

## M3 JUNCTION 9 IMPROVEMENT PROJECT

### SUMMARY OF WRITTEN REPRESENTATION OF SOUTHERN WATER SERVICES LIMITED (URN 20036806)

#### 1. Southern Water's status and statutory responsibilities

- 1.1. We are instructed by Southern Water Services Limited (**Southern Water**) in relation to the application for a development consent order (**DCO**) made by National Highways (**the Applicant**) to authorise upgrades to Junction 9 of the M3 to allow free movement from the A34 to the M3 (**the Project**). This written representation is made on behalf of Southern Water ahead of Deadline 2 of the Examination on 15 June 2023.
- 1.2. As detailed in its Relevant Representation, Southern Water is the appointed water undertaker under the Water Industry Act 1991 for certain areas in the south-east of England comprising the Isle of Wight and parts of Hampshire, Sussex and Kent. Southern Water is also the appointed sewerage undertaker for the purposes of that same Act, comprising a larger continuous area stretching from Hampshire to Kent, including the Isle of Wight. As a result, Southern Water is subject to a number of strict statutory duties for the supply of water to c. 2.6 million people and providing sewerage services to c.4.6 million people.
- 1.3. Southern Water is the appointed water and sewerage undertaker for the entirety of the Order limits as defined in article 2(1) of the draft DCO [AS-004] (and the surrounding areas). Southern Water is therefore a statutory undertaker for the purposes of sections 127 and 138 of the Planning Act 2008 in relation to the Project.
- 1.4. Given its statutory duties, any development in areas where Southern Water is responsible for providing water and sewerage services, or over or near land in which Southern Water maintains assets and/or has other rights for the purposes of discharging its statutory duties, is carefully considered by Southern Water and the Project is no different.

#### 2. Objection

- 2.1. At this present time, Southern Water maintains its objection (as first set out in its Relevant Representation) to the Project. Whilst Southern Water does not object *in principle* to the Project, its statutory duties compel it to object to the Project on the basis that, absent of satisfactory protections for its benefit, the Project would cause serious detriment to Southern Water's undertaking. Southern Water has the following overarching principal issues with the DCO application at present. These are further detailed in Southern Water's main written representation:
  - 2.1.1. the proposed operation of powers contained in the draft DCO authorising the Applicant to construct, operate and maintain works on, across, under, above or adjacent to Southern Water's operational assets which may impede Southern Water's ability to ensure the safe, efficient and economical provision of water and sewerage services and for Southern Water to discharge its statutory duties;
  - 2.1.2. the proposed operation of powers contained in the draft DCO authorising the Applicant to compulsorily acquire land, to compulsorily acquire rights in or over land, extinguish rights in land or take temporary possession of land in which Southern Water maintains assets and/or has other rights for the purposes of discharging its statutory duties;
  - 2.1.3. the fact that the intention of the Applicant appears to be for Southern Water to have no formal input into mitigation measures that are directly relevant to its functions (e.g. under the proposed Environmental Management Plan (second

iteration) secured by Requirement 3 in Schedule 2 to the draft DCO or surface water drainage details under Requirement 13 in that Schedule); and

- 2.1.4. the absence in the current draft DCO of satisfactory protective provisions for the benefit of Southern Water.

### **3. Engagement between Southern Water and the Applicant**

- 3.1. It is worth noting that the Applicant has only undertaken limited engagement with Southern Water to date, with the most recent substantive engagement taking place in September 2022.
- 3.2. In summary, this engagement has been restricted to the progression of the 'conventional' C3 process for the Project under the New Roads and Street Works Act 1991, beginning in May 2019 and culminating in Southern Water providing a revised C3 budget estimate to Volker Fitzpatrick Ltd (the Applicant's contractors dealing with utility matters) on 2 September 2022 in respect of impacts to Southern Water's water supply infrastructure. It was not until 2 February 2023 that Volker Fitzpatrick Ltd responded in short form to Southern Water and requested that this scheme be progressed from C3 to C4, and in any event it was determined that this would be managed through the DCO process. No further engagement has taken place between the parties since then.
- 3.3. In addition, there has been no dialogue or communication to date between Southern Water and the Applicant or Volker Fitzpatrick Ltd regarding any impact on Southern Water's sewer network as a result of works proposed by the Project.
- 3.4. Southern Water has noted the Applicant's *Responses to Relevant Representations* submission [REP1-031], particularly the response given to Southern Water's relevant representation. It is stated that "*Discussions are ongoing with Southern Water*".
- 3.5. For the benefit of the Examining Authority, Southern Water wishes to make clear that in its view this is not an accurate characterisation of engagement between the parties to date. Nevertheless, Southern Water's solicitors have, since Deadline 1, been in contact with the Applicant's solicitors, with a view to discussing Southern Water's outstanding issues and it is understood that the Applicant wishes to engage positively moving forward, which is very much welcomed. Southern Water has also reached out to the Applicant's technical teams with a view to re-commencing technical engagement between the parties.

### **4. Protective Provisions**

- 4.1. Southern Water notes the 'standard' set of protective provisions for the benefit of statutory undertakers contained in Part 1 of Schedule 10 to the draft Order. As has been communicated to the Applicant, these are unsatisfactory to Southern Water in a number of areas. Southern Water wishes to engage with the Applicant with a view to reaching agreement on a satisfactory form of protective provisions for the benefit of Southern Water, to deal with the impacts on its interests so as to avoid serious detriment to its undertaking arising from the Project. It is considered likely that all the issues raised above could be resolved through such means.

### **5. Current Position**

- 5.1. If the Applicant and Southern Water can reach agreement on the form of protective provisions to address the concerns detailed above, Southern Water considers that its objection could be resolved swiftly. However, Southern Water is compelled to maintain its objection to the Project at this stage absent such agreement with the Applicant.
- 5.2. Southern Water will seek to positively engage with the Applicant on these points.

**Pinsent Masons LLP**

**15 June 2023**