RE: THE FELIXSTOWE PENINSULA HOLISTIC WATER MANAGEMENT PROJECT

ADVICE

INTRODUCTION AND BACKGROUND

1. I am asked to advise Suffolk Coastal District Council ("the Council") in relation to whether a proposed scheme for water management comprising a pipeline and reservoirs, known as the Felixstowe Peninsula Project ("the project") would require an express grant of planning permission or whether the development (or individual elements of it) would be permitted development.

2. Suffolk County Council, in conjunction with the East Suffolk Internal Drainage Board, the Environment Agency, Natural England and others are developing a water management scheme in the lower part of the Kings Fleet River, near Felixstowe Ferry, which would overhaul an existing drainage structure. The project's stakeholders have formed a company to deliver the project, the Deben Estuary Water Company ("DEWC")

3. The purpose of the project is effectively twofold; first to stop the pumping of fresh water into saltmarsh habitat within the River Deben Special Protection Area (which is degrading the habitat) as currently occurs, and second to use that fresh water for beneficial (largely agricultural) purposes in circumstances in which there is an increasing scarcity of fresh water.

4. To bring about the project, the existing Kings Fleet drainage pump would be relocated and reconfigured such that only 10% of the existing fresh water flow would continue to be pumped into the estuary.

5. The remaining 90% of the freshwater would be pumped inland by way of a 17km long water pipeline excavated to a depth of around 1.5m in a trench 1.5m wide. The trench would be infilled with the soil / spoil from the

excavation with the pipeline sitting at 1m depth. The pipeline would serve a network of existing reservoirs constructed for agricultural irrigation purposes. In addition, around 5 further reservoirs would be added to the network (which appear to be over 0.5ha in area).

6. I am asked to advise whether:

   (a) the proposed pipeline alone would be permitted development:

   (b) the pipeline and reservoirs considered together would be development requiring planning permission;

   (c) the development was likely to be in excess of the threshold for environmental impact assessment

7. I note at the outset that I have not seen any representations or statement from DEWC or the Council in relation to the issues raised in this Advice.

8. It goes without saying that it will be a matter for the Council to determine in the first instance whether the development would be permitted development or not in light of any representations made by DEWC.

9. Further, the application of the provisions in the Order is not straightforward and there is a considerable amount of further detail and information that would be required before any definitive determination made in relation to the issues raised, as set out below.

10. This Advice therefore sets out, in preliminary form, the issues that will be relevant to the Council's determination (depending on how the matter proceeds) in the first instance. As set out above, I would be happy to advise further once the Council has received further information (and a statement setting out DEWC's position) in due course.

DISCUSSION

11. Article 3(1) of the Town and Country Planning (General Permitted Development) Order 2015 grants planning permission for the classes of

development described as permitted development in Schedule 2 of the Order.

12. Articles 3(10) – (12) make particular provision for EIA development, as set out in greater detail below.

13. However, the first question that arises is whether the proposed development would fall within any of the classes of development described as permitted development in Schedule 2. I am not instructed as to which category of development the project is said to fall. As such, I provide advice below on what I consider to be the most likely categories, but further consideration may need to be given to any other categories that the Council (or DEWC) consider to be applicable.

14. So far as the pipeline is concerned, that might potentially fall within Class A, C or D of Part 13 which deals with water and sewerage.

15. Class A provides:

> Development for the purposes of their undertaking by statutory undertakers for the supply of water or hydraulic power consisting of—
>
> (a) development not above ground level required in connection with the supply of water or for conserving, redistributing or augmenting water resources, […]
>
> (b) development in, on or under any watercourse and required in connection with the improvement or maintenance of that watercourse;
>
> […]
>
> (g) any other development in, on, over or under operational land other than the provision of a building but including the extension or alteration of a building

16. The construction of an underground reservoir is excluded from the permitted development right (Paragraph A.1(a)).

17. It seems unlikely that Class A would apply (as it does not appear that the development would be being carried out by a statutory undertaking for the purpose of its undertaking for the supply of water) but I mention it for completeness. The pipeline might otherwise fall within either Class A(a) or (g). So far as Class A(b) is concerned, similar considerations arise in relation to Class C (as set out below).

18. Class C provides:

> C. Permitted development
>
> Development by a drainage body in, on or under any watercourse or land drainage works required in connection with the improvement, maintenance or repair of that watercourse or those works.

19. Whether the project falls within Class C depends therefore on whether the development would be carried out by a drainage body[1] (which would include the IDB) and whether it would be development required "in connection with the improvement, maintenance of repair" of an existing watercourse or land drainage works and would be carried out in, on or under those works.

20. It would appear from the plans provided that the project goes far beyond development "in, on or under" an existing watercourse or land drainage works such that it is difficult to see how Class C would apply, but that would ultimately be a matter for the Council to determine based on any further detail provided by DEWC.

21. Class D provides:

> Development by the Environment Agency for the purposes of its functions, consisting of—
>
> (a) development not above ground level required in connection with conserving, redistributing or augmenting water resources;
>
> (b) development in, on or under any watercourse or land drainage works and required in connection with the improvement, maintenance or repair of that watercourse or those works;
>
> […]
>
> (f) any other development in, on, over or under their operational land, other than the provision of a building but including the extension or alteration of a building.

22. It seems to me that the pipeline may potentially fall within Class D(a) insofar as it is "development not above ground level required in connection with conserving, redistributing or augmenting water resources". Again, it

[1] As defined by s. 72 of the Land Drainage Act 1991 as follows (Paragraph C.1) (but excluding the EA): "drainage body" means the Agency, the Natural Resources Body for Wales, an internal drainage board or any other body having power to make or maintain works for the drainage of land;

would be a matter of judgment for the Council in the first instance as to whether the development fell within the description. The construction of an underground reservoir is excluded from the permitted development right (Paragraph D.1).

23. So far as the reservoirs are concerned, it does not seem likely that they would fall within any of the classes of description above in Part 13. Firstly, even if they were underground (so might potentially fall within Class A(a) or Class D(a))), reservoirs are expressly excluded from the permitted development right. So far as Classes A(b), C and D(b) are concerned, it would need to be shown that the reservoirs were development "in, on or under" an existing watercourse or land drainage works and required in connection with that watercourse or those works. As noted above in respect of the pipeline, that appears unlikely to be the case (but would be a matter for the Council to determine). So far as Class A(g) and Class D(f) are concerned, the reservoirs would need to be built on "operational land". It appears that the reservoirs are proposed to be built on agricultural land, rather than operational land, but again that would depend on further detail of the project being provided.

24. Otherwise, the only possible way that I can see that the reservoirs might be permitted development is pursuant to Class A of Part 6, as follows.

25. Class A of Part 6 ((Agricultural and forestry) provides:

> A. Permitted development
>
> The carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of—
>
> (a) works for the erection, extension or alteration of a building; or
>
> (b) any excavation or engineering operations,
>
> which are reasonably necessary for the purposes of agriculture within that unit.

26. If the agricultural unit in question is more than 5 hectares (it should be noted that permitted development rights for "excavation" in general terms do not attached to units of less than 5 hectares), works of excavation such

as would be necessary to create the reservoirs might conceivably fall under Class A of Part 6 if they were "reasonably necessary for the purposes of agriculture within that unit" which would be a matter of judgment for the Council in the first instance.

27. It should be noted however that, insofar as the purpose of the reservoir was to serve a number of agricultural units, it is difficult to see how it could be said to be reasonably necessary for "that" unit.

28. Further, if the excavation operations involved mineral extraction then that would be outwith the scope of the permitted development right.

29. Further, there are various restrictions on the permitted development right in paragraph A.1 which may be applicable. It seems to me that the following may potentially be relevant, but the Council will also need to ensure that none of the others are breached.

> Development is not permitted by Class A if—
>
> (a) the development would be carried out on a separate parcel of land forming part of the unit which is less than 1 hectare in area;
>
> […]
>
> (h) any part of the development would be within 25 metres of a metalled part of a trunk road or classified road;

30. Paragraph A.2 imposes various conditions on the right. In particular, paragraph A.1(2) provides:

> (2) Subject to sub-paragraph (3), development consisting of—
>
> […]
>
> (c) the carrying out of excavations or the deposit of waste material (where the relevant area, as defined in paragraph D.1(4) of this Part, exceeds 0.5 hectares);
>
> […]
>
> is permitted by Class A subject to the following conditions—
>
> (i) the developer must, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the siting, design and external appearance of the

building, the siting and means of construction of the private way, the siting of the excavation or deposit or the siting and appearance of the tank, as the case may be;

(ii) the application must be accompanied by a written description of the proposed development and of the materials to be used and a plan indicating the site together with any fee required to be paid;

(iii) the development must not begin before the occurrence of one of the following—

(aa) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required;

(bb) where the local planning authority give the applicant notice within 28 days following the date of receiving the applicant's application of their determination that such prior approval is required, the giving of such approval; or

(cc) the expiry of 28 days following the date on which the application under sub-paragraph (2)(ii) was received by the local planning authority without the local planning authority making any determination as to whether such approval is required or notifying the applicant of their determination;

(iv) where the local planning authority give the applicant notice that such prior approval is required, the applicant must—

(aa) display a site notice by site display on or near the land on which the proposed development is to be carried out, leaving the notice in position for not less than 21 days in the period of 28 days from the date on which the local planning authority gave the notice to the applicant; and

(bb) where the site notice is, without any fault or intention of the applicant, removed, obscured or defaced before the period of 21 days referred to in sub-paragraph (iv)(aa) has elapsed, the applicant is treated as having complied with the requirements of that sub-paragraph if the applicant has taken reasonable steps for protection of the notice and, if need be, its replacement;

(v) the development must, except to the extent that the local planning authority otherwise agree in writing, be carried out—

(aa) where prior approval is required, in accordance with the details approved;

(bb) where prior approval is not required, in accordance with the details submitted with the application; and

(vi) the development must be carried out—

(aa) where approval has been given by the local planning authority, within a period of 5 years from the date on which approval was given;

(bb) in any other case, within a period of 5 years from the date on which the local planning authority were given the information referred to in paragraph (d)(ii).

31. The relevant area is defined by paragraph D.1(4) as follows:

(4) For the purposes of paragraph A.2(2)(c) of this Part, the relevant area is the area of the proposed excavation or the area on which it is proposed to deposit waste together with the aggregate of the areas of all other excavations within the unit which have not been filled and of all other parts of the unit on or under which waste has been deposited and has not been removed.

32. As such, if the relevant area of excavation exceeds 0.5 hectares then the prior notification requirements in paragraph A.1(2) (i) – (vi) would apply.

33. As noted above, if the proposed development would fall within Schedule 1 or Schedule 2 of the EIA Regulations 2017 then the development would be subject to Article 3(10) – (12), the relevance of which is addressed below.

34. In summary, therefore, I consider that the pipeline may well fall within Class A(a) of Part 13 if it is carried out by a statutory undertaker for the purpose of its undertaking for the supply of water, (albeit that this does not appear to be the case) or within Class D(a) if it is carried out by the EA for the purpose of its functions. In the case of Class A(a), the Council would need to be satisfied that the project was “development not above ground level required in connection with the supply of water or for conserving, redistributing or augmenting water resources”. In the case of Class D(a), the Council would need to be satisfied that the project was “development not above ground level required in connection with the supply of water or for conserving, redistributing or augmenting water resources.” It is possible (but appears unlikely at this stage) that the development might fall within one of the other classes of development set out above.

35. So far as the reservoirs are concerned, it does not seem to me to be likely that they would fall within of the classes of development set out in Part 13. While they might conceivably fall within Class A of Part 6, that would depend on a number of contingencies, as set out above, about which further information would be required.

36. However, even if the project does fall within one of the classes of development specified in Schedule 2, it may be excluded from the permitted development regime by virtue of Articles 3(10) – (12) if it is EIA development.

37. The relevant statutory provisions are as follows.

38. Article 3 of the 2015 Order provides, so far as relevant, as follows:

> (10) Subject to paragraph (12), Schedule 1 development or Schedule 2 development within the meaning of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations") is not permitted by this Order unless—
>
> > (a) the local planning authority has adopted a screening opinion under regulation 6 of those Regulations that the development is not EIA development within the meaning of those Regulations;
> >
> > (b) the Secretary of State has made a screening direction under regulation 5(3) of those Regulations that the development is not EIA development within the meaning of those Regulations; or
> >
> > (c) the Secretary of State has given a direction under regulation 63(1)(a) of those Regulations that the development is exempted from the application of those Regulations.
>
> (11) Where—
>
> > (a) the local planning authority has adopted a screening opinion under regulation 6 of the EIA Regulations that development is EIA development within the meaning of those Regulations and the Secretary of State has in relation to that development neither made a screening direction to the contrary under regulation 4(8) or 6(4) of those Regulations nor directed under regulation 63(1)(a) of those Regulations that the development is exempted from the application of those Regulations; or
> >
> > (b) the Secretary of State has directed that development is EIA development within the meaning of those Regulations,
>
> that development is treated, for the purposes of paragraph (10), as development which is not permitted by this Order.
>
> (12) Paragraph (10) does not apply to—
>
> (a) development which consists of the carrying out by a drainage body, within the meaning of the Land Drainage Act 1991, of improvement works within the meaning of the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999;

[…]

39. Article 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 provides, so far as relevant:

"EIA development" means development which is either—

(a) Schedule 1 development; or

(b) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location;

"Schedule 1 development" means development, other than exempt development, of a description mentioned in Schedule 1;

"Schedule 2 development" means development, other than exempt development, of a description mentioned in column 1 of the table in Schedule 2 where—

(a) any part of that development is to be carried out in a sensitive area; or

(b) any applicable threshold or criterion in the corresponding part of column 2 of that table is respectively exceeded or met in relation to that development;

40. Paragraphs 11 and 12 of Schedule 1 to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 provide:

11. Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.

12.—

(1) Works for the transfer of water resources, other than piped drinking water, between river basins where the transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres per year.

(2) In all other cases, works for the transfer of water resources, other than piped drinking water, between river basins where the multi-annual average flow of the basin of abstraction exceeds 2,000 million cubic metres per year and where the amount of water transferred exceeds 5% of this flow.

41. Schedule 2 includes the following descriptions of development:

Column 1 Description of development	Column 2 applicable thresholds and criteria
1 Agriculture and aquaculture	

(b) Water management projects for agriculture, including irrigation and land drainage projects;	The area of the works exceeds 1 hectare.
10. Infrastructure projects	
(b) Urban development projects, including the construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas;	(i) The development includes more than 1 hectare of urban development which is not dwellinghouse development; or (ii) the development includes more than 150 dwellings; or (iii) the overall area of the development exceeds 5 hectares.
(i) Dams and other installations designed to hold water or store it on a long-term basis (unless included in Schedule 1);	The area of the works exceeds 1 hectare.
(n) Groundwater abstraction and artificial groundwater recharge schemes not included in Schedule 1; (o) Works for the transfer of water resources between river basins not included in Schedule 1;	The area of the works exceeds 1 hectare.

42. It should be noted preliminarily at this stage that it is possible that the exclusion of permitted development rights in the case of EIA development (as provided for by Article 3(10) and (11)) may not apply by virtue of Article 3(12), which I deal with below.

43. However, dealing with each issue in order, the first question that arises is whether the development would fall within one of the relevant paragraphs in either Schedule 1 or Schedule 2.

44. I should note that although I am asked to advise about the pipeline and reservoirs separately, I am not persuaded that such an approach would be lawful. Where, as appears to be the case here, different elements of a project are in reality all part of the same project, it is unlawful to divide

them into different elements so as to avoid the application of the EIA regulations. From the information I have been provided, the reservoirs are an integral part of the development, without which the pipeline could not fulfil its function (and without which the pipeline would not be built).

45. As such, I deal firstly with the project as a whole.

46. If the project doesn't fall within paragraph 11 or 12 of Schedule 1 (which would be a matter for the Council to determine), then it appears to me that it may fall within one of the paragraphs in Schedule 2.

47. It seems to me that the project may well fall within paragraph 1(b), insofar as the purpose of the pipeline is for irrigation and land drainage in association with agriculture (although it might be argued that one of the purposes is to avoid the discharge of freshwater into the SPA).

48. So far as paragraph 10(b) is concerned, the European Commission has produced Guidance, *Interpretation of definitions of project categories of annex I and II of the EIA Directive*, which suggests that:

> In interpreting the scope of Annex II (10)(b), the 'wide scope and broad purpose' of the EIA Directive should be borne in mind.
> […]
> [I]n relation to project location, an urban development project should be seen as a project that is urban in nature regardless of its location.
> […]
> Projects to which the terms 'urban' and 'infrastructure' can relate, such as the construction of sewerage and water supply networks, could also be included in this category.
> […]
> Member States may decide in their national environmental impact assessment systems that some of the above-mentioned projects (for example, sports stadiums or water supply networks, drinking water treatment plants and pipes for carrying treated drinking water) fall within other Annex II project categories. Compliance with the Directive will be ensured, irrespective of which Annex II category is considered applicable, provided that those projects which give rise to significant environmental effects do not escape from the scope of application of the Directive.

49. It is conceivable that the project falls within paragraph 10(b) insofar as the project is “urban” in nature (bearing in mind the Commission guidance noted above).

50. So far as paragraph 10(n) is concerned, it is not clear to me whether the project would involve abstraction as such, but again paragraph 10(n) might conceivably apply.

51. Finally, so far as paragraph 10(o) is concerned, it is not clear to me whether the project would involve the transfer of water “between” river basins, although the European Guidance cited above does warn against an overly strict application of the requirement, noting:

> Article 2(13) of the Water Framework Directive defines the term ‘river basin’ as ‘the area of land from which all surface run-off flows through a sequence of streams, rivers and, possibly, lakes into the sea at a single river mouth, estuary or delta’.
>
> For the purposes of interpreting the term ‘river basin’, a strict reference to the definition provided in the Water Framework Directive would limit the scope and purpose of the EIA Directive in the light of relevant projects (Annex I, point 12, and Annex II, point 10 (m)). For instance, transfer of water resources other than river basins, e.g. sub-basins, could have significant effects on environment and thus be made subject to an assessment with regard to its effects.

52. In light of the guidance, it may well be the case that, bearing in mind the purpose of the Directive, that the Council considers that the development falls within paragraph 10(o) even if, according to the definition in Article 2(13) of the Water Framework Directive, water would not be transferred between river basins but would be transferred between sub-river basins.

53. So far as the thresholds in Column 2 are concerned, it seems to me that the 1-hectare threshold that would apply in each of the cases would inevitably be exceeded in this case. If the pipeline trench is 1.5m wide and 17km long then the area covered by the pipeline alone will be 2.55 hectares. If the reservoirs are included, then the area will be even greater (irrespective of their size).

54. If the project falls within one of the paragraphs in Schedule 1, permitted development rights do not apply and an EIA will be required.

55. If the Council determines that the project falls within one of the paragraphs of Schedule 2 (and the area threshold is breached) then the Council would need to screen the development to determine whether it was EIA development, which will depend on whether it is likely to have significant effects on the environment by virtue of factors such as its nature, size or location (see Regulation 2(1) of the EIA Regulations 2017). If the Council finds that the development is EIA development, then permitted development rights will not apply.

56. Even if the pipeline is considered separately to the reservoirs, it seems to me that the pipeline may well fall within one of the above-mentioned paragraphs and may in any event exceed the relevant area threshold so as to be subject to a screening requirement.

57. As noted above, the exclusion of permitted development rights does not apply where the development "consists of the carrying out by a drainage body, within the meaning of the Land Drainage Act 1991, of improvement works within the meaning of the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999", pursuant to Article 3(12) of the 2015 Order.

58. In such a case, although the development may require EIA (in accordance with the EIA Land Drainage Improvement Works Regulations 1999) the development will not be excluded from permitted development rights.

59. Regulation 2 of the EIA Land Drainage Improvement Works Regulations 1999 provides:

> "improvement works" means—
>
> (a) in relation to England, works which are—
>
> (i) the subject of a project to deepen, widen, straighten, or otherwise improve or alter, any existing watercourse or remove or alter mill dams, weirs, or other obstructions to watercourses, or raise, widen, or otherwise improve or alter, any existing drainage work; and

(ii) permitted development by virtue of Class C or Class D of Part 13 (water and sewerage) of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015;

60. As such, if the development comprised solely the pipeline (and no reservoirs were necessary) and the Council finds that the pipeline benefits from permitted development rights pursuant to Class C or Class D of Part 13 (as set out above), then the development will benefit from permitted development rights, irrespective of whether EIA would otherwise be required pursuant to the 2017 Regulations.

61. It is important to note that the development would not be excluded from the EIA regime in such circumstances because the EIA (Land Drainage Improvement Works) Regulations 1999 themselves make detailed provision for the production of an EIA in certain circumstances. That provision is outwith the scope of this Advice, but I would advise the Council to familiarise itself with the provisions of those regulations if they have not done so already. In short, they require a drainage body to determine whether any "improvement works" it is proposing are likely to have significant effects on the environment and then provide a copy of the proposal to each of the "consultation bodies"[2] (which may or may not include the Council – see footnote 2 of this Advice). In view of the uncertainty as to whether the Council would be considered to be a "consultation body", I would advise that the Council makes a written request to DEWC and its constituent members that it should be treated as a consultation body for the purpose of the EIA (Land Drainage Improvement Works) Regulations 1999.

62. If there are no objections, the drainage body may proceed. If the drainage body considers that the improvement works are likely to have significant effects on the environment then an ES must be produced. If, any representations have been made to the effect that the works are likely to

[2] "consultation bodies" means–
(a) in relation to improvement works which are to be carried out in England, Natural England;
[…] and
(c) any other public authority, statutory body or organisation which, in the opinion of the drainage body proposing any improvement works, has an interest in those improvement works by virtue of its environmental responsibilities or local or regional competences

have significant effects on the environment and, notwithstanding those representations, the drainage body still consider that the improvement works are not likely to have significant effects on the environment, the body must apply to the Secretary of State for a determination of whether the improvement works are likely to have significant effects on the environment.

63. However, the question arises whether Article 3(12) would lift the exclusion of permitted development rights where the "development" to which permitted development rights were claimed to attached was in reality part of a larger development, the other elements of which did not fall within Article 3(12). In this case, from the information I have been provided with, it would appear that the reservoirs are in reality an integral element of the project. If the project is in reality a single project including the pipelines and the reservoirs, bearing in mind the broad scope and underlying purpose of the EIA Directive, it is arguably only if that project as a whole falls within Article 3(12) that any restriction on permitted development rights that might otherwise apply by virtue of Articles 3(10)-(11) would be lifted.

64. The question therefore is whether the reservoirs would fall within the definition of "improvement works" in Regulation 2 of the EIA (Land Drainage Works) Regulations 1999, as set out above.

65. For the reasons set out above, I do not consider that the reservoirs would fall within Class C or D of Part 13.

66. Further, while it would be again a matter for the Council in the first instance, it is not obvious how the reservoirs could be described as improvements to "existing" drainage work or an "existing" watercourse. As such, even if the pipeline, considered in isolation, might otherwise have benefitted from permitted development rights, I am not currently persuaded that it can do so if in reality it is part of a larger development comprising the reservoirs.

67. If the lifting of the restriction on permitted development rights in Article 3(12) does not apply and the development is found to be EIA development, then permitted development rights will not apply.

SUMMARY ADVICE

68. As set out at the beginning of this Advice, I have not seen any representations or statement from DEWC or the Council in relation to the issues raised in this Advice. It goes without saying that it will be a matter for the Council to determine in the first instance whether the development would be permitted development or not in light of any representations made by DEWC.

69. There is a considerable amount of further detail and information that would be required before any definitive determination made in relation to the issues raised, as set out above.

70. However, it seems to me that:

(a) The development may fall within one of the classes of permitted development set out in Schedule 2 to the 2015 Order (as set out in greater detail above); and although

(b) The development may be excluded from permitted development rights if it is EIA development by virtue of Article 3(10) - (11) (which again I deal with in greater detail above);

(c) It is possible that, by virtue Article 3(12), the exclusion on permitted development rights does not apply in these circumstances.

71. As noted above the application of the permitted development regime in these circumstances is not straightforward. I would advise the Council to ask DEWC to set out its position in full so that the Council can consider it. I would be happy to provide any such further advice as is necessary in due course.

12 March 2018 **Jack Parker**