



# The Planning Inspectorate

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Mr David Palmer

Your Ref:

By email

Our Ref: EN010064

Date: 17 November 2014

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Dear Mr Palmer

Further to your email of 27 October 2014, please find attached to this letter the Planning Inspectorate's comments on the draft documents submitted for the Meaford Energy Centre project as follows:

**Annex 1** – Draft Consultation Report

**Annex 2** – Draft DCO

**Annex 3** – Draft Land Plans and Work Plans

These comments are without prejudice to any decision made under section 55 of the Planning Act 2008 (as amended) or by the Secretary of State on any submitted application, however I hope you find them useful. If you have any queries regarding these comments do not hesitate to contact me.

Yours sincerely

*Tom Carpen*

Tom Carpen  
Infrastructure Planning Lead

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.

## Annex 1 – Draft Consultation Report

Please note, the comments below note areas of compliance as well as comments on areas for consideration.

- It is noted that that CR includes word 'statutory' in its title. Please note that although the CR is a statutory document required from the applicants upon submission as per s37 of the 2008 Act, you may consider removing word 'statutory' from the title. This title may be perceived as it only includes information from 'statutory consultation' where the intention of this document is to provide information in relation to the entire process of pre-application consultation including both non-statutory and statutory consultation you may perhaps wish to remove the word '*Statutory*' from the name of the document.
- As you are likely to be aware the Planning Act 2008 (PA 2008) was amended by Localism Act 2011. When referring to the PA 2008, you may in the first instance wish to state 'as amended', Chapter 1 for instance.
- Paragraph 1.1.1 and 1.1.2 (p.5) currently state that the Report summarises '*initial consultation undertaken as part of a voluntary, non-statutory consultation*' which is then explained in Chapter 4. From experience the word 'voluntary' may be perceived as less relevant you may consider removing word 'voluntary' when referring to non-statutory consultation.
- Please note that the Report must be explicit and clearly identify which consultation was carried out as a part of non-statutory consultation and statutory consultation.
- It is noted that 'Hard to reach' communities have not been mentioned in the applicant's Report. Please note that it is important that Report clearly explains how such groups have been identified and information should be added to comply with *The Planning Act 2008: Guidance on pre-application process (August 2014) issued by the DCLG*'. Moreover, this should match with activities listed in the applicant's Statement of Community Consultation (SoCC).
- Chapter 3 – Overview:
  - Although not titled 'Executive summary', Chapter 3 provides clear information relating to the applicant and the project, and clear description of each element of the project that the applicant wishes to apply for.
  - Paragraph 3.8 (p.12) clearly defines the Development Consent Order (DCO) application process. Please note, however, that Inspector/s appointed to examine the application are known as 'Examining authority'. The term used in the CR 'planning inspector' (p.13) should be therefore replaced to match the definition as per PA 2008 and The Infrastructure Planning (Examination

Procedure) Rules 2010.

- Moreover, it should be noted that NSIP applications, once the application is formally submitted, are examined by the Inspectorate on behalf of various Secretaries of State (SoS) depending on nature of the proposed development. The final decision is made by relevant Secretary of State, in this case DECC. I note that paragraph 3.8.2 should refer to the SoS on its own rather than Secretary of State for Energy and Climate Change.

## Section 42: duty to consult

Chapter 5 entitled 'Scope of statutory consultation' sets out the purpose and scope:

- The applicant's intention was '*to gather feedback on the proposed design of the MEC and its integral connections to local gas and electricity distribution networks before submitting a DCO application*' (paragraph 5.3.1, page 17).
- The information on the scope of the statutory consultation refers to the Preliminary Environmental Information Report (PEIR) and Non-Technical Summary (NTS) (para 5.3.3, page 18). NTS has been provided in Appendix 2.
- Chapter 6 sets out s42 statutory consultation.
- Appendix 5 provides Schedule of s42 consultees, appears that there are s42(1)(a), s42(1)(b) and some 42(1)(d) consultees:
  - Prescribed organisations set out in Schedule 1 to the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009. It would be useful to refer to Advice Note 3 and its Annex which reflects post April 2013 changes brought in by the Infrastructure Planning (Prescribed Consultees and Interested Parties etc.) (Amendment) Regulations 2013, amending the list of prescribed consultees.
  - Relevant local authorities as per s43
  - The individuals and landowners categorised in s44 of the PA 2008.
  - The applicant used Regulation 9(1)(c) (EIA Regs 2009) list produced by the Inspectorate. However, it might not be clear to a reader as terms '*PIN reg 9 list*' and '*Reg 9 list*' are quoted (p125 and next).
- The Chapter sets out how the applicant consulted with consultees under s42(1)(a), s42(1)(b), s42(1)(aa) and (c) and s42(1)(d).
- The applicant issued s42 notification letter on 4 June 2014, copy is included in Appendix 6. The start date was 6 June and deadline for responses was given as 7 July 2014 which was more than the minimum statutory period of 28 days.
- Feedback summary is provided in section/Chapter 9 of the Report, and the feedback, MEL's responses and any resulting changes are set out in Appendix 24.

- The draft consultation report states that proposal would not affect inshore waters and will not be located in Greater London therefore the Marine Management Organisation and the Greater London Authority were not consulted under s42(1)(aa) and (c) respectively (para 6.4, p21).
- S42(1)(b) refers to 'each local authority that is within section 43'. The definition provided in s43 of the PA 2008 includes 'A', 'B', 'C' and 'D' authorities; however, the applicant provided information on how it had consulted authorities under 'categories' 'A' and 'B' **only** (paras 6.3.1 – 6.3.3, page 20). **The applicant is encouraged to provide a list of all relevant LAs (A, B, C and D) identified and consulted for the purpose of s42(1)(b).** This could be supported by a map showing the site and identifying the boundaries of the relevant local authorities.
- Full responses to the consultation together with MEL's responses are provided in Appendix 24. Para 10.2.1 provides Table 3 of key points in s42 consultation response (starting on p36), and para 10.2.2 lists organisations that did not respond to the consultation. Clear presentation, although Table 3 could be set as a separate appendix.
- It is helpful to see that the applicant also sets out a schedule of meetings with a number of s42 consultees

#### Section 42: additional targeted consultation set out in Chapter 12.

- During the pre-application stage MEL identified a need to make a minor amendment to its proposed Order limits (para 12.1, p68), and undertook a targeted stage of statutory consultation with those parties with an interest in land affected by the amendment and other key s42 consultees.
- No new consultees were identified and those affected were sent a letter dated 7 October 2014 regarding amendment to s42 red line boundary at Canal Bridge 101 (Malkin's Bridge) and Railway Bridge 104 (incorporating additional land, 125.7sqm). Appendix 28 provides a list of targeted consultation consultees, although does not list Stafford Borough Council, Staffordshire County Council and Environment Agency.
- This consultation closed on 5 November 2014 and the applicant advises that it will update Appendix 29 in due course.
- **It would be helpful to know how the applicant identified those persons for targeted consultation.**

#### Section 44: Categories for purposes of section 42(1)(d)

- In para 6.5 (p21) the applicant identified consultees described in section 42(1)(d) of the Act. These individuals may have interest in the land on which the NSIP is

proposed and include:

- *'Category 1' Owners, tenants or occupiers of land directly affected by the NSIP proposal;*
  - *'Category 2' persons who have an interest in land or have the power to sell, convey or release the land affected by NSIP; and*
  - *'Category 3' persons who are not having any land acquired but who could be entitled to make a compensation as a result of their property being depreciated in value by the proposed development'.*
- However, definition of 'Category 3' persons in s44(4) is more complex and relates to the ability to make 'a relevant claim' as set out in s44(6) and we would suggest that it should be used instead.
  - We cannot compare the applicant's s42 list with the Book of Reference as it hasn't been provided, or check for 'diligent inquiry' in identifying s42(1)(d) persons.

#### Section 45: timetable for consultation under s42

Chapter 6 deals with s42 consultation. The applicant issued notification letter on 4 June 2014, copy of which is included in Appendix 6. The consultation commenced on 6 June and deadline for responses was given as 7 July 2014 which was more than the minimum statutory period of 28 days. S45 is not explicitly mentioned in the CR.

#### Section 46: duty to notify Secretary of State of proposed application

The applicant must comply with s46 on or before commencing its consultation under s42 of the Act. It is noted that there is no mention of s46 notification in the Report. As it is a statutory requirement the applicant is encouraged to include a copy of the letter (dated 5 June 2014), along with the copy of acknowledgement letter issued by the Inspectorate (dated 9 June 2014), in the final Report.

#### Section 47: duty to consult local community

- Chapter 7 provides information relating to the preparation of the Statement of Community Consultation (SoCC).
- The applicant set out the preparation process of the SoCC with host local authorities Staffordshire County Council and Stafford Borough Council. Both LAs have been issued draft SoCC ahead of the formal consultation which was carried out between 18 March and 15 April 2014 (para 7.2, p23). The letter accompanying draft SoCC, dated 18 March 2014, is provided in Appendix 7. Both LAs confirmed that they were satisfied with the contents of the draft SoCC, their comments were included in Table 1 (para 7.2.6, p 24) and Table 2 (para 7.2.7, p 24-25) and in Appendix 8. The final SoCC is provided in Appendix 9.
- The Planning Inspectorate carried out a factual check (para 7.2.8, p25) which has been provided in Appendix 10.

- The finalised SoCC has been publicised in the Staffordshire Newsletter on 29 May and 5 June 2014. Copies of the notices are provided in Appendix 11; dates are illegible but the applicant stated it will provide original copies.
- Chapter 8 explains the undertaking statutory consultation in accordance with s47
- The applicant committed to consult the local community on its proposal for the MEC by using the following methods listed in the finalised SoCC:
  - Project information leaflet (para 8.2, p26) – key document for s47 consultation is provided in Appendix 12, and the accompanying covering letter dated 3 June 2014 (arrived on 5 June) is in Appendix 13. The applicant stated what the information in the leaflet was, and how it was circulated. The statutory consultation ran from 6 June to 7 July 2014.
  - Project website (para 8.3, p27) was updated and re-launched on 5 June 2014, ahead of statutory consultation. Screen captures are provided in Appendix 14.
  - Posters (para 8.4, p27) were sent to 102 community organisations. The issue of posters coincided with the publication of SoCC (para 8.4.1, p28).  
**How were these chosen?**
  - Appendices 16 – 18 provide copies of the poster, covering letter and the list of organisations. Although it would be helpful if the Table in Appendix 18 listed all organizations in alphabetical order. Barlaston Village Hall where public exhibition event was held does not appear to be listed.
  - Public exhibition events are explained in para 8.5, p28.
  - Advertising (para 8.8, p 30) in local newspapers on 3 and 5 June 2014. A copy of the placed advert is provided in Appendix 21.
  - Media coverage is explained in para 8.9, p30. The press release issued on 29 May 2014 is provided in Appendix 22, and the resulting press coverage is in Appendix 23.

#### Section 48: duty to publicise

- S48 notices have been published on 29 May (Staffordshire Newsletter, Daily Telegraph and London Gazette) and 5 June 2014 (Staffordshire Newsletter), and the copies are provided in Appendix 3. The copies are not legible but the applicant stated it will remedy this in the final Consultation Report, as it would be helpful to see **copy of the original s48 notice in full**.
- At the same time notification under Regulation 11 of the EIA Regs 2009 was issued. Copy of the letter, dated 29 May 2014, is provided in Appendix 4.

#### Section 49: duty to take account of responses to consultation and publicity

Although the applicant sets out how it has taken account of responses to consultation and publicity, there is no explicit reference to s49 in the Consultation Report, and this would aid clarity.

The structure of MEL's response followed by how the scheme has changed does enable the reader to understand how comments have been given regard, and there are useful references to specific requirements and documents. In some instances, the responses to the comments are relatively brief and the applicant should ensure that all comments raised can be reasonably identified in the scope of the response.

#### Section 50: guidance about pre-application procedure.

- Under s50(3) of the PA 2008 the applicant must have regard to any guidance under this section. There is reference to s50 in para 2.2.5 (p7) that '*applicants must also have regard to any statutory guidance issued under section 50 of the Act. This includes The Planning Act 2008: Guidance on pre-application process (August 2014) issued by the DCLG*'. Then in para 5.2.2 (p17) the applicant refers to the paragraph 11 of the DCLG's '*Planning Act: Guidance on the pre-application process*' (August 2014) which states: '*The early involvement of local communities, local authorities and statutory consultees at this stage can bring about significant benefits for all parties.*' MEL stated that stat con has been structured to achieve these benefits (para 5.2.3).
- However, it would be beneficial if a table (for example Consultation Compliance) was included in the final CR, explaining how the applicant had regard to the statutory requirements of the Planning Act 2008. In line with the Advice Note 6, in preparing for the submission of the application, it may be a helpful exercise to complete a version of the s55 checklist that the Planning Inspectorate uses to assess whether an application can be accepted for examination. **This may be appended to the application if the applicant considers that it would assist parties.**

#### Non statutory consultation

- The applicant undertook a *voluntary*, non-statutory consultation which took place over six weeks, commencing on 24 September 2013 and closing on 1 November 2013, in line with a published Consultation Plan (para 4.2.3). The Consultation Plan was agreed with Stafford Borough Council and Staffordshire County Council, and it was the precursor to SoCC. Appendix 1 (Non-Statutory Consultation Feedback Report) will set out activities and the outcome but it has not been provided at this stage. **It would be helpful if the Consultation Plan was included in that Appendix.**

In addition the applicant undertook a programme of engagement with landowners who own or have an interest in land affected by MEL's proposal for the MEC. The summary of this activity is set out in paras 4.3 - 4.10 (p15). **It would assist to see how were these consultees were identified.**

## **Annex 2 – Draft DCO**

The applicant should be aware of and refer to the recently published DCO drafting advice note (PINS Advice Note 15) and should ensure that their DCO follows the advice contained within it.

[http://infrastructure.planningportal.gov.uk/wp-content/uploads/2014/10/advice\\_note\\_15\\_version\\_1.pdf](http://infrastructure.planningportal.gov.uk/wp-content/uploads/2014/10/advice_note_15_version_1.pdf)

### Article 2 & 4 - Definition of Maintain

Article 2 contains a wide definition of maintain, including removal and replacement, this could permit substantial works to be carried out. The power to maintain should not permit the construction of what is a different project from that consented and the applicant should provide justification for including “removal” and “replacement”. It is acknowledged that Article 4 limits the power to works within the order limits but a DCO should only authorise works that are within the scope of the environmental impact assessment (EIA) that has been carried out. The applicant is advised to limit the definition of maintain either in the definition of “maintain” and / or within the maintenance article, to the extent assessed in the ES. This is reflected in the recent DCO drafting advice note at section 20.2. If the applicant does not consider this to be necessary they should provide an explanation for this within the Explanatory Memorandum (EM).

### Article 2 – Definition of Undertaker

This is defined as Meaford Energy Limited or any other person who has the benefit of the land in accordance with Article 7 and s.156 of the 2008 Act.

The undertaker is granted development consent and other important powers within the order, such as the operation of the generating station, and the applicant should consider whether it is acceptable and appropriate for such powers to be granted to “any person with the benefit of the land” in accordance with s.156. The applicant should provide an explanation for their definition in the EM.

### Article 10 & 13

These articles contain deemed consent provisions, the applicant is advised to consult with the discharging authorities regarding the provisions and the time periods imposed.

### Article 18 – Compulsory acquisition

This article authorises the creation and compulsory acquisition of new rights. The power is limited to the rights described in Part 1 of the BoR and shown on the land plans. The applicant should ensure that each right is clearly and precisely described in the BoR.

### Article 23 – Private Rights

This article provides that all private rights over “land subject to compulsory acquisition” are suspended and unenforceable insofar as their exercise would be



inconsistent with the exercise by the undertaker of the “acquired right”. The only compulsory acquisition authorised by the order is the creation of new rights (article 18). The draft land plan indicates that the power to extinguish or suspend private rights contained in article 23 is intended to apply to a significantly larger area of the order land than the land in which new rights are created. The applicant should consider whether the article as drafted successfully achieves its objective and should ensure that it is in accordance with the land plans and the book of reference. It would be helpful for the applicant to explain in the EM the extent of the land that this article is intended to apply to and why it is necessary.

#### Article 25 – Temporary use of land

25(8) refers to paragraph (1)(a)(i). There is not a paragraph (1)(a)(i) in this article. 25(11) states that nothing in this article prevents temporary possession more than once in relation to land in schedule 8, this is not appropriate here as schedule 8 relates to the discharge of requirements.

The article authorise the temporary possession of all of the order land which is described as land required for or affected by the authorised development shown on the land plans and described in the BoR. The appellant should consider whether this is necessary. It is noted that the applicant is only seeking CA powers in respect of the creation of new rights, presumably on the basis that the applicant owns all the other land required for the project already. In consideration of this the applicant should consider whether it is necessary to seek temporary possession powers over all of the order land. If the applicant considers it is necessary, reasons for this should be explained in the EM and statement of reasons (SoR).

#### Article 26 – Temporary use for maintaining

The applicant should also explain why this power is necessary in the EM and statement of reasons

#### Article 32 – Certification of Plans

The applicant should ensure that every plan relied on in the DCO is listed in this article. For example, the Rights of Way and Access plan should also be included in this Article.

#### Article 24 – Procedure in relation to certain approvals.

The applicant is advised to discuss this article and Schedule 8 with all discharging authorities prior to submission. The applicant should ensure that the National Infrastructure EIA regulations that apply to discharge of requirements are not ousted by schedule 8 and the applicant is referred to sections 21 & 22 of the DCO drafting advice note.

#### Schedule 1 – Works

The applicant should ensure that the EM explains which works form part of the NSIP and which comprise associated development. The applicant should note that development consent cannot be granted for associated development in Wales.

#### Works No 4

It is noted that the applicant has an extant planning permission for highway improvements, the applicant should explain the interaction between the highway works for which development consent is sought and the extant permission in the EM.

## Schedule 2 – Requirements

### Requirement 1

The applicant should consider whether the definition of commencement is appropriate in consideration of the advice contained in section 23 of the DCO drafting advice note.

### Requirement 3

This requirement contains a tailpiece. The applicant should have regard to the advice on tailpieces contained in section 19 of the DCO drafting advice note and ensure that the justification for the tailpiece is explained in the EM.

3(2) refers to requirement 20(1), there is no requirement 20(1), the applicant should consider whether this should be a reference to requirement 14(1) instead.

3(3) requires the works to be designed "substantially" in accordance with the design principles statement. Use of the term "substantially" generates uncertainty as to what is being consented and the applicant should consider whether this is appropriate in relation to key design principles. If the applicant wishes to retain the word "substantially" they should provide justification for this in the EM.

### Requirements 4, 5 & 10

These requirements also contain tailpiece provisions. The applicant should consider whether these are acceptable in consideration of the advice in section 19 of the DCO drafting advice note and, if they are to remain, provide justification for them in the EM.

### Requirement 11

11(3) – The applicant should clearly explain in the EM why this is necessary. If it is necessary to limit noise levels in the DCO to secure essential mitigation, and this is done, they should not be exceeded. If they are exceeded then the undertaker will be in breach of the DCO and the LPA can take enforcement action.

## Annex 3 – Draft Land Plans and Work Plans

### Works plan, scale 1:2500, A1. Reg 5(2)(j)

- The order limits are clearly delineated in red line.
- The drawing has the same number as the Land Plan, which is confusing.
- The following Works are depicted:

1A,1B,1C,1D,1E,2A,2B,3,4,5A,5B,6 & 7

In the draft DCO, paragraph/section 2 Interpretation: definition – *"limits of deviation" means, in respect of numbered works 1A to 8 inclusive the outer limits of the corresponding numbered area shown on the works plans, in respect of numbered works 1A to 8.*

It is noted that there is **no** mention of works number 8 in Schedule 1 of the DCO or on the Works Plan.

- There is no reference to APFP regulations.

### Land Plan, scale 1:2500, A1. Reg 5(2)(i)

- The order limits are clearly delineated in red line.
- As required by APFP Regs it identifies:
  - Land required or affected by authorised development,
  - Land subject to a power to extinguish or suspend private rights (yellow), and
  - Land subject to a power to acquire new rights or extinguish or suspend private rights (blue) – assume that the plot GC3 relates to the railway bridge for which additional targeted consultation was undertaken (Chapter 12 of the CR). However, as the applicant only provided the main works plan and land plan it is not possible to refer to other sections / plans, or work out the naming convention (for example: PS1, PS1A, AR1, AR2A).
- There is no reference to APFP regulations

### General comments:

- Both plans appear to include scale, direction to the north and the scale in which the plans are to be produced on. However, there are no revision numbers.
- The applicant should ensure that plans are printed to the correct scale – i.e. not just to fit the sheet.
- Where a plan comprises three or more separate sheets a key plan must be provided showing the relationship between the different sheets, please see Regulation 5(4) of the APFP Regulations 2009 (as amended).