

# Report for Department of Communities & Local Government STATUTORY CONSULTEE PERFORMANCE 2014/15 Canal & River Trust (the Trust)

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## Canal & River Trust as Statutory Consultee: Duty to Respond and Report

### Purpose of the Report

Provisions contained within the Planning and Compensation Act 2004 and the Town and Country Planning (Development Management Procedure) (England) Order 2015 set out the requirements on Canal & River Trust as statutory consultee. As such, the Canal & River Trust as statutory consultee is required to:

- Provide a substantive response within 21 days from receipt of the document forming the consultation to pre-application requests for advice from developers and to respond to requests for advice from local planning authorities in accordance with Article 22 of the Town and Country Planning (Development Management Procedure) (England) Order 2015.
- Compile a report on an annual basis for the Secretary of State on compliance with the provisions under the Planning and Compensation Act 2004 and with Article 23 of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

In addition the Planning Practice Guidance, in relation to Statutory Consultee performance reports, states that “it would be helpful if these reports also identify the number of instances where negotiated extensions to the 21 day deadline are agreed with the local planning authorities concerned”. We have included this information.

The report consists of the following information:

- The number of consultation requests received at pre-application stage which required a response within the reporting period and the number responded to within the prescribed consultation period;
- The number of registered planning application consultation requests received which required a response within the reporting period and the number responded to within the prescribed consultation period;
- The number of consultation requests received from a person other than a local planning authority which required a response within the reporting period and the number responded to within the prescribed consultation period;
- A brief summary of reasons why the statutory deadline has not been met in all cases; and
- Key issues and challenges faced by the Trust as statutory consultee.

### Statutory Consultee Status for Planning Applications

The Canal & River Trust (“the Trust”) is a Statutory Consultee on planning applications involving:

*‘Development likely to affect -*

- *any inland waterway (whether natural or artificial) or reservoir owned or managed by the Canal & River Trust; or*
- *any canal feeder channel, watercourse, let off or culvert, which is within an area which has been notified for the purposes of this provision to the local planning authority by the Canal & River Trust’*

The requirement is set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015-

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In preparing a substantive response, the Trust seeks advice from a range of internal specialists including, bridge, geotechnical and structural engineers, hydrologists, ecologists, heritage advisors etc.

The Notified Zone for Consultation with the Trust transcends **177** local authority administrative boundaries as illustrated in the table below.

Type of Local Planning Authorities in England & Wales	No of Local Planning Authority administrative areas transcended by waterways owned or managed by the Trust
Greater London Authority	1
County Councils	17
National Park Authorities	3
Unitary Authorities	52
London Boroughs	18
Non Unitary Authorities	78
Welsh Unitary Authorities (County Boroughs & County Councils)	7
Other – UDCs, Olympic Legacy etc	1
<b>TOTAL</b>	<b>177</b>

## Canal & River Trust's Overall Performance

The Trust received a total of **2144** pre-application and registered planning application consultations in England and Wales to which a response was required within the period 01 April 2014 to 31 March 2015.

This figure includes **393** consultations to which the Trust has no statutory duty to respond but where we consider it appropriate to do so in order to protect our assets and/or where the consultation falls within our notified areas for consultation. This includes consultations from authorities within Wales, applications for Listed Building Consent, applications for the Discharge of Conditions, EI Scoping consultations etc. For the purposes of the remainder of this report, these consultations have been excluded.

The Trust therefore received a total of **1751** pre-application and registered planning application consultations in England to which there was a duty to respond within the period 01 April 2014 and 31 March 2015. The figures reported below relate to these consultations.

Consultation Type	Number of consultations received requiring a response in 2014/15
Pre-application consultations received from LPAs	63
Pre-applications received from others	54
Registered Planning Application Consultations received from LPAs	1634
Planning Application Consultations received from others	0
<b>TOTAL</b>	<b>1751</b>

Of these **1751** statutory consultations received, the Trust did not receive sufficient information to enable us to make a substantive response to **15** of these consultations despite requests made.

A further **11** consultations were subsequently withdrawn within the statutory period and before the Trust made a substantive response.

We therefore consider that the Trust had a duty to respond to **1725** consultations as follows:

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Consultation Type	Net number of consultations received requiring a response in 2013/14
Pre-application consultations received from LPAs	62
Pre-applications received from others	53
Registered Planning Application Consultations received from LPAs	1610
Planning Application Consultations received from others	0
<b>TOTAL</b>	<b>1725</b>

The following analysis is based on these figures.

In the period 01 April 2014 to 31 March 2015 the Canal & River Trust received a total of **115** pre-application consultations, which represents **6.6%** of the total number of consultations requiring a response received. Of these **62 (54%)** were received from LPAs whilst **53 (46%)** were received from persons other than a Local Planning Authority ("LPA").

Under the provisions of Article 22 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, statutory consultees are required to provide a substantive response within 21 days upon receipt of the document forming the planning consultation, to pre-application requests for advice from developers and to respond to requests for advice from LPAs in respect of registered planning applications. Where the 21 day deadline has been extended by the agreement of both parties, it is the extended date which performance should be recorded against.

	No. of Registered Planning Application Consultations	No. of Pre-Application Consultations received from LPAs	No. of Pre-Application Consultations received from others	Total No of Consultations
No. of consultations in compliance with statutory deadlines	1320	45	33	1398
No. of consultations in Compliance with statutory deadlines & agreed extension	1452	51	45	1548
No. of application consultations in non-compliance <sup>1</sup>	158	11	8	177
<b>TOTAL</b>	<b>1610</b>	<b>62</b>	<b>53</b>	<b>1725</b>

<sup>1</sup> These figures include consultations where a response was made outside of statutory deadlines and/or any agreed extension for reasons discussed below, as well as consultations to which no response was made within the relevant timescale at all

During the period 01 April 2014 to 31 March 2015 the Trust provided a substantive response to **1398** consultations in compliance with the statutory deadline ( $\leq 21$  days), which equates to **81%** of the total consultations received as defined above. A substantive response was also provided to a further **150** consultations where the 21 day deadline had been extended by agreement of both parties.

During the period 01 April 2014 to 31 March 2015 the Trust provided a substantive response to a total of **1548** statutory consultations in compliance with the statutory deadline and/or agreed deadline extension, which equates to an overall response rate of 90% against a DCLG set target response rate of 80%-95%.

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Therefore, during this period a substantive response to **177** consultations was not provided within 21 days of receipt and/or an agreed extension period, which equates to **10%** of the total number of consultations received.

The overall response rate of 90% in compliance with the statutory deadline and/or agreed deadline extension is lower than the 93% reported in 2013.14. There are three principal factors which have contributed to this 3% drop in the overall response rate:

- There has been a significant increase in the number of **Nationally Significant Infrastructure Projects (NSIPs)** consultations received by the Trust;
- Significant planning resources have been devoted to working upon the Trust's response to **HS2 Phase 1 and 2**, this has involved extensive engagement with HS2 Ltd and other key stakeholders;
- **Internal capability issues** resulting from staff absences within the planning team and restructuring of certain technical teams which support our statutory consultee function.
- Throughout the year the Trust has faced a number of internal issues such as staff sickness and changes within the Team and restructuring.

However, the Trust is currently recruiting additional planning resources to support our statutory consultee activities.

#### Reasons for Non Compliance with Statutory Deadline for Consultations

As stated above, a substantive response to **177** consultations was not provided by the Trust within 21 days of receipt and/or within an agreed extension period. For **33%** of those consultations however, substantive responses were provided within 7 days of the deadlines as shown in the table below. Furthermore, in **7%** of these cases we were not supplied with sufficient information by either the LPA or applicant to enable us to make a substantive response at all.

№ of additional days that statutory deadline and agreed extension of time exceeded	№ of Consultations	%
1 day	14	8
2 - 3 days	22	12
4 – 7 days	23	13
8 – 14 days	38	21
15 – 21 days	33	19
22 – 28 days	14	8
> 28 days	21	12
No response made / date not properly recorded	12	7
<b>TOTAL</b>	<b>177</b>	<b>100%</b>

The reasons recorded for non-compliance with statutory deadline and agreed extensions of time for the **177** consultations during the period 01 April 2014 – 31 March 2015 are listed in the table overleaf.

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Principal reasons for non- compliance	№ of Consultations	%
Verbal response given within statutory deadline but written substantive response exceeded statutory deadline or agreed extension of time	0	0
Accompanied by a full Environmental Statement	0	0
Amendments subsequently received	1	<1
Where an extension of time request was not agreed by applicant	0	0
Resourcing Issues e.g. recruitment & retention; sick leave; annual leave; internal consultations	161	91
Application consultation sent to the wrong Trust office	0	0
Public Holiday	4	2
Planning applications consultation received making response to pre-app unnecessary	3	2
Other or reason not properly recorded	8	4
<b>TOTAL</b>	<b>177</b>	<b>100%</b>

## Key Issues and Challenges faced by the Trust as Statutory Consultee

As identified in previous reports over recent years, there are a number of key issues which continue to affect the Trust's effectiveness as a statutory consultee:

1. **6.6%** of all statutory consultations received were **pre-application requests** for advice from Local Planning Authorities and / or developers. This represents a reduction from last year when a figure of 7.4% was reported. The relatively low number of pre-application consultations it received, remains a key concern for the Trust. It is very important for Local Planning Authorities and developers to recognise from the outset that new waterside developments place extra liabilities and burdens upon the Trust and addressing these issues at the pre-application stage will be beneficial.
2. There is a significant issue related to the **delay** between LPA's sending out the notification of the application and when the documents become available on the web site. In some instances, this can be some time and regularly requires follow up with the LPA to obtain the information. Furthermore, it is not uncommon for a LPA notification to state that information will be available on line within a certain period of time, sometimes up to 7 days, which clearly impacts on the 21 day statutory consultation period.

Whilst the Trust supports electronic consultation, the documents need to be available at the time when the consultation is received. The Trust therefore seeks support from DCLG in relation to encouraging LPAs to adopt the practice of the information being available online prior to the consultation being sent out.

Although the 21 day consultation period does not commence until the necessary documentation is available, until it is we are unable to log the consultation and there are resource implications

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for continually checking availability. Furthermore, there are pressures associated with meeting a LPAs deadline for making a decision which may not alter even if there is a week's delay before documents are available.

3. In the period 01 April 2014 to 31 March 2015 the Trust received **472** consultations from LPAs which were outside the notified areas for consultation and where the LPA was consulting us for no specific reason. These were returned to those authorities and the Trust did not respond to them further. This represents a significant increase of over 30% from the figure of **364** reported in 2013.14. Identifying and dealing with these consultations clearly has resource implications for the Trust.
4. As stated earlier in this report, the Trust also received 15 consultations in 2014/15 where it was never provided with sufficient information to enable a substantive response to a consultation to be prepared despite repeated requests for it. In some instances these consultations are still pending determination and the information has still not been received over 90 days from the first date of consultation. In others, LPAs issued a decision before the information to enable us to respond was forthcoming.
5. Very few decision notices are received by the Trust from Local Planning Authorities. Copies of decision notices and planning obligations agreements (S106 Agreements) are required by the Trust in order to:
  - Assist the Trust in checking compliance with conditions
  - Monitor the Trust's effectiveness and value as statutory consultee
  - Make appropriate comments on future applications given the site history

It would be helpful if LPAs were obliged to provide electronic copies of decision notices, or a hyperlink to the decision, within seven working days of being issued to the applicant. It would also be helpful if electronic copies of planning obligation agreements were to be made available.

Finally we would like to reiterate our commitment to working with the DCLG and others to explore new innovative ways of working to improve the performance of statutory consultees and local planning authorities in achieving our shared objective of supporting the delivery of sustainable growth. We would welcome the opportunity to meet with you to discuss this further.

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