

From: Gideon Amos
Sent: 14 June 2016 16:41
To: Kathryn Dunne
Subject: RE: Moorside pre-application consultation

Dear Kathryn,

Thank you for your email of 1st June 2016 which provides comments on NuGen's ongoing Stage Two consultation.

NuGen is committed to wide consultation and stakeholder involvement in the development of its proposals for the Moorside Project and therefore welcomes comments in response to its consultation from all respondents.

Whilst individuals and organisations can of course provide the Planning Inspectorate with their comments and views on NuGen's Stage Two consultation, we would ask that the Planning Inspectorate refer those who make contact with them and who have comments to make, to the published ways of how to respond to the Moorside Stage Two consultation as set out at <https://nugenconsultation.com/have-your-say/>:

"You can respond to the Moorside Stage Two consultation in a variety of ways:

- by completing the Stage Two Consultation feedback form – link to on-line form;
- by completing the Stage Two Consultation feedback form – editable PDF; and
- by completing the Quick Feedback form.

Or:

- by writing to FREEPOST – MOORSIDE HAVE YOUR SAY;
- by calling our freephone number: 0800 157 7352;
- by emailing: haveyoursay@nugenconsultation.com; and
- by dropping in to our Information Centre at the Civic Hall, Whitehaven
Open 10am-4pm Monday to Friday and 10am-12pm Saturday."

The Planning Inspectorate has asked NuGen to respond to a number of queries, which we address in the order raised in your email.

Statement of Community Consultation (SOCC)

- SOCC Project Description:

1. You will be aware that the SOCC is required to be published some weeks in advance of publishing the Consultation Documents and the carrying out of the consultation to which it refers. At the time of writing the SOCC, NuGen considered that it could not definitely conclude whether or not the railway works and the Marine Off-Loading Facility ("MOLF") met the thresholds under sections 25 and 24 respectively of the Planning Act 2008 to be considered nationally significant infrastructure projects ("NSIPs") in their own right.
2. Accordingly, NuGen considered that the SOCC should be clear that the railway works and the MOLF could, subject to final design, both constitute NSIPs. Equally, NuGen considered it important to inform the reader of the SOCC

what the position would be should the railway works and/or the MOLF not constitute an NSIP.

3. For these reasons, the SOCC was structured so as to make it clear that NuGen would be obtaining development consent for the railway works and the MOLF, either as NSIPs or as Associated Development as follows:
 - (a) Page 5 – the SOCC introduces the Moorside Power Station, which is clearly stated as being a NSIP. The SOCC makes clear in this section, which is discussing the "primary" development, that the railway works and the MOLF could also be NSIPs and clearly states that "subject to final design" both may qualify as such;
 - (b) Page 6 – the first paragraph of this page confirms to the reader that in addition to the Moorside Power Station, development consent will be sought for development that is associated with the Moorside Power Station, given that the previous page referred to the potential for the railway works and the MOLF to be NSIPs, it is only correct for page 6 to inform the reader how the railway works and the MOLF would be consented should they not be NSIPs – *"If the railway works or the MOLF are not ultimately definable as an NSIP, they may be included in the proposed DCO as Associated Development"*;
 - (c) Page 11 – under the heading "What NuGen is consulting on", NuGen identifies the "railway works" and the "MOLF" as separate development to "specific Associated Development". This is in recognition that they may or may not be NSIPs.
4. Between the publication of the SOCC and the commencement of Stage Two Consultation, the on-going design of the Moorside Project meant that NuGen was in a position to confirm that the railway works met the tests in section 25 of the Planning Act 2008, whilst the MOLF did not meet the capacity thresholds set out in section 24 of the Planning Act 2008. NuGen considered it important that the Stage Two Consultation informed the reader of the most up to date position regarding the design evolution of the Moorside Project. For this reason, section 1.1 (page 8) of the Proposed Scheme document makes it clear that *"The Moorside Power Station (MPS) meets the thresholds in the PA 2008 to be an energy NSIP. In addition, the Moorside Project Railway meets the thresholds in the PA 2008 to be a transport NSIP in its own right. Therefore, the Moorside Project will seek authorisation for more than one NSIP."*
5. Section 5 (page 22) of the Proposed Scheme document also makes clear that the MOLF forms part of the MPS Associated Development (as does the Glossary under the definition of "MPS Associated Development").
6. There is, therefore, a clear design progression from the SOCC to the Stage Two Consultation materials. In NuGen's opinion, the SOCC document is open and transparent about the possibility of the railway works and the MOLF both being potential NSIPs and, if they were not concluded to be so, then they would be Associated Development. The Stage Two Consultation

documentation is then clear that the railway works have been determined as an NSIP with the MOLF being Associated Development to the Moorside Power Station.

7. Paragraph 1.1.3 of the Preliminary Environmental Information Report ("PEIR") sets out this iterative approach in an open and transparent manner: *"It should be noted that in addition to the Moorside Power Station and the Moorside Project Railway being NSIPs, the proposed Marine Off-loading Facility (MOLF) at the Moorside Site had the potential to be a harbour facility NSIP under the Planning Act 2008. However, as the design and its anticipated usage have evolved, it has been determined that the MOLF will not meet the thresholds for harbour facilities as set out in the Planning Act 2008. This means that the MOLF will be Associated Development (see further below) to the Moorside Power Station rather than a NSIP in its own right. This position has become clear following the publication of NuGen's Statement of Community Consultation in April 2016."*

8. It is normal during the design and preparation of an NSIP application for the project description to evolve and be refined. Further evolution of the project description can be expected as NuGen completes detailed design work, takes into account responses to the Stage 2 consultation and prepares future, including application, documents.

- **Railway NSIP:**

1. Significant railway works are necessary to facilitate the delivery of the Moorside Power Station. The design of the railway works will continue to evolve and be refined as the design and assessment process continues, including having regard to consultation responses and consultation with Network Rail. The final extent of the railway NSIP, including identifying which railway works form "part of" the railway NSIP, can only be confirmed once the final design is fixed. Therefore, the analysis below is subject to the on-going iterative design of the railway works as the Moorside Project progresses through its formal Stage Two Consultation and its continuous consultation with key stakeholders.
2. The Moorside Project, as published at its Stage Two Consultation, includes construction of approximately 9 km of new railway track at the Moorside Site, approximately 3.2 km of continuous new railway track at the Corkickle to Mirehouse Railway Site and approximately 285 m of continuous new railway track at the St. Bees Railway Site together with associated stations and platforms, including platforms and access by members of the public.
3. NuGen considers that the construction of the new continuous railway track comprising part of the Corkickle to Mirehouse Railway meets the statutory thresholds for a railway NSIP. These works will (when constructed) be wholly in England and will be part of a network operated by an approved operator. The Corkickle to Mirehouse Railway will (when constructed) include a stretch of track that is a continuous length of more than 2 km, that is not on land

that was operational land of a railway undertaker immediately before construction work began or is on land acquired at an earlier date for the purpose of constructing the railway. It therefore meets the conditions set out in section 25 and section 14(1)(k) of the Planning Act 2008 of an NSIP that is construction of a railway. The construction of the associated worker platforms and station facilities for the Corkickle to Mirehouse Railway (including footbridges, ticket halls, waiting areas, car parking and accesses etc.) is not NSIP development, but is considered by NuGen to represent Associated Development.

4. NuGen does not consider that, *on its own*, the St. Bees Railway meets the thresholds in section 25 of the Planning Act 2008, on the basis that the new railway track would be less than 2 km in length. Accordingly, NuGen considers that the St. Bees Railway falls within two categories. First, given it would form part of the same network (for the purposes of section 25) as the Corkickle to Mirehouse Railway, the St. Bees Railway could be said to comprise "part of" the Corkickle to Mirehouse Railway NSIP for the purposes of section 31 of the Planning Act 2008. Second, the laying of the new passing loop/railway track at St. Bees could also be considered to be Associated Development.
5. In relation to the Moorside Site Railway, NuGen again considers that *on its own* (subject to final design and the detail of the final arrangements reached with Network Rail for the operation of the Moorside Site Railway) the statutory thresholds for an NSIP are not met. This is because a proportion of the railway will remain private within the boundaries of the NuGen site and would not be part of the network operated by an approved operator. In addition, although the length of new tracks is estimated to be 9 km, it does not currently appear that the threshold requirement of a continuous individual stretch of track measuring at least 2 km would be met. NuGen therefore considers that the Moorside Site Railway should be considered to be Associated Development. However, it should be noted that the precise operational arrangements of the Moorside Site Railway are still being finalised and may affect its status as development under the Planning Act 2008.
6. In forming this position, NuGen has had regard to the guidance set out in Annexes A and B of the April 2013 Department of Communities Local Government (DCLG) document entitled 'Planning Act 2008 – Guidance on associated development applications for major infrastructure projects'.
7. For the purposes of the Stage Two Consultation, and in order to avoid confusion for members of the public, NuGen simply referred to the "Moorside Project Railway" as being a NSIP (especially given the final extent of the railway works and who may operate them is subject to on-going consultation). It was not considered appropriate to be over-prescriptive in respect of splitting out the various railway works, when this could mean that elements of the railway works which became the railway NSIP, or part of the railway NSIP, were not included in that classification during consultation.

NuGen confirms that the Explanatory Memorandum to the draft Development Consent Order (to be submitted with the application) will identify which elements of the Moorside Project are a NSIP, part of a NSIP and Associated Development.

8. NuGen would be pleased to consider any views the Inspectorate may have on this matter at an appropriate meeting.

- **MOLF not an NSIP:**

1. Please be advised that NuGen has never formally considered the MOLF as an NSIP and therefore your statement "*the MOLF is no longer an NSIP*" is incorrect.
2. NuGen has not changed its position on this matter, which would be the inference from your statement, but rather NuGen has now determined the final position as to the capacity of the MOLF that it will be promoting as part of its DCO application. NuGen made clear in 2015 that it had not, at that stage, determined whether the MOLF was an NSIP and flagged to the Inspectorate that this question was being examined. Having conducted some necessary design work and capacity calculations to assess this matter, in preparing the current consultation, the outcomes now clearly indicate, as plainly stated in the Stage 2 Consultation documents, that the MOLF will not be a Harbour Facilities NSIP in its own right. Specifically this is because they are not expected to be capable of handling the embarkation or disembarkation of at least the relevant quantity of material each year as set out in sections 24(1)(b) and 24(3)(a) to (d) of the Planning Act 2008.

- **SOCC Page 7 National Policy Statements:**

1. It was considered appropriate to only refer to the National Policy Statements relevant for the confirmed NSIP that was identified in the SOCC, i.e. the Moorside Power Station. It was considered to be potentially confusing to start referring to National Policy Statements for development that *may* be an NSIP.
2. The Stage Two Consultation documents, such as section 10 (page 53) of the Proposed Scheme document, set out the relevant National Policy Statements, being EN-1, EN-6 and the National Networks National Policy Statement.

- **SOCC Page 8 Site Preparation Works:**

1. Consultation on these works is clearly set out within the Stage Two Consultation documents. Please see section 9 (page 52) of the Proposed Scheme document entitled "**Site preparation application(s) to Copeland Borough Council**". This element of the consultation is also clearly and separately highlighted on an exhibition panel of its own and through a dedicated consultation question (Q15 in the Proposed Scheme document). This will enable NuGen to identify any views relating specifically to these works. You will be aware that there is no statutory requirement to carry out

pre-application consultation in relation to an application under the Town and Country Planning Act 1990.

S48 publicity notice in London Gazette and national newspaper

1. A copy of the Notice of Proposed Application under section 48 was enclosed with the letter sent to the Secretary of State under section 46.
2. Copies of the advertisements from both successive weeks could not be enclosed with that letter due to them not having been published at that stage, as required by the Planning Act 2008. Copies of the Notices can be consulted by visiting:

London Gazette:

<https://www.thegazette.co.uk/notice/2541881>

Edinburgh Gazette:

<https://www.thegazette.co.uk/notice/2542617>

The copy of the Notice in The Times of London national newspaper is attached.

Preliminary Environmental Information Report (PEIR)

- Section 1.2:

1. Whilst in the particular instance of paragraph 1.2.1 of the PEIR there is no explicit reference to the Secretary of State for Transport, it is clear from the rest of the document that both the Secretary of State for Energy and Climate Change and the Secretary of State for Transport would be the relevant Secretaries of State determining the application.
2. The definition of "Secretary of State", which is used throughout the PEIR, in the Glossary (section 1.7) states clearly that "*As the Moorside Project contains two NSIPs, being the MPS and the Moorside Project Railway, the relevant Secretaries of State who will decide NuGen's application for a DCO for the Moorside Project will be:-*
 1. *the Secretary of State for Energy and Climate Change; and*
 2. *the Secretary of State for Transport"*
3. The definitions of "DECC" and "DfT" in the Glossary also make it clear that both Secretaries of State will determine the DCO application.

Section 1.2.29:

1. Paragraph 1.2.29 of the PEIR commences with the words "*As referred to above.*". Paragraph 1.1.2 of the PEIR makes it very clear that "*In addition [to the Moorside Power Station], the Moorside Project Railway is classed as a NSIP under sections 14 and 25 of the Planning Act 2008. The DCO application will, therefore, include two "Nationally Significant Infrastructure Projects."*"

2. The phrase "*likely to include*" does not mean that the railway works may or may not be a NSIP, rather the DCO application is likely to apply for development consent in respect of those works.
3. Accordingly, there is no difference between the PEIR and the Non-Technical Summary to the PEIR.

Cumulative Effects:

1. Reference in paragraph 3.4.52 of the PEIR to "*[a] preferred route option is emerging through appraisal of various route options*" accurately refers to the fact that whilst a "scoping corridor" is known in respect of the North West Coast Connections Project, what is not known at this point is the "preferred route" within that corridor.
2. As Paragraph 2.3.4 of National Grid's Scoping Report makes clear, the Scoping Corridor "*is expected to comprise a larger area and wider swathe than the eventual Order Limits that would be the subject of the Application for development consent.*" Until this preferred route is known, it is very difficult for NuGen to carry out a meaningful cumulative assessment, as until it is known where within the scoping corridor the overhead line will be positioned, an assessment of the cumulative effects will be limited given there are too many permutations within that scoping corridor.
3. NuGen is in active discussions with National Grid over its project, and will present in its application a cumulative assessment of the Moorside Project with the North West Coast Connection Project to the extent possible based on the information that is available to NuGen.

General Points

- Distribution of consultation documents:

1. It is not correct, unless some evidence can be provided, that any section 42 consultees or that any consultation bodies under Regulation 11 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 only received some of the Stage Two Consultation documents. NuGen arranged hand delivery (including in some instances photographing documents being posted through letterboxes) for many local s42 recipients, for the remainder and for all Consultation Bodies the Royal Mail's track and trace system was employed to establish that direct distribution has taken place. It would be helpful if there is any evidence to the contrary for this to be provided to NuGen so that the matter can be addressed as soon as possible.
2. As the Inspectorate will appreciate, it is not appropriate to send the same documents to section 42 consultees as those identified in the SOCC. All Section 42 consultees received the full Stage Two Consultation documents, whilst households within a certain area (as identified on page 14 of the SOCC) received the Proposed Scheme Overview document.

3. In addition, and over and above any statutory obligations to do so, NuGen also sent out a copy its discretionary "Draft Property Support and Local Mitigation Schemes" document not only to all section 42 consultees, but also to households in Beckermeth and Braystones, including to properties that NuGen does not consider will be affected by the development, in case they should want to provide input and comment on the documents.

- **Memory stick:**

1. This form of information dissemination has been highly popular. NuGen has produced approximately 4,000 memory sticks and distributed the bulk of these. The memory sticks contain the full suite of Stage 2 Consultation documents. NuGen has received many requests for additional memory sticks, which are given out at consultation exhibitions.
2. Out of the 4,000 memory sticks produced, having checked with colleagues, there is only one recorded individual, according to a comment made to a member of NuGen's staff by an officer of Copeland Borough Council, that has had any reported problems with the memory stick, although we do not know what the problem was. NuGen has contacted Copeland Borough Council seeking further information about this case, but no reply has been received.

- **Marine Off-loading Facility (MOLF) Description:**

1. It would be entirely incorrect to say that detailed information was produced for the Consultation following the start of the consultation period. Further detailed design work and assessment of the MOLF is continuing (as is usual), which will also take into account consultation feedback as it is received. This detailed design work and assessment is required for the preparation of the necessary application material.
2. The MOLF is expected to be reduced in size during the operation of the Moorside Power Station. This is clearly set out on page 28 of the Proposed Scheme document and in the Glossary. As would be expected, the same points are explained in more detail in the Preliminary Environmental Information Report (pages 2-11 and 2-12) and are supported by detailed plans and figures. Figure 2.28 of the PEIR shows, in a very clear manner, the full extent of the MOLF with the difficult to misunderstand title, "MOLF Proposed Layout".
3. These documents are, as you are aware, the Stage Two Consultation documents that have been sent to every section 42 consultee and Regulation 11 Consultation Body. These same Consultation documents are also laid out on display tables at the consultation exhibitions and in locations across Cumbria. The same Figure 2.28 was used as the basis for the illustration of the MOLF in the three dimensional fly-through model that can be viewed at the exhibitions. In addition, as is also to be expected, the Consultation documents and the exhibition stands both include a plan of the Moorside

Power Station once it has become fully operational with the smaller MOLF, so that both can be seen for comparative and other purposes.

4. The same information setting out both the larger construction phase and the smaller operational phase MOLF is therefore clearly available both in the Consultation documents and at the exhibitions. (The exhibition materials are based on and make use of the Consultation documents). Any suggestion that the same information was not available in both is therefore completely incorrect.

- **Further consultation:**

1. NuGen has carried out consultation on the Moorside Project over a number of years from the earliest stages of the design and development of the Moorside Project. Prior to application, it is essential to consult communities on the main features of the project and to give those communities some confidence that the application that will be made will not be materially and substantially different from the project on which they are being consulted.
2. The Guidance on the Pre-application Process (DCLG, March 2015) recognises the importance of "*having project proposals that are firm enough to enable consultees to comment*" (paragraph 70). There is a "*tension*", it recognizes, between achieving this and early consultation. Indeed your email both highlights the potential need to make changes as the design evolves, but also raises concerns where changes and evolution appear to have occurred.
3. There are, therefore, aspects of the Moorside Project which are fixed as at this Stage Two Consultation (such as the location of the Moorside Power Station itself which is dependent on results of various geological and seismic surveys), those where the location is known but the design can be informed within certain parameters, and those where there are options remaining.
4. As recommended in the Guidance (ibid), the Moorside Project has previously been subject to iterative consultation over a period of some years. NuGen will continue this iterative process. It takes the design and evolution of the Moorside Project, and any significant impacts it may have, extremely seriously and is committed both to avoiding adverse significant impacts wherever possible and to continuous and ongoing consultation and stakeholder involvement in its design and development of the Moorside Project.
5. There are therefore, a range of ongoing meetings and dialogues with Councils and local bodies to facilitate this. NuGen intends to continue its programme of this kind throughout the remaining period of preparation of its application leading up to submission. NuGen has made no commitment at this stage to repeat a formal statutory pre-application consultation nor has it stated it will not do so. It would be inappropriate to decide now whether, and indeed what kind of further consultation, is required before the current consultation is even half way through. Nor would it be appropriate to repeat consultation where the Project design had not changed.

6. You will be aware that NuGen's Stage Two Consultation is intended to be the main pre-application consultation and it is important that all parties understand that this may be their final opportunity to comment before application. It would be irresponsible to suggest otherwise, as people would potentially be disenfranchised from the process by failing to get involved at this key stage, assuming that there would be another. NuGen will, however, continue to keep under review the kinds of consultation and dialogue it has planned following Stage Two.

- **Transport modelling/Health impact/level of detail and consultation:**
 1. Transport modelling work has been carried out to inform an understanding of those road sections and junctions where NuGen may need to carry out improvements. As the Stage Two Consultation materials show, NuGen has identified nine highway improvements sites and these sites are included within the proposed redline boundaries of the Moorside Project.
 2. This transport modelling has also supported the preliminary environmental assessment, and the results are reported on in the PEIR. As is usual, NuGen is continuing with its transport modelling, and discussing the results as they are generated with consultees. If further modelling, design or assessment work in this, the health impact field, or any other area of detailed study for the Moorside Project, indicates a need for material changes to the Moorside Project proposals (such as an additional highway improvement site) then appropriate consultation will be carried out. NuGen has never suggested the contrary, that any necessary consultation would not be undertaken.

NuGen welcomes comments on its consultation. It urges those making comments to make them directly to NuGen so that NuGen can identify who has made the comments and can attempt to address those comments with the individual or body concerned.

We hope that this letter addresses the points raised in your correspondence. We would be happy to meet with the Inspectorate to provide further clarification on any of the above issues and/or to provide further updates on the Moorside Project as appropriate to the timescales involved.

Yours sincerely,

Gideon Amos – DCO & Legal Interface Manager