

## Cabinet – 2 September 2004

### Report of the Environment Director

#### Part I - Item No. 5 (a)

Electoral Division affected:  
Heysham  
Lancaster City  
Lancaster East  
Lancaster Rural Central  
Lancaster Rural North  
Lancaster Rural South  
Morecambe East  
Morecambe West  
Skerton

#### **Completion of Heysham to M6 Link (Western and Northern Routes)**

##### **Determination of the Route**

(Appendix A refers)

Contact for further information:

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#### **Executive Summary**

On 6 December 2001 the Cabinet considered a full report regarding the choice of route for the Heysham to M6 Link and recommended the former Cabinet Executive Committee that:

- "In view of the environmental issues which need to be addressed in relation to the green (Western) route, the County Council should undertake environmental impact studies of both the green (Western) and orange (Northern) routes", and
- "If it proves impossible to proceed with the green (Western) route, the County Council should then pursue the orange (Northern) route."

The full text of the recommendation which was adopted by the Executive Committee is set out in the Report.

Environmental impact studies of both routes have been undertaken by ADAS Consulting Ltd. The attached Appendix A contains a document titled "Comparison of Schemes" which includes in its Appendix 2A a report by ADAS titled "Ecological Justification of Western & Northern Routes as Alternatives for the Completion of the Heysham to M6 Link".

This report details the assessment of the impacts of the two routes. The ADAS report concludes that "Selection of the Western Route may not accord with the UK's obligations under EU law, given the potential impacts on European Protected Species (Bats and Great Crested Newts) and the risk of potential impacts on the candidate Special Area of Conservation/ Special Protected Area and Lune Estuary Ramsar site and SSSI. The availability of a satisfactory alternative route, which is not predicted to result in significant impact on European Protected Species or habitats, suggests that in ecological terms the Western Route would not be an appropriate option to select".

Following receipt of the ADAS Report an Opinion has been sought from Leading Counsel in relation to the problems identified by ADAS, particularly those associated with the Western Route and whether, in view of those problems, a decision to opt for the Western Route is legally sustainable.

### **Recommendation**

The Cabinet is asked to determine the route for the completion of the M6 - Heysham Link.

### **Background**

On 6 December 2001, the Cabinet recommended the former Cabinet Executive Committee to adopt the following resolution in respect of the Western (Green) Route and the Northern (Orange) Route:

"That Lancashire County Council notes that in the recent consultation exercise concerning traffic issues in the Lancaster District there was overwhelming public support for a new Heysham/M6 road link. It further notes that whilst a majority favoured the green route (Western Bypass), a substantial number also supported the orange route (Northern Link).

That Lancashire County Council is committed to sustainable economic development. It recognises the serious impact of traffic congestion on the lives and health of people in the Lancaster District and the need to take action to ease the situation. Such action must include a new direct road link from the M6 to the Heysham peninsula reinforced by appropriate additional traffic management measures. This will form an important link in the Northern European Access corridor".

The Cabinet's recommendations were therefore as follows:

- i) The Heysham/M6 link should remain the County's top priority scheme for road construction in Lancashire.
- ii) In view of the environmental issues which need to be addressed in relation to the green route, the County Council should undertake environmental impact studies of both the green and orange routes.

- iii) If it proves impossible to proceed with the green route, the County Council should then pursue the orange route.
- iv) Meanwhile, the County Council will continue to invest in such traffic management measures and additional public transport options as will help to improve the situation in the interim.

These recommendations were adopted by the Executive Committee on 6 December 2001 and subsequently reported to the Full Council on 13 December 2001.

ADAS Consulting Ltd were commissioned to investigate, identify and assess the biodiversity issues associated with the two routes and compare and contrast the nature conservation and ecological impacts of each route, especially those which may make either route difficult to justify, particularly at a public inquiry.

Appendix A attached contains a document titled "Comparison of Schemes" incorporating a summary, route descriptions, tables, appendices, supporting information etc, which details the effect of both schemes in respect of:

- Scheme Details, Land and Property
- Nature Conservation and Ecological Impacts of Schemes
- Forecast Changes to Traffic in Association with Schemes
- Estimates of Costs, Benefits and Safety
- Economic Development

Based on the ADAS report titled "Ecological Justification of Western & Northern Routes as Alternatives for the Completion of the Heysham to M6 Link", which is contained in Appendix A, advice has been taken from Frances Patterson QC on the difficulties identified by ADAS in relation to each route. In particular, Leading Counsel was asked to advise on the effect of these issues as they relate to the Western Route in terms of the likelihood of the decision being called in by the Secretary of State; the County Council's position as regards the Conservation (Natural Habitats & c.) Regulations 1994 and other environmental legislation; and the extent to which a decision to choose the Western Route would be vulnerable to legal challenge. Leading Counsel was also then asked to identify and advise on any issues relevant to a decision to choose the Northern Route which may impact upon such a decision or affect the prospects of the Scheme being approved.

Leading Counsel has confirmed the legal basis for the concerns highlighted by ADAS and her advice may be summarised as follows:

- 1) ADAS' assessment is that it is not possible to state that the impacts of the Western Route on European Protected Areas will be insignificant and with that uncertainty the application of the precautionary principle would therefore be against its construction.
- 2) The effect of the 1994 Regulations is that projects which affect European Protected Areas may only proceed where the project will not adversely affect the integrity of the site unless there are no satisfactory alternatives and the project must be carried out for imperative reasons of over-riding public interest. In this

case it cannot be said that the integrity of the sites will not be affected and as the Northern Route provides a viable alternative, there can be no over-riding public interest in promoting the Western Route.

- 3) Even if there were no satisfactory alternative to the Western Route, the County Council would have to consult English Nature and have regard to any representations they make. The County Council could only then agree to the project after having ascertained that it would not affect the integrity of the site. That cannot be concluded in the light of the response from English Nature during the 2001 consultation exercise and the ADAS Report.
- 4) In any event the Secretary of State may give directions prohibiting the project “indefinitely or for whatever period specified in the Direction “.
- 5) Similar considerations apply to the Ramsar Site (although there is no sanction for non-compliance) and the SSSI.
- 6) Both the European Protected Species identified in the ADAS Report (bats and Great Crested Newts) require licences from DEFRA for their removal but these only apply in certain circumstances set out in the 1994 Regulations and there is no real prospect of these being satisfied.
- 7) A Call In Inquiry is inevitable and the prospects of success are between only 0 – 10%.

In view of these considerations, Leading Counsel’s conclusion is to regard a choice of the Western Route, “not only as extraordinary but one that was perverse on the part of the County Council” and that such a decision would be “lacking in logic and one that no reasonable planning authority properly directing itself could come to”.

Leading Counsel confirms that the Northern Route has significantly less problems and does not appear to be in breach of the legislative requirements relating to conservation issues. Whilst the prospect of it being called in or an Inquiry taking place cannot be ruled out, the prospects for success are in her view “radically different”.

## **Consultations**

Details of the consultation exercise carried out in 2001 and responses received are set out in the report of the Environment Director to the Highways and Transportation Executive Committee meeting on the 6<sup>th</sup> December 2001, which is referred to in the List of Background papers below.

## **Advice**

A summary of the advice received from Leading Counsel is set out in the body of the Report.

Technical advice from the Environment Director is contained in Appendix A.

## **Alternative options to be considered**

N/A

**Implications:** e.g. Financial, Legal, Personnel, Human Rights, Crime and Disorder or Other

This item has the following implications, as indicated:

Financial: The report at Appendix A contains Estimates of Costs, Benefits and Safety (see page 4 of the Comparison of Schemes document).

## **Local Government (Access to Information) Act 1985 List of Background Papers**

Paper	Date	Contact/Directorate/Ext
Report of the Environment Director - Completion of the Heysham to M6 Link	6 December 2001	Ray Worthington, Ext 33718
Minutes of Highways & Transportation Cabinet Meeting	6 December 2001	Helen Ormerod, Ext 34374
Minutes of Highways & Transportation Executive Committee Meeting	6 December 2001	Helen Ormerod, Ext 34374
Minutes of Council Meeting	13 December 2001	Helen Ormerod, Ext 34374