Meeting Note

File reference EN010004 – Merthyr EfW Facility
Status Final
Author Owain George

Meeting with Burges Salmon
Meeting date 25/11/2010
Attendees (IPC) Mark Wilson
Lynne Franklin
Owain George
Attendees (non IPC) Julian Boswall
Elizabeth Dunn
Location IPC Offices, Temple Quay House

Meeting purpose Meeting to discuss content of submitted Draft Development Consent Order (DCO) and the extension of the red line plan which accompanied the DCO.

Summary of outcomes The Commission requested an update on the Brig Y Cwm proposal in respect of the following issues:

Section 42 Consultation
The Commission noted an extension of the red line within a land plan accompanying the submitted draft DCO. The Commission requested clarification on any subsequent consultation approach.

Burges Salmon (BS) advised that the site boundary/red line has been amended to include a section of land adjacent to the highway which extends the site into Caerphilly County Borough. This section of land has been subject of discussions with Merthyr CBC and Caerphilly CBC.

BS confirmed that this section of land was not included in the original s.42 consultation and its inclusion within the red line was a direct result of this consultation process. BS considered that extent of additional land did not result in the need to reconduct under s.42.

The Commission referred to The Infrastructure Planning (Applications: Prescribed Forms and Procedure)
Regulations 2009; and questioned whether prescribed consultees (which may be required to be consulted given the additional section of land falling within Caerphilly CBC) were consulted. BS confirmed that at that stage only neighbouring Local Authorities had been consulted.

BS advised that Merthyr CBC and Caerphilly CBC had both been consulted on the Statement of Community Consultation (SoCC).

The Commission advised that all issues relating to pre-application consultation should be clarified in the consultation report submitted as part of the application.

BS acknowledged issues raised by the Commission in relation to the extended red line plan, and would review the consultation requirements and the scope of the application.

**Articles**

The following draft articles and requirements in the submitted draft Development Consent Order (DCO) were discussed. Where appropriate the Commission highlighted any inconsistencies and the need for clarification so as to enable BS to prepare a further draft of the DCO subject to comments awaited from the local authorities.

**Article 2** - Definition of "maintain" – this is a new definition and is not a model provision. Further clarification as to its purpose and effect should be provided. Article 3 (2), (3) and (4) - this provides an element of flexibility. Further consideration should be given to the way in which the article (see also draft requirements 6 and 7) confines any flexibility to the scope of the development which has been subject to EIA.

**Article 5** – it was noted that this article provides authorisation to operate the energy from waste generating station.

**Article 6(4)** - it was noted that the provisions of articles 11 – 15 (which authorise the use of compulsory acquisition and other powers) are for the benefit of Covanta only. This is inconsistent with Article 12 (power to override easements and other rights included by application of s237 (1) of the Town and Country Planning Act 1990) which provides for statutory successors or persons deriving title to benefit from the Article 12 power. This should be considered further. It will also be important to ensure that the Funding Statement addresses the effects of Article 12 in relation to the availability of funding to meet...
compensation liabilities.

Article 16(3) Landlord/Tenant law – Commission noted the novel inclusion of “at the discretion of the undertaker” within this provision and queried the implications of disturbing the balance of landlord and tenant rights. The provision should be fully justified and further explanation provided as to its effects.

**Authorised Development**

Work 1 (e) – The Commission queried the purpose of a Switch Yard and this was explained.

**Requirements**

It was suggested that BS should clarify the definition of “Residual Waste” as this was not clear.

The Commission questioned whether "Relevant Planning Authority" should also include reference to Caerphilly CBC.

Requirement 4 (Type of waste to be Treated) - Is requirement 4 sufficiently certain and can it be enforced? The requirement wording suggests that it can only be enforced at the end of a calendar year. BS advised they have no response from the LA on drafting of this requirement to date. BS to discuss the monitoring scheme with Covanta and LA. Requirement 4 – the Commission also queried whether this requirement should include "following consultation with LPA". BS to discuss with Covanta and consider amending the requirement.

Requirements 5 and 6 – this provides some flexibility. Consideration should be given to the way in which the requirement confines any flexibility to the scope of the development which has been subject to EIA.

Landscaping requirements – discussed the need for greater clarity.

Requirement 9 (Highway Access) - should this reflect terminology in Requirement 6 - "bearing references x". Commission suggested that this should utilise the wording “plans set out”, to allow for consistency and certainty. BS acknowledged this and will consider its inclusion.

Requirement 10(3) (Fencing and all other means of Enclosure) – Commission discussed the benefit of providing a definition/clear identification of “temporary fencing”. BS acknowledged this point.
Requirement 11 (Surface Water Drainage) - "drainage authority" is not defined. The Commission also requested further clarification of "making provision for the construction of Work No 1." BS acknowledged this point.

Requirement 12 (Construction Environmental Management Plan) - Any remediation must be carried out in accordance with approved plan and the Commission suggested that "plan" should be "Plan" Commission queried whether for consistency this requirement should mirror terminology in requirement 14 which refers to the implementation timetable. BS acknowledged this point.

Requirement 13 (Archaeology) – Commission discussed the need for a definition to be provided for a "suitably qualified" archaeologist, for clarity? BS acknowledged this point and will reconsider.

Requirement 14 (Ecological Management Plan) – Commission queried absence of need to consult CCW. BS acknowledged this and will consider.

Requirements 14 to 20 – Commission noted the absence of wording dealing with monitoring. BS acknowledged this point.

Requirement 16 (Lighting) – Commission queried the absence of lighting from the Authorised Development. BS to consider.

Requirement 16 (Lighting) – for clarity, it is the “lighting proposals” in the strategy which are to be maintained, rather than the strategy itself. BS acknowledged this point.

Requirement 17 (Traffic Management) – Commission queried difference between the Travel Plan within the ES and the Travel Plan to be submitted pursuant this requirement and whether there was duplication.

Requirement 17 (Traffic Management) – Commission queried whether "Parking to be provided" related to on-site or off-site provision. BS explained that this would relate to off-site provision.

Requirement 17(2) – Commission queried whether “the route agreed by the Commission” relates to the “preferred route” to be approved pursuant to 17(1)? BS explained.

Requirement 18 (Hours of Working) – Commission queried the inclusion of and definition of "non-intrusive activity" BS said that this would be clarified.
Requirement 18(2) – Commission queried the hours of working. BS explained the context of the site and that Miller Argent, the neighbouring facility, operates 24hrs a day.
Requirement 18(5) (Hours of Working) – The Commission suggested that the definition of an "abnormal load" should be provided. BS to consider this point.

Requirement 19 (Noise) – Commission asked what progress had been made in relation to the drafting of noise requirements. BS advised that the ES chapter relating to Noise issues has now been completed and will be subject to consultation with the relevant Local Authorities.

Requirement 21 (Restoration) – Commission asked for clarification of "On the 32nd anniversary of the Commissioning...." BS explained that the 32nd year is close to the total lifespan of an EfW facility and measures would therefore (at that stage) need to be considered for decommissioning and/or future uses.

**Further Issues**
The Commission queried the absence of any requirements or protective provisions in relation to new rail sidings/connections and any private level crossing works. BS clarified that to date Network Rail have not sought any requirements/provisions.

The Commission queried the absence of any reference in Requirement 17 in relation to secure coverage of vehicles exiting site, as well as entering the site. Also no reference to other vehicles entering the site e.g. rail vehicles for consistency with 17(4).

<table>
<thead>
<tr>
<th>Specific decisions/follow up required?</th>
<th>Burges Salmon to consider section 42 issues raised and provide the Commission with comments.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Burges Salmon to consider inclusion of a statement of reasons for requirements within the application.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Circulation List</th>
<th>Attendees</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Peter Bond</td>
</tr>
</tbody>
</table>