



Pinsent Masons

Defining a Project Post *Finch*

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A purpose-led professional services
business with law at the core

Context

- What is an indirect effect is now a matter of planning judgment, subject to the Court's review on *Wednesbury* grounds
- An indirect effect needs to be associated with the project
- Can you draw your project tightly and consequently influence the indirect effects said to relate specifically to your project?
- Defining the project important to set the 'fence' against which your effects are drawn



Scoping

- Scope of assessment \neq definition of your project, but it has direct implications
- EIA Regs – ES to be “based on” the most recent scoping opinion. Comments in *Finch* in High Court judgment regarding this obligation
- Need to allow for flexibility in design whilst accounting for *Finch* issues. Consider the purpose of the project, the objectives it seeks to achieve, and its definition
- Definition needs to account both for upstream effects and downstream effects. A cheese factory / a dairy farm; a biomass plant / the planting of pellet-producing forests; a housing development / its future generations of residents



Salami slicing and 'unassessed' effects

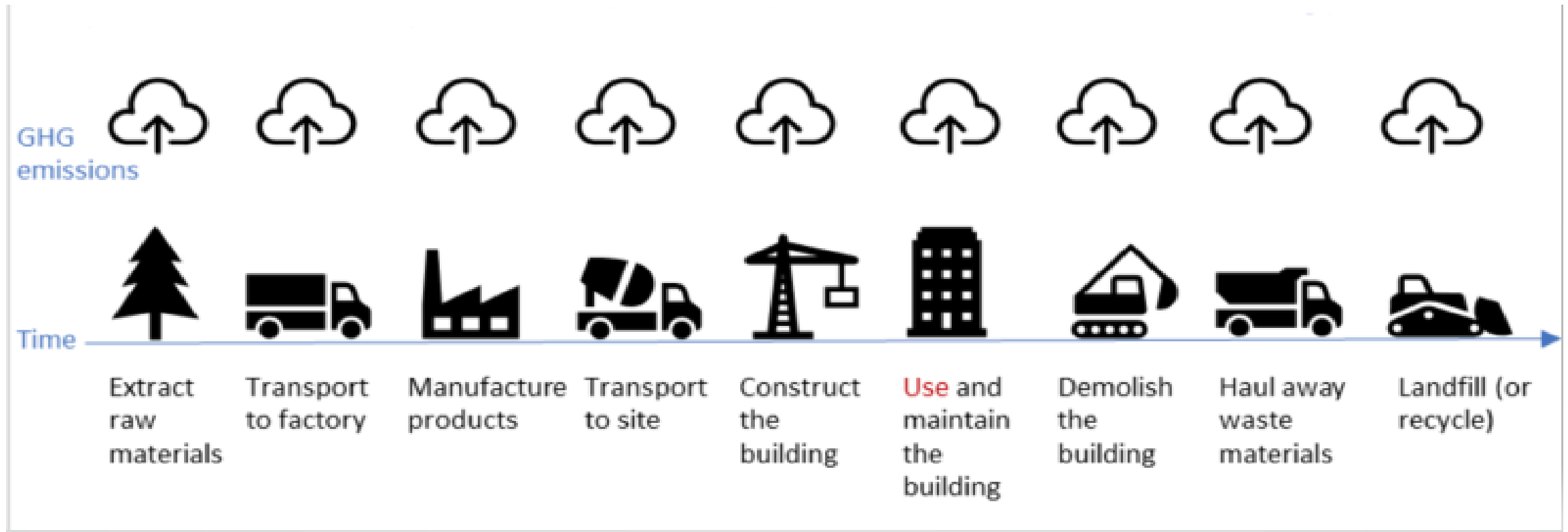
- Cannot use project definition process to artificially split up the EIA consideration of a project
- In considering this, the 'mischief' for the Courts is a promoter seeking to avoid EIA scrutiny
- Not suggested in *Finch* that the later refining / combustion of the oil was properly part of 'the project'
- There may be indirect effects which are not considered in any ES

The causal link between project and effects

- CoA noted that there was no 'gloss' to be put on the judgment of a degree of connection between a project and an effect
- Challenges to LPA's judgment on that connection only challengeable on public law grounds
- Scoping Report and ES will need to make a clear case as to why there is not sufficient causal connection, partly through the project definition
- Case by case judgment to decide whether you need to get into this debate for your project or particular potential effects



In conclusion....



What is the project, and which effects are sufficiently connected?

