

# Report for Department of Communities & Local Government STATUTORY CONSULTEE PERFORMANCE 2015/16 Canal & River Trust (the Trust)

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

### Purpose of the Report

The Canal & River Trust is a statutory consultee as set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015. As a statutory consultee we are required to compile a report for the Secretary of State on our performance in responding to consultations. This is our annual report for the period 1<sup>st</sup> April 2015 to 31<sup>st</sup> March 2016.

### 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.

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>

### Number of consultations received

The Trust received a total of **2255** pre-application and registered planning application consultations in England and Wales to which a response was required within the period 01 April 2015 to 31 March 2016.

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This figure includes **366** 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 figure includes consultations from authorities within Wales, applications for Listed Building Consent, applications for the Discharge of Conditions, EIA Scoping consultations etc. For the purposes of the remainder of this report, these consultations have been excluded.

The Trust therefore received a total of **1889** pre-application and registered planning application consultations in England to which there was a duty to respond within the period 01 April 2015 and 31 March 2016. 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	66
Pre-applications received from others	47
Registered Planning Application Consultations received from LPAs	1776
Planning Application Consultations received from others	0
<b>TOTAL</b>	<b>1889</b>

Of these **1889** statutory consultations received, the Trust did not receive sufficient information to enable us to make a substantive response to **14** of these consultations despite requests made.

A further **5** 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 **1870** consultations as follows:

Consultation Type	Net number of consultations received requiring a response in 2013/14
Pre-application consultations received from LPAs	64
Pre-applications received from others	47
Registered Planning Application Consultations received from LPAs	1759
Planning Application Consultations received from others	0
<b>TOTAL</b>	<b>1870</b>

The following analysis is based on these figures.

## **The Canal & River Trust's Overall Performance.**

The Trust is required to make a substantive response within 21 days of receiving sufficient information or within an extended period which has been agreed between the parties.

The table below sets out our compliance in this regard.

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	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	1372	46	33	1451
No. of consultations in Compliance with statutory deadlines & agreed extension	1567	57	37	1661
No. of application consultations in non-compliance	192	7	10	209
<b>TOTAL</b>	<b>1759</b>	<b>64</b>	<b>47</b>	<b>1870</b>

In summary **the overall response rate within 21 days and/or an agreed extension period is 89%**. This **meets** the DCLG set target response rate for 80 – 95% of responses to be made within 21 days and/or an agreed extension.

This response rate is 1% less than reported in 2014/15 and the first time since the duty to respond and report was introduced that we have reported an annual performance level below 90%. There are two principal factors which have contributed to this minor drop in the overall response rate:

- **Increase in volume of consultation received.** The Trust received **145** more consultations where it had a duty to respond in the period 01 April 2015 to 31 March 2016 than it did the previous year. This represents an increase of over **8%**. The Trust also has to resource responding to HS2 and Nationally Significant Infrastructure Projects.
- **Internal capacity and capability issues.** 2015/16 saw significant change to the planning team. There was sickness and 2 experienced members of staff decided to leave the Trust. This resulted in not only the loss of planning professionals but planning professionals with knowledge of the organisation and the specialist matters which arise in relation to proposals affecting our waterways. The team lost 33% of the people who, at that time, were responsible for responding to planning applications. During the year an experienced manager also left the team. Although the Trust sought to maintain performance with the use of agency staff, there were times when there were vacant posts.

The planning team was also restructured during 2015/16. The Trust now has a team dedicated to responding to statutory consultation and development plan matters. As of April 2016 this team is now fully staffed. Our unaudited response rate for the first two months of 2016/17 has recovered to over 95%. Furthermore the Trust will shortly be introducing a new system to improve the longer term efficiency of processing consultations.

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## Reasons for Non Compliance with 21 day deadline or agreed extension for Consultations

A substantive response to **209** consultations was not provided by the Trust within 21 days of receipt and/or within an agreed extension period. For **42%** of those consultations however, substantive responses were provided within 7 days of the deadlines as shown in the table below.

№ of additional days that statutory deadline and agreed extension of time exceeded	№ of Consultations	%
1 day	31	15
2 - 3 days	26	12
4 – 7 days	31	15
8 – 14 days	42	20
15 – 21 days	28	13
22 – 28 days	12	6
> 28 days	21	10
No response made / date not properly recorded	18	9
<b>TOTAL</b>	<b>209</b>	<b>100%</b>

The reasons recorded for non-compliance are below.

Principal reasons for non- compliance	№ of Consultations	%
Accompanied by a full Environmental Statement	1	<1
Amendments subsequently received	5	2
Resourcing Issues e.g. recruitment & retention; sick leave; annual leave; internal consultations	180	86
Public Holiday	2	1
Other or reason not properly recorded	21	10
<b>TOTAL</b>	<b>209</b>	<b>100%</b>

## Pre-application Consultations

In the period 01 April 2015 to 31 March 2016 the Canal & River Trust received a total of **111** pre-application consultations, which represents **6%** of the total number of consultations requiring a response received. Of these **64 (58%)** were received from LPAs whilst **47 (42%)** were received from persons other than a Local Planning Authority (“LPA”).

## 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:

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1. **6%** of all statutory consultations received were **pre-application requests** for advice from Local Planning Authorities and / or developers. This represents a continued reduction from last year when a figure of 6.6% 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.

Early engagement with the Trust also allows the identification of issues such as structural integrity and flooding matters which can affect the delivery of schemes. The Trust considers that it is important for such matters to be raised early in the process. We are concerned that the proposed consultation arrangements for Permission in Principle on allocation in local, neighbourhood plans and potentially brownfield registers and consultation arrangements for technical details consent may undermine delivery of housing if Local Planning Authorities are not statutorily required to involve the Trust.

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 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. The Trust continues to receive a substantial number of 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. Identifying and dealing with these consultations clearly has resource implications for the Trust diverting our attention from processing statutory consultations.
4. As stated earlier in this report, the Trust also received 14 consultations in 2015/16 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

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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 have made suggestions to DCLG about arrangements which we feel would be appropriate to address our concerns in relation to the operation of Permission in Principle.

## **Contact Details**

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