

WPD QUESTIONS and IPC RESPONSES

Western Power Distribution (WPD), the applicant for a 132kV electric line to Maesgwyn proposed wind farm, raised the following questions and provided draft documents including:

- An Ecological Assessment
- An Archaeology and cultural heritage assessment
- Phase 1 habitat survey

In essence, The IPC strongly advised the applicant seek its own legal advice on these queries however included below are links to the advice and guidance relevant to these questions, for the applicant's consideration.

1) The Maesgwyn application will not affect any European Sites, protected species, special habitats or protected Archaeology. We have in any case prepared a phase 1 Ecology report and Archaeology desk survey. Should these documents be referenced to para (l) and (m) under Reg5(2) of the APFP regs or para (q).

These documents fall within the terms of Regulation 5(2)(l) and (m) of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. CLG has published 'Nationally significant infrastructure projects application form guidance' which can be found on the following link = <http://infrastructure.independent.gov.uk/wp-content/uploads/2009/08/applicationformguidance.pdf> please refer to paragraphs 33-38 of this guidance for further clarification on the above.

Please also note that Regulation 5(3) of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 requires plans to be no more than A0 size at not less than 1:2500 scale.

2) Land Plan: Do we need to show any routes we intend to use to access the works as affected under the regulations? These would vary in any case depending on where the landowner wanted us to go and would be existing accesses and not be new or modified accesses but involve us driving or walking along existing tracks or across land with the landowners' agreement to deliver equipment and labour to the sites to be worked at. This is obviously what we do on all land in our area to get to and from our equipment to construct, maintain and replace kit and is only a landowner matter and not a planning one. Rights to access land have been agreed with the landowner through our wayleaves.

Please refer to the guidance set out in paragraphs 21 and 6 of the CLG 'Planning Act 2008: Nationally Significant Infrastructure Projects Application Form Guidance'.

Regulation 5(2)(i) of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP Regulations) refers to the

'land plan' and (i), (ii), (iii) and (iv) states the information which it should identify, as shown below:

- (i) the land required for, or affected by, the proposed development;
- (ii) where applicable, any land over which it is proposed to exercise powers of compulsory acquisition or any right to use land;
- (iii) any land in relation to which it is proposed to extinguish easements, servitudes and other private rights; and
- (iv) where the land includes special category land and replacement land, that special category and replacement land;

Land 'required' for the proposed development would include land within the application site boundary and land 'affected' may include land over which the application site is to be accessed. There is no specific requirement in the APFP Regulations that applicants include access arrangements on the land plan, although there is nothing in the Regulations which expressly prohibits this either. Means of access during the works phase might though be more appropriately be shown on the 'works plan' which has to accompany the application under Regulation 5(2)(j) of the APFP Regulations.

There are provisions in the APFP Regulations which do specifically require that details of access arrangements are submitted with the application.

If any means of access are new or altered then a plan identifying these must be submitted under Regulation 5(2)(k) of the APFP Regulations.

Regulation 5(2)(o) of the APFP Regulations requires the submission of any other plans/drawings showing (amongst other matters) means of vehicular and pedestrian access to the proposed development. Such access routes do not have to be new or altered (unlike Regulation 5(2)(k)). This provision is concerned with means of access to the proposed development when it has been completed rather than during the works phase.

Regulation 5(2)(q) of the APFP Regulations refers to 'any other documents considered necessary to support the application'. Plan(s) showing access arrangements during the works phase could be included under this provision, although this is of course not a mandatory category.

We note that you envisage wayleaves granting rights of access to the site being agreed with landowners. You do not however state in your email whether these just relate to the works phase. We would presume that such arrangements will need to be secured on a permanent basis so that the development can be accessed for maintenance etc. purposes after it has been completed. As noted above, plan(s) showing such permanent means of vehicular and pedestrian access have to be provided under Regulation 5(2)(o). These means of access may be the same access routes used during the construction phase. Please could you clarify your intentions in this regard.

3) *Please advise the format you require the application in and number of copies (eg number of paper copies and number of electronic copies on CD)?*

With regard to the format of application documents, IPC's Guidance Note 2 'on the preparation of application document' which can be found at: <http://infrastructure.independent.gov.uk/wp-content/uploads/2010/04/IPC-app-docs-guidance-note-2.pdf> states at para10 that "In all cases the application documents must be paginated and paragraphs must be numbered. Every document must contain a clear title page which identifies the project, the date of revision, author(s) and the appropriate Regulation 5(2) paragraph number to which the document relates. The document must also contain a table of contents setting out chapter or topic headings, unless it comprises a short statement of no more than two A4 pages. Where the document provided comprises a plan or plans, these must also be clearly labelled in the bottom right hand corner with 'title page' information; a list of revisions should be produced so at any stage it is easy to identify the latest version".

In relation to the number of copies of application documents (and whether paper or electronic) IPC Guidance Note 2 (para 11) states that "The applicant should submit 3 paper copies of the full application submissions together with a list of all of the application documents that accompany the prescribed form (see Schedule 2 of the APFP). In addition, the IPC should be provided with an initial further 10 copies of the full application submissions compiled on DVDs (in a format to be agreed in advance with the IPC). The IPC may need to request additional paper or DVD copies on a case by case basis".

Both these paragraphs set out minimum standards which must be complied with in the submission of all application documents.

4) *Would the covering letter to the application be the appropriate place to explain why documents are or are not included (as per the Reg 5(2) list)?*

The most appropriate place to explain this would be in the relevant box of the standard application form. Please note paragraph 5 of CLG Guidance on Application Documents, which states that:-

"If the applicant considers it is infeasible to provide full and final details of any element of the proposal at the point of submitting the application, the applicant should clearly set out its reasoning for this. However, in such circumstances, the applicant should still submit the more limited information on those elements. The applicant should consider discussing this issue with the Commission in advance of submitting an application".

Please note that any documents etc. not prefixed with 'any', 'where applicable' (or similar) in this list are mandatory in all circumstances. It is for you though to decide, having considered the Planning Act 2008 (the Act) and the APFP Regulations, what documents to include and omit, having taken your own legal advice on this if you consider it necessary.

5) Under Reg 5(2)(o) "any other plans, drawings, sections necessary to describe the proposals ..." are there any mandatory docs we need to submit here?

We can only determine whether an application and the documents etc. accompanying it are acceptable once the application has been submitted. Applicants must ensure that the information provided, including plans, drawings and sections fully describe the proposals, and are in accordance with the Act, the APFP Regulations and the standards referred to above.

With regard to Regulation 5(2)(o) of the APFP Regulations, any plans and drawings under this provision only have to be provided if they are "necessary to describe the proposals for which development consent is sought". If they are 'necessary' then such plans etc must be submitted. It is for you to consider and decide whether, in the particular circumstances of this scheme, you need to submit such material.

6) Is it acceptable to have tolerances within the dimensions of the works as long as the tolerances are stated or explained in the application? It is impossible to exactly specify all the dimensions of a wood pole type overhead line before we award construction or contracts to supply equipment and it is constructed.

Please note that it is not possible under the Acts regime to materially change an application once it has been submitted to us. This proposed scheme has been screened by the IPC on the basis of the information provided to us. Our view that the proposed development is not EIA development and an environmental statement would not be required was on the basis of that information. Any changes to the scheme that was screened by us may have EIA implications. You should take and rely on your own legal advice in relation to this.

7) Do the requirement in Reg 5(3) to have plans of scale no smaller than 1:2500 only apply as it states to "Any plans, drawings or sections required to be provided by paragraph (2)". I.e. where we are not required to provide the plans under Reg 5(2) but if we are including it as an option, the 1:2500 does not apply. For example in our Visual impact report, there are a number of 1:10,000 and 1:20,000 A3 plans as attachments showing high level landscape designations.

We would expect any additional non-mandatory plans submitted to be of a sufficient scale, be clearly labelled, and of a manageable size. You may wish to include an explanation of your preferred scale in support of this.

8) *Under Reg 5(2)(g) if no European Site is affected, therefore no report, can we just state this in the covering letter?*

The most appropriate place to explain this would be in the relevant box of the standard application form.

9) *Do we need to list the wayleaves with landowners as 'consents' under Box 24 of the application form?*

Yes.

Where the proposed development will also require other consents, licences, permits, etc, to enable it to be constructed and / or operational, and for which the Commission is not the authorising body, then the applicant must list and briefly describe these in Box 24. Please see para 47 of CLG Guidance on Application Documents in relation to this.

10) *In the IPC's screening opinion dated 30th April, it was recommended that WPD submit with the application:-*

1) A Landscape and Visual Impact Report

2) A Construction Environmental Management Plan.

We are finalising these and in terms of Reg 5(2) paragraph referencing can you confirm which paragraph they should be referenced to?

The Visual Impact Report and Construction Environment Management Plan could both be submitted to the IPC under Box 23 of the application form, and labelled accordingly, and not identified as being documents submitted under Regulation 5(2)(o) or (q) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP regulations).

We do not consider that either of these documents are 'necessary' to describe the proposals or to support the application, pursuant to Regulation 5(2)(o) or (q), nor are they mandatory documents that have to be submitted under Regulation 5(2). Accordingly, the requirements under Regulation 5(3) of the APFP Regulations, relating to the size and scale of plans etc., would not need to be complied with in relation to these documents.

We also note Paragraph 46 of the CLG Application Form Guidance which states that "The applicant should also use Box 23 to refer to any other information that the applicant has decided to submit in support of the application, but which has not been explicitly required by Regulations or NPSs". This guidance clearly envisages that additional, non-mandatory documents may be submitted on this basis.

We would also note that the decision whether or not to accept an application will be taken by a Commissioner who has had no involvement with the pre-application stage for this proposal. All advice we provide at this stage does not prejudice or pre-judge the decision of the Commissioner regarding acceptance or non-acceptance of an application. We would strongly recommend that you always seek your own legal advice upon which you can rely.