

The Planning Inspectorate  
Room 4/04  
Temple Quay House (2 The Square)  
Temple Quay  
Bristol  
Avon  
BS1 6PN

**Our ref:** LT/2019/124714/01-L01  
**Your ref:** A38 NSIP  
**Date:** 4 November 2019

Dear Sir/Madam

## **APPLICATION BY HIGHWAYS ENGLAND FOR A38 DERBY JUNCTIONS IMPROVEMENTS – ENVIRONMENT AGENCY WRITTEN REPRESENTATIONS**

Please find enclosed our written representation for the A38 Highways Improvements.

### **The Role of the Environment Agency**

The Environment Agency has a responsibility for protecting and improving the environment, as well as contributing to sustainable development.

We have three main roles:

We are an **environmental regulator** – we take a risk-based approach and target our effort to maintain and improve environmental standards and to minimise unnecessary burdens on business. We issue a range of permits and consents.

We are an **environmental operator** – we are a national organisation that operates locally. We work with people and communities across England to protect and improve the environment in an integrated way. We provide a vital incident response capability.

We are an **environmental advisor** – we compile and assess the best available evidence and use this to report on the state of the environment. We use our own monitoring information and that of others to inform this activity. We provide technical information and advice to national and local governments to support their roles in policy and decision-making.

One of our specific functions is as a Flood Risk Management Authority. We have a general supervisory duty relating to specific flood risk management matters in respect of flood risk arising from Main Rivers or the sea.

### **Outstanding information and issues of concern**

Our written representation outlines where further work, clarification or mitigation is required to ensure that the proposal has no detrimental impact on the environment. Since our relevant representations, Highways England and the Environment Agency have been engaged in the creation of a Statement of Common Ground (SOCG). We have now been provided additional groundwater and contaminated land information to review in respect of these matters, which was received on the 9<sup>th</sup> October 2019, however after review we still have outstanding matters to be addressed by the applicant which are detailed below.

Please do not hesitate to contact me if you require any further information. We look forward to continuing to work with the applicant to resolve the matters outlined above, and to ensure the best environmental outcome for this project.

Yours faithfully

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Cont/d..

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**Written Representations  
On behalf of the Environment Agency**

**1. Additional Groundwater and Contaminated Land Comments**

The Annexes to the Preliminary Sources Studies provide us with the reassurance that the scopes of the intrusive site investigations considered the potentially complete pollutant linkages outlined in the “Geotechnical Risk Register”.

The applicant provided figures showing groundwater exceedances in each area, but still believe the use of UCL95 for groundwater quality data is not appropriate. This is because the UCL95 value is used to represent a concentration of a contaminant in groundwater across the whole of each area of investigation, which is conceptually incorrect.

For example, we would not expect various hydrocarbon substances to be naturally occurring, or widespread in all groundwater monitoring points, and therefore the production and use of the UCL95 value would not accurately reflect the risk posed to controlled waters from the locations where contamination *has* been identified. After all, this is why the investigation has targeted sources of contamination.

We suggest that the risk assessments are updated by comparing actual laboratory results with the chosen standard, and well as considering other lines of evidence, such as the spatial distribution of the contaminant in groundwater. This is in line with our Land contamination: risk management guidance document, which can be found via the link below:

<https://www.gov.uk/guidance/land-contamination-how-to-manage-the-risks>

We note that the recently submitted screening tables provide direct comparison of groundwater quality data and a relevant standard, although there are no associated assessments of risk, dialogue, or recommendations.

We reiterate our comments about the Detailed Quantitative Risk Assessment, which are underpinned by the earlier assessments of risk discussed above. We will wait for additional information to be provided before we review this documents.

Please note, however, that this matter is covered by a provision within the draft DCO, in this case requirement 8. We understand that the applicant is preparing further information to provide additional assurances on this regard during the examination process.

**2. Draft Development Consent Order**

The Environment Agency are still waiting to see the revised draft DCO where we expected that the requirement for a verification will be incorporated in line with our

agreement with Highways England through the Statement of Common Ground (SoCG) process.

### **3. Permits & Consents**

The Environment Agency has reiterated to the applicant through the SoCG process, as well as highlighting in our response to the written questions from the planning inspector, that we are satisfied that the applicant is aware of all permits and consents that would be required. However, we are not aware of any applications for said permits and consents as of 4th November 2019, and therefore cannot comment on the likelihood of these being granted.

### **4. Protective Provisions**

The Environment Agency has provided our protected provisions and are awaiting further discussion with the applicant. We are still waiting for confirmation on the specifics of what they propose to disapply if anything.

### **5. Other matters raised in our relevant representations**

The other matters raised within our relevant representations have started to be addressed and agreed to through the SoCG process that is currently being progressed.

### **6. Examining Authority's First Written Questions**

As mentioned above we have responded to the questions raised by the Examining Authority. Our replies and the Applicants subsequent comments may give rise to further representations.