

3 November 2011

Our Ref: TR010008 Heysham to M6 Link Road

Dear Mr McCreesh,

I refer to the meeting between the Infrastructure Planning Commission (IPC) and Lancashire County Council (applicant) (LCC) on Wednesday 26 October 2011. Set out below are comments on the following draft documents which have been submitted for the IPC's review:

1. the draft requirements you have prepared for inclusion at schedule 2 of the draft development consent order (**DCO**)
2. the draft information you have prepared for the purposes of a Habitat Regulations Assessment (**HRA**).

Advice contained in this letter will be published under s.51 of the Planning Act 2008 (PA 2008).

Further to our letter dated 20 October 2011, please be reminded that the IPC's advice relates to technical and drafting aspects of the draft documents. Advice provided at this stage does not prejudice the position of the IPC at further stages of the application process including the decision of the Commissioner appointed to decide whether to accept the application for examination.

We have omitted identifying typographical errors for the purposes of this letter as the IPC assumes the documents will be proofread before submission.

Draft DCO requirements

As indicated in our meeting on 26 October, the requirements should use drafting appropriate for a modern statutory instrument. For example, caps should not be used for defined terms; "thereafter" and other similar terms should be removed; wordy phrases should not be used (e.g. "until such time as" should be replaced with "until"); and definitions only used in one requirement should be contained in that requirement rather than being placed in a general definitions section.

The comments below deal primarily with the form of the requirements. The comments are not exhaustive and do not deal with all issues associated with the requirements. For example, we have not commented on whether any requirements are missing or on the adequacy of any mitigation measures. Please also refer to the comments below on the adequacy of survey information for the purpose of the HRA. You should ensure all relevant requirements are included, and that all necessary information is provided to the

IPC at the time of the application in order to assess the adequacy of any requirements. We would also welcome the submission, at the time of the application, of drafts of any mitigation schemes referred to in the requirements.

- **Definitions:** Definitions used in the requirements should be consistent with those used in the main body of the DCO. You may wish to consider providing definitions or using alternative terms where the following are terms used in the requirements: "works areas"; "road"; "site"; and "archaeological feature". Similarly, the defined term "link road" does not appear to be used and the defined term "soil" appears unnecessary.
- **Time limits and commencement** (draft requirements 1 and 3): You may wish to use wording from the Rookery South draft DCO (which is available on the IPC's website) as a basis for these requirements.
- **Implementation** (draft requirement 3): You may wish to consider whether the words "unless otherwise approved in writing by the relevant planning authority" potentially extend the scope of the works beyond the scope of the application (see *Midcounties Co-operative Limited v Wyre Forest District Council*). In addition, you may wish to consider whether the words "within the principles of the design and access statement" are sufficiently clear.
- **Ecology** (draft requirement 4): The terms "protected species" and "European Protected Species" are used but neither is defined. You may wish to refer to requirement 40 in the Rookery South draft DCO for an example of a similar requirement.
- **Contaminated land** (draft requirement 5): You may wish to consider (1) if it is clear who decides when remediation is "necessary" and (2) the meaning of "previously identified". You may wish to refer to requirement 13 in the Rookery South draft DCO for an example of a similar requirement.
- **Noise** (draft requirements 6 and 11): It would be helpful to group the two noise requirements together. You may wish to refer to requirements 17 to 23 of the Rookery South draft DCO for examples of requirements relating noise. You may also wish to consider whether the meanings of "approved noise attenuation measures" and "effective silencing equipment" are clear.
- **Safeguarding of watercourses and drainage** (draft requirement 12): This requirement refers to "contaminated or polluted drainage" and "foul drainage". You may wish to consider whether both of these terms are required.
- **Archaeology** (draft requirement 13): You may wish to consider whether it is clear what each "scheme" must contain.
- **Landscaping** (draft requirement 14): This requirement refers to both a "schedule of planting" and a "detailed landscaping scheme". You may wish to consider whether both terms are required.
- **Requirements relating to Lancaster and Morecombe College:** These requirements should form part of the main list of requirements.

Draft HRA information

The following comments relate to the draft document entitled 'Shadow Habitats Regulations Assessment' submitted to the IPC in October 2011 (**the draft HRA information**).

As we have previously explained, the IPC is not required to undertake a formal review of the applicant's draft HRA documents at the pre-application stage and we are unable to comment on the outcome or conclusions of the assessment or the merits of the scheme or any mitigation proposed.

The following advice is not intended to be prescriptive or exhaustive. It is for applicants to satisfy themselves that they have complied with the relevant legislation and guidance. The necessary preparatory work and evidence should be assembled by the applicant to a level of detail that will enable the competent authority to meet its duties under the 2010 Habitats Regulations.

Report format

Regulation 5(2)(g) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (**APFP Regulations**) requires applications for a DCO to be accompanied by a report identifying any European site to which the Habitat Regulations apply or any Ramsar site which may be affected, and to provide the competent authority with the information required in order to carry out an appropriate assessment of the implications of the proposed development for the European Site in view of the site's conservation objectives, or to enable them to determine whether an appropriate assessment is required.

The draft HRA information comprises comments on the IPC HRA checklists (the checklists are taken from the appendices to IPC Advice Note 10) and a series of supporting appendices including several chapters extracted from the draft ES. The APFP Regulations specifically require the provision of a 'report' and therefore the IPC advises that the information should be provided in a report format. It will not always be necessary for the report to duplicate information contained within other application documents including the ES, but the report should summarise and interpret relevant information and provide the necessary references.

The report itself should describe as a minimum:

- The process followed and the assessment methodology;
- The development, processes and method of work proposed as part of the NSIP;
- The European site(s) and its qualifying features potentially affected;
- An outline and interpretation of baseline data required to undertake the assessment;
- The assessment findings;
- The applicant's conclusion;
- The response from consultees in particular the statutory nature conservation body; and
- The information necessary for the competent authority to make an appropriate assessment (if required).

The report should provide clear reasons and justification for arriving at the conclusion.

The IPC welcomes the inclusion of comments on the IPC's HRA screening checklists as part of the HRA report and considers that the checklist comments should be included as an appendix to the report. The purpose of the IPC's HRA checklists are:

- To guide applicants on the relevant HRA information needed to support their application.
- To support the Examining Authority in checking at the acceptance stage that sufficient information required to either carry out appropriate assessment or to determine whether appropriate assessment is required, has been provided with the application.

It would be helpful if the applicant's comments on the checklists include cross-references to the relevant sections of the HRA report and any other relevant documents. Where sections of the HRA screening checklist are not considered by the applicant to be relevant or applicable, the reasons for arriving at this conclusion should be clearly stated.

Description of the project

In addition to identifying the distance of the project from the European site or qualifying features of the site, the report should also address any potential ecological connectivity between the proposed development site and European sites e.g. hydrological connections.

The checklist comments in the draft HRA information state that, given the lifetime of the project, it is impossible to define resource requirements. The applicant should consider whether there are any resource requirements during the construction period which are relevant to the HRA and if so provide details. Should the applicant consider that resource requirements are not relevant to the HRA then this should be explained in the report.

Defining the study area and identifying European sites

The report should define how the overall study area and specific survey areas have been determined. In determining the study area, the applicant has followed guidance set out in the DMRB guidance on HRA. The assessment should be impact led, and it is important that the study area is based not only on the indicative thresholds identified in the guidance, but on the zone of influence of the proposed development.

Appendix D of the draft HRA information sets out at Paragraph 1.4 the European sites located within 30km of the project. The need to further consider whether the proposed development has the potential to affect these sites has been based on the thresholds set out in the DMRB guidance. The IPC recommends that, beyond the application of the DMRB thresholds, the report provides an explanation for why no impact is likely to occur at each site, taking into account the qualifying features and the area that is likely to be affected by the proposed development.

Initial assessment of potential impacts on the European site

The report should identify all elements of the proposal with the potential to give rise to impacts, and should explain whether they are likely to occur. As well as identifying the elements that are likely to give rise to an impact, it is equally useful to explain why certain impacts are unlikely to arise. For example the applicant's comments at part 1C of the checklist, included in the draft HRA information, do not consider the potential for disturbance during construction, road kill and potential pollution incidents associated with construction works in the River Lune.

In addition to consideration of potential direct impacts on the European site, the report should also address potential impacts on qualifying features on and in the vicinity of the proposed development site where relevant.

Paragraph 4.1.2 of Appendix D of the draft HRA information considers the potential for impacts on the European site as a result of river borne pollutants. This section only identifies risks associated with drainage outfalls. The applicant should clarify whether there are works required within the River Lune, which is connected to the European Site, and if so should address any potential impact resulting from these works.

Baseline information

The IPC notes that the HRA is based on breeding bird surveys and wintering bird surveys undertaken at and in the vicinity of the site in 2004, and a further breeding bird survey update undertaken in 2011. A further wintering bird survey is planned for winter 2011-12. If this or any other data is required to assess and to conclude that no significant effects are likely, then it should be included in the HRA report. Any correspondence with Natural England in regards to the adequacy of supporting data should be included in the HRA Report.

Paragraph 4.2.1 of Appendix D of the draft HRA information indicates that the survey area for the updated survey in 2011 focussed on the route corridor and a buffer zone of approximately one field either side. The report should clarify whether this is the same as was previously surveyed and on what basis the survey area was determined. It would be useful to include a plan indicating the 'Field Survey Area'.

In-combination impacts with other projects or plans

It is not clear from the draft HRA information how potential projects have been identified and what approach to assessing in-combination impacts has been applied. The assessment of in-combination impacts should be developed in consultation with the relevant consultees. In particular the assessment should consider:

- projects that are under construction;
- permitted application(s);
- submitted application(s) not yet determined;
- projects on the IPC's programme of projects;
- development identified in the relevant development plan (and emerging development plans - with appropriate weight being given as they move closer to adoption); and
- other plans and programmes (as appropriate) which set the framework for future development consents/approvals, where such development is reasonably likely to come forward.

Paragraphs 2.3 and 2.4 of Appendix D of the draft HRA information indicate that previous studies concluded that, in relation to the northern route corridor, no significant impacts on European species of habitats were predicted, including from 'in-combination' impacts. There is the possibility that other development has been granted consent or identified within relevant plans since the previous assessment was undertaken in 2004 / 2005. The information provided in section 4, which comprises a reassessment of likely impacts, does not identify whether projects considered in the assessment of in-combination effects have been reviewed as part of the reassessment process. The report should clearly indicate how projects have been identified for inclusion or screened out of the assessment of in-combination effects.

The report should include any correspondence with the statutory nature conservation bodies which shows evidence of consultation and agreement on the approach to the assessment of in-combination effects.

Assessment of effects

All potential effect pathways should be identified and considered in the report, and where discounting potential pathways, the report should provide reasons for doing so.

The report should describe the key relationships that define the structure of the European site, and subsequently identify how the proposed development could interfere with these relationships, if at all. This does not appear to have been addressed under the section of the checklist included in the draft HRA information, which addresses interference with the key relationships that define the structure of the site.

The applicant's comments on the checklists indicate that a non-significant impact on bird movements and foraging habitat availability is predicted. The report should explain how significance is defined and why the identified impact is not likely to be significant.

The report should clearly explain the rationale for discounting any potential significant effects and should provide a level of information that is adequate to support the conclusion.

Mitigation

The Summary of Appendix F- Breeding Bird Survey – 2011, included in the draft HRA information, states that the Environmental Management Plan will use the conclusions of the bird survey report to advise on specific mitigation measures designed to maintain and/or improve the conservation status of the species identified as being present. The HRA report should clearly indicate whether the assessment has been undertaken on the basis that certain mitigation measures are implemented. If the mitigation measures identified relate to qualifying species, then these measures should be outlined in the main body of the report.

Consultation

The report should incorporate key correspondence with the statutory nature conservation bodies, specifically correspondence indicating agreement on the scope and approach to assessment, the adequacy and relevance of survey data, mitigation, and conclusions. The applicant may wish to consider the potential benefits of preparing a statement of common ground.

The names of agencies or bodies consulted should be provided in the report along with a contact name and telephone or e-mail address, and the date of consultation.

Yours sincerely,

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