

Stakeholder Meeting Note

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Meeting with	EDF
Meeting date	3 May 2011
Attendees (IPC)	Mark Wilson (Case Leader) Helen Adlard (Director of Legal Services) Sheila Twidle (EIA Manager) Kathryn Powell (case Officer) Nik Perepelov (Assistant Case Officer)
Attendees (non IPC)	Richard Mayson Kate Stinton John Rhodes Matthew White
Location	IPC Offices, Bristol

Meeting purpose	Update on proposed Hinkley Point 'C' project and discussion of submission documents
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Summary of outcomes	<p>EDF Update: some early works are ready to commence on site, subject to the discharge of remaining Local Authority and Environment Agency conditions. Around 12,000 trees, to act as a screen for the site, have been planted. A further voluntary support scheme- covering a property price support scheme and a noise insulation scheme - has also been defined.</p> <p>Planning Obligations in relation to the site preparation works application are yet to be agreed, but discussions are ongoing and the application is expected to go to Committee in June.</p> <p>There have been some procedural difficulties in relation to EDF's application for consent for the proposed jetty. The Marine Management Organisation (MMO), to whom the application for the jetty has been made, are of the view that they do not have the power to authorise the closure of the harbour once the jetty is no longer needed. IPC advised that although it was not possible to authorise jetty works within a DCO if those had been authorised under the Harbours Act 1964 by the MMO, it was possible under</p>
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the legislation to run applications in parallel. However, this should not compromise the MMO's role as consultee in the development consent process and the IPC asks that this matter is discussed with the MMO before making a decision as to how to proceed in relation to the jetty works application.

EDF Energy's recent consultation round: "Update on and Proposed Changes to 'Preferred Proposals'" was met with a relatively modest response of around 250. Most issues related to transport, worker shift patterns and related impacts (e.g. noise).

Local Authorities have suggested that community benefit compensation scheme funds be made available outside the s106 obligations. The possibility of a long-term Planning Performance Agreement (for the operational life of the reactors, decommissioning and the management of on-site waste thereafter) has also been mooted.

EDF had not seen a major shift in local public opinion following events in Japan. The political will for new nuclear remains and the submission timetable is unlikely to be affected (subject to the findings of the Weightman Report).

Submission requirements were discussed:

The draft Development Consent Order

The IPC encourages the early submission of draft Development Consent Orders (DCO) together with any relevant plans and the book of reference for comment. Any comments will not constitute a 'shadow' acceptance. The Habitats Regulations Assessment will be a lengthy document and subject to careful analysis at acceptance, so sight of this ahead of submission would also be useful. Copies of correspondence with the relevant nature conservation bodies would also be helpful.

An early draft of the DCO had been sent to the IPC prior to the meeting and is also with the relevant Local Authorities. The IPC offered the following comments on the draft sent:

- Article 19A: s10 of the 1965 Compulsory Purchase Act is disapplied under s125(3) of the Planning Act 2008 (the Act). The IPC considers s152 of the Act provides for compensation to be available in broadly equivalent circumstances to those envisaged under s10 of the 1965 Act, with less room for misinterpretation. Please could EDF consider whether applying s10 is appropriate .
- Article 22(1): In relation to the acquisition of new

rights the phrase 'as may be required for any purpose for which that land may be acquired under that provision' should not be necessary within this provision as an appropriate description of rights would need to be identified in relation to particular plots of land in the book of reference.

- Article 22(3) appears to be contrary to s126 of the Act.
- Article 3 contains a wide power to construct and maintain. As such, this leads to uncertainty about what is being authorised to the extent that future maintenance comprises development. Maintenance works may be more properly included in article 30.
- Article 29 should make explicit reference to the temporary works for which consent is sought. Though not all of these will be known ahead of construction, those which are known should be listed and cross-referenced with the works plans.
- In article 30, use of "enter upon...any land within the Order limits and lying [20] metres from that work..." is problematic. The Order limits must be respected. Any scope for deviation should be built into the Order limits.
- Compulsory acquisition of statutory undertakers' land is subject to special restrictions. It is expected EDF are aware that any relevant Ministerial certificate should be obtained as soon as possible and of the need to establish whether s129 of the Act applies to EDF.
- The crest on the title page is incorrect. You may wish to contact Her Majesty's Stationery Office for the correct crest to use.

The IPC will provide further comments on future drafts of the DCO and on draft Plans and the draft Book of Reference. It would assist the Commission and any subsequent discussions if EDF prepared a comparison of the draft DCO with the Model Provisions to highlight any deviations.

EDF may wish to consult with key statutory consultees on the drafting of the DCO, though it is for them to determine which consultees. Such discussions can improve the quality of the drafting and thereby help focus the examination on other issues. EDF should therefore consider which consultees are likely to be able to produce valuable comments on drafting having regard to resources available to the various consultees.

Clear references should be included in the draft DCO to the Environmental Statement (ES), in particular where any

flexibility is being sought in relation to the works to be authorised.

The IPC encouraged the inclusion of a table in the application documents to cross refer the details in the DCO to the relevant sections of the Environmental Statement. This would help to demonstrate and confirm that all matters had been properly assessed.

A question was raised as to whether 'limits of deviation' are the same as 'parameters'. Both terminologies have been used in other applications. Applicants should not take these as precedents because the relevant Orders are still only in draft and remain subject to examination and approval by the Commission. Limits of deviation is a terminology brought across from the TWA regime. The IPC and others seek to apply appropriately concepts more usually used in respect of linear schemes, to development previously authorised by, for example, planning permission or deemed planning permission. It is clear that any parameters and limits of deviation should be explained in the explanatory memorandum and clarity provided as to exactly what is being sought to be authorised, particularly for the purposes of an assessment of the environmental impacts of the works.

Practical advice around submission

Boxes of application documents should be carefully ordered. Further practical discussions nearer the submission date may be useful. Likewise, the practical issues around any future hearings can be worked out nearer the time. The IPC is happy to offer generic practical advice ahead of this, but does not wish to be seen to be pre-judging the acceptance decision in pursuing venues for hearings or similar.

The Consultation Report

The IPC is currently preparing an appendix to advice note 6 on the preferred structure of the Consultation Report. This will urge that different types of consultation (s47, s42, non-statutory etc) are clearly distinguished. Data protection issues should be considered upfront. Explicit reference should be made in the Consultation Report to the duty under s49.

A proposed structure for the Consultation Report had been provided to the IPC prior to the meeting. The draft structure looked very thorough and represented a well-considered approach to the relevant requirements.

There was discussion around whether there was a need to demonstrate the receipt of responses from s48 general public consultees as distinct from s47 local community consultees. IPC advised that the Consultation Report would need to demonstrate compliance with both s47 and s48, but accepted that to identify and separate individual responses would not be practicable.

Land Acquisition

Some land may need to be acquired compulsorily for associated development sites. EDF are deciding how best to approach acquisition where the land or rights over it are only needed temporarily (i.e. for the construction phase). EDF are currently of the view that Model Provision 28, whilst applying to temporary possession, was not intended to apply to the sort of period needed in this case (8-10 years in some cases). Moreover, as this provision does not include the power to acquire title, this potentially creates problems with regard to letting contracts for the works and ensuring that s106 obligations can be entered into. EDF are therefore considering how to proceed and, in the meantime, discussions with landowners seeking purchase by agreement remain ongoing. IPC advised that these considerations must have been concluded before submission and then reflected in the application.

Other matters

The examination on Sedgemoor's Core Strategy will open on May 24th. EDF will make submissions to the Inspector on the lawfulness of including policy relating to Nationally Significant Infrastructure Projects.

The question of who will discharge requirements remains open: there is nothing in the legislation to stop requirements being drafted in such a way as to name either the IPC as the discharging authority (indeed, the model requirements relating to terrestrial matters anticipate just this) or the Local Authority. CLG's Guidance to Local Authorities suggested an intention on the part of Government to change this, whereby the Local Authority will discharge requirements. The Localism Bill may introduce changes to put beyond doubt the ability to allow an appeal against non determination of discharging requirements.

DCLG do not currently intend to publish regulations or guidance on the decision maker's ability to grant consent on terms materially different to those applied for (under s114(2)). DCLG have advised that case law on this matter should be referred to and that there is an ability to accept

	<p>changes in accordance with such case law. The IPC's view is that the importance of pre-application consultation in the Planning Act regime needs to be taken into account when applying such case law. The specific question of the decision maker refusing some discrete element of the scheme when granting development consent has not yet been specifically considered by the IPC.</p>
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Specific decisions/follow up required?	<p>IPC to send EDF any CC'd correspondence received arising from stage 2A consultation.</p> <p>Arrange future meetings on further drafts of DCO and HRA.</p> <p>IPC to advise on whether the requirements in regulation 6 of the Applications: Prescribed Forms and Procedures Regulations relating to, inter alia, hazardous waste apply only to schemes where the main development is such a facility or to those which merely include such a facility as a subordinate element.</p>
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IPC Circulation List	Attendees