

## Meeting Note

<b>File reference</b>	<b>Rochdale Envelope, Non-case Specific</b>
<b>Status</b>	<b>Final</b>
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<b>Meeting with</b>	<b>RenewableUK, Forewind, Burgess Salmon, E.ON, Scottish and Southern Energy (SSE)</b>
<b>Meeting date</b>	<b>28 January 2011</b>
<b>Attendees (IPC)</b>	<b>Ian Gambles (Director of Operations) Sheila Twidle (EIA &amp; Land Rights Manager) Tim Hallam (Lawyer) Hannah Pratt (EIA &amp; Land Rights Adviser)</b>
<b>Attendees (non IPC)</b>	<b><u>RenewableUK:</u> Paul Reynolds <u>Forewind:</u> Sharn Ward <u>Burgess Salmon:</u> Julian Boswall <u>E.ON:</u> Eleri Owen <u>SSE:</u> Pete Raferty</b>
<b>Location</b>	<b>IPC Offices, Temple Quay, Bristol</b>

<b>Meeting purpose</b>	To hear the views of the wind energy industry on the IPC's Advice Note on the Rochdale Envelope approach.
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<b>Summary of outcomes</b>	<p><b>1. Introduction</b></p> <p>The IPC noted that it did not consult externally on Advice Notes and this meeting, which was being held at the request of Renewable UK, did not constitute such consultation. Whilst the Commission was interested to hear the views of the wind energy industry, and others, it reserved the right to decide on the final published form of this Advice Note.</p> <p>The IPC said that whilst it was happy for staff to attend future external workshops organised by RenewableUK or others to discuss, amongst other matters, the Rochdale Envelope approach, they would only do so as observers not as participants.</p> <p>The IPC pointed out that this Advice Note was intended to address potential implications of the Rochdale Envelope approach in relation to applications for all categories of Nationally Significant Infrastructure Projects (NSIPs), not just off-shore wind farms.</p>
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The IPC advised on its openness policy and that any advice given will be recorded and placed on the IPC website under s.51 of the Planning Act 2008 (the 2008 Act). The IPC can advise about applying for an order granting development consent (DCO) for a NSIP or a proposed application for such an order, but cannot advise on the merits of any such projects.

Non-IPC attendees thanked the IPC for their time and for addressing the use of the Rochdale Envelope in relation to the 2008 Act regime in an Advice Note. They explained that the Advice Note was helpful in outlining issues the IPC foresee with regards to the Rochdale envelope concept, however noted they have some concerns.

## **2. Presentation**

Non-IPC attendees delivered a presentation which included information on offshore wind energy drivers, consenting challenges, programme delivery timetables and design objectives.

They noted that turbine technology changes rapidly, and the layout within an array is determined by, amongst other matters, the turbine used. This is dependent upon the technology available at the time of construction and is one of the reasons, in addition to the uncertainties around the supplier and operator of the grid infrastructure, for the wind energy industry wishing to utilise the Rochdale Envelope principle.

The wind energy industry's reluctance to finalise aspects of design was highlighted by reference to a specific case study 'Scarweather Sands'. This project was consented in 2005 but was subsequently not implemented because the permission did not allow for sufficient flexibility since the technology available at the time of tendering for construction did not comply with that described within the consent. Examples of applications for offshore wind energy developments which had been consented under other regimes and successfully utilised the Rochdale Envelope principle were provided in the presentation.

## **3. Discussion**

The IPC stated that they recognise the challenges faced by offshore wind energy applicants. The IPC share an objective with all parties to ensure the smooth acceptance and examination of DCO applications which results in decisions that are not successfully challenged in the Courts. In order to do this, the IPC must correctly apply the provisions of the 2008 Act, Regulations and Rules made under it and other relevant legislation into its work processes and when making decisions/recommendations.

The IPC outlined their role -

- Ensure work is undertaken in line with the 2008 Act and other legislation
- No presumption in favour of development under the Planning Act 2008
- Role in providing impartial advice under s51 of the Planning Act to all parties concerned with proposed NSIP development

Non IPC attendees noted that the National Policy Statements (NPS) set the context and the need for development in the case of offshore wind, and queried whether the IPC had a role to permit development that was proposed in accordance with the NPS's.

For example, draft NPS EN-1 and EN-3 recognise the need for relevant infrastructure to be delivered, including offshore wind energy. The IPC acknowledged that Commissioners will examine applications within the framework of the NPSs and the Commission, if it is the decision maker, must decide applications in accordance with any relevant designated NPSs unless any of the relevant criteria (in s.104(4)-(8)) applied. However, the IPC explained that there is no presumption in the 2008 Act which favours development and it is not the IPC's role simply to approve applications for development consent. If applicants and others wished to make representations on legislation and policy they should do so to the relevant Government Department.

The IPC explained that the regime under the 2008 Act is different from previous consenting regimes for infrastructure such as wind farms in the UK. A front-loaded approach offers a faster decision making process, but this can only be achieved if work is undertaken by applicants at the pre-application stage. For example, by applicants carrying out adequate pre-application consultation in compliance with the 2008 Act and sufficiently refining their schemes prior to formal submission of an application for development consent.

Non-IPC attendees noted that developers fully recognise the pre-application consultation requirements of the Planning Act and the front loaded nature of the development process but did not agree that it was very different from the process that developers sought to undertake under the former regime.

Non-IPC attendees queried whether applicants can discuss projects with the IPC once they have sufficiently worked up the parameters of a proposed development, in order to identify any potential problems. The IPC stated they are able to provide Section 51 advice on a draft Development Consent Order (DCO), and other application documents, provided by applicants and indeed the

Commission would encourage Applicant's to submit such draft documents. It would be helpful if applicants could provide these draft documents at least six weeks prior to formal application submission. Any s.51 advice given does not preclude the IPC from requesting further information during the examination stage.

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 Commission on making such advice available in as timely manner as possible. 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 in due course, for example as a result of feedback from applicants and others.

Non-IPC attendees thought that this Advice Note had profound implications for applicant's strategic decisions. They therefore queried how they should interpret this advice if it is subject to change and has not been consulted upon. The IPC replied that Advice Notes are carefully drafted having considered, amongst other matters, case law and the information available at that time. However, under a new planning regime which has not been legally tested in the Courts, new information, for example via feedback from applicants and others, may come to light which could result in the revision of an Advice Note.

The Rochdale Envelope Advice Note has been drafted based on current case law in relation to other consenting regimes. However, it is possible that there may be future Court cases specifically dealing with the Rochdale Envelope approach in relation to the 2008 Act regime which could have implications for the s.51 advice set out in this Advice Note.

Non-IPC attendees raised concerns that this Advice Note may have implications for any cumulative impact assessment carried out as part of the EIA process for proposed projects. The IPC stated that they used EU Guidance in drafting this Advice Note and the advice set out in it is consistent with that provided in the IPC's published Scoping Opinion's and previous advice issued to applicants and others under Section 51 of the 2008 Act. The IPC accepts there may be little information available for some proposed future schemes to inform a cumulative impact assessment. However, an applicant should still make such an assessment rather than omit the consideration of cumulative impacts.

The IPC stated that when utilising the Rochdale Envelope

	<p>principle, applicants should fully explain and justify, in the Explanatory Memorandum, the flexibility they are seeking in their draft DCO. The onus is on applicants to consult on the full range of scenarios and take into account any consultation responses received.</p> <p>The IPC said that they would shortly be publishing Advice Notes on the Habitats Regulations process and on trans-boundary matters under the 2008 Act regime.</p>
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<b>Specific decisions/follow up required?</b>	The IPC is to respond to the letter (dated 26 <sup>th</sup> January 2011) from RenewableUK regarding the Rochdale Envelope Advice Note.
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<b>Circulation List</b>	All attendees
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