



Meeting note

File reference	TR010014
Status	Draft
Author	Michael Baker
Date	10 June 2013
Meeting with	Cornwall Council
Venue	Planning Inspectorate, Temple Quay House
Attendees	Kath Haddrell (Case Manager) Sarah Green (Lawyer) Frances Russell (Environmental Services) Hannah Pratt (Environmental Services) Mark Allot (Cornwall Council) Alexis Field (Highways Agency) Amy Hallam (Parsons Brinkerhoff) David Hinde (Highways Agency) Amanda Odgers (CORMAC Solutions) Helen Ormes (DWF) David Phillips (CORMAC Solutions) Tim Walmsley (Cornwall Council) Helen Ward (DWF)
Meeting objectives	To discuss the draft documents submitted and other matters
Circulation	As above

Summary of key points discussed and advice given:

The Planning Inspectorate explained that it could give advice under s.51 Planning Act 2008 (as amended); a note of the meeting would be taken and any advice would be published on the website and that any advice issued under s51 would not constitute legal advice upon which the developer could rely.

The Planning Inspectorate gave advice about the draft DCO and Explanatory Memorandum. A written note of the advice was given to the applicant at the start of the meeting, appended to this meeting note.

The applicant was advised that the Explanatory Memorandum and the DCO needed to clearly explain how the project qualifies as an NSIP, and that there should be clarification on the relationship between the promoter, being the highway and planning authority, and the status of the road as a Secretary of State highway.

The Planning Inspectorate advised it would be helpful if the applicant could distinguish between the associated development and NSIP. The applicant enquired how this should be presented if the distinction is not possible; the Planning Inspectorate advised that any lack of distinction between the two elements should be clearly explained in the Explanatory Memorandum.

In relation to the discharging of requirements, the Planning Inspectorate advised that the Explanatory Memorandum should set out how the applicant would operate the discharging of requirements as both the discharging authority and the promoter of the scheme.

The Planning Inspectorate advised that special category and statutory undertaker land included in the application would not need certification if the application is made after 25 June 2013, however the Secretary of State will still need to be satisfied that the relevant tests are met. It was recommended that the applicant contact the relevant government departments as soon as possible to ensure that the tests governing the acquisition of said land can be satisfied.

The Planning Inspectorate informed the applicant that a draft Consultation Report and draft HRA report can be submitted for review. It was also advised that all responses to statutory consultation can be requested by the Planning Inspectorate during the acceptance period, so it should be ensured that these are available.

In response to a query regarding minor works that may need to take place outside the red line boundary, the Planning Inspectorate advised that the red line boundary submitted must be that which was consulted on. If a change to the red line involves minor works, the applicant must explain why this was not consulted on and set out the impact of these works. The applicant should also explain sequentially the changes to the redline boundary that have taken place in the formation of the scheme.

The applicant was informed that they should submit the shapefile of the red line boundary two weeks before the submission of the application.

The Planning Inspectorate advised the applicant to begin considering suitable venues in the vicinity of the site for the Preliminary Meeting and hearings that may be held during the course of the examination, should the application be accepted for examination.

The applicant informed the Planning Inspectorate that the site waste and construction management plans may not be prepared until after the Examination. The Planning Inspectorate advised that drafts should suffice and that in previous cases a requirement in the DCO has been set that the applicant agree these plans with the LA before construction commences.

Specific decisions / follow up required?

Applicant to provide shapefile 2 weeks before the submission of the application

Applicant may provide a draft Consultation Report, HRA report, Book of Reference, Statement of Reasons and an updated DCO and Explanatory Memorandum if needed.



Appendix 1

Legal advice from the Planning Inspectorate in draft DCO for Cornwall Council, A30 Temple-Higher Carblake Improvement.

June 2013

1. There appears to be some inconsistency between the explanatory memorandum (EM) and the development consent order (DCO) in relation to description of the works and the nature of the NSIP for which development consent is sought. This needs to be clarified.

The EM under the heading "NSIP – construction of a highway", states at 2.1 that the application is for an order to improve a 4.5km section of the A30 by upgrading to a dual carriageway. At 2.2 it describes the project as including the construction of a highway for a purpose connected with a highway for which the Secretary of State is the highway authority (the A30 trunk road) and the improvement of a highway for which the Secretary of State is the highway authority and which is likely to have a significant effect on the environment (improvements to the A30)

The DCO describes work no 1 as construction of a permanent highway to dual the A30 trunk road for a distance of 2.8miles (4.5km) between Temple and Higher Carblake. The remaining works numbered 2-4 are described as the construction of 3 new junctions and work number 5 is described as reconfiguration and relocation of private accesses.

The EM and the DCO need to be amended to clarify and explain exactly how the project is an NSIP within s.22 Planning Act 2008 (PA 2008). At present it is unclear if the proposed works to the A30 are considered to be construction of a new road for which the Secretary of State will be the highway authority or the improvement of a road for which the Secretary of State will be the highway authority. It is also unclear exactly which works the reference in the EM to the construction of a highway for a purpose connected with a highway for which the Secretary of State is the highway authority, relates to. It is assumed that this refers to the construction of the new junctions which will not be designated as a trunk road in accordance with Article 11, however this needs clarifying and explaining in the EM.

The anticipated submission date for the application is August 2013. The applicant should note that Draft statutory instrument, the Highway and Railway (Nationally Significant Infrastructure Project) Order 2013, was laid in parliament on 16 May 2013. It is anticipated that this will come into force towards the end of July. This Order amends the thresholds for NSIP's contained in the PA 2008. In relation to highways (s.22 PA2008) the Order removes all highways to be constructed / altered for a purpose connected with a highway for which the Secretary of State is (or will be) the highway authority, from the definition of an NSIP. The Order also introduces certain thresholds for construction / alteration of roads for which the Secretary of State is or will be the highway authority. Only projects where the area for

development is above the thresholds will be NSIP's – for a motorway, 15 hectares, a highway other than a motorway where the speed is over 50PMH, 12.5 hectares, for any other highway 7.5 hectares. If the project comes in after the Highway and Railway (Nationally Significant Infrastructure Project) Order 2013 comes into effect the EM and the DCO will need to clearly demonstrate how the project is an NSIP in accordance with the amended thresholds.

2. No distinction has been made between works which are an NSIP and works which are associated development. While it is acknowledged that there is no requirement for the DCO to distinguish between 2 categories, it would be helpful if these works could be distinguished in the Order. If they are not a clear explanation should be given for this in the EM. The applicant should note that the application form requires the works to be distinguished and DCLG guidance on associated development requires applicants, as far as practicable, to explain in their EM which parts of their proposal are associated development any why (see paragraph 10). The EM as drafted does not address this matter in enough detail.

3. The EM at 2.7 refers to Guidance on associated development: Applications to the Infrastructure Planning Commission September 2009. This guidance has now been superseded by Planning Act 2008 Guidance on associated development application for major infrastructure projects April 2013 and the EM should be amended to reflect this.

4. The EM frequently relies on the Heysham Order as precedent, it should be noted that this Order is currently subject to a Judicial Review challenge.

5. In the DCO Cornwall Council is defined as the undertaker (subject to any transfer) and the relevant local authority. The requirements of the Order require approval from the relevant local authority. It is questionable whether this is appropriate in principle given that this will effectively mean that the promoter and developer will be approving itself in discharging the requirements. If a decision is made to proceed on this basis then justification for this should be provided in the EM.

6. Article 38 of the DCO refers to documents certified by the Secretary of State, the environmental statement and the landscaping plans should be included in this as it is defined as being certified by the Secretary of State of the purposes of the Order.

7. The description of the works themselves in the DCO lack clarity and detail. For example, it is unclear what exactly is meant by the reconfiguration, improvement or adjustment of access to existing service stations (work No 1(b)).

8. It is advisable that detailed design plans of the bridges referred to in works 2-4 are provided with the application.

9. At page 28 DCO reference is made to 'further development within the Order limits' this should also state 'and which fall within the scope of the environmental impact assessment'. Reference to this at point (h) is insufficient as it should refer to all works (a) – (h).

10. In schedule 2 interpretation, the approved development plans is defined as plans certified in accordance with article 40(1), this is an incorrect reference, it should be article 38(1)

11. In schedule 2 interpretation, the link road is defined as 'the dual carriageway link road from the junction of the A683 and the A589 to Junction 34 of the M6 motorway'.

This link road is then referred to in requirement 8. I do not think this can be correct as it does not appear to refer to the development for which consent is sought. This needs clarifying.

12. The project includes the compulsory purchase of common land which is special category land and s.131 and s.132 PA 2008 will apply. If the application is submitted after the 25 June 2013 then a separate certificate will not be required and the matter can be dealt with during the examination, however, it is important for the applicant to remember that the Secretary of State will still have to be satisfied that the tests in s.131 and s.132 are met. If the Secretary of State is not satisfied that the tests are met any Order granting consent will be subject to SPP.

13. It appears that the project also includes the compulsory purchase of Statutory Undertakers land and rights and s.127 and 138 PA 2008 will apply. As above if the application is submitted after 25 June 2013 no certificate will be required but the Secretary of State will still need to be satisfied that the tests are met.