

**A14**  
**Cambridge to Huntingdon**  
**improvement scheme**  
Development Consent Order Application

HE/A14/EX/151

**TR010018**

HE/A14/EX/151

Matters arising from Highways England's Oral Submissions made at the Issue Specific Hearing  
on the draft DCO and associated Post Hearing Documents

September 2015

The Infrastructure Planning (Examination Procedure) Rules 2010





## **A14 Cambridge to Huntingdon improvement scheme**

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**HE/A14/EX/151**

**September 2015**



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## 1 Context

- 1.1.1 This document provides written responses from the Applicant to matters raised by the Examining Authority (ExA), Local Authorities and third party stakeholders at the Issue Specific Hearing on the Development Consent Order (DCO) held on Friday 4 September 2015.
- 1.1.2 The structure of this document follows the order of items as set out in the agenda ("Agenda") and list of questions ("Questions") issued by the ExA for the issue specific hearing on the DCO. Numbered agenda items referred to are references to the numbered items in the Agenda and the Questions.

## 2 Agenda Item 2: Update on positions of interested parties in relation to SoCG

### 2.1 Agreement with CCC in relation to de-trunking agreement

- 2.1.1 Cambridgeshire County Council (CCC) and the Applicant provided an update to the ExA in relation to the de-trunking agreement. The Applicant confirmed it would provide a further update to the ExA at Deadline 10. This is set out below.
- 2.1.2 The form of the de-trunking legal agreement is considered largely agreed between the Applicant and CCC, although there are outstanding issues in respect of the precise obligations placed on both parties in respect of 'abnormal' maintenance following de-trunking. Both parties are working hard to resolve these, and it is hoped that the legal agreement will be in agreed from by Deadline 11 or, at the very least, by the end of the examination.

### 2.2 Agreement with CCC in relation to monitoring of local traffic

- 2.2.1 CCC and the Applicant provided an update to the ExA in relation to discussions about the monitoring and mitigation of traffic on local roads. The Applicant confirmed it would provide a further update to the ExA at Deadline 10. This is set out below.
- 2.2.2 At Deadline 9 the Applicant submitted the Progress report on discussions regarding post scheme monitoring of traffic on local roads and mitigation (REP9-022). This point was discussed in greater detail at the issue specific hearing on traffic and transportation on 16 September, and the latest position is set out in Section 2.1 of the Matters arising from Highways England's Oral Submissions made at the Issue Specific Hearing on Traffic

and Transportation and associated Post Hearing Documents  
(HE/A14/EX/157) submitted by the Applicant at Deadline 10.

## **2.3 Approach to the use of requirements and protective provisions**

- 2.3.1 During a discussion at the issue specific hearing in relation to protective provisions, the Applicant referred to the importance of distinguishing between requirements and protective provisions. The ExA requested the Applicant to prepare a note to address the approach adopted to the use of requirements and protective provisions. The Applicant submitted the Note on the approach to the use of requirements and protective provisions (REP9-014) at Deadline 9.

# **3 Agenda Item 3: Discharge of requirements**

## **3.1 The role of LPAs, consultation in respect of requirements, public register of requirements**

- 3.1.1 The ExA asked the Applicant to prepare a note at Deadline 10 setting out its current position on the proposed process for the discharge of the DCO Requirements. The ExA required the note to cover consultation to be undertaken by the Applicant in the preparation of submissions to the Secretary of State pursuant to the Requirements, the consultation then undertaken by the Secretary of State with local authorities in the discharge of the Requirements, and how the public register for the discharge of Requirements would operate and be made publicly accessible. The ExA asked the Applicant to address how local authorities would enforce the requirements and the consequences should the consultation required by the Requirements not take place (either at all or properly). The ExA also requested the Applicant to include draft wording for a provision in Schedule 2 to the DCO in relation to the proposed public register in connection with the discharge of requirements.
- 3.1.2 The Applicant has submitted the Discharge of Requirements Process (HE/A14/EX/152) at Deadline 10, in response to the above requests from the ExA.

## 4 Agenda Item 4: Code of Construction Practice including CEMPs and LEMPs

### 4.1 Amendments to Requirement 4 (Code of Construction Practice)

- 4.1.1 The ExA referred to concerns raised by the local authorities as to the simplicity of the wording in Requirement 4, requiring the development to be carried out in accordance with the Code of Construction Practice (CoCP). The concerns were that the requirement did not also secure the preparation of the construction environmental management plans (CEMPs) and the local environmental management plans (LEMPs), nor consultation with the local authorities in connection with these plans.
- 4.1.2 The Applicant explained that it is through the CoCP (secured by Requirement 4) that the preparation of the CEMPs and the LEMPs is secured, and that further, the CoCP required the LEMPs to be prepared in consultation with the local authorities. The Applicant explained that to provide specific requirements in connection with the CEMPs and LEMPs would duplicate the mechanism in the CoCP for securing those plans.
- 4.1.3 Cambridgeshire County Council and South Cambridgeshire District Council confirmed they were content with this approach, and no other local authorities raised comments in this respect.
- 4.1.4 With respect to the flexibility built into the CoCP, it was clarified that whilst the drafting of the CoCP (once certified if the DCO is made) will not change, the CoCP is drafted in such a way as to allow flexibility during the course of its implementation.
- 4.1.5 The ExA indicated that the DCO should be clear on its face that it deals with environmental management and asked whether the wording of Requirement 4 could be more explicit in this respect.
- 4.1.6 In response, the Applicant submitted an amended Schedule 2 to the DCO at Deadline 9 (REP9-012) which moved and amended the definition of the CoCP to make clear that that document secures the CEMPs and LEMPs as well as various other aspects of environmental management. In addition, and in response to further comments from the ExA, the CoCP submitted at Deadline 10 (HE/A14/EX/160) has been amended to include an Executive Summary, highlighting to readers the environmental mitigation the document secures.



## 5 Agenda Item 5: Borrow Pits Restoration Plan

- 5.1.1 The Applicant explained that Requirement 11 of the DCO would secure the restoration and aftercare of borrow pits to be carried out in accordance with the borrow pits and aftercare strategy. The Application explained that the strategy would be a certified document (if the DCO is made) and would be the framework pursuant to which the plans for each borrow pit are produced and consulted upon. CCC (in its capacity as the minerals and waste authority) confirmed that this approach was agreed in principle.
- 5.1.2 The ExA indicated it would be appropriate for the Applicant to revisit the borrow pit Requirement to make clear the approach taken. Such an approach would be consistent with the suggested amendments in relation to the CoCP, so that readers could understand the effect of the borrow pits strategy on the face of the DCO.
- 5.1.3 In response, the Applicant submitted an amended Schedule 2 to the DCO at Deadline 9 (REP9-012) which moved and amended the definition of the borrow pits restoration and aftercare strategy to make clear the way in which the strategy operates and that plans will be produced in accordance with it.
- 5.1.4 The Applicant has submitted the borrow pits restoration and aftercare strategy (HE/A14/EX/159) at Deadline 10.

## 6 Agenda Item 8: Protective Provisions (Article 40)

- 6.1.1 The ExA asked for an update as to the current position in terms of the draft DCO protective provisions. The Applicant set out the position as at the date of the issue specific hearing and undertook to submit the agreed position on protective provisions generally at Deadline 10.
- 6.1.2 The Applicant has included the latest form of the protective provisions in the latest draft of the DCO, submitted at Deadline 10 (HE/A14/EX/167). A summary of the current position as to each set has been provided in the document explaining the amendments made to the draft DCO (HE/A14/EX/166).

## **7 Agenda Item 9: Other matters relating to the DCO**

### **7.1 Limits of deviation (Article 7)**

- 7.1.1 The operation of art 7 of the DCO was discussed, and the Applicant explained that the "certification" referred to in this article would be required during detailed design, if the scheme was proposed to be built beyond the vertical limits of deviation. In that case, a submission would be made to the Secretary of State who would need to consider whether the environmental impact of the deviation would give rise to effects materially worse than those set out in the Environmental Statement. The ExA asked the Applicant to provide more detail at Deadline 9 as to where such a mechanism had been used elsewhere. The Applicant submitted a Note on Certification Provisions in the draft Development Consent Order (REP9-015) at Deadline 9 in response to the ExA's request.
- 7.1.2 The ExA also asked the Applicant to consider whether the Secretary of State should consult with local authorities before certifying pursuant to art 7. The Applicant has amended art 7 in the latest draft of the DCO, submitted at Deadline 10 (HE/A14/EX/167), to provide that the Secretary of State must consult with the relevant planning authority before giving any certificate under this article.

### **7.2 Construction and maintenance of new, altered or diverted streets and other structures (Article 11)**

- 7.2.1 The ExA asked for an update as to discussions between the Applicant and Cambridgeshire County Council (CCC) with respect to the drafting of art 11(2) and (8). CCC and the Applicant reported that discussions as to whether changes were required to art 11 were ongoing and that the Applicant would update the ExA at Deadline 10.
- 7.2.2 Discussions between the Applicant and CCC are ongoing and an update will be provided at the issue specific hearing on the draft DCO on 22 October 2015.

### **7.3 Classification of roads, etc (Article 12)**

- 7.3.1 The ExA referred to a comment made by Network Rail at the previous issue specific hearing on the DCO in connection with art 12(3). The Applicant reported that this point had not been pursued by Network Rail and that it therefore assumed there was no longer an issue with the drafting of the article. The ExA asked the Applicant to seek express confirmation of this from Network Rail. The Applicant has sought to do so but does not yet have

express confirmation. It is noted however that Network Rail has not said anything further to the Applicant about this article.

- 7.3.2 The Applicant has not been able to agree with the County Council a requested amendment to article 12(4) regarding the de-trunking date. The Applicant considers that it is necessary and appropriate for the DCO to provide for the undertaker alone to determine the de-trunking date, with the detailed mechanics for that to be governed by the intended legal agreement. The Applicant does not accept the summary of the legal advice that the County Council has obtained and submitted at Deadline 9, which was that the legal agreement would be unenforceable in relation to agreeing the de-trunking date.
- 7.3.3 The draft legal agreement is intended to provide further (to the DCO) in respect of the de-trunking process so as to afford protection for CCC. Pursuant to the agreement, HE would consult with CCC in developing a Handover Plan for de-trunking, which would be submitted for the approval of CCC at least 12 months before "the De-Trunking Date", as set out in an aspirational timetable, such approval not to be unreasonably delayed or withheld. "The De-Trunking Date" is defined in the draft Agreement as the date to be determined pursuant to article 12(4). The draft agreement provides for deemed approval of the Handover Plan in defined circumstances. Further clauses set out procedures for confirmation of compliance with the Handover Plan, including deemed confirmation in defined circumstances.
- 7.3.4 These provisions in the draft Agreement are not inconsistent with the exercise of the power under article 12(4). There are no processes in article 12(4) which would be circumvented by operation of the provisions in the draft Agreement.
- 7.3.5 CCC's summary advice by counsel refers to three cases from Australia but does not refer to any United Kingdom authorities. There are several United Kingdom authorities, most notably the House of Lords' judgments in Ayr Harbour Trustees v Oswald (1883) 8 App. Cas. 623 and British Transport Commission v Westmorland County Council [1958] AC 126. The principle in the Ayr Harbour case that a public body entrusted with statutory powers or duties cannot by contract divest itself of those powers or duties has to be applied with an understanding as to whether there is any incompatibility between the power and the contract. Thus, in the BTC case, Viscount Simonds at 143 stated that:

*"...in the Ayr Harbour case, it was plain that the proposed agreement by the statutory body, which had acquired land for a particular purpose...was regarded as incompatible with the statutory purpose. It was in fact an example of incompatibility,*

*not a decision to the effect that incompatibility does not supply a test.”*

Lord Keith of Avonholm at 166 observed that “*incompatibility is a question of fact, not a question of law.*”

- 7.3.6 These provisions in the draft Agreement are not inconsistent with the exercise of the power under article 12(4). There are no processes in article 12(4) which would be circumvented by operation of the provisions in the draft Agreement.
- 7.3.7 It is established therefore that so long as a constraint imposed by contract can be characterised as not incompatible with the statutory power but rather a form of exercising the power in question, the contract will not offend the principle in the Ayr Harbour case.
- 7.3.8 The provisions in the draft agreement are not incompatible with the exercise of the power in article 12(4). Rather they provide for certain processes to be carried out prior to the exercise of the power. The power to determine the de-trunking date pursuant to article 12(4) remains with the Applicant.
- 7.3.9 This is not altered by consideration of the Australian cases.
- 7.3.10 Therefore the Applicant considers that the terms of the Agreement, if entered into, would not be invalid on the basis suggested by CCC.

## **7.4 Public Rights of Way (Article 24)**

- 7.4.1 CCC and the Applicant reported to the ExA that there were ongoing discussions as to whether the widths of public rights of way are required to be specified in the DCO. CCC has since accepted that the DCO should not be amended in this respect.

## **7.5 Temporary use of land for carrying out the authorised development (Article 30)**

- 7.5.1 The ExA queried the "end date" for temporary possession, particularly by reference to the development being "complete" and had asked where there was precedent for the approach to the drafting of article 30. The Applicant confirms, as a result of its research, that the proposed drafting in the DCO is entirely standard and it is not aware of any departure from the proposed drafting in any made highways DCOs.

## 7.6 Schedule 1 – Authorised Development

### 7.6.1 Work No.33

7.6.2 The ExA asked for an explanation of the need for each of the work items (a) to (r) in Work No. 33 in Schedule 1 to the draft DCO. In response, the Applicant submitted the Explanation of Work No. 33 (REP9-013) at Deadline 9, explaining why the inclusion of Work No. 33 as part of the Cambridge to Huntingdon improvement scheme is appropriate. The note also:

- explained the distinctions between the various elements of Work No. 33 and the Pinch Point Scheme for improvements to the A14 Junctions 31 to 32 Eastbound and Westbound;
- described the elements of work that comprise Work No. 33, and explained why those elements of work are proposed to be carried out as part of the A14 scheme, and why they were not carried out as part of the (now completed) Pinch Point scheme; and
- demonstrated that Work No.33 would not give rise to any duplication of works between the A14 Cambridge to Huntingdon improvement scheme and the Pinch Point scheme.

### 7.6.3 On-site Worker Accommodation

7.6.4 The ExA queried whether the "catch all" provisions at the end of Schedule 1 to the draft DCO, namely sub-paragraphs (m) and (n) are sufficient to cover on-site worker accommodation.

7.6.5 Whilst the Applicant explained that it thought the drafting was sufficient, it has included "temporary worker accommodation facilities" in Schedule 1 to the latest draft of the DCO submitted at Deadline 10 (HE/A14/EX/167) to make clear that it authorises the construction of such works.

## 7.7 Schedule 2 – Requirements

### 7.7.1 General 1 – Certified documents and plans

7.7.2 South Cambridgeshire District Council questioned how it would be able to identify which documents or plans had been certified or approved if the DCO is made. The Applicant explained that, unlike a planning permission, the approach on DCOs for big schemes is not to list out all the plan numbers as this is impracticable and also unnecessary.

7.7.3 The Applicant suggested that to assist people to understand what documents have been approved pursuant to the Requirements of the DCO, the register of requirements could provide links to the relevant documents. The Applicant has amended article 41 of the draft DCO to make clear that the certified documents must be

made available for inspection by members of the public in electronic form. In addition, the Applicant undertook to include reference numbers for documents in the draft DCO submitted at Deadline 10.

- 7.7.4 The Applicant has included in article 2 of the draft of the DCO submitted at Deadline 10 (HE/A14/EX/167) document reference numbers in the definitions of certain documents that are to be certified, to ensure clarity as to which document the Applicant and its contractors need to comply with. However, it should be noted that not all document reference numbers are available at this point in time and, as such, placeholders have been inserted for the time being. They will be updated in due course.
- 7.7.5 General 2 – compliance with NPS tests
- 7.7.6 The ExA asked how the Requirements contained in the draft DCO that are not precedent meet the relevant tests in paragraph 4.9 of the National Policy Statement for National Networks (NPS). The Applicant undertook to submit a note at Deadline 10 demonstrating how the relevant tests were met for each such Requirement. This note is provided at **Appendix 1** to this document.
- 7.7.7 Detailed design (Requirement 3)
- 7.7.8 At the issue specific hearing South Cambridgeshire District Council (SCDC) raised concerns regarding the procedure for agreeing matters of detailed design.
- 7.7.9 The procedure for agreeing matters of detailed design was further discussed at the issue specific hearing on detailed design matters on 17 September 2015 and at Deadline 10 the Applicant has submitted a note entitled Participation in the Detailed Design Process (HE/A14/EX/163) setting out the proposed procedure in this respect.
- 7.7.10 Protected species (Requirement 5)
- 7.7.11 The ExA asked CCC whether it was content in respect of a concern it had previously raised with respect to locally important species. At the time of the issue specific hearing, CCC had not yet had the opportunity to reconsider its position following a meeting with the Applicant on this point.
- 7.7.12 The Applicant explained that it considered an additional requirement for locally important species to be unnecessary as the pre-construction survey, design of mitigation and liaison with local authorities in respect of important species is adequately secured through Requirement 4 of the DCO and the CoCP.

- 7.7.13 The Applicant explained the key distinction between “protected” species (to which Requirement 5 refers) and “important” species. For protected species, individuals of the species are protected by law from killing and injury and therefore a scheme of protection is required to demonstrate that no offence would be committed during the construction of the scheme. Species are protected by national or international legislation. There is no such thing as a “locally” protected species.
- 7.7.14 The term "important" relates to populations of a species at a stated geographical scale; and is used to identify the significance of potential effects on the species' conservation status. Environmental impact assessment legislation requires that projects must describe significant effects on nature conservation to inform the judgement by decision makers on the balance of benefits and significant effects on different receptors. Importantly, the environmental impact assessment does not confer any protection on individuals of an important species. The more important a species is (i.e. the higher the geographical scale to which an effect on the species would be significant), the more mitigation must be proposed to demonstrate there would be no overall reduction in the conservation status of that species.
- 7.7.15 A population of a species that is considered to be relatively rare or under threat at a stated geographical scale is said to be important at that scale, e.g. grasshopper warbler or barbastelle bats are relatively rare in Cambridgeshire and so are said to be of county value and therefore of county importance. Blackbirds and pipistrelle bats are more common and widespread and so are considered to be of only local or site importance. Note that grasshopper warbler and blackbird; and barbastelle and pipistrelle bats have the same levels of protection, but different conservation importance levels in the context of the scheme.
- 7.7.16 The Environmental Statement outlines the mitigation proposed to ensure there would be no significant effects on the conservation status of all species (whatever level of importance). The proposals for nature conservation mitigation, pre-construction surveys and liaison with key stakeholders within the ES are secured through the CoCP (and Requirement 4). This ensures the population of the species is protected from significant harm, but does not prevent the killing and injuring of individuals as a necessary consequence of construction. If important species were to be added to Requirement 5 or a similar requirement added to the DCO, the killing and injuring of many species would become an offence, which would be unnecessary and undeliverable. It would be impracticable for example to define a scheme of protection for the killing or injury of dragonflies, which may be of county importance, but are numerous and difficult to detect where

they do occur. The conservation of dragonflies requires only that sufficient habitat is available for them to survive in, not the protection of every individual.

7.7.17 The text of the CoCP was amended at Deadline 8 to more precisely accord with CCC's concerns over pre-construction surveys, liaison and development of detailed design for species of local importance.

7.7.18 Following the issue specific hearing CCC has not yet agreed that there is no need for any amendment to the Requirements of the draft DCO in connection with important species of local importance.

7.7.19 Implementation and maintenance of landscaping (Requirement 7)

7.7.20 At the issue specific hearing South Cambridgeshire District Council (SCDC) questioned whether a "tiered approach" could be taken whereby an overarching landscaping strategy is approved, pursuant to which landscaping plans would be submitted (as per the approach taken to the borrow pits restoration and aftercare strategy and plans) (Requirement 7). The Applicant explained that it did not consider an overarching strategy was necessary and that there was not precedent for such an approach. The Applicant agreed to discuss this point with SCDC.

7.7.21 The Applicant has since had discussions with SCDC and the parties agree that the approach advocated by SCDC (as detailed above) would be acceptable. In this respect, the overarching landscaping "strategy" will be the landscaping scheme submitted for approval pursuant to Requirement 7 of the DCO, and the Applicant would consult local authorities in relation to the detail of the landscaping under the scheme as proposed to be approved. In addition, pursuant to paragraph 10.2.3 of the CoCP, the main contractors will be required to consult relevant local authorities (amongst others) regarding the detail of the landscape and planting proposals.

7.7.22 In light of the above, it is understood that SCDC is content that the drafting of Requirement 7 does not need to change.

7.7.23 Noise mitigation (Requirement 12)

7.7.24 The Applicant confirmed that in response to concerns raised by the local authorities Requirement 12 would be amended to include that the relevant planning authorities would be consulted with respect to the details of the noise mitigation. The local authorities confirmed that they had nothing further to bring to the ExA's attention in connection with this requirement.



7.7.25 Highway lighting scheme (Requirement 14)

7.7.26 The ExA queried the drafting of Requirement 14, in particular the references to lighting standards.

7.7.27 The Applicant suggested that the Requirement could be clearer if it was amended to refer to the "standard of highway lighting" throughout, rather than "lighting standards". The Applicant explained that "standard of highway lighting" would encompass the specification, level of provision, light spillage, intensity, brightness and uniformity of the lighting.

7.7.28 In response to comments from CCC, the Applicant also agreed to amend Requirement 14 to reflect that in terms of consultation, in all cases the relevant local planning authority should be consulted and the local highway authority should only be consulted in relation to the lighting of what are (or will become) local roads. These amendments were reflected in the revised Schedule 2 to the draft DCO submitted at Deadline 9 (REP9-012).

## **APPENDIX 1: Conformity of unprecedented requirements with the NPS**

# 1 Introduction

## 1.1 Background

1.1.1 Following a request from the Examining Authority (ExA) at the first Issue Specific Hearing on the draft Development Consent Order (DCO) held on 15 July 2015, Highways England submitted a post hearing note to the ExA as Appendix 6 to its *Comments on the DCO Hearing* (Applicant reference HE/A14/EX/66, PINS reference REP5-028). The note provided details of the origins of the different requirements, including those that do not come directly from precedent DCOs.

1.1.2 The second Issue Specific Hearing into the draft DCO was held on 4 September 2015. Prior to the hearing, the ExA issued two documents; an agenda setting out various topics where the ExA had further questions relating to the draft DCO, and a supplementary document to the agenda containing questions relating to some of the agenda items.

1.1.3 Under agenda item 9 (other matters relating to the DCO), the ExA raised questions relating to the requirements contained in Part 1 of Schedule 2 to the draft DCO. In particular, the ExA drew upon Appendix 6 of Highways England's *Comments on the DCO Hearing* and raised a question in relation to requirements that do not come directly from precedent DCOs:

*“Can the applicant comment on how the wording in these instances where it is not directly from precedent DCOs, meets the test set out in NN NPS para 4.9?”*

1.1.4 The specific requirements that the ExA consider to not come directly from precedent DCOs include:

- **Detailed Design – Requirement 3**

Highways England stated that this requirement has precedent in the two made Highways Agency DCOs to date (Appendix 6 to Highways England's *Comments on the DCO Hearing*). However, in its questions relating to agenda items, the ExA notes that the wording differs from the Port of Immingham DCO.

- **Code of Construction Practice (CoCP) – Requirement 4**

Appendix 6 of Highways England's *Comments on the DCO Hearing* identifies this requirement as a 'bespoke' requirement for this DCO.

- **Protected Species – Requirement 5**

Highways England stated that this requirement has broad precedent in made DCOs (Appendix 6 to Highways England's *Comments on the DCO Hearing*). However, the ExA notes that there is some difference in wording from precedents.

- **Implementation and maintenance of landscaping – Requirement 7**

Highways England stated that the wording of this requirement has been mirrored elsewhere (Appendix 6 to Highways England's *Comments on the DCO Hearing*). However, in its questions relating to agenda items, the ExA questions whether 'mirrored' wording means that it is the same.

- **Archaeology – Requirement 8**

Highways England has stated that this requirement has precedent in other made DCOs (Appendix 6 to Highways England's *Comments on the DCO Hearing*). However, the ExA notes that the wording differs from the Port of Immingham DCO.

- **Borrow Pits – Requirement 11**

Appendix 6 of Highways England's *Comments on the DCO Hearing* identifies this requirement as a 'bespoke' requirement for this DCO.

- **Noise Mitigation – Requirement 12**

Appendix 6 of Highways England's *Comments on the DCO Hearing* identifies this requirement as a 'bespoke' requirement for this DCO.

## 1.2 Purpose of this report

- 1.2.1 This document demonstrates how the requirements without precedent (i.e. those set out above) conform to the relevant tests set out in the National Networks National Policy Statement ("the NPS"). It acts as a supplementary document to the NPS Compliance Tracker, which Highways England submitted as updates to the Case for the Scheme (Applicant reference HE/A14/EX/21, PINS reference APP-784; Applicant reference HE/A14/EX/144, PINS reference REP9-019). Section 6.3 of the Case for the Scheme (document reference 7.1, PINS reference APP-755) should be read accordingly.

## 2 Compliance with the NPS

### 2.1 National policy context

2.1.1 The NPS sets out the Government's vision and policy against which the Secretary of State (SoS) will make decisions on applications for development consent for nationally significant infrastructure projects on the strategic road and rail networks.

2.1.2 The NPS was formally designated by the SoS on 14 January 2015 and sections 104(2) and (3) of the Planning Act 2008 (which require applications to be decided in accordance with a relevant NPS) apply to the application.

2.1.3 The NPS sets out general policies with which applications relating to national networks infrastructure are to be decided. With particular regards to the imposition of requirements, paragraph 4.9 of the NPS states:

*“The Examining Authority should only recommend, and the Secretary of State should only impose, requirements in relation to a development consent, that are necessary, relevant to planning, relevant to the development, enforceable, precise, and reasonable in all other aspects. Guidance on the use of planning conditions or any successor to it, should be taken into account where requirements are proposed.”*

2.1.4 This reflects the policy set out in paragraph 206 of the National Planning Policy Framework (NPPF). The National Planning Practice Guidance (NPPG) provides specific guidance on the use of planning conditions and refers to the NPPF policy as the 'six tests' that must be satisfied each time a decision to grant planning permission subject to conditions is made.

2.1.5 The NPPG poses key questions to consider when determining whether the 'six tests' for conditions have been met, as set out below. Further guidance provided by the NPPG is copied in Annex 1 of this document.

- Will it be appropriate to refuse planning permission without the requirements imposed by the condition?
- Does the condition relate to planning objectives and is it within the scope of the permission to which it is to be attached?
- Does the condition fairly and reasonably relate to the development to be permitted?
- Would it be practicably possible to enforce the condition?
- Is the condition written in a way that makes it clear to the applicant and others what must be done to comply with it?
- Is the condition reasonable?

2.1.6 The conformity of the requirements with the NPS can be best summarised by consideration against the NPPG's key questions for the 'six tests' for conditions. To reflect paragraph 4.9 of the NPS, key questions considered in the sections below have been modified in relation to the requirements for a development consent order.

2.1.7 The following sections demonstrate how the requirements that are not directly taken from precedent DCOs meet the tests set out in paragraph 4.9 of the NPS.

## 2.2 Detailed Design (requirement 3)

*The authorised development must be carried out in accordance with the scheme design shown on the works plans and the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its functions.*

Table 2-1 Conformity of requirement 3 with the tests set out in the NPS paragraph 4.9

| Test   | Key Question  | Conformity with the NPS   |
|--|---|---|
| <b>Necessary</b>                                   | Will it be appropriate to refuse development consent without the imposition of the requirement?   | The requirement secures the outline design of the scheme, including the limits of deviation. The requirement is necessary as there will be no detailed design in place at the time of the making of the DCO (if the application is granted) and it would not be appropriate for there to be a 'blanket' detailed design approval requirement, due to the nature and scale of the scheme and long established practice with strategic road network improvement schemes. The design of the scheme as secured by this requirement dictates the scope of the development consented and this is therefore a necessary requirement. |
| <b>Relevant to planning</b>                        | Does the requirement relate to planning objectives and is it within the scope of the development consent to which it is to be attached? | The scheme design shown on the works plans and the engineering drawings and sections set the scope of the development consented. The design of the scheme accords with planning objectives as set out in the NPS as documented in the <i>Case for the Scheme Updated NPS</i> (PINS reference REP9-019, Applicant reference HE/A14/EX/144).  |
| <b>Relevant to the development to be permitted</b> | Does the requirement fairly and reasonably relate to the development to be consented?   | The requirement directly relates to the design of the development to be consented and is clearly relevant.  |

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| <b>Enforceable</b>                      | Would it be practicably possible to enforce the requirement?   | The scheme design shown on the works plans and the engineering drawings and sections, as referred to in the requirement, would be certified plans and would therefore be 'set'. It is therefore clear and practicably possible for Highways England to comply with this requirement. |
| <b>Precise</b>                          | Is the requirement written in a way that makes it clear to the applicant and others what must be done to comply with it? |  |
| <b>Reasonable in all other respects</b> | Is the requirement reasonable?   | It is considered this requirement is entirely reasonable in order to set the parameters of the scheme, where the detailed design is not in place at the time of the making the DCO.  |

## 2.3 Code of Construction Practice (requirement 4)

*The authorised development must be carried out in accordance with the provisions of the code of construction practice.*

Table 2-2 Conformity of requirement 4 with the tests set out in the NPS paragraph 4.9

| Test   | Key Question  | Conformity with the NPS  |
|--|---|--|
| <b>Necessary</b>                                   | Will it be appropriate to refuse development consent without the imposition of the requirement?   | The requirement secures the CoCP which contains necessary mitigation measures, as documented in the ES, and which make the development acceptable in planning terms. The scope of the CoCP is proportionate to the scale and nature of the development and construction impacts identified through the EIA process.  |
| <b>Relevant to planning</b>                        | Does the requirement relate to planning objectives and is it within the scope of the development consent to which it is to be attached? | The CoCP is within the scope of the development consented (it mitigates its effects) and relates to the various planning objectives set out in the NPS, particularly in light of the mitigation measures it contains.  |
| <b>Relevant to the development to be permitted</b> | Does the requirement fairly and reasonably relate to the development to be consented?   | The CoCP directly relates to the development. The CoCP has been produced in conjunction with the ES with the aim of ensuring that likely significant effects as a result of the scheme, that are reported in the ES, will either be avoided or mitigated.  |
| <b>Enforceable</b>                                 | Would it be practicably possible to enforce the requirement?  | The requirement secures compliance with the CoCP and any breach of the CoCP would therefore be enforceable as a breach of the DCO. The obligations in the CoCP are considered to be sufficiently detailed and will be certified in order to allow certainty for enforcement. Further details on the enforceability of the CoCP can be found in Highways England's <i>Note on the</i> |

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|   |  | <i>Enforceability of the Code of Construction Practice</i> (Applicant reference HE/A14/EX/141, PINS reference REP9-016).  |
| <b>Precise</b>                          | Is the requirement written in a way that makes it clear to the applicant and others what must be done to comply with it? | The requirement is clear and the CoCP (which will be certified) itself provides clear obligations on Highways England and its contractors. The CoCP has been developed through the examination and amendments as a result of this have bolstered the precision of the CoCP further. |
| <b>Reasonable in all other respects</b> | Is the requirement reasonable?   | It is considered the CoCP is entirely reasonable and proportionate in the context and likely construction impacts of the A14 scheme. There are no burdensome or unjustifiable obligations.  |

## 2.4 Protected Species (requirement 5)

*5.—(1) No part of the authorised development is to commence until final pre-construction survey work for that part has been carried out, reflecting that contained in the environmental statement, to establish whether European or nationally protected species are present on any of the land affected, or likely to be affected, by any part of the authorised development or in any of the trees and shrubs to be lopped or felled as part of the authorised development.*

*(2) Where a protected species is shown to be, or where there is a reasonable likelihood of it being present, the relevant parts of the relevant works must not begin until a scheme of protection and mitigation measures including their design and management has been submitted to and approved in writing by the Secretary of State after consultation with Natural England. Except to the extent otherwise approved, the scheme of protection and mitigation measures including their design and management must be in accordance with the guidance in the Design Manual for Roads and Bridges (Volume 10, section 4).*

*(3) The relevant works must be carried out in accordance with the approved scheme, and under licence where necessary, unless otherwise agreed in writing by the Secretary of State, after consultation with Natural England.*

Table 2-3 Conformity of requirement 5 with the tests set out in the NPS paragraph 4.9

| Test             | Key Question  | Conformity with the NPS   |
|------------------|---|---|
| <b>Necessary</b> | Will it be appropriate to refuse development consent without the imposition of the requirement? | The requirement is necessary to secure the surveys needed for the proper identification of protected species and to secure necessary mitigation measures for protected species that are directly affected by the scheme. The requirement would make the development acceptable in planning terms. |



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| <b>Relevant to planning</b>                        | Does the requirement relate to planning objectives and is it within the scope of the development consent to which it is to be attached? | It relates to the various planning objectives specific to nature conservation as set out in the NPS, the NPPF and the NPPG and is clearly within the scope of the development to be consented.  |
| <b>Relevant to the development to be permitted</b> | Does the requirement fairly and reasonably relate to the development to be consented?   | Protecting the protected species is directly related to the nature and impact of the development as demonstrated by the <i>Environmental Statement (Chapter 11)</i> . Mitigation for species affected by the development is clearly related to the development and an issue only created by the proposed development. |
| <b>Enforceable</b>                                 | Would it be practicably possible to enforce the requirement?  | The requirement is clearly drafted and states what is required to ensure compliance. It is considered that it would be practicably possible to detect a contravention and remedy any breach of the requirement.   |
| <b>Precise</b>                                     | Is the requirement written in a way that makes it clear to the applicant and others what must be done to comply with it?                | The obligations are clearly drafted and Highways England (and its contractors) considers the wording precise enough to be aware of its obligations.   |
| <b>Reasonable in all other respects</b>            | Is the requirement reasonable?  | It is considered this requirement is entirely reasonable in order to mitigate any effects on protected species.   |

## 2.5 Landscaping (requirement 7)

**7.—(1)** *No part of the authorised development must commence until a landscaping scheme applicable to that part has been submitted and approved in writing by the Secretary of State, following consultation with the relevant planning authority.*

**(2)** *The landscaping scheme must reflect the mitigation measures included in the environmental statement and set out details of all proposed hard and soft landscaping works, including—*

- (a) location, number, species, size and planting density of any proposed aquatic or terrestrial planting;*
- (b) landscaping works associated with any noise fences and walls (as appropriate);*
- (c) cultivation, importing of materials and other operations to ensure plant establishment;*
- (d) proposed finished ground levels;*
- (e) hard surfacing materials;*
- (f) details of existing trees to be retained, with measures for their protection during the construction period;*

*(g) retained historic landscape features and proposals for restoration, where relevant; and*

*(h) implementation timetables for all landscaping works.*

*(3) All landscaping works must be carried out in accordance with the approved landscaping scheme and carried out to a reasonable standard in accordance with the relevance*

*recommendations of appropriate British Standards or other recognised codes of good practice.*

*(4) Any tree or shrub planted as part of the landscaping scheme that, within a period of five years after planting, dies or becomes, in the opinion of the relevant planning authority, seriously diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.*

Table 2-4 Conformity of requirement 7 with the tests set out in the NPS paragraph 4.9

| Test   | Key Question  | Conformity with the NPS   |
|--|---|---|
| <b>Necessary</b>                                   | Will it be appropriate to refuse development consent without the imposition of the requirement?   | The requirement secures necessary landscaping mitigation which is required as a result of the scheme. The principles of this are outlined in paragraph 10.4.12 of chapter 10 of the ES and illustrated by Figure 3.2 of the ES. The requirement is needed to make the development acceptable in planning terms. |
| <b>Relevant to planning</b>                        | Does the requirement relate to planning objectives and is it within the scope of the development consent to which it is to be attached? | The landscaping of the scheme is directly related to the scope of the development consented. The requirement relates to the planning objectives set out in paragraphs 5.160 and 5.161 of the NPS, which sets out policy concerning the mitigation of adverse landscape and visual effects.                      |
| <b>Relevant to the development to be permitted</b> | Does the requirement fairly and reasonably relate to the development to be consented?   | Landscaping schemes are required to mitigate the impacts of the operation of the scheme as set out in chapter 10 of the ES. It is considered that this fairly and reasonably relates to the development. The imposition of this requirement would remedy likely effects as a result of the development.         |
| <b>Enforceable</b>                                 | Would it be practicably possible to enforce the requirement?  | The requirement is clearly drafted, is applicable to each part of the development and must reflect the ES, and is thereby practicably possible to enforce. Once approved, the landscaping scheme will be the document against which compliance is tested, which provides certainty.                             |
| <b>Precise</b>                                     | Is the requirement written in a way that makes it clear to the applicant  | The obligations are clearly drafted and state what is required for compliance.  |

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|   | and others what must be done to comply with it? | Therefore, it is considered that Highways England and its contractors will be able to comply.  |
| <b>Reasonable in all other respects</b> | Is the requirement reasonable?                  | The requirement links to mitigation measures set out in the ES (chapter 10) and is therefore considered justifiable and proportionate to the scheme and meets the tests of reasonableness. |

## 2.6 Archaeology (requirement 8)

8.—(1) *No authorised development must commence until a written scheme for the investigation of areas of archaeological interest, reflecting the mitigation measures included in the environmental statement, has been submitted to and approved in writing by the Secretary of State.*

(2) *Prior to the submission of the written scheme to the Secretary of State for approval under paragraph 8(1) above, the relevant planning authority must be consulted on its content.*

(3) *The authorised development must be carried out in accordance with the scheme as approved under sub-paragraph (1).*

Table 2-5 Conformity of requirement 8 with the tests set out in the NPS paragraph 4.9

| Test   | Key Question  | Conformity with the NPS   |
|--|---|---|
| <b>Necessary</b>                                   | Will it be appropriate to refuse development consent without the imposition of the requirement?   | The requirement secures necessary archaeological mitigation that is required as a result of the scheme as set out in section 9.6 of chapter 9 of the ES. This is considered to be a clear planning justification for the imposition of the requirement.   |
| <b>Relevant to planning</b>                        | Does the requirement relate to planning objectives and is it within the scope of the development consent to which it is to be attached? | The archaeological mitigation of the scheme is directly related to the scope of the development. The requirement relates to the various planning objectives set out in the NPS, including paragraph 5.130 and section 12 of the NPPF.   |
| <b>Relevant to the development to be permitted</b> | Does the requirement fairly and reasonably relate to the development to be consented?   | Archaeological mitigation is required to mitigate the effects of the scheme on areas of archaeological interest as described in sections 9.4 and 9.5 of the ES and this requirement is therefore related to the development.  |
| <b>Enforceable</b>                                 | Would it be practicably possible to enforce the requirement?  | The requirement is clearly drafted and relates to the mitigation approach outlined in the ES. It is considered that it would be practicably possible to detect a contravention and remedy any breach of the requirement (e.g. the written scheme of investigation would place clear obligations on Highways |

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|   |  | England and its contractors).   |
| <b>Precise</b>                          | Is the requirement written in a way that makes it clear to the applicant and others what must be done to comply with it? | The obligations are clearly drafted and state what is required for compliance. The requirement precisely relates to a written scheme of investigation for archaeological areas of interest. |
| <b>Reasonable in all other respects</b> | Is the requirement reasonable?   | It is considered this requirement is entirely reasonable and proportionate in order to provide relevant archaeological mitigation for the scheme.   |

## 2.7 Borrow Pits (requirement 11)

11. *The restoration and aftercare of the borrow pits must be carried out in accordance with the borrow pits restoration and aftercare strategy.*

Table 2-6 Conformity of requirement 11 with the tests set out in the NPS paragraph 4.9

| Test   | Key Question  | Conformity with the NPS   |
|--|---|---|
| <b>Necessary</b>                                   | Will it be appropriate to refuse development consent without the imposition of the requirement?   | The requirement secures the Borrow Pits Restoration and Aftercare Strategy (Applicant reference HE/A14/EX/168) submitted at deadline 10 of the Examination. It contains a number of necessary measures in connection with the restoration and aftercare of the borrow pits which make the development acceptable in planning terms.   |
| <b>Relevant to planning</b>                        | Does the requirement relate to planning objectives and is it within the scope of the development consent to which it is to be attached? | The <i>Borrow Pits Restoration and Aftercare Strategy</i> is a certified document and is within the scope of the development, as set out in <i>Appendix 3.3 of the ES</i> .   |
| <b>Relevant to the development to be permitted</b> | Does the requirement fairly and reasonably relate to the development to be consented?   | The <i>Borrow Pits Restoration and Aftercare Strategy</i> directly relates to the restoration and aftercare of six borrow pits that would be created in order to provide sand, gravel and clay as construction materials for the development. The imposition of this requirement would secure certain measures to ensure the borrow pits are not a burden on the local area when finished with. They would be created entirely for the development. |
| <b>Enforceable</b>                                 | Would it be practicably possible to enforce the requirement?  | The requirement secures compliance with the certified <i>Borrow Pits Restoration and Aftercare Strategy</i> and any breach would therefore be enforceable as a breach of the DCO. The obligations in the strategy are considered to be sufficiently drafted in order to allow enforcement.  |
| <b>Precise</b>                                     | Is the requirement written in a way that makes it clear to the applicant and others what must be done to comply with it?                | The requirement is clearly worded and states what is required to comply with it. The obligations on Highways England and its contractors are clear.   |

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| <b>Reasonable in all other respects</b> | Is the requirement reasonable? | It is considered the requirement is entirely reasonable and proportionate in the context of the A14 scheme – there are no burdensome or unjustifiable obligations. |
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## 2.8 Noise Mitigation (requirement 12)

*12.—(1) No part of the authorised development must commence until written details of proposed noise mitigation in respect of the use and operation of that part of the authorised development, including noise barriers, have been submitted to and approved by the Secretary of State, following consultation with the relevant planning authority.*

*(2) The written details referred to in sub-paragraph (1) must either reflect the mitigation measures included in the environmental statement or, where the mitigation proposed materially differs from the mitigation identified in the environmental statement, the undertaker must provide evidence with the written details submitted that the mitigation proposed would not give rise to any materially new or materially worse adverse environmental effects than those reported in the environmental statement taking into account the mitigation identified in it.*

*(3) The noise mitigation must be constructed in accordance with the approved details referred to in sub-paragraph (1).*

Table 2-7 Conformity of requirement 12 with the tests set out in the NPS paragraph 4.9

| Test   | Key Question  | Conformity with the NPS   |
|--|---|---|
| <b>Necessary</b>                                   | Will it be appropriate to refuse development consent without the imposition of the requirement?   | The requirement secures necessary noise mitigation which is required as a result of the scheme and makes the development acceptable in planning terms.  |
| <b>Relevant to planning</b>                        | Does the requirement relate to planning objectives and is it within the scope of the development consent to which it is to be attached? | The mitigation of noise effects of the scheme is directly related to the scope of the development, as demonstrated by chapter 14 of the ES. The requirement relates to the planning objectives set out in the NPS, in particular as set out in paragraphs 5.197 and 5.198.  |
| <b>Relevant to the development to be permitted</b> | Does the requirement fairly and reasonably relate to the development to be permitted?   | The requirement makes clear that that the details submitted must either reflect the mitigation in the environmental statement or it must be shown that the proposed mitigation would not give rise to materially new or materially worse environmental effects than those reported in the ES, taking into account the mitigation identified in it. The requirement thereby fairly and reasonably relates to the development and is justified by the nature and impact of the development. |

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| <b>Enforceable</b>                      | Would it be practicably possible to enforce the requirement?   | The requirement is clearly drafted and requires written details to be submitted (and, if approved, to be complied with) in accordance with the ES or for evidence to be provided. It is therefore considered that it would be practicably possible to detect a contravention and remedy any breach of the requirement. |
| <b>Precise</b>                          | Is the requirement written in a way that makes it clear to the applicant and others what must be done to comply with it? | The obligations are clearly drafted and clearly state what is required for compliance. Therefore, it is considered that Highways England and its contractors will be able to comply.   |
| <b>Reasonable in all other respects</b> | Is the requirement reasonable?   | It is considered this requirement is entirely reasonable in order to provide necessary noise mitigation for the scheme.  |

## Annex 1

Table 0-1: National Planning Policy Guidance, Use of Conditions, 6/03/2014

| TEST  | KEY QUESTIONS  |
|---|--|
| Necessary                                   | <p>Will it be appropriate to refuse planning permission without the requirements imposed by the condition?</p> <ul style="list-style-type: none"> <li>• A condition must not be imposed unless there is a definite planning reason for it, ie it is needed to make the development acceptable in planning terms.</li> <li>• If a condition is wider in scope than is necessary to achieve the desired objective it will fail the test of necessity.</li> </ul>   |
| Relevant to planning                        | <p>Does the condition relate to planning objectives and is it within the scope of the permission to which it is to be attached?</p> <ul style="list-style-type: none"> <li>• A condition must not be used to control matters that are subject to specific control elsewhere in planning legislation (for example, advertisement control, listed building consents, or tree preservation).</li> <li>• Specific controls outside planning legislation may provide an alternative means of managing certain matters (for example, works on public highways often require highways' consent).</li> </ul> |
| Relevant to the development to be permitted | <p>Does the condition fairly and reasonably relate to the development to be permitted?</p> <ul style="list-style-type: none"> <li>• It is not sufficient that a condition is related to planning objectives: it must also be justified by the nature or impact of the development permitted.</li> <li>• A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development.</li> </ul>   |
| Enforceable                                 | <p>Would it be practicably possible to enforce the condition?</p> <ul style="list-style-type: none"> <li>• Unenforceable conditions include those for which it would, in practice, be impossible to detect a contravention or remedy any breach of the condition, or those concerned with matters over which the applicant has no control.</li> </ul>  |

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| Precise                          | <p>Is the condition written in a way that makes it clear to the applicant and others what must be done to comply with it?</p> <ul style="list-style-type: none"><li>• Poorly worded conditions are those that do not clearly state what is required and when must not be used.</li></ul>  |
| Reasonable in all other respects | <p>Is the condition reasonable?</p> <ul style="list-style-type: none"><li>• Conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness.</li><li>• Unreasonable conditions cannot be used to make development that is unacceptable in planning terms acceptable.</li></ul> |