

## Written summaries of oral representations made at Issue Specific Hearing 6 by the Cambridgeshire Authorities

### 1. Introduction

- 1.1 This note summaries the submissions made by Cambridgeshire County Council (**CC**), Huntingdonshire District Council (**HDC**) and South Cambridgeshire District Council (**SCDC**) (together, the **Cambridgeshire Councils (CC)**) at the Issue Specific Hearing 6 on 2 December 2021 (the **Hearing**) in relation to the application for development consent for the A428 Black Cat to Caxton Gibbet Road Improvement Scheme (the **Scheme**) by Highways England (the **Applicant**).
- 1.2 This document does not purport to summarise the oral submissions of parties other than the Cambridgeshire Councils, and summaries of submissions made by other parties are only included where necessary in order to give context to the Cambridgeshire Councils' submissions in response, or where the Cambridgeshire Councils agreed with the submissions of another party and so made no further submissions themselves.
- 1.3 The structure of this document follows the order of items in the agenda for the Hearing published by the Examining Authority (ExA) on 22 November 2021 (the **Agenda**). Numbered agenda items referred to are references to the numbered items in the Agenda. The Cambridgeshire Councils' substantive oral submissions relate to items 3, 7 and 8 of the Agenda.

### 2. Written summary of the Cambridgeshire Councils' oral submissions

3. Pre-commencement plan	
Agenda item	Cambridgeshire Councils' submission
i. Content of the Pre-Commencement Plan (PCP) [REP4-038]	<p>The EXA invited comments from the local authorities on the PCP (<b>REP4-038</b>)</p> <p>Francis Tyrrell, Pinsent Masons LLP, for CC outlined that there was concern in relation to the mitigation measures, which remained unclear. The mitigation measures in the PCP (<b>REP4-038</b>) had been listed against the pre-commencement works as a whole rather than per activity.</p> <p>There was also a lack of clarity in the wording of paragraph 1.2.1 in the PCP (<b>REP4-038</b>) which states that the scope and methodology are indicative only. Paragraph 2.1 constitutes the scope of the PCP (<b>REP4-038</b>) but it details mitigation measures. The question arises therefore whether the measures listed in that paragraph are only indicative or binding. Mr Tyrrell noted that certainty is needed as failure to comply with the</p>

	<p>requirements of a development consent order carry criminal sanctions.</p> <p>Mr Tyrrell confirmed that CC’s preference would be to have each mitigation measure set out separately against each pre-commencement work.</p> <p>Mr Tyrrell also noted that the content of the PCP (<b>REP4-038</b>) was a little thin. For example, there is no detail on contaminated land even though paragraph 1.1.3 suggests there should be.</p> <p>Mr Tyrrell also noted that the PCP (<b>REP4-038</b>) contained insufficient detail on traffic management activities. Some of the works seem to be quite major and it seems unlikely that the mitigation measures set out will be sufficient. It seems sensible to suggest that some of these works will need mitigation measures closer to what is in the First Iteration of the Environmental Management Plan (EMP) (<b>APP-234</b>).</p> <p>The ExA asked the local authorities to submit written representations on their view on the best way to amend the PCP (<b>REP4-038</b>) so that there was more clarity around the mitigation measures.</p>
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**7. Article 55 – Traffic Regulation**

<p>i. Wording of article 55</p>	<p>The ExA asked the Applicant to respond to its question in the first and second written question:</p> <p><i>Applicant, confirm if different parts of the Proposed Development will be open for public use at different times [REP1-051]. If so, then the ExA could see the point made by the Cambridgeshire Councils [REP1-051] that the provisions in this Article are ambiguous; for instance, would the period of 12 months in Article 55(3) and 24 months in Article 55(7) then be different calendar periods? How would this be managed and monitored?</i></p> <p>Lorrae Hendry for the Applicant apologised for failing to notice that the question had not been answered in the Applicant’s submissions. Ms Hendry confirmed that the Applicant had amended article 55 in response to the question.</p> <p>Mr Tyrrell for CC noted that the re-drafting was appreciated and advised that the revised wording was sufficiently clear for present purposes.</p>
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**8. De-trunking**

i. Status of negotiations between the Applicant and the local highway authorities on a handover plan for the de-trunked assets and the local roads standards

The ExA asked the Local Highways Authorities (LHAs) and the Applicant for an update on the progress of discussions relating to side agreements on local roads standards and the handover process for de-trunked assets.

Ms Hendry for the Applicant outlined that progress with CC had been good and that the parties had arranged fortnightly meetings to agree the main provisions to be captured in the agreement.

The ExA asked whether the Applicant and the LHAs thought that the contents of the side agreements needed to be secured in the development consent order (DCO).

Ms Hendry referred the ExA to article 13 of the DCO, which the Applicant believed was sufficient to ensure that the LHAs are satisfied with the condition of the assets before taking responsibility for them.

Mr Tyrrell for CC agreed with Ms Hendry in relation to progress. Mr Tyrrell noted that there had been 2 or 3 iterations of the agreement to date and that CC was currently discussing with National Highways what the local standards should be. The provisions on de-trunking were largely already agreed. Mr Tyrrell noted the ExA's comments on having sight of the side agreement and advised that CC would be willing to disclose it.

Ms Hendry for the Applicant confirmed that the side agreement should stand alone and would not be part of the DCO.

The ExA commented that without seeing the side agreement, it cannot be afforded any weight. If that is the case, the ExA can only rely on what is in the Environmental Statement, which currently does not provide adequate information.

Mr Tyrrell and Ms Hendry noted that the status of the side agreement relating to local roads was very similar to side agreements which are regularly agreed under DCOs agreeing protective provisions for statutory undertakers. Such agreements are not usually disclosed to the ExA.

The ExA asked whether it would be useful to append the agreement to the EMP (**APP-234**).

Mr Tyrrell for CC did not believe that would provide any greater utility to the process. Mr Tyrrell agreed that there was a question of legal transparency under article 13 in terms of confirming when the handover of assets had

happened, which is why CC argues there is a need for the certification process proposed in its mark-up of the DCO (**REP3-039**). This would provide the legal certainty and public facing piece, which would mean there is no need to publish the side agreement.

The ExA asked for an estimated timeframe for the conclusion of the agreement.

Ms Hendry for the Applicant confirmed that both parties strongly intend to conclude the agreement before the end of the examination.

The ExA asked Mr Tyrrell for clarification on what he meant by “public facing piece”. Mr Tyrrell confirmed that by “public facing piece” he meant the certification process under article 13.

The ExA asked if it was likely that the Applicant and CC would be able to submit anything by deadline 6.

Ms Hendry for the Applicant confirmed that the parties would submit an updated Statement of Common Ground which could include the status of the side agreement.

Mr Tyrrell agreed and advised that CC was extremely keen to conclude the side agreement as soon as possible. CC was mindful that on the A14 project the side agreement was not concluded before the close of the examination and that put CC in a difficult situation, which it would like to avoid repeating.

The ExA asked the LHAs what would happen if the side agreements are not agreed by the close of the examination. Mr Tyrrell mentioned that, in such a scenario, CC may seek other protections. If such protections were to take the form of certified documents, the ExA noted that it would need to be involved in the agreement of those documents well before the close of the examination.

Mr Tyrrell clarified that if CC has the amendments to the DCO that it has suggested in terms of the certification process under article 13, then CC would be satisfied that there is adequate protection.

Mr Tyrrell clarified that in negotiating the side agreement, the parties were also negotiating a document that could be included as a certified document if the negotiations were to fail and the side agreement was not ultimately signed. Mr Tyrrell therefore believed it would be a duplication of efforts to submit a document to the ExA at this stage which sought to include the

standards the local highways authorities would want to see in such an agreement before taking responsibility for the assets, as such terms would be contained in the negotiated agreement in any case.

The ExA noted that it would be useful if the Statement of Common Ground to be submitted at deadline 6 could include details of the provisions in the side agreement which still needed to be agreed. The ExA also requested that a copy of the side agreement be submitted at deadline 6.

Ms Hendry for the Applicant noted that she would need to take instructions.

The ExA asked the parties for a proposal for what could be submitted at deadline 7 as the next step.

Ms Hendry confirmed that a further update in relation to progress on the side agreement and DCO drafting could be submitted at deadline 7.

The ExA requested that the Applicant submit an agreed timetable for the conclusion of the side agreements by deadline 6.

Ms Hendry confirmed.

Mr Tyrrell confirmed that a timetable would be welcomed by CC. Mr Tyrrell also reserved CC's position in relation to comments made by Ms Hendry in relation to an approval mechanism for the de-trunked assets involving the Secretary of State. CC's position remained that the LHAs should be the ones to approve the de-trunked assets.