

Meeting Note

File reference	WW010001
Status	Final
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Meeting with	Department of Environment , Food and Rural Affairs (DEFRA)
Meeting date	20 June 2011
Attendees (IPC)	Jessica Potter (Senior Case Officer) Pauleen Lane (Deputy Chair) Ian Gambles (Director of Operations) Nik Perepelov (Assistant Case Officer)
Attendees (non IPC)	Andrea Marston (DEFRA- Policy) John Manning (DEFRA- Policy)
Location	Teleconference

Meeting purpose	To discuss the proposed Thames Tunnel project and the draft s.14 Order which when affirmed would classify it as a Nationally Significant Infrastructure Project (NSIP)
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Summary of key points discussed and advice given	<p>Thames Water (TW) have proposed the construction of a new waste water storage and transfer tunnel to expand the capacity of London’s sewerage system. Ministerial statements and the draft Waste Water National Policy Statement (NPS) have indicated that Government wish this scheme, due to its size and complexity to be treated as an NSIP for the purposes of the Planning Act 2008 (PA 2008). There is currently no explicit provision for projects of this type to be considered NSIPs (please see previous meeting notes for details).</p> <p>However, as stated in a letter of November 15 2010 the IPC were unable to accept a s.46 notice sent by TW and were also of the view that they did not have the power to issue a formal scoping opinion (though they also invited TW’s views on this) without the completion of the designation order. TW subsequently indicated their intention to ‘shadow’ the PA 2008 process pending a future transfer to that regime. The IPC have since given various pieces of procedural advice to TW under s.51 of PA 2008 to help facilitate this, including s.51 advice on the content of a scoping report sent by TW.</p> <p>DEFRA are proposing to make the project an NSIP by amending the list of project types and thresholds in PA 2008. They plan to do this by means of an Order made under s.14 of that Act. A copy of the draft Order was provided to the IPC ahead of the meeting, and the IPC offered the following comments:</p>
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	<ul style="list-style-type: none"> • The IPC is happy with the proposed route for classifying the scheme as an NSIP. • The IPC notes that the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 (APFP regs) contained transitional provisions with a similar purpose to the proposed Supplemental Provision in the draft s.14 Order ie (in summary) to allow the IPC to accept applications which had complied with pre-application requirements under PA 2008, but which had not been “proposed applications” capable of formally meeting the statutory requirements. • The IPC advised that DEFRA may wish to look again at the wording of their Supplemental Provision: at present, unlike the transitional provisions in the APFP regs, there is no explicit mention of the IPC’s role in deciding compliance with the relevant provisions at the acceptance stage under s.55 of PA 2008. The current wording might be read to fetter the IPC’s discretion on this matter and thereby unduly benefit schemes which are NSIPs as a result of the s.14 Order. DEFRA confirmed that this was an unintended consequence of the drafting and would consider, following discussions with its lawyers, whether the draft Order could be amended to clarify its desired intent more clearly. • The IPC also advised that many of the requirements under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (EIA regs) are voluntary and therefore the use of the term “compliance” in relation to them may be inappropriate. <p>DEFRA noted the points raised and both parties agreed to continue to discuss how best to implement any changes to the draft s.14 Order in light of a proposed 12-week public consultation and other Governmental requirements on the production of Statutory Instruments. The s.14 Order would be subject to positive resolution by both Houses of Parliament once laid, following public consultation.</p> <p>DEFRA indicated that they are not aware of any other schemes likely to be covered by the Order in the next 5 years but the Order, if confirmed, would not contain a sunset provision.</p>
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Specific decisions/ follow up required?	<p>IPC and DEFRA lawyers to discuss detailed drafting points.</p> <p>Once discussions had taken place on whether amendments to the draft could be made to clarify the intent of the proposed “transitional provisions” within the draft Order, IPC and DEFRA to</p>
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	consider whether further meetings would be useful. NP to provide JM with a copy of the IPC's response to TW's purported s.46 notification.
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Circulation List	Attendees