



The Planning Inspectorate

M5Junction10@planninginspectorate.gov.uk.

**Our ref:** XA/2024/100143/01-L01

**Your ref:** TR010063

**Date:** 03 September 2024

Dear Sir

**Application by Gloucestershire County Council for an Order Granting Development Consent for the M5 Junction 10 Improvement Project**

**Agenda for Issue Specific Hearing 3 (ISH3) dealing with matters relating to the Traffic and Transport, Flooding, Funding, Mitigation and Environmental Matters – Deadline 4 submission**

The Environment Agency attended the Issue Specific Hearing virtually on Environmental Matters held on the 13 and 14 August 2024 and made oral submissions, summarised below, in relation to the following Agenda items.

**Issues relating to Flood Risk, Drainage and the Water Environment**

Agenda item 3 i) ***The ExA will explore with the EA and the Applicant their consideration of Sequential and Exception Test and the current conclusions in the Statement of Common Ground (SoCG).***

As we have previously stated in the SoCG Ref: (TR010063 – APP 8.4 Volume 8 June 2024), the Secretary of State will need to determine the Flood Risk Vulnerability Classification for the scheme. Overall, the scheme has been defined as “essential infrastructure”. Where this is appropriate to the improvement works to the motorway junction and A4019 link, it could be considered that the West Cheltenham Link Road (the Link Road) is proposed to support future development only, which would fall outside of this definition.

One of the actions from the Issue Specific Hearing 3 that we attended on 13 August 2024 was to give to our position should the scheme in its entirety be classified as “essential infrastructure”, or due to the Link Road, the scheme is not classified as “essential infrastructure”.

### **Action - Option one: Scheme classified as essential infrastructure**

The scheme has been defined by the applicant, as “essential infrastructure”, in accordance with the National Planning Policy Framework (NPPF) Annex 3: Flood risk vulnerability classification – Essential infrastructure – *Essential transport infrastructure (including mass evacuation routes) which has to cross the area at risk.*

If the Sequential Test is deemed to have been passed, the requirements of the exception test need to be applied as stated in the NPPF, Para 170 and specifically as set out in *Table 2 of paragraph 079 of the National Planning Policy Guidance (NPPG)*. To pass the exception test the scheme needs to demonstrate that:

*a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and*

*b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.*

In Flood Zone 3b (functional floodplain) essential infrastructure that has passed the Exception Test, should be designed and constructed to:

- remain operational and safe for users in times of flood;
- result in no net loss of floodplain storage;
- not impede water flows and not increase flood risk elsewhere.

In principle, we would consider the scheme would pass the exception test, in relation to flood risk, as we have reviewed the updated modelling, and it is fit for purpose. There are slight increases of flood risk within the order limit, but we have been made aware that there are discussions with the landowners regarding compensation. The updated Flood Risk Assessment (FRA) provides mitigation measures on Flood Plain Compensation (FPC) which we will be consulted on the final designs as stated in the dDCO Requirement 13.

### **Option two: Scheme not classified as essential infrastructure**

If the scheme is not classified as essential infrastructure, due to the Link Road falling outside of this definition, then according to *Table 2, Flood Risk vulnerability and flood zone ‘incompatibility’ of paragraph 079 of the NPPG*, development should not be permitted, because the scheme would then contain different elements of vulnerability and therefore the highest vulnerability category should be used.

**Agenda item 3 iii) *The ExA will explore with the Applicant, the Joint Councils (JC) and the Environment Agency an understanding of the compliance with the Water Framework Directive, and the measures secured through the dDCO.***

From a Water Quality aspect, the Environment Agency is satisfied that there is negligible risk of deterioration to water quality elements in the effected WFD waterbodies.

**Action – SCOUR Assessment review at detailed design stage (Environmental Statement), Appendix 8.2 WFD Compliance Assessment TTR010063 – APP 6.15 (July 2024)**

We will review the SCOUR Assessment once it has been completed and provide our comments at the detailed design changes. We will liaise with the applicant to provide a pragmatic approach to bank protection.

Agenda item 3 iv) **Are the EA and the LLFA content that the Flood Risk Activity Permit (FRAP) aligns with the dDCO and would secure appropriate mitigation? Are all parties content that the dDCO as worded ensures that the FRAP will have been agreed in advance of the commencement of works authorised by the dDCO?**

The FRAP will only be issued after planning permission is granted and composes two parts, permanent works whose principals/designs will be covered through that granted by planning permission. Therefore, FRAP is classified as the secondary legislation. Any temporary works FRAPS will only be issued on further discussion with the applicant and contractor awarded the construction works, but the principals set out in the dDCO (Requirements 11 & 13) and the REAC WE15 should keep these within the mitigation requirements if relevant. This provides us with confidence that appropriate mitigation measures will be in place.

Agenda item 3 v) **Phasing of attenuation basin construction and consenting process. Are the Environment Agency (EA) and JCs content that this is appropriate and that it is appropriately secured via the dDCO?**

The Environment Agency has no concerns regarding the construction and consenting process. However, as highlighted at the examination on 13 August 2024 we would recommend adding the wording in bold which will provide us with confidence that if any form of contamination is identified additional assessments will be carried out. Wording to be added in the REAC (TR010063 – APP 7.4 GS4 July 2024).

**Action** - Design team to incorporate mitigation/remedial measures in the design of the Scheme to reduce impacts from contamination as required, should new sources of contamination be identified at detailed design stage. The Scheme will be operated in accordance with the relevant regulations and best practice guidance in applying Best Available Techniques and pollution prevention **appropriate to the sensitivity of the location which may require relevant risk assessment.**

Agenda item 3 vi) **The ExA will wish to explore the principle of the reservoir as well as the practical implications of operation, maintenance and ownership.**

We have agreed that once the detailed designs are available, we would like to be consulted on these so we can provide our comments.

**Action** – We are content with the wording in the dDCO Requirement 11 – detailed design and the REAC WE15 to WE24.

Agenda item 3 vii) ***The Applicant and EA will be asked to confirm their positions with respect to their view on drainage consents and whether they are appropriately covered in Requirement 13***

We are content with the wording in Requirement 13 and Requirement 11 and supporting document REAC WE15 to WE24 which covers all flood risk works temporary and permanent.

Agenda item 3 ix) ***The ExA will seek clarification from the Applicant and the EA on the outstanding matters referred to in the SoCG.***

The Environment Agency is liaising with the applicant to resolve the outstanding matters.

#### **Agenda item 7). Issues in respect of Mitigation**

##### **Requirements**

***The Applicant and the EAs views will be sought on the drafting of Requirements 8, 11 and 13***

##### **Requirement 8 - Land and groundwater contamination**

**Action** – Please see the alterations in **bold**.

(1) No part of the authorised development is to commence until a contamination risk assessment in respect of controlled waters has been produced for that part which is to include details of—

(a) any existing sources of contamination within the Order limits that may be affected by the carrying out of the authorised development.

(b) any reasonably required protective measures to ensure that the carrying out of the authorised development does not make worse any adverse conditions or risks associated with such existing sources of contamination; and

(c) appropriate remediation strategies and mitigation measures to address any historic contamination which is shown to be having significant, unacceptable effects on the environment within the context of the proposed works, and the assessment has been submitted to and approved by the county planning authority following consultation with the Environment Agency.

(2) The steps and measures that are identified as necessary for the purposes of carrying out the authorised development in the assessment referred to in sub-paragraph (1) must be implemented as part of the authorised development.

***(3) In the event that soil or water contamination, including groundwater, is found at any time when carrying out the authorised development, which was not previously identified it must be reported as soon as reasonably practicable to the Secretary of State, the relevant planning authority and the Environment Agency, and the undertaker must update the risk assessment and remediation strategy in consultation with the relevant planning authority and the Environment Agency on matters related to their functions.***

***(4) Remediation, where necessary, must be carried out in accordance with the approved remediation strategy unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority and the Environment Agency on matters related to their functions.***

***(5) Where remediation is necessary, no part of the authorised development is to be brought into use until for that part a verification report demonstrating the completion of the works set out in the approved remediation strategy and the effectiveness of the remediation has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and the Environment Agency on matters related to their functions. The verification report must include results of sampling and monitoring carried out in accordance with the approved details.***

#### **Requirement 11 – detailed design.**

The Environment Agency has confirmed that it is satisfied with the wording of Requirement 11 – detailed design.

**Action** – The Environment Agency requested in the Relevant Representation, paragraph 3.4, dated: 08.06.2024, (REP1-043), that the dDCO Schedule 2, Part 11, Requirements to be changed to include the EA as a statutory consultee. However, after reviewing the applicant’s response “*Environment Agency will be consulted will be through the specific requirements related to its functions and those elements of the REAC which require its input*”. We are satisfied that we will be consulted on all environmental matters that will require our input. Therefore, we are happy for this action to be closed.

#### **Requirement 13 – Flood Compensation and Flood Storage.**

The Environment Agency has confirmed that it is satisfied with the wording of Requirement 13 – Flood Compensation and Flood Storage.

## **Register of Environmental Actions and Commitments (REAC)**

***Has the REAC been changed to reflect the requirement to restrict the timing for construction in respect of the Leigh Brook identified in the SoCG with EA (item 7.3 [REP1-036])***

The Environment Agency is satisfied with the changes made in the:

*REAC Ref B28 Ref B28 in REAC (TR010063 - APP 7.4, Version Rev 2, July 2024).*

*Section 7.8.197 in Biodiversity Chapter (TR010063 – APP 6.5, Version Rev 2, June 2024).*

*Section 5.2.9 in WFD Assessment (TR010063 - APP 6.15, Version Rev 1, June 2024).*

***In the SoCG with the EA item 8.9 refers to the inclusion of shutoff penstocks for each basin – how are these secured?***

The Environment Agency is satisfied with the shutoff penstocks being incorporated for each basin and further updates being made to the wording of the ES section 8.9.13 and submitted before the close of examination.

Should you require any additional information, or wish to discuss these matters further, please contact me on the details below.

Yours faithfully

**Noreen Nargas (MRTPI)**

**Planning Specialist – National Infrastructure Team**

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