

Transport Infrastructure Project Guidance

Supporting Major Infrastructure Projects

Background

WPD recognises the need for infrastructure projects to continue and fully supports the delivery of these schemes. As always, our priority is to ensure construction poses no risk to safety and that our electricity network remains secure to keep power flowing for our customers. Drawing on our experience of supporting previous large scale projects, this document outlines WPD's position on its involvement in ongoing and future infrastructure schemes.

Introduction

This guidance:

- Sets out the key issues that arise when a major infrastructure project, such as a new road or a railway, is proposed and how these works impact on WPD's assets.
- Outlines the factors that WPD must take into account when engaging with an infrastructure developer (sometimes called an undertaker). This will often be a public body such as the Highways Agency or Network Rail, but may also be a private developer.
- Explains that, in all cases, WPD will expect the cost of diverting WPD assets to accommodate a proposed development to be borne in full¹ by the developer.
- Confirms that WPD will seek to settle legally binding terms of agreement for the protection

and diversion of assets and the recovery of costs.

- Establishes that WPD will, in almost all cases, submit a holding objection to infrastructure projects to secure adequate legal protection.
- Clarifies WPD's statutory responsibilities and its legal duty to protect the electricity distribution network.

WPD's statutory obligations and position

- WPD has a legal duty to develop and maintain an *efficient, co-ordinated and economical system of electricity distribution*, under Section 9 of the Electricity Act 1989.
- This is interpreted as a duty to protect the network from disruption at no or minimal cost or liability to WPD or its customers.
- When dealing with developers/undertakers, it is important to understand that WPD is acting as a statutory undertaker performing its statutory role - this means that its relationship with the developer/undertaker is not that of a commercial contractor. This point is central to WPD's position on cost recovery and risk management in the following sections. Ofgem's price control framework provides no incentive or other mechanism for WPD to absorb risk or cost when interacting with other infrastructure projects. Nor does it permit such costs or risks to be passed to its customers. Therefore, it is WPD's policy to prevent developers or undertakers passing the costs of works or development risk to WPD.
- Undertakers have argued that risk allocation of public schemes is irrelevant because WPD's customers are also members of the public who will benefit from the project and should therefore shoulder the cost. WPD does not accept this position as its customers are businesses and individuals who make up only a small section of the general public.
- For this reason, WPD expects the developer or undertaker to bear the full cost/ risk burden of the project, as WPD would not incur any cost or risk, if the scheme was not affecting its assets.
- In very limited circumstances - where cost sharing provisions apply under the New Roads and Street Works Act (NRSWA) - WPD must share some of the costs of

¹ Subject to NRSWA see below.

diversions. However, WPD will not accept NRSWA cost sharing on diversions unless they are wholly within the public highway².

- Developers/undertakers expect WPD to engage with its consultants and plan diversions and protective works in line with the project timetable. This means WPD is asked to prioritise works ahead of other planned/ 'business as usual' programmes. Developers/ undertakers should recognise the additional burden this may place on WPD labour and resources and expect to meet any appropriate costs.

Serious detriment test

- Infrastructure projects should not be given consent, or approved, where they are likely to cause serious detriment³ to WPD's assets.
- While the test has been discussed in some Development Consent Order projects⁴, it has not been set out in any detail. This is because it is generally accepted that the developer/undertaker has, or will, agree reasonable terms for protection of assets.
- WPD believes that, where the requirements set out in this guidance are followed, there will be no serious detriment to its network.

Specific requirements

- WPD expects that the requirements set out below will form part of a settlement agreement (sometimes called an asset protection agreement) between WPD and the undertaker/developer of any major infrastructure project to make sure the criteria highlighted in the sections above are met.
- In most cases, WPD will submit a precautionary holding objection to the scheme on the basis of potential serious detriment to its network. This can be withdrawn once agreement has been reached on the protection of its assets and on the terms for the asset protection agreement.
- Occasionally, when terms cannot be agreed, WPD will need to engage more fully in the procedural decision. This may involve attending a public inquiry to ensure protective terms or variations to the scheme are secured.

³ For example see Section 16 Acquisition of Land Act 1981 and Section 127 Planning Act 2008

Indemnity for costs/losses

- WPD incurs cost risks where there is a chance of damage to its network from construction/project works. This can include network losses/disruption, leading WPD to be liable to customers for loss of supply. WPD expects developers to provide an indemnity where such risks arise as a result of a project.
- WPD also expects the indemnity to cover all costs incurred by WPD as a result of the scheme.

Liability for delay

WPD considers it is the undertaker/developer's responsibility to give WPD sufficient notice of its project timetable where any diversions or protective works need to be carried out by the electricity operator. WPD will act reasonably and work with the project team to meet these timescales but will not under any circumstances accept liability for delays to the project or failure to meet the timetable.

Insurance

Undertakers/developers allocate risk to their contractors for project losses including third party liability. WPD expects that any losses caused by the developer/undertaker or its contractors are underwritten by a third party liability policy which WPD can call on as a named beneficiary. In the event that damage is caused to its network which causes loss to itself or its customers, WPD is then able to draw on this policy rather than needing to claim losses against the undertaker (which might be losses incurred by its contractor).

Land Rights

- WPD is frequently required to divert its electricity lines and cables to accommodate a project and sometimes to divert or install new substations. These diversions can extend beyond the geographical boundaries of the project and require assets to be placed in third party land. Developers/undertakers often overlook the need for third party land

⁴ See for example The M42 Junction 6 Development Consent Order 2020

- rights outside the project boundaries to accommodate diverted assets.
- Diversions usually need to be energised before existing routes are removed which requires diversion works to be undertaken well in advance of project works. Because of this, it can take a considerable amount of time to acquire land rights and plan for works. WPD expects the undertaker/developer to plan for this and assume risk for any failure to do so. WPD will not be responsible for acquiring land rights for diversions unless that is agreed in advance and the undertaker agrees to meet WPD's costs for doing this.
 - WPD will not use its compulsory rights to acquire land rights for a third party scheme except as a last resort. As the 'lead in time' for using compulsory powers can be significant, undertakers should not rely on WPD to meet the project timetable. WPD considers it reasonable for a third party's compulsory rights to be used, rather than its own, where such rights are available to the third party.

New Connections

- Undertakers should state clearly if they require WPD to create a new connection and make provision for approving that connection and agreeing connectivity with WPD. In WPD's experience, developers/undertakers often underestimate (or even overlook) their network connection, land rights and consenting requirements. Early engagement with WPD is essential to ensure optimal outcomes, particularly if early engagement can ensure provision is made for land rights and consenting to be included in the developer/undertakers' own statutory process.
- As new connection customers, developers/undertakers need to be aware that WPD is obliged to maintain consistency in its approach and its connection offers to ensure that all customers are treated equally. This can limit WPD's ability to agree non-standard, bespoke terms in relation to developer/undertakers' new connections.

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