

IPC Infrastructure Planning Commission

Meeting Note

File reference	Offshore Consenting Forum, Non-case Specific
Status	Final
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Meeting with	Countryside Council for Wales (CCW), English Heritage (EH), Joint Nature Conservation Committee (JNCC), Marine Management Organisation (MMO), Natural England (NE), Royal Commission on the Ancient and Historical Monuments of Wales (RCAHMW) and Welsh Government (WG)
Meeting date	12 July 2011
Attendees (IPC)	Simon Butler, Sheila Twidle, Jessica Potter, Hannah Pratt, Simon Dilly, Tim Hallam
Attendees (non IPC)	<u>CCW</u> : Jessica Orr, Sarah Wood (by telephone) <u>EH</u> : Chris Pater <u>JNCC</u> : Lucy Greenhill (by telephone) <u>MMO</u> : Shaun Nicholson, Martyn Youell <u>NE</u> : Helen Lancaster <u>RCAHMW</u> : Deanna Groom <u>WG</u> : Tamsin Brown
Location	IPC Offices, Temple Quay House, Bristol

Meeting purpose	To set up clear lines of communication and discuss environmental and other issues related to proposed offshore NSIP developments with key statutory authorities.
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Summary of outcomes	<p>1. Draft Terms of Reference (ToR)</p> <p>The IPC noted that the Offshore Consenting Forum (OCF) has proved to be a successful way of discussing the environmental and other generic issues associated with offshore developments with key statutory bodies. The IPC explained that they have drafted ToR to clearly set out the purpose and objectives of the Offshore Consenting Forum, and thanked attendees for the comments received on the draft ToR so far.</p> <p>A number of drafting issues were discussed, including:</p> <ul style="list-style-type: none"> An objective of the OCF should be to discuss 'joined up' cross-border working between English and Welsh agencies, and also the relationship of
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development consent orders (DCOs) to other licensing regimes (eg marine licences in Wales). Providing clarity on how separate, but related, regimes will work in practice should be an objective of the OCF.

- Consideration of how the Habitats Regulation Assessment and EIA processes will work under the Planning Act 2008 (the 2008 Act) regime should also be an objective of the OCF.
- There should be an exchange of feedback between attendees of relevant experience to date, including what is going well/ where improvements have been made for the better.
- What the Forum will not do – discuss details relating to National Policy Statements, and project specific details of particular projects.
- How the forum will manage the flow of information between organisations.

The IPC stated they would take these, plus any comments received by attendees in the next two weeks, into account and will produce a final draft of the ToR which will be circulated prior to the next meeting.

2. Marine Planning – presentation by MMO

The MMO delivered a presentation on their marine planning operations. This included information on the first proposed marine plan areas selected off the east coast of England, their approach to a sustainability appraisal (incorporating SEA, HRA and Equality Appraisals), and the newly launched marine planning portal.

The group discussed the process for adopting a marine plan. A plan and statement of public participation is drafted by the MMO and signed off by the relevant Secretary of State (SoS). The MMO or the SoS can request an optional independent investigation.

The MMO explained that although Round 2 windfarm consent approvals preceded the Marine Policy Statement (MPS), any further licensing decisions must be made in accordance with the MPS.

The MMO explained that they have had informal discussions with Ireland, Northern Ireland and the Isle of Man with regards to trans-boundary issues, and hope to set up a North Sea Forum in the near future. They also have a close working relationship with the Planning Advisory Service in the Planning Inspectorate.

3. Programme of projects

The IPC provided an indicative programme of projects to attendees and noted that they are reliant on information provided by developers on when applications are likely to be submitted. This overview document was manually produced and is not available on the IPC website. Non-IPC attendees expressed an interest in this document being provided on the IPC website and extended to cover the next two years in order to assist with resourcing and workload planning. The programme of projects would also give consultees a clearer, more formal indication as to developers' timescales when responding to requests for comments on draft application documents such as draft ESs and HRA Reports, and preliminary environmental information. It was though acknowledged that applicants will always need some flexibility regarding application deadlines due, amongst other things, to the iterative nature of the pre-application process.

4. Update on the IPC's Advice Notes

The IPC published 'Advice Note 11 (part 1): Working with public bodies in the infrastructure planning process' on the IPC website in mid-May. Part 1 is a generic document which applies to all public bodies that the IPC work with under the 2008 Act regime. Part 2 will comprise annexes relating to individual public bodies. The MMO and CCW annexes are close to completion, and the IPC is currently working with NE, and the Environment Agency to develop further annexes. The Maritime and Coastguard Agency is also likely to be covered by an Advice Note 11 annex. EH, RCAHMW and WG expressed an interest in developing such annexes.

The IPC explained that a revised version of 'Advice Note 3: Consultation and notification undertaken by the IPC' has recently been published, with particular attention paid to providing further information on offshore bodies. It was acknowledged that there is no equivalent body to EH for areas outside UK territorial waters including the continental shelf, although EH have a memorandum of understanding with JNCC that they will provide advice in relation to proposed offshore developments in those areas.

Non-IPC attendees queried why external consultation had not taken place on this Advice Note or Advice Notes previously published by the IPC. The IPC advised that Advice Notes were prepared in response to need, and accordingly an emphasis had been placed by the IPC on making such advice available in as timely manner as possible. The IPC also said that, as a non-departmental public body, it was not presently subject to formal

consultation requirements in relation to its proposed Advice/Guidance Notes. The IPC noted that Advice Notes are not statutory Guidance under the 2008 Act, to which applicants must have regard, and they may be subject to revision from time to time, for example as a result of feedback from statutory consultees and other interested parties. This was in particular reference to the advice note on Habitats Regulations Assessment. Non-IPC attendees expressed a desire to be able to input to the drafting/revision process and provide feedback (based on experience in using the Advice Notes), and agreed to provide the IPC with comments on the Advice Notes as and when they arose.

The Forum discussed potential subjects for future advice notes, including suggestions for cumulative impacts, cross border working, nuclear consenting, issues of flexibility and material change to projects, and a specific focused annex suggested by the Welsh Government (WG) picking up issues such as marine consenting not covered by the published MoU. The IPC stated they will raise these suggestions with the internal IPC Advice and Guidance Working Group.

5. Drafting the DCO – issues being addressed

The group discussed the implications of responses to date from statutory consultees to applicants' section 42 consultations. The IPC explained that developers must have regard to all relevant responses received and this should be reflected in their consultation report submitted with the DCO application. A developer must demonstrate how any such comments have informed the evolution of their project. Evidence of this in the consultation report is a statutory requirement under sub-sections 37(3)(c), 37(3)(7), 55(3)(e) and 55(4)(a) of the 2008 Act, and the IP (Applications: Prescribed Forms and Procedures) Regulations 2009 during application acceptance stage. This can also form the basis for any 'Statement of Common Ground' accompanying the application; the IPC clarified that this is not a statutory requirement, but is still recommended as it identifies areas of agreement or unresolved issues at the time of application.

The IPC raised the dual role of many statutory bodies in relation to proposed NSIP developments in that they are consulted under s.42, and may also be a licensing/consenting/permitting authority. Such bodies should give consideration to how far they expect such consenting processes to have been progressed prior to a DCO application being submitted to the IPC, and what approach they will take to any consents/ licenses under section 150 of the 2008 Act. The IPC would expect these matters to be clarified in forthcoming specific annexes to

Advice Note 11.

6. AOB

RCAHMMW distributed copies of 'The lost lands of our ancestors – Exploring the submerged landscapes of prehistoric Wales' produced by Dyfed Archaeological Trust (and available on the following website <http://www.cambria.org.uk/>). The Forum discussed the importance of offshore archaeological investigation and assessment. It was acknowledged that a number of developers are suggesting undertaking intrusive investigations post consent, however it is the view of EH that this is too late in the marine context. In addition, an emphasis is often placed on seascape and not on landscape characterisation. EH said that the Archaeological Data Service (<http://archaeologydataservice.ac.uk/myads/copyrights>) places data online which should be used by developers to check the compatibility of a project where such characterisation has already been undertaken. Other guidance noted by EH included European Landscape Characterisation (related link to EHs website > <http://www.english-heritage.org.uk/professional/research/landscapes-and-areas/characterisation/historic-seascape-character/>) and reference was made to a recently published report on the representation of guidance on seascape within ESs (EH - please provide link). The IPC stated they would seek to acknowledge this in future Scoping Opinions. EH agreed to provide information to the Forum on any relevant case histories, and a best practice approach to seascape characterisation for Round 1&2 windfarm developments.

It was noted that the Crown Estate intend to facilitate a workshop between developers and statutory bodies which will discuss the use of the Rochdale envelope approach. The IPC stated they may attend as impartial observers. In any event, the IPC would encourage feedback from statutory bodies with regards to Advice Note 9: Rochdale Envelope.

James Bussell (NE) will be covering Victoria Copley's work (NE) for the foreseeable future.

It was agreed that 'associated development', its interpretation by different developments, and implications for dealing with onshore consenting outside the NSIPs process, would be addressed at the next Forum meeting.

<p>Specific decisions/follow up required?</p>	<ol style="list-style-type: none"> 1. Attendees to provide comments on the draft ToR to the IPC by 26 July 2011. The IPC to then 'finalise' the draft ToR and circulate prior to next meeting where they can be approved. 2. IPC to circulate an internal marine planning advice note to the MMO for their comments. 3. IPC to look into the possibility of providing a programme of projects overview document on its website. 4. IPC to consider adding as possible additional topics to the series of Advice Notes cumulative impacts, cross border working, nuclear consenting, material change and flexibility, and WG consenting, and will raise these suggestions in a future meeting of the IPC Advice and Guidance Working Group. 5. The IPC to send its Advice Note 11 annex template to EH, RCAHMW and WG for their consideration. 6. EH to provide the IPC with examples of good practise of work undertaken on previous Round 1&2 offshore windfarm developments with regards to seascape characterisation.
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<p>Circulation List</p>	<p>All attendees Plus James Bussell (NE)</p>
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