

**AGENDA MANAGEMENT SHEET**

<b>Name of Committee</b>	<b>Cabinet</b>
<b>Date of Committee</b>	<b>7th September 2006</b>
<b>Report Title</b>	<b>Department for Transport Consultation on Draft Guidance on Intervention Criteria</b>
<b>Summary</b>	<p>The Traffic Management Act 2004 was introduced to augment existing powers of local authorities under which they maintain and improve their highway network. Further it imposes the Network Management Duty, which requires local traffic authorities to do all that is reasonably practical to manage the network effectively to keep traffic moving.</p> <p>The Act includes the concept of intervention by Government if local authorities fail to perform. The Intervention criteria also sets out an engagement process that encourages an authority to recover its position so as to avoid the stage where a Traffic Director is appointed by Government.</p> <p>Under Section 27 the Secretary of State is required to give guidance about the criteria proposed for the intervention process. The Department for Transport is currently now consulting on this guidance.</p> <p>This report discusses the current consultation on the draft intervention criteria and recommends how the Council should respond to the consultation.</p>
<b>For further information please contact</b>	<p>Keith Davenport  Transport Planning Unit  Tel. 01926 735673  keithdavenport@warwickshire.gov.uk</p>
<b>Would the recommended decision be contrary to the Budget and Policy Framework?</b>	Yes/No
<b>Background Papers</b>	The Department for Transport consultation on Draft guidance on intervention criteria dated 6th July 2006.

**CONSULTATION ALREADY UNDERTAKEN:-**

*Details to be specified*

- Other Committees  Cabinet 28th April 2005.
- Local Member(s)  .....  
(With brief comments, if appropriate)
- Other Elected Members  Councillor K Browne )  
Councillor Mrs E Goode ) for information  
Councillor Mrs J Lea )
- Cabinet Member  Councillor M Heatley  
(Reports to The Cabinet, to be cleared with appropriate Cabinet Member)
- Chief Executive  .....
- Legal  I Marriott
- Finance  .....
- Other Chief Officers  .....
- District Councils  .....
- Health Authority  .....
- Police  .....
- Other Bodies/Individuals  .....

**FINAL DECISION**

**YES/NO**

*(If 'No' complete Suggested Next Steps)*

**SUGGESTED NEXT STEPS :**

*Details to be specified*

- Further consideration by this Committee  .....
- To Council  .....
- To Cabinet  .....
- To an O & S Committee  .....
- To an Area Committee  .....
- Further Consultation  .....

## Cabinet - 7th September 2006

### Department for Transport Consultation on Draft Guidance on Intervention Criteria

#### Report of the Strategic Director for Environment and Economy

##### Recommendation

That a response to the consultation by the Department for Transport on the Draft Guidance on Intervention Criteria be submitted in accordance with paragraph 4.1 of this report.

## 1. Introduction

- 1.1 The Traffic Management Act 2004 (TMA) was introduced to augment existing powers of local authorities under which they maintain and improve their highway network. Further it imposes the Network Management Duty (NMD), which requires local traffic authorities to do all that is reasonably practical to manage the network effectively to keep traffic moving.

## 2. Background

- 2.1 The TMA is intended to promote better conditions for all road users through proactive management of road networks. The Act adds new duties and powers on local traffic authorities, building upon their existing range of powers and duties under which they maintain and improve the network and manage its use and the activities taking place on it.
- 2.2 The Act introduces a major new duty, the Network Management Duty (NMD), on Local Traffic Authorities (LTAs) and advice is provided by the Department for Transport (DfT) in the form of the Network Management Duty Guidance. LTAs should embed desired outcomes and appropriate policies and plans under the NMD within Local Transport Plans.
- 2.3 The new Network Management Duty was implemented on 4th January 2005. This placed upon all local traffic authorities a duty to manage their road network with a view to achieving... "the expeditious movement of traffic on the authority's road network" and, "facilitating the expeditious movement on road networks for which they are not the traffic authority."

- 2.4 The scope of the duty is wide, however it includes the following requirements:-
- (i) To consider the needs of all road users, including utilities.
  - (ii) To manage the road space for everyone.
  - (iii) To identify current and future causes of congestion and disruption, and to plan and take action accordingly.
  - (iv) To put arrangements in place to gather accurate information about planned works or events, consider how to organise them to minimise their impact, and agree (or stipulate) their timing to best effect.
  - (v) To establish contingency plans for dealing with unforeseen incidents outside the authorities' control e.g. adverse weather, security alerts, and major emergency incidents.
  - (vi) To identify trends in traffic growth on specific routes and put in place policies for managing incremental change.
  - (vii) To recognise that the implications of the actions of a local traffic authority do not stop at its borders.
- 2.5 At its meeting on 28th April 2005 Cabinet considered a report on the TMA and the DfT consultation on the proposed changes to the existing regulatory framework, within which utility companies are permitted to dig up roads, and resolved that the general principles were supported but some concerns with the detail of the consultation should be highlighted to the DfT.

### **3. Consultation**

- 3.1 If an LTA is failing to carry out its NMD effectively, the TMA also included the concept of Intervention powers whereby the Secretary of State has the ultimate sanction to appoint a Traffic Director. How far the Traffic Director would intervene in the running of the authority's duties would depend on the circumstances of each case. The activities of any such Traffic Director would be at the LTA's expense.
- 3.2 Within the TMA the Secretary of State is charged with publishing guidance about the criteria proposed for deciding whether to issue an Intervention Notice or Order. The Department for Transport is currently now consulting on this guidance
- 3.3 For poorly performing authorities, invoking intervention is seen by DfT as their means to encourage better management of the road network. The proposals provide a built in opportunity for engagement and recovery of the situation by joint working with the DfT at an early stage with the aim of making improvements. The Intervention criteria sets out an engagement process to encourage an authority to recover so as to avoid the stage where a Traffic Director is appointed.

- 3.4 It is accepted by the DfT that each LTA has other obligations and policies which it must address. This is to be taken into account when making an assessment of an authority's individual performance. It will consider the approach to the duty in the wider context of an authority's wider responsibilities and will not expect each authority's approach to be the same. They expect each authority to put in place arrangements and action for performing the duty. All authorities should report on how they are managing their networks and tackling congestion within existing reporting mechanisms. They will look for a robust reporting mechanism that does not place an unnecessary burden on the authority. We propose to report progress through the Local Transport Plan Annual Progress report.
- 3.5 The criteria sets out how the DfT will assess the evidence to determine whether failure of the NMD has occurred. They will look at existing reports as well as any supporting documentation. They will also take into account any "serious issue about traffic movement" on an authority's road network.
- 3.6 In conducting this assessment they will consider these primary questions:-
- (i) To what extent has an authority had regard for the NMD guidance in performing its network management duties?
  - (ii) To what extent has the LTA considered and where appropriate taken action to achieve more efficient use of the road network.
  - (iii) To what extent has the LTA exercised any power in support of this action?
  - (iv) To what extent have indicators and targets to reduce congestion been met?
  - (v) To what extent do mitigating circumstances account for an apparent failure of a duty?
- 3.7 If the DfT does not have sufficient information to answer these questions they will contact the authority informally. Whilst it is expected that this informal approach will be the main method of contact there are powers to direct an authority to provide the information within a specified time. The guidance does set out a progressive approach to Intervention that allows an authority to responded at the informal stage.
- 3.8 The Intervention Notice is the first formal stage of the intervention process and is not intervention itself, which may follow if recovery is not managed. The notice will contain brief particulars of the areas of concern, along with an opportunity to make representations on those concerns. This may be sufficient to prevent further action but if this is not successful, then the Intervention Order would follow.
- 3.9 We are developing, in conjunction with other West Midlands Shires, Unitary and Metropolitan Authorities, a Network Management framework for integrated working where we develop and enhance our activities through the sharing of best practice.

## 4. Recommendation

4.1 It is recommended that this Authority supports the draft guidance on intervention criteria in general but that the concerns listed below be raised. The DfT has asked some specific questions as part of the consultation and these questions and proposed responses are attached as **Appendix A**.

- (1) The NMD indicates that the DfT will provide advice on performance indicators, however, the draft guidance does not include any guidance on these performance indicators. The guidance indicates that it is expected that authorities will keep in step with national policy and where necessary determine indicators locally. The indicators that we have developed in the LTP are locally determined ones and are attainable over the plan period. We have developed some very specific performance indicators that seek to compare local highway authority performance against that of the utilities, in an effort to achieve parity. Without the guidance expected in NMD the process of assessment by the DfT is by its nature generic and therefore the use of locally determined indicators will not allow comparisons between authorities to be easily made. This raises concern as to the fairness of any performance assessment derived from this reporting.
- (2) There is no guidance on the frequency and regime for reporting, only that it should form part of any existing reporting process for the authority. Without specific guidance as the mechanism for reporting performance, there is a need for reassurance that authorities will not be disadvantaged as a result of their chosen reporting regime.

JOHN DEEGAN  
Strategic Director for Environment and Economy  
Shire Hall  
Warwick

23rd August 2006

**Cabinet - 7th September 2006**

**Department for Transport Consultation on Draft Guidance on Intervention Criteria**

1. Is the process that is set out in the guidance clear and understandable?

Yes, although this authority has concerns with the reporting requirements when demonstrating the performance of an authority in meeting its obligations under the network management duty. The process indicates that there may be different reporting mechanisms in the future, our main concerns are the need for reassurance that authorities will not be penalised as a result of a chosen reporting regime

2. Is it helpful for the Guidance to show the steps in the process which will be adopted when considering whether to give an intervention notice or make an intervention order?

Yes.

3. Do you consider that the Guidance on Intervention Criteria is suitably derived from the Traffic Management Act 2004 and can assist local authorities in improving management of the road network?

Yes. It is suitably derived but the lack of progress in implementing the other parts of the act such as the changes to the New Roads and Streetworks Act 1991 and the introduction of permit schemes will compromise the ability of local authorities to manage their road networks.

4. Do you think that the approach of identifying the types of question in the Guidance on Intervention Criteria that each local traffic authority should be asking themselves under the Act is useful?

Yes, as long as a subjective judgement is taken on the response to any particular question and is looked at in the wider context of the Network Management Duty.

5. Do you think that the criteria are correct? If not, please state reasons. Will they ensure that local traffic authorities will carry out their network management duties properly?

Yes.

6. Do you think that the Guidance on Intervention Criteria covers all the necessary significant elements from the *Network Management Duty Guidance*? If not, which other elements should be included?

No, as it is clearly stated in paragraph 46 of the Network Management Duty Guidance that in addition to producing guidance on Intervention Criteria it would produce along with it advice on the choice of indicators. This has not been included in this guidance, it is required to enable comparisons between authorities and to ensure fairness in the assessment process.

7. The Guidance is aimed directly at a single traffic authority conducting its duties. However, section 26 of the Act makes provision in relation to functions which are exercised jointly and this is reflected in paragraph 42 of the Guidance. Are there examples of when any functions are currently exercised jointly, or might be in the near future?

None.

8. Do you have any comments on the Initial Public Sector Regulatory Impact Assessment (RIA)?

The guidance talks of the possibility of developing additional reporting process in the future, these would be outside of the existing reporting process therefore would put an additional administrative burden on local authorities, thereby increasing the costs to that authority.

9. Do you have any other comments on this consultation document?