



## Meeting note

<b>File reference</b>	TR050002
<b>Status</b>	<b>Final</b>
<b>Author</b>	Zena Madden
<b>Date</b>	3 July 2014
<b>Meeting with</b>	Roxhill Developments Ltd
<b>Venue</b>	Ex-IPC Board Room, Temple Quay House
<b>Attendees</b>	<b>Applicant</b> Morag Thomson - Marrons Shakespeares Laura-Beth Hutton - Marrons Shakespeares Simon Hilditch - BWB <b>The Planning Inspectorate</b> Richard Price - Case Manager Mark Wilson - Infrastructure Planning Lead Sarah Green - Lawyer Will Spencer - EIA Advisor Zena Madden - Case Officer
<b>Meeting objectives</b>	Planning Inspectorate to provide feedback on draft documents and applicant to provide project update including anticipated timescales
<b>Circulation</b>	All attendees

### Project update

Marrons Shakespeares (MS) began the meeting with an update on the project. It was confirmed that the s42 consultation period had finished on 27 June 2014, and MS explained that one late response was anticipated from the Environment Agency. This response would be considered even though it was late. Subject to advice issued by the Inspectorate at this meeting, MS stated that it remained confident the application would be submitted at the end of July/in early August 2014.

### s51 advice regarding applicant's s47 consultation

The Inspectorate drew the applicant's attention to s51 advice issued in response to a number of queries/complaints about the applicant's s47 consultation exercise, and recommended that these were addressed thoroughly in the Consultation Report. MS summarised a problem with the applicant's initial s47 leafleting exercise, and advised that a second successful distribution had been undertaken to ensure that its Statement of Community Consultation (SoCC) had not been compromised. It was affirmed that the queries/complaints received by the Inspectorate would be addressed in the Consultation Report.

### Draft Development Consent Order

Article 2(1) – The Inspectorate observed that the definition of ‘maintain’ was particularly wide. The applicant was advised to explain why it would be necessary to have a power to remove, clear, demolish, decommission, reconstruct and replace the authorised project. At present this definition could permit substantial works and should be justified in the Explanatory Memorandum (EM) accompanying the draft Development Consent Order (DCO).

Regarding the definition of ‘undertaker’, the Inspectorate observed that at present this defined the undertaker as Roxhill Kegworth Ltd and its associated companies “or any person with the benefit of the land”, and therefore lacked certainty. The applicant was advised to explain exactly what was meant by “its associated companies” and in what circumstances it was envisaged that they would be the undertaker. The applicant indicated that associated companies was a defined term in the DCO. The applicant was also advised to consider whether it was appropriate for any person with an interest in the land to be the undertaker in consideration of the wide range of powers granted to the undertaker by the DCO. MS referenced the examination of DIRFT and affirmed that justification would be provided in the EM

Article 8 (4) and (5) – The Inspectorate expressed concern that these articles appeared to circumvent the procedures put in place by the PA2008. The applicant was advised that this was unlikely to be acceptable and suggested that the applicant have regard to the Secretary of State’s (SoS) findings that similar provisions were inappropriate and unacceptable in the DIRFT decision. The applicant was advised that if it were to maintain that these articles were appropriate, detailed justification must be provided in the EM.

The Inspectorate also expressed concern in relation to the drafting of Article 8 (5) and advised the applicant to consider whether seeking to dis-apply s174(3) of the PA2008 would achieve the desired outcome. The Inspectorate suggested that the applicant might want to consider seeking to amend s106(a) of the Town and Country Planning Act 1990 (as amended) if it intended to retain this provision.

Article 19 – If it had not already, the Inspectorate urged the applicant to consult with the relevant highway authority regarding the approach set out in this article and the detail of the associated protective provisions. It was advised that agreeing protective provisions prior to submission would assist the examination. MS advised that there had been continuing discussions with the highway authorities. It was understood by them that the protective provisions included in the draft DCO would be removed if and when s278 agreements were entered into. The Inspectorate advised that such agreements would need to be completed before the end of the examination for the Examining Authority (ExA) and the SoS to place reliance on them. If this was not possible they would need to be secured by a Grampian-type requirement.

Article 31 – The Inspectorate observed that this article authorised the undertaker to operate and use the railway and any other elements of the authorised development. The undertaker is defined as “Roxhill Kegworth Ltd and its associated companies or any person with the benefit of the land”, meaning that Roxhill and its associated companies and any person with the benefit of the land would all be authorised to operate and use the railway. The applicant was advised to consider whether this was its intention, and if the drafting of the article was intentional, to provide an explanation for this in the EM.

Article 36 – The Inspectorate observed that some documents which had been described as being certified in the interpretation sections of the draft DCO were missing from this article. MS asked for clarification as to what should be included since

different DCO's seemed to take different approaches. It was advised that the highways classification plan, environmental statement and design and access statement would need to be included. The applicant was also advised to consider how it intended plans such as the Construction Environment Management Plan (CEMP) to be secured. The Inspectorate emphasised that any documents which were to be relied upon should be certified in the draft DCO.

Schedule A – The Inspectorate observed that it was unclear from the DCO/EM whether the applicant was seeking consent for construction or 'construction and alteration' of a rail freight interchange. MS advised that it was clear it was not an alteration but the DCO and EM would be checked to make sure there was no confusion. The Inspectorate advised the applicant to provide greater detail in the EM to explain why the works described as "associated development" are considered to be associated and not integral. Further, the Inspectorate advised the applicant to consider that the final sentence of Works No. 14(p) ("and which are within the scope of the environmental impact assessment recorded in the environmental statement") should also apply to (a) through (o) of Works No. 14.

Schedule B – The Inspectorate advised that further consideration should be given to proposed tailpieces and that if they were to be retained in the DCO they must be justified in the EM. The Inspectorate highlighted the approach of the SoS to tailpieces in the decision in DIFRT and other recent NSIP decisions where tailpiece requirements were considered to be unacceptable. The Inspectorate suggested that one possible way to include limited tailpiece requirements might be to limit them to non-material changes that do not fall outside the scope of the Environmental Statement. The applicant was also advised to consider whether the use of words such as "broadly / generally in accordance with" were appropriate.

Further, the Inspectorate advised that requirements 13, 17, 21, 22 and 23 should be made specific to the project, and that discussions should be held with the local planning authority (LPA) and highways authority (HA) to seek agreement on drafting and associated discharging responsibilities.

Protective Provisions – Protective provisions were discussed earlier in the meeting as noted above. The applicant was also advised to consider how the protective provisions which related to detailed design drawings would interact with the DCO requirements on design. The applicant was also advised to check references to requirements in these schedules as some appeared to be incorrect. The applicant was recommended to explain any Traffic Regulation Order provisions in the EM

### **Draft Consultation Report**

The Inspectorate advised that it would be helpful if the introduction set out clearly how regard had been taken to DCLG Guidance and PINS advice notes. A summary of how 'Advice note fourteen: Compiling the consultation report' had been considered would be particularly useful. It was further advised that 'formal' and 'informal' consultation should be referred to as statutory and non-statutory consultation. It would also be helpful for a section to be included identifying all s43 local authorities and confirming their status in relation to the PA2008 (i.e. the A, B, C, D test).

It was further advised that a section on s46 (Duty to notify the Planning Inspectorate) should be included, stating the date the notification letter, listing the documents submitted alongside it, and appending a copy of that letter to the report.

The Inspectorate advised that the Consultation Report should set out how the applicant (under s47(2)) had consulted relevant local authorities about the content of the SoCC. This might be most usefully demonstrated in a table giving a summary of the responses and how regard was had to them. A summary of the rationale behind the SoCC methodology would also be helpful, with draft and published iterations of the SoCC appended to the report. It would also be useful for the report to explain why an updated SoCC was not required to communicate the second round of leaflet distribution. It was noted that the Consultation Report states that the s47 notice was published in local and national papers, but no dates are included. It was advised that if copies of the notices as they appeared in the press were to be provided separately from the Consultation Report they should be appropriately cross-referenced.

The Inspectorate advised that the deadline provided for responses to the published s48 notices should be clearly stated in the Consultation Report, and that a paragraph should be included stating that the notice was sent to prescribed consultees at the same time as the notice was published. A sample letter would also usefully be appended to the report.

It was further advised that lists of the consulted statutory parties should be included in the Consultation Report and differentiated under ss42, 43 and 44. If a body identified by the Inspectorate had not been consulted, an explanation should be provided in the report. The Inspectorate noted that in its provisional review of s42 bodies, the applicant's list had not included NHS East Midlands and the Environment Agency (River Derwent). MS emphasised that its s42 list had been generated before the implementation of changes to the PA2008 statute, and that therefore the applicant's consultation had been wider than it would have been required to have been had they generated the list later. MS expressed confidence that the applicant's s42 consultation had satisfied the requirements of the PA2008. The Inspectorate advised the applicant to address any issues that it did identify in the Consultation Report.

### **Draft plans**

The Inspectorate advised that on the face of it the draft plans provided by the applicant appeared to satisfy statutory requirements. It was noted that some plots on the land plans had not yet been included in the draft BoR (plots 3/1 through 3/7, 4/1 through 4/7, 5/1 through 5/21 and 6/1 through 6/14). The applicant was reminded that where plan scaling had departed from the Applications (Prescribed Forms and Procedure) Regulations 2009, justification should be provided in the EM. Further, it would be helpful scale bars could be added to the NSIP Calculation plans.

### **Draft BoR**

The Inspectorate advised that it would be helpful for Part 1 of the BoR to clearly differentiate between Category 1 or Category 2 persons, and reminded the applicant that Part 3 persons should be duplicated in Part 1. It would also be helpful for the title bar to be repeated on each page.

MS queried the recording of Manorial rights in the BoR; specifically where the same manorial right was attributed to every plot comprising the Order land. The Inspectorate advised the applicant that ordinarily manorial rights should be addressed in the same way as any other right in the BoR; however in this circumstance the applicant might wish to consider an overarching statement attributed to the entirety of the Order land at the beginning of the document. The statement should clearly

identify the rights and where they were applicable and the applicant should ensure that this is included in each relevant part. The applicant should explain this approach in its statement of reasons.

### **Advertisement Consent and works outside of the Order land**

MS queried whether the addition of works relating to advertisements to Schedule A would require the draft DCO to dis-apply or modify the Town and Country Planning (Control of Advertisements) (England) Regulations (the Advert Regs). The Inspectorate advised that express consent for advertisements was not a prescribed consent in the Infrastructure Planning (Miscellaneous Provisions) Regulations 2010, and therefore it was likely that the Advert Regs would need to be modified in accordance with s120(5)(a) of the PA2008 so as to permit the SoS to grant express consent in the DCO.

MS queried the impact of a post-consultation agreement with Nottingham County Council for the applicant to fund traffic works outside of the Order limits. The Inspectorate affirmed that as these works were not comprised within DCO, the applicant's pre-application consultation duties would not be compromised.

MS queried whether s278 of the Highways Act 1980 (HA1980) would need to be amended in light of the protective provisions in the DCO which seek to provide the highways authorities with similar protection to that which a s278 agreement would provide. The Inspectorate advised that since s278 contained a power this was probably not necessary but there may be some provisions in the HA1980 which would need to be modified to ensure that the developer had the necessary powers to undertake the works to the highway and advised the applicant to consult with the Highways Agency and the local highways authority on this matter.

### **Environmental Impact Assessment**

MS provided an short update on the applicant's preparation of its environmental statement (ES). The Inspectorate advised the applicant that where the draft DCO had relied upon mitigation measures detailed within ES, it would be very helpful for a document to be provided demonstrating the relationship between mitigation provided in the draft DCO and corresponding content in the ES. This information would be most usefully demonstrated in a table/matrix format.

### **Preparation of application documents and the acceptance period**

The Inspectorate confirmed that it would initially require two hard copies of the application at submission, along with six electronic copies. Two further paper copies might subsequently be required. The Inspectorate confirmed that the electronic application index would be sent to the applicant following the meeting, and emphasised that would be helpful for the applicant to provide clear plain English descriptions of the each document in the appropriate column. In relation to the ES, electronic versions of the chapters, tables, figures, annexes, and appendices should be named so that their subject matter can be determined from the title without having to open the document.

MS stated its intention to provide a list of application documentation to the Inspectorate for comment ahead of submission. It was confirmed that the draft DCO was in the correct statutory instrument template.

The Inspectorate confirmed it would be contacting the local authorities summarised the procedure for inviting Adequacy of Consultation Representations from s43 local authorities; including the warm-up letter sent two weeks in advance of submission of the application, and the 14 day period for response. MS affirmed that the applicant had been in contact with the local authorities, and that they were expecting the Inspectorate's invitation.

### **AOB**

The Inspectorate informed MS that the project inbox was live:  
[EastMidlandsGatewayRFI@infrastructure.gsi.gov.uk](mailto:EastMidlandsGatewayRFI@infrastructure.gsi.gov.uk).

### **Specific decisions / follow up required?**

- MS to consider how to address queries/complaints sent to the Inspectorate in its Consultation Report
- MS to consider advice issued by the Inspectorate in relation to draft documents
- Inspectorate to send payment details, new iteration of s55 checklist and electronic index to MS
- Inspectorate to provide MS with draft meeting note by end of w/c 7 July

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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