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Your Ref:

Our Ref: EN020001

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Application by National Grid for the Hinkley Point C Connection Project

Dear Mr Walsh

Thank you for sending a copy of National Grid's draft structure for the consultation report to the Planning Inspectorate.

The review was not at the level of detail that will be required to inform a decision under Section 55 of the Planning Act 2008 (as amended by the Localism Act 2011) (PA 2008); and does not pre-judge any future decision of the Secretary of State. Similarly, it does not predetermine any matter that is properly for the Examining Authority appointed to consider any application, who may take a different view.

We note your comments that the proposed structure has been developed taking account of advice notes issued by the Planning Inspectorate and drawing upon other Development Consent Order applications that have been accepted for examination.

Guidance

For clarity, the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP) sets out the prescribed form of the application at Schedule 2 and the prescribed accompanying documents and information at Regulations 5 and 6. Section 37 of the PA 2008 requires the applicant to produce a consultation report, and for this report to accompany the application. At acceptance, the details of how the applicant has complied with the consultation requirements set out in PA 2008, as described in the consultation report, will be tested at acceptance.

In addition to referring to any non-statutory advice notes issued by the Planning Inspectorate in compiling a consultation report, we recommend applicants have regard to the relevant documents produced by the Department for Communities and Local Government (DCLG), such as the 'Planning Act 2008: Guidance on the pre-application process'. This guidance is part of the package of statutory instruments and guidance for PA 2008 and the major infrastructure sections of the Localism Act. This guidance relates to both Chapter 1 (applications) and Chapter 2 (pre-application procedure) of Part 5 of PA 2008. Under section 50(3) of PA 2008, applicants must

have regard to this and any other guidance published by the Secretary of State which covers the pre-application procedure for major infrastructure applications.

Paragraph 60 of the DCLG guidance states that the consultation report should:

- “provide a general description of the consultation process undertaken;
- set out specifically what the applicant has done in compliance with the requirements of the Planning Act, relevant secondary legislation, this guidance, and any relevant policies, guidance or advice published by Government or the Inspectorate;
- set out how the applicant has taken account of any response to consultation with local authorities on what should be in the applicant’s statement of community consultation;
- set out a summary of relevant responses to consultation (but not a complete list of responses);
- provide a description of how the application was influenced by those responses, outlining any changes made as a result and showing how significant relevant responses will be addressed;
- provide an explanation as to why responses advising on major changes to a project were not followed, including advice from statutory consultee on impacts;
- where the applicant has not followed the advice of the local authority or not complied with this guidance or any relevant advice note published by the Inspectorate, provide an explanation for the action taken;
- be expressed in terms sufficient to enable the Secretary of State to fully understand how the consultation process has been undertaken and significant effects addressed. However, it need not include full technical explanations of these matters.”

In consideration of the variety and scope of applications submitted under the PA 2008 regime, no prescriptive advice is given on the format and content of consultation reports. Nonetheless, the Planning Inspectorate’s Advice Note Fourteen seeks to give advice to applicants about the format and content of the consultation report in order to enable the Secretary of State to identify whether the statutory requirements have been met during the acceptance stage.

The draft consultation report structure

In summary, our advice is as follows:

- The draft structure appears to be comprehensive and logically set-out. It provides a clear contents page for National Grid’s phased approach to pre-application consultation on the proposal, covering the statutory and non-statutory stages. It is evident, therefore, that the relevant chapters will explain the applicant’s iterative process to consultation and the evolution of the

proposal and strategic options from its earliest manifestations to completion.

On this latter point, it is helpful to include as part of the explanatory text, either in the introduction or consultation overview, a summary in bullet point form of the chronological timeline for the different phases for quick reference and explaining the rationale for such methodology. It is a useful tool to assist the reader in visualising the consultation process as a whole.

Where a phased approach has been carried-out, it is anticipated, therefore, that National Grid will include separate commentary with a summary schedule of responses for each of these phases - grouped under s42 (including s43 and 44), s47 and 48 categories. Please refer to AN14 Annex A: Indicative schedule of relevant responses. The summary of responses should include details alongside each entry to indicate (for the purposes of s49) what regard has been had to the response received.

- The contents structure clearly separates those chapters that will address the statutory consultation undertaken. National Grid appears to be applying the recommendations in Advice Note Fourteen in indicating and indentifying separately, those phases not carried out in compliance.
- In the 'statutory' chapters, it is noted that National Grid is to seek to describe the consultation activity undertaken with the prescribed consultees and local authorities (s42), the local community (s47) and respondents to wider publicity (s48) within subsections. For each group, it is expected that National Grid will explain how it has met its duty to have regard to relevant responses received (s49). If there is doubt as to how an applicant has complied with this latter requirement, the Secretary of State may request all responses to the consultation carried out under Part 5 of PA 2008, in accordance with Regulation 5(5) of the APFP Regulations.
- It is not evinced that there are subsections covering consultation with the relevant local authorities on the Statement of Community Consultation (SoCC); and in covering how the applicant has had regard to their comments. It is presumed that these requirements will be covered within the appropriate Chapters. The Secretary of State will need to be satisfied that local authorities were consulted correctly in connection with the preparation of the SoCCs, and that the applicant had regard to their comments. The final SoCC, on which the statutory consultation was based, should be clearly identifiable. An audit trail of correspondence between National Grid about the SoCC should be included in the Report.
- It is not clear in the contents list whether the Consultation Report identifies how the applicant has had regard to its SoCC when consulting with the community under s47 of the PA 2008. The LPAs will be asked to comment on the extent to which you complied with the SoCC(s) and so it is important that we are able to understand how you have practically complied with the methodology set out in the SoCC if there are any comments in the adequacy statements which cast doubt on this.
- There appears to be no subsection covering section 46 'duty to notify the Secretary of state of the proposed application'.



- Similarly, there appears to be no subsection covering Stage 2 Consultation
- Perhaps you could send us a list of Annexes to your Consultation Report to check in advance of submission.

Yours sincerely

Mark Wilson

Mark Wilson
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.