

Application by Highways England for an Order Granting Development Consent for the M4 Junctions 3 to 12 Smart Motorway (Case ref. TR010019)

Agenda for issue specific hearing dealing with matters relating to the draft Development Consent Order

On 23 October 2015 interested parties and others were notified that an issue specific hearing dealing with matters relating to the draft Development Consent Order (dDCO) would take place on **Thursday 19 November 2015** at the **Radisson Blu Edwardian Heathrow Hotel, 140 Bath Road, Hayes, Middlesex, UB3 5AW**. The hearing room will be available from 9.30am and the hearing will commence at 10.00am. It is expected to close by about 1.00pm. In order to ensure that those attending the hearing can make the best use of the time, we have prepared an agenda as attached.

All interested parties are welcome to attend the hearing. In consideration of its purpose however, it follows that the hearing will be of interest mainly to those organisations who have a direct contribution to the drafting of the Order, and its implementation should it be granted.

Administrative arrangements

If you did not do so by the pre-notified deadline, it is vital for parties intending to attend to now give prior notice to the case team of who will attend, who will speak and which points they wish to address. In accordance with Rule 14(3) of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended), any oral representations should be based on representations previously made in writing by the particular participant.

Please provide your interested party reference number in any communication and mark it for the attention of the M4 Junctions 3 to 12 Smart Motorway case team.

Agenda for issue specific hearing dealing with the draft Development Consent Order (dDCO)

10.00am, 19 November 2015

1 Drafting issues, including:

- i. A49(2) of 2nd dDCO REP2-002, Section 8 refers to Schedule 11. This is now Schedule 12 in the 2nd dDCO.
- ii. R5 – “TSCS” is not defined.
- iii. Could the list of documents under R6 be moved to a schedule to improve readability?

Documents which require document references, including:

- iv. R6 – “engineering and design report”
- v. R7 – “outline environmental management plan”
- vi. R8 – “outline Construction Environmental Management Plan” and “outline EMP”
- vii. R9 – “engineering and design report”
- viii. R11 – “environmental masterplan”
- ix. R14 – “drainage strategy report”
- x. R18 – “outline construction traffic management plan”

2 Implementation clauses: where a requirement seeks the submission and approval of a scheme, it then needs to require development to be carried out in accordance with the approved scheme, and a timescale for implementation should also be included. For example:

- i. R9 needs to be redrafted: when is the landscaping scheme to be submitted; when is the approved scheme to be implemented?
- ii. Implementation clause added to R19, but no timescale is provided.

3 First round question (FRQ) 8.3 - definition of “commence”:

- i. Applicant has differentiated between development being commenced and development being carried out. To clarify, include “carry out” as a defined term in A2 so that it can be clearly distinguished from “commence”.
- ii. Some of the exclusions from the definition of “commence” need to be justified further, in particular intrusive works such as site clearance, demolition work, establishment of site offices and the laying of services, which are hard to justify as “minor operations”. For example, looking at R18, there should be no commencement near at-risk buildings until the local planning authority (LPA) has been notified. The current wording would allow the intrusive works

listed above to begin near at-risk buildings without such notification. Similarly, could the intrusive works begin without a traffic management plan having been agreed (R19)? This could have implications (for example, removal of debris after demolition).

- 4** FRQ 8.4 - further environmental information: Applicant's response noted, but where a table or other information which is in the Environmental Statement (ES) is amended in the course of the examination, the amended information will need to be referenced and certified together with the ES in the dDCO, for example the table of information on the location and height of gantries in Section 4 Appendix C to the applicant's response to FRQ, or the amended Drawing 12.2 of Appendix 12.2 of the ES. Can the applicant produce and maintain a schedule of such amendments which includes the document reference?
- 5** FRQ 8.5 – definition of "maintain": This question was prompted by concerns that the wide definition of "maintain" would allow works which had not been assessed as part of the ES. Clearly if they are allowed by the Order, they would not be unlawful. The applicant either needs to:

 - i. Highlight in the ES where the works required to "inspect, repair, adjust, alter, remove, clear, refurbish, reconstruct, decommission, replace and improve" the development have been assessed; or
 - ii. Accept that the definition needs to be amended as suggested.
- 6** FRQ 8.10 - Article 6: The applicant accepts that the proposed wording has so far only been used in another draft DCO, and has therefore not yet been approved by a Secretary of State (SoS). The proposed wording seems to be seeking to avoid the procedures for varying a DCO provided for under the Planning Act regime, and so is not appropriate. Can the applicant justify this? What would be the mechanism whereby the SoS would approve a deviation in excess of the limits in A6?
- 7** FRQ 8.11 - Article 14(6) (also A19(6) and A17(9)): consent of the street authority or of the watercourse/sewer authority is deemed to be given after 28 days if no refusal has been received. Do the street authorities and watercourse/sewer authorities have any comments on this provision?
- 8** FRQ 8.13 - A16: the Environment Agency (EA) has requested additional wording to make it clear that the need for flood defence consents has not been excluded. Can the applicant suggest suitable wording/agree suitable wording with EA?
- 9** FRQ 8.19 - A49(2): Schedule 11 of the dDCO (now Schedule 12 in 2nd dDCO) provides a bespoke procedure for the discharge of requirements.

What are the views of the local authorities and any other discharging authorities on this provision?

- 10** FRQ 8.20 - tailpieces in requirements: For tailpieces point, the general approach is that:
- i. If a scheme/detail is to be left to the LPA to define, then it is acceptable for the LPA to agree amendments to it. This would be the case for R4, R7, R9, R13, and R19, and so those tailpieces are acceptable.
 - ii. If details are approved by the SoS, then they are considered fixed and can only be varied using the PA 2008 variation procedures – otherwise, the SoS does not have sufficient certainty as to what consent is being granted for. This is the case for R3, R5, R6, R10, and R11.
 - iii. Can the applicant explain why the PA2008 variation procedures should not be used for these aspects of the development?
- 11** FRQ 8.21: The SoS is approving a specific scheme, subject to the limits of deviation provided for in A6. The LPA has no power to amend a scheme approved by the SoS. Level of flexibility being sought goes beyond what is usually permissible.