

Meeting Note

File reference	WW010001
Status	Final
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Meeting with	Thames Water (TW)
Meeting date	8 September 2011
Attendees (IPC)	Mark Wilson (Case Leader) Lynne Franklin (Lawyer) Will Spencer (EIA and Land Rights Adviser) Nik Perepelov (Case Officer)
Attendees (non IPC)	Ian Fletcher Richard Fornelli James Good (Berwin Leighton Paisner LLP)
Location	IPC offices, Bristol

Meeting purpose	To discuss the proposed Thames Tunnel project
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Summary of key points discussed and advice given	<p>Draft section 14(3) order</p> <p>The draft s.14(3) Order, which will designate the Thames Tunnel as a nationally significant infrastructure project (NSIP), is being consulted on. The IPC's observations were limited to the need to ensure that the IPC's discretion in coming to a decision on whether to accept the application is not fettered in any way. The present draft's 'supplementary provision' seeks to achieve this.</p> <p>As regards the status of the pre-application work already undertaken, the present drafting of the supplementary provision is also intended to give the IPC the power to deem compliance with the requirements of PA 2008.</p> <p>Notices under section 46 and regulation 6(1)(b) of the EIA Regs</p> <p>The IPC remains of the view that it is at present unable to serve notice on the consultation bodies under regulation 9 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (EIA regs) in respect of the Thames Tunnel further to notice under regulation 6 of the EIA regs (and that it cannot formally accept notice under section 46 of the 2008 Act) as the Thames Tunnel project is still not formally designated an NSIP.</p> <p>It is considered however that the IPC could</p>
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nonetheless provide TW with s.51 advice outlining the pre-application requirements under the Planning Act 2008 (PA 2008) and EIA regs. This advice could highlight whether any steps taken or proposed to be taken by TW shadowing the process in respect of NSIPs (for example notifying the IPC of a proposal to provide an environmental statement – akin to reg 6(1)(b) of the EIA regs - and notifying the IPC of a proposed application – akin to a s.46 notification) could be considered to have followed in substance the procedural requirements in respect of NSIPs. However, it should be noted that this s.51 advice would not be binding on any future decisions of the Commissioner appointed to decide whether or not the application should be accepted. The IPC agreed to confirm whether the plans attached to the notices served at phase one consultation were acceptable or whether a different format / level of detail was required in respect of notices to be provided in the future.

Pre-application consultation, the SOCC and the Consultation Report

We would encourage TW to utilise the s.42 (either statutory or 'shadow') process as an opportunity to engage the relevant bodies. The list of consultation bodies provided previously by the IPC related to the bodies who would have been consulted (on the basis of the scoping report submitted by TW at that time) if the IPC had been able to issue a scoping opinion. It should be noted that this list should not be relied upon by TW for the purposes of identifying who should be consulted in order to comply with s.42, as previously advised.

The draft Statement of Community Consultation (SOCC) provided ahead of the meeting does not seem to mention the proposed terrestrial works in the scheme description. TW should address this.

TW may wish look again at the wording of regulation 10 of the EIA Regs which requires SOCCs to set out how the applicant intends to **publicise** and **consult** on the preliminary information. TW explained that it may wish or need to carry certain targeted consultation post its phase two consultation and that this had been provided for in the draft SOCC. The IPC confirmed that targeted consultation on specific communities or areas was acceptable, it had been done in respect of the proposals for Hinckley Nuclear Power Station.

When submitting the application TW should ensure that the Consultation Report explains how it has complied with its SOCC and how the consultation has been carried out following the relevant legislation and guidance in fact or in substance
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(including in relation to consultation carried out before the s.14 Order comes into effect). In accordance with s.55 and the proposed supplementary provisions in the s.14 Order, the Commissioner will take this into account when deciding whether

or not to accept the application.

Section 48 publicity

Reg 4 of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 (APFP regs) requires “documents, plans and maps showing the nature and location of the proposed development” to be placed on deposit for public inspection when publicising the application as required by s.48. Reg 4 does not prescribe publication of the full application documents which must be submitted in accordance with reg 5 of APFP.

Incorporating flexibility within the DCO application

TW explained that they will need some design flexibility within their submitted application design. This was because it was not possible or desirable to confirm certain details many years in advance of when certain parts of the development will be carried out. It is also not possible to identify with certainty locations for the reuse of excavated material for several years and certainly not in advance of the application. This is because the market for such material and the reuse locations change on a relatively frequent basis. The locations selected will ultimately depend on the opportunities available at the time.

The IPC’s approach to the Rochdale Envelope is contained in the published Advice Note 9. The draft NPS also contains some principles for the IPC to consider in respect of flexibility. If flexibility is incorporated within the design the worst case scenario should be assessed.

Section 106 obligations and statements of common ground

The heads of terms of any s.106 obligations should be included with the application for development consent. The Examining authority (ExA) may ask questions on, or schedule a hearing in relation to, these obligations. The relevant parties will have an opportunity to make representations at the preliminary meeting on how these matters should be examined. Draft agreement or unilateral undertakings will be required for examination sessions concerning obligations and the agreement / undertakings must be completed by the end of the examination phase.

Statements of Common Ground could, where appropriate, also include areas where the relevant parties disagree on a matter.

Notice of accepted applications (section 56 of the 2008 Act)

The minimum period for registering and interest in the application following publication of the prescribed notice required by s.56 is 28 days. TW may wish to consider giving more than the prescribed minimum of 28 days

for members of the public to register an interest following the acceptance of the application. The minimum period may on a scheme of this size lead to more late submissions. A representation does not constitute a “relevant representation” (entitling someone to be an interested party and participate in the examination phase) unless it is submitted by the due date although it was noted that the ExA has discretion to allow members of the public who are not registered as interested parties to participate in the examination.

Submission of local impact reports

The Examining authority will set the timetable for submission of any Local Impact Reports (LIR) following CLG guidance. The Examining authority would also take into account submissions from the Local Authorities about the proposed timetable at the preliminary meeting. The period for receipt of reports is likely to be 6 weeks from the Preliminary Meeting.

Land ownerships issues and the book of reference

The Book of Reference (BOR) will need to document the results of TW’s diligent inquiries during the course of pre-application consultation. The s.56 notice (notifying persons of the accepted application) would need to reflect a reasonable snapshot of TW’s knowledge of land ownership of the application site at the time the notice was served.

There is no statutory requirement to request the IPC to authorise service of a s.52 notice in order to ensure diligent inquiry. The power under s.52 is aimed at helping applicants and it is discretionary. The use of s.52 should be a last resort, once all other avenues have been exhausted.

In terms of fees for section 52 applications it is possible on linear scheme to submit applications in respect of individual land holdings in batches. A reasonable approach must be adopted and TW should seek further advice from the IPC on this matter. There was further discussion about the need to update the BOR (during examination and before a DCO is made) to reflect any further information received about interests in land. The IPC will provide s.51 advice about this.

Application documentation

Applications should be carefully structured. Formal standards for applications, previously set out in the IPC’s guidance note 2, have been withdrawn. Advice note 6 sets out best practice on the preparation of application documents. The IPC can offer more detailed advice nearer to submission.

However, some requirements (e.g. the scale of the land plan) are prescribed by the APFP regulations and should be treated accordingly. When assembling application documents and

	<p>considering the required plan scales applicants should also be aware that if a DCO is to be made in the form of a Statutory Instrument (SI) there are formatting and other requirements (including plan scales) that must be adhered to. It is possible that the scale requirements in the APFP reflect the SI requirements.</p> <p>MW agreed to send the electronic application index referred to in the recently revised IPC Advice Note 6.</p> <p>Requirements</p> <p>CLG's Guidance for Local Authorities anticipates that Local Authorities will be the bodies to discharge requirements in the development consent order. However, at present, it remains for the applicant to draft the requirements following the model provisions or in a different form as they see fit (giving reasons where there has been deviation from the model provisions), in consultation with the relevant bodies, including Local Authorities.</p> <p>Special Parliamentary Procedure</p> <p>It was noted that the IPC is putting in place the administrative arrangements which may be required if any DCO is subject to special parliamentary procedure. These will be advised by the IPC in due course.</p>
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Specific decisions/ follow up required?	<p>IPC to provide further advice on BOR.</p> <p>IPC to send the electronic application index to TW</p>
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Circulation List	Attendees