

## Mike Harris

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**From:** Mike Harris  
**Sent:** 19 August 2011 15:31  
**To:** 'kim.daye@rwe.com'  
**Cc:** robert.thornhill@rwe.com; Ian Gambles  
**Subject:** Proposed Atlantic Array wind farm – Statement of Community Consultation (SoCC)

Dear Kim,

I am writing further to my letter of 10 August 2011, and in light of our subsequent email and telephone exchanges. I have now consulted senior colleagues on this matter, and we have come to the view that it would be appropriate to clarify the advice provided to you.

The decision taken by the Commission under s.55 of the Planning Act 2008 (the 2008 Act) must have regard to a number of matters, including the applicant's compliance with its obligations under Chapter 2 of Part 5 of the 2008 Act. Our advice to you was intended to indicate aspects of your published SoCC where, if you were minded at any relevant point in the pre-application stage to publish a further SoCC, improvements could be made which would be likely to assist the Commission in concluding that the application was compliant in this respect. It was not though our intention to imply that publication of a new SoCC was a necessary condition for such an outcome. Nor should any advice we give be taken to prejudge or predetermine any decision as to whether or not to accept an application that may be taken under s.55.

I would though wish to emphasise the advice given in my letter of 10 August 2011 that the wording included in the published SoCC "...in effect satisfies the purpose of Regulation 10(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009".

As you may know, the IPC takes a pro-active approach to giving s.51 advice to applicants and others, which is intended to be helpful to recipients. I would also note that s.51 does not require a request to have been made to the IPC for us to give such advice. If you still have any concerns regarding this approach, may I suggest that you contact our Director of Operations, Ian Gambles, who I have copied into this email, and whose direct-line telephone number is 0303 444 5080. I would also note that it is a matter for applicants, taking and relying on their own legal advice, whether or not to follow our s.51 advice.

I hope this is of assistance. I have tried to call and discuss this message in advance of sending but was unable to reach you. If on reading I can provide any further clarification please do not hesitate to contact me.

Kind regards

Mike

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10 August 2011

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SN5 8ZT

Our ref EN010015

Dear Kim,

### **Proposed Atlantic Array Wind Farm – Statement of Community Consultation**

We are writing to you following the publication of your Statement of Community Consultation (SoCC) in respect of the proposed Atlantic Array Offshore Wind Farm project. As recently discussed, we have carried out a short review of the SoCC in order to check its broad compliance with the various requirements of the Planning Act 2008 (the Act), related secondary legislation and published guidance and advice.

In order for the Commission to accept an application for examination it must (inter alia) have regard to the extent to which the applicant has had regard to any guidance issued by the Secretary of State and the IPC under s.50 of the Act (DCLG Guidance on pre-application consultation, and IPC Guidance Notes 1 and 2). The IPC must also be able to conclude that there has been compliance with the pre-application procedure set out in Chapter 2 of Part 5 of the Act, which includes s.47. In view of this, and the advice given below in this letter, you may wish to consider how the published SoCC addresses these matters.

#### ***Preliminary Environmental Information (PEI)***

It is noted that your SoCC includes the phrase “the consultation will coincide with the completion of the work being undertaking for the EIA and this will be used to provide information to the public via various communication methods on the different aspects of the project”. Whilst we think that this wording in effect satisfies the purpose of Regulation 10(b) of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (the EIA Regs) it is not in our view strictly compliant with this Regulation.

We also note that this wording is included under the heading ‘Consultation – offshore’ rather than under the EIA heading and that no reference is made to onshore consultation activities in this regard. As such, we consider that this text may be confusing to readers of the SoCC.

In relation to both the onshore and offshore consultation, we are unclear as to how it is proposed to consult with the local community in Wales, including hard-to-reach groups and users of the sea based in Wales, given the consultation boundaries you have identified, and that it is stated that at the closest point to shore of the proposed development would be approximately 18km from the south Wales coast. Please could you clarify this.

### ***Zone of Theoretical Visibility (ZTV)***

Clarification of the size of the offshore ZTV would be appreciated since no reference is made to this in the SoCC. In this regard you may wish to consider our recently updated Advice Note 3 on Scoping Opinion Consultation which highlights that we adopt a 35km zone of visual influence, identified from the nearest element of a proposed NSIP development to the shoreline.

In relation to your proposed onshore ZTV of 10km, it is not clear to us as to how this distance has been arrived at, whether it is based on best practice, and if so what, nor whether the methodology you have used has been agreed with the relevant Local Authority(s) and relevant statutory consultees such as Natural England. It would appear that you are proposing to adopt the same approach to identifying any ZTV in relation to your s.42 consultation, although this is not clear.

We would also note that IPC Guidance Note 1 at paragraph 21 states that 'If applicants identify and consult fewer consultation bodies (as part of their s.42 obligations) than the IPC consults in relation to a scoping opinion a clear explanation should be provided when the application is submitted'. In view of this, you may wish to clarify these points.

### ***Consultation period***

It is noted that the SoCC does not include details of the consultation period. Whilst we acknowledge that it was published in advance of you having confirmed dates and locations for public exhibitions, some indication of the consultation period in the SoCC would we think have been useful in aiding engagement from the local community.

It is hoped that these comments are helpful. If you have any questions in relation to the points raised please do not hesitate to contact us.

Yours faithfully

**Mike Harris**  
**Case Lead**

The IPC gives advice about applying for an order granting development consent or making representations about an application (or a proposed application). The IPC takes care to ensure that the advice we provide is accurate. This communication does not however constitute legal advice upon which you can rely and you should note that IPC lawyers are not covered by the compulsory professional indemnity insurance scheme. You should obtain your own legal advice and professional advice as required.

We are required by law to publish on our website a record of the advice we provide and to record on our website the name of the person or organisation who asked for the advice. We will however protect the privacy of any other personal information which you choose to share with us and we will not hold the information any longer than is necessary.

You should note that we have a Policy Commitment to Openness and Transparency and you should not provide us with confidential or commercial information which you do not wish to be put in the public domain.