

Meeting Note

File reference	N/A
Status	FINAL
Author	Jeffrey Penfold

Meeting with	INEOS ChlorVinyls (INEOS)
Meeting date	1 December 2012
Attendees (IPC)	Janet Wilson – Head of Case Management Mark Wilson – Principle Case Manager Jeffrey Penfold – Assistant Case Officer
Attendees (non IPC)	Jonathan Leary – Zyda Law Paul Zyda - Zyda Law Eileen Wilson-McKenzie - INEOS ChlorVinyls Julian Watts - INEOS ChlorVinyls
Location	IPC Offices

Meeting purpose	To discuss the IPC processes generally, and the implications of changes to the Planning Act 2008 as a result of the Localism Act 2011.
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Summary of key points discussed and advice given	<p>The IPC informed those present about its openness and transparency policy and that a note of the meeting would be published in accordance with Section 51 of the Planning Act 2008 ('the Act'). As such, developers should not discuss information with the IPC that they wish to remain commercially confidential.</p> <p>Background to the scheme: INEOS ('the developer') applied for and were subsequently granted - pursuant to the Electricity Act 1989 - Section 36 Consent and Deemed Planning Permission to construct and operate an Energy from Waste Combined Heat and Power ('CHP') Generating Station at Runcorn, Cheshire ('the facility') with a generating capacity of 100 MW. The Deemed Planning Permission is subject to 67 conditions addressing a variety of land use matters.</p> <p>The developer commented that if the construction of the facility was proposed today, it would be considered to be a Nationally Significant Infrastructure Project ('NSIP') and that development would require a development consent order ('DCO') pursuant to the Act. However, the Section 36 Consent and Deemed Planning Permission pre-date the coming into force of the Act, and development of the Facility has lawfully commenced pursuant to the Section 36 Consent and Deemed Planning Permission granted pursuant to the provisions of the Electricity Act 1989.</p>
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The developer desires a variation to a condition imposed by the Deemed Planning Permission. The said condition limits by restriction the volume of refuse derived fuel (RDF) that may be imported by road to the facility to 85,000 tonnes per annum. It is desired that the said restriction be varied to permit the importation of up to 480,000 tonnes per annum of RDF.

Advice was requested concerning the applicability of the DCO regime, where a variation to the Deemed Planning Permission is intended to be sought.

The developer raised the following items for discussion:

- INEOS note that pursuant to the Section 35 of the Act, the Secretary of State ('SoS') has the power to direct that applications made pursuant to the alternative regimes described in section 33(1) should be treated as an application for a DCO. We ask the IPC to advise on the operation of section 35 of the Act, in particular, what factors and circumstances would cause the Secretary of State to direct that a section 73 application should be treated as an application for a DCO.

IPC advised that it is for the Secretary of State ('SoS') to decide what criteria will be used to direct an application to the IPC. INEOS should seek advice from DECC in this regard. The SoS's discretion to make a Section 35 direction arises when a planning application is submitted to the relevant local authority.

- Is there a mechanism within the Act, which enables an application for a DCO to be made to modify the operation of, or planning controls over, a generating station previously permitted by Section 36 Consent and Deemed Planning Permission?

The IPC cannot alter a condition attached to an extant planning permission granted under the TCPA by DECC.

- What changes to the operation of an NSIP generating station (which has been consented pursuant to a regime prior to the coming into force of the Planning Act 2008) which do not include any construction, increase in generating capacity or change in site boundary, would nonetheless still require a DCO?

With regard to Section 15 (1) of the Act, the definition of 'development' was discussed in the context of an increase in the amount of waste delivered to the site by HGV and whether such an increase would constitute development.

	<p>It is, however, for the developer to seek their own legal advice on interpreting legislation upon which they can rely.</p> <p>The IPC advised that if INEOS consider that an application to the IPC is appropriate, the IPC can advise about the pre-application consultation duties placed upon developers in the context of the scale and nature of the development proposed in any application.</p> <ul style="list-style-type: none"> • IPC asked INEOS whether the desired increase in the volume of waste proposed to be delivered by HGV to the site had been assessed in the ES which supported the application to DECC. <p>INEOS advised that the worst case scenario in the extant ES, in relation to the delivery of waste by HGV, was consistent with the quantum of waste under discussion.</p>

Circulation List	Meeting attendees.