



UK Business Council for Sustainable Energy

Submission on the Planning White Paper¹

1. INTRODUCTION

The UK Business Council for Sustainable Energy was established in 2002 to support the fastest transition feasible to a sustainable energy economy consistent with the delivery of a secure, reliable and affordable energy infrastructure.

Members of the Council include Centrica, EDF Energy, E.ON UK, National Grid, RWE npower, Scottish and Southern Energy, Scottish Power, and United Utilities. Associates include Shell, BP, Drax Power, International Power, CE Electric and Renewable Energy Systems.

Together, UKBCSE members are responsible for a very significant proportion of the UK's sustainable energy projects, large and small, and much of the energy infrastructure in Great Britain. We therefore very much welcome the opportunity to comment on the Planning White Paper consultation. This submission offers some high-level points on the government's proposals for planning reform.

The Council welcomes the proposed reforms for more effective consent arrangements for energy projects, both large and small, set out in the Planning and Energy White Papers (Chapter 8).

2. OVERVIEW

These reforms are a necessary and constructive step in achieving transformation to a lower carbon energy economy and in maintaining long-term security of UK energy supplies.

Community engagement must remain a core and integral part of the planning process, but reform is central to ensure that plans for critical energy infrastructure and sustainable energy projects can be delivered on time. The Council wishes to see the following principles embodied in an improved planning system:

¹ Planning for a Sustainable Future. White Paper. May 2007
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- Pre-agreed timescales and clarity on the scope and form of engagement at each stage of the process.
- A clear and robust national policy framework in the form of National Policy Statements underpinning consent arrangements for sustainable energy projects, both large and small.
- Coherence, consistency and improved alignment across consent regimes.

3. PLANNING REFORM AND THE ENERGY WHITE PAPER GOALS

Long consent timescales and related investment uncertainty represent an increasingly significant challenge to achievement of the government's energy policy goals.

First, many more low-carbon energy projects are needed to achieve the 2050 carbon-dioxide reduction targets, including major development of on-shore and off-shore renewables, new lower-carbon thermal plant, and, widespread adoption of small-scale distributed and micro-generation. Essential as they are, demand-side measures alone are unlikely to suffice.

Second, as older generating plant retires (both coal and nuclear), replacement investment with new lower-carbon plant is essential to avoid future capacity shortfall. Over one-third of UK power plant needs replacement in the next 15 to 20 years, and, within a decade, 80% of UK gas will need to be imported to maintain current levels of security of supply. Not least, greater confidence is needed that gas-storage and other gas infrastructure such as LNG terminals can be built on time.

Third, a multi-million pound energy infrastructure programme needs to be delivered on time. Significant network and pipeline construction and reinforcement is essential to deliver the nation's energy from the point where it is produced or imported to the point of demand. Without new investment in pipes and wires, new energy projects, both on-shore and off-shore, cannot connect or operate.

Energy projects can be controversial and local communities must have a full opportunity to express their view and be heard. However, examples below of the very extended time-scales for obtaining planning consents for a variety of energy projects suggest that present arrangements fail to serve either energy project developers or local communities. Needless uncertainty and excessive expense result all round.

- **Second Yorkshire line** – almost seven years to obtain consents, including two public inquiries.
- **Milford Haven gas pipeline** – will transport 20% of UK gas supply when built. Pipeline consented by DTI, but planning permission refused by local planning authorities under the TCPA regime for associated gas compression stations.
- **London Array** - main off-shore permissions for a 1000 MW offshore wind farm were consented by DTI in 2006, but a single on-shore electrical substation consent has subsequently been refused by the local planning authority under the TCPA regime. Presently subject to appeal.

- **Gas storage** consent at Byley took three years. New national policy guidance notwithstanding, other facilities also refused permission and await appeal.
- **On-shore wind** – Little Cheyne Court, Kent, - 60 MW. Around three years of consultation, scrutiny and public inquiry preceded DTI consent (s36) in October 2005. Subsequent application for judicial review - disallowed but added almost two further years to consent process. Final consent obtained in August 2007.

4. INTEGRATED REFORM PACKAGE

The government reforms offer the prospect of a more integrated framework for energy consents designed to improve upon some of the agreed shortcomings, overlap, fragmentation and needless inefficiency found in the present consenting arrangements.

Importantly, each separate element of the proposed reform package comprises part of a single and inter-related whole: setting a strategic national policy context for energy sector consents; formalising and improving transparency in the pre-application phase; the new independent Infrastructure Planning Commission established to determine consents for nationally significant projects; rationalisation of which consents are decided where; improvements already in hand under the existing s36 & s37 consenting arrangements ; clarifying expectation for effective public participation and engagement at each stage ; and, very importantly, new efficiency measures for consenting smaller energy projects under the TCPA regime.

The Council believes that taken together, and retained as a whole, these reforms will help to improve both the strategic context and the overall efficiency and fairness of the energy consenting process for all parties, including for those who may wish to challenge a particular proposal.

5. PLANNING REFORM BILL - LINKAGE WITH CLIMATE CHANGE BILL AND OTHER LEGISLATION

The proposed planning reform package needs integration and alignment with other draft legislation, and, with other consent jurisdictions.

Climate Change Bill

The Council has actively welcomed the Climate Change Bill in providing a practical long-term UK policy framework for tackling climate change.

It will be important to clarify the linkages between the Climate Change and the Planning Reform Bills. In particular, it will be important to understand how requirements for national CO₂ reduction targets in the Climate Change legislation are to be interpreted by government, particularly in formulation of the proposed National Policy Statements. Such clarification in the Energy National Policy Statements could also be expected to have a knock-on to decisions made by the Infrastructure Planning Commission, and,

importantly, in consent decisions being made by local planning authorities under the Town and Country Planning regime. Presently, these linkages are not clear.

Clarification is also needed on how the proposed planning reforms for nationally significant energy projects will relate to:

- Proposed new offshore consent arrangements to be introduced in the forthcoming Marine Bill
- Present and future responsibilities for planning in Scotland and Wales
- The Town and Country Planning Act regime in England and Wales, where many smaller energy projects will continue to be consented.

These three issues are discussed below.

6. EFFECTIVE ENGAGEMENT

The proposed planning reforms rightly aim to clarify and thereby improve upon arrangements for effective public engagement and participation at each stage of the consent process: in formulation of National Policy Statements; in the pre-application phase ; for the Infrastructure Commission in arriving at consent decisions ; and, for local planning authorities taking decisions in the TCPA regime. This clarification is necessary and very welcome, as it will provide greater consistency and certainty for all, including at community level.

Identifying effective approaches on engagement will prove core, not just from the point of view of statutory and non-statutory consultees and local community groups, but also from the point of view of those wishing to develop low-carbon energy projects who need to achieve support for their projects.

Central to the success of the proposed reforms, is a need to achieve a broad consensus on the nature, scope, and manner of engagement within the new arrangements. Without such a consensus, it will be difficult to achieve the legitimacy that the reform proposals require to ensure their long-term success. The Council will work with statutory and non-statutory bodies, local planning authorities and NGOs, in seeking a broad consensus on appropriate approaches to effective engagement.

7. ENERGY NATIONAL POLICY STATEMENTS

The Council has consistently high-lighted the need for clear, stable and long-term policy frameworks to underpin a smooth transition to a low-carbon economy.

It is therefore very welcome that the strategic policy context for energy project investment is to be clarified by ministers and government in new National Policy Statements. This is a very important step. We see the new National Policy Statements as fundamental to successful implementation of the Government's planning reforms and

accept that adoption in their final form may take some time. We believe it is vital that Energy National Policy Statements have precedence in the hierarchy of other planning policy and guidance, including existing planning guidance for local authorities (see section on TCPA regime below).

Our understanding is that initial Energy National Policy Statements (E-NPS) will include an over-arching NPS on Climate Change and Security of Supply; a cross-cutting NPS on Electricity Networks ; and three others on Fossil Fuel Power Stations ; Renewables and Gas Infrastructure, and, subject to the outcome of the present consultation, one on Nuclear. Additional statements may be necessary in the future. The competitive energy market arrangements will mean that some Energy National Policy Statements may be less site-specific than NPS's for some other sectors. Given the range of issues covered, it is probable that the Energy Statements will cover different time horizons and will have differing review periods.

Consistent with our points above on effective engagement, an inclusive and consultative process for developing each of these Energy National Policy Statements will be central – in particular in finding appropriate mechanisms for their meaningful debate and full consultation.

Status of National Policy Statements

Above all, the Council wishes to see each National Policy Statement being supported by a robust statutory mechanism to help establish legitimacy. In our view, this means that National Policy Statements should have a status at least equivalent to that of a statutory instrument subject to affirmative resolution of both Houses.

One possible option may be a 'super-affirmative' procedure of the kind available for making Reform Orders². Importantly, this allows both Houses to pass resolutions to recommend amendments to the draft instrument. Moreover, there is also a mechanism for a Committee of either House, charged with reporting on an Order, to prevent the Order from being made.

The Council believes that active and meaningful parliamentary consideration of this kind, with a vote by each House, will give a necessary political legitimacy and public credibility to each policy. Such legitimacy will prove very important in the subsequent consenting process – for project developers, for statutory and non-statutory consultees, for the Commission, and, for local authorities in preparing their development plan documents.

² section 18. Legislative and Reform Act 2006.

8. PRE-APPLICATION CONSULTATION

Proposals for a rigorous pre-application consultation phase and for eventual pre-application guidance by the Commission are generally very welcome in shaping the early stages of a project and in setting out a clear path to a consent decision.

The Council wishes to understand more about what any statutory requirement in the pre-application phase may mean in practice. This may take the form of a simple requirement for parties to engage, but at the other extreme would need to guard against undue prescription given that engagement needs to be project-specific. It will be important to avoid a pre-run of an inquiry to avoid replication. Early guidance from the Commission will prove key in clarifying expectation for the pre-application phase.

Firm and systematic timetabling is needed for a successful pre-application phase. One possible model for projects to be determined by the IPC, and, which would provide consistency with the TCPA regime, would be the recent move to Planning Performance Agreements. Under the TCPA, these formalised timetabling arrangements are agreed at the outset between the local planning authority and developer.

Many BCSE members already spend much time in prior-discussion with local planning authorities, community and environmental organisations, in the rightful belief that provision of well-timed pre-application information and high-quality material can help to develop the optimum scheme and help avoid needless misunderstanding and, not least, can assist in building support for a scheme. Early exchanges of this kind, by helping to identify major areas of agreement and disagreement, should improve the overall efficiency of the process for all parties, including local organisations, when it comes to subsequent formal consent consideration by the Commission.

9. INFRASTRUCTURE PLANNING COMMISSION

The Council supports creation of a new Infrastructure Planning Commission (IPC) to determine consents for major energy projects. We would expect issues to be robustly examined, against the backdrop of the relevant national policy statement, but not, as is presently sometimes the case, examined repetitively over a range of consent processes.

It will be very important for the legitimacy of the new Commission that its relationship to parliament and to ministers is clear from the outset, particularly in respect of appointments. A perception that potential democratic engagement with the planning system might be significantly reduced will only harm the legitimacy of the IPC, and this would not be helpful.

IPC Resource and Expertise

The IPC will need adequate energy expertise and resource, both in terms of commissioners and officials. The Commission will need access to an adequately-sized expert-pool for its panels, able to handle both the complexity and technicalities of different energy projects as well as the flexibility to handle high (or low) volumes of consent applications. Subject to earlier points about a need for agreed and systematic timetabling in the pre-application phase, a total nine month statutory timetable for the Commission to examine a consent (6 months) and make a determination (3 months) seems appropriate.

IPC Set-Up and Transition

The Council would wish to see a clear time-table for the set-up of the IPC and for it to operate from April 2009. Following second-reading of the Planning Reform Bill, a shadow IPC should be established to facilitate this.

Consistency and an orderly transition from moving from the present consenting arrangements to the new IPC will be absolutely central. The Council believes it will be very important to ensure that new schemes are not held back awaiting the start of the new regime, and that unintentional delays and bottlenecks for key energy projects do not arise.

IPC and Energy Project Thresholds

The Council supports the proposal for gas infrastructure consents to be determined by the IPC, and supports the intention to adopt the present section 36 (generating station) and section 37 (overhead line) project thresholds as the basis for consent by the IPC.

For transmission and distribution, we welcome the Government's proposal to include within the remit of the Infrastructure Planning Commission those projects 'necessary to the operational effectiveness, reliability and resilience of electricity transmission and distribution networks'. Often these smaller projects are an integral part of a larger project and critical to maintaining security of supply and enabling connection of gas terminals or generating stations. This wording captures those substations not currently built under permitted development rights and any above ground installations (such as compressor stations needed to regulate the through-flow of gas within a pipeline). Currently these types of infrastructure require planning permission from the relevant local planning authority, whereas the overhead lines and gas transmission pipelines are consented by BERR. This split of responsibilities has, on occasion, led to delays in nationally significant energy projects.

The Council would also wish to see smaller overhead lines (ie distribution lines below 132 kV but over 33kV) be consented by a panel of the IPC with delegated powers, as the most appropriate consenting route, with local authorities as statutory consultees. This is because even a small new section of line, or other re-reinforcement, can be

essential in ensuring that a distribution network is resilient and able to operate at the required security standards, when a new generator connects to the network. In a world of significantly more distributed energy, these small line projects could prove increasingly important. Retaining consent arrangements for small but nevertheless important line projects or transformer stations within the TCPA regime, risks unnecessary fragmentation and dilution of expertise.

IPC and Unified Consent Process

The Council strongly supports the proposal for a new integrated approach to energy planning consents for major projects, whereby an energy project developer (or developers) can elect to bring all parts of a project together into a unified consent application. From the point of view of all parties, including community groups for whom it may be hard to track a major energy project across several consenting regimes, this will be a very important and constructive step in helping to improve the efficient consideration of major energy projects.

IPC and Smaller Renewable Energy and Heat Projects³

The Council has consistently stressed that despite the significance of the proposed reforms for nationally significant energy projects, many smaller renewable energy and heat projects consented within the Town and Country Planning regime, risk continued delay. The Council therefore strongly welcomes the PWP proposal that ministers would have the power to direct that smaller projects that are below the thresholds but are nevertheless of national significance, or which have potential cumulative impacts with other applications above the thresholds, should be treated as nationally significant infrastructure projects and determined by the IPC.

A further helpful step will be to provide clearer guidance to local authorities on national need via the Energy National Policy Statements (see section below on TCPA).

10. ENERGY CONSENTS GRANTED UNDER THE TOWN AND COUNTRY PLANNING ACT

Local planning authorities sit at the heart of the consent process for energy projects - large and small. Constructive relationships and developing a good understanding with local authorities - and other statutory and non-statutory consultees - are paramount to successful energy project development.

The UKBCSE is committed to building relationships, facilitating dialogue and working to improve understanding and the quality of material and information available to local councillors, planning officials and other statutory and non-statutory bodies about the nature of the GB energy market and the policy and economic need for development of new sustainable energy projects and associated infrastructure.

³ Onshore generator <50MW. Offshore generator <1MW.
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The Council welcomes the many efficiency measures, either in hand or proposed under the TCPA regime following the Barker review and the Planning White Paper. These many separate initiatives, such as proposals for more Planning Performance Agreements, and proposed improvements to timetabling and to the Appeal Process, are extremely welcome and material, and should prove resource-efficient for all concerned.

Council members also believe that proposals for a reasonable increase in Planning Fees, agreed between local planning authorities and developers, may assist local planning authorities to adequately resource their handling of larger energy consent applications.

Interaction of the Consent Regimes for Major and Small Energy Projects

One major and unresolved question for the energy sector is how well the separate consent regimes for major energy infrastructure and that for consenting smaller energy projects under the TCPA will mesh together going forward in terms of effective delivery of lower carbon energy projects. Not least, delivery of the government's national targets for reducing carbon-dioxide emissions, and for renewable and heat targets, will be achieved in part via a large number of smaller-scale renewable and sustainable energy and heat projects. These are very likely to be consented under the TCPA regime⁴.

The PWP makes clear that regional planning bodies and local planning authorities will be expected to 'have regard to national policy statements on infrastructure' when preparing regional and local development plans, just as for other national policies and guidance. For clarity, and to align with requirements for the IPC, we believe it would be beneficial to place an explicit and direct duty upon local authorities to have regard to Energy National Policy Statements as a primary consideration in determination of planning consents under the TCPA, just as for the IPC.

11. INTER-PLAY BETWEEN JURISDICTIONS

The possible inter-play between different jurisdictions on planning consents needs to be better understood than either the Planning or Energy White Papers, currently set out.

England, Wales, Scotland and Northern Ireland.

The PWP states that National Policy Statements for the energy sector will be developed for the whole of Great Britain or the UK as appropriate and also that no change is intended to the various devolution settlements on planning and the management of

⁴ As noted above, ministers would have the power to direct that smaller projects which are below the thresholds but are nevertheless of national significance, or which have potential cumulative impacts with other applications above the thresholds, should be treated as nationally significant infrastructure projects and determined by the IPC.

consent responsibilities in each of the devolved administrations. Welsh, Scottish and Northern Ireland Ministers will be statutory consultees in the development of relevant national policy statements.

A GB-wide energy market operates onshore, and, in the future, will also extend offshore. Successful market operation demands a level playing field, including with respect to obtaining consents for energy projects. The Council foresees a number of challenges in achieving broad policy consistency for energy consents across England, Wales and Scotland. For example :

- Development of the new National Planning Policy Framework in Scotland is likely to precede development of National Policy Statements for GB.
- The IPC-remit extends only to England and Wales.
- The Government proposes to increase the role exercised by the Welsh Assembly Government in large energy consents.
- Welsh ministers hope for devolution of energy consents over 50MW.
- Some cross-border infrastructure projects could need consent from both the IPC and a devolved administration. Whilst government has committed to developing new joint determination arrangements for cross-border projects, these must be simple, transparent and timely, and not create delay.

Offshore and Onshore Regimes

We welcome the broad intent of the proposed Marine Bill but there is a notable lack of clarity across the likely new consenting arrangements for offshore renewable energy projects and associated infrastructure. The Council believes it will be very important to ensure consistent treatment across regimes and to avoid needless fragmentation.

- The delayed Marine Bill, now unlikely to reach the statute book before 2009, will set up a new Marine Management Office, expected to take consenting decisions for renewables over 100 MW. At present, DBERR consents offshore projects over 1 MW. For consistency, the Council believes that all offshore energy consents over 1 MW should be determined by the IPC, and the MMO to have statutory consultee status. Not least, under the Marine Bill proposals, an offshore renewable project up to 100 MW could be consented via the MMO, while the associated transmission line or cable could nevertheless be consented via the IPC. This potentially flies in the face of the new unified consent proposals.
- Should the MMO nevertheless become responsible for consenting offshore energy projects up to 100 MW, then the strategic policy context will be important, and any Marine Policy Statement will need to align with the Energy National Policy Statement on Renewables. A new 'marine works consent' for all physical works in the marine environment may be helpful.
- Before set-up of the MMO, for offshore renewable consents below 100 MW, effective transition arrangements will be needed with DBERR (given that these consents will not be determined by the IPC).
- The offshore consent regime for Scotland will be devolved. For Wales, the offshore consent regime appears complex. Our present understanding is that offshore

projects below 50 MW will continue to be devolved – and over 100 MW will be consented by the IPC. However, proposed consent treatment for offshore projects in Wales below 100 MW but above 50 MW is not clear – whether by a devolved body or by the MMO.

- At the very least, the interplay between the consenting regimes for on-shore and off-shore will need to be very clear. For off-shore transmission, the assumption will be that this will be consented by the IPC and that any ancillary plant at the point the cable comes ashore, will be treated by the IPC as a unified consent. This would improve upon present arrangements, which are very fragmented.
- For the future, major offshore infrastructure for CO₂ transport and storage will also need consenting. We would wish to see this consented by the IPC. This would be consistent with consents for offshore transmission and gas storage.

12. CONCLUSION

The Council actively supports the broad thrust of the proposed reforms for consent arrangements for energy projects set out in the Planning and Energy White Papers (Chapter 8). These reforms are a necessary and constructive step in achieving transformation to a lower carbon energy economy and in maintaining long-term security of energy supplies. The reforms need to be implemented as a single integrated package.

The Council believes many of the proposed reforms represent potential improvement for all parties engaged in the determination of planning consents for sustainable and lower-carbon energy projects.

There are a number of key areas where better understanding will be needed as to how the major energy project consent arrangements are likely to work in practice, not least likely interplay with the TCPA, and, the devolved and new offshore regimes. The Council will work closely with Government and other key stakeholders to support the working-through of many of these issues.

The Council will also work together with the Local Government Association, with local authorities and other statutory and non-statutory bodies in seeking a broad consensus on appropriate approaches to effective engagement.

UKBCSE
13 August 2007

The views expressed in this paper cannot be taken to represent the views of all parts of all the companies in the UKBCSE. However, they do reflect a general consensus.