



3/18 Eagle Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer Services: 0303 444 5000
e-mail: enquiries@infrastructure.gsi.gov.uk

Guy Lewis
Highways Agency
Major Projects (North)
Lateral
8 City Walk
LEEDS
LS11 9AT

Your Ref:

Our Ref: TR010017

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Dear Guy

**Section 51 of the Planning Act 2008 (as amended)
Pre application advice about EIA matters in respect of the A19 / A1058 Coast
Road Junction Improvements**

This s.51 advice is provided in response to a project meeting held on 21 October 2013 between PINS and the Highways Agency. The advice explains the procedural requirements likely to occur in the event that the developer voluntarily submits an ES as part of their application for a DCO following the receipt of a negative screening opinion.

Background

The Highways Agency (developer) has chosen not to provide an environmental statement (ES) voluntarily but instead requested an Environmental Impact Assessment (EIA) screening opinion prior to carrying out s42 consultation, in accordance with EIA Regulation 6. The PINS screening opinion confirmed that the development was not EIA development. There is currently therefore no requirement to provide an ES in respect of the application and Regulations 8, 9 and 11 do not apply (the power to request a scoping opinion, requirement on SoS to notify consultation bodies and requirement to publicise respectively).

Pre-application stage

The developer is intending to confirm in its SoCC that the project is not EIA development (Regulation 10 (a)). There is therefore no requirement to publicise and consult on preliminary environmental information (Regulation 10(b)). If the developer states in its SoCC that the project is not EIA development and then submits an ES this may cause confusion over notification/ consultation/publicity.

Acceptance stage

If the application is made without an ES and on receipt of the application (i.e.

acceptance stage) it is considered that the negative screening opinion did not take into account new material information and the development now appears to be EIA development (Regulation 12(4)), then another screening opinion must be adopted and the provisions of Regulation 6 are relevant ((Regulation 6 (5) then applies (additional information needed from developer in order to adopt an opinion); Regulation 6(6) (21 days to adopt a screening opinion); Regulation 6(7) (opinion sent to developer).

If a second screening opinion is then adopted stating that it is in fact EIA development, consideration of the application is suspended until the developer has provided an ES (Regulation 12(2)). At that point, Regulation 8 and Regulation 9 will also apply. This would likely result in the final decision on whether or not to accept the application being taken outside of the s.55 28 day acceptance period. However, it is currently the practice for PINS to screen projects at acceptance stage as a matter of course and if it is considered that the project is EIA development but no ES has been submitted, a decision will be taken within the 28 day period not to accept the application.

Post acceptance stage

Following acceptance the SoS can give a direction if it considers that the screening opinion did not take into account information that is material. If the further survey/assessment work referred to in the Developer's screening report, when completed, are material to the question of whether the development is EIA development then the SoS could make a direction determining whether or not the development was EIA development in the light of the completed topic studies.

The developer should be aware however that if the SoS considers that a project is EIA development, a DCO cannot be made unless an ES has been taken into consideration.

Examination stage

If the application (negative screening opinion and no ES) is accepted, the examination begins and then the ExA considers that the negative screening opinion did not take into account material information then the ExA must suspend the examination until a further screening opinion is adopted. If the screening opinion confirms that the development is in fact EIA development then the developer must provide an ES and publicise this (Regulation 16 (5)).

Although the Regulations therefore provide for situations where an ES is found to be required at or post acceptance, this would result in delays to the consideration/examination of an application. To avoid this the advice in Advice Note 10 should be followed: " Prior to submission of a DCO application - Where the Secretary of State has directed that the proposed development is not EIA development, but subsequently new information becomes available that may affect whether the proposal is EIA development, or where the scheme itself changes, developers should consider submitting a new screening request to the Secretary of State, prior to submission of the draft DCO application".

If the new screening opinion confirms that the project is now in fact EIA development, then the developer should prepare an ES. Regulation 8 and Regulation 9 will then apply (Regulation 9 (2)(b)). It would also be advisable for the developer to carry out its s42 consultation again. If this were not done, then the consultation provisions

would be circumvented as there would have been no formal consultation/publicity on the ES/PEI prior to submission. The pre application consultation would have been carried out on the basis that the project was not EIA development and it would not have been made clear to those who were not consultation bodies or the general public that the project was now EIA development.

Summary

The developer should decide whether they wish to continue on the basis that the development is not EIA development, bearing in mind that they may need to request a new screening opinion at a later date when the further survey/assessment information is available. If this second screening opinion confirms that an ES is necessary, full s42 consultation/publicity should be undertaken to avoid risk of non acceptance or a legal challenge. Notification of consultation bodies under Regulation 9 will also need to be carried out.

If they do not request a screening opinion, the application may not be accepted if it comes to light at acceptance stage that an ES is needed. If information emerges after acceptance resulting in an ES being required, there will be delays to the examination of the project.

Please revert to me or David Price if you have any questions in respect of the advice above. This advice will be published as case specific advice on the A19 project page.

Yours sincerely

Mark Wilson

Mark Wilson
Infrastructure Planning Lead

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

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