

M5 Junction 10 Improvements Scheme

Applicants written submission of Oral Case for Open
Floor Hearing 2 (OFH2), Compulsory Acquisition
Hearing 2 (CAH2) and Issue Specific Hearing 5 (ISH5)

TR010063 – APP 9.95

Rules 8 (k)

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

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Gloucestershire
COUNTY COUNCIL

Infrastructure Planning Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

M5 Junction 10 Improvements Scheme Development Consent Order 202[x]

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1. Introduction

- 1.1.1. The purpose of this document is to set out the Applicant's written summary of its oral case for Open Floor Hearing 2 (OFH2), Compulsory Acquisition Hearing 2 (CAH2) and Issue Specific Hearing 5 (ISH5) held on Wednesday 20 November 2024 virtually via Microsoft Teams.
- 1.1.2. This document does not propose to summarise the oral case of parties other than the Applicant. Summaries of the oral case made by other parties are only included where necessary in order to give context to the Applicant's summary.
- 1.1.3. Where the Examining Authority (ExA) requested further information from the Applicant on particular matters, or the Applicant undertook to provide further information during the Hearing, the Applicant's response is set out.
- 1.1.4. This document follows the order of the Agenda published by the Examining Authority on 13 November 2024.
- 1.1.5. For defined terms and abbreviations, please refer to Section 14 of the Introduction to the Application (APP-001).
- 1.1.6. The Applicant has provided responses to the CAH2 and ISH5 hearing actions collectively in Appendix A.

2. Applicant's project team

- 2.1.1. Andrew Tait KC of Francis Taylor Building confirmed that he represents the Applicant and introduced the following members of the Applicant's project team, who would speak as required on the agenda items:
- (a) Leticia Mandra, Burges Salmon;
 - (b) Douglas Haycock, Burges Salmon;
 - (c) Gary Soloman, Burges Salmon; and
 - (d) James Cattermole, Land Assembly Lead, Carter Jonas.
- 2.1.2. The following members of the Applicant's project team also spoke on the certain agenda items:
- (a) Chris Beattie, Project Manager, Gloucestershire County Council;
 - (b) Aimee Blay, Senior Design Manager, Galliford Try;
 - (c) Colin Cartwright, Environment Lead, AtkinsRéalis;
 - (d) Stephen Coe, Senior Project Manager, Gloucestershire County Council;
 - (e) Nathan Drover, Developer Interface Manager, Gloucestershire County Council; and
 - (f) Tim Pearce, Planning Lead, AtkinsRéalis.

3. Open floor hearing 2

3.1.1. The Applicant did not make any submissions at this hearing.

4. Compulsory Acquisition Hearing 2

Agenda Reference	Examining Authority's Agenda Item	Applicant's summary of oral case
1	Purpose of the Compulsory Acquisition Hearing.	The Applicant did not make any submissions in relation to this agenda item.
2	<p>The ExA will hear from Affected Persons and Interested Parties in relation to the Proposed Development and the provisions following the acceptance of Change Request No. 1</p> <p>Each Party who has indicated a wish to speak will be invited in turn to address the Examining Authority.</p> <p>Following each submission, the Examining Authority may wish to ask the speaker questions.</p> <p>The Applicant will be invited to respond to any matters raised by each speaker.</p>	The Applicant did not make any submissions in relation to this agenda item.
3	The ExA will seek an update from the Applicant in respect of outstanding objections to CA or TP.	<p>The Applicant provided an update on its progress with voluntary acquisition and negotiations:</p> <ul style="list-style-type: none">• The Applicant explained that it now owns or has agreed terms to voluntarily acquire 33 of the 34 residential properties required for the Scheme including the purchase of 15 Withybridge Gardens.• Terms have been agreed for the acquisition of four more properties or interests.

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		<ul style="list-style-type: none"> • The Applicant anticipates reaching agreement on terms with Robert Hitchins Limited and the Crown Estate Commissioner by the close of examination. • An offer has been made by the Applicant to all freeholders to voluntarily acquire the land required for the Scheme and to all parties impacted by the changes to the Scheme's flood profile. • The Applicant has also made offers to acquire the presumed subsoil interests required for the Scheme to over 55 interests. • An objection has been removed by Dana Wotton. • Terms have been agreed for the acquisition of the freehold of the entirety of Sheldon Nurseries at the request of Mr Williams. • Terms have now been agreed with Mr Wakefield and Mrs Wakefield to voluntarily acquire the residential property at 10 Withybridge Gardens and the neighbouring parcel of land to the east. • Terms have been agreed for the acquisition of the land and rights required at the House in the Tree with both the freeholder and leaseholder. • Several meetings and calls have been held with Mr Hadley to progress negotiations in relation to the voluntary acquisition and this has included providing clarification on the access solutions available for his land. The Applicant has responded to a request from Mr Hadley to alter the structure of the voluntary acquisition and a revised offer to acquire the freehold was made on 29th October 2024 on this basis. • There has been regular dialogue with Mr Smith's appointed agent and an offer to 3 Tewkesbury Road remains. It is the Applicant's understanding that Mr Smith's agent is broadly in agreement to the terms and consideration offered. • The Applicant's position in relation to the Safeguarded Land is set out in its written representation. A meeting has been proposed with Mr Bower and GCC for w/c 25 November. • The Applicant met with Cheltenham Borough Council to discuss proposed access but some concerns remain in relation to the interaction between the Scheme and the access. A further meeting has been scheduled with the Council's agent.

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		<ul style="list-style-type: none"> • The Applicant met with the agent representing JW Bruton and Sons and provided clarification on the southern agricultural access, providing reassurance that communication will be maintained throughout construction and beyond. • The Applicant held a meeting with the newly appointed agent for Midland Land Portfolio on 22 August. The Applicant has not received a response but has continued to chase. <p><u>JW Bruton and Sons land</u></p> <p>The agent representing JW Bruton and Sons explained that they had not been provided with definitive details of the purpose of the temporary acquisition of land and permanent acquisition of rights over land at Barn Farm.</p> <p>The Applicant explained that the land is required temporarily required for the construction and maintenance of an environmental barrier with the acquisition of permanent rights required for its continued maintenance following construction.</p> <p>The agent representing JW Bruton and Sons explained that they would like further detail on what the maintenance activities would be.</p> <p>The Applicant suggested that a schedule could be provided setting out the works on a plot-by-plot basis.</p> <p><u>Mr Hadley's land</u></p> <p>In response to Mr Hadley, the Applicant explained that it provided a detailed response to Mr Hadley's concerns about safety and land take at Part 9 of REP7-009. In respect of the letter issued on 7 June it was Mr Hadley that proposed a figure of 30 units at the property rather than GCC HDM. The matter was discussed in a meeting with Mr Hadley on 18 September where an agreement in relation to a future planning application wasn't made, but an undertaking to explore unit numbers with GCC HDM was taken forward with the letter being issued on 14 October. As set out in the letter there wouldn't be a restriction or limit on the number of units that could be delivered from an access off of Hayden Lane and on that basis further dialogue will be had with Mr Hadley and his agent to explain</p>

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		<p>this. GCC cannot offer a formal agreement at this stage as this would predetermine any planning application made for the site. In respect of the offer, the Applicant put an offer forward to Mr Hadley taking account of the open market value of the land, the compensation code and betterment. Mr Hadley's proposed development is contingent on the highways improvements which are proposed by the Scheme, including the West Cheltenham Link Road, and for that reason the Applicant has clearly improved Mr Hadley's position. The offer made by the Applicant is representative and no offer has ever been made of nil consideration.</p> <p>The ExA asked the Applicant whether GCC HDM are the team that provide consultation responses to the planning authorities who are the determining authorities for the planning applications.</p> <p>The Applicant explained that this is correct.</p> <p>The ExA asked the Applicant whether this means that the Applicant is unable to make the requested commitment given that it is not the determining authority.</p> <p>The Applicant explained that this is correct.</p> <p>The ExA noted that Mr Hadley does not see a betterment to his land as the location of the proposed junction would compromise his access onto the Old Gloucester Road and would undermine the ability for his land to be developed.</p> <p>The Applicant explained that it is its view that the development at Mr Hadley's land can be delivered using Hayden Lane to the south and therefore the Scheme does not prevent the development. The wider highways improvements delivered by the Scheme will still be required and benefit Mr Hadley's land regardless of whether his development directly accesses the Link Road.</p> <p>The ExA asked the Applicant whether the junction proposed by the Scheme will make it unlikely that a second junction onto the Old Gloucester Road can be facilitated.</p> <p>The Applicant explained that it will be for GCC HDM to confirm.</p>

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		<p>Mr Hadley explained that he had received an offer of nil consideration for his land.</p> <p>The Applicant explained that a summary of offers made to Mr Hadley can be provided.</p>
<p>Action Point 1: Provide schedule to Mr King re. (Bruton) land need / purpose for each plot for ongoing maintenance (Deadline 9a).</p> <p>Action Point 2: Applicant to provide a summary of CA engagement re. Mr Hadley's land (Deadline 9a).</p>		
4	<p>The ExA will invite updates from Statutory Undertakers as to their position in respect of s127 and s138 of the Planning Act 2008 and any matters which remain outstanding in this respect.</p>	<p><u>National Grid Electricity Distribution (NGED)</u></p> <p>The ExA asked the Applicant to clarify why the Applicant suggests that the definition of specified work should not apply a 6m distance to all assets.</p> <p>The Applicant explained that it is seeking a graded definition of specified work where a 6m distance applies to extra high voltage assets and 1m to high voltage and low voltage assets. The Applicant set out two examples where NGED's proposed definition would cause problems due to the approval procedure needed for specified works. Firstly, along the A4019 there are multiple connections into existing properties where the specified works approval process will be triggered, where those properties are to be demolished. The second example is along the Link Road where at the point of construction it would not be a public highway and the protective provisions would be triggered. There are multiple assets and connections which suggest the specified works definition will be constantly triggered and so a graded definition is sought to avoid a lengthy approval process between the Applicant and NGED.</p> <p>The ExA asked whether the 40-day (or 60-day) approval timeframe is critical.</p> <p>The Applicant explained that it is critical and it goes hand in hand with the graded definition. It would work better if a graded definition of specified works were applied and a 40-day approval process was used.</p> <p>The ExA noted that the justification for the graded distances relies on Health and Safety Executive guidance asked the Applicant whether this guidance could be provided.</p>

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		<p>The Applicant explained that it is the Applicant's interpretation of the guidance, which can be provided. The guidance sets up exclusion zones around assets which the Applicant has translated into specified work distances that follow the exclusion zones.</p> <p>The ExA asked the Applicant whether this approach is consistent with other DCOs?</p> <p>The Applicant explained they will respond in writing.</p> <p>The ExA noted that the Applicant is seeking a cap on its liability for negligence</p> <p>The Applicant explained that agreement on this point has been reached with NGED. The next version of the draft DCO will retain the liability clause and will incorporate a cooperation clause, which resolves the issue.</p> <p><u>Wales and West Utilities</u></p> <p>The ExA asked the Applicant to provide practical examples of the problems caused by a separation distance of 15m.</p> <p>The Applicant explained that it cannot provide specific examples for this but the 15m radius would capture too many works and it would be impractical to seek approval. The Applicant has suggested definitions which would apply where the works are not compliant with safety and practice and a definition which would apply 4 metres measured in any direction. The Applicant confirmed that a copy of the guidance relied on can be submitted into the examination</p> <p>The ExA asked the Applicant what the difference between it and Wales and West Utilities is in relation to approval of acquisitions.</p> <p>The Applicant explained that it would like to remove or rephrase the clause so that it applies only to acquisition of apparatus instead of land. The Applicant considers that a restriction in the exercise of compulsory acquisition powers could hinder the programme and put it in a position where it can't exercise powers within the order. The Applicant's proposal is in line with the most recent Government guidance on the drafting of protective</p>

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		<p>provisions which provides that they should not negate provisions of the DCO, including proposed compulsory acquisition of statutory undertakers' land.</p> <p>The ExA asked the Applicant whether it has been presented with any evidence that there would be a serious detriment to Wales and West Utilities' operation in the event that the Applicant's proposal is incorporated into the DCO.</p> <p>The Applicant explained that it has not been provided with specific evidence. The Applicant is also only proposing to acquire rights over land where the statutory undertaker has rights and so the Applicant would co-exist in the land with the statutory undertaker. The Applicant is not proposing to acquire freehold land belonging to a statutory undertaker.</p> <p><u>Severn Trent Water Limited (Severn Trent)</u></p> <p>The ExA asked the Applicant whether Severn Trent has explained why they need access at all times to apparatus in stopped up streets.</p> <p>The Applicant explained that Severn Trent has provided some reasoning, but the Applicant believes there has been a misunderstanding as it is not restricting access at all. The Applicant is proposing a notice process which would require reasonable notice prior to access in order to ensure safety and efficient operation of the authorised development in what would be a construction site. There is also a caveat that applies in case of emergency.</p> <p>The ExA asked the Applicant whether there is any definition of a reasonable period.</p> <p>The Applicant explained that there is not a definition and it would depend on need and the length of time which access is needed for. The Applicant agreed to look into this further.</p> <p>The ExA noted that Severn Trent want a similar restriction on compulsory acquisition as Wales and West Utilities and asked whether the Applicant's position is the same.</p> <p>The Applicant explained that this is correct.</p>

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		<p>The ExA asked the Applicant whether it considers there is no serious detriment to the operation of all three statutory undertaker's undertaking provided the suggested diversions take place before their apparatus is taken out of action.</p> <p>The Applicant explained that this is correct.</p> <p>The ExA noted concern that the definition of specified works in Severn Trent's protective provisions does not catch every size of pipe.</p> <p>The Applicant confirmed it would look into this.</p> <p>The ExA asked the Applicant how they would know the size of Severn Trent's pipe and the separation distance needed before starting works.</p> <p>The Applicant explained that it is likely to rely on data provided by Severn Trent, but it will confirm this in writing.</p> <p><u>National Highways</u></p> <p>The ExA asked the Applicant for confirmation that National Highways are content with the compulsory acquisition elements involving their land or rights.</p> <p>The Applicant confirmed that it understands this is correct.</p>
<p>Action Point 3: Provide Applicant position statement re. distances relevant to specified work areas for NGED based upon HSE guidance (DCO Schedule 9) (Deadline 9a)</p> <p>Action Point 4: Position statement re. Wales and West utilities regarding distances including provision of their guidance relied upon (Deadline 9a).</p> <p>Action Point 5: What is a 'reasonable notice period' re. Severn Trent to access assets in stopped up streets etc (Deadline 9a).</p> <p>Action Point 6: Consider form of words regarding Severn Trent - pipe diameters and separation distances (Deadline 9a).</p>		
5	The ExA will invite updates from the Applicant and Crown Estates/Govt Departments on the latest position in respect of Crown Land and the respective positions of parties regarding s135 of the Planning Act 2008.	The Applicant explained that the relevant Crown authorities are the Ministry of Housing, Communities and Local Government (MHCLG), the Crown Estate Commissioners and Defra. The Applicant has not obtained a written s.135 consent from any party yet. The Applicant is at an advance stage of engagement with MHCLG and is awaiting a signed

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		<p>letter of consent, which is expected within the examination period. The Applicant is in discussion with the Crown Estate Commissioners regarding heads of terms and is discussing the possibility of obtaining a s.135 from the Crown Estate Commissioners once signed heads of terms are received, which the Applicant hopes will take place by the close of examination. In respect of Defra, the Applicant sent a letters requesting consent on 19 March 2024 and chased on 9 May 2024, 3 September 2024 and 12 November 2024, but has not received a response. The Applicant will continue to chase for a response from Defra.</p> <p>The ExA asked whether there has been any form of communication with Defra.</p> <p>The Applicant explained that there has been no response from Defra so the Applicant is exploring other potential contacts internally.</p> <p>The ExA asked about what this means for the position under s.135.</p> <p>The Applicant explained that article 43 of the draft DCO ensures that the DCO is aligned with s.135 PA 2008. The article replicates the protections for the Crown Authorities on the face of the order and ensures that the Applicant must obtain the consent of the Crown Authorities. Government guidance on s.135 consent advises applicants to obtain consent at the earliest stage possible, but it is not unknown for consent to be obtained at the decision stage where the Secretary of State makes requests for further information.</p> <p>The ExA asked the Applicant whether they are hopeful that they will receive consent from MHCLG and the Crown Estate Commissioners.</p> <p>The Applicant explained that this is correct, and it is only Defra which the Applicant is unable to comment on. The Applicant noted however that Defra’s interest relates to a Land Charge within a Redemption of Tithe Rent charge by an Order dated 16 June 1922 in land that currently sits within the adopted highway. Given this factual background the Applicant does not consider that Defra’s consent could reasonably be withheld.</p> <p>The ExA asked the Applicant whether they are confident they have been writing to the correct part of Defra.</p>

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		The Applicant explained that they are confident they have been writing to the correct body and they are trying to explore other options using personal contacts.
6	Any other business	The Applicant did not make any submissions in relation to this agenda item.
7	Actions points and post hearing notes and closing remarks	The Applicant did not make any submissions in relation to this agenda item.
8	Close of Compulsory Acquisition Hearing.	The Applicant did not make any submissions in relation to this agenda item.

5. Issue Specific Hearing 5 (ISH5) dealing with matters relating to the draft Development Consent Order (dDCO), Traffic and Transport, Heritage, the Water environment, Noise, and other environmental matters.

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1	Purpose of the Issue Specific Hearing	The Applicant did not make any submissions in relation to this agenda item.
2	The ExA will seek an update in respect of Schedule 9 – Protective Provisions for: <ul style="list-style-type: none"> i. National Highways ii. National Grid (West Midlands) iii. Wales and West Utilities iv. Severn Trent Water v. BT Openreach 	<p><u>BT Openreach</u></p> <p>The ExA asked the Applicant for clarity regarding whether the protective provisions inserted for the protection of BT Openreach at Deadline 7 were agreed with BT Openreach.</p> <p>The Applicant confirmed that the protective provisions for the protection of BT Openreach are fully agreed.</p>
Action Point 1: Provide letter confirming agreement of PPs with BT Openreach (Deadline 10).		
3	The ExA will explore the need or otherwise for a bond to secure National Highways	<p>The Applicant explained that they are content with the ExA's suggested protective provisions subject to a small amendment to bring the provisions in line with National Highways' (NH) standard bonding provisions.</p> <p>The ExA noted that this is a change from the Applicant's previous position.</p> <p>The Applicant explained that it is very near to the completion of a side agreement with National Highways which contains a notice to proceed mechanism. The agreement doesn't automatically require a bond but requires the Applicant to demonstrate that sufficient</p>

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		<p>funding is available prior to commencing works on the strategic road network (SRN). If the side agreement is entered there is no reason to trigger the requirement for the bond, and if the side agreement is not entered the Applicant considers that it is appropriate for the DCO to include a bonding provision.</p> <p>The ExA asked the Applicant and National Highways to provide written confirmation of the status of the side agreement at the end of examination.</p> <p>The Applicant explained that it is anticipated it will be agreed by the end of examination.</p> <p><u>UK Infrastructure Bank funding</u></p> <p>The ExA asked the Applicant to provide clarity on the funding from the UK Infrastructure Bank.</p> <p>The Applicant explained that its Deadline 9 cover letter [REP9-001] encloses a letter from the Iain Watson, the Director of Lending at the UK Infrastructure Bank. The letter explains that GCC has commenced discussions with us earlier than would normally be the case, which positions the UK Infrastructure Bank well to progress the project through the necessary governance, approvals, and loan documentation process in light of an anticipated Secretary of State decision on the project in early June 2025 with a planned commencement of works during October 2025. The letter goes on to explain that the project is now visible to senior management through inclusion in our pipeline of potential projects and we will continue to assess the project as more information becomes available. The UK Infrastructure Bank states that they envisage that there is sufficient time available to enable the UK Infrastructure Bank to complete its 3-stage governance process and, following a decision on the DCO, allow formalisation of the necessary loan documentation to support the planned date for commencement of works. The letter goes on to provide some detail on the three stages and their timing. It then notes that the GCC team has indicated that a loan facility of £81m or more may be required in respect of the project but the NWF (National Wealth Fund) has up to £4bn to lend to local authorities and recently provided £90m to Denbighshire County Council. The letter then refers to NWF being able to offer loan facilities with flexible drawdown terms, flexible repayment terms and various loan tenures.</p>

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		<p>The Applicant explained that its Deadline 9 cover letter [REP9-001] also encloses a letter from GCC confirming the council's commitment including securing the loan from the UK Infrastructure Bank.</p> <p>The ExA asked the Applicant whether the letter is confirmation that appropriate authority from GCC has been given to progress with the loan and commit to the project.</p> <p>The Applicant explained that this is correct and is far as GCC can go at this stage. Once the various stages are entered into it is anticipated there would need to be cabinet approval prior to a formal loan being entered into.</p>
Action Point 2: Note confirming status of side agreement demonstrating funding available and whether a bond is needed (end of examination)		
4	The ExA will explore the suitability of limiting the timing of undertaking CA	<p>The Applicant explained that its primary position is a 5 year period for compulsory acquisition is appropriate, but it takes on board the ExA's reasons for looking at 2½ year period for implementation of compulsory acquisition. The Applicant considers that a 2½ year period is unduly restrictive as it doesn't allow for any extension of HIF funding. While the Applicant isn't anticipating an extension of HIF funding it may be looked at in the event of an unforeseen delay. The Applicant would potentially consider the inclusion of a 3 year period, which would balance the impact of compulsory acquisition on affected persons. The Applicant is not required to acquire all the required land through general vesting declarations at the outset of the Scheme and can phase the process of acquisition so land is only acquired as and when it is needed, which avoids fallow or abandoned land, allows affected persons to remain on their property for longer and may allow those with agricultural land to realise an additional harvest.</p> <p>The Applicant explained that a 3 year period would run from approximately June 2025 – June 2028, which would align with the likely timetable for the Scheme with a limited allowance for delay. The Applicant noted that 3 years is the maximum period for compulsory acquisition permitted under the Compulsory Purchase Act 1965 (not considering the recent changes introduced by LURA) and it is therefore an established principle that 3 years adequately balances the impact on affected persons with the need for flexibility for compulsory acquisition. While the Planning Act 2008 excludes the application of the 3 year</p>

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		<p>period under the Compulsory Purchase Act 1965, the usual result is that this is extended to 5 years or more and so the Applicant considers that a 3 year period is in line with the principles of public law.</p> <p>The Applicant noted that any period below 5 years would mean that a legal challenge would have a heightened impact on the availability or structuring of an acquisition and so the Applicant has suggested wording in its response to the ExA's commentary on the DCO which includes some protective wording based on the Manston Airport DCO [REP9-010]. The Applicant later explained that its position is that this protective wording should be included in any case where the period for compulsory acquisition is set to less than 5 years.</p>
<p>Action Point 3: Any examples over-and-above Manston Airport re timing of the CA (Deadline 10).</p>		
5	<p>The ExA will seek clarification on the availability of the HIF money and the availability for the purposes of CA beyond September 2027.</p>	<p>The Applicant explained that there are two relevant periods for HIF funding, the completion period and the availability period for funding. The Applicant is currently looking to extend the completion period, which can be done with Homes England's delegated authority. The Applicant does not anticipate extending the availability period of funding.</p> <p>The ExA asked for clarity on the interaction between the completion end date and funding availability period if the former were to be extended.</p> <p>The Applicant explained that the original agreement envisaged that the HIF funding would be fully drawn by September 2027 or earlier. Even if the completion date is extended from December 2027 to March 2028 it is still envisaged that the HIF funding will be used by September 2027 and so there is no need to extend the funding availability period at this stage.</p> <p>The ExA asked the Applicant whether September 2027 is the final date for drawing funding.</p> <p>The Applicant explained that it must demonstrate the costs it has incurred in relation to the project which are then claimed in arrears from the HIF funding.</p> <p>The ExA asked for confirmation that any works undertaken after September 2027 will be funded by monies outside of the HIF Fund.</p>

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		The Applicant explained this is correct.
6	<p>Consents, licences and other agreements</p> <p>The Applicant will be asked to provide an update of progress and timescales for completion of any licences and other agreements</p> <p>The ExA will then ask questions, including discussing whether any legal agreements are proposed and if there is an indicative timescale for finalising them</p>	<p>The Applicant explained that it submitted a Gantt chart at Deadline 7 [REP7-010] and confirmed that it is on track with the activities it said it would carry out in November and the Applicant doesn't see any impediments to achieving the dates set out in the programme.</p> <p>The ExA asked the Applicant to explain the permits being sought.</p> <p>The ExA asked the Applicant whether there are any legal agreements that the ExA needs to be aware of in support of the DCO.</p> <p>The Applicant explained that the only legal agreement is the side agreement with NH.</p> <p>The Applicant confirmed it would provide an updated position on its other consents via an updated CAPS.</p>
Action Point 4: Update consents and agreement position statement (Deadline 10).		
7	<p>Flood Risk and Water Quality</p> <p>The ExA will seek views of all parties in respect of their position on flood risk, and water quality in light of comments made in response to Change Request No.2.</p>	<p>The ExA asked the Applicant to explain their position in relation to the consultation response from Elmstone Hardwicke Parish Council regarding flooding at Leigh Brook.</p> <p>The Applicant explained that the Scheme design that was originally submitted severed any overland flow either under or over the top of the A4019, which would have reached Leigh Brook. The original Scheme design stored this water to the south of the A4019 in the flood storage area. The proposed change reinstates the flow path with two new culverts and the lowering of the Withybridge underpass, which means that the flows will reach the Leigh Brook. The outcome of the original flood risk assessment is maintained as there is no worsening of flooding due to the Scheme.</p> <p>The ExA asked whether the design change provides a betterment to the original Scheme.</p> <p>The Applicant explained that it is a betterment in the sense that the previous design solution required that the A4019 and embankment to the M5 acted as impounding structures, which would result in significant maintenance responsibilities for NH and the Applicant. The</p>

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		<p>betterment is that the new design solution does not use the A4019 or embankment to the M5 as impounding structures but does not result in any worsening to Leigh Brook.</p> <p>The Environment Agency (EA) stated that they had made comments on biodiversity (specifically fish).</p> <p>The Applicant explained that it has provided a response in the consultation statement on the biodiversity point; the Applicant is aware of it and will look to address it at detailed design in consultation with the EA. The Applicant confirmed that it will consider whether the flood risk assessment can be updated considering the remaining time available in examination.</p> <p>The ExA asked the Applicant whether Natural England have made any comment regarding fish and whether it is sufficient to leave this issue to detailed design.</p> <p>The Applicant explained that Natural England have not provided any specific comments on fish or particular ecological species, they made one comment on biodiversity which the Applicant responded to in the consultation statement.</p>
8	<p>Consultation Report - Table 4.2 in the Consultation Report – Change Application No.2</p> <p>The ExA will seek views of the EA, NH and Joint Councils with regards to the Applicant's position and if there are any outstanding concerns.</p>	<p>The ExA asked the Applicant for their view on filter drains / swales and their effectiveness.</p> <p>The Applicant explained that its position is based on the Highways England Risk Assessment Tool, which we used to assess water quality. A filter drain does not provide an equivalent level of removal to a swale, which would provide a greater level of removal of dissolved solids.</p> <p>The ExA asked the Applicant to explain the Highways England Risk Assessment Tool.</p> <p>The Applicant explained that the tool assesses suitability of the design for the surface water drainage solution in terms of water quality, and considers any mitigation put in place by the Scheme which offer greater removal of metals and sediments (e.g. attenuation basins). The surface water runoff design is put into the tool which assesses whether there is sufficient mitigation to pass water quality tests.</p>

Agenda Reference	Examining Authority's Agenda Item	Applicant's summary of oral case
		<p>The ExA asked the Applicant to confirm whether it has assessed the previously proposed swales against filter drains and whether they are entirely appropriate and meet all necessary parameters in the Applicant's view.</p> <p>The Applicant confirmed this is correct.</p> <p>The ExA asked the Applicant why the Water Framework Directive assessment was not updated.</p> <p>The Applicant explained that as part of assessment of Change Application it reviewed the previously submitted assessment of the Water Framework Directive assessment and considered there to be no change.</p>
<p>Action Point 6: WFD – Applicant will come back with written response and set out position regarding NPSNN para 5.225 and 5.226 (Deadline 9a)</p>		
8	<p>Consultation Report - Table 4.2 in the Consultation Report – Change Application No.2</p> <p>The ExA will seek views of the EA, NH and Joint Councils with regards to the Applicant's position and if there are any outstanding concerns.</p>	<p>The ExA noted that various other consultees raise issues regarding ecology, water supply and other matters and asked JCs and EA whether there is anything in table 4.2 which gives cause for concern.</p> <p>JCs and EA responded in the negative.</p>
9	<p>ExA's third written questions</p> <p>The ExA will seek views of parties in respect of responses to third written questions:</p>	
i	<p>Traffic and transport including access arrangements and NH position on the safe operation of the SRN</p>	<p><u>Access to the safeguarded land and Court Consulting D7 submission [REP7-020]</u></p> <p>The ExA asked the Applicant whether it is their position that the Scheme and its design for agricultural access into the safeguarded land remains fit for purpose and appropriate.</p> <p>The Applicant confirmed that the existing design is suitable for the realistic number of movements. The Applicant agreed with a statement made by the Joint Councils that the 192 movements proposed in the Court Consulting written representation is unreasonable in light of historic use and yields.</p>

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		<p><u>Operation of the Strategic Road Network</u></p> <p>The ExA asked the Applicant whether there is anything in the proposal that would affect the safe operation of the SRN.</p> <p>The Applicant explained that it has undertaken further analysis of the modelling which confirms that the temporary closures of the M5 junction 10 slip roads during construction of the Scheme should not result in the queues on the M5 junction 9 off-slips nor on the M5 junction 11 northbound off-slip extending back onto the M5 mainline carriageway and so do not impact the SRN. There is one exception on the southbound off-slip at Junction 11 where the queue could sometimes extend onto the M5 mainline carriageway. The Applicant has looked at potential temporary traffic management arrangements to address the potential for the queue to extend back onto the M5 mainline carriageway. This has included temporary traffic signals at the junction and changes to lane allocations and markings that does satisfactorily address the issue. The Applicant understands that NH will confirm that it is satisfied with the proposed temporary traffic management measures but have requested a small amendment to the Traffic Management Plan to incorporate a reference to the need to do more detailed modelling for M5 junction 11 at detailed design stage.</p>
ii	Noise and mitigation for Stoke Road through Stoke Orchard	<p>The ExA asked the Applicant whether they can outline any further developments with the mitigation scheme. The ExA also asked whether the noise mitigation scheme would adequately address the significant effects identified.</p> <p>The Applicant explained that this is dealt with in the Applicant's answer to the ExA's third written questions, question 12.0.1. In summary, the speed restriction element of the noise mitigation scheme alone would result in a noise reduction of 1.8dB meaning, none of the properties in Stoke Orchard would experience a 1bB or greater increase in noise compared to the predictions in ES Chapter 6, which means no property would be subject to a significant effect.</p>
iii	Landscape and Visualisation	<p>The ExA asked the Applicant what impact Change Request 2 has on the Landscape and Visual Impacts of the Scheme.</p>

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		<p>The Applicant explained that only the visualisation for viewpoint 2 [REP2-004] is affected by the design change, and only very slightly. The Applicant explained that the design changes 3 (River Chelt Bridge structural form) and design change 4 (Link Road vertical alignment) are visible from viewpoint 2.</p> <p>The ExA asked whether the relative height of the embankment will change when compared to the road.</p> <p>The Applicant explained that the relative height of the embankment and the road will remain the same, but the height of the embankment itself will change. The planting design is intended to be the same as the existing design.</p> <p>The ExA asked the Applicant about the impact on landscape due to the change to the embankment.</p> <p>The Applicant confirmed that the effect will be negligible and that mitigation is included in the same way as the existing design to help fit the Link Road into the existing landscape.</p>
<p>Action Point 7: Submit updated viewpoint 2 re. landscape impact associated with road design associated changes included within Application Change Request 2 (Deadline 9a)</p>		
iv	Heritage and the position with respect to Non Designated Heritage Assets	<p>The ExA asked the Applicant to confirm how it was progressing in light of the identification of 5 new non-designated heritage assets.</p> <p>The Applicant explained that it has been informed that there are five properties that are non-designated heritage assets but has currently been provided with their names only. Two are outside of the current Order limits. In respect of the three properties inside the Order limits the Applicant requires further information from the Joint Councils regarding why they are considered to be non-designated heritage assets. If the Applicant receives this information they can be treated in the same way as the three properties as Uckington with an update to the ES Chapter 11 on Cultural Heritage, as was done at Deadline 9 in respect of the three properties identified in Uckington.</p>

Agenda Reference	Examining Authority's Agenda Item	Applicant's summary of oral case
		<p>The ExA asked the Applicant for its position with regard to their obligations on assessing heritage assets and what advice might be given to the ExA in light of the statutory tests.</p> <p>The Applicant explained that it will seek to obtain information from the Joint Councils as a priority to make sure it is as best a position to provide an assessment to the examination. The Applicant explained that the test in NPS NN paragraph 5.125 requires the Secretary of State to consider the impacts on other non-designated heritage assets which are identified either through the development plan process by local authorities, including 'local listing' or through the nationally significant infrastructure project examination and decision making process. The former does not apply in this case. The nationally significant infrastructure project examination and decision making process is a structure process which doesn't envisage non-designated heritage assets being identified at a late stage. NPSNN goes on to state that the impacts on the assts must be considered on the basis of clear evidence that the assets have a significance that merit consideration in that process, which hasn't been identified yet. However the Applicant aims to establish this clear evidence, one way or another, which will enable the Applicant on to carry out an assessment and provide it to the ExA. The Applicant aims to do so by Deadline 9A if possible as it gives others the opportunity to respond.</p> <p>The ExA asked the Applicant whether they have been able to discount the two properties outside the order limits due to their distance from the Scheme.</p> <p>The Applicant explained that it can't assess the assets without information on why the buildings are considered to be non-designated heritage assets. However since they are outside the order limits and several hundred metres limits from the Scheme the expectation is that they will not be impacted by the Scheme. The Applicant will seek to confirm this.</p> <p><u>Trial Trenching</u></p> <p>The Applicant explained that it has carried out geophysical survey work and that evaluation trial trenching will follow later. The results of the geophysical survey work have been shared with the GCC archaeologist and the Archaeological Management Plan is being updated to</p>

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		<p>reflect the results in consultation with the GCC archaeologist. The Applicant plans to submit revision 1 of the Archaeological Management Plan into examination at D10.</p> <p>The ExA asked whether the final position on archaeological information will be included in the SoCG.</p> <p>The Applicant confirmed this is correct.</p>
<p>Action Point 9: How has Applicant met obligations with respect to impacts on Non-Designated Heritage assets? (Deadline 9a)</p>		
<p>Action Point 11: OS plan of new / additional non-designated heritage assets to be shown on updated plan in separate colour (Deadline 9a)</p>		
10	<p>Statements of Common Ground and Principal Areas of Disagreement Summary Statement</p> <p>The ExA will ask the Applicant to provide an update on Statements of Common Ground.</p> <p>The ExA will seek an update from National Highways on Progress on Principal Areas of Disagreement Summary Statement (PADSS) with National Highways</p>	<p><u>Environment Agency</u></p> <p>The Applicant explained that with the exception of the change application, all matters are agreed. In respect of the change applications, the EA have confirmed that the model used for the change applications is fit for purpose subject to slight changes to the flood risk assessment addendum and the position on fish, which the Applicant will take away for Deadline 10.</p> <p><u>National Highways</u></p> <p>The Applicant explained that progress has been made and it is proposed that an updated SoCG will be provided at Deadline 10.</p> <p><u>Joint Councils</u></p> <p>The Applicant explained that the final SoCG is with the Joint Councils for their review and the Applicant hopes it will be signed. The outstanding matters relate to the review of the Archaeological Management Plan and final comments from the council's archaeologist are being addressed and agreed. There is also an outstanding matter relating to funding and timing of s.106 monies since the Joint Councils as planning authorities do not want to predetermine any planning applications. This is being discussed and the SoCG will be updated at Deadline 10.</p> <p><u>Housebuilders</u></p>

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		<p>The Applicant explained that it has met with the majority of developers from all sites this month. The Applicant has received an up-to-date SoCG from the West of Cheltenham and North West Cheltenham developers and is waiting for final review from Safeguarded Land developers. In relation to the West of Cheltenham, the developers are waiting for final confirmation on some design matters and how the schemes intertwine, which can be dealt with at detailed design. In relation to North West Cheltenham, there are some outstanding points on funding, deadweight and other elements. The developers appear to be accepting of the forward funding proposals but there is some debate over the final methodology. The Safeguarded Land's purported ransom position is still a matter of ongoing discussion and agreement may not be reached between the parties before close of examination. All SoCGs will be updated and submitted by Deadline 10.</p> <p>In respect of funding, the Applicant explained for the North West Cheltenham SoCG, there is some wording in the agreed territory that the Applicant considers the £20m funding contribution by Bloor Homes and Persimmon Homes is a proportionate contribution for the Elms Park development, subject to some conditions being met. The Applicant explained that the developers are protecting their position in respect of CIL test. In respect of the West of Cheltenham SoCG, the developer's applications are further behind and Henry Boot Development have submitted viability reports to the local planning authority, with St Modwen expected to do the same. This will delay the ability to get any agreement into the SoCG. The Applicant has not received the safeguarded land SoCG. The Applicant explained that it has received a revised letter of support from all developers, which provides clarification on the position regarding the strengthening of planning policy through the supplemental local plan.</p> <p><u>Historic England</u></p> <p>The Applicant explained that there are three outstanding matters with Historic England. Some of these are historic matters relating to the DCO where updates have been made but confirmation has not been received that they are agreed yet. The updated Archaeological Management Plan is with Historic England for their consideration and the Applicant understands that they will come back on all matters outstanding this week.</p>

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		<p><u>Natural England</u></p> <p>The Applicant explained that all matters are agreed and it is in receipt of a sign version of the SoCG which will be submitted at Deadline 10.</p>
Action Point 10: Provide update with respect to outstanding funding matters with housebuilders (Deadline 10).		
11	Any Other Matters	The Applicant did not make any submissions in relation to this agenda item.
12	Review of issues and actions arising The ExA will review any actions arising in the light of issues raised	The Applicant did not make any submissions in relation to this agenda item.
13	Closure of the hearing	The Applicant did not make any submissions in relation to this agenda item.

AtkinsRéalis

5th Floor, Block 5
Shire Hall
Bearland
Gloucester
GL1 2TH

Tel: +44 (0) 8000 514 514