

# IPC Infrastructure Planning Commission

## Stakeholder Meeting Note

<b>Author</b>	<b>Nik Perepelov</b>
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<b>Meeting with</b>	<b>RES and Bond Pearce</b>
<b>Meeting date</b>	<b>26<sup>th</sup> February 2010</b>
<b>Attendees (IPC)</b>	<b>Kath Haddrell (Case Leader) Gideon Amos OBE (Pre-application Commissioner) Lynne Franklin (IPC Lawyer) Nik Perepelov (Assistant Case Officer)</b>
<b>Attendees (non IPC)</b>	<b>Chris Lawson (RES) Donna Brown (RES) Richard Guyatt (Bond Pearce) Claire Reece (Bond Pearce) Sara Greggs (Bond Pearce)</b>
<b>Location</b>	<b>IPC offices, Bristol</b>

<b>Meeting purpose</b>	To discuss the draft development consent order ('DCO') for the North Blyth Biomass Plant.
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<b>Summary of outcomes</b>	<p>RES intend to submit an application for development consent in August 2011. The consultation report is being compiled and discussions on the Marine Licence are ongoing.</p> <p>IPC provided comments on a draft DCO. These comments, set out below, do not prejudice any future decisions to be taken by the Commission.</p>
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<b>Record of any advice given</b>	<p>Gideon Amos explained his role as Pre-application Commissioner (including his approval of the Scoping Opinion) and the IPC's openness policy.</p> <p>Applicants should consider CLG Guidance on Associated Development (to which the IPC must have regard when deciding whether development can be treated as associated development) in determining which elements of a scheme would constitute associated development and which would be an integral part of the main development. The model DCO provisions anticipate that ancillary works (which can also be authorised by the DCO) are those which would not constitute development under S.32 of the</p>
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Planning Act 2008 ('the Act'). The IPC is unable at this pre application stage to give a binding determination as to whether development constitutes associated development and therefore how individual elements of the scheme should be categorised. The explanatory memorandum submitted with the application will provide an opportunity to justify the choices made by the applicant.

When structuring the DCO applicants should consider with their advisors what consequences may flow, in legal terms, from categorising elements of the scheme in a particular way. In particular, applicants should take care when defining the project, authorised development, ancillary works etc in the interpretation article and elsewhere and ensure consistency when applying those terms in the articles which deal with the construction, operation etc. of the development and in the requirements.

If EIA is required and a scoping opinion sought, applicants are advised to ensure that all land required for/affected by the development is identified within the "red line boundary" to enable the IPC to scope the ES. It is for applicants to use their own due diligence and enquiries to identify those bodies who must be consulted to ensure compliance with s42 and they should not in any event rely on the Regulation 9 list of consultation bodies provided by the IPC. Applicants should be aware that if the scheme changes after the scoping exercise has been carried out (as appears to be the case in this project) additional bodies (not on the Regulation 9 list) may need to be consulted. The applicant advised that third party interests exist on the proposed site, and there may therefore be a need to compulsorily acquire these. Where the land is statutory undertakers' land acquired for the purposes of their undertaking and the statutory undertaker makes (and does not remove) a representation on the proposed compulsory acquisition, under S.127, the applicant may need to obtain a certificate from the Secretary of State before the Order can be made. This certificate should be sought at the pre-application stage where practicable. Moreover, where the acquiring body is not one of bodies listed in S.129, the Order may be subject to Special Parliamentary Procedure.

The current wording of the draft DCO names Northumberland County Council as the authority to discharge the requirements pertaining to terrestrial works. S120 of the Act appears to make provision for this and this situation is anticipated in CLG's Guidance to Local Authorities. The applicant was advised to provide justification for this approach in the explanatory memorandum. It may also be helpful to the examining authority (if the application is accepted) to provide with the application a statement of common ground recording

	<p>discussions/agreement with the Council as to this approach.</p> <p>The IPC is not required to consult the MMO at the pre application stage on the terms of any draft marine licence which it is intended to attach to a DCO although the examining authority may wish to pose questions. It was noted that the draft marine licence will be prepared by the MMO.</p> <p>The applicant may wish to liaise with regulators and DECC to clarify whether their consent should be obtained before the benefit of the DCO may be transferred. RES will also need to consider how the Funding Statement will provide information (in the light of any inter company transfers) about resources to meet compensation liabilities.</p> <p>If it is proposed to incorporate the mineral code clear justification for doing so should be set out in the statement of reasons (also the explanatory memorandum).</p> <p>Article 34 (double recovery of compensation) should be considered in the light of Section 126 (which bars any modification of the application of a compensation provision except to the extent necessary) to ensure there is no inconsistency.</p> <p>Article 33 (arbitration) should be considered in the light of the proposed incorporation of the appeal procedure under the Town and Country Planning Act 1990. Modifications to the article may be required.</p>
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<b>Specific decisions/follow up required?</b>	IPC to provide more detailed comments on the drafting of the DCO and hold future meetings with RES to discuss progress.
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<b>IPC Circulation List</b>	Attendees