

From:
Sent: Tuesday, November 29, 2011 1:01 PM
To:
Cc:
Subject: Section 51 advice: North Blyth Renewable Energy Project - draft documents

Richard - as promised (and discussed at our meeting today) some comments below on the current draft documents. It is appreciated that the documents will be subject to further amendment and checks for consistency by you before the application is submitted.

Draft DCO

Article Number

2

"authorised project" - this definition is not necessary as there are no ancillary works

"decision maker" - s103 will be amended by the Localism Act. Consider whether the definition should refer to (post April) the relevant Secretary of State.

"land plan" - for clarity article 28 (b) should refer to land plans

"requirements" - does "matters set out" lead to confusion? Would it be better simply to identify requirement as "a requirement set out in.."? See also comments below relating to requirement definitions.

"undertaker" - consider whether alternative drafting provides more clarity - for example the undertaker "means in relation to any provision of this Order, North Blyth Energy Ltd and any other person who has the benefit of that provision in accordance with article 7 or section 156 of the 2008 Act"

3 - "deposited" is unnecessary. This article appears to control the extent of vertical deviation "in respect of any structure not being beneath or comprising the stack" in other words it does not relate to the stack. Query then whether "provided that the height of the stack shall not exceed 105 metres above ordnance datum" is best placed in another paragraph or sub paragraph of the article as a general limitation.

4 Consider whether the formulation in the Rookery South Order (as made) is a clearer expression of what the article is intended to do.

5 To be clear add that the power to maintain is subject to the terms of the Order including requirements. Sub paragraph heading (1) is not required.

7

This article does not deal solely with consent to transfer so could be headed "Benefit of the Order"

7(6) (a) reference to transferee or lessee could be clarified by the addition of "as referred to in paragraph 2"

8 - it is paragraph not paragraphs (g); it is requirement 42

9 - "why are the additional words "including, in particular, breaking up.....under the street" and "and all such other provisions as apply formentioned above" necessary? The EM should explain.

10 - why is it not considered necessary to enable an agreement with a street authority to deal with maintenance? The EM should explain.

16 - please clarify in the EM why "any private right of way" has been altered to read "any private right"

17 -

Is reference to Articles 13 or 16 necessary?

Please clarify why 17 (3) widens compensation to "any private right" (the heading refers to "Private rights of way")

27 - Schedule 4 should read Schedule 3. In view of article 4 which applies the TCPA 1990 is it sufficiently clear to define requirements in article 2 as "requirements set out in Schedule 4" but have another class of requirements set out in Schedule 3 which relate solely to the marine licence. Are these in fact marine licence conditions - see s149A (3)?

28 - this should also include the design statement and any other documents referred to in the DCO

Schedule 3 part 1 (marine licence)

"The Order limits" - for consistency "development" should be used instead of "project". For consistency, would it be better if this part relied on interpretation in article 2 with only new definitions included here?

"requirements" - see point above, should "conditions" be used in preference?

"undertaker" - it should be reference to article 7 (2)

Requirement 3 - what is the environmental document (reference made here and in other requirements) and how does this relate to the environmental statement?

Requirements 9 and 10 - paragraphs 4 and 8 of what?

Schedule 4

Requirement 1

"the authorised project" - this definition is not required.

"applicable mandatory sustainability criteria" - the term "Development" is not consistent with "the authorised development". The sentence beginning "and, at the time when they are burnt" does not seem to add to the definition of criteria.

"commence" - "Commissioning" does not need a capital letter.

Requirement 9 - "contaminated" or "contaminating" material? Is "site" sufficiently understood? Other references are to "within the Order limits" (eg requirement 8).

Requirement 10 - "environmental document" or environmental statement?

Requirement 16 - for consistency, add the name of the standard.

Requirement 19 - "unless" not "until"

Requirement 24 - "to be used" not "will be". Capital is not required for "Otters".

Requirement 28 - an updated reference to the Conservation of Habitats and Species Regulations 2010 should be provided.

Requirement 32 - consider adding "for those works" for clarity

Requirement 40 - does Health and Safety at Work Register need defining?

Requirement 43 - is "site" sufficiently understood?

Requirement 44 - a capital is not required for "Road"

Requirement 45 - see comments above. It is not clear why "applicable mandatory sustainability criteria" has been defined. In this requirement the criteria are defined by reference to the Renewables Obligation (which is not itself defined by reference to a financial assistance regime of the interpretation).

Requirement 46 - is "site" sufficiently understood?

Explanatory Memorandum

1 Article 3 - "it provides greater clarity" than what?

2 Article 4 - does s72 TCPA 1990 establish a procedure?

3 Article 5 - this does not explain the purpose and effect of the article

Statement of Reasons

Paras 7.4 and 7.5 could be amended to explain the changes which will be brought about by the Localism Act ("objection" not "representation" will trigger requirements under s127).