

The Planning Inspectorate
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Our ref: XA/2024/100126/01-L01
Your ref: TR010063

Date: 30 July 2024

Dear Sir/Madam

The M5 Junction 10 Improvements Scheme: Development Consent Order: The Examining Authority's written questions and requests for information (ExQ1)

Comments on the Examining Authority's written questions and requests for information (ExQ1). Further to our formal response on the Written Representation (WR) dated 18 June 2024, we have now reviewed and answered the questions which were uploaded to the PINS website dated 9 July 2024 and have the following comments.

ExQ1	Question to:	Answer
1. General and Cross-topic Questions		
Q1.0.9	Other Consents and Licences The SoCG with the Environment Agency refers to a Temporary Flood Risk Activity Permit (under the Environmental Permitting Regulations 2016) that will be required. (i) Please advise what progress has been made on obtaining such a permit. (ii) Advise of any impediment that there may be to the grant of such a permit. (iii) In the absence of the information of what the permit may or may not allow explain how the ExA can be satisfied there is sufficient understanding of the flood risk and water management issues	<p>i. At present, no Flood Risk Activity Permit (FRAP) has been issued for either the temporary or permanent works because the applicant has not yet applied to us.</p> <p>ii. At this stage we have not yet identified any showstoppers that would prevent the grant of a permit. However, the Environment Agency (EA) advises that applications for FRAPS should not be made until planning permission has been secured as this is the primary legislation in such instances to minimise unnecessary work for both the applicant and the regulator.</p> <p>iii. The application has been accompanied by a detailed Flood Risk Assessment which has assessed the risk to the development from all sources of flooding including how climate change will affect flood risk into the future. The applicant has undertaken detailed hydraulic modelling of the watercourses within the order limits for the development. This has been done for both the baseline (pre-scheme) and with scheme in place scenarios and provides a comprehensive understanding of baseline flood conditions and how the proposed scheme will affect flood risk. The Environment Agency have reviewed both the baseline and with scheme models for the River Chelt and ordinary watercourses and are satisfied that the hydraulic modelling provides a realistic representation of flood risk to the scheme as well as the effects of the scheme on flood risk. We note that construction phase activities have not been included in this assessment however please see</p>

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	that the tests in the NPS NN are satisfied	our response to question Q16.0.7 for additional detail on this.
3. Biodiversity, Ecology and the Natural Environment		
Q3.1.8	<p>Waterbodies connected to the Severn Estuary</p> <p>Can the EA explain the absence of reference to the Severn Estuary in the WR [REP1-067]?</p>	5.7 was omitted due to a clerical error in the creation of WR [REP1-067]. The EA will endeavour to add this item back in the next deadline.
6. Draft Development Consent Order (DCO)		
Q6.0.3	<p>Article 4 – Maintenance of Drainage Works</p> <p>Following on from ISH2 and the Applicant's response at D1 are all parties agreed as to who the responsible authorities are as set out by the Applicant?</p>	The Environment Agency does not have an obligation to maintain drainage works but in some cases, we choose to do so under our permissive powers.
16. Water Environment – Flood Risk, Water Quality and Resources		
Q16.0.1	<p>Flood Risk</p> <p>Is the EA satisfied with the scope of flood risk assessments undertaken by the Applicant including the omission of any specific hydraulic modelling of temporary construction conditions?</p>	<p>To date hydraulic modelling has been undertaken for the current baseline (without scheme) and an in-principal scheme. The modelling for the scheme has been reviewed internally by the Environment Agency and externally by a third-party consultant on behalf of the EA.</p> <p>We have not seen any detail or modelling with regards to the temporary construction phase of the project as this is not finalised. The EA will be consulted on this as detailed in Item WE15 of the Register of Environmental Actions and Commitments (REAC) which highlights a requirement for detailed hydraulic modelling of the construction phase which will be undertaken to support a temporary flood risk activity permit [REP1-030] (page 45, June 2024).</p> <p>The appropriate output results of this modelling should have been included within the body of the Flood Risk Assessment (FRA) or as appropriate appendices, along with the modelling report.</p> <p>However, in the absence of a final detailed design a commitment has been made to undertake further detailed assessment which will be used to finalise the mitigation requirements, that will be reviewed by the Environment Agency.</p> <p>Apart from phasing and a commitment to sequentially locate temporary compounds/work in areas of lowest risk, the EA believe until a contractor is appointed it is not possible to commit further to temporary construction conditions as these may be unfeasible to implement.</p>

<p>Q16.0.2</p>	<p>Flood risk</p> <p>Are the EA satisfied with the findings regarding minor riverbank erosion and whether EA are now a consultee that would also be adequately addressed in the REAC via a flood risk activity permit?</p>	<p>Riverbank erosion is considered a natural process and any proposals to mitigate against this as part of the scheme will be regulated through the Environmental Permitting Regulations (2016) by the Environment Agency under the Flood Risk Activity Permitting process.</p>
<p>Q16.0.3</p>	<p>Flood Risk</p> <p>Please can the Applicant and the EA confirm how the ExA can be satisfied that there will be no significant construction phase flood effects (fluvial and surface water) in the absence of any construction phase assessments? The Applicant should demonstrate how adequate floodplain storage and compensation areas will be in place to avoid any overall adverse impacts during construction.</p>	<p>The Environment Agency cannot confirm this at present as we have not seen the detail. However, item WE15 in the REAC [REP1-030] commits the applicant to assessing the impacts of both the final permanent and temporary works within the flood plain of the River Chelt through detailed modelling to ensure appropriate flood plain compensation measures are constructed to mitigate impacts.</p> <p>To date hydraulic modelling has identified the need for compensation and the likely volumes required which has been initially reviewed. However, until final designs are submitted the specific detail of any compensatory storage areas cannot be confirmed.</p> <p>The EA will be consulted on the construction phase post DCO as outlined in the REAC [REP1-030] and will have the opportunity to review the construction phase proposals and associated modelling to ensure construction phase effects are mitigated.</p>
<p>Q16.0.7</p>	<p>Flood risk assessment - Construction phase and Flood Risk Activity Permits</p>	<ul style="list-style-type: none"> i) At present no Flood Risk Activity Permits (FRAPS) have been issued for either the temporary or permanent works. The Environment Agency advise that applications for FRAPS should not be made until planning permission has been secured as this is the primary legislation in such instances to minimise unnecessary work for both the applicant and the regulator. Until a detailed design for the permanent works has been granted planning permission, it is advised that a FRAP application for any structures requiring permission is not sought. ii) Without the final design or appointed contractor, it is not possible to undertake a site-specific construction FRA. iii) The Flood Risk Activity Permit is not the appropriate mechanism for assessing risk for the construction phase as this only applies to areas within 8 metres of the watercourse. Construction phase flood risk will be assessed via the

		<p>commitments made within the REAC [REP1-030] document and are secured through requirement 3 of the dDCO (REP1-004)</p> <ul style="list-style-type: none"> iv) This is a matter for the applicant, contractor, and EA to agree. As a contractor has not been appointed the EA consider that siting of compounds should be like all other flood matters, where possible, take a sequential approach. We would advise against siting any compounds or temporary storage of material within Flood Zone 3b (the functional flood plain). Where it is not viable to avoid locating compounds in Flood Zone 3a (High Risk), then appropriate mitigation measures will be sought to minimise impacts to both the works themselves and third parties. v) It may not be reasonable to rely on the ongoing floodplain compensation unless it can be demonstrated through hydraulic modelling that it offsets the risk from the construction phase activities. If the ongoing compensation is found not to be suitable to offset the increased risk, then other mitigation measures need to be explored. We recommend the wording in WE15 of the REAC [REP1-030] is updated to allow flexibility in the event that the ongoing floodplain compensation is found to be unsuitable to offset the risk from the construction phase activities. vi) None. The construction phase is fully dependent on the submission of final detailed designs and the appointment of a contractor. Hence whilst the impact of the permanent structures can be satisfactorily covered by planning legislation.
<p>Q16.0.19</p>	<p>Legal Agreement or further mitigation</p> <p>In their relevant and written representations [RR-013 and REP1-067], the Environment Agency (5.4.95 – 5.4.99 Issue - Right to increase flood levels through the DCO and 6.10 Exemption Test Principles, referring to the FRA [AS-023] refer to the requirement to enter into a legal agreement with landowners affected by any increases to flood risk as a result of the Proposed Development, or provide further mitigation.</p>	<p>Through the EA's role as a statutory planning consultee for flood risk, we are obliged to highlight the responsibilities any developer has in relation to flood risk impacts and third parties if full mitigation cannot be provided. It is clear there may be a level of detriment to third parties from a flood risk perspective.</p> <p>As a responsible public body, it may be appropriate for us to flag this issue and highlight that the applicant should initiate contact and compensate the landowners for this increase. However, the EA cannot comment on the makeup of the legal agreement itself. To do so would constitute over-stepping into what is a private matter. The responsibility would rest on the affected landowners to seek their own legal advice on what they should be looking to secure from the applicant, whether in terms of a legal agreement for compensation or otherwise.</p>

16.1 Water Framework Directive (WFD)		
Q16.1.2	<p>Water Framework Directive (WFD)</p> <p>Are the EA satisfied that there would be no adverse effects on water quality or on achieving the environmental objectives established under the WFD</p>	<p>Based on the information provided in Appendix 8.2 WFD Compliance Assessment (REP1-026) and the reported results of the Highways England Water Risk Assessment Tool (HEWRAT) assessment, the Environment Agency is satisfied that there is negligible risk of deterioration to water quality elements in the affected WFD waterbodies.</p>

Yours faithfully

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Planning Advisor- National Infrastructure Team

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