ENVIRONMENT AGENCY

WRITTEN REPRESENTATION - DEADLINE VIII

HIGHWAYS ENGLAND'S RESPONSE

Deadline 8 (29 February 2016) – Comments on details submitted for deadline 7. Development Consent Order Application M4 - Junctions 3-12 (Smart Motorway)

The following remarks summarise our position with regards to the above scheme and are set out under the following headings:

1.0 Flood Risk
2.0 Draft Development Consent Order

1. Flood Risk

1.1 As noted in our deadline 7 response, in principle, the Environment Agency supports proposals to improve national infrastructure. We are pleased that Highways England (HE) have undertaken significant work in relation to fluvial flood risk since the last hearings in November 2015.

1.2 Upon reviewing the January 2016 version of the flood risk assessment (FRA) we were satisfied with the updated principles of the FRA and the outline floodplain compensation (FpC) scheme. However, we had some outstanding concerns relating to the proposed FpC scheme and particular site locations including E6-B1 at Junction 8/9. These concerns were noted within our deadline 6 response.

1.3 We have reviewed the latest FRA document (revision February 2016) with regards to our remit. We are pleased to note that the latest February 2016 FRA addresses the concerns we raised in previous correspondence. We now have no objection to this scheme on fluvial flood risk grounds subject to the inclusion of the agreed DCO requirement wording.

1.4 Furthermore, we are pleased to inform the ExA that we have agreed the wording of a flood risk requirement, relating to fluvial flood risk and a floodplain compensation scheme. This has been included within the ExA’s draft DCO wording.

Highways England Response

1.1.1 Highways England is pleased to note that the Deadline VII submission of the Flood Risk Assessment (“FRA”) satisfies all of the Environment Agency’s requirements and that the Environment Agency now confirms that they have no objection to the Scheme on fluvial flood risk grounds. Highways England is also pleased to confirm agreement on the wording of Requirement 23 relating to fluvial flood risk and confirm that this revised wording was included in the updated DCO submitted on 15 February 2016.

2. Draft Development Consent Order

2.1 We are pleased that Highways England has agreed to certain notice provisions requested by the Environment Agency. These primarily relate to access to main rivers and interference with apparatus and a written notice period of 8 weeks is being proposed. However, following the hearings we continued to liaise with Highways England on the particular wording of protective provisions for the Environment Agency.

2.2 On 15 February 2016 we provided amendments to the applicant on their latest draft these. We understand that this was the same date that highways England submitted a revised draft DCO. Our preferred protective provision wording is noted in Appendix 1 – should the ExA have any queries why we require the wording as noted in appendix 1 please feel free to contact us.

2.3 We wish to provide the following remarks on the draft DCO requirement wording.
2.3.1 **Requirement 8 (CEMP)** - As noted in our answers submitted for deadline 5 (8 January 2016) to the ExA second round of written questions, we support the ExA’s suggested requirement wording as this provides further clarification on the details contained within the CEMP.

2.3.2 **Requirement 12 (Contaminated land and groundwater)** - As confirmed at the November hearing sessions and in the associated follow-up documentation submitted for deadlines 4 and 5, we are satisfied with the wording of requirement 12.

2.3.3 **Requirement 14 (Surface Water Drainage)** - This requirement relates specifically to surface water drainage. Under the Flood and Water Management Act 2010 surface water drainage is the responsibility of the Lead Local Flood Authorities (LLFA). The LLFA’s are referenced in requirement 14 and we believe they are best placed to confirm if they wish to seek amendments to this requirement.

2.3.4 **Requirement 24 (Biodiversity management strategy)** - As confirmed at the November hearing sessions and in the associated follow-up documentation submitted for deadlines 4 and 5, we are satisfied with the wording of requirement 12.

2.3.5 **Requirements 23 (Flood Risk)** – We are satisfied with the latest flood risk requirement wording as noted in the current draft DCO wording.

2.4 **DCO Discharge of Requirements – Schedule 2, Part 2**

2.4.1 Our concerns relating to the proposed discharge of requirements are noted in our letter to the ExA submitted for deadline 6. In summary, we do not have a strong preference as to whether the discharging body is the Secretary of State (SoS) or a joint planning board of the local planning authorities.

2.4.2 In either case we would wish to see included within Part 2 of Schedule 2 a provision specifying that where consultation is required in relation to the discharge of a requirement, the Secretary of State has a set time period within which it must consult. Our reasons for seeking this inclusion are noted within our deadline 6 submission (pages 4 and 5). Our suggested amendment to the DCO is to add a new paragraph 2(3) to Part 2 of Schedule 2 to read as follows:

> 2(3) If the requirement specifies that consultation with a requirement consultee is required, the discharging authority shall issue the consultation to the requirement consultee within 3 business days of receipt of the application.

2.4.3 The current paragraph 2(3) of Part 2, Schedule 2 would then become paragraph 2(4) of Part 2, Schedule 2.

2.4.4 The proposed additional wording is based on similar wording found in other DCOs. For example, the Hinkley Point C New Nuclear Power Station DCO, the North Killingholme Power Project DCO and the Thames Tideway Tunnel DCO.

2.5 We understand that Highways England are proposing to liaise with the parties referenced in the requirements prior to submitting a summary and request to discharge the requirement to the SoS. Additionally, within the current requirement wording it is noted that the SoS may, if they wish to do so, also consult the relevant party. This is termed by the applicant as a ‘dual consultation’ process. As a note of record we have informed the applicant that any post-permission consultation by the applicant and/or their consultants may fall within our cost recovery service and an appropriate cost recovery agreement would be set-up between the HE and the Environment Agency under the current processes. Our cost recovery process is in accordance with recent government ministerial statements. It applies to the public, charities and government agencies. For clarity, in this instance consultations directly from the SoS will not fall within our cost recovery service.

Highways England Response
2.5.1 Highways England acknowledges the matters raised by the Environment Agency in relation to the draft Development Consent Order ("DCO"). Highways England has previously addressed these matters in the following documents:

2.5.1.1 Highways England's response to the Environment Agency's Deadline VI representations, submitted at Deadline VII (REP7-170);

2.5.1.2 Highways England's written summary of the oral representations made at the Issue Specific Hearing in to the DCO, submitted at Deadline VII (REP7-038); and

2.5.1.3 Highways England's response to the Environment Agency's Deadline VII representations, submitted at Deadline VIII.

2.5.2 Consequently, Highways England considers that no further response is required.

2.5.3 In addition, Highways England notes that a response was provided on the drafting suggested by the Environment Agency at Appendix 1 and 2 of its Deadline VIII response, as part of Highways England's response referred to at paragraph 2.5.1.3 above. As such, these appendices have not been reproduced here.