

ISSUE SPECIFIC HEARING ON THE DRAFT DCO – 10 DECEMBER 2015

NRW SUBMISSION ON ARTICLE 33 OF THE DRAFT DCO

1. This note comprises submissions on behalf of NRW in relation to Article 33 (Disapplication of Legislative Provisions) of the draft DCO (Option A and Option B) dated November 2015 for the purposes of the Issue Specific Hearing on the draft DCO on 10 December 2015.
2. Article 33 has been incorporated by the applicant under Section 150 of the Planning Act 2008 and subordinate legislation, namely the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015.
3. The Article removes the requirement for a consent or authorisation which would otherwise be required under the following enactments:
 - (a) Section 109 of the Water Resources Act 1991 (and any other legislation or enactment as may replace or re-enact section 109 from time to time);
 - (b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 to the Water Resources Act 1991, which require consent or approval for the carrying out of the works; and
 - (c) section 23 of the Land Drainage Act 1991
4. Section 150 of the Planning Act ('Section 150') ('*Removal of Consent Requirements*') reads as follows:
 - (1) *An order granting development consent may include provision the effect of which is to remove a requirement for a prescribed consent or authorisation to be granted, only if the relevant body has consented to the inclusion of the provision.*
 - (2) *"The relevant body" is the person or body which would otherwise be required to grant the prescribed consent or authorisation.*
5. A consent or authorisation required under the enactments referred to in Article 33 would comprise a '*prescribed consent or authorisation*' under Section 150.
6. NRW is a '*relevant body*' under Section 150 (2) and therefore its consent is required in order for the provisions to be dis-applied. NRW's consent is therefore required for Article 33 to remain in the Development Consent Order.

7. NRW's position is as follows:

- (a) The purpose of Section 150 is to exempt specific identifiable consents or authorisations from the need of a separate and/or parallel applications outwith the examination and consented outside of the DCO. In order for NRW to determine whether or not to provide consent for the disapplication of the consents or authorisations identified in Article 33, full details of the works for which the consent or authorisation is required must be provided. Section 150 does not provide a general or blanket exemption from the need for consents or authorisations which have not yet been identified, but which may become apparent during the lifetime of the development. It relates to specific identifiable consents.
- (b) NRW has not been provided with the required information in relation to the consents and authorisations identified in Article 33. At the present time, NRW is not in a position to grant consent under Section 150 and cannot agree to the inclusion of Article 33.

LEGAL DEPARTMENT

NATURAL RESOURCES WALES