

NUCLEAR NEW BUILD - PROCUREMENT OF LEGAL ADVICE

EXECUTIVE MEMBER: Councillor E Woodburn
LEAD OFFICER: Pat Graham Head of Development Operations
REPORT AUTHOR: Steve Smith, Interim Nuclear Programme Manager

WHAT BENEFITS WILL THESE PROPOSALS BRING TO COPELAND RESIDENTS

The successful development of Nuclear New Build proposals will substantially contribute to the economic well-being of Copeland residents through the provision of new job opportunities for future generations.

WHY HAS THIS REPORT COME TO THE EXECUTIVE?

(e.g. Key Decision, Policy recommendation for Full Council, at request of Council, etc.)

To seek a key decision to appoint legal consultants to advise the Council on matters relating to the Nuclear New Build Programme including the creation of Planning Performance Agreements, operational matters relating to the development consent process for Nationally Significant Infrastructure Projects and internal and external governance issues.

RECOMMENDATION:

That Executive agrees to;

- delegate authority for the selection of the Ad Hoc list of consultants, and acceptance of a tender to the Chief Executive in consultation with the Head of Legal and Democratic Services and the relevant Portfolio Holder

1. INTRODUCTION

1.1 A report to Executive in July 2010 provided an update on the key work streams relating to the Nuclear New Build Programme. As a number of these work streams progress over coming months it is clear that the Council will need to seek and retain, specialist legal advice.

2. POTENTIAL AREAS FOR ENGAGEMENT

Some of the initial areas where legal advice will be required include the following;

National Policy Statements

Despite an earlier announcement by Government it has recently been confirmed that **all** National Policy Statements (NPS) for Energy will be subject to a process of re-consultation in the Autumn including the Nuclear NPS. This will undoubtedly delay the announcement of potentially suitable sites for deployment as nuclear power stations. The new Government has also indicated that it intends to abolish the recently established Infrastructure Planning Commission but will retain the principles of considering applications for development consent for major infrastructure projects through a new Major Projects Unit as part of the national Planning Inspectorate but with the ultimate decision sitting with Ministers once more. The development consent process will have significant implications for the planning process and governance for Copeland Borough Council, and in its role as Community leader and these and the NPS re-consultation may require legal advice .

NNB Consortium

The consortium bringing forward the development of a site at Sellafield for new nuclear power station facilities continues to develop the company structure to take forward the proposals. Further discussions with consortium representatives will take place shortly regarding the entering into of a Planning Performance Agreement (PPA), which if agreed, will provide resources to cover additional and substantial tasks required to be carried out by the Council as part of the development consent process. Evidence from Somerset partners regarding the Hinckley Point development shows that the drafting of the formal PPA will require substantial legal input. Costs of such advice will, it is envisaged be paid for by the developer/applicant ie the NNB consortium.

RWE

As reported in July RWE have currently given up their Grid connections, the implication being that they are not seeking to develop their sites in the short term. They are however, still deployable by 2025. Should RWE wish to pursue these sites then we would also expect to enter into a Planning Policy Agreement which again would require legal input.

National Grid

Again as reported in July the effective distribution of power generated by new facilities in West Cumbria will require additional grid capacity across Cumbria and Lancashire. Early discussions with National Grid are underway regarding potential grid route options which in due course, will be the subject of an application for development consent, and the need for extensive community consultation. Cumbrian and Lancashire local authorities have had initial discussions regarding how to work together to engage with National Grid. Early indications are that resource implications for the local authorities will be funded through a Planning Performance Agreement with National Grid. At this stage it is unclear as to which of the Cumbrian and Lancashire local authorities will need

to be party to such an agreement but it is clear that the Borough Council will need independent legal advice to protect its position. Again the intention would be to ensure that such costs are met by National Grid as the applicant through the PPA.

Governance Arrangements

It is clear that the scale of the potential development through nuclear new build and ancillary facilities could be extensive and have significant impacts on the roles of the Council and external partners. In July Executive agreed to a proposal to undertake a comprehensive review of governance arrangements relating to the nuclear new build programme, including the role and membership of the Nuclear Working Group and this may also require legal advice.

3. PROCUREMENT

- 3.1 Contract Standing Orders (July 2008) allow the use of consortia or framework contracts, but in doing so managers are required to demonstrate a robust approach to obtaining value for money.
- 3.2 In this instance the intention is to again utilize the Homes and Communities Agency's Legal consultant's panel and the consultants listed will be invited to complete a prequalification Questionnaire, and an evaluation process will be applied to enable selection of approx. 5 consultants in terms of both technical and financial suitability for the final stage of the selection process.
- 3.3 In order to streamline this process Executive is asked to delegate authority for the selection of the Ad Hoc list of consultants, and acceptance of a tender for these services to the Chief Executive in consultation with the Head of Legal and Democratic Services and the relevant Portfolio Holder.
- 3.4 The process is potentially above the threshold for European legislation for competitive tendering (£156,442) and will comply fully with these regulations.

5. WHAT ARE THE LEGAL, FINANCIAL AND HUMAN RESOURCES IMPLICATIONS?

- 5.1 The scope of early work streams to take forward the nuclear new build programme has already identified the need for additional capacity within the Council including spatial planning capacity, as reported to Executive in July, and legal services.
- 5.2 The intention is that where appropriate the costs of such legal advice will be externally funded by the Planning Performance Agreements with applicants for development consent. However there may be occasions where such an

arrangement is inappropriate and in these instances such works will need to be funded from existing nuclear budgets.

6. HOW WILL THE PROPOSALS BE PROJECT MANAGED AND HOW ARE THE RISKS GOING TO BE MANAGED?

A Programme Manager is currently working with CBC and partners to manage this process in these early stages and risks will also be managed through the Nuclear Issues Officer Group and external partnership arrangements.

7. WHAT MEASURABLE OUTCOMES OR OUTPUTS WILL ARISE FROM THIS REPORT?

The procurement of legal consultants will assist the Council to develop appropriate Governance arrangements for the nuclear new build programme and enable the Council to add capacity to specific areas of responsibility through the successful development of Planning Performance Agreements. The ultimate outcome would be the successful development of nuclear new build and power transmission facilities as key components of the Energy Coast Master Plan.

List of Appendices

None

List of Background Documents: project files