

20 October 2011

Our Ref: TR010008 Heysham to M6 Link Road

Dear Mr McCreesh

TR010008 Draft Development Consent Order, Explanatory Memorandum Works plans, Land plans and Consultation report for the proposed Heysham-M6 Link Road.

I refer to your emails dated 30 September 2011 and 6 October 2011 seeking comments from the Infrastructure Planning Commission (IPC) on the draft development consent order (the Order), the draft Explanatory Memorandum (EM), the draft works and land plans and the draft consultation report relating to the proposed Heysham to M6 link road scheme. I set out below comments based on the information we have received.

We have now received a copy of the draft requirements. If we have any further technical comments we can discuss these at the planned meeting on 26 October 2011 at the IPC offices.

Any advice we give in this letter will be published as Section 51 advice.

Introductory comments

The IPC's advice below relates to technical and drafting aspects of the draft Order, associated documents and the consultation report without prejudice to the eventual decision of the Commissioner appointed to decide whether to accept the application under s55 of the Planning Act 2008 (PA 2008). It will be for the Examining Authority (ExA) appointed to examine the application to consider and decide whether or not, with legal advice as appropriate, an Order can be made in the form submitted within the powers of the PA 2008 and subject to any decision-making tests imposed by the PA 2008. Please note also that we have not identified all typographical errors (for example in article 2 the definition of "special road" contains an extra "a" before "an order") and assume that any errors of this nature will be corrected in the final version submitted with the application.

Although consistent drafting will be helpful, whether or not a provision in a draft Order is acceptable will depend on the facts and circumstances of the particular nationally significant infrastructure project (NSIP) and its impacts. It

is not appropriate or relevant to assume that it will be acceptable because it has been used in another Order. The EM must explain the purpose and effect of each provision in the draft Order and any departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the MP Order). Providing provisions used in predecessor regimes such as for Transport and Works Act Orders in the EM may be helpful but may not be sufficient. The IPC will need to understand the rationale for including the particular working of a provision in the context of the PA 2008.

It is ultimately the responsibility of developers to ensure that the draft Order applied for would provide them with all the necessary authorisations to implement the scheme. It is essential that the drafting of the Order accurately defines the land over which powers are required and so as to be consistent with the approach taken in the land and works plans.

Draft Development consent order and Explanatory Memorandum

The main points noted at this stage relate to the definition of development, explanations of consultation in respect of specific provisions, clarifications within provisions or the explanatory memorandum, and minor drafting queries.

These are set out in full in appendix 1.

In respect of the development for which you will be seeking development consent, further information should be provided in the Explanatory Memorandum (EM) to explain why it is considered that the park and ride site constitutes associated development, having regard to the principles in paragraph 10 of the CLG Guidance on Associated Development (February 2010: <http://infrastructure.independent.gov.uk/wp-content/uploads/2009/08/guidanceassocdevelopment.pdf>)

Articles 14, 16, 18 and 19 in respect of access to and from works, discharge of water, temporary closure of and works in the canal, and authority to survey and investigate land would benefit from further clarification on whether particular authorities have been consulted. These are explained in more detail in Appendix 1.

Article 22 regarding compulsory acquisition rights requires further explanation, in particular why modifications to compensation provisions are necessary to “ensure other Acts satisfactorily anticipate the creation of new rights”.

Draft Works and Land Plans

The draft Works and Land plans appear to meet the format requirements for plans under Regulation 5(3) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, whereby any plans, drawings or sections required to be provided by paragraph (2) shall be no larger than A0 size, shall be drawn to an identified scale (not smaller than 1:2500) and, in the case of plans, shall show the direction of North. The Land plans are currently missing a key plan, however, which must be provided to

show the relationship between the different sheets where a plan comprises three or more separate sheets under Regulation 5(4). The long-standing convention (without statutory basis) of colour coding land proposed to be acquired shown in pink, land over which a new right would subsist shown in blue, and replacement land shown in green on the Land plans has been followed as suggested in Annex 3 of CLG Guidance relating to procedures for compulsory acquisition. The redline boundary has yet to be confirmed on the Land plans.

Draft consultation report

Section 37 (3) (a) of the Planning Act 2008 (PA2008) requires an application for development consent to be accompanied by a consultation report which, under section 37 (7) of PA2008 means a report giving details of what has been done in compliance with sections 42 (duty to consult), 47 (duty to consult local community) and 48 (duty to publicise) of PA2008, details of relevant responses and the account taken of any relevant responses. Relevant responses are defined in section 49 (3) of PA2008.

Overall, the structure of the draft Consultation Report is clear and logical. It enables the reader to understand the nature of responses given to points made by consultees that are represented in the report.

The Consultation Report should provide justification for any departures from the relevant CLG or IPC guidance. In addition, you should ensure you are satisfied that you accurately report what responses you received and how you responded. Under Regulation 5 (5) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, the IPC has the power to request copies of all responses to consultation.

The draft consultation report makes references throughout to a previous planning consent and the various considerations during that process. The draft consultation report indicates in paragraphs 2.4.2, 3.4.4 and 6.11.8 that previous consultation on this scheme may have shaped the scope of consultation for this scheme and that previous planning decisions may be the basis for justifying elements of the application.

The IPC has advised at meetings dated 22/03/2011 and 17/08/2011 that although the previous scheme may shape the characteristics of your current scheme, it should have been made clear during consultation that the proposed application is a (new) application for development consent to be determined in accordance with the Planning Act. As previously advised your consultation report could explain how this was addressed in consultation. The Environmental Statement (as previously advised) will also need to provide an assessment of alternatives considered.

In respect of drafting, you should ensure the accuracy of figures in graphs and tables. In particular, we query whether the transport figures at 3.3.4 are per year or per day and note that the key in the graph at 2.14.2 is inaccurate.

You might find it helpful to look at the Section 55 Checklist which is available on our website in preparing your submission documents. For example, a full list of consultees should be provided to allow confirmation that s42 requirements have been met.

We note that you have indicated that you have published your s.48 notification. We have not seen a copy of the notification but presume that a copy will be provided in the final consultation report.

Should you have any queries in relation to the above or any other matter, please do not hesitate to contact us.

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Yours sincerely

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Appendix 1 – Draft Development Consent Order and Explanatory Memorandum

Article	Comment
Authorised development	Further information should be provided in the Explanatory Memorandum (EM) to explain why it is considered that the park and ride site is considered associated development having regard to the principles in CLG Guidance (paragraph 10).
Article 2: interpretation	<p>The definition of “the Order limits” and the relationship between the “Order land” and “the Order limits” (which is defined by reference to two plans) is not clear.</p> <p>We query whether the DCO is capable of prescribing interpretation of the Book of Reference which is not itself part of the DCO.</p>
Article 5 Limits of Deviation	It should be clarified that the sections are shown on the works plan.
Article 6 Benefit of Order	Paragraph 2 (b) is not entirely clear. Further explanation is required in the EM.
Article 8 Power to alter layout, etc., of streets	<p>Further information could be provided to clarify the compensation provisions that will apply in the event of loss or damage as a result of works under this article.</p> <p>Further clarification could be provided on the difference between “reinstate” and “restore” in Article 8(3)</p>
Article 11 Special Roads	Article 11(2) refers to “the Council” which term is not used elsewhere in the order.
Article 14 Access to and from works	Further information could be provided to clarify whether the local planning authority has been consulted about the deemed consent provision in this article.

<p>Article 16 Discharge of water</p>	<p>Further information could be provided to clarify whether the owners of water courses, public sewers and drains have been consulted about the deemed consent provision in this article.</p>
<p>Article 18 temporary closure of and works in the canal</p>	<p>It would be helpful if the EM provided reference to the powers in s120 and Schedule 5 of PA 2008 supporting this article. The EM could also clarify whether British Waterways has been consulted in relation to this article and an explanation (if included in the DCO) of any protective provisions.</p> <p>It is noted that there is no requirement to remove temporary works or reinstate land and no requirement for prior notification before exercising the power.</p>
<p>Article 19 Authority to survey and investigate land</p>	<p>Further information could be provided in the EM to clarify whether the highway/street authority has been consulted about the deemed consent provisions in this article. Further information could be provided to clarify why 14 days for deemed consent is used in Art 19(6) rather than 28 days in other articles.</p>
<p>Article 20 Compulsory acquisition of land</p>	<p>Is it necessary to include “for mitigation purposes”? Is this an incidental purpose?</p>
<p>Article 22 compulsory acquisition of rights</p>	<p>The EM explains that there is no need to make reference to existing rights. However, article 22 (1) refers to “rights already in existence”.</p> <p>Further explanation is required so that it can be understood why modifications to compensation provisions are necessary to “ensure other Acts satisfactorily anticipate the creation of new rights”. On what legal grounds is “general acceptance” based?</p>

	It is not clear why compensation for loss by extinguishment/suspension of private rights may be payable in accordance with the terms of s152 (no right to claim in nuisance).
Article 23 Private rights	It appears that article 23(7) should refer to paragraph 7(b) rather than 6(b)
Article 28 Temporary use of land for carrying out the authorised development	Query whether meaning of “any other permanent mitigation works” in art 28(1)(d) is sufficiently clear.
Article 29 temporary use of land for maintaining authorised development	It is not clear why liability to compensation is payable “where no right to claim is overcome”. This is not replicated in article 28 paragraph 7.
Article 35 Trees subject to tree preservation order	There is no definition of “trees plan”.
Article 38 defence to proceedings in respect of statutory nuisance	It is noted that this article is to be reviewed further in the light of proposed requirements.

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