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**OUR REFERENCE:**  
M5J10.JC.D5.CL

**YOUR REFERENCE:**  
TR010063

Date: 1 October 2024

Dear Mr Maund,

**Application by Gloucestershire County Council for an Order Granting Development Consent for the M5 Junction 10 Improvements Scheme: TR010063**

**Submission made by the Joint Councils pursuant to Deadline 5 (D5) of the Examination of the M5 Junction 10 Improvements Scheme**

This covering letter is written on behalf of Gloucestershire County Council (GCC), acting on behalf of GCC in its role as the Local Highway Authority, Cheltenham Borough Council (CBC) and Tewkesbury Borough Council (TBC) as Local Planning Authorities (LPAs), together the Joint Councils (20047710). The Joint Councils are the host authorities for the GCC Major Projects Team ('the Applicant') M5 Junction 10 Improvements Scheme Development Consent Order (DCO) ('the Scheme').

This letter provides a summary of the Joint Councils' D5 submissions of which further details can be found within the following documents:

- Joint Councils Response to the Examining Authority's Second Written Questions – our document reference M5J10.JC.ExAQ2; prepared by AtkinsRéalis on behalf of the Joint Councils, dated 1<sup>st</sup> October 2024.

The Joint Councils have also reviewed the submissions made by the Applicant and other Interested Parties at D4. Where a review of an D4 submission does not warrant a separate document, these are captured within this letter.

**Joint Councils' Response to the Examining Authority's (ExA) Second Written Questions (ExAQ2)**

The ExA published the ExAQ2 referenced [PD-012] on 10<sup>th</sup> September 2024. The Joint Councils have identified a number of questions that have been directed to them at ExAQ2 and have submitted responses to these questions at D5. The Joint Councils' responses to these questions are set out in a separate document, titled "Joint Councils Response to the Examining Authority's Second Written Questions" (our reference: M5J10.JC.ExAQ2).

## **Joint Councils' comments on the Deadline 4 (D4) submissions made by the Applicant and other Interested Parties**

The Joint Councils have reviewed the submissions made by the Applicant and other Interested Parties at D4 on 3<sup>rd</sup> September 2024. In summary, the Joint Councils have no specific comments on the submissions by other Interested Parties but would particularly like to highlight our comments on the following submission items made by the Applicant which are set out below.

### Applicant comments on Interested Parties Response to Examining Authority's First Written Questions (ExAQ1) [REP4-035]

The Joint Councils have reviewed [REP4-035]. The Joint Councils noted that Section 2.2 comprises the Applicant's comments on the Joint Councils' response to ExAQ1 [REP3-064] submitted at D3. The Joint Councils broadly accept the comments made by the Applicant. Where the Joint Councils wish to make further responses to the Applicant's comments, these are provided in Table 1 of the Appendix to this letter.

### Applicant Response to Interested Parties D3 Submission [REP4-036]

The Joint Councils have reviewed [REP4-036]. The Joint Councils noted that Section 2 comprises the Applicant's Response to the Joint Councils' comments on the D2 submissions made by the Applicant and other Interested Parties [REP3-066] submitted at D3. In [REP3-066], the Joint Councils provided comments on the landscape visualisations submitted by the Applicant at D2 and the Applicant's Response to the Local Impact Report [REP2-009].

The Joint Councils broadly agree with the responses made by the Applicant in [REP4-036]. Where the Joint Councils have further comments on the Applicant's responses, these are provided in Table 2 of the Appendix of this letter.

### Cumulative Effects Assessment Technical Note [REP4-034]

The Joint Councils have reviewed [REP4-034]. The Joint Councils' position at D5 is that further discussion between the Joint Councils and the Applicant on the content of the Technical Note is required. The Joint Councils will have to liaise and discuss/agree with the Applicant the need for inclusion of the identified sites.

### Need for Scheme Technical Note [REP4-042]

The Joint Councils have reviewed [REP4-042]. The Joint Councils agree with the conclusion of the Technical Note.

### Updated draft DCO (dDCO)

The Joint Councils note that an updated iteration of the dDCO [AS-067] has been submitted by the Applicant as part of Change Application 1 following D4. The Joint Councils understand that we are invited to provide comments on the Applicant's proposed provisions for the compulsory acquisition of additional land by D6 on 25<sup>th</sup> October 2024. The Joint Councils are not submitting any comment on this issue at D5 but wish to highlight on behalf of GCC that the County Archaeologist expects Requirement 9(3) of the dDCO to have included public engagement.

#### Other submissions made by the Applicant at D4

The Joint Councils have no specific comments to make in response to the other submission items from the Applicant.

#### **Joint Councils' Response to the Action Points arising from the Issue Specific Hearing 3 (ISH3)**

The ExA published the Action Points list arising from the ISH3 [EV8-016] on 5<sup>th</sup> September 2024. The ISH3 was held on 13<sup>th</sup> and 14<sup>th</sup> August 2024. The Joint Councils have provided a response to the 4 Action Points assigned to us in our submissions at D4. Following a review of the Applicant's submissions at D4, the following table provides an update on the Joint Councils' positions on the ISH3 Action Points:

<b>ISH3 Action Point</b>	<b>Action By</b>	<b>Joint Councils' position at D5</b>
<b>Action Point 7</b> – Copy of confirmation from GCC that disapplication of drainage legislation has been agreed	Applicant/ GCC	Please refer to Section 2.8 and Appendix A of the Joint Councils Written Submissions of oral cases made at ISH3 and CAH1 [REP4-048c] submitted at D4.
<b>Action Point 25</b> – Consider whether St Modwen suggestion of a Requirement could be a mechanism to allow funding matter to be progressed	Applicant/ NH/JC/IPs	For the previous response the Joint Councils submitted at D4, please refer to Section 2.8 of the Joint Councils Written Submissions of oral cases made at ISH3 and CAH1 [REP4-048c].  The Joint Councils are not seeking a Requirement but would have no objection to the inclusion of a Requirement as a mechanism to allow funding to be progressed, yet would require wording to be reviewed before any final agreement is made to this approach.
<b>Action Point 29</b> – JC to provide position statement re. adequacy of scheme design and what needs to be resolved at detailed design stage (and if that is secured via the dDCO)	JC	Please refer to Section 2.8 of the Joint Councils Written Submissions of oral cases made at ISH3 and CAH1 [REP4-048c] and the Joint Councils Design Statement [REP4-048a] submitted at D4.
<b>Action Point 33</b> – JC to review and confirm if provisions regarding reviews / consultations / approvals with respect to environmental barriers as secured via the REAC / DCO are acceptable	JC	Please refer to Section 2.8 of the Joint Councils Written Submissions of oral cases made at ISH3 and CAH1 [REP4-048c] submitted at D4.

### **Statement of Common Ground (SoCG) with the Applicant**

The Applicant's SoCG Joint Councils [REP4-022] submitted at D4 reflects the latest position of the SoCG between the Joint Councils and the Applicant. The Joint Councils would like to reiterate their position in support of the Scheme in principle and will continue the discussions of outstanding matters with the Applicant during the Examination to work towards agreement wherever possible.

### **Documents submitted by the Joint Councils at D5**

In summary, please find below a list of documents which form the Joint Councils' submission for D5 of the Examination of the Scheme:

- Joint Councils Response to the Examining Authority's Second Written Questions – our document reference M5J10.JC.ExAQ2; and
- This covering letter for the submission, which includes the Joint Councils' comments on the D4 submissions made by the Applicant and other Interested Parties.

If you require any further information, please do not hesitate to get in contact via the M5 J10 Joint Councils project team: [M5J10JointCouncils@atkinsrealis.com](mailto:M5J10JointCouncils@atkinsrealis.com)

Yours sincerely,



Lewis Oliver

Associate Planner for and on behalf of The Joint Councils

# APPENDIX

## Appendix: Joint Councils comments on the Deadline 4 (D4) submissions made by the Applicant and other Interested Parties

Table 1 – Joint Councils’ Responses to the Applicant comments on Interested Parties Response to ExQ1 [REP4-035]

ExQ1 No.	Applicant’s Comment on the Joint Councils’ Response at D4 (verbatim)	Joint Councils’ Response on the Applicant’s Comment at D5
Q1.1.4	<p><b>Cumulative Effects Assessment</b></p> <p>The Applicant has submitted a Technical Note at Deadline 4 (TR010063/APP/9.65). The Technical note provides a fuller response to that provided by the Applicant at D3 and sets out the basis of the applications and allocations that have been considered within the cumulative effects assessment for the Scheme.</p>	Please refer to page 2 of this letter for the Joint Councils’ comment on the CEA Technical Note.
Q1.1.7	<p><b>Cumulative Effects Assessment</b></p> <p>The Applicant has submitted a Cumulative Effects Assessment (CEA) Technical Note at Deadline 4 (TR010063/APP/9.65).</p>	Please refer to page 2 of this letter for the Joint Councils’ comment on the CEA Technical Note.
Q2.0.5	<p><b>Cheltenham Air Quality Management Area</b></p> <p>The modelled estimates of total annual mean NO<sub>2</sub> reported for the 2019 base year were verified and adjusted against CBC and TBC air quality monitoring results reported in 2019, as detailed in APP-081 ES Appendix 5.1. Verification and adjustment are detailed in the methodology in AS-012 Air Quality chapter 5.4.27 – 5.4.30, the model adjustment factors were then applied to future year modelling results, as is standard practice. As reported in APP-081 ES Appendix 5.1 of the ES (section 1.4), there were four different adjustment factors for different zones within the air quality study area, including one for the Cheltenham AQMA and a separate one for the rest of Cheltenham outside the AQMA (adjustment factors of 4.73 and 3.14).</p> <p>Overall, the model was considered to be performing well at all locations with a tendency to slightly underestimate NO<sub>2</sub> concentrations in 2019 (APP-081 ES Appendix 5.1 1.4.10 – 1.4.11). The Applicant considers that the concentrations estimated in the opening year scenarios are likely to be higher than current monitored results due to the combination of the adjustment factors, and the change in traffic flows since 2019 as a result of the impact of the COVID-19 pandemic on travel patterns. However, it is still appropriate to apply the model adjustment factors derived for 2019 to modelled estimates of total annual mean NO<sub>2</sub> in 2027, and this can be considered a conservative approach. In any case, the Scheme does not have an overall significant adverse effect on air quality.</p>	<p>The following are all considered acceptable:</p> <ul style="list-style-type: none"> <li>• applying multiple adjustment factors for zones within the study area</li> <li>• conservative approach of applying 2019 adjustment factors</li> <li>• the conclusion that overall, the Scheme does not have a significant effect on air quality</li> </ul> <p>It is noted by the Joint Councils that the modelling presented in the ES has used the DMRB LA 105 Long Term Trends (LTT) methodology for the assessment of future NO<sub>x</sub> and NO<sub>2</sub> projections (as stated in paragraph 5.4.31 of the ES), which is a conservative approach to modelling future air quality. This is likely to account for the discrepancy identified by CBC between the modelling results presented in the ES and the 2023 monitoring data. The Joint Councils have no further comment on this matter.</p>
Q5.0.15	<p><b>Funding</b></p> <p>The Applicant has submitted a Technical Note at Deadline 4 (TR010063/APP/9.65). The Technical note provides a fuller response to that provided by the Applicant at D3 and sets out the basis of the applications and allocations that have been considered within the cumulative effects assessment for the Scheme.</p>	Please refer to page 2 of this letter for the Joint Councils’ comment on the CEA Technical Note.
Q6.0.4	<p><b>Article 7 – Planning Permission</b></p> <p>The Applicant would note that it is not a requirement for a proposed article in a dDCO to have precedent in other granted dDCOs. A DCO is considered on its own merit. This isn’t to say that examples are not useful to provide overall context to the proposed wording and whether that falls within accepted norms or not. The drafting in this area is a newly developing area and as such there is not a general industry consensus for how to deal with this issue. The Applicant would highlight other live applications such as the Five Estuaries Offshore Wind Farm dDCO are proposing some form of this wording having the same</p>	The Joint Councils have sought counsel advice and the current drafting of Article 7 (2) and (3) should be deleted as they seek to constrain the planning enforcement powers of the Joint Councils in a manner that is ultra vires.

ExQ1 No.	Applicant's Comment on the Joint Councils' Response at D4 (verbatim)	Joint Councils' Response on the Applicant's Comment at D5
	<p>purpose and effect. Other made DCOs, including made orders such as the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024 have already secured wording to the same effect. The Applicant has utilised the wording proposed in the Lower Thames Crossing due to the application being in a relevant sector.</p> <p>The Applicant appreciates the concerns of the Joint Councils regarding the constraints imposed over enforcement. The Applicant is not clear on the basis of the claim that the approach proposed is ultra vires. Section 120(5) of the Planning Act 2008 provides that a DCO may disapply statutory provisions, subject to the other provisions in Chapter 1 of Part 7 of that Act. Section 150 allows for the removal of a requirement for prescribed consent or authorisation only if the relevant body has consented to the inclusion of the provision within the DCO. The prescribed consents in England are set out in Paragraph 1 of Schedule 2 to the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015. Where a consent or authorisation is not prescribed for the purposes of section 150, the relevant statutory provisions can be disapplied without consent from the relevant regulatory body (pursuant to section 120). The Applicant is not aware of any other restriction within the relevant chapter of the Planning Act 2008 (i.e. Chapter 1 of Part 7) which otherwise restricts the application of section 120. In relation to England, Schedule 2 of the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 does not include reference to the Town and Country Planning Act 1990, Part VII of which contains the relevant provisions relating to enforcement which the Joint Councils in their capacity as local planning authorities would rely on.</p> <p>The Applicant provided a summary as to the overall purpose of its wording in its response at Deadline 3 to ExQ1s at 6.0.4 [REP3-043]</p>	
Q6.0.9	<p><b>Article 41 Defence to proceedings in respect of statutory nuisance</b></p> <p>The Applicant would highlight that its proposed wording is aligned with that of other recently granted highways DCOs. This includes:</p> <ul style="list-style-type: none"> <li>- Article 44, A417 Missing Link Development Consent Order 2022</li> <li>- Article 44, A47/A11 Thickthorn Junction Development Consent Order 2022</li> <li>- Article 42, A47 Blofield to North Burlingham Development Consent Order 2022</li> <li>- Article 40, A57 Link Roads Development Consent Order 2022</li> <li>- Article 43, A47 Wansford to Sutton Development Consent Order 2023</li> <li>- Article 50, A12 Chelmsford to A120 Widening Development Consent Order 2024</li> <li>- Article 44, M3 Junction 9 Development Consent Order 2024</li> </ul> <p>The Applicant considers that this level of consensus among recently granted DCOs is likely as a result of the article being substantially based on article 7 of the model provisions contained at Schedule 1 of the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009.</p> <p>The Applicant therefore does not agree with the Joint Council's assessment that its position is unreasonable, given the widely documented examples where previously it had been decided that was appropriate.</p>	<p>The position of the Joint Councils is reasonable due to the particular circumstances of the proposed DCO in the proximity to residential homes. The wording proposed by the Joint Councils has been accepted in such circumstances. However, exclusion or inclusion in other DCOs is a material consideration for this Inspectorate. The application and wording of the DCO is determined on the material and circumstances before the Inspectorate.</p>
Q15.0.1	<p><b>Traffic Management Plan (TMP)</b></p> <p>The Joint Councils in their role as local planning authorities will be consulted on the second iteration of the TMP as secured by requirement 3 of the dDCO. The dDCO does not secure the requirement of the Joint Council's approval of the TMP. The second iteration environmental management plan will, as per changes introduced at Deadline 4, be approved by the Secretary of State.</p>	<p>The Joint Councils note the Applicant's response and accept that the Joint Councils will be a consultee on the second iteration of the TMP.</p>



ExQ1 No.	Applicant's Comment on the Joint Councils' Response at D4 (verbatim)	Joint Councils' Response on the Applicant's Comment at D5
Q15.0.9	<p><b>Transport Modelling</b></p> <p>The Applicant has submitted additional information regarding potential public transport and active modes interventions considered during development of the Scheme which is presented in the Multimodal Study (REP3-053).</p> <p>The Applicant considers that all information regarding the assessment of the Scheme is reported in a clear and appropriate way in the documents submitted in support of the dDCO, including within the ES. The Applicant does not consider it necessary nor appropriate to duplicate this information in an additional chapter within the ES. In addition, the Scoping Opinion received (Appendix 1.2 of the ES APP-076), scoped out transport from the EIA.</p> <p>The Applicant is in discussions with the Joint Councils to prepare a plan at that shows all the enhanced facilities incorporated into the Scheme for active modes of transport and how these connect in with the wider network of facilities. This will be submitted at an agreed deadline into the Examination.</p>	<p>The Joint Councils have provided detailed comments to the Applicant. Additional information to be submitted by the Applicant will be reviewed once available.</p>

**Table 2 – Joint Councils' Comments on the Applicant Response to Interested Parties D3 Submission [REP4-036]**

Response Reference	Applicant's Response at D4 (verbatim)	Joint Councils' Comments on the Applicant's Response at D5
066-06	<p><b>Joint Councils' Comments on the Documents on Landscape Visualisations Viewpoints [REP2-003, REP2-004, REP2-005, REP2-006 and REP2-007]</b></p> <p>The acoustic barrier shown in the visualisation represents a 'worst-case' scenario. This is because the manufacturer and exact specification will be decided at detailed design stage.</p> <p>Entry LV6 of the REAC secures the Applicant's commitment to consult with the local planning authorities and directly affected receptors on options for the final design of noise barriers so that they provide visual amenity and/or biodiversity values as well as noise abatement. In addition, DCO Schedule 2, Requirement 14(1) requires noise mitigation proposals to have been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and county planning authority prior to construction. Requirement 14(2)(a) states written details must reflect mitigation measures included in Chapter 6 (noise and vibration) of the ES and Noise and Vibration Management Plan approved as part of the EMP (2nd iteration). The Applicant therefore considers that regardless of the worst case scenario presenting in the visualisations, that there are sufficient controls in the dDCO to ensure sufficient consultation and engagement with relevant parties on the detailed design of these features.</p>	<p>Thank you for this information. The Joint Councils understand, but would like to note, that the LVIA chapter, particularly Appendix 9.2 LVIA Chapter Assessment Table [APP-144], assumes that the barrier fence would be designed for enhanced visual amenity. We also refer to SoCG Joint Councils [REP4-022], which states: <i>"Position: On all occasions, these matters were agreed during a meeting between technical specialists. The Joint Councils now understand that the assessment assumes residents will have input into the barrier's design. There is room for climbing plants to create an attractive screen within the first year. The Joint Councils agree with these matters, subject to detailed design and commitments made in the REAC."</i></p> <p>It was our understanding that the LVIA assessment was based on providing a better visual amenity solution than a standard timber barrier. We would like to question the disparity between the visualisations and the assessment. It appears that the visuals are based on the worst-case scenario, whereas the assessment assumes a better visual amenity outcome is possible. If a commitment cannot be made to the proposed treatment of the barrier, the assessment should be based on the worst-case scenario. The appearance of the barrier fence is material to the application and is likely to have noticeable effects on some visual receptors. It is difficult to see why a mitigation treatment cannot be proposed at this stage.</p>
066-23	<p><b>LIR Ref 3.9.24 Population and Human Health</b></p> <p>Design of the Withybridge underpass as 'dual function' refers to its use by bats as a route to cross under the A4019 at nighttime, and an access route for walkers and equestrians during the daytime.</p> <p>With regards to question (1) from the JCs, Applicant is reviewing the proposed lighting of the underpass by pedestrians and equestrians at night.</p> <p>With regards to question (2), Applicant will, as part of detailed design, review appropriate wayfinding signage. Alternative access and crossing facilities would be available for pedestrians and cyclists at the proposed A4019/West Cheltenham Link Road signalised junction with proposed connections to Withybridge Lane to the south and the proposed access track and bridleway AUC 1 to the north.</p> <p>As detailed in items PHH3 and PHH4 of the REAC [REP3-031] continued engagement with walking, cycling and horse-riding groups throughout the detailed design and construction phases would assist with all user groups' understanding and familiarity of the scheme proposals.</p>	<p>Clarification on the 'dual function' (day and night) is appreciated. The Joint Councils will need to be updated on the outcome of the lighting review for question (1). Wayfinding, to be included in the detailed design is acknowledged for question (2) and addresses those concerns. Ongoing consultations with WCH groups should continue and is appreciated.</p>



Response Reference	Applicant's Response at D4 (verbatim)	Joint Councils' Comments on the Applicant's Response at D5
066-24	<p><b>LIR Ref 3.9.26 Population and Human Health</b></p> <p>There is no guarantee of a successful resolution, but the Applicant aims through its previously stated engagement that such a resolution will be achieved.</p>	<p>Ongoing engagement is noted. The Applicant should do everything possible to find a mutually acceptable solution that minimises impacts on the businesses.</p>