

AtkinsRéalis



Joint Councils Deadline 4 Submission

Gloucestershire County Council, Cheltenham
Borough Council, Tewkesbury Borough Council

3 September 2024

M5 JUNCTION 10 IMPROVEMENTS SCHEME DCO

**Joint Councils Written Submission of case put orally
at the Hearings held the week commencing 12 August
2024**

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1. Introduction

1.1.1 This document summarises the submissions made orally by Gloucestershire County Council (GCC), Cheltenham Borough Council (CBC), and Tewkesbury Borough Council (TBC) (together ‘the Joint Councils’) at the Hearings held on the week commencing 12 August 2024 in relation to the GCC Major Projects Team (‘the Applicant’) M5 Junction 10 Improvements Scheme Development Consent Order (DCO) (‘the Scheme’). The Joint Councils are the three host authorities for the Scheme.

1.1.2 The Joint Councils were represented at the Hearings by the following persons:

- Catherine Knight (CK), Director – Legal at DWF Law LLP;
- Ciar Donnelly (CD), Associate Legal at DWF Law LLP;
- Tracey Birkinshaw (TB), Joint Councils’ representative at CBC;
- Nick Bryant (NB), Joint Councils’ representative at TBC;
- Nicole Golland (NG), Principal Planning Officer at CBC;
- Paul Instone (PI), Consultant Planner at CBC and TBC;
- Ben Watts (BW), Joint Councils’ Lead at GCC;
- Simon Shapland (SS), Highways Development Management Manager at GCC;
- Andrew Padden (AP), Principal Project Manager at AtkinsRéalis for the Joint Councils’ involvement in the DCO Examination for the Scheme, Highways Lead;
- James Jackson (JJ), Associate Director and Transportation Lead at AtkinsRéalis;
- Lewis Oliver (LO), Associate Planner and Planning Lead at AtkinsRéalis;
- Roshni Surdevan (RS1), Associate Environmental Scientist and Water Quality Specialist at AtkinsRéalis;
- Rob Sewell (RS2), Associate Consultant and Flooding Specialist at AtkinsRéalis;
- Jane Brinkley (JB), Associate Ecologist and Biodiversity Specialist at AtkinsRéalis;
- Guy Kendall (GK), Associate Heritage Consultant and Heritage Specialist at AtkinsRéalis; and
- David Browne (DB), Principal Landscape Architect and Landscape and Visual Specialist at AtkinsRéalis.



2. Issue Specific Hearing 3 (ISH3)

2.1 Agenda item 1 – Welcome, introductions and arrangements for the Hearing

2.1.1 No questions or comments of an introductory or preliminary nature were raised by the Joint Councils on this agenda item.

2.2 Agenda item 2 – Purpose of the Issue Specific Hearing

2.2.1 No questions or comments of an introductory or preliminary nature were raised by the Joint Councils on this agenda item.

2.3 Agenda item 3 – Flood Risk, Drainage and the Water Environment

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

2.3.1 The ExA queried the Joint Councils if they wish to provide any comment, noting that the Joint Councils have made reference to some concerns on WFD compliance in their written responses. RS1 stated that the Joint Councils have reviewed the information and assessment provided as part of the draft DCO and this indicates compliance with the WFD. The Joint Councils note that the Environmental Statement (ES) includes the embedded mitigation and the specific mitigation in the Register of Environmental Actions and Commitments (REAC). The Joint Councils have also reviewed the Pollution Prevention and Control Management Plan [AS-037]. It is however noted that there are further assessments, notably the scour assessment, to be made available at the detailed design stage.

2.3.2 The ExA clarified with the Joint Councils on whether they are content with their position that some elements need to be reviewed at further detailed design. RS1 confirmed this is the position of the Joint Councils.

Agenda item 3(iv) – Are the EA and the Lead Local Flood Authority (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 the FRAP will have been agreed in advance of the commencement of works authorised by the dDCO?

2.3.3 The ExA requested that the EA and Joint Councils set out their positions regarding the use of the FRAP and the provision within the draft DCO that secures appropriate mitigation. EA explained that the FRAP for the Scheme only relates to the temporary works because all mitigation should be secured within the DCO granted for the permanent structures and permanent works. EA stated that the mitigation currently set out in Requirement 13 is sufficient. They are waiting for further modelling work from the contractor once it is engaged to confirm that the temporary works going to be done still result in no detriment.



- 2.3.4 RS2 stated that the Joint Councils are in agreement with the EA. In terms of the permanent works, the embedded mitigation has been demonstrated through the modelling presented in the DCO, which ensures that there is an adequate level of flood mitigation being afforded. In terms of the temporary works and issues such as phasing of works, it is recognised that this needs to be further explored at the detailed design stage.

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

- 2.3.5 The ExA asked the Joint Councils to explain their position regarding the appropriateness of the phasing of the attenuation basin construction and the consenting process. RS2 stated that the overall approach to phasing the compensatory storage during the construction phase is appropriate and will mitigate construction phase risks. The Joint Councils suggested the Applicant to consider avoiding the placement of excavated material and spoil from the construction and excavation of the compensatory storage during the construction phase within the flood plain itself. This avoids potentially offsetting some of the benefits that would be provided by the compensatory storage during the construction phase.

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.

- 2.3.6 The ExA asked the Applicant to explain the wider context to the principle of the reservoir as well as their current position regarding the discussions with National Highways (NH) on the ownership and maintenance of the reservoir. The Applicant explained how the increase in the volume of flood water held in the field to the south of A4019 for the purpose of flood mitigation falls within the ambit of the Reservoir Act 1975. A statement from the Reservoirs Panel Engineer on this agenda item was also read out by the Applicant. The Joint Councils understand that the Reservoirs Panel Engineer has been appointed by the Applicant to the role of Construction Engineer for the project, and this statement is outlined within a technical note which the Applicant has not submitted to the Examination yet.
- 2.3.7 The ExA then invited the EA and NH to comment on the operation, maintenance and ownership responsibilities of the reservoir. NH stated that no responsibility for the Flood Storage Area (FSA) should lie with NH and they do not accept the principle of joint responsibility. NH required the DCO to secure that the responsibility remains with the Applicant and requested the provision of some physical boundaries to separate the Strategic Road Network (SRN) from the FSA. The ExA then asked the Joint Councils if they could respond to some of the concerns from NH. CK stated that the Joint Councils will follow up on these concerns in their written submissions at Deadline 4.
- 2.3.8 Following a review of the evidence presented during ISH3, the Joint Councils would like to respond to NH's concern regarding the operation, maintenance and ownership responsibilities of the reservoir. This is provided in paragraphs 2.8.9 to 2.8.12 of this written submission.

Agenda item 3(viii) – 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.

- 2.3.9 The ExA queried the Joint Councils if they are content with the Applicant's position on Requirement 13 and its ability to deal with all the necessary drainage consents. CK confirmed that the Joint Councils are content with the current wording of Requirement 13.
- 2.3.10 The ExA then followed up with the Applicant on whether the confirmation for the disapplication of section 23 of the Land Drainage Act 1991 from GCC has been submitted to the Examination. The Applicant stated that the confirmation is contained in an email and covering letter between Mr Peter Siret from GCC LLFA and Mr Chris Beattie representing the Applicant dated 17 June 2024. The correspondence has not been submitted to the Examination. The ExA requested the Applicant and



the Joint Councils to provide a copy of the confirmation correspondence to the Examination. This is captured in item 7 of the Action Point list. The Joint Councils' response to this Action Point is provided in paragraph 2.8.1 of this written submission.

Other agenda items

- 2.3.11 The Joint Councils offered no comments on the other agenda items and the questions raised on the other agenda items under Agenda item 3 – Flood Risk, Drainage and the Water Environment, namely agenda items 3(i), 3(ii), 3(vii) and 3(ix). Following a review of the evidence presented during ISH3, the Joint Councils have no further comments to make.

2.4 Agenda item 4 – Traffic and Transport

Agenda item 4(ii) – The ExA will explore the current position with respect to the Transport Assessment (TA) and modelling and its ability to support the examination of the DCO proposals (including need, geometric design etc).

- 2.4.1 During ISH3, the Joint Councils offered no comments on this agenda item. However, following a review of the evidence presented during ISH3, the Joint Councils would like to submit to the Examination comments regarding the TA and modelling and its ability to support the Examination of the DCO proposals. The comments are provided in paragraphs 2.8.13 to 2.8.17 of this written submission.
- 2.4.2 The Joint Councils have provided the comments to the Applicant following ISH3. It is understood that the Applicant will address the Joint Councils' comments in their submissions at Deadlines 4 and 5. The Joint Councils look forward to the Applicant's submissions and will further review this matter.

Agenda item 4(iv) – The Applicant and NH will be asked to explain their position with respect to all Departures from Standard (DfS) sought in the Safety Report submitted at Deadline 2.

- 2.4.3 The ExA asked the Applicant to provide an update on all DfS and the appropriateness of them. The Applicant outlined the status of the 4 DfS at SRN and the 10 DfS at the Local Road Network (LRN). For DfS at the LRN, the Applicant has put together a Departures Report that has been submitted to the GCC DfS panel.
- 2.4.4 AP queried the Applicant on the outcome of their submission to the GCC DfS panel. The Applicant stated that the DfS on the LRN were considered and signed off by the panel, but the date of this is not known to the Applicant. AP stated that the submission was something the Joint Councils was not aware of. The Joint Councils will have a conversation with the panel about whether there were any concerns raised and confirm whether the DfS at the LRN had been signed off. The Joint Councils will report any outstanding concern in writing at Deadline 4 in the 'Joint Councils' Design Statement'.
- 2.4.5 The Joint Councils have provided a follow-up response to agenda item 4(iv) in paragraph 2.8.18 of this written submission.

Other agenda items

- 2.4.6 The Joint Councils offered no comments on the other agenda items and the questions raised on the other agenda items under Agenda item 4 – Traffic and Transport, namely agenda items 4(i) and 4(iii). Following a review of the evidence presented during ISH3, the Joint Councils have no further comments to make.



2.5 Agenda item 5 – Funding

Agenda item 5(iii) – The Applicant will be asked to evidence if there are other sources of funding available, and the timing, and certainty of delivery to be explained. Please make reference to any alternative funding mechanisms which may be being developed.

2.5.1 During the discussion on the certainty of financial contributions from the safeguarded land at North West Cheltenham in covering part of the identified funding shortfall, the ExA invited the Joint Councils to make comments on the discussed funding mechanism. CK stressed that any undetermined planning applications and new local plan adoption process the Joint Councils are handling should not be pre-determined. CK stated that the Strategic and Local Plan (SLP) authorities, comprising CBC, TBC and Gloucester City Council, are in the process of producing a SLP, and it is understood that they are aiming for submission to Examination in April 2026. The Joint Councils would like to assure the ExA that the Local Planning Authorities have been progressing undetermined planning applications which the Scheme is looking to seek contributions from. However, there are other infrastructure considerations as well as the M5 Junction 10 Scheme, such as primary schools within these developments and the Local Planning Authorities are required by law to ensure any signed section 106 agreements meet the 3 key statutory tests.

2.5.2 CK also highlighted to the ExA that the Joint Councils have been consulted by the Applicant on the proposed methodology in calculating the section 106 funding for the Scheme. However, the Joint Councils have not yet agreed the s106 methodology as currently proposed. In light of the statutory tests for s106 contributions, and other infrastructure considerations on the relevant developments such as viability, the Joint Councils' position is that an agreed section 106 calculation methodology would be imperative. If the Applicant has agreed a funding mechanism with NH where section 106 contributions from developments approved by Local Planning Authorities are required, the Joint Councils would require a role of not only consultation but also approval of such agreement in light of their financial responsibilities under the Local Government Acts.

Other agenda items

2.5.3 The Joint Councils offered no comments on the other agenda items and the questions raised on the other agenda items under Agenda item 5 – Funding, namely agenda items 5(i), 5(ii), 5(iv) and 5(v). Following a review of the evidence presented during ISH3, the Joint Councils have no further comments to make.

S106 Funds

Agenda item (i) – The Applicant and Interested Parties (IPs) will be questioned on the likelihood of the discussions being concluded, and an agreed methodology being before the Examination?

2.5.4 The ExA invited the Applicant and IPs to express their views on a suggestion from St Modwen & Midlands Land Portfolio Limited (SM&MLPL), where dialogues on agreeing a funding mechanism for the Scheme could be kept alive via an appropriately worded Requirement. CK stated that the Joint Councils will provide a response in writing at Deadline 4. This action is encapsulated in item 25 of the Action Point list.

2.5.5 Following a review of the evidence presented during ISH3, the Joint Councils have commented on Action Point item 25. This is presented in paragraphs 2.8.2 and 2.8.3 of this written submission.

Other agenda items

2.5.6 The Joint Councils offered no comments on the other agenda items and the questions raised on the other agenda items under Agenda item – S106 Funds, namely agenda items (ii), (iii) and (iv).



Following a review of the evidence presented during ISH3, the Joint Councils have no further comments to make.

2.6 Agenda item 6 – Environmental Matters

Design

Agenda item (i) – The Applicant will be asked to explain: the design vision for the project giving details of where this is set out and how the design has been influenced by (a) the need for sustainability and carbon reduction, (b) any changes that have occurred as a consequence of feedback in respect of design input, (c) how the local context has influenced the design and how this has responded to the vision, (d) what controls are in place to secure the quality of the design needed for a national project, (e) provide evidence of any external or independent review process to date and whether an independent review process should be in place for the consideration and approval of the future detailed design process.

- 2.6.1 The ExA asked the Joint Councils to explain their position on how the responses the Joint Councils gave during the pre-application consultation have led into the evolving design of the Scheme. AP stated that the Joint Councils are content with the information provided throughout the Examination and the representations the Applicant made during ISH3 regarding the Scheme design. The ExA then clarified with the Joint Councils on whether they have no concerns about how the design has evolved and whether they are content that a robust design approach has been taken by the Applicant to present the Scheme to Examination so far. AP confirmed this is the position of the Joint Councils.
- 2.6.2 During the discussion on the controls in place to secure the quality of the Scheme design, the ExA invited the Joint Councils to express any concerns on the design elements of the LRN or the broader context of the LRN sitting into the local environment. AP explained that the Joint Councils have reviewed the design and made comments back to the Applicant. Most of the comments were dealt with and discussed via a specialist meeting between the Joint Councils and the Applicant. A lot of the issues that were raised by the Joint Councils can and will be resolved at detailed design stage. With regard to how the LRN sits into the local environment, the Joint Councils are content with the current design of the Scheme.
- 2.6.3 The ExA then requested the Joint Councils to provide a statement on the adequacy of the Scheme design, with an indication of the issues the Joint Councils are anticipating would be resolved at detailed design stage and if that is secured acceptably via the DCO. This action is captured in item 29 of the Action Point list. As explained in paragraph 2.8.4, the Joint Councils has provided this statement at Deadline 4.
- 2.6.4 During the discussion on the external and independent review process, the ExA also queried the Joint Councils whether they have any design review panels and department within the organisation. AP confirmed that the Joint Councils do not have any design review panels.

Landscape

Agenda item (i) – Joint Councils LIR Section 3.5 Can the Applicant and Joint Councils explain the latest position in respect of Barn Farm, the Travellers Site, and properties to the south side of the A4019.

- 2.6.5 Regarding Section 3.5 of the Joint Councils Local Impact Report, the ExA asked the Joint Councils if they are seeking from the Applicant a consultation process with the residents on the design of the proposed acoustic barrier fence. DB stated that the Joint Councils' understanding from the Applicant is that the barrier will be designed in collaboration with the Local Planning Authority and interested



parties and residents to achieve a vegetated design, providing additional landscape screening and aesthetic qualities for the affected residential receptors.

- 2.6.6 The ExA questioned if the DCO is written in a way that facilitates a consultation exercise, and what happens if the people consulted are not in agreement. The Applicant explained that this matter has been agreed with the Joint Councils as item 9.5 of the SoCG [REP1-034] by embedding the process of engagement in commitment LV6 of the REAC [REP3-031]. The process does not present any difficulties in terms of if there is disagreement or divergence of views amongst individuals. As indicated in commitment LV6, visual amenity and biodiversity values are intrinsic parts of the acoustic barrier, which requires submission for approval by the County Planning Authority subject to Requirement 14.
- 2.6.7 **POST HEARING**, DB recommends that LV6 of the REAC be modified to explicitly include the objective of implementing a vegetated solution. This is crucial, as it could prevent the adoption of a less desirable alternative, such as a painted barrier etc., which would negatively affect the visual amenity, impacting not only the adjacent residential areas but also the broader visual amenity of the area.
- 2.6.8 There appears to be some ambiguity regarding the feasibility of a vegetated solution by the Applicant's design team. Modifying the language would ensure that during the consultation and detailed design phase, the discussion would focus on the methods of implementation rather than its possibility or desirability among affected residents.
- 2.6.9 CK added that the Joint Councils' concern is that substantial number of trees must be cut down for the slip roads. The affected residential receptors currently enjoy a view across farmland, which will be replaced with the acoustic barrier. The Joint Councils understand the need of the barrier but would appreciate some discussion from the Applicant with the local residents on not only the acoustic barrier but also its visual impact. The Joint Councils acknowledge that the final design of the barrier submitted to the County Planning Authority for approval will be determined by the Applicant. The Joint Councils therefore request the Applicant to consider the views of the local residents properly when designing the barrier.
- 2.6.10 The ExA queried the Joint Councils if they are content with the provisions of how they will be consulted on how the acoustic barrier will be approved, and whether any necessary consultation are appropriately secured via the REAC and the DCO. CK stated that the Joint Councils will provide a response in writing at Deadline 4. This action is captured in item 33 of the Action Point List.
- 2.6.11 Following a review of the evidence presented during ISH3, the Joint Councils have comments on Action Point item 33. This is presented in paragraphs 2.8.5 to 2.8.8 of this written submission.

Agenda item (ii) – The Applicant and IPs views will be sought in respect of the visualisations, and how well they represent the potential effects on the local character areas and the Green Belt?

- 2.6.12 The ExA invited the Joint Councils to make any comments on the landscape visualisations submitted by the Applicant at Deadline 2. DB provided that the Joint Councils were sent the locations of the viewpoints and provided comments to the Applicant prior to the production of the visualisations. However, the longer list of all possible viewpoint locations was never provided for the Joint Councils. The Joint Councils are content that the visualisations present the Scheme and its impacts on the local landscape character and the Green Belt well, but would like to offer the following comments:
- In Landscape Visualisations Viewpoint 6 [REP2-007], the proposed acoustic fence in front of the house is portrayed as a plain timber treatment. This does not represent the conclusions reached in the Landscape and Visual Assessment (LVA) [REP1-016] that the fence is going to be a vegetated barrier, which will be aesthetically more acceptable to the residents and the receptors.



- Regarding the visualisations for year 15, they sometimes present an optimistic view of vegetation growth and tree maturity. While it is recognised that such growth will occur eventually, there is some scepticism that the depicted level of growth will be realised by year 15.
- In Landscape Visualisations Viewpoint 2 [REP2-004], the visualisations of the link road crossing the River Chelt effectively demonstrate the effects on the Green Belt and the slight reduction in openness. It also demonstrates this is not a full reduction in openness as the road can be integrated into the local landscape character and preserve views through and over the raised section of the link road.

2.6.13 The Applicant then responded to the three comments raised by the Joint Councils. DB replied that the Joint Councils are content with the Applicant's response. Particularly on the second comment on tree heights representation, the Joint Councils agree that it is a reasonable approach to represent the actual tree heights at year 15 without necessarily representing the actual girths. DB requested the Applicant to signpost the list within the LVA [REP1-016] that sets out the planting assumptions, initial planting size, growth rate of the trees and their assumed size by year 15.

2.6.14 The Joint Councils note that this is recorded in item 36 of the Action Point list. The Joint Councils look forward to the Applicant's submission at Deadline 4 and will further review this matter.

Heritage

Agenda item (i) – The Applicant will be requested to explain the degree of uncertainty on the effect of significance concluded for archaeological assets given the current status of investigations.

2.6.15 The Joint Councils offered no comments on this agenda item. Following a review of the evidence presented during ISH3, the Joint Councils have no further comments to make.

Agenda item (ii) – The Joint Councils will be asked to confirm whether they are content that sufficient baseline assessments have been carried out to inform the assessment of significance and the suitability of and security of any mitigation proposed?

2.6.16 The ExA asked the Joint Councils to explain their position on the archaeological assessment that have been undertaken to date and the proposals for future assessment. GK stated that the Joint Councils are content with the works that have been done by the Applicant to date from a baseline perspective. The Joint Councils still do not have the Archaeological Survey or trial trenching information that is to be undertaken by the Applicant in September 2024. GK highlighted that some of the geophysical surveys to be undertaken in September onwards may need some form of trial trenching to further identify the significance of any archaeological deposits. GK added that the Joint Councils received from the Applicant on 13 August 2024 the geophysical specification and an updated addendum to the archaeological assessment that has been undertaken. The Joint Councils are content with the location of the proposed extra works and the proposed geophysical survey areas which will fulfil and inform the DCO decision going forward.

2.6.17 The ExA followed up with the Joint Councils on whether they are content with the information from the Applicant which gives the ExA sufficient confidence that the significance of the archaeological remains has been appropriately assessed. GK explained that the Joint Councils do not have enough information to date to make a decision on the significance of archaeological assets across the entire Scheme area, based on the fact that additional geophysical surveys have not been undertaken.

2.6.18 The ExA then questioned the Joint Councils how the ExA would advise the Secretary of State (SoS) on the legal tests on whether there has been an appropriate understanding of the significance of the heritage impacts of the Scheme without information on further assessments being concluded before the end of Examination. GK explained that the Joint Councils are of the understanding that the



geophysical surveys will start in September and the trial trenching are expected to continue some time after. The duration of any additional archaeological work would have to be confirmed again once the programme and location of these works are made available to the Joint Councils. GK added that the ExA would certainly need the geophysical surveys ahead of the end of Examination to assess whether the legal tests on heritage impacts have been met appropriately. The Joint Councils have a good record of the historic environment of the area around the proposed Link Road and various areas in the vicinity. However, the Joint Councils do not have a consideration of archaeology from a geophysical point of view across the wider Scheme area.

Agenda item (iii) – The Applicant and the Joint Councils will be asked for an update on the progress in updating the Archaeological Management Plan [AS-038] and any progress made on reporting geophysical surveys and trial trenches.

- 2.6.19 Following the discussion on the availability of geophysical surveys and trial trenching information ahead of the end of Examination, the ExA requested the Applicant to present the timeframe the Applicant is working on. The Applicant explained that the geophysical surveys could be completed by the end of September 2024, provided that land access is available and there are no overarching problems with crop cover, climate or flooding. Any trial trenching could then be completed before the end of Examination in December 2024. The Applicant added that all geophysical surveys and trial trenching require Archaeological Project Designs (formerly Written Schemes of Investigation) that will be reviewed and signed off by the County Archaeologist.
- 2.6.20 The ExA then sought views from the Joint Councils on the Applicant's timeframe, particularly in terms of whether it is possible for the County Archaeologist to provide comment within the Examination timetable and whether information from these further assessments is required in advance of the close of Examination to appropriately inform the SoS. GK explained that the Joint Councils have developed a good understanding of the archaeological baseline across the Scheme area based on the assessments completed by the Applicant to date. The Joint Councils are confident that the geophysical surveys will be undertaken and assessed within the Examination timetable, but the timeframe for the completion of trial trenching might be tight before the end of Examination in December. GK stated that the Joint Councils may be able to push the completion of trial trenching if the geophysical surveys come back with good data. However, if the result of the geophysical surveys indicates the presence of ephemeral features, ground truthing will need to be performed in these areas to assess the significance of any identified archaeological deposits.
- 2.6.21 GK also reported to the ExA that the GCC County Archaeologist responsible for the Scheme has retired and is currently working on a part-time basis. His replacement will start in September and there could be potential delay to reviewing and signing off any information from the Applicant because of the need of handover.

Noise

Agenda item (i) – The Applicant will be asked to explain the mitigation measures in Stoke Orchard in the context of the provided answer to 1st Written Question 12.0.1.

- 2.6.22 The Joint Councils offered no comments on this agenda item. Following a review of the evidence presented during ISH3, the Joint Councils have no further comments to make.
- 2.6.23 Following on from the agenda item, the ExA explored a more general area regarding the potential need for rehousing or noise insulation as noise and vibration mitigation measures. The ExA posed a question to the Applicant on how they envisage the monitoring of the threshold and trigger points for these mitigations and the delivery of these mitigations work in practice. The ExA also queried how the implementation of mitigations during the construction stage could be secured within the DCO.



- 2.6.24 The Applicant explained whilst there may be construction practices that will generate noise levels that exceed the noise thresholds, it is not expected that the duration of the activities will be sufficient to trigger the requirement for mitigations. That would be managed through the construction stage by the Principal Contractor. The Applicant also stated that the implementation of mitigations will be managed through the commitments in the REAC and the second iteration of the Noise and Vibration Management Plan within the EMP. To bridge the gap between iterations of the EMP, the ExA requested the Applicant to provide further detail and commitments within the second iteration of the Management Plan prior to its production at the construction stage by Deadline 4. This action is encapsulated in item 41 of the Action Point list.
- 2.6.25 The ExA then invited the Joint Councils to express their position on how any necessary noise and vibration mitigation measures could be secured. CK stated that the ExA has requested the information the Joint Councils would like to get from the Applicant. The Joint Councils look forward to the Applicant's submission at Deadline 4 and will further review this matter.

EIA Methodology

In the SoCG with Natural England (NE) item 4.1 in dealing with cumulative recreational effects there appears to be a reliance upon the respective planning applications to review their Habitats Regulations Assessment (HRA) in order to assess the potential for effects on the neighbouring sites with biodiversity and geological interests. The ExA will seek views of parties on this approach?

- 2.6.26 The ExA directed the Applicant to clarify the approach to the in-combination recreational effects of the surrounding housing developments in the HRA for the Scheme. The Applicant explained that the HRAs for the surrounding housing developments will be undertaken separately. Any potential increase in recreational pressure on neighbouring sites with biodiversity and geological interests will come from the increase in housing which the Scheme will facilitate but will not cause as the Scheme does not provide direct access to these sites. The Applicant also confirmed that this approach has been agreed with NE.
- 2.6.27 The ExA then invited the Joint Councils to raise any concerns on the approach to the in-combination recreational effects. JB confirmed that the Joint Councils are in agreement with the Applicant and NE. The Joint Councils have reviewed NE's position on the approach and have accepted the Applicant's response regarding whether the Scheme itself provides more accessibility to the affected neighbouring sites with biodiversity and geological interests.

2.7 Agenda item 7 – Mitigation

Geology and Soils

- 2.7.1 The Joint Councils offered no comments on this agenda item. Following a review of the evidence presented during ISH3, the Joint Councils have no further comments to make.

Requirements

The Applicant and IPs will be requested to provide an update on the approach to consultation and discharge of requirements and detail where matters remain outstanding.

- 2.7.2 The ExA asked the Applicant to provide an update on the discussion regarding the discharging authority in respect of Requirements. The Applicant stated that the Joint Councils, NH and the Applicant have had a meeting with the Department of Transport following ISH2 to understand what



would be involved if the discharging authority is shifted to the SoS. The Applicant understood that the Joint Councils as the County Planning Authority are content with their role as the discharging authority to be moved to the SoS. The Joint Councils as the County Planning Authority will move into a consultative role, same as the Local Planning Authorities as currently secured. The Applicant added that these changes to the DCO will be introduced at Deadline 4, and the Applicant expected the Joint Councils to review the redrafted DCO to ensure that the Joint Councils as the County Planning Authority continues to be protected in the necessary way.

- 2.7.3 The ExA then invited the Joint Councils to set out their position in terms of the Requirements as drafted. CK stated that the Joint Councils have been in discussions with the Applicant. Regarding the discussion about the discharging authority, the Joint Councils have the same understanding as the Applicant on the progress of the discussion. The Joint Councils look forward to the next iteration of the DCO to be submitted at Deadline 4 and will review this matter further.

Other agenda items

- 2.7.4 The Joint Councils offered no comments on the other bulleted agenda items and the questions raised on the other agenda items under Agenda item – Requirements, namely the second and third bulleted agenda items. Following a review of the evidence presented during ISH3, the Joint Councils have no further comments to make.

Environmental Management Plan (iterations)

The ExA will seek the views of IPs on the role of the EMP, the relationship to the REAC and the supplemental management plans and whether in combination they are satisfied that appropriate mitigation is secured, would be delivered in a timely manner and that they facilitate appropriate monitoring in advance of any harm arising.

- 2.7.5 The ExA queried if the Joint Councils, NH and EA are content with how the EMP is intended to work as it progresses through from the first iteration to project handover subsequently. CK stated that the Joint Councils should be in agreement with no concerns.

Register of Environmental Actions and Commitments (REAC)

- 2.7.6 The Joint Councils offered no comments on this agenda item. Following a review of the evidence presented during ISH3, the Joint Councils have no further comments to make.

2.8 The Joint Councils' responses following ISH3

The Joint Councils' responses to the Action Points arising from ISH3

Action Point 7 – The Joint Councils and the Applicant to provide a copy of the confirmation email from GCC that the disapplication of drainage legislation has been agreed.

- 2.8.1 As a follow-up action of agenda item 3(viii) (see paragraphs 2.3.9 and 2.3.10), the Joint Councils are submitting a copy of the confirmation email for the disapplication of section 23 of the Land Drainage Act 1991 to the Examination. This is attached to Appendix A of this written submission.



Action Point 25 – The Applicant, NH, the Joint Councils and relevant IPs to comment on whether SM&MLPL’s suggestion of a Requirement could be an appropriate mechanism to allow funding matters to be progressed.

- 2.8.2 As a follow-up action of agenda item (i) of the Agenda item – S106 Funds (see paragraphs 2.5.4 and 2.5.5), the Joint Councils would like to make the following comments on Action Point item 25:
- 2.8.3 Following from ISH3, the Joint Councils have not received any proposed wording from the Applicant on the Requirement suggested by SM&MLPL. The Joint Councils would be pleased to review any Requirement wording that may be drafted by the Applicant.

Action Point 29 – The Joint Councils to provide a position statement with regards to the adequacy of the Scheme design, what needs to be resolved at detailed design stage and if that is secured acceptably via the DCO.

- 2.8.4 As a follow-up action of the discussion under agenda item (i) of the Agenda item – Design (see paragraph 2.6.3), the Joint Councils are submitting to the Examination the statement requested by the ExA. This is provided in the submission item titled ‘Joint Councils’ Design Statement’.

Action Point 33 – The Joint Councils to review on the provisions of how they will be consulted on how the acoustic barrier will be approved, and whether any necessary consultation are appropriately secured via the REAC and the DCO.

- 2.8.5 As a follow-up action of agenda item (i) of the Agenda item – Landscape (see paragraphs 2.6.5 to 2.6.9), the Joint Councils would like to make the following comments on Action Point item 33:
- 2.8.6 The Joint Councils have reviewed the wording of DCO Schedule 2 Requirement 14 and are pleased to note the requirement under 14(1) that details must be submitted and approved by the county planning authority following consultation with the relevant planning authority and highway authority on matters related to their function. Additionally, 14(2)(a) states that details must reflect mitigation measures included in The Noise and Vibration Management Plan as part of the EMP (2nd iteration), which is to be secured under Schedule 2 Requirement 3. The Joint Councils are also pleased to note that Requirement 14(2)(b) requires the undertaker to submit evidence that, where mitigation measures differ from The Noise and Vibration Management Plan and The Environmental Statement, they do not give rise to new or different environmental effects.
- 2.8.7 From the review of Annex B.3 - Noise and Vibration Management Plan [AS-033], as part of the EMP (2nd iteration), The Joint Councils can confirm that under B.3.4. Management Measures, Table B 3-2, LV6 of the REAC has been included. LV6 of the REAC requires that consultation be carried out with the local planning authority and directly affected receptors, so the final design of the noise barriers provides visual amenity and/or biodiversity values as well as noise abatement. The Joint Councils are also pleased to see that under DCO Schedule 2 Requirement 11, developments in detailed design need to be approved by the county planning authority following consultation with the relevant planning authority, and that any changes would not give rise to new or differing environmental effects.
- 2.8.8 Taking the above review into consideration, the Joint Councils can confirm they are happy with the wording of DCO Schedule 2 Requirement 14, but would like to make the following points:
- The Joint Councils must be included in consultation regarding the design of the noise barriers and any design changes/developments in detailed design that would affect the visual amenity mitigation function of the noise barriers.
 - As per the wording of LV6 of the REAC, the Joint Councils consider it is imperative that the inclusion of measures to provide improved visual amenity to the noise barriers is an essential



mitigation commitment required to reduce visual amenity effects on the receptors identified in the ES.

- As per the Landscape and Visual Impact Assessment Chapter of the ES, The Joint Councils note that the conclusions reached regarding receptors affected by the noise barrier assume that a vegetated design solution will be provided to reduce visual amenity effects. Therefore, if a non-vegetated noise barrier is provided at detailed design, it is assumed this would give rise to new and differing visual amenity effects.
- Considering the above point, The Joint Councils would like to see the wording of LV6 of the REAC amended to reference achieving a vegetated solution that will provide visual amenity as well as noise abatement. This would ensure that the conclusions reached in the Landscape and Visual Impact Assessment Chapter of the ES, which assume a vegetated noise barrier is provided, do not change and result in greater significance of visual amenity effects on the receptors.

The Joint Councils' follow-up responses to agenda items 3(vi), 4(ii) and 4(iv)

Agenda item 3(vi)

- 2.8.9 As a follow-up response to agenda item 3(vi) (see paragraphs 2.3.6 to 2.3.8), the Joint Councils would like to make the following comments regarding the operation, maintenance and ownership responsibilities of the reservoir:
- 2.8.10 Regarding the question of whether the flood storage area falls under the definition of a Reservoir under the Reservoirs Act, this is a matter that the Joint Councils will defer to the EA on.
- 2.8.11 The Joint Councils view is that it should be clear (and explicitly agreed by all parties) as to which organisation(s) will hold maintenance responsibilities and any liabilities associated with a reservoir. The Joint Councils are not in a position to accept any of these responsibilities.
- 2.8.12 Should alternative flood mitigation and/or storage options be considered by the applicant, then the Joint Councils request that all additional flood modelling and associated reporting is made available for review and comment.

Agenda item 4(ii)

- 2.8.13 As a follow-up response to agenda item 4(ii) (see paragraphs 2.4.1 and 2.4.2), the Joint Councils would like to provide the following comments:
- 2.8.14 The Joint Councils have received the historic multi-modal information [REP3-053] and revised TA [REP3-054]. The ExA has now requested the presentation of a without scheme scenario in the TA. The Joint Councils are also awaiting the updated plans related to the connected and wider cycle network to support the WCHAR report.
- 2.8.15 The ExA requested further additional information as part of the ISH3 with particular information specifically related to the TA and modelling (journey time review of A4019). Some information has been provided in advance of Deadline 3 but other information remains outstanding to be provided for Deadline 4. The information is interlinked and therefore responses will be considered in this context.
- 2.8.16 The Joint Councils originally requested an additional chapter within the ES to pull together all the relevant information in a coherent and logical way which would inform all other elements of the ES,



Compulsory Acquisition and assist the ExA in reporting to the SoS. The Joint Councils continue to review the additional supplementary information being provided by the Applicant for the TA. It is understood that a stand-alone technical note has been prepared which covers some of the points raised here and other questions from other parties. The Joint Councils are reviewing the information available in the coming weeks.

- 2.8.17 For clarity the Joint Councils have long accepted the 'need' case having identified and noted this in the Gloucestershire Local Transport Plan (LTP) as a priority scheme. GCC published the Gloucestershire's LTP 2020 – 2041 in March 2021. It has materiality as a statutory plan. The LTP sets out the strategic transport vision to 2041 and the overarching policies that support the spatial Connecting Places Strategies (CPS) and the Transport Scenarios looking to 2041. The LTP is structured around six CPS areas. In each area its CPS sets out the priority schemes for investment and delivery. Paragraph 4.2.31 of the LTP states that improvements to M5 Junction 10 are required over the Plan period to “maintain the safe operation of the highway” and “support the delivery of the North West and West Cheltenham strategic allocation”.

Agenda item 4(iv)

- 2.8.18 The Joint Councils' follow-up response to agenda item 4(iv) (see paragraphs 2.4.3 to 2.4.5) is provided in the submission item titled 'Joint Councils' Design Statement'.

3. Compulsory Acquisition Hearing 1 (CAH1)

3.1 Agenda item 1 – Welcome, introductions and arrangements of the Hearing

- 3.1.1 No questions or comments of an introductory or preliminary nature were raised by the Joint Councils on this agenda item.

3.2 Agenda item 2 – The statutory conditions and general principles applicable to the exercise of powers of compulsory acquisition

- 3.2.1 The Joint Councils offered no comments on this agenda item. Following a review of the evidence presented during CAH1, the Joint Councils have no further comments to make.



3.3 Agenda item 3 – Whether there is a reasonable prospect of the requisite funds becoming available

Agenda item 3(II) – The ExA will invite evidence from the Applicant and IPs on the degree of certainty that is in place in respect of future funding of the whole project, the timing of this funding, and whether it would be sufficient to support a realistic forecast for the costs of the Proposed Development.

3.3.1 During the discussion on the funding shortfall, the Applicant stated that the ExA should have regard to the Community Infrastructure Levy (CIL) infrastructure list produced by the SLP authorities as a potential source of funding. The Applicant explained that the Scheme was excluded from the infrastructure list when it was produced in December 2023, but this exclusion has now been removed. Regarding the removal of this exclusion, the ExA queried the Joint Councils if this is a decision following from the formation of a joint committee to look at CIL more broadly. CK explained that the SLP authorities have agreed to set up a Community Infrastructure Joint Committee, with the first meeting scheduled in late September 2024. A CIL infrastructure list has been produced which sets out the CIL allocation policy and a list of infrastructure projects requesting CIL funding. CK stated that the Applicant is correct that the Scheme was excluded from the previous iteration of the infrastructure list and has now been included. The Joint Councils are intending to submit a copy of the CIL infrastructure list to Examination at Deadline 4. The Joint Councils will also confirm the date of the first meeting of the Joint Committee in writing at Deadline 4. The information has been provided in the relevant submission items detailed in paragraphs 3.9.1 and 3.9.2 of this written submission.

3.3.2 The ExA then asked the Joint Councils if the CIL infrastructure list has gone through the process of formal adoption by the Joint Councils. CK explained that it has been formally adopted by the SLP authorities, comprising CBC, TBC and Gloucester City Council. GCC within the Joint Councils is not a CIL charging authority and thus is not involved in the adoption process.

Agenda item 3(III) – This will include developing an understanding of the status of the current planning applications that have been submitted for consideration, whether there is a reasonable prospect of the s106 negotiations leading to sufficient funding and which sites may come forward within the timeframe that would support the Proposed Development.

3.3.3 During the discussion in ISH3 on the available sources of funding (see Section 2.5 above), the Joint Councils expressed a need to reflect that it is the Joint Councils as Local Planning Authorities who will be determining the planning applications and deciding what the section 106 monies collected would contribute towards. In light of the addition of CIL into the available sources of funding, the ExA invited the Joint Councils to make any additional comments regarding the funding for the Scheme. CK stressed that the Joint Councils' position remains that site viability is a matter for the Local Planning Authorities to look at in their determination of planning applications. It is important that the Scheme do not skew the viability for other infrastructure priorities such as education and affordable housing within nearby developments where the Scheme is looking to seek contributions from. In respect of CIL, CK added that the CIL infrastructure list produced by the SLP authorities contain a public record of the available funding and the amount of CIL funding requested by each infrastructure projects within the list.

3.3.4 The ExA then requested the Joint Councils to provide some guidance on how the two funding mechanisms for CIL and section 106 contributions will work together to give the ExA greater assurance that funding for the Scheme will be available. CK explained that section 106 contributions are linked to individual planning applications, meaning that any infrastructure works which are linked to and directly related to a specific development will be sought through section 106 contributions.



Meanwhile, CIL is related to the funding for infrastructure requirements across the wider SLP authorities' area. The Joint Councils will provide further information on the two funding mechanisms in writing at Deadline 4. The 'Joint Councils' Planning Statement' provides this information.

- 3.3.5 The ExA explained what they were trying to understand is the broader picture about the total funding available relative to the cost of the Scheme and a certainty on whether the funding will facilitate the Scheme going ahead in a timely manner. CK stated that planning officers at the Joint Councils have set out some schedules detailing the amount of section 106 contributions from individual planning applications that will be available for the Scheme. These schedules have been submitted to the Examination as part of the Joint Councils' response to ExQ1 Q5.0.15 [REP3-067, REP3-068 and REP3-069]. CK assured the ExA that the Joint Councils will provide a broader response to the issues the ExA are looking to understand in writing at Deadline 4 but would like to reiterate that individual planning applications should not be pre-determined by the Scheme. Further detail is provided within the 'Joint Councils' Planning Statement'.
- 3.3.6 During the discussion of this agenda item, NH also expressed their concern that a section 106 contribution policy is not yet in place and is still being developed. The ExA then queried the Joint Councils if the section 106 contribution policy is intended to be a Supplementary Planning Document (SPD). CK clarified that the section 106 contribution policy is a document between GCC as the Applicant and the Joint Councils as the County and Local Planning Authorities as to how the viability of the sites subject to planning applications are going to be worked up and the allocation of the section 106 contributions. There is no intention for this document to be an SPD. The Applicant also agreed that the document is not envisaged to have a formal status of an SPD as it is rather a tool to support the application of Joint Core Strategy policy INF7. CK added that if the document is to be an SPD, it would need to go through the cabinets of the three Councils under the Joint Councils for formal approval.
- 3.3.7 Following a review of the evidence presented during CAH1, the Joint Councils are submitting the 'Joint Council's Planning Statement' which serves as a follow-up response to this agenda item. Further detail of the statement is set out in paragraph 3.9.2 of this written submission.

Other agenda items

- 3.3.8 The Joint Councils offered no comments on the other agenda items and the questions raised on the other agenda items under Agenda item 3, namely agenda items 3(I), 3(IV) and 3(V). Following a review of the evidence presented during CAH1, the Joint Councils have no further comments to make.

3.4 Agenda item 4 – Whether the purposes of the proposed compulsory acquisition are legitimate and would justify interfering with human rights of those with interest in the land affected

- 3.4.1 The Joint Councils offered no comments on this agenda item. Following a review of the evidence presented during CAH1, the Joint Councils have no further comments to make.



3.5 Agenda item 5 – Consideration of duties under the Equality Act 2010

3.5.1 The Joint Councils offered no comments on this agenda item. Following a review of the evidence presented during CAH1, the Joint Councils have no further comments to make.

3.6 Agenda item 6 – Sections 127 and 138 of the PA2008 – the acquisition of statutory undertaker’s land and the extinguishment of rights and removal of apparatus of statutory undertakers

3.6.1 The Joint Councils offered no comments on this agenda item. Following a review of the evidence presented during CAH1, the Joint Councils have no further comments to make.

3.7 Agenda item 7 – Section 135 of the PA 2008 – Crown Land

3.7.1 The Joint Councils offered no comments on this agenda item. Following a review of the evidence presented during CAH1, the Joint Councils have no further comments to make.

3.8 Agenda items 8-10 – CAH Part 2

3.8.1 The Joint Councils attended CAH1 as the host authorities for the Scheme but not as Affected Persons. The Joint Councils offered no comments on the agenda items under Part 2 of CAH1. Following a review of the evidence presented during CAH1, the Joint Councils have no further comments to make.

3.9 The Joint Councils’ responses following CAH1

3.9.1 The Joint Councils understand that the ExA directed all Action Points arising from CAH1 to the Applicant to follow up on. Following from the discussion during agenda item 3(II) (see paragraphs 3.3.1 and 3.3.2), the Joint Councils are submitting to the Examination a copy of the CIL infrastructure list. This is provided in the submission item titled “CIL_Joint_Committee_Infrastructure”.

3.9.2 Following from the discussion during agenda item 3(III) (see paragraphs 3.3.3 to 3.3.7), to facilitate the ExA in understanding the funding mechanisms of CIL and section 106 contributions, the Joint Councils are also submitting a statement. The statement sets out the current and future position of relevant Development Plan and policy documents. The statement also provides the procedures and policies regarding CIL and section 106 contributions, as well as confirming the date for which the first CIL Joint Committee meeting will take place. The statement is provided in the submission item titled ‘Joint Councils’ Planning Statement’.



APPENDICES



Gloucestershire
COUNTY COUNCIL



CHELTEMHAM
BOROUGH COUNCIL



Tewkesbury
Borough Council

M5J10.D4HS | 1.0 | September 2024 | AtkinsRéalis
TR010063 Joint Councils Written Submission of case put orally
at the Hearings held the week commencing 12 August 2024

Appendix A. Confirmation email from GCC for the disapplication of drainage legislation

From: SIRET, Peter <[REDACTED]@gloucestershire.gov.uk>

Sent: Monday, June 17, 2024 3:52 PM

To: BEATTIE, Chris <[REDACTED]>

Subject: M5 J10 Highway Improvement Scheme Development Consent Order (DCO) - S.23 Disapplication - LLFA Agreement

Dear Sirs,

I refer to your request that any consent required pursuant to Section 23 of the Land Drainage Act 1991 in relation to the above scheme can be disapplied within the Development Consent Order (DCO).

With the understanding that we will be consulted on the relevant details of the consentable works involved in the approved scheme, I confirm on behalf of GCC as the Lead Local Flood Authority, that it consents to the disapplication of S.23 being included in the DCO.

Regards

Peter Siret
Sustainable Drainage Engineer
Flood Risk Management (Strategic Infrastructure)
Gloucestershire County Council
1st Floor, Block 5, Shire Hall, Westgate Street, Gloucester, GL1 2TG

www.gloucestershire.gov.uk



Flood Online Reporting Tool



You can now report property flooding online using FORT

If your home or business has been affected by flooding and you would like the Council to investigate the cause, you can report the incident on FORT. Click here or visit "Flooding and Drainage" at www.Gloucestershire.gov.uk.



Gloucestershire COUNTY COUNCIL



AtkinsRéalis



Planning, Environmental Consenting and Communities

AtkinsRéalis

Nova North

11 Bressenden Place

Westminster

London

SW1E 5BY

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