Stream (e.g. between the mammal pipe bridge and the Lacton Farm culvert).
- Access provision for the Environment Agency to the Aylesford Stream from the A20.
- Temporary works structures: e.g. temporary bridge (e.g. bailey bridge), coffer dams, over-pumping arrangements, silt mitigation measures, haul roads, compounds, fencing. This is to ascertain whether we can access the Aylesford Stream whilst work on the development is being carried out.

## **2.0 Land contamination and groundwater protection**

The proposed works present a risk of groundwater pollution by mobilising contaminants that are in this area. Chapter 9 of the Environmental Statement also indicates that historic sources of contamination pose a risk to controlled waters. It should be possible to mitigate these risks however through appropriate requirements on the DCO. There will need to be requirements to cover the following:

- Site investigations and/or further risk assessment: The Contaminated land desk study and preliminary interpretative report dated July 2016 report assessed groundwater to be at risk from historic sources. This is due to vertical migration of leachates, and vertical and horizontal migration of contaminants in the saturated zone. The introduction of mitigation measures during construction works will not reduce this risk, as it is already present prior to construction.
- Remediation strategy.
- Verification plan which will help inform and assist the development of the verification report
- Verification report to confirm the completion, and effectiveness of measures carried out under the remediation strategy.
- Piling risk assessment: It has been confirmed to us that there will be no piling in the vicinity of the historic landfill site however, where there will be piling, it can still result in risks to groundwater quality from, for example, mobilising contamination, drilling through different aquifers and creating preferential pathways. Thus it should be demonstrated that any proposed piling will not

result in contamination of groundwater. This is outlined as a mitigation measure in Chapter 9 of the Environmental Statement, and should fall under requirement 3.(2)(c) of the draft DCO.

- Monitoring and maintenance plan: The Outline CEMP suggests that selected water courses will be sampled during construction operations. Given the potentially contaminative historic uses, proposed piling, and sensitive groundwater receptors, this should also include groundwater quality monitoring. Groundwater quality data would need to be provided before, during and after construction work, and should include more than the single round of groundwater analysis currently undertaken. We have no objection the proposed use of the standpipes. We also need the CEMP, when produced, to clearly show that groundwater monitoring will take place before, during and after construction, and detail the list of determinants to be analysed (such as those identified in the Contaminated Land Desk Study and Preliminary Interpretative report).
- Surface water drainage plan to be submitted under requirement 12 of the dDCO should show that infiltration drainage is limited to only those areas of the site where it has been demonstrated that there is no resultant pollution risk to the groundwater. We would expect the drainage to have all the necessary pollution prevention measures built into the road system, such as gully pots, attenuation lagoons etc., if a fuel spill were to occur then the fuel would be able to be contained prior to discharging into a main river. We are aware that managing flood risk from surface water is the responsibility of the Kent County Council however we would request to be consulted so as to be able to comment on pollution prevention measures which are advisable.

### **3.0 Ecology**

The Environment Agency has a general statutory duty to promote the conservation of flora and fauna dependent on an aquatic environment and a specific duty to maintain, improve and develop this environment. We have reviewed the mitigation measures proposed by the development and we are satisfied that the proposals put forward by the applicant to mitigate for the adverse effects on the water environment are appropriate. Most importantly, the use of clear span bridges above the Aylesford Stream for the junction's slip roads means that the watercourse remains open and ecologically viable, no future improvement is prevented and the watercourse does not deteriorate under the Water Framework Directive. We find the scheme is compliant with Water Framework Directive requirements. We do not believe that the proposed works to the Aylesford Stream will cause deterioration to the stream or wider waterbody.

We have previously shared the following ecological enhancement measures with the applicant as desirable though we don't require specific requirements or protective provisions:

- Deflectors made of woody material fitted within the Aylesford Stream along the very straight section of watercourse between TR0370741284 and TR0396041186. This is alongside where the site compound is proposed.

These will help create a meandering watercourse, with a variety of flows and bed types, which will improve the biodiversity.

- Some tree planting immediately adjacent to the water along the south side of the same stretch of Aylesford Stream would be useful as this section of watercourse only has trees on the north side. Shading watercourses from the south helps protect them from rising temperatures whereas trees immediately adjacent to the river help the river to meander. However, as this is not the bank where the compound is to be placed we recognise that this may be difficult to achieve.
- Demolition or notching of the weir at TR0435641348 to enable gravels to move downstream (a vital habitat) and fish to migrate upstream to spawn. We note that Junction 10A works will be conducted immediately above the weir structure and it would therefore be the ideal opportunity for this to occur.

In addition to the above, we have yet to receive clarification as to why Highways England seeks to disapply fisheries legislation. We await further information from the applicant and will provide advice when additional information is submitted.

#### **4.0 Waste and materials**

We are pleased to note there is a draft requirement for the CEMP (3) which details that a Site Waste Management Plan, a Soil Handling and Management Plan, and Materials Management Plan will be submitted as part of the CEMP. We will be able to provide advice to the applicant when this information is made available. We would like to have the opportunity to be consulted on the above plans and seek for the requirement to be amended to reflect this.

#### **5.0 Pollution prevention**

We are pleased to note there is a draft requirement for the CEMP (3) and for surface and foul water drainage (12). We have the following concerns with regards pollution prevention and would like to have the opportunity to be consulted on pollution prevention measures and seek for the requirement to be amended to reflect this.

We have the following comments to make

- Appendix 14.2 Flood Risk Assessment Volume 6.3 July 2016-Drainage Strategy:
  - *The Pollution Prevention Measures Section states that "Earthworks drainage would incorporate catchpits/sumps to reduce the risk of silt reaching the outfall. This level is outside the scope of this report and would be included in detailed design".* We request the opportunity to comment when the detailed design is available to ensure that catchpits/sumps will function appropriately to prevent silt runoff reaching the outfalls and ending up in the watercourse.
  - *The report also states "Penstock shall be installed upstream of each pond to allow isolation in case of a spillage within the catchment".* The Environment Agency recommends that as the penstocks are to be located upstream and downstream of each attenuation pond, which will isolate the

- drainage system and contain any polluting effluent, to ensure that if the pollution has already reached the ponds, manual stop boards are placed at the outfall from the ponds to the receiving watercourse. This will ensure no pollution reaches the Aylesford Stream at any time, whenever the pollution is discovered and/or reaches the ponds. Together with the road gullies the Environment Agency accepts that all pollution prevention measures would be in place, in the absence of interceptors. We request the opportunity to comment at detailed design stage.
- Appendix 17.1 Outline Construction Environmental Management Plan (oCEMP) 5 Consents, Commitments & Permissions. Table 5.1 Permits, Consents and Licences:
    - *The document states “Discharge of water from excavations is trade effluent, and therefore requires a Permit although exemptions apply for temporary dewatering affecting up to 20m of a Main River”*: while we agree that discharge of water from excavations is trade effluent, and therefore requires a Permit, we do not agree with the second part of that sentence. The Environment Agency clarifies that for an exemption to be used in place of an Environmental Permit, any dewatering must be carried out within a period of 3 months together with any of the remaining criteria in the Agency’s Regulatory Position Statement (RPS), anything over this period of time will require an Environmental Permit. The RPS has been shared with the applicant. We await further clarification from the applicant as to the need for dewatering.
  - Appendix D. Register of Environmental Actions and Commitments. Road Drainage and the Water Environment (RDWE):
    - *The document states “The washing of any concrete mixing plant or ready-mix lorries would be carried out in a way that prevents cleaning effluent to flow into any watercourse or drain”*. The Environment Agency recommends that all effluent from vehicle washing or mixing plant washing must be contained and tankered off site if it is not possible to discharge this trade effluent directly into a main foul drainage system. This should be written into the CEMP. We request the opportunity to comment on the CEMP when produced.
    - The document states “To limit effects upon groundwater during excavations”. We note that this again is regarding groundwater being pumped from excavations so our previous comments above regarding dewatering apply as follows: discharge of water from excavations is trade effluent, and therefore requires a Permit. For an exemption to be used in place of an Environmental Permit, any dewatering must be carried out within a period of 3 months together with any of the remaining criteria in the Agency’s Regulatory Position Statement (RPS), anything over this period of time will require an Environmental Permit. The RPS has been shared with the applicant.

The Environment Agency recommends the following mitigation measures to be put into place to protect water quality:

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- No vehicle washing effluent can discharge to watercourses under any circumstances. A designated area containing all run-off must be used. The effluent must be tankered off site. The same applies for designated concrete and cement mix areas. All effluent must be contained and tankered off site.
- All oil and fuel storage must be on impermeable surfacing and secondary contained.
- All nozzles must be kept within the secondary containment and securely locked at all times.
- Silt must not enter any watercourse, pollution prevention measure such as silt busters, settlement tanks etc., must be put into place at all times to prevent pollution.
- The Environment Agency must be informed immediately should accidental spillages occur and all emergency response procedures included in the CEMP must be followed.

We have yet to receive clarification as to what abstraction activities need to be carried out. We need clarification around what is being proposed, to what extent and duration, what monitoring and trigger levels there are before we can provide advice. The same applies to dewatering activities. Until then, we recommend that any reference to disapplication of abstraction and dewatering legislation is removed from the draft Protective Provisions.

## **6.0 Disapplication of Legislation and Protective Provisions**

Highways England seeks to disapply various pieces of legislation (in the draft Development Consent Order submitted with the application). We are currently considering our position in relation to the legislation which is relevant to the Environment Agency. We are currently reviewing our preferred form of protective provisions (in particular because flood defence consenting now falls under the Environmental Permitting Regulations 2016 year rather than under the Water Resources Act 1991 as it did previously). We will be responding to the applicant on these issues in due course and will provide the Examining Authority with an update.

HE seeks to disapply various pieces of legislation for the period of construction of the works authorised by the DCO. These are listed in Part 2 of the draft DCO. Those relevant to the Environment Agency are

- Regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2010/675(a) (now EPR 2016);
- Section 24 (restrictions on abstraction) of the Water Resources Act 1991;
- The provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 to the Water Resources Act 1991;
- Section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(b);
- Section 32 (variation of awards) of the Land Drainage Act 1991; and
- The provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991.

The Environment Agency is prepared to consider disapplication of Flood Risk Activity Permits provided HE agrees to appropriate protective provisions for the benefit of the Environment Agency to be included in the DCO. We would stress that we would not agree to the disapplication of permitting legislation until further information and a complete FRA has been submitted. As the disapplication of legislation has not all been agreed yet, and ongoing environmental permitting cannot be disappplied without justification (which we have not received), we are unable to agree any draft Protective Provisions or Requirements in the draft DCO. We are unable to agree to acceptance of the Requirements until we have accepted the protective provisions given the interface between the two. We are in ongoing discussions with HE on these issues and will update the Examining Authority in due course.

HE included draft protective provisions for the benefit of the Environment Agency in the draft DCO submitted with their application. We have considered these draft provisions and will shortly be discussing them in detail with HE. We will be requiring amendments to the protective provisions put forward by HE.

We will update the Examining Authority on the progress of the discussions regarding protective provisions in due course.

## **7.0 Attendance at Hearings**

We will be happy to attend the hearing relating to environmental issues and any DCO drafting hearings to explain any of the above representations in further detail if that will assist the Examining Authority. Alternatively the Examining Authority may wish to schedule a separate hearing on flood risk issues.