

**Meeting Note**

<b>File reference</b>	<b>EN060001</b>
<b>Status</b>	<b>Final</b>
<b>Author</b>	<b>Katherine Chapman</b>

<b>Meeting with</b>	<b>RWE Npower</b>
<b>Meeting date</b>	<b>11<sup>th</sup> May 2011</b>
<b>Attendees (IPC)</b>	<b>Glyn Roberts (Pre-app Commissioner) Simone Wilding (Case Leader) Simon Butler (EIA Manager) Katherine Chapman (Case Officer) Jeffery Penfold (Assistant Case Officer)</b>
<b>Attendees (non IPC)</b>	<b>Hugh Morris (Senior Consents Manager, RWE) David Tate (Pipeline Project Manager, RWE) Mike Peel (Willington Project Manager, RWE) Matthew Trigg (Planning Manager, RWE) Helen Burley (EIA/Consents, RWE) Adriana Gasparini (Legal Advisor, RWE) Bill Simms (Land Agent, Bruton Knowles) Fiona Auty (Consents and Development Manager, RWE)</b>
<b>Location</b>	<b>IPC Offices, Temple Quay House</b>

<b>Meeting purpose</b>	<b>Project update and advice on draft Development Consent Order (DCO)</b>
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<b>Summary of key points discussed and advice given</b>	<p>IPC advised on its policy of openness and transparency and the record of the meeting to be published on the IPC's website under s.51 of the 2008 Planning Act (PA 2008). Under s.51, no advice can be given on the merits of an application.</p> <p><b>Programme Update – EIA</b> RWE Npower (RWE) advised that strategy documents for all key environmental impacts (hedgerows, Great Crested Newts, footpaths etc) have been produced. The preparation of the draft environmental statement (ES) is the critical path for the entire project as the relevant surveys need to be undertaken at the appropriate time. Concerning a licence for Great Crested Newts mitigation, RWE informed the IPC about their discussion with Natural England (NE) on the provision of a 'minded to grant' letter (potentially offering a decision to the indicative Favourable Conservation Status (FCS) test) to be included with the application documents. RWE reported NE asking for clarification on which body would consider the Overriding Public Interest (OPI) and No Satisfactory Alternative (NSA) tests in determining the application.</p> <p>The IPC confirmed that the Examining Authority (ExA) (and the Secretary of State as the decision maker), have a duty under the</p>
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Habitats Directive (transposed into UK law by the Conservation of Habitats and Species Regulations 2010 - the 2010 Habitats Regulations) to take account of all three derogation tests. The IPC therefore requires the information to address all three tests. If sufficient information is not provided the ExA may need to address specific questions to the applicant or NE. NE would also need to consider these three tests when deciding whether or not to grant the licence.

The IPC advised RWE to refer to the IPC's Advice Note 10: Habitat Regulations Assessment – this explains the obligations placed on both the decision maker and developer under the Habitats Directive and the 2010 Habitats Regulations, clarifies the information to be provided with a development consent order and highlights the relevant bodies that should be consulted throughout the DCO application process.

The IPC advised that the Environment Agency would be the lead authority with regard to the River Basin Management Plan.

#### **Programme Update - Consultation**

RWE confirmed their intention to start the second phase of consultation in September 2011 and to provide the draft application documents including the draft DCO and draft ES for comment. RWE reported that the relevant Local Authorities (LAs) have requested 2-3 months to respond at this next consultation stage to take it through their normal planning application process (including consultation with Parish Councils and committees). RWE are concerned that if they need to extend the time to respond for the LAs they are unlikely to be able to submit the application at the end of 2011 as currently planned.

The IPC confirmed that there is no requirement within PA 2008 for deadlines to be extended. At pre-application it is at the developer's discretion to extend response times. However, once an application has been submitted deadlines are mostly fixed by statute and can therefore not be extended. It was therefore agreed for the IPC to contact the LAs to arrange a meeting with the LAs: to clarify the LAs' role, emphasise the need for a tailored process, and the need to avoid creating confusion through duplication of consultation.

#### **Programme update - Land assembly**

The developer stated that offers have been made to all land owners and a high proportion has been signed up. RWE indicated that they are now unlikely to make a s.52 application as the owner of the plot of land for which this approach had been considered could not be identified. Consequently there is no one on whom the s52 could have been served. RWE is now seeking to acquire this plot of land through compulsory acquisition (CA). The developer asked for the clarification of the process on CA when the owner of the land is unknown. The IPC agreed to follow up on this after the meeting.

#### **Review of the draft DCO**

### **Plans**

The requirement of separate plans to comply with regulation 5 of the Applications Prescribed Forms and Procedures Regulations 2009 (APFP Regs 2009) was discussed.

The IPC advised that the legislative framework requires the submission of a “land plan” and a “works plan” (reg 5(2)(i) and (j) APFP Regs 2009). These should therefore be submitted separately and entitled as such. The land plan can be the relevant plan for the Book of Reference: Reg 7 of the APFP Regs 2009 states that the Book of Reference means a book in five parts together with any relevant plan. Relevant plan is defined as including the land plan. The developer will need to satisfy itself though to ensure that the scale of the plan is appropriate for this purpose in the light of CLG Guidance on CA.

Reg 5(2)(k) requires a plan identifying any new or altered means of access. This could be provided as part of the works plan. For consultation purposes a composite plan could be used. This could also be submitted as part of the application documents as additional information.

All plans which are required under regulation 5(2) APFP Regs 2009 will need to comply with the legal requirements set out in reg 5(3) and (4) of APFP Regs 2009. The developer was also advised to ensure compliance with IPC guidance note 2 (statutory guidance). Eg the key is required to show which part of PA 2008 is being discharged. The full list of the criteria against which the plans will be checked can be found in the blank checklist which has been sent to the developer.

### **Limits of Deviation**

The IPC advised that the approach taken with regard to the limits of deviation should be justified within the explanatory memorandum (ExM), including clarification on any vertical and/or horizontal limits being applied for. With regards to EIA, the worst case scenario should be assessed and, if necessary, requirements included in the draft DCO which prevent or mitigate unacceptable impacts. The ES needs to be fully consistent with the DCO and full justification for any limits of deviation included in the developer’s consultation material.

### **Benefits of the order**

It was discussed how the DCO could provide for an Above Ground Installation (AGI) to be transferred to National Grid after consent has been granted. The developer explained that the transferee does not have an interest in the land until the permission has been granted.

The IPC stated the Infrastructure Planning (Model Provisions) Order 2009 includes permission being sought from a specified person or body (article 5(1)). Consent should therefore be sought from the IPC.

The importance of demonstrating a grid connection was emphasised. A requirement akin to a Grampian condition could therefore be

considered to ensure that the grid connection is secured prior to implementation of the DCO. Material changes cannot be made to the draft DCO after submission of the application. If consent is given a further application would be required if changes to the DCO were subsequently needed.

The IPC agreed to clarify the advice on transfer of benefits of the order as follow up to the meeting.

### ***Compulsory Acquisition***

Time limit of CAO: The standard is 5 years. Any deviation from the standard requires justification in the ExM. The draft DCO states that the time limit is to start at commencement of the works rather than consent. This will also require justification. In addition, further justification is required to address the reasoning behind the CA of the land on the AGI site rather than any other.

Page 10 – Article 16(2) as proposed appears to attempt to make temporary rights permanent which would not be legally possible.

Page 10 – CA rights: Clarity should be provided on the time limits for rights of access to provide certainty for landowners. The rights of access for construction and operations require justification, clarification and consistency.

### ***Temporary rights***

Temporary rights require an end point at which they expire. Article 29(11) of the Model Provisions Order states that the maintenance period means the period of 5 years beginning with the date on which that part of the authorised project is first opened for use. The ExM should contain justification for the length of period and extent to which the rights are required.

### ***Other comments on draft DCO***

Page 6 – Defence: Number of the requirement needs changing to reflect update.

Page 7 – s50 and other licences: need to be listed in the application form and information on when and how these are likely to be received in the ExM.

Schedule A should include grid references and greater detail. The developer was directed to the CLG guidance on Associated Development. The DCO must be able to be read as a standalone document and therefore the detail should reflect this.

Schedule B and C requires clarification as to why the reference numbers used are the same for some of the works listed in schedule B and C. The IPC queried whether it would not be more appropriate to give each of the works unique reference numbers.

Requirements: Approval by the Commission could be omitted. CLG guidance to Local Authorities states that requirements should be agreed between the developer and the relevant LA as the LA enforces the requirements.

Detailed design approval: Indicative designs of the AGI would be helpful to be submitted with the draft DCO. These designs should include limits of size which will be set (eg. fence height) etc. As

	drafted the requirement would seem to leave too much open for approval through discharge of the requirement.
<b>Updates post-meeting</b>	RWE reviewed the program and advised the IPC that the likely date for the start of the Phase 2 Consultation will be during October with a submission in February 2012.
<b>Specific decisions/ follow up required?</b>	<ul style="list-style-type: none"> <li>• The developer is to consider the Pipelines Act to determine the standard approach to temporary rights.</li> <li>• RWE to provide contact details of LAs to IPC</li> <li>• IPC to arrange outreach meeting with LAs</li> <li>• IPC to advice on CA of land where the owner is unknown.</li> <li>• IPC to clarify advice on transfer of benefits of the order</li> <li>• IPC to investigation s127 where agreements cannot be made prior to submission of the DCO.</li> <li>• IPC to provide advice on the requirement of a Grampian condition.</li> <li>• IPC to provide further advice on timings regarding granting of hedgerow licences.</li> </ul>
<b>Circulation List</b>	All attendees