



## Meeting Note

<b>File reference</b>	<b>EN010007 - Wylfa New Nuclear Power Station</b>
<b>Status</b>	<b>FINAL</b>
<b>Author</b>	<b>Robert Ranger</b>

<b>Meeting with</b>	<b>Horizon Nuclear Power</b>
<b>Meeting date</b>	<b>26 July 2012</b>
<b>Attendees (Planning Inspectorate)</b>	<b>Simone Wilding</b> (Principal Case Manager) <b>Lynne Franklin</b> (Lawyer) <b>Robert Ranger</b> (Case Officer)
<b>Attendees (non Planning Inspectorate)</b>	<b>James Eaton</b> (Project Developer Planning and Consents) <b>Jon Cornelius</b> (Project Counsel) <b>Kieran Somers</b> (Head of Planning & Consents)
<b>Location</b>	Teleconference

<b>Meeting purpose</b>	Project update
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<b>Summary of key points discussed and advice given</b>	<p><b>The Planning Inspectorate (PINS)</b> advised on its openness policy, that any advice given will be recorded and placed on the National Infrastructure Portal website under s.51 of the Planning Act 2008 as amended (the act) and also to note that any advice given under s.51 does not constitute legal advice upon which applicants (or others) can rely.</p> <p><b>Project Update</b></p> <p><b>Horizon Nuclear Power's (HNP)</b> shareholders have announced their intention to seek new ownership for the company and a sales process has commenced. Horizon is optimistic that new investors will be found and it can continue developing its proposals at Wylfa under new owners.</p> <p><b>Outreach</b></p> <p><b>PINS</b> explained they had been approached by Local Authority officers in Anglesey to discuss undertaking an outreach event to provide advice on the Planning Act 2008 process to local stakeholders. PINS undertakes such events on a non-statutory basis and seeks to time them having regard to the developer's pre-application consultation. PINS asked HNP whether or not any consultation activities were currently planned locally.</p> <p><b>HNP</b> explained that their monthly public information surgeries and quarterly Project Liaison Group meetings are</p>
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continuing. The formal consultation programme is expected to be re-started once sufficient clarity in the sale process has been reached and announced.

**PINS** confirmed that they are guided by applicants and others on the timing of outreach events. In their experience, such events are most effective if they are shortly before the applicant's pre-application consultation, but not close enough to confuse or dilute the response. PINS will postpone any outreach event in connection with Wylfa until HNP are able to commit to a statutory consultation programme.

#### **Procedural advice**

**HNP** asked if consent for offshore elements of the proposal could be included in any Development Consent Order. (DCO)

**PINS** Advised that a DCO may only authorise development in Wales if the development is integral to the NSIP. HNP should consider whether the offshore works in question lie within the remit of the local planning authority (which extends to the low water mark). Beyond this, the LPA has no jurisdiction. The works may also require a marine licence from the Welsh Government. There is an overlap in the tidal area where works might require a marine licence from the Welsh Government as well as planning permission (if the works are not integral). This is a complex legal area and HNP is strongly advised to take legal advice and consult the relevant organisations.

**HNP** is producing an offshore consenting strategy document setting out how they anticipated that the different regimes would interact. HNP also asked whether PINS could contribute to a workshop on the topic with other regulators and consenting bodies.

**PINS** agreed that producing such a strategy would be helpful, and suggested to include graphical illustrations (eg plans of jurisdictional boundaries). PINS also offered to look at such a document and offer s51 advice, either at a meeting or in writing, but noted that any such advice would be procedural rather than legal in nature and would be published on the Planning Inspectorate's website.

**HNP** asked if a DCO in Wales could incorporate provisions that would have the effect of creating offences; similar to those that might be created by a Harbour Empowerment Order.

**PINS** advised that in general, s120 (8) of the 2008 Act prevents a DCO creating offences with some exceptions as listed in paragraph 32B of Schedule 5 (including offences in connection with the construction, improvement or management of a harbour). S120 (8) applies equally to

development in Wales.

**HNP** noted that recent events, had resulted in the current Statement of Community Consultation (SoCC) being out of date in some respects. They asked if there was a process for withdrawing it or a prescribed form of notification.

**PINS** advised that there is no prescribed process or form of notification for the withdrawal of a SoCC. PINS generally advises that it is important that accurate, current information is provided but this can be in form of updates and addendums. Consultation on large projects is often iterative as the project and circumstances evolve, and it is open to applicants to publish new SoCCs. There is no requirement to notify PINS of any inaccuracies that emerge in a SoCC, but it may be valuable to notify local authorities, who will be consulted on the adequacy of the applicant's consultation when an application is submitted.

**HNP** asked how the environmental permitting regime interacted with the DCO examination process, how much comfort an Examining authority would need that a permit could be granted when making their recommendation, and whether or not a "Grampian-style" requirement could be used to require an environmental permit before a consent could be implemented.

**PINS** advised that Advice Note 11, Annex D addresses working with the Environment Agency in the DCO process, and can be found on our website. Generally, applicants seek necessary environmental permits from the EA in parallel with their applications for a DCO. The DCO application is subject to a statutory timetable and so early pre-application engagement with the EA and others is vital.

Requirements operate under similar principles to conditions on planning applications. A "Grampian" requirement such as the one suggested may be appropriate (within the context of Circular 11/95 which advises against positive obligations to obtain the consent of another body). This would be a matter for the Examining authority.

### **Land Rights**

**HNP** asked for further clarification about authorisation to enter land under s53 of the 2008 Act..

**PINS** advised that the conditions to be satisfied under s53 (in relation to s42 consultation) had been modified following the Localism Act and committed to providing further advice in writing subsequently.

**HNP** asked for clarification about powers to compulsorily acquire land..

	<p><b>PINS</b> it was noted that s51 advice has been given about compulsory acquisition of land not falling within the NSIP application. This advice related to the North Killingholme New Power Station project and can be found <a href="#">here</a>. Compulsory acquisition is an extremely complex area of law, and PINS emphasised that developers should seek their own legal advice, and draft their query in writing for PINS to respond to.</p>
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<b>Circulation List</b>	Attendees

<b>Follow up advice</b>	<p>Query in relation to authorisation to enter land under s53 in advance of s42 consultation (see above).</p> <p>Prior to the Localism Act 2011, s53(2) of the 2008 Act set out three requirements that had to be met before a request for access onto land under s53 could be granted. S53(2) has been amended by the Localism Act 2011 to remove sections (b) and (c). This has taken away two of those requirements: the need for s42 consultation to have been undertaken and for the applicant to be seeking authority to compulsorily acquire the land.</p> <p>The remaining clause, s53(2)(a), requires that the applicant is considering a distinct project of real substance genuinely requiring entry onto the land.</p> <p>PINS considers that authorisation to enter land should only be given as a last resort, and will seek evidence of attempts to secure access by agreement before giving such authorisation. Further advice on s53 applications is contained in the Planning Inspectorate's Advice Note Five: <a href="http://infrastructure.planningportal.gov.uk/wp-content/uploads/2012/03/Advice-note-5v2.pdf">http://infrastructure.planningportal.gov.uk/wp-content/uploads/2012/03/Advice-note-5v2.pdf</a></p>
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