

# M5 Junction 10 Improvements Scheme

## Consents and Agreements Position Statement TR010063 - APP 3.3 (Tracked)

Regulation 5 (2) (q)

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Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

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# Infrastructure Planning Planning Act 2008

## The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

### M5 Junction 10 Improvement Scheme Development Consent Order 202[x]

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#### 3.3 Consents and Agreements Position

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# 1. Introduction

## 1.1. Purpose of this document

- 1.1.1. This Consents and Agreements Position Statement sets out Gloucestershire County Council's (GCC) intended strategy for obtaining the consents and associated agreements needed to implement the ~~M5 J10 project~~ M5 Junction 10 Improvements Scheme ("the Scheme").
- 1.1.2. The purpose and objective of this document is to identify what consents and agreements are expected to be needed for the Scheme outside of the Development Consent Order (DCO), and how these will be obtained in line with Regulation 5(2)(q) of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (The APFP Regulations).
- 1.1.3. For further information on the Scheme, please refer to Environmental Statement (ES) Chapter 2 – The Scheme (application document TR010063/APP/6.2).

# 2. Strategy

## 2.1. Consents strategy

- 2.1.1. Although the DCO will allow the Scheme to be constructed and operated, there will inevitably be wider consents and licences which are required outside of the DCO, recognising the level of detail and information available at the point at which the application is submitted and consented.
- 2.1.2. The basis of GCC consents strategy is therefore:
  - A DCO must be sought as the principal consent for the works under the Planning Act 2008 ("the Act") including to provide the necessary land acquisition and temporary possession powers.
  - The intent of the Act and Government policy is to enable development and construction-related consents to be included within the DCO; therefore, where possible and practicable, additional consents have been included within the DCO.
  - The Scheme benefits from the intent of the Act and Government policy, as most of the consents required for the construction of the Scheme will be in place at the point of the making of the DCO. ~~→~~ This minimises the need for any further approvals before the works covered by the DCO can commence.
  - The proposed Scheme has and will be developed based on strong collaboration between the key stakeholders, and any additional consents and agreements will be secured at key stages of project development as necessary.
- 2.1.3. The progress on these items will be reported to the Examining Authority through Statements of Common Ground (SoCG) with the key statutory bodies, with a summary of the current situation reported in Section 3 of this document and at Appendix A.

## 3. Consents and agreements

### 3.1. Consents

3.1.1. The principal consent for the proposed Scheme will be a DCO. The DCO provides development consent for the works and enables land acquisition and temporary possession, along with many consents and powers to be dealt with at the same time.

3.1.2. However, the DCO application may need to be supplemented by other applications because:

- A specific consent cannot be contained in the DCO.
- A consenting authority declines to allow a consent to be contained within the DCO (where they have the power to do so).
- It is not desirable, or it is inappropriate, to include a consent within a DCO due to the stage of design development meaning the detail required is unavailable.

3.1.3. At this point (the submission of the DCO application), most of the consents and all the powers required have been included, or addressed, within the DCO as permitted by various provisions of the Act. These fall into the following categories:

- Authorisation of all permanent and temporary works.
- Compulsory acquisition of land and/or rights over land such as easements, restrictive covenants and the temporary possession of land.
- Consent to carry out street works and to stop up highways permanently or temporarily.
- Highways matters (including classification of roads; temporary stopping up and restriction of use of streets and private means of access).
- Traffic regulation matters (including speed limits, clearways and restrictions on use).
- Consent to stop and divert public and private rights of way.
- Consent to carry out tree works.
- Consent to remove hedgerows including any 'important hedgerows';
- Powers to carry out utility diversions (subject to protective provisions).
- Consent to abstract and/or discharge water from/to the sub-soil.
- Consent to carry out flood risk and water discharge activities.
- Consent to obstruct ordinary watercourses.
- Consent or approval for the carrying out of the works required under any relevant bylaws made under the Water Resources Act 1991 or the Land Drainage Act 1991.
- Consent to remove buried human remains.

3.1.4. A number of the above consents are prescribed in the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 (a "Prescribed Consent"). As a result, under section 150 of the Act, the relevant consenting body must agree to the inclusion of these consents within the DCO. Please see Appendix A for further details.

- 3.1.5. GCC is confident that the necessary agreements will be obtained before or during the Examination of its application, in exchange for GCC proposing to include in the DCO appropriate protective provisions, drafts of which have been included in the draft DCO (application document TR010063/APP/3.1).
- 3.1.6. The permits, consents and agreements that may need to be sought separately from the DCO are identified in Appendix A. The consents listed in Appendix A are largely dependent on finalisation of the detailed design, the detailed construction site set up and working methodologies, and discussions with the consenting authorities in light of the detailed design. Some of these are not sufficiently developed at this stage to confirm the requirements and therefore it is not practicable to include them within the DCO.
- 3.1.7. Other forms of agreement are also likely to be required, including letters of no impediment from Natural England in relation to draft European Protected Species licences.
- 3.1.8. Paragraph 4.56 of the National Policy Statement for National Networks (NPSNN) states that the Secretary of State should not refuse development consent on the basis of regulated impacts unless there is good reason to believe that any relevant necessary operational pollution control permits, licences or other consents will not subsequently be granted. GCC is unaware of any such reason.

## 3.2. Agreements

- 3.2.1. Agreements with relevant stakeholders may be required in parallel to the DCO process and may take a variety of forms.
- 3.2.2. A fundamental part of the DCO process is the preparation and agreement of SoCGs with a variety of relevant stakeholders to identify the matters on which parties agree and disagree. This helps narrow the focus for examining the application concerned and to make the examination process more efficient. SoCGs have been prepared with the following organisations:
- Host Authorities (Cheltenham Borough Council, Tewkesbury Borough Council and Gloucestershire County Council).
  - National Highways.
  - Environment Agency.
  - Natural England.
  - Historic England.
  - Developers - North West Cheltenham.
  - Developers - West Cheltenham.
  - Developers - Safeguarded land north-west Cheltenham.
- 3.2.3. The progress to date of SoCGs can be found in the Statement of Commonality (Document Reference TR010063/APP/8.11). Copies of the draft SOCGs will also be provided within the DCO submission.
- 3.2.4. Further progress on finalising any SoCG or other forms of agreement, along with updated/final documents, will be reported to the Examining Authority before the close of the examination.
- 3.2.5. Other forms of agreement are also likely to be required alongside SoCGs, for example, legal agreements regulating land and works powers, undertakings, memoranda of understanding. A number of these are being progressed by the Applicant, for example:

- Agreements with statutory undertakers where these are required in addition to the protective provisions within the DCO.
- If needed, where mitigation measures are proposed outside of the DCO boundary (e.g., discretionary noise insulation Scheme for certain properties affected by operational changes to the local road network), these would be agreed with individuals, businesses and any other relevant receptors to provide the appropriate mitigation.



# Appendices



## Appendix A. Consents and agreements table

### A.1. Consents and agreements that may be required separately to the DCO

Issue	Consent / Licence / Agreement & Legislation	Relevant authority	Description	Status	Relationship to the Draft DCO
Nature conservation	<b>Badgers</b> – A licence under section 10 of the Protection of Badgers Act 1992	Natural England	May be required in relation to the disturbance and destruction of known badger setts within the Order Limits prior to and during construction of the Scheme. To ensure badgers are not disturbed and ensure legal compliance with the Protection of Badgers Act 1992.	Engagement with Natural England is ongoing regarding the potential impacts of the Scheme on badgers and necessary mitigation. A draft licence will be submitted to Natural England following submission of the DCO and the Applicant anticipates a letter of no impediment will be provided by Natural England prior to the close of Examination. A final licence will be formally submitted following finalisation of the construction design and schedule, and once the DCO has been granted.	GCC is not seeking to disapply this in the draft DCO.
	<b>Bats</b> – European Protected Species Licence under the Conservation of Habitats and Species Regulations 2017; section 16 of the Wildlife and Countryside Act 1981	Natural England	Required in relation to the disturbance and destruction of known bat roosts within the Order Limits prior to and during construction of the Scheme. To comply with conservation legislation and protect roosting bat species.	Engagement with Natural England is ongoing regarding the potential impacts of the Scheme on bats and necessary mitigation. A draft Protected Species Licence will be submitted to Natural England following submission of the DCO and the Applicant anticipates a letter of no impediment will be provided by Natural England prior to the close of Examination. A final Protected Species Licence will be formally submitted following finalisation	GCC is not seeking to disapply this in the draft DCO.

Issue	Consent / Licence / Agreement & Legislation	Relevant authority	Description	Status	Relationship to the Draft DCO
				of the construction design and schedule, and once the DCO has been granted.	
	<b>Great Crested Newts</b> – Conservation of Habitats and Species Regulations 2017; a licence under section 16 of the Wildlife and Countryside Act 1981	Natural England	Will be required in relation to the disturbance or removal/translocation of great crested newts within the Order Limits prior to and during construction of the Scheme. To ensure Great Crested Newts are not disturbed and ensure legal compliance with the Wildlife and Countryside Act 1981.	Engagement with Natural England is ongoing regarding the potential impacts of the Scheme on <u>G</u> reat <u>C</u> rested <u>N</u> ewts and the potential requirement for an EPS licence post DCO consent. A draft Protected Species Licence will be submitted to Natural England following submission of the DCO and the Applicant anticipates a letter of no impediment will be provided by Natural England prior to the close of Examination. A final Protected Species Licence will be formally submitted following finalisation of the construction design and schedule, and once the DCO has been granted.	GCC is not seeking to disapply this in the draft DCO.
	<b>Translocation of fish</b> – Authorisation to translocate fish prior to reprofiling of banks, under section 27a exception permit under The Salmon and Freshwater Fisheries Act 1975 (Form FR2)	Environment Agency	Required for the minor reprofiling of banks upstream and downstream of River Chelt Bridge, and River Chelt culvert, and downstream of Leigh Brook culvert, to ensure that the fish assemblage in the receiving environment are protected during works.	Engagement is ongoing with the Environment Agency (EA). The requirement for fish translocation will be reviewed at the detailed design stage.	GCC is not seeking to disapply section 27a in the draft DCO.
Water	<b>Water Discharge Activities</b> – Permit to discharge to surface water and/or groundwater under Regulation 12 of the Environmental Permitting	Environment Agency	Required following treatment of waters arising from construction activity or for the discharge of treated contaminated waters to ground, via re-injection (or	Engagement is ongoing with the EA. Requirement for permit will be determined based on construction method and sequencing. <u>d</u> ischarge activity in the draft DCO.	GCC is not seeking to disapply this consent in the draft DCO.

Issue	Consent / Licence / Agreement & Legislation	Relevant authority	Description	Status	Relationship to the Draft DCO
	(England and Wales) Regulations 2016		possible soakaway) or a watercourse.		
	<b>Water Abstraction Licence</b> – Abstraction of water under sections 24 and 25 of the Water Resources Act 1991	Environment Agency	Required for de-watering operations on site during construction.	Discussions with the <del>Environment Agency</del> EA have taken place on the potential impact of the Scheme. Engagement is ongoing with the EA. Requirement for licence will be determined based on construction methods and sequencing.	GCC is not seeking to disapply this consent in the draft DCO.
	<b>Flood Risk Activity Permit (FRAP)</b> – Consent or approval for the carrying out of works required under any relevant bylaws made under the Water Resources Act 1991	Environment Agency	Required in the event that any relevant bylaws require consent or approval for the authorised development.	Discussions with the <del>Environment Agency</del> EA have taken place on the potential impact of the Scheme. Engagement is ongoing with the EA.	GCC is not seeking to disapply this consent in the draft DCO.
	<b>Ordinary Watercourse Consent</b> – Ordinary Watercourse Land Drainage Consent: under section 23 of The Land Drainage Act 1991	Gloucestershire County Council as the lead local flood authority	Required for all works over, under or near ordinary watercourses. Required for all culvert or structures likely to affect flow in ordinary watercourses. This would include all ordinary watercourses crossed by the Scheme.	Discussions with the relevant authorities have taken place in relation to the Scheme and will continue in relation to the relevant works and agreement to disapply section 23 in the draft DCO.	This is a Prescribed Consent which GCC is seeking to disapply in the draft DCO.
	<b>Trade Effluent Consent</b> – under the Water Industry Act 1991	Local water undertaker	For the purposes of discharging trade effluent from welfare facilities.	Should a trade effluent consent be required to discharge any trade effluent into a public sewer, then a consent would be applied for in advance of the works commencing.	GCC is not seeking to disapply this consent in the draft DCO.

Issue	Consent / Licence / Agreement & Legislation	Relevant authority	Description	Status	Relationship to the Draft DCO
				The requirement for a Trade Effluent Consent will be discussed with the relevant local water undertaker should it be required during the construction phase.	
Materials and Waste	<b>Waste</b> – Management and disposal of waste under the Environmental Permitting (England and Wales) Regulations 2016	Environment Agency	Required for the management and disposal of waste from site, to protect the environment against contamination.	Engagement is ongoing with the EA. Full extent and details of required permits and licences is to be determined.	GCC is not seeking to disapply this consent in the draft DCO.
	<b>Materials</b> – Pollution Prevention and Control Act 1999, Environmental Permitting (England and Wales) Regulations 2016	Environment Agency	A mobile plant permit for crushing operations or site permits will be required if a subcontractor within a mobile plant permit is used for construction of the Scheme.	If required, discussions will take place post-DCO consent with the <u>Environment Agency</u> in advance of construction works.	GCC is not seeking to disapply this in the draft DCO.
	<b>Asbestos</b> – Control of Asbestos Regulations 2012	HSE	Required for any works where asbestos is present.	It is possible that asbestos may be present in some of the buildings to be demolished as part of the Scheme and as such a licence may be needed. If required, a licence will be sought by the contractor prior to demolition works taking place.	GCC is not seeking to disapply this in the draft DCO.
	<b><u>Hazardous Substances Consent</u></b>	<u>Relevant local authority</u>	<u>Required when specified hazardous substances are stored or used at or above specified controlled quantities. This includes hazardous substances stored on, over or under land.</u>	<u>The Scheme allows for the potential diversion of the pipeline should this be required. If a pipeline requires diversion, a Hazardous Substances Consent will be applied for.</u>	<u>GCC is not seeking to disapply this in the draft DCO</u>

Issue	Consent / Licence / Agreement & Legislation	Relevant authority	Description	Status	Relationship to the Draft DCO
Building Demolition	<b>Demolition</b> – Section 80 notice under the Building Act 1984	Local Authority Notice	Written notice is required to be submitted to the Local Authority in relation to the demolition of buildings (and is applicable, an occupier of any adjacent building, public gas supplier and public electricity supplier) setting out the building and the related demolition works.	Discussions with the Local Authorities where demolition is required have taken place. Notice of demolition will be provided post-DCO consent once details in relation to methodology and timing of works are known.	GCC is seeking to disapply section 80 in the draft DCO.
Noise	<b>Section 61 agreement</b> – under Section 61 of the Control of Pollution Act 1974	Relevant local authority	Required to avoid significant construction noise and vibration effects.	Applications for consent to be made to the relevant local authority at least 28 days before the relevant work is due to start, or earlier if reasonably practicable.	GCC is not seeking to disapply this in the draft DCO.

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