

# THE PLANNING ACT 2008

## M4 (JUNCTIONS 3 TO 12) (SMART MOTORWAY) DEVELOPMENT CONSENT ORDER APPLICATION

PINS REFERENCE NO: TR010019

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### Discharge of DCO requirements - Explanatory Submission for the ExA

**Deadline III - 5 November 2015**

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#### 1. Introduction

- 1.1 The draft DCO ("**dDCO**") which forms part of the above application makes provision for requirements to be discharged by the 'relevant planning authority'. Therefore, 'relevant planning authority' is defined in Article 2(1) of the dDCO as the 'local planning authority for the land in question'. This means that each local planning authority ("**LPA**") within whose area the Scheme passes would be required to approve each requirement in Schedule 2 of the dDCO. Consequently, each requirement might have to be discharged by up to 11 separate LPAs.
- 1.2 Highways England has been reviewing, with the Secretary of State for Transport ("**Secretary of State**"), how requirements should be discharged under its DCOs, given the linear nature of many of its schemes. This has included consideration as to whether the discharge of requirements is most appropriately performed by LPAs and, if not, where that responsibility should lie. The conclusion reached (and what is proposed) is that the discharge of the requirements in DCOs should be undertaken by the Secretary of State. This conclusion takes into account a number of factors, as are explained in detail in paragraphs 2.1 to 2.2 of this submission.
- 1.3 This submission explains the rationale behind the proposal and details the mechanism providing for the Secretary of State to discharge DCO requirements.

#### 2. Reasons for proposed procedure for discharge of requirements

- 2.1 The first reason for suggesting that discharge be within the remit of the Secretary of State relates to the capacity of the LPAs. There is some doubt as to whether the LPAs in question would have the necessary resources and expertise to discharge the DCO requirements in a timely manner, particularly having regard to the need for discharge of requirements contemporaneously along the route of the Scheme. This opinion has been expressed by local authorities on other similar motorway schemes (for example, by South Cambridgeshire District Council in a written representation on the A14 Cambridge to Huntingdon scheme (see Question 2.6.2, document reference HE-A14-EX-121)) and Highways England expects that a number of the LPAs affected by the Scheme would echo this view.

- 2.2 The second reason for the suggested procedure is that the Scheme is linear in design; the effect being that it runs through, and affects, a large number of LPAs. This would result in each requirement having to be discharged multiple times, leading to a process that is potentially disjointed and inconsistent and could result in considerable delay to the implementation of a project of strategic national importance to the UK transport network and UK economy.

### 3. **Proposal for the discharge of requirements**

#### Register of Requirements

- 3.1 A register of requirements ("**Register**") will be created from the requirements in the DCO and placed on the M4 project website for viewing by the public. The DCO will contain a new requirement that Highways England has to produce and maintain the Register. This is requirement 24 in the latest version of the dDCO submitted at Deadline III.
- 3.2 This Register will track the discharge progress of each requirement and be used to demonstrate that Highways England has discharged the requirements attached to the DCO. Where requirements state that consultation must be undertaken with third parties prior to discharge, Highways England will provide the DfTGL with a statement of the necessary consultation undertaken for the particular requirement in question, with supporting details.
- 3.3 The Register will also be available to Highways England's regulator, 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) as well as the requirements themselves.

#### Highways England Internal Approval

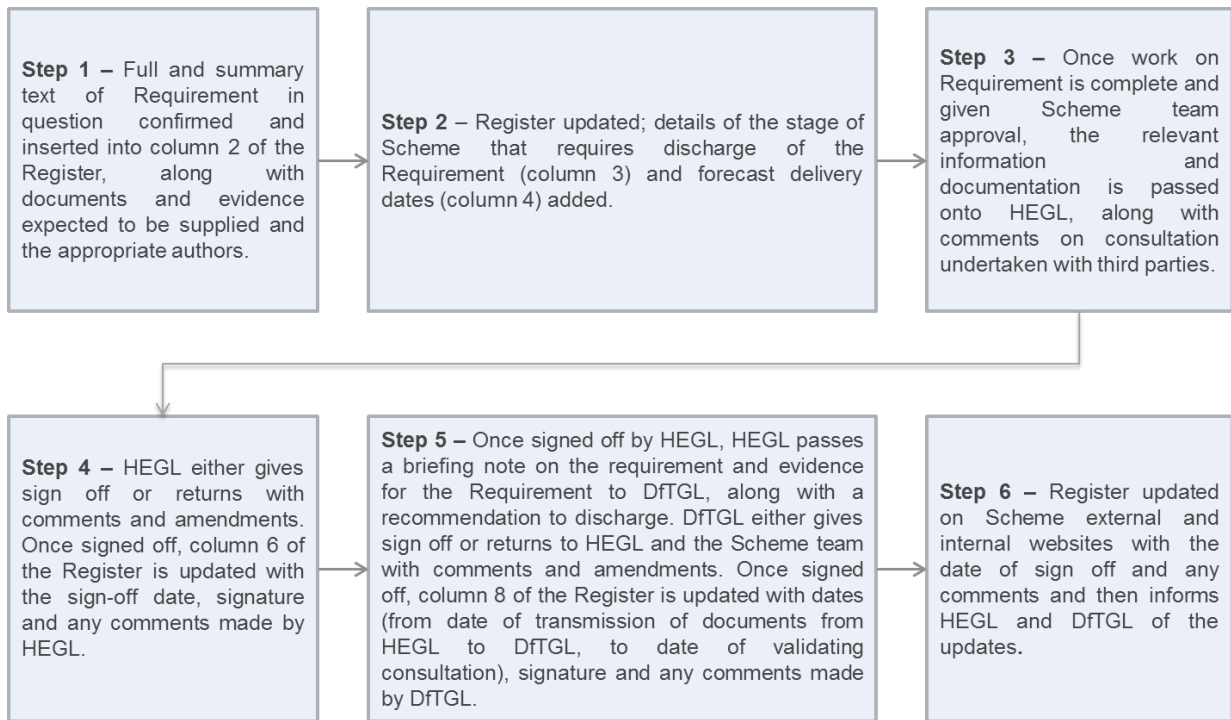
- 3.4 Applications for discharge of requirements will be made to the Secretary of State.
- 3.5 Prior to being submitted to the Secretary of State for approval, an application for discharge of a requirement will be received and approved by an independent, internal team within Highways England, formed from within the Highways England Professional Technical Solutions Directorate. This team would be known as the Highways England Governance Lead ("**HEGL**"). That approval (once given) would then be submitted, along with Highways England's application for the requirement to be discharged, to a governance body within the Department for Transport ("**DfT**") to be known as the DfT Governance Lead ("**DfTGL**").
- 3.6 Highways England will carry out third party consultation in relation to the application for discharge of the requirement, where such consultation is required under the terms of a particular requirement. It would then provide responses to such consultation to HEGL, as well as relevant supporting documents evidencing the consultation, to enable HEGL to come to an informed view on the proposed details to be submitted to the DfTGL for approval, on behalf of the Secretary of State.
- 3.7 Information barriers within Highways England between the M4 Scheme team and HEGL would be put in place. These would include:

- 3.7.1 line-management responsibilities for HEGL will be kept separate from the team responsible for the Scheme up to the highest level in the chain of command that can be achieved;
- 3.7.2 an information barrier will be implemented, so that documents produced in respect of the Scheme will not be submitted to HEGL and vice versa (except in accordance with the procedures set out in this note);
- 3.7.3 staff will be required by the information barrier to ensure that those on the other side of the barrier do not gain access to relevant material;
- 3.7.4 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
- 3.7.5 legal advice for the project team and for HEGL will be provided by separate lawyers.

#### DfTGL Approval

- 3.8 DfTGL will be kept apprised of the progress of the Highways England internal approval. The DfTGL will then undertake its own formal consultation with third parties, where such consultation is required under the terms of a particular requirement.
- 3.9 Following consultation of the relevant third parties by DfTGL, and before deciding whether to discharge the requirement, DfTGL will consider Highways England's submissions, taking into account all relevant information including the views of consultees and the HEGL.
- 3.10 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 DfT's Strategic Roads Division of those involved in discharging requirements from those involved in delivery of the Scheme through their relationships with Highways England.
- 3.11 Once the Secretary of State - acting through DfTGL - has discharged the requirement, the Register will be updated accordingly, stating the name and document reference number of the approved document and providing an electronic link where possible and appropriate.

#### 4. Explanatory Flowchart



#### 5. Register of Requirements

1. Requirement No.	2. Full description & summary	3. Stage of the Scheme	4. Forecast delivery	5. Internal project approval	7. HEGL sign off	8. DfT sign off	9. Update to public and internal websites
[ x ]	Step 1 – Full text of Requirement from Sch. 2 of the DCO provided along with a summary, documents/evidence expected to be provided, consultation required and information on the appropriate authors.	Step 2 – Details of the Stage of the Scheme that requires discharge of the Requirement .	Step 2 – Details of forecast delivery dates.	Step 3 – Scheme team approval given, with a list of comments on consultation with third parties.	Step 4 - Once HEGL sign-off is given, details of sign off date, signature and any comments from HEGL added.	Step 5 - Once DfTGL sign-off is given, details of dates (from transmission of documents from HEGL to DfTGL to date of validating consultation), signature and any comments from DfTGL added.	Step 6 – Internal and public project websites updated with date of sign-off and any comments. HEGL and DfTGL informed of the updates.

**DLA Piper UK LLP**

**On behalf of Highways England**

**5 November 2015**