

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

HE/A14/EX/152

TR010018

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Note on discharge of requirements process

September 2015

The Infrastructure Planning (Examination Procedure) Rules 2010

A14 CAMBRIDGE TO HUNTINGDON IMPROVEMENT SCHEME

PROPOSED APPROACH TO DISCHARGE OF REQUIREMENTS

1. INTRODUCTION

- 1.1 At the Issue Specific Hearing on the Development Consent Order which took place on 4 September 2015, the Examining Authority requested an update from Highways England on the development of the procedure for discharging the requirements contained in Schedule 2 to the DCO.
- 1.2 As currently drafted, certain requirements are proposed to be discharged by the Secretary of State for Transport, following consultation with certain bodies (e.g. the relevant planning authority or Natural England).
- 1.3 Highways England, together with the Department for Transport, has been giving further consideration as to how this procedure would work in practice. The proposed procedure is set out below.

2. CURRENT PROPOSAL FOR THE DISCHARGE OF REQUIREMENTS

Register of requirements

- 2.1 A Register of the Requirements ("**the Register**"), taken from the made Development Consent Order, would be placed on the dedicated A14 project website. The Register would track the discharge 'journey' of each requirement.
- 2.2 A preliminary draft of what the Register might look like has been appended to this note and Schedule 2 to the draft DCO has been amended to refer to the Register having to be established and maintained by Highways England.
- 2.3 It is intended that the Register will form part of the formal evaluation process undertaken by Highways England's Post Opening Project Evaluation exercise (where a review is undertaken following the opening of roads, to measure performance against forecasts). The Register will be used to evidence Highways England having met the commitments it made during the DCO process.
- 2.4 The Register will also be available to Highways England's monitor, The Office of Rail and Road, as well as The Passengers' Council and Transport Focus, as evidence of Highways England having met the objectives of the Road Investment Strategy (where relevant) and also commitments made during the process of project development which have been translated into requirements.
- 2.5 Highways England has included a new requirement in the draft DCO to produce and maintain the Register - this is reflected in the latest draft of the DCO submitted at Deadline 10.

Highways England internal 'sign-off' prior to formal submission of details for the discharge of a requirement

- 2.6 Prior to being submitted to the Secretary of State for approval, details relating to a requirement would need to be signed off 'internally' by independent teams within Highways England from within Highways England Professional Technical Solutions Directorate and in accordance with Highways England's standards. That sign off would then be submitted to the Secretary of State alongside the project team's application for the approval specified by the requirement.
- 2.7 The project team within Highways England would carry out all 3rd party consultation in relation to the requirement, as well as providing relevant supporting documents to

enable the Highways England independent team to come to an informed view on the proposed details to be submitted to the Secretary of State for approval.

- 2.8 As part of the process of internal Highways England 'sign-off' prior to submission of details to the Secretary of State for approval, information barriers within Highways England and between the A14 project team and the internal 'sign off' team will be put in place as follows:
- 2.8.1 line-management responsibilities for those in Highways England will be kept separate from the project team up to the highest level in the chain of command that can be achieved in practice (in practice no-one will have a dual interest);
 - 2.8.2 documents will not be copied across the barrier, so that project team documents will not go to the signing-off team and vice versa (except in accordance with the procedures set out in this note);
 - 2.8.3 staff will be expressly instructed to do everything in their power to ensure that those on the other side of the barrier do not gain, even accidentally, access to relevant material;
 - 2.8.4 those outside Highways England will, when relevant, be told that a strict division is being maintained and should be directed to the correct part of Highways England; and
 - 2.8.5 legal advice for the project team and for the 'approval body' within Highways England will be provided by separate lawyers.
- 2.9 The need for fairness and transparency means that the 'approver' within Highways England should act in a transparent manner, giving the parties the information necessary to make representations and then considering the representations properly. This precludes taking into account representations made privately, without other parties having had an opportunity to respond to them. Highways England will ensure that this is achieved, placing all representations received relating to the requirements in the Register.
- 2.10 Highways England intends that the above process will be incorporated into its own standard project control framework, which governs how major improvement projects are delivered.

Formal approval from the Secretary of State to discharge a requirement

- 2.11 The Secretary of State would be kept fully apprised of the progress of the Highways England internal 'approvals', to ensure that the approval process by him is as straightforward and as timely as possible. However, the requirements will require the Secretary of State to undertake consultation with third parties himself, prior to discharge of the requirements. This process will be informed by one of the documents submitted to the Secretary of State with the application for discharge, which will be a statement of the consultation as needed undertaken by the project team in relation to the requirement together with full supporting details.
- 2.12 Following consultation of the relevant third parties by the Secretary of State and before deciding whether to discharge the requirement, the Secretary of State will consider Highways England's submissions taking into account all relevant information including the views of consultees and the internal sign off by the Highways England independent teams.
- 2.13 It is envisaged that decision-making would follow similar internal processes to those employed in taking other quasi-judicial decisions (for example, in deciding whether to make a DCO or a Transport and Works Act Order), meaning a separation within the

Department's Strategic Roads Division of those involved in discharging requirements from those involved in delivery of the project through their relationships with Highways England.

- 2.14 Once the Secretary of State has discharged the requirement, the Register would be updated accordingly, stating the name and document reference number of the approve document and providing an electronic link where possible and appropriate.

3. **ENFORCEMENT OF REQUIREMENTS**

- 3.1 Local planning authorities are responsible for enforcing the terms of the DCO, including the requirements, under Part 8 of the Planning Act 2008. Under section 161, it is an offence to breach the terms of a DCO. This Part gives local planning authorities the power to carry out certain actions to ensure compliance, such as the right to enter land, require information, serve notice on the undertaker requiring certain action and applying for an injunction to restrain any prohibited actions.

- 3.2 These enforcement powers would extend to the Secretary of State's functions under the requirements (i.e. to discharge the requirements and to consult various parties before doing so). It is inherent within the terms of the DCO that the Secretary of State's functions under Schedule 2 must be carried out properly and correctly, including carrying out consultation in line with the various principles laid down in case law. By the very nature of the Secretary of State's position, it is unlikely that he would exercise his functions incorrectly or unconscionably but, should he do so, it would be a breach of the terms of the DCO. In the circumstances, the likely process in respect of any breach would be through application for judicial review.

DRAFT Register of Requirements within Schedule 2 to the A14 Improvement Scheme Development Consent Order

Requirement No.	Description	Discharge document produced	Produced by	Timescale	Internal project approvals	Sign off by Highways England Professional Technical Solutions Division	Department for Transport approvals
<i>Reference from Development Consent Order</i>	<i>Direct quote from Schedule 2 to the Development Consent Order</i>	<i>All documents produced that are necessary to fulfil/discharge the requirement to be noted here</i>	<i>To contain details of who has produced these documents</i>	<i>To contain details of when these documents were produced by the A14 project team and when the requirement could be discharged, in order to assist scheme handover.</i>	<i>To contain details of when these documents were approved by the A14 project team, including details of prior consultation of 3rd parties by the project team</i>	<i>To contain details of when these documents were signed off by Highways England Professional Technical Solutions Division</i>	<i>To contain details of when these documents were approved by the Secretary of State, including details of prior consultation of 3rd parties by the Secretary of State</i>