

A14
Cambridge to Huntingdon
improvement scheme
Development Consent Order Application

HE/A14/EX/10)

TR010018

HE/A14/EX/105

Consents and Agreements Position Statement Update
(updating version submitted with the application in December 2014)

August 2015

The Infrastructure Planning (Examination Procedure) Rules 2010

**A14 CAMBRIDGE TO HUNTINGDON
IMPROVEMENT SCHEME**

Consents and Agreements Position Statement

**31st December 2014 (Updated 19th August
2015)**

1. **PURPOSE & OBJECTIVE**

- 1.1 This paper sets out Highways England's intended strategy for obtaining the consents and associated agreements needed to implement the proposed A14 Cambridge to Huntingdon improvement scheme ("the Scheme").
- 1.2 The purpose and objective of this position statement is to identify at a high level what consents are expected to be needed for the Scheme, together with how those consents will be obtained.

2. **THE PROPOSED SCHEME**

- 2.1 The scheme comprises the following:
 - 2.1.1 widening of the A1 between Brampton and Alconbury over a length of approximately 5.6 km (3.5 miles) from the existing two lane dual carriageway to a three lane dual carriageway. Between Alconbury and Brampton Hut this would generally be achieved by widening on the east side of the existing road; between Brampton and Brampton Hut a new road would be constructed to the west of the existing A1 which would become the new A1. This would enable the existing carriageway over this length to form part of the new A14 Huntingdon southern bypass. A local access road approximately 2.5 km (1.6 miles) long would link the Ellington junction with Woolley Road;
 - 2.1.2 a new Huntingdon southern bypass of approximately 20 km (12.5 miles) in length, which would provide a two lane dual carriageway between Ellington and the A1 at Brampton and a three lane dual carriageway between Brampton and Swavesey. The new bypass would cross over the river Great Ouse and the East Coast mainline railway, and would include junctions with the A1 at Brampton and with the A1198 at Godmanchester;
 - 2.1.3 downgrading the existing A14 trunk road (by de-trunking to county road status, with ownership transferred to local government) over approximately 21 km (13 miles) between Brampton Hut and Swavesey, as well as between Alconbury and Spittals interchange;
 - 2.1.4 Huntingdon town centre improvements, including the closure and demolition of the A14 viaduct over the East Coast mainline railway and Brampton Road in Huntingdon. A new link road would be constructed to improve accessibility into Huntingdon from the south and east by connecting the old A14 directly with Huntingdon ring road near the bus station, and by constructing a new link road from Brampton Road to connect with the A14 to the west. As such, a through route for light vehicles would be maintained;
 - 2.1.5 widening of the existing A14 over approximately 7.9 km (5 miles) to provide three lanes in each direction between Swavesey and Bar Hill, and four lanes in each direction between Bar Hill and Girton;
 - 2.1.6 widening of a 2.5 km (1.5 mile) section of the Cambridge northern bypass between Histon and Milton;
 - 2.1.7 improving existing A14 junctions at Swavesey, Bar Hill and Girton in order to increase the road's capacity, ensure compatibility with adjacent proposed developments such as Northstowe, and provide improved connections for non-motorised users; and
 - 2.1.8 a new local access road following the route of the A14 over a distance of approximately 8 km (5 miles), including construction of a dual carriageway link between the existing A14 near Fen Drayton and Swavesey junction and

a single carriageway between Swavesey and Girton. The road would provide a route for local traffic between Cambridge and Huntingdon as well as providing access to properties and businesses along the corridor.

3. STRATEGY

3.1 The basis of the consents strategy is that:

3.1.1 a Development Consent Order ("DCO") must be sought as the principal consent for the works (under the Planning Act 2008 ("the Act")) and to provide the necessary land acquisition and temporary possession powers;

3.1.2 where possible and practicable, additional consents should be included within the DCO in one form or another; and

3.1.3 the proposed scheme has and will be developed on the basis of strong collaboration between the key stakeholders, and agreements will be secured at key stages of project development as necessary.

3.2 The basis for this approach, particularly that set out in paragraph 3.1.2 above is two-fold:

3.2.1 the extent of the powers under the Act (as described in paragraphs 3.3-3.7 below); and

3.2.2 a recent government consultation in respect of the DCO process (as described in paragraphs 3.8-3.12).

Planning Act 2008

3.3 Section 33 of the Act makes it clear that there is no requirement for certain principal consents to be obtained where a DCO is required to authorise a project (as is the case for the Scheme).

3.4 In addition, Part 7 of the Act sets out what can be included within a DCO. Effectively, the scope of this is extremely broad and includes compulsory acquisition powers.

3.5 In particular, section 120 of the Act makes it clear that the following can be included within a DCO:

3.5.1 ancillary matters (including those listed in Schedule 5 to the Act);

3.5.2 the application, modification or exclusion of statutory provisions for which provision may be made in the DCO;

3.5.3 amendment, repeal or revocation of any local legislation, where thought necessary or expedient by the Secretary of State in consequence of or in connection with the DCO; and

3.5.4 incidental, consequential, supplementary, transitional or transitory provisions and savings.

3.6 Further, section 150 of the Act states that a requirement to obtain certain prescribed consents (under the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015) ("section 150 consents") can be removed by the DCO as long as the relevant consenting body agrees to this.

3.7 From the above, it is clear that the intention of the Act is to encourage as many consents to be 'wrapped up' in a DCO as possible.

Government consultation

- 3.8 On 31 July 2014 the Department for Communities and Local Government (“CLG”) published a ‘*Technical consultation on planning*’ document (“the Consultation”). The Consultation, which closed on 26 September 2014, set out a number of proposed reforms to the planning system, including the Nationally Significant Infrastructure Project (“NSIP”) regime under the Act. One aspect of the NSIP regime CLG consulted on was a proposal to reduce the number of section 150 consents.
- 3.9 In the Consultation, CLG proposed that 10 consents were removed from the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 and thus would no longer be section 150 consents. This would result in a developer being able to choose freely whether to include these consents in a DCO without the need for the agreement of the relevant consenting body. CLG stated that this would give developers more certainty and, indeed, it strongly supported the overarching policy aim of DCOs being a ‘one-stop-shop’ for consents required for the construction of major infrastructure developments.
- 3.10 On 5 March 2015¹, the Government responded to the comments received on the Consultation. As part of setting out its next steps, it was confirmed that the three consents required in respect of discharge for works purposes and trade effluent would be removed from the section 150 consents list. This was reflected in the revised section 150 consents list in the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 which came into force on 6 April 2015 and revoked the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010.
- 3.11 It was further confirmed that: “...[removal from the section 150 list of] *European Protected Species Licence* [will follow] *early in the next Parliament when a suitable legislative vehicle is identified. The remaining six consents will be streamlined between 2015 and 2017 when taking forward work to consolidate consents within the Environmental Permitting Regulations.*”
- 3.12 It is therefore clear that emerging Government policy now supports much more clearly the ‘one-stop-shop’ approach for construction-related consents.
- 3.13 Highways England believes that the approach to ‘including’ all consents within a DCO should apply for both those that do and those that do not require the agreement of the relevant body under section 150 in order for them to be included in the DCO. Highways England envisages this approach being as follows:
- 3.13.1 The DCO contains an express provision disapplying the requirement for the consent in question.
- 3.13.2 In exchange, the DCO includes ‘protective provisions’ for the benefit of the body concerned, typically providing for the body to approve detailed plans of relevant aspects of the project in question before they may be constructed and, in some cases, operated. Conditions relating to ongoing operation can also be included.
- 3.13.3 Those provisions are specifically stated to have effect unless otherwise agreed between the DCO applicant/beneficiary and the body concerned.
- 3.13.4 Compliance with the provisions is a matter as between the parties and can be enforced accordingly.

¹ *Streamlining the consenting process for nationally significant infrastructure planning: The Government’s response to the Summer 2014 Technical Consultation* (CLG, March 2015)

- 3.13.5 It is possible for the provisions to say that any approval given by the body concerned under the plan approval, etc., provisions, shall be deemed to be an approval given under the legislation/regime disapplied.
- 3.13.6 Either way, the protective provisions provide a means for the body concerned to monitor, enforce compliance and to review the effectiveness of the approval regime enshrined in the protective provisions.
- 3.13.7 The mechanism of approval being given under the protective provisions allows the body concerned to approach a project in two stages:
- (a) The DCO application stage, when the principle of the project is accepted and the detail of the protective provisions is negotiated. Sufficient details of the project will be produced by the applicant at this stage, particularly in the ES, the other application documents and during the Examination process, to secure this acceptance.
 - (b) The subsequent plan approval stage(s) under the protective provisions, when the approval of plans cannot be unreasonably refused (so preserving the in-principle approval of the project signified by the DCO) but when detailed matters going to construction can properly be considered.

- 3.14 This is a tried and tested approach adopted in numerous local and Public (hybrid) Acts, Harbours Act Orders, TWA Orders and Scottish Provisional Orders for many decades and is now beginning to be adopted in the case of DCOs. It is also consistent with the approach proposed by expert respondents to the Consultation, including the National Infrastructure Planning Association.

The approach of Highways England

- 3.15 It is clear, then, that the intent of the Act and Government policy is to include as many construction-related consents as practicable within DCOs. Highways England's approach to consents for the Scheme is therefore to fit within that legislative and policy intent and to include as many consents as practicable within the DCO. This means that the Scheme will benefit from the chief advantage that the intent of the Act and Government policy are designed to deliver, namely the certainty that the majority of consents required for the construction of the Scheme are in place at the point of the making of the DCO, minimising the need for any further approvals before the works covered by the DCO can commence.

4. CONSENTS AND AGREEMENTS

Consents

- 4.1 The principal consent for the proposed scheme will be a DCO. The DCO process enables land acquisition along with many consents and powers to be dealt with at the same time. The DCO application may, however, need to be supplemented by other applications because: (a) a specific consent cannot be contained in the DCO; (b) a consenting authority declines to allow a consent to be contained in the DCO; or (c) it is not desirable or it is inappropriate to include a consent within the DCO due to the stage of design development and thus the detail available.
- 4.2 At this point (i.e. during the examination) it is anticipated that the majority of consents required will be included, or addressed, within the DCO as permitted by various provisions of the Planning Act 2008, although discussions in some of these respects are continuing with the principal stakeholders. These fall into the following categories:

- 4.2.1 authorisation of all permanent and temporary works (equivalent of planning permission, and where necessary, Scheduled Monument Consent, Listed Building Consent and Conservation Area Consent);
- 4.2.2 compulsory acquisition of land and of rights over land such as easements, restrictive covenants and mineral extraction rights, and the temporary possession of land;
- 4.2.3 consent to construct works on common land and/or open space;
- 4.2.4 consent to carry out street works and to stop up highways permanently or temporarily;
- 4.2.5 highway matters (such as designating highway as trunk road and 'de-trunking' sections of the existing A14);
- 4.2.6 traffic regulation matters (such as speed limits, clearways and restrictions on use);
- 4.2.7 consent to stop up and divert (where necessary) public and private rights of way;
- 4.2.8 consent to erect structures in, over or under a 'main river';
- 4.2.9 consent to obstruct ordinary watercourses;
- 4.2.10 consent to discharge into an available watercourse;
- 4.2.11 consent or approval for the carrying out of the works required under any relevant byelaws made under the Water Resources Act 1991 or the Land Drainage Act 1991;
- 4.2.12 consent to carry out tree works (including works to trees subject to a Tree Preservation Order);
- 4.2.13 consent to remove hedgerows (including any 'important hedgerows');
- 4.2.14 notice of proposal to carry out an operation on a Site of Special Scientific Interest;
- 4.2.15 realignment of Award Drains (effectively ensuring that the 'Enclosure Acts' still have effect in respect of maintenance of these Award Drains);
- 4.2.16 approval for revoking, varying or amending an award made in respect of an Award Drain;
- 4.2.17 disapplication of any relevant local legislation or byelaws; and
- 4.2.18 any required utility diversions.

4.3 A number of the above consents are prescribed in the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015. As a result, under section 150 of the Planning Act 2008 the relevant consenting body must agree to the inclusion (i.e. disapplication) of these consents within the DCO. Discussions between Highways England and these consenting bodies are ongoing, and Highways England is confident that the necessary agreements will be obtained before or during the examination of its application, in exchange for Highways England proposing to include in the DCO appropriate protective provisions. The various proposed protective provisions are at a relatively advanced stage with the Environment Agency, Cambridgeshire County Council, relevant internal drainage

boards, as well as National Grid and Network Rail, and it is anticipated these will be finalised shortly.

- 4.4 It is likely, however, that certain consents will need to be pursued separately from the DCO, for instance:
- 4.4.1 Environmental Permits – the DCO could include a provision removing the requirement for such permits if the Environment Agency (EA) agrees and appropriate alternative provision is made through the DCO (e.g. protective provisions). However, it is considered unlikely that the EA will agree as there appears to be no precedent for the EA having done so in DCO applications to date. Further, it may be more appropriate to obtain these permits once detailed construction methods and programmes are identified. Therefore, at this stage it is assumed that these permits will be sought separately;
 - 4.4.2 Protected Species Licences – the presence (or otherwise) of protected species has been determined by surveys undertaken as part of the Environmental Impact Assessment work. The DCO could include a provision removing the requirement for such licences but it is unlikely that Natural England (NE) will agree as there appears to be no precedent for NE having done so in DCO applications to date. Therefore, it is assumed that these licences (where required) will be sought separately. Letters of no impediment in respect of certain species have been received to date from Natural England, with the remainder expected relatively soon;
 - 4.4.3 any consents required under the Highways Act 1980 in respect of construction works (e.g. crane oversail licences, hoarding licences, etc) (to be sought by appointed contractor); and
 - 4.4.4 any section 61 consents under the Control of Pollution Act 1974 for works outside of hours specified or which exceed permitted noise thresholds (although the Development Consent Order proposes to amend the appeals process in respect of these licences by providing that an appeal should be heard by the Secretary of State rather than by a Magistrates' Court) (to be sought by the appointed contractor).

Agreements

- 4.5 Agreements with third parties will be required as part of the DCO process and these are likely to take a variety of forms.
- 4.6 A fundamental part of the DCO process is the preparation and agreement of Statements of Common Ground (SoCGs) with third parties to identify the matters on which parties are in agreement, in order to narrow the focus for examining the application concerned and to make the examination process more efficient.
- 4.7 Other forms of agreement are also likely to be required alongside SoCGs, e.g. legal agreements regulating land and works powers, undertakings, memoranda of understanding, letters of comfort, etc.
- 4.8 SoCGs are currently being progressed with a number of interested persons and more information has been set out on these in other submissions by Highways England, particularly the *Statement of Common Ground Report Update (updating version HE/A14/EX/47 from June 2015)* (Applicant ref: HE/A14/EX/98) which was submitted at Deadline 7.