

Meeting Note

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| File reference | EN02 0001 |
| Status | Final |
| Author | Kath Haddrell |

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| Meeting with | Multi Party Hinkley-Seabank Grid Connection meeting |
| Meeting date | 1st December 2011 |
| Attendees (IPC) | Kath Haddrell, Senior Case Manager (KH) Jan Bessell, Pre-Application Commissioner (JB) |
| Attendees (non IPC) | Doug Bamsey, Sedgemoor District Council (DB) Gillian Ellis-King, South Gloucestershire Council (GEK) Alan Jones, Somerset County Council (AJ) Valerie Moody, Somerset County Council (VM) Rebecca Musto, Somerset County Council (RM) Graham Quick, North Somerset Council (GQ) Kenneth Taylor, West Somerset District Council (KT) Peter Gregory, Mark Parish Council (PG) Peter Bryant, National Grid (PB) Aileen Smith, National Grid (AS) Ivan Stone, National Grid (IS) Richard Walsh, National Grid (RW) |
| Location | IPC Offices, Temple Quay House, Bristol |

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| Meeting purpose | To provide an update on the progress of the Hinkley – Seabank Connection project, on-going pre-application process and joint working. |
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| Summary of key points discussed and advice given | <p>JB Introduced herself as the Pre-Application Commissioner providing advice and support to the case team during the pre-application stage of the project. JB also confirmed that as she is involved in giving advice she will not be appointed to examine the project, should it be submitted for acceptance. JB reminded all present of the IPC openness policy and that the IPC cannot comment on the merits of any application.</p> <p>KH Introduced herself and advised that she was now case leader for the project and the main point of contact. KH advised that a general agenda had been drawn up from matters pre-advised by the attending parties (attached).</p> <p>ALL Present briefly introduced themselves (as noted in the attendance list above).</p> <p>JB Updated the group on meetings that the IPC has had in</p> |
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recent months with National Grid and the No Moor Pylon group, minutes of which are or soon will be on the IPC website and that a note of this meeting would also be placed on the website.

AJ Stated that there was a need to understand the engagement strategy and how this relates to the SoCC. This is seen as a process point. Somerset authorities are learning from other projects, ie they have looked at adequacy of consultation reports.

DB Confirmed that he also wanted clarity about engagement.

RM Noted that the SoCC had been produced for stage 1 consultation and sought guidance on whether the current SoCC should be a final SoCC or whether a revised SoCC should be produced.

DB Agreed that clarity was sought as to what the IPC required. He confirmed that National Grid (NG) has shared the revised consultation with them, and that Sedgemoor are broadly content.

JB Advised that the IPC is bound by legislative process and requirements and there is nothing in the legislation that requires a SoCC to be revised, even if a project moves on (as long as it is still the same project in substance). Furthermore, there is nothing to stop a developer going beyond what is in a SoCC.

In terms of whether developers are revising SoCCs, some are and some are not. What is important is to document the process in full, identifying what is in the SoCC and any revised SoCC and what is additional in the Consultation Report. The authorities should also do this in the adequacy of consultation statement if they wish to report on more than the statutory tests.

Overall, the consultation report (prepared and submitted by an applicant) represents the culmination of the three different strands of consultation and publicity set out in s.37 of the Planning Act 2008 (PA 2008). The primary purpose of the consultation report is to capture and reflect upon all of the responses received from these three distinct pre-application stages (sections 42,47 and 48 of the PA2008) and explain how the developer has met its duty in the preparation of the application to have regard to the views expressed (s.49 PA2008). The report can also capture non-statutory or 'informal' consultation that takes place outside the requirements of the PA2008 so that the IPC has a comprehensive picture of all the consultation activity relevant to a particular project.

DB With Hinkley Point C (HPC) Sedgemoor used the s.55 checklist. While the additional consultation is welcomed, it is not known what this should be compared to.

VM Asked how authorities should respond to informal

consultation as opposed to formal consultation.

JB Advised that it was for authorities to respond as they see fit but as identified, the s.55 requirements relate to the formal consultation process.

GEK Stated that authorities need to understand what the consultation is and therefore there should be a structure.

JB Advised that it is within the authorities' gift to comment on the statutory elements and other elements of consultation if they choose to. However, it should be clear as to what was within the SoCC and what was not. The need to report on the three different strands of consultation and publicity set out in s.37(7).

RW Noted that quarterly reviews of work undertaken by National Grid (including consultation activities) was an implicit part of the work packages agreed under the Planning Performance Agreement.

PG Said that local communities are not involved with the preparation of the SoCC or at the adequacy of consultation stage and that they are being excluded from the new consultation. What is the test for commenting on consultation, if it is the SoCC, does the new consultation count?

JB Advised that the SoCC is the framework for how the developer will engage, and that the developer can update and re-issue a SoCC and/or go beyond what is in the SoCC. The IPC look at the Consultation Report and whether it followed legislative requirements (in particular s.42, s.47, s.48 and s.49), CLG guidance, and if not, why not, and whether the consultation met the SoCC.

The adequacy of consultation representations that we request are sought from A and B authorities and these should be tested against the SoCC but can go beyond this and comment on the whole process if this exceeded what was in the SoCC. The minimum that the Adequacy of Consultation response should cover is whether the consultation did what the SoCC committed to do and whether the three different strands of consultation and publicity set out in s.37 have been complied with. Some reports have taken into account the views of local communities and the general public, others have stuck to commenting on consistency with the SoCC and the legislative requirements.

The Acceptance Commissioner, which will be a different Commissioner to that during Pre-Application, has to take account of comments in the Adequacy of Consultation representations. However, these are taken at face value and compared to the Consultation Report prepared by the applicant. the application documents etc. Regulation 5 of the Application, Prescribed

Forms and Procedure Regulations gives the IPC the power to request hard copies of all consultation correspondence under the whole of Part 5 of the PA2008.

The IPC tell developers, and have told National Grid, to be prepared for that eventuality. This has been requested in all bar one of the cases that the IPC has accepted for examination so far (as at the date of this meeting). If requested, this will be within the 28 day acceptance period and so very short notice will be given and a response by return within a very short number of days will be expected.

DB Stated that there is a body of opinion that will have a view, much of which is likely to be commentary. There is more community interest in this project than in Hinkley Point C New Nuclear Power Station (HPC). HPC will be dwarfed by the connection project. Communication around this issue will need to be shared.

PG Stated that there had been misunderstanding about what the IPC could take into account at acceptance stage. National Grid want to engage with local authorities and statutory consultees etc. but arguably the new consultation will create more detailed points. Will this be included in the SoCC and can communities comment?

JB Gave the example of the Brig y Cwm application which is now withdrawn. A SoCC had been agreed and the applicant undertook consultation in accordance with the SoCC. However, there was a great deal of community disquiet which was fully reported in relevant representations made by interested parties after the acceptance process had been concluded. When the IPC looked at the Adequacy of Consultation responses. Original correspondence under Part 5 of the PA2008 was requested and reviewed. The Adequacy of Consultation responses from the local authorities were taken into account. None of the responding authorities raised any insurmountable issues in respect of consultation or in relation to compliance with section s.42, s.47 and s.48 of the PA2008.

JB The local authority formal role is to provide a statement about whether or not the applicant has complied with s.42, s.47 and s.48 of PA2008. The Adequacy of Consultation response is not the place to debate the merits of the scheme and local authorities and others will have ample opportunity to raise these matters in their Local Impact Report and/or any written representations that are made if the application is accepted to go forward to examination.

JB Advised that it was very important for communities and other organisations and bodies to engage in the consultation process and to raise all matters directly with applicants. However, if there

are concerns that communities consider have still not been dealt with satisfactorily after an application has been submitted, this should be recorded in relevant representations, should the application be accepted. Once an application has been accepted, the issue of consultation would be considered to have been dealt with. The appointed Examining Authority (ExA) would then be the appropriate recipient through written representations of any matters communities still felt had not been dealt with and it would be for interested parties to submit evidence on these matters to assist the ExA in examining the application before it.

PG Commented that there is a latent sense of frustration about how the first round of consultation was carried out which has contaminated further rounds. It will be important to focus less on that and move on to the substantive issues. Going back to the SoCC, the SoCC is still in place, but there is now consultation which is not included in that SoCC but which will inform the final version of the SoCC. The relationship between the consultation strategy and the SoCC is unclear.

JB Advised that the SoCC is not a prescribed set of headings but a framework within which consultation is undertaken and that CLG guidance should be taken into account and Guidance Note 1 of the IPC.

PG So the IPC is looking for the applicants to evidence their justification for the Consultation Report?

JB Advised that the IPC have to take documents submitted at face value unless there is obvious inconsistency. If the IPC has concerns then this may be a reason to request all correspondence. For Brig y Cwm, we carried out a “deep dive” checking a sample of representations and identifying all of the subject matters raised to see if these were dealt with in some way in the Consultation Report. As another example, the IPC may check the comments from the statutory consultees to ensure that they agree with what the applicant has recorded and represented as having been resolved or dealt with. However, it must be remembered that this is only a 28 day period in total for acceptance of an application and it is not a matter of testing the merits of an application at this stage.

GEK Asked if the IPC checked the content of the SoCC.

JB Advised that the IPC had no formal role in the preparation, agreement and publication of the SoCC, but that the IPC would check the Consultation Report against the SoCC and check the advertisement and compliance with the requirements of the PA2008 and secondary legislation such as Environmental Assessment at the acceptance stage.

GEK Asked whether if only the SoCC was tested by the IPC, and

informal consultations were given less weight, whether this could disadvantage consultees by encouraging applicants to do the bare minimum

JB Advised that the IPC will look at the whole Consultation Report.

DB Noted that the Consultation Report should be in accordance with CLG Guidance.

JB Advised that if the IPC refuses to accept an application for examination, it is open to High Court challenge. We can not be Wednesbury unreasonable. It might be helpful to think of the IPC as the National Planning Authority for Nationally Significant Infrastructure Projects and the acceptance process can be likened to the validation process in Local Planning Authorities. Acceptance is procedural and does not consider the merits of the application but whether it procedurally meets s55 of the PA2008.

JB Noted that the Localism Act 2011 proposes to relax or make less prescriptive, the tests for acceptance and that any application submitted after vesting (provisional date 6 April 2012 could be subject to change) would be likely to be considered under new tests.

JB Advised that a current version of the s55 checklist is available on the IPC website.

AJ It is in National Grid's gift to do what they want. If they chose not to revise the SoCC then we would need to assess the consultation against the existing SoCC and the Consultation Strategy and we will have to articulate the difference. It is difficult to break down the difference between the two.

JB Advised that there is no fixed or prescribed way of carrying out the consultation and that the IPC encourages dialogue between parties.

RW National Grid has a new publication out, and National Grid consider that they are at Stage 3. The necessary work has been carried out for Stages 1 and 2 but National Grid are happy to discuss this with the local authorities and parish councils.

AJ Expressed concern about the consultation and the need to ensure clear understanding about each of those stages. The IPC can expect comments on this in consultation responses.

JB Advised that the IPC can only comment on the process, we are limited to what PA2008 says we can advise on.

AJ Advised that Councillors will take this issue very seriously and that is why the point is being laboured.

DB National Grid now has a corporate approach to the process. Where do Ofgem sit in relation to the IPC process and how does the IPC consult with them? Ofgem is the regulatory body for a monopoly.

JB Advised that the IPC had met with all statutory parties and explained about the IPC process. However, the IPC is not a policy making body and thus have no control over any other body. The IPC must consider “important and relevant” issues at the direction of the appointed ExA, for example, at Brig y Cwm, the Environment Agency was the licensing authority, and it is not for the IPC to duplicate that regime as set out in the relevant National Planning Policy Statement (EN1).

PB. Whatever we propose in terms of connection will ultimately go through National Grid's governance structures for approval rather than Ofgem. National Grid does get an allowed rate of return on its asset base and National Grid would be unlikely to recover costs for anything that Ofgem would not consider to have been reasonably incurred as part of developing the appropriate connection solution.

DB Sought clarification whether Ofgem could stop a project.

PB Advised that Ofgem could not ‘stop’ a project and that determination of the project was ultimately an issue for the planning process e.g. the IPC and the Secretary of State

DB Noted that the process for Hinkley-Seabank will be more challenging than for HPC and welcomed National Grid's relaxed timescales thus far.

JB Advised that at Pre-Application stage, the project is in the developer's control. At acceptance, it moves into the IPC's control and there are 28 calendar days to decide whether to accept or not.

PG Stated that the statutory process excludes local communities. He asked whether there was best practice in terms of developers giving local authorities early sight of consultation reports.

JB Advised that this was best practice, and that developers tend to tell the IPC when applications are coming in and we provide informal advance notice to A and B Authorities as we become aware of any submission timings. Very early on in the process we advise authorities to ensure that they can meet the deadlines required, for example by ensuring schemes of delegation are in place if necessary.

RW Stated that NG do not intend there to be any surprises or

showstoppers and that there is no reason why consultees are not using the consultation report already published.

JB Noted that consultation is not an end in itself but part of the journey for the IPC process. It is not that simple that if people don't like a scheme, it will go away. It is for the developer to bring an application before us.

PG Commented that the underground/undersea work was so technical that people struggled to engage.

DB Noted that while delegated powers were used for HPC, this approach won't be accepted by councillors for the National Grid project.

AJ Noted that early sight of the Consultation Report would be welcomed and that a letter from the IPC about the levels of delegation would be very helpful to provide to senior colleagues and councillors.

RW Noted the request for early sight of documents. He went on to say that the thematic groups met for the first time last week. National Grid will discuss the key themes and issues emerging from the Thematic Groups at the Community Forum meetings. It was noted that a shadow Habitat Regulations Assessment (HRA) was good practice and that National Grid will shadow the HRA process at the pre-application stage so that all the information necessary for the competent authority to make a determination can be provided with the DCO application.

JB Advised that HRA was a matter for acceptance, and will be looked at whether the IPC is the decision maker or in recommendation mode. JB further advised that the IPC recommends a precautionary approach and that developers should liaise with statutory consultees early and to use evidence in documentation to support positions. Rule 17 of the Examination Procedure Rules allows the ExA to request further information on any matter before the close of the examination.

JB Drew attention to the IPC's advice notes which are available on the IPC website, highlighting Advice Notes 7 and 10.

RW Advised that National Grid would be likely to submit a request for scoping in May 2012, and JB requested that at least two week's notice was provided, along with a GIS shapefile.

GQ Asked about significant impacts on habitats and mitigation.

JB Advised that Advice Note 7 should help. If the mitigation involves land that is not within the control of the developer. The PA2008 allows compulsory acquisition for the developer rather than a public authority, should the developer need to use it

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| | <p>following diligent enquiry and negotiation with those with an interest in the land. The land must be necessary and reasonable alternatives must have been considered. It will be as rigorous as any other Compulsory Purchase Order (CPO), and the tests are very high. The hearings would be at the same time as the rest of the examination; a Book of Reference, financial statement and explanatory memorandum must be submitted with the application. Any affected person automatically becomes an interested party and any affected person can ask for a Compulsory Acquisition Hearing and if requested by such a party it must be held.</p> <p>DB Noted that local communities want to know Western Power Distribution's intentions, as they don't appear to be part of the application.</p> <p>RW Confirmed that National Grid are working closely with Western Power Distribution and it is the intention that these works will form part of the overall DCO application to be submitted by National Grid (132kV lines are covered by the PA 2008).</p> |
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| Specific decisions/ follow up required? | <p>IPC to provide an update on delegation in the newsletter.</p> <p>It was suggested that the parties meet with the IPC at key milestones and also that WPD may join the next meeting.</p> |
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| Circulation List | All attendees |
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