

Appendix 1 - HNP TCPA applications

CIL pooling restriction



1 INTRODUCTION

- 1.1 Horizon Nuclear Power Wylfa Limited (“HNP”) intends to apply for planning permission under the TCPA for a number of developments that are associated with the construction of a new nuclear power station at Wylfa Newydd. Some of these developments may require HNP to enter into planning obligations with Isle of Anglesey County Council (“IACC”), secured by way of agreement(s) under Section 106 of the TCPA (“S.106 agreements”).
- 1.2 This note addresses the pooling restriction contained in Regulation 123 of the Community Infrastructure Levy Regulations 2010 (the “CIL Regulations”) and explains how IACC will impose planning obligations under the Town and Country Planning Act 1990 (“TCPA”) in relation to future developments promoted so as to ensure that those obligations do not breach the pooling restriction within the Regulations.

2 REGULATION 123

- 2.1 Regulation 123(3) of the CIL Regulations contains the pooling restriction. In summary, the effect of the restriction is that where there are more than five planning obligations, entered into since 6 April 2010, which relate to either (a) a type of infrastructure or (b) a specific infrastructure project, they cannot be taken into account as a reason for granting planning permission.
- 2.2 IACC has established and maintains a register of the planning obligations that it has entered into since 6 April 2010. It is therefore aware of how many obligations it has already entered into in respect of types of infrastructure or specific infrastructure projects and, therefore, whether it may take into account further obligations (and enter into further section 106 Agreements) without breaching the pooling restriction.

3 IACC’S APPROACH

- 3.1 In relation to the HNP applications, IACC considers that there is unlikely to be a danger of breaching the CIL Regulations as, in most cases, the developments differ in nature. Therefore the mitigation (and therefore the planning obligations) that each development will require will differ. For example, the planning obligations that may be required to mitigate a park and ride scheme are likely to be very different in nature and extent to the obligations that are required to mitigate worker accommodation. As such the obligations should not fall into the same pools.
- 3.2 In any event, IACC will require that all planning obligations are made as specific as possible. This will avoid similar proposals leading to obligations which will breach the restriction. This will be achieved by linking obligations to specific infrastructure items. The type of development where this is most likely to apply is in relation to worker accommodation where similar impacts will arise on each proposal resulting in similar obligations being required in the related section 106 Agreement. For example, rather than requiring a general contribution to education, there will be a requirement for a contribution to a specific school or a specific area of impact. This is the approach taken in the Land and Lakes development recently consented for nuclear worker accommodation, where obligations are expressed to be applicable to a particular area.
- 3.3 The geographical areas will be defined as tightly as possible to reduce the risk of overlap. As can be seen from the plan attached to this note at Appendix A¹, there is a significant degree of geographical separation between a number of the proposed HNP developments, which should assist IACC in following this approach.

¹ The plan is taken from HNP’s Consultation Overview document (2016)

- 3.4 If necessary, IACC will also consider whether an infrastructure item should be subdivided into parts, so that a separate pool can be created for each part. Although IACC recognises that it may not always be appropriate to split infrastructure items, if as a matter of fact and degree different projects can legitimately be identified then this approach may be adopted. This is an approach which has been adopted in other Section 106 Agreements to help ensure compliance with the CIL Regulations.
- 3.5 IACC has had discussions with HNP in relation to these issues and both IACC and HNP are confident that any planning obligations that may be required in relation to future TCPA applications associated with Wylfa Newydd can be imposed in a way that ensures that they do not breach the requirements of the CIL Regulations.

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Appendix A

Indicative location of HNP TCPA developments