

## The Planning Inspectorate

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**Our ref:** LT/2019/124875/01-L01  
**Your ref:** A38 NSIP  
**Date:** 19 December 2019

Dear Sir/Madam

### **A38 DERBY JUNCTIONS - RESPONSE TO ISSUES AND QUESTIONS RAISED IN ISSUE SPECIFIC HEARING 2 ON THE 11TH DECEMBER 2019 - ENVIRONMENT AGENCY RESPONSE A38 DERBY JUNCTIONS**

Thank you for giving the Environment Agency the opportunity to provide a written response to the issues and questions raised by the Inspectorate during Issue Specific Hearing 2 that took place on the 11<sup>th</sup> December 2019. Please find our response to the relevant questions below.

34) The Environment Agency has no direct remit on the carbon footprint of this scheme. However, we did offer some general advice as part of our response to the written questions for Issue Specific Hearing 1. That advice still stands that we would encourage any opportunities for Carbon Reduction.

35) a) We would encourage the aim for 25% as the national target as a minimum despite the East Midlands target being 14%. Some large projects have provided more than the 25%. For example the London Olympics achieved a 34% recycled content rate (by value) for materials used in that scheme (para 10.18 No Time to Waste, Commission for a Sustainable London 2012, March 2010  
[http://www.cslondon.org/wp-content/uploads/downloads/2010/03/2010\\_Waste\\_Review.pdf?id=2010\\_Waste\\_Review.pdf](http://www.cslondon.org/wp-content/uploads/downloads/2010/03/2010_Waste_Review.pdf?id=2010_Waste_Review.pdf) .

b), we would agree that the SWMP should be required to consider waste minimisation (designing out waste and preventing it from arising in the first place is a key aspect of Site Waste Management Plans, and is consistent with the waste hierarchy, where it is better to prevent waste from being produced, than having to recycle / dispose of it), The SWMP should also ensure that the waste management chain is fully auditable by having checks and processes in place to ensure that waste is passed to authorised persons, and disposed / recycled at appropriately authorised facilities. This will support the legal waste industry and protect it and the environment from price undercutting and consequent unlawful disposal by illegal operators.

37) The Environment Agency is satisfied that in respect of main rivers affected by the scheme there is no net loss proposed. We are aware that environmental enhancements are taking place on ordinary watercourses and the ecologists working for the councils have engaged with the development of these proposals.

38) We have no comments on this section as these are matters that relate to matters within the domain of the councils rather than the Environment Agency.

41) We would ask that the Inspector adopt the wording from the DCO model provisions "Nothing in this article overrides the requirement for an environmental permit under regulation 12 (requirement for environmental permits) of the Environmental Permitting (England and Wales) Regulations 2016", in respect of Article 20 of the DCO. This will make it clear that the applicant will need to obtain a permit for any water discharge activity which requires such a permit pursuant to the 2016 Regulations.

44) a) To date the Environment Agency has not had any detailed discussions with the applicant, however, we understand that the applicant proposes to disapply Environment Agency byelaws. We will wait for the applicant to contact us with further specifics.

b) Disapplication of legislation and protected provisions are inherently linked. Where an applicant is looking to disapply legislative requirements relevant to the Environment Agency's regulatory role, the Environment Agency's protected provisions ensure that that the disapplication is subject to the provisions (conditions) contained within them thus protecting the Environment Agency's regulatory interests.

59) a) The Environment Agency are happy to be consulted via the LPA for requirements 3, 8 and 14.

**g) Verification**

We have previously expressed a need to have a verification process, which validates any remedial action deemed necessary under requirement 8 (land and groundwater contamination) of the draft Development Consent Order (dDCO).

This is because the framework upon which contamination risk assessment and remediation is based requires a need to demonstrate that any remedial action undertaken has been carried out as detailed within remediation strategy proposals, and also that it has been effective in reducing contamination risks.

The applicant has indicated that this verification process can be included as part of the Construction Environmental Management Plan rather than through an amendment of the dDCO.

Whilst we do not object to the principle of this proposal, but we do point out that the current wording of requirement 3 (CEMP) in the dDCO may not currently facilitate this.

This is because remedial actions may constitute commencement of development, and/or may need to be undertaken during the course of development. If the

verification process is included as part of requirement 3 (CEMP, which is a pre-commencement requirement) then the applicant may be unable satisfy requirement 3 - they cannot commence until it is satisfied, but cannot satisfy until after commencement.

To this end, we would recommend that the wording of requirement 3 is reviewed by the applicant in consultation with the Environment Agency to ensure that in the event that remedial action is undertaken and a verification report is to be produced, the Environment Agency is consulted as part of the process.

61) As stated we would be happy to see the HEMP if it is required. We have no detailed comments further on this.

62) (a) No specific comments on the timescales. If timescales are proposed we would be content with a 21 day time scale to respond.

(b) We would recommend that Requirement 4 is amended to include an obligation that the applicant must provide reasons for not incorporating an undertaker's recommendations within the report to the Secretary of State.

69) As mentioned under 44), the Environment Agency is waiting for the applicant to provide further details on what is expected to be disapplied, although we understand that the disapplication may relate to Environment Agency byelaws only. Once the applicant has provided this information we will be able to provide a more detailed response.

70) We have not had any further approaches from the applicant in respect of applications for the relevant consents and permits. As such we are not in a position to comment on whether these consents will be granted or not until such time as we have seen the required detail. We would recommend that the applicant should submit any required applications for consents as soon as possible due to the risk of delay as a result of the consultation and consideration periods which will need to be included within the determination time scales.

71) It is difficult to take a position when important detail remains outstanding. We have previously responded to written questions stating that standard pollution prevention control and best practice measures should be sufficient but until the specifics are detailed at a site meeting we cannot provide further information.

72) At this stage, in respect of the documents provided for this DCO application, the Environment Agency has raised no concerns relating to the environmental aspects within our remit. However, we cannot provide a definitive response on the outcome of future permit and consent application that will be required until the detail and information is provided by the applicant.

74) e) **Groundwater contamination** - The Environment Agency has reviewed a technical note produced by the applicant which aims to address our queries on reports that were appended to the Environmental Statement. The subject of the technical note relates to contamination risk assessments, and we consider that this matter, whilst under discussion, is covered under requirement 8 of the dDCO.

## Contamination

We have reviewed the Technical Note for the a38 junctions produced by AECOM, dated November 2019 (ref: 60533462). The Technical Note looks to address questions made by us (Environment Agency) in response to risk assessments underpinning the Environmental Statement.

We are encouraged that the updated assessment of risk no longer uses a statistical test (i.e. use of UCL95), which is not appropriate for the purposes of controlled waters risk assessment.

Table 1 indicates that a number of aliphatic and aromatic hydrocarbon bands have been detected in elevated concentrations within groundwater within landfilled materials at the Kingsway Junction. However, there is no subsequent comment or assessment of risk posed to controlled waters receptors from these determinants. This point was raised in paragraph 6.4 of our Relevant Representations (July 2019) and remains an outstanding matter which has not been addressed.

To a lesser extent, similar comments could be made about results of concentrations of similar compounds from groundwater analysis in BM05 within the Markeaton Roundabout area.

We have no objections in principle to the conclusions drawn about the risks posed to controlled waters from other determinants in the other junction areas.

75) The majority of matters relating to SOCG are related to either groundwater or contaminated land. As mentioned at 74 e) above, the Environment Agency have reviewed new groundwater information as submitted by the applicant and our response is detailed above.

Yours faithfully

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