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The Planning Inspectorate
National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

Our ref: HA/2023/124853/03
Your ref: TR010055

Date: 15 June 2023

Dear Sir or Madam,

Application by National Highways Company Limited for an Order Granting Development Consent for the M3 Junction 9 Improvement Scheme.

Please find enclosed the Environment Agency's responses to the Examining Authority's written questions and requests for information (ExQ1) (as issued on 25 May 2023).

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

Yours faithfully,

Anna Rabone

Sustainable Places Technical Specialist

Environment Agency, Solent & South Downs

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TR010055: Application by National Highways for M3 Junction 9 Improvement Scheme

Environment Agency response to the Examining Authority's written questions and requests for information (ExQ1) (as issued on 25 May 2023)

EXQ1	QUESTION	ENVIRONMENT AGENCY'S ANSWER
Q9.1.9	Regarding the draft DCO [APP-019] Article 3, please comment generally on the effect of Article 3 and whether relevant protective provisions have been discussed and agreed?	<p>We have suggested to the Applicant that the following amendments are made to Article 3:</p> <p>“Disapplication of legislative provisions</p> <p>1.—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within any maintenance period defined in article Error! Reference source not found., any maintenance of any part of the authorised development–</p> <ul style="list-style-type: none"> (a) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(a) in relation to the carrying on of a flood risk activity or a water discharge activity; section 21 (restriction on abstraction) and section 25 (restrictions on impounding) of the Water Resources Act 1991(b); (b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (bye-law making powers of the appropriate agency) to the Water Resources Act 1991; (c) section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991; (d) section 32 (variation of awards) of the Land Drainage Act 1991; (e) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991 including, but not limited to, Southern Water Authority Land Drainage and Sea Defence Byelaws 1981;

		<p>(f) section 28E (duties in relation to sites of special scientific interest) and 28H (Statutory undertakers, etc.: duty in relation to carrying out operations) of the Wildlife and Countryside Act 1981; and</p> <p>(g) in so far as they relate to the temporary possession of land, the provisions of the Neighbourhood Planning Act 2017.</p> <p>(2) In paragraph 1(1)(a) “flood risk activity” (b) and “water discharge activity” (e) has the meaning given in the Environmental Permitting (England and Wales) Regulations 2016.</p> <p>In regard to the above suggested amendments, the EA will usually only agree to the disapplication of a requirement for a flood risk activity permit under the Environmental Permitting Regulations 2016 and for byelaw making provisions under the Water Resources Act 1991 and where we are the Internal Drainage Board, under the Land Drainage Act 1991. Everything else, including abstraction and impounding licences, drought orders and permits under the Water Resources Act 1991 and all environmental permits, except flood risk activity permits, we would typically not allow to be disapplied in the DCO in consideration of the particular aspects of the development and the risk of environmental harm.</p> <p>We have also provided a copy of our standard Protective Provisions to the Applicant and anticipate further revisions of the DCO to include those.</p> <p>The Applicant has advised that they will address the above in due course.</p>
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Q9.1.14	Regarding the draft DCO [APP-019] Article 8, please indicate whether there are any outstanding concerns in relation to the proposed limits of deviation or whether any drafting amendments are sought in relation to Article 8?	We have been advised by the Applicant that the widening of the limits of deviation would be subject to the restriction that it would not give rise to any materially new or worse adverse environmental effect, in comparison to those addressed in the Environmental Statement. Therefore, we are satisfied that Article 8 is adequate and no amendments are necessary.
Q9.1.25	Please comment on the Article 21 provisions generally, and in particular, on the safeguards provided by Article 21(3) and (5).	The provisions in Article 21 seem satisfactory to us.
Q9.1.55	Please explain further the need, if any, for additional Requirements to cover matters relevant to the EAs remit. Please provide draft Requirements for those topic areas for the ExA's consideration giving reasons for their imposition.	The EA has no need for further Requirements to cover matters relevant to our remit.
Q10.1.2	Section 13.4 of ES Chapter 13 [APP-054] explains that although the findings of the initial ground investigation works undertaken to inform the design of the Proposed Development did not cover the entire application site it is considered that they provide sufficient detail to allow a robust assessment of potential impacts at this stage. Please can the EA and HCC (as Lead Local Flood Authority) confirm whether it considers that the works undertaken are sufficient to identify all of the relevant hydrological receptors that may be affected by the Proposed Development.	Yes, we are satisfied that the works to date are sufficient to identify all of the relevant hydrological receptors that may be affected by the Proposed Development.