

**From:** [Clare, Ruth](#)  
**To:** [A417 Missing Link at Air Balloon](#)  
**Cc:** [REDACTED]; [Kris Atkins \(Ocker Environmental\)](#); [Allan Pitt](#); [Brown, Steve](#); [David Brown \(X\)](#)  
**Subject:** Environment Agency Submission for Deadline 4 - A417 Missing Link - ref TR010056  
**Date:** 14 February 2022 17:22:13  
**Attachments:** [image002.jpg](#)

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Dear Madam/Sir

At the recent Issue Specific Hearing 1: draft Development Consent Order (dDCO) on 25<sup>th</sup> January the Environment Agency (EA) was asked to confirm its position on Protective Provisions. The specific action was listed as:

*ISH1-AP10 - EA to confirm its position on protective provisions for the EA in the dDCO.*

We are able to provide the following update at this time. Please note that due to illness impacting staff availability over the past 3 weeks it has not been possible to give as much time to this as would have been desired. We would be happy to follow-up on any outstanding issues or further queries as necessary.

**Protected Provisions:**

We understand that the Examining Authority (ExA) wishes to know whether the EA is in agreement with the wording set out in Schedule 8 Part 3 of the dDCO pertaining to the EA's Protected Provisions.

To date the EA has not required its legal team to undertake a detailed review of the wording in Schedule 8 Part 3 of the dDCO. This can be arranged if it is deemed necessary. However, we understand from our discussions with National Highways (NH) that the wording follows standard wording used elsewhere on other DCO projects that have previously been accepted by the EA. Given that the Protected Provisions are generic in nature and not bespoke to the project or site, we have not sought for a detailed legal review of the wording to date as it is anticipated that the wording will be sufficient in the context of the EA's Protected Provisions. Accordingly we raise no objections in principle to the Protected Provisions. However given that the Protected Provisions relate in part to the issue of Other Consents, Licences and Permits, it may be helpful to provide additional commentary on this matter, as follows below.

**Other Consents, Licences and Permits:**

At deadline 1 (14 December 2021) we provided answers to the ExA's questions regarding Other Consents and Licences. (Please refer to our answers to 1.4.20 Watercourse Rights and 1.4.22 Other Consents.) We have not been able to reach a final position on this matter as yet. The following gives a summary of the current position:

NH has provided the following advice to us regarding the Consents/Licences it wishes to disapply through the DCO legislation (the below was supplied when NH was still using 'Highways England'):

1. **Water Discharge Activities** – *Permit to discharge to surface water and/or groundwater under Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016. Required following treatment of waters arising from construction activity or for the discharge of treated contaminated waters to ground, via re-injection (or possible soakaway) or a watercourse. The requirement*

*for permit will be determined based on construction method and sequencing. This is a Prescribed Consent which Highways England are seeking to disapply through the DCO and therefore **need agreement from the EA.***

2. **Water Abstraction License** – *Abstraction of water under sections 24 and 25 of the Water Resources Act 1991. Required for de-watering operations on site during construction. This is a Prescribed Consent which Highways England are seeking to disapply through the DCO and therefore **need agreement from the EA.***
  
3. **Flood Defence Bylaws** – *Consent or approval for the carrying out of works required under any relevant bylaws made under the Water Resources Act 1991. Required in the event that any relevant bylaws require consent or approval for the authorised development. This is a Prescribed Consent which Highways England are seeking to disapply through the DCO and therefore **need agreement from the EA.***

Our discussions with NH to date have led to us agreeing in principle that the third item (Flood Defence Byelaws) are not likely to be relevant to the development as there are no main rivers, fluvial floodplains or EA Assets (such as flood risk management infrastructure) located within the application site at present. It is not impossible that no such features will be located within the site in future (for example it is possible that an ordinary watercourse could become 'enmained' in future, or future flood risk management infrastructure may be installed in the area). As such we are satisfied that the Protected Provisions are worded as they are to include such provisions. However based on the current situation and expected future outlook, we understand that NH do not consider that any Flood Risk Permits will be required as part of the proposed works given the effected watercourses are lower tier and regulated by Gloucestershire County Council as Lead Local Flood Authority. We agree with this.

With regards to the other two items (Water Discharge Activities and Water Abstraction License), our internal discussions with relevant officers within the EA to date have led to some hesitancy about agreeing that these can be disapplied. Some staff have cast doubt over whether the EA generally agree to disapplying the legislation in the case of water resources consents (with the view expressed that we do not agree to this for abstraction and impoundment licences specifically).

There has also been a view expressed that we may be prepared to be flexible on this where the abstraction is only short term and in connection with the construction of infrastructure. Whilst discussions are ongoing about these matters both internally within the EA and together with NH, given the hydrogeological setting of the development and the likelihood that abstraction would not be on particularly 'short term' basis, it is felt at this point in time that the EA still has reservations about agreeing to these matters being disapplied through the legislation. We will continue to work with NH on this matter to reach a final position. It would be helpful to understand from the ExA's perspective when a final position is required on this matter.

I hope the above is of help at this stage. Please do not hesitate to contact me if you have any queries.

Kind regards,  
Ruth.

**Ruth Clare** BA (Hons), MSc, MRTPI, PIEMA

**Planning Specialist – Sustainable Places**

**Environment Agency - West Midlands Area** (Shropshire, Herefordshire, Worcestershire & Gloucestershire)

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